

CLASS 5, THE PROTECTING AND INDEMNITY CLASS

NOTICE IS HEREBY GIVEN that a SEPARATE MEETING of the MEMBERS OF CLASS 5, THE PROTECTING AND INDEMNITY CLASS, of the Association will be held at the REGISTERED OFFICE of the Association, 50 LEMAN STREET, LONDON, E1 8HQ at 12 noon on WEDNESDAY, 24th JANUARY 2001, or as soon thereafter as the meeting of the Committee called for that day is finished, for the purpose of altering and adding to the Rules.

The following alterations and additions together with such further alterations and additions, if any, as may be proposed will be submitted for adoption with or without modification and with effect from noon G.M.T. on the 20th day of February 2001.

[New wording is in bold. The explanatory notes in italics will not appear in the actual Rules.]

RULE 9 RISKS COVERED

9.9 Stowaways, Deserters and Refugees:

- 9.9.1** Expenses, other than under Rule 9.7, incurred by the Member in discharging his obligations towards or making necessary arrangements for stowaways, deserters, refugees and persons saved at sea but only to the extent that either the Member is legally liable for them or they are incurred with the prior approval of the Association in writing.
- 9.9.2** The cost of employing shore watchmen approved by the Association, or the cost of maintaining crew members, stowaways or refugees ashore in safe custody, in circumstances where a detainment notice is served by the appropriate Authorities;
- 9.9.3** PROVIDED that there shall be no recovery from the Association under Rule 9.9.2 ~~and/or Rule 9.23.1.1~~ unless the Member can satisfy the Association that proper steps were taken to guard against desertion and landing without permission of the proper Authority.

[The reference in the proviso to Rule 9.23.1 has been removed and has now been set out again in that Rule.]

9.14 Property not on board an Entered Ship:

- 9.14.1** Liability to pay damages or compensation for any loss of or damage to **or loss of use of or infringement of rights in connection with** any property ~~(including~~

~~infringement of rights in connection with that property)~~ whether on land or water and whether fixed or movable,

PROVIDED that there shall be no recovery under Rule 9.14 in respect of liability:

[The amendment is to make it clear that the Rule covers claims for loss of use of, or delay to, a fixed or floating object caused by a casualty to the entered ship, for example, the obstruction of a berth, port, harbour or river resulting in loss of use of cargo handling facilities or delay to another ship, without any physical loss or damage caused by direct contact by the entered ship.]

9.15 Pollution:

9.15.1 Liabilities, costs and expenses set out in Rule 9.15.1.1 - 9.15.1.4 to the extent that they are the result of the discharge or escape from an entered ship of oil or any other polluting substance, or the threat of such discharge or escape, namely:

9.15.1.1 Liability for loss, damage or contamination.

9.15.1.2 Liability of a Member as a party to any agreement previously approved by the Association in writing, and the costs and expenses incurred by a Member in performing his obligations under such agreements.

9.15.1.3 The costs of measures reasonably taken (or taken in compliance with any order or direction given by any government or authority) for the purpose of avoiding the threat of or minimising pollution, and liability incurred as a result of such measures.

9.15.1.4 Liability of a Member to pay special compensation to a salvor of an entered ship in respect of work done or measures taken to prevent or minimise damage to the environment, but only to the extent that such liability is imposed on the Member pursuant to Article 14 of the International Convention on Salvage, 1989, or is assumed by the Member under the terms of a standard form of salvage agreement approved by the Association, or the Lloyd's standard Form of Salvage Agreement (LOF1995) and subsequent amendments thereto.

9.15.1.5 PROVIDED that, unless the Committee in its sole discretion shall otherwise determine, there shall be no recovery under this Rule:

9.15.1.5.1 in respect of any liabilities, costs and expenses which but for the terms of a charter or contract of employment entered into for the employment of the entered ship would have been allowable in general average adjusted under the unamended York-Antwerp Rules 1994 and would have been recoverable from other parties to the contract;

9.15.1.5.2 in respect of any liability for loss, damage, contamination, costs or expenses arising as a consequence of the discharge or escape or the threat of discharge or escape of any hazardous waste (previously carried on the vessel) from any land based dump, storage or disposal facility.

[An exclusion has been added in respect of liabilities arising under the US Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or similar legislation for the escape of any hazardous waste (previously carried on the entered vessel) from any land-based dump storage or disposal facility, subject to the Committee's discretion to allow such a claim, in order to implement a decision by the International Group Managers at their meeting on 4 July 2000 that Clubs should introduce uniform rules to make cover for such liabilities a matter for Board/Committee discretion, in the particular circumstances of the case, rather than of right. It was considered that Board discretion should be more favourably exercised if a Member was a sole defendant in any action.]

9.23 Fines:

9.23.1 Fines imposed by any court, tribunal or authority for:

9.23.1.1 Breach of any immigration law or regulations relating to crew members or their wives and children **or stowaways**. ~~The PROVISIO in Rule 9.9.3 shall apply to recovery under Rule 9.23.1.1.~~ **PROVIDED that there shall be no recovery from the Association unless the Member can satisfy the Association that proper steps were taken to guard against desertion and landing without permission of the proper Authority.**

9.23.1.2 Smuggling by the Master or crew members, provided that the Member upon becoming aware of the alleged offence immediately notifies the Association.

9.23.1.3 Short-delivery or over-delivery of cargo or failure to comply with any law or regulations relating to declaration or documentation of cargo, but only when the entered ship is covered for cargo risks under Rule 9.19 in which case such fines shall be aggregated with cargo claims for the purposes of applying the cargo deductible to the same, and fines under Rule 9.23.1.3 shall not be subject to any other deductible.

9.23.1.4 The accidental discharge or escape of oil or any polluting substance from an entered ship, but as regards oil only where the entered ship is covered for pollution risks under Rule 9.15.

9.23.2 All other fines shall be recoverable only at the sole discretion of the Committee and provided that:

9.23.2.1 the Member has satisfied the Committee that he took such steps as appear to the Committee to have been reasonable to avoid the event giving rise to the fine or penalty and

9.23.2.2 any fine imposed not on a Member but the Master or crew members of the entered ship or on any other servant or agent of the Member shall only be recoverable in circumstances either where the Member has been compelled by law to pay or reimburse such fine or where the Committee shall determine that it was reasonable for the Member to have paid or reimbursed the same.

[This amendment extends Rule 9.23.1.1 to cover any immigration fines imposed in respect of stowaways and the proviso previously identified only by reference to another Rule is now set out.]

RULE 16 LIABILITY EXCLUDED FOR CERTAIN NUCLEAR RISKS

16.1 There shall be no recovery in respect of any liabilities, costs and expenses directly or indirectly caused by or contributed to by or arising from

16.1.1 ionising radiations from, or the radioactive, toxic, explosive or other hazardous or contaminating properties of

16.1.1.1 any nuclear fuel or any nuclear waste or the combustion of nuclear fuel; or

16.1.1.2 any nuclear installation, reactor or other nuclear assembly or nuclear component thereof; or

16.1.2 any weapon of war employing atomic or nuclear fission and/or fusion ~~and/or other~~ like reaction or radioactive force or matter, other than liabilities, costs and expenses arising out of carriage of "excepted matter" (as defined in the Nuclear Installations Act 1965 of the United Kingdom or any regulations made thereunder) as cargo in an Insured Vessel.

[This minor amendment is made so that the wording of the Rule conforms with the wording of the exclusion of nuclear risks in the Pooling Agreement.]

RULE 28 TERMINATION UPON SALE, LOSS, ETC.

28.1 Unless otherwise agreed by the Association in writing, any contract of insurance in respect of any Member's interest in an entered ship shall terminate (together with the entry of that ship in respect of that interest) upon the happening of any of the following events:

28.1.1 the Member parting with or assigning his interest in the ship whether by bill of sale or other formal document or in any other way whatsoever;

28.1.2 the ship becoming ~~a an actual~~ **a constructive, compromised or arranged total loss** or **is accepted by the Hull Underwriters as being a constructive, compromised or arranged total loss**, save as regards the liabilities, costs and expenses resulting directly from the casualty which has given rise to such ~~actual~~ **total loss or which are incurred as a result of measures taken with the Association's approval for the purpose of avoiding or minimising any such liabilities.**

28.1.3 ~~in the case of an alleged constructive total loss of the ship, the acceptance by Hull Underwriters of notice of abandonment, the tendering of which must be immediately notified to the Association in writing;~~

28.1.4 ~~the ship being missing for ten days from the date she was last heard of or from her being posted at Lloyd's as missing, whichever shall be the earlier.~~

28.2 The Association may terminate any contract of insurance in respect of any Member's interest in an entered ship (together with the entry of that ship) upon there being any change in the management or operation of the entered ship.

[This Rule has been amended so that the entry of a ship shall terminate when it becomes an actual, constructive or compromised total loss, although cover will continue in respect of liabilities, costs and expenses resulting directly from the casualty or which are incurred as a result of measures taken with the Club's approval for the purpose of avoiding or minimising any such liabilities. It is proposed that Rule 28.1.3 should be deleted because, in practice, hull underwriters seldom accept a shipowners' notice of abandonment of his vessel.]

By Order of the Committee,
A. BILBROUGH & CO. LTD.
(Managers)

20 December 2000