



**THE LONDON**  
STEAM-SHIP OWNERS'  
MUTUAL INSURANCE ASSOCIATION LIMITED

All correspondence should be addressed to the Managers

**A. BILBROUGH & CO. LTD**  
50 Lemn Street London E1 8HQ  
Telephone: 020 7772 8000  
Facsimile: 020 7772 8200  
E-mail: london@a-bilbrough.com  
[www.lssso.com](http://www.lssso.com)

21 October 2005

## **TO ALL MEMBERS**

Dear Sirs

### **International Convention for the Prevention of Pollution from Ships 73/78 MARPOL – Oily Water Separators**

The Association's Circular of 9 June 2005 highlighted the increasingly stringent nature of investigations of Owners in connection with suspected breaches of the MARPOL Regulations in a number of jurisdictions including, in particular, Germany, the USA and France and which have led to prosecutions. The Circular also confirmed that, other than in cases of purely accidental discharge, the cover provided by the Clubs in the International Group for fines imposed in connection with such breaches is only available on a discretionary basis. It is in this context that the Association's Committee has instructed the Managers to provide the following additional information to the Membership.

The widespread reports and examples of the extremely substantial penalties attracted by cases involving, inter alia, the misuse of oil discharge monitoring and filtering equipment, or failures to comply with engine room record keeping requirements, have served to provide a very clear warning (underscored by this and the 9 June Circular) of the seriousness with which failures to adhere to MARPOL are treated. Indeed, the exposure to fines (which have ranged from instances of multi-million dollar penalties for cases of improper discharge, to fines of hundreds of thousands of dollars for omissions in the upkeep of oil record books) may in some jurisdictions be accompanied by a risk of imprisonment of crew or corporate personnel. The position of the Authorities is made all the more powerful on account of their use of "whistleblower" type legislation, while the pivotal role played by engine-room crews in these matters has also been highlighted by penalties imposed on Owners in cases resulting from misconduct by a Chief Engineer and/or other engine-room personnel, in defiance of company instructions and procedures.

Accordingly, it appears that a focused and determined approach to upholding proper operational practices in relation to waste oil management and related recording requirements, in particular, will be required as part of the measures adopted by Owners to avoid the potential liabilities that may otherwise arise. The safeguards being deployed on board ships and in the companies' offices should be subject to special scrutiny. Training programmes, performance assessments and company instructions and procedures cannot overstate the significance of MARPOL and the need for scrupulous oil record book keeping. However, experience indicates that it is the rigorous monitoring, checking and auditing of the operation of all relevant equipment and record maintenance that may well be most critically instrumental in ensuring compliance with the Regulations.

P&I cover for fines involving breaches of MARPOL is, as stated, discretionary save only where the breach involves pollution and is purely accidental. However, in all cases, the steps taken to avoid the event giving rise to the fine or penalty will be one of the central issues considered by the Committee in determining whether its discretion should be exercised to allow recovery or, alternatively, whether any prima facie entitlement to recovery as of right under the Rules on account of the accidental nature of any discharge may have been prejudiced. It is against a backdrop of the sort of comprehensive measures outlined above - to prevent violations of the MARPOL Regulations - that such an evaluation of the steps taken will be made. Accordingly, and because the authorities levying the fines do not generally expect them to be insurable, the Committee wishes Members to be well aware that cover will not necessarily be afforded and to be cognizant of the very exacting standards which have to be met and with respect to which the Committee will have to be fully satisfied, as part of the process informing the decision over the exercise of its discretion.

Yours faithfully  
A BILBROUGH & CO LTD  
(MANAGERS)