

11 November 2010

## TO ALL MEMBERS

Dear Sirs

### INTERNATIONAL GROUP STANDARD FORM LETTERS OF INDEMNITY Delivery of cargo without production of Bills of Lading

Members are referred to the Circular on delivery of cargo under bills of lading, without production of the original bill of lading, issued in February 2001 and the accompanying International Group Standard Form Letters of Indemnity. (Circular 5:300 – <http://www.londonpandi.com/files/circulars/pandi/5300.pdf>)

Following the decision in the English Commercial Court in the case of Farenco Shipping Co Ltd -v- Daebo Shipping Co Ltd [2009] 1 Lloyd's Rep 81 (the 'BREMEN MAX') the Association recommends that Members take two further precautions if they choose to accept a Letter of Indemnity for delivery of cargo without production of the original bill of lading. The precautions relate to:

I. ***The identity of the party to whom delivery is to be given***

The opening paragraph of the Letter of Indemnity includes a number of italicised insertion instructions in brackets which are to be completed when the Letter of Indemnity is issued. This Circular deals with the identity of the party to whom delivery is to be made which appears as:

*[insert name of party to whom delivery is to be made]*

Recommendation: As well as inserting the name of the specific party (person or company) to whom delivery is to be made, Members should request that the blank section be completed as follows:

*"X [name of the specific party] or to such party as you believe to be or to represent X or to be acting on behalf of X"*

Reason: If a specific party only is named in the Letter of Indemnity, the Member may be assuming the burden of properly identifying that party. If the Member then mis-identifies the party, and delivers to some other party, there is the risk that the Member is not entitled to an indemnity, because he has not satisfied the pre-conditions in the Letter of Indemnity for delivery to the named party. The wording suggested above is designed to ensure, so far as possible, that if the Member believes that the party to whom physical delivery of the cargo is given is X or is acting on behalf of X he can rely on the Letter of Indemnity. In order to limit if not remove the burden on the Member to carefully identify the nominated party, it remains, however, important that the Member has a

paper trail which shows that the cargo was delivered to the party whom the issuer of the Letter of Indemnity or, materially, his agent at the discharge port has identified as the party to whom delivery is to be made.

2. ***Timing of Demands under the Letter of Indemnity***

In the event that a Member delivers cargo without production of the bill of lading in return for a Letter of Indemnity and an allegation is subsequently made against the Member that it has mis-delivered the cargo, accompanied by a security demand from the claimant, then the Member should immediately give notice to the issuer of the Letter of Indemnity that:

- (a) a claim has been notified
- (b) security has been demanded from the Member
- (c) the Member now requires the issuer in accordance with paragraph 3 of the Letter of Indemnity to provide security to the satisfaction of the claimant to prevent the arrest or detention or to secure the release of the ship.

In this regard, it is important now to recognise that if the Member provides security to the claimant directly without making a request to the issuer of the Letter of Undertaking to provide security to the claimant, the Member may, according to the decision in the 'BREMEN MAX', prejudice his right to demand subsequently from the issuer of the Letter of Undertaking that he provide substitute security to the claimant or counter security to the Member

Yours faithfully  
A BILBROUGH & CO LTD  
(MANAGERS)