

## CLASS 5, THE PROTECTING AND INDEMNITY CLASS

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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, 23rd JANUARY 2002, 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 2002.

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

### RULE 9 RISKS COVERED

#### 9.19 Cargo:

**9.19.2.3** there shall be no recovery in the case of deviation from the contractually agreed voyage if as a result of such deviation the Member is denied any defences or rights of limitation which would otherwise have been available to him to exclude or reduce liability unless either:

**9.19.2.3.1** the Member has notified the Association of the deviation before it occurs or immediately upon receiving information that it has occurred and the Association has agreed or arranged cover on special terms (which may include the requirement of an additional Call or premium), or:

**9.19.2.3.2** the Committee in its sole discretion shall determine that the Member had reasonable grounds for believing that no deviation was being or had been made **or that the deviation was permitted under the terms of the contract of carriage;**

**9.19.2.4** unless the Committee in its sole discretion shall otherwise determine, there shall be no recovery in respect of:

**9.19.2.4.1** any Bill of Lading, Waybill or other document containing or evidencing the Contract of Carriage issued with the knowledge of the Member or the Master of the entered ship with an incorrect date or an incorrect description of the cargo or its quantity or its condition **or a misstatement of the port of loading or the port of discharge;**

*[Explanation: It is likely that the Committee will be asked to exercise its discretion in a case where a Member has incurred a liability arising from a deviation, not in circumstances where the Member was unaware of the deviation, but rather in circumstances where the Member was aware of a geographical or other deviation but had reasonable grounds for believing that such a deviation was permitted under the terms of the contract of carriage. Thus this amendment is made in order to reflect the most likely circumstances in which the Committee might be asked to exercise its discretion.]*

*There have been instances of misstatement of the port of loading or the port of discharge in a bill of lading and, if the Member should incur a liability arising from such a misstatement, then it is suggested that cover should be a matter for the Committee's discretion.]*

## **9.22 Property other than Cargo on board an Entered Ship:**

**9.22.1** Liability for loss of or damage to any containers, equipment, bunkers or other property on board the entered ship other than cargo and the effects of any person aboard,  
PROVIDED that:

**9.22.1.1** there shall be no recovery in respect of any property which forms part of the entered ship or which is owned, **hired**, ~~or~~ leased **or borrowed** by the Member or by any company associated with or under the same management as the Member;

*[Explanation: In a recent case involving the total loss of the entered ship, it was argued that this exclusion did not apply to equipment on board which was hired rather than leased by the Member. The word "hired" has therefore been added to the Rule to cover this situation. The words "or borrowed" have also been added to cover another possible situation.]*

## **RULE 15 LIABILITY EXCLUDED FOR WAR RISKS**

**15.1** Unless the Association shall have previously agreed or arranged cover in writing on special terms (which may include the requirement of an additional Call or premium) there shall be no recovery in respect of any liabilities, costs or expenses (whether or not a contributory cause of the same being incurred was any neglect on the part of the Member or the Member's servants or agents) when the loss or damage, injury, illness or death or other accident in respect of which such liability arises or costs or expenses are incurred, shall have been caused by:

**15.1.1** war, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power, **or any act of terrorism**;

**15.1.1.1 PROVIDED that in the event of any dispute as to whether or not any act constitutes an act of terrorism the decision of the Committee shall be final.**

**15.1.2** capture, seizure, arrest, restraint or detainment (barratry and piracy excepted), and the consequences thereof or any attempt thereat;

**15.1.3** mines, torpedoes, bombs, rockets, shells, explosives or other similar weapons of war,

PROVIDED that the exclusion in Rule 15.1.3 shall not apply to:

**15.1.3.1** liabilities, costs or expenses which arise solely by reason of the transport of any such weapons whether on board the entered ship or not;

**15.1.3.2** the use of any such weapons, either as a result of government order or with the agreement of the Association in writing, where the reason for such use is the avoidance or mitigation of liabilities, costs or expenses which would otherwise be recoverable under Rule 9.

**15.2 PROVIDED ALWAYS that the Association may provide special cover to the Members against any or all of the risks set out in Rule 9 notwithstanding that those liabilities, costs or expenses would otherwise be excluded by this Rule 15, subject to such limits and to such terms and conditions as the Association may from time to time determine.**

*[Explanation: The words "or any act of terrorism" have been added to make it clear that such an act is excluded as a war risk and proviso 15.1.1 gives the Committee the authority to decide whether any act constitutes an act of terrorism in the case of dispute. These amendments are being introduced by all Group Clubs.*

*Rule 15.2 has been added in order to include the excess war risks P&I cover which Group Clubs currently provide to their Members. This cover is presently subject to a limit of USD100 million in excess of any amount recoverable under the entered ship's Hull & Machinery and War Risks Policies and any P&I Inclusion Clauses, attached thereto, and subject to an excess of the U S Dollar equivalent of the full market value of the entered ship, or the amount recoverable from the Member's underlying war risks underwriters, whichever is the greater, up to a maximum of USD100 million. This cover is based upon a reinsurance which the Group currently obtains from London Market Underwriters and it is not presently known whether this reinsurance, and therefore the Club's cover, will be available in 2002.]*

**RULE 17 EXCLUSION OF RISKS ARISING FROM SALVAGE AND SPECIALIST OPERATIONS, DRILLING VESSELS AND WASTE DISPOSAL AND SUB-SEA ACTIVITIES**

Unless previously agreed in writing **by a special agreement between the Member and the Association** there shall be no recoveries in respect of liabilities, costs and expenses:

- 17.1 arising out of salvage operations conducted by an entered ship or provided by the Member, other than for the purpose of saving or attempting to save life at sea;**
- 17.2 incurred by a Member during the course of performing specialist operations including but not limited to dredging, blasting, pile-driving, well stimulation, cable or pipelaying, construction, installation or maintenance work, core sampling, depositing of spoil, professional oil spill response or professional oil spill response training or tank cleaning of a ship other than the entered ship or salvage (but excluding fire-fighting) to the extent that such liabilities, costs and expenses arise as a consequence of:**
  - 17.2.1 claims brought by any party for whose benefit the work has been performed, or by any third party (whether connected with any party for whose benefit the work has been performed or not), in respect of the specialist nature of the operations;**
  - 17.2.2 the failure to perform such specialist operations by the Member or the fitness for purpose and quality of the Member's work, products or services, including any deficiency in the Member's work, products or services;**
  - 17.2.3 any loss of or damage to the contract work;**
  - 17.2.4 PROVIDED that this exclusion shall not apply to liabilities, costs and expenses incurred by a Member in respect of loss of life, injury or illness of crew and other personnel on board the entered ship, and the removal of the wreck of the entered ship, the discharge or escape of oil from the entered ship; but only to the extent that such liabilities, costs and expenses are covered elsewhere in accordance with these Rules.**
- 17.3 incurred in respect of a drilling vessel or barge or any other vessel or barge employed to carry out drilling or production operations in connection with**

oil or gas exploration or production, including any accommodation unit moored or positioned on site as an integral part of any such operations, to the extent that such liabilities, costs or expenses arise out of or during drilling or production operations.

**17.3.1** For the purposes of Rule 17.3, a vessel shall be deemed to be carrying out production operations if (inter alia) it is a storage tanker or other vessel engaged in the storage of oil, and either:

**17.3.1.1** the oil is transferred directly from a producing well to the storage vessel; or

**17.3.1.2** the storage vessel has oil and gas separation equipment on board and gas is being separated from oil whilst on board the storage vessel other than by natural venting.

**17.4** incurred by a Member in connection with any claim arising out of:

**17.4.1** waste incineration or disposal operations carried out by the entered ship (other than any such operations carried out as an incidental part of other commercial activities, not being specialist operations); or

**17.4.2** the operation by the Member of submarines, mini-submarines or diving bells, or

**17.4.3** the activities of professional or commercial divers where the Member is responsible for such activities, other than

**17.4.3.1** activities arising out of salvage operations being conducted by an entered ship where the divers form part of the crew of that entered ship (or of diving bells or other similar equipment or craft operating from the entered ship) and where the Member, the Owner of that entered ship, is responsible for the activities of such divers; and

**17.4.3.2** incidental diving operations carried out in relation to the inspection, repair or maintenance of the entered ship or in relation to damage caused by the entered ship; and

**17.4.3.3** recreational diving activities.

*[Explanation: This Rule has been amended to include all categories of specialist operations which are presently excluded in the Pooling Agreement; and include, for example, an exclusion in respect of storage tankers carrying out production operations.]*

## **RULE 24 EXTENSION OF COVER TO OTHER PARTIES**

**24.1.3** the benefit of a Member's insurance shall not be extended to third party persons or companies which are not referred to in the relevant Certificate of Entry or by endorsement thereto, whether by name, class, description or otherwise, notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999.

*[Explanation: This Rule has been added to avoid the possibility of a third party not named in a Club Certificate of Entry from seeking the benefit of Club cover by invoking the UK Contracts (Rights of Third Parties) Act 1999, which came into force in 2000, and which gives a third party the right to claim benefit from a contract to which he is not a party in certain circumstances.]*

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