

## 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, 29th JANUARY 2003, or as soon thereafter as the meeting of the Committee called for that day is finished, for the purpose of amending the Rules.

The following amendments together with such further amendments, 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 2003.

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

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### RULE 9 RISKS COVERED

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#### 9.2 Liability to Persons other than Seamen:

##### 9.2.3 Passengers (persons holding passage tickets):

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Liability to pay damages or compensation:

- (i) for personal injury, illness or death of any passenger and hospital, medical or funeral expenses incurred in relation to such injury, illness or death;
- (ii) to or in respect of passengers on board an entered ship arising as a consequence of a casualty to that ship, including the cost of forwarding passengers to destination or return to port of embarkation and of maintenance of passengers ashore;
- (iii) for loss of or damage to the effects of any passenger;

PROVIDED that:

- 9.2.3.1** the terms of the passage ticket or other contract between the passenger and the Member have been approved by the Association in writing and cover for the liabilities set out in this Rule has been agreed between the Member and the Association in writing on such terms as the Association may require.
- 9.2.3.2** There shall be no recovery from the Association under this Rule in respect of liabilities for personal injury or death, or loss of or damage to property, delay or any other consequential loss sustained by any passenger by reason of carriage by air, except where such liability occurs either:
  - (i) during repatriation by air of injured or sick passengers or of passengers following a casualty to the entered ship; or
  - (ii) subject always to Rule 9.2.3.3, during an excursion from the entered ship.
- 9.2.3.3** There shall be no recovery from the Association in respect of the contractual liability of a Member to a passenger whilst on an excursion from the entered ship in circumstances where either:

- (i) a separate contract has been entered into by the passenger for the excursion, whether or not with the Member, or
- (ii) the Member has waived any or all of his rights of recourse against any sub-contractor or other third party in respect of the excursion.

**9.2.3.4** There shall be no recovery in respect of hotel, restaurant, bar or other guests or visitors on board the entered ship when moored and open to the public as a hotel, restaurant, bar or other place of entertainment.

**9.2.3.5** **In the context of Rule 9.2.3 (ii), 'casualty' shall mean an incident involving either (i) a collision, stranding, explosion, fire, or any other cause affecting the physical condition of the entered ship so as to render it incapable of safe navigation to its intended destination, or (ii) a threat to the life, health or safety of passengers.**

*[Explanation: The proposed amendment has been recommended by the International Group's Passenger Cover Working Group in order to better define and restrict cover to what may be termed marine incidents.]*

## **9.7 Diversion:**

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**9.7.1** Expenses of diversion of an entered ship to the extent that those expenses:

- 9.7.1.1** represent the net loss to the Member (over and above such expenses as would have been incurred but for the diversion) in respect of the cost of bunkers, insurance, wages, stores, provisions and port charges; and
- 9.7.1.2** are reasonably incurred for the sole purpose of securing treatment for an injured or sick person or while awaiting a substitute for such person or for the purpose of landing stowaways or, refugees **or persons saved at sea.**

*[Explanation: The amendment addresses an obvious omission and makes this Rule consistent with Rule 9.9's provision for persons saved at sea.]*

## **9.15 Pollution:**

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**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 and expenses arising as a consequence of the discharge or escape, or the threat of discharge or escape, or the presence, of any substance, material, product, or waste, determined or deemed to be hazardous, in any dump, site, storage or disposal facility, whether or

not such substance, material, product or waste was previously carried on an entered ship as cargo, fuel or stores.

**9.15.1.5.3 in respect of liabilities, costs and expenses in respect of an escape or discharge or threatened escape or discharge of oil arising out of any incident or occurrence to which the United States Oil Pollution Act of 1990 (OPA 90) is applicable and which relates to a “tank vessel” (as defined in OPA 90) unless the Member who has entered such a tank vessel has complied with the following terms and conditions:**

- (a) the Member shall agree before 20th February of the relevant policy year to make and shall make quarterly declarations in arrears, at the latest within two months of each quarter ending 20th May, 20th August, 20th November and 20th February, declaring whether or not any entered tank vessel has made a voyage carrying cargo to or from ports or places in the United States of America, including the exclusive economic zone (EEZ), to which OPA 90 applies, and, if any such voyages have been made, giving the date on which the cargo was loaded or discharged, the name of the United States port or location at which the cargo was loaded or discharged, and the type of the cargo carried, in accordance with the U.S. Voyage Quarterly Declaration form issued to the Member by the Managers; and**
- (b) if a voyage declared under (a) above involves the carriage of persistent oil (as defined in the U.S. Voyage Quarterly Declaration form) as cargo, the Member shall pay, on or before the date stipulated in the debit note issued by the Managers, an additional premium as specified therein.**

**It is a condition precedent to cover in respect of liabilities costs and expenses in respect of an escape or discharge or threatened escape or discharge of oil arising out of an incident or occurrence to which OPA 90 is applicable that the Member has timeously and accurately complied with the above conditions concerning declarations.**

*[Explanation: Since 1991, the International Group of P&I Clubs has applied a voyage surcharge in premium to tankers carrying persistent oil to or from the United States of America in order to protect the International Group's Pooling and Excess Loss Reinsurance arrangements against the distorting effect of the likely increase in pollution costs arising from OPA 90. The Association's annual Circulars have stated that the Association's cover for all tankers capable of carrying oil in bulk as cargo "will continue to incorporate the following Exclusion Clause: Excluding any and all claims in respect of oil pollution arising out of any incident to which the U.S. Oil Pollution Act 1990 is applicable". However, to date, the Association's Rules have not been substantively amended to incorporate such exclusion and which is effected by the above amendment and which brings the Association's Rules in line with most other Clubs].*

**9.19 Cargo:**

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**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;**
- 9.19.2.4.2 delivery of cargo without production of the relevant Bill of Lading;**
- 9.19.2.4.3 carriage of cargo to the port of destination stipulated in the contract of carriage from another port, or storage or other charges;**
- 9.19.2.4.4 late arrival or non-arrival of the entered ship at a port or place of loading, or failure to load any particular cargo;**
- 9.19.2.4.5 the carriage on deck of cargo for which the Bill of Lading does not state that such cargo is being so carried and does not purport to exclude the Member's liability altogether, save that in the case of cargo customarily carried or suitable for carriage on deck incorporation of an appropriate liberty clause for on-deck carriage shall be sufficient;**

- 9.19.2.4.6** any liability howsoever described arising from the mistaken or illegal exercise of a lien over cargo on board the entered ship;
- 9.19.2.4.7** any liability howsoever described arising from withdrawal or temporary interruption in services performed under Time Charterparty where such actions have been taken in order to enforce payment of hire;
- 9.19.2.4.8** refusal to issue Bills of Lading in an attempt to recover any sums due to the Member under a Charterparty;
- 9.19.2.4.9** **any liability, costs or expenses whatsoever or howsoever arising, whether directly or indirectly, out of or in consequence of:**
- (a) the Member's participation in or use of any system or contractual arrangement the predominant purpose of which is to replace paper-based documentation in shipping and/or international trade with electronic messages (any such system or arrangement being referred to in this Rule as a "paperless system"), or**
  - (b) a document which is created or transmitted under a paperless system, which document contains or evidences a contract of carriage, or**
  - (c) the carriage of cargo pursuant to such a contract,**
- save to the extent that the Committee may determine that such liability, costs or expenses would have arisen and would have been covered by the Association if the Member had not participated in or used a paperless system and any contract of carriage had been contained in or evidenced by a paper document. In the context of this Rule, a "document" shall mean anything in which information of any description is recorded, including, but not limited to, computer or other electronically generated information.**

*[Explanation: With effect from 20 February 1999, the Clubs within the International Group introduced a Paperless Trading Endorsement to Certificates of Entry, the effect of which was to exclude liabilities which may arise under paperless trading systems, which would not have arisen if cargo had been carried on the basis of conventional documentation. Rather than perpetuate the inclusion of this Endorsement within Certificates of Entry, the Clubs are moving to the incorporation of the provisions of the Endorsement into Club Rules.]*

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## **RULE 43 JURISDICTION AND LAW**

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- 43.1** The Association may but shall not be obliged to commence and maintain proceedings to obtain security for and/or payment of any amount outstanding in respect of Calls or otherwise in the High Court of Justice of England and, if it does so, the Member hereby submits to the jurisdiction of this Court in respect of any such action. Without prejudice to the foregoing the Association shall be entitled to commence and maintain proceedings in any other jurisdiction **and under the law of any such other jurisdiction** to obtain security for and/or payment of any amount outstanding in respect of Calls or otherwise.

*[Explanation: The proposed amendment should enhance the prospects of the Association being able to avail itself of favourable local laws concerning the recognition of maritime or general liens for insurance premiums and calls.]*

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

10 January 2003