

20 January 1999

TO ALL MEMBERS

Dear Sirs

YEAR 2000 CHARTERPARTY CLAUSE

Members will be aware that the Association has issued a number of recent Circulars concerning the Millennium Bug and that it is the Association's intention regularly to update Members on this important issue. Some of the dates upon which millennium problems may arise are now rapidly approaching (see the Association's Circular 5:250 dated 2 April 1998). The Association has received an increasing number of requests from Members enquiring whether their Charterparties, and other contracts, should contain a specific millennium clause.

The Millennium Bug gives rise to a number of issues in relation to the chartering of vessels. For example, millennium compliance is likely to be relevant to whether a vessel has been delivered "with hull, machinery and equipment in a thoroughly efficient state" (NYPE form line 5) and whether the vessel is "tight, staunch and strong and in every way fitted for the service" (NYPE form line 22). Moreover, most Charterparties (and all those governed by English Law) contain an absolute undertaking of the seaworthiness of the vessel on delivery. A deficiency in the vessel's equipment as a consequence of the Millennium Bug would almost certainly amount to unseaworthiness. In fact, the potential problems threatened by the Millennium Bug remain to be fully identified.

It is perhaps therefore not surprising that many Charterers are now seeking warranties in relation to Year 2000 compliance and have circulated Year 2000 "awareness" clauses for incorporation into Charterparties. However, some of these clauses which are put forward by Charterers are unduly onerous and could result in P&I cover being prejudiced for the Owner. Against this background, BIMCO has now produced the following Standard Year 2000 Clause for Voyage and Time Charterparties:

"Year 2000 conformity' shall mean that neither performance nor functionality of computer systems, electronic and electro-mechanical or similar equipment will be affected by dates prior to or during the year 2000.

Without prejudice to their other rights, obligations and defences under this Charter Party including, where applicable, those of the Hague or Hague-Visby Rules, the Owners and the Charterers, and in particular the Owners in respect of the Vessel, shall exercise due diligence in ensuring Year 2000 conformity in so far as this has a bearing on the performance of this Charter Party."

P.T.O.

BIMCO make the important point that Millennium compliance is not just a matter for Shipowners, but is an industry-wide obligation. However, while the scope of this Clause extends to computer hardware and software belonging to the Charterers and the Owners in their shoreside operations, the key item of "equipment" in terms of the performance of the Charterparty is, of course, the vessel and it is in this respect that the Shipowner has the major exposure.

Most Charterparties incorporate the Hague or Hague-Visby Rules, or equivalent terms, which require carriers to exercise due diligence in respect of seaworthiness, manning, equipment and cargoworthiness. The Hague and Hague-Visby Rules are widely accepted and well understood by those engaged in the international carriage of goods and, as Members will know, they are also the contractual basis upon which liability in respect of cargo is insured by the Association. Club cover may thus be prejudiced if a Member contractually assumes greater responsibilities than those imposed by the Hague or Hague-Visby Rules. The benefit of this Clause from the Owners' perspective is that it preserves any defences available under the relevant contract of carriage including, where applicable, the Hague or Hague-Visby Rules defences. Importantly, the carrier's responsibility is defined in terms of **due diligence** rather than strict liability, reflecting the intention of BIMCO, by this clause, to set out what they understand to be the general pre-existing position under most charters as to the questions of seaworthiness.

To summarise, because Year 2000 compliance is essentially a seaworthiness issue - an obligation which imposes a non-delegable duty on Owners which is already expressed or implicit in the provisions of Voyage and Time Charterparties - it is preferable that carriers avoid any clause concerning millennium compliance in their contracts of carriage. However, if Members are compelled to agree a Year 2000 clause, the BIMCO clause, having been drafted in conjunction with the International Group of P&I Clubs, is recommended by the Association as it will not place Club cover at risk.

The Association's Managers will be pleased to advise Members who are in any doubt concerning the wording of such clauses.

Yours faithfully
A BILBROUGH & CO LTD
(MANAGERS)