P&I Rules and Exceptions 2012
Third edition

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P&I Rules and Exceptions
2012

Guidelines to the understanding and practical application of
The Swedish Club Rules for P&I Insurance

THE SWEDISH CLUB is proud to present the third and revised edition of our P&I Rules & Exceptions - a book containing supportive comments on our P&I Rules. The previous editions have enjoyed a high status and provided its readers with a better understanding of the Rules. It is our ambition that this book will be even more valued as a tool and source of information among people who work with P&I related matters worldwide. We hope to accomplish this by making the book easily accessible, from the point of view of contents as well as layout and searchability. In addition, a digital version of the book can be found on the Swedish Club Online (SCOL) website - accessible for members and business associates.

The first edition of the book was published in 1992 by Lennart Delfs, former Director of the P&I Claims Department. The second and most recent version was published in 2000 by Fredrik Kruse, former head of the P&I Claims Department and Senior Claims Manager and he has also revised this edition.

At the time of printing, this book reflects the latest changes of our P&I Rules (as per 20 February 2012) as well as the most recent developments in the relevant legislation. Nevertheless, it is important to be aware that since the P&I insurance is part of the dynamic shipping industry, things change continuously. If you need updated information about a specified topic, please do not hesitate to contact The Swedish Club directly or search for the latest information on www.swedishclub.com.

We hope that you will find this revised version of our P&I Rules & Exceptions to be both interesting and useful and that it will help you in your daily work, whether you are a member, broker, correspondent, lawyer, student or involved in any other area of the shipping industry.

Gothenburg, February 2012

Lars Rhodin
Managing Director
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Useful links

There are a number of other sources from which the reader of this book can obtain relevant information on specific topics. Below list of links to international maritime organisations contain a selection of organisations that can be useful.

BIMCO
www.bimco.org

CMI (Comité Maritime International)
www.comitemaritime.org

Finansinspektionen (FI) - Swedish Financial Supervisory Authority
www.fi.se

ICC/IMB (ICC Commercial Crime Services/International Maritime Bureau)
www.icc-ccs.org

ICS (International Chamber of Shipping/International Shipping Federation
www.marisec.org

IMO (International Maritime Organization
www.imo.org

InforMare
www.informare.it/dbase/convuk.htm

International Group of P&I Clubs (IG)
www.igpandi.org

The Swedish Club
www.swedishclub.com
Part One:
An introduction to The Swedish Club and the background of Protection & Indemnity
A. The Swedish Club
A.1 Background
Improvements of ships and navigation have at best reduced some of the risks inherent in
shipping but never eliminated them and sometimes created new ones. It is no wonder
that the spreading of those risks occupied the minds of those who invested money in ships
and cargoes in seafaring civilisations and communities. The risk-sharing systems included
elements of a truly mutual nature.

The administration of those systems contained some incompatible elements. They were
big and located at shipping centres. Whereas London became such a centre, minor and
industrious shipping communities found the dependence on the London market expensive
and time-consuming. Shipowners in provincial areas in the north of England associated
together to insure their Hull risks among themselves on a mutual basis. There were many
advantages in this arrangement. Such an association could operate with a small staff. It had
good knowledge of its members, their solvency and ships. Premiums could be held low, as
profit was not part of the premium calculations.

The formation of the local Hull clubs coincided in time with the change from sail to steam.
Many of the established and traditional insurance associations hesitated to provide cover at
reasonable costs for such a potentially dangerous invention.

This was the scenario when the decision was taken to found The Swedish Club.

A.2 How it started
A combination of good times for shipping and technical improvements of steam propulsion
machinery caused a rapid expansion of Swedish shipowning in the beginning of the 1870’s.
Previous attempts to provide Hull insurance in Sweden had either failed or been restricted to
sailing ships. On 7 December 1872 the first general meeting was held of Sveriges Ångfartygs
Assurans Förening, which would later be known internationally as The Swedish Club.
Application for entry had been received for 26 steamers. The cover was confined to Hull &
Machinery and War risks.

When the Club celebrated its 25th anniversary in 1898, it had become well established and
insured 275 ships. About the same time discussions started within the Board as to whether
the services afforded should include P&I insurance. The Board remained split on the issue as
to whether the cover should be provided direct by the Club or through a separate company.
Finally, the latter alternative won. On 8 December 1910 a new company with the handysizeed
name Sveriges Ångfartygs Assurans Förenings Delägares Ömsesidiga Försäkringsbolag
Protection & Indemnity held its first annual meeting. It was a company consisting of shares
owned by The Swedish Club. The company was amalgamated with The Swedish Club in
1950 and became its P&I department.

A.3 Operation of The Swedish Club
The British Clubs are generally operated by separate professional management companies.
Some Clubs are equally well known under the name of the managers than under their own
names. The Swedish Club does not have that dual system. The management is employed by
the Club which is a mutual insurance company formed under Swedish law. It has a Board of Directors elected by and among its members. Under the control of the management, there are several teams for specialised functions such as P&I, Marine, Underwriting and Technical expertise. Handling of claims and other related matters are the responsibility of the claims handlers forming part of the teams.

The Board consists exclusively of members holding executive positions within the field of shipowning and of the managing director of the Club and two representatives of the employees. It ensures that the Club is controlled for the benefit of the members. The Board is elected at the Annual General Meeting (AGM) held in Gothenburg at the end of May or the beginning of June. At the AGM, each member is entitled to one vote for each commenced SEK 100,000 of the sum total of his estimated premiums for the current fiscal year. Each member’s right to vote is restricted to 1/10 of the sum total of the votes of members represented at the AGM. That ensures a reasonable and democratic influence to all members present at the AGM and prevents one large member from taking control of the Club.

All members are invited to attend the AGM, which provides a good opportunity to meet other members as well as the staff of the Club. In addition to social events, the Club arranges lectures or other information on issues of current interest for shipping and underwriting in connection with the AGM.

A.4 Some ominous names
The Club’s P&I records reflect some big and well-known disasters at sea.

In January 1950 the Swedish tanker Divina collided with the British submarine Truculent which sank with a loss of 64 lives. An almost identical accident occurred only three years later when the Turkish submarine Dumlupinar sank with a heavy death toll after a collision with the Swedish general cargo ship Naboland. The most well-known case in the Club’s history is the collision between the Stockholm and the Andrea Doria on 25 July 1956. In more recent years we have seen the two most expensive cases in the Club’s history. In 2004 the Selendang Ayu drifted after an engine breakdown off the Aleutian Islands, belonging to the United States and grounded causing a massive pollution in very sensible waters to the tune of USD 200 million. The New Flame sank in 2007 off Gibraltar after a collision and the authorities ordered the wreck to be removed at a cost of more than USD 150 million.

A.5 Expansion of liabilities
During the first decades of The Swedish Club as a P&I underwriter, the legal pattern of the shipowner’s liabilities was simple. People were not claims-minded. The legal system for enforcing liabilities was unsophisticated. The most effective remedy against cargo liability was a rubber stamp on the B/L saying “Ship not responsible for anything”.

This may seem to have been a lucky time for shipowners and their liability underwriters. The absence of cargo liability was, however, the cause of its own undoing. An industry with no responsibility simply becomes irresponsible. Bad ships, stowage and handling caused severe cargo losses to merchants and their banks.
As early as 1893 the U.S. adopted the Harter Act, which imposed certain mandatory liabilities for cargo upon shipowners. The expected increase in trade and shipping in the wake of the 1918 peace felt the need for an internationally accepted mandatory cargo liability. At a meeting of CMI (International Maritime Committee) in the Hague in 1922, a set of rules was agreed upon and was adopted as a convention at a diplomatic conference in Brussels in 1924.

The historical situation at that time, when a few countries accounted for the greater part of the world, at least had the advantage of making the Hague Rules almost globally accepted. Today, when universal unification of law ought to be preserved and supported, we see the breaking up of the system and a fragmentation of the liability pattern.

The introduction of the Hague Rule mandatory liability increased the importance of the cover provided by the P&I clubs. Other increased liabilities were to follow.

Although the concern for the safety at sea of emigrants from Europe to the U.S. and Australia was one of the reasons for the formation of the P&I clubs, the liability for personal injury and loss of life was not too burdensome to insure which appears from this entry in the minutes of a meeting in 1876 of the U.K. Association:

“Talisman - sank French lugger with potatoes and drowned the captain’s wife. Claim for potatoes £71 and claim for wife £5 passed for payment.”

International conventions and landmark cases in the U.S. have dramatically increased the carrier’s liability for crew, passengers, longshoremen and others who board the ships.

Liability for oil pollution has escalated over the years from almost zero to an extent where it is more or less impossible to insure. As a result the International Group of P&I Clubs have agreed to limit liability for oil pollution to USD 1 billion (see comments under 6.2.2).
B. Protection & Indemnity Insurance

B.1 The birth of P&I

P&I insurance has no glorious historical background to match that of Hull insurance other than the fact that the P&I Clubs developed as an offspring from the mutual Hull Clubs.

Liability does not exist free floating. It requires a man-made law saying who is liable and for what. Liabilities in respect of cargo already existed in maritime codes in the Middle Ages. Still, they did not require insurance. Society at that time was not equipped with the means to enforce the liabilities locally and even less so internationally. They could easily be avoided by the terms of the freight contract. In the first half of the 19th century, society was able to put power behind its words. The concept of mandatory liability was introduced and there were ways of enforcing it. A new risk had been created for which shipowners required insurance protection.

One important factor was the flow of emigrants from Europe to the U.S. and Australia. The trade attracted ships which left much to be desired with respect to maintenance and manning. In the U.K., the Fatal Accident Act or Lord Campbell’s Act of 1846 enabled dependants to sue for damages for the death of relatives caused by the negligence of shipowners.

Other liabilities were added. Existing types of Hull cover left the shipowner exposed for 1/4th collision liability and for liabilities in excess of the sum insured for collision damage. The Westernhope case held the owner liable for the cargo when the ship was lost during a deviation.

To provide cover for these and other liability risks, owners used existing Hull Clubs or formed new Clubs based on the concept of mutuality with which they were familiar. Thus were the P&I Clubs born.

B.2 The concept of mutuality

Insurance based on mutuality means that a member is simultaneously both the insurer and the insured. In a P&I Club, members get together to share each others’ risks. This requires a true feeling of mutual trust which can only be nourished by a common conviction that all members are committed to exercise qualified responsible behaviour in the operation of their ships.

Several Rules prescribe or presuppose action which a member should either take or refrain from to be considered as having exercised such responsible behaviour. In that respect the Rule defines the ultimate tolerance which, if exceeded, expels the member from the cover mutually provided.

The ingenuity of the system is that any improved standard applied by a member has a direct influence not only upon his own insurance costs but on those to be paid by the entire community of members in the Club. That is why the Club strongly promotes loss prevention.

The concept of mutuality should be applied with diligence. It does not require a complete sharing of risk. Liability risks which are strictly confined to certain jurisdictions or certain types of ships or cargo may be shared among those in that trade and not by the whole community of members. That is still mutuality.
The purpose of the exclusions of cover contained in a number of rules is not to punish the member against which they are applied, but to protect the other members who abide by the rules.

The close reliance among members on each others’ performance makes it an obligation for the Club to be selective in admitting new members into the community. The Club therefore tries to form a firm opinion as to the standard of ships and management before accepting new members.

Members can also require the Club as administrator of their rights and obligations under these rules to apply the rules in consistent fashion. These guidelines serve the purpose of providing members with equal treatment and compensation.

Being mutual means that the clubs are non-profit making. Their income and assets are designed to cover no more than their liabilities and expenditure, their reinsurance costs and any necessary improvement of the general reserves.

It is also part of the mutual concept that premiums should be fair in total amount and paid according to the rules. Fair premiums are achieved by the system of insurance records which are directly linked to and therefore possible to influence by the members’ claims performance.

The Rules contain sanctions against late premium payers. The purpose of those sanctions is not to punish the member who is in delay, but to protect the other members who fulfil their obligations in timely fashion.

The Club regards it as part of the mutual concept to use experience and information gained in the best interest of the members. This can be channelled back to the members at seminars, or used to protect the members’ interests vis-à-vis governments and organisations.

**B.3 The International Group**

The International Group of P&I Clubs, in these comments referred to as the Group, has been formed by 13 P&I Clubs, of which 2 are operated from Norway, one from Japan, the U.S. and Sweden respectively, and the remaining 8 from the U.K.

The Group exists to arrange collective insurance and reinsurance for the participating clubs, to represent the views of shipowners and charterers who belong to those clubs on matters of concern to the shipping industry and to provide a forum for the exchange of information.

The Group appoints a number of subcommittees to deal with issues of major and common interest. Information and recommendations are shared between the clubs and used in the best interest of their members.

Together, the Group Clubs insure over 90% of the world fleet. Therefore, the Group speaks with great authority and provides an effective voice for their members, particularly on new conventions and legislation affecting the liabilities of shipowners and charterers and the insurance thereof. It carries out this function in relation to inter-governmental bodies such as IMO and UNCTAD, as well as in relation to national governments. The Group has a secretariat in London.
B.4 Reinsurance
An important function of the Group is to provide reinsurance to the clubs. This is done by way of pooling and market reinsurance. The market reinsurance is renegotiated each year and the upper limit of the market reinsurance and the pool, as well as each club's retention, can vary from year to year.

For the policy year 2011/2012 the reinsurance is arranged as follows:

Each club retains the first USD 8 million per claim. This means that The Swedish Club pays out of its own funds any claim for one of its members up to that amount. Part of the Club's retention is reinsured to mitigate the risk exposure.

Where the payment in respect of a claim exceeds USD 8 million, the payment is pooled between the Group Clubs up to an amount of USD 60 million. Pooling means that the Group Clubs share the excess amount among themselves according to an agreed formula.

For payments between USD 60 million (Club retention of USD 8 million plus the pool of USD 52 million) and USD 3 billion, the Group has a collective reinsurance on the market. This is the largest single contract in the world's marine insurance market. For oil pollution, charterer's risks and P&I war risks the cover is limited as described under 6.2.2., 9.6 and 11.5.7 respectively.

For many years the P&I cover was unlimited, but in 1996 the International Group of P&I Clubs decided to apply a limit to the cover. The limit was further reduced in 1998. The overall cover afforded by the Association is, unless otherwise stated in the policy or in the P&I rules, limited to a maximum collection of 2.5% contribution of each entered vessel based on the International Convention on Limitation of Liability for Maritime Claims 1976 and its protocols, in excess of market reinsurance placed by the International Group.

Should payment of a claim exceed USD 3 billion, the overspill is again referred back to the Clubs for pooling up to an amount of 5.45 billion. In the event of such an overspill claim, the Club may have to levy an overspill call. Rule 23 then applies.

B.5 Club Rules and the Pooling Agreement
No club can reasonably ask the other clubs to share a payment to one of its members in respect of a risk for which the other clubs deny their own members compensation under their rules. The valuable system of reinsurance by way of pooling can only be maintained if the same concept of mutuality is applied between the Group Clubs as among the members of the individual clubs.

A uniformity of the Group Club Rules is, therefore, necessary. That does not mean that the rules are identical. The layout and wording may vary. The Swedish Club rules must be adapted to mandatory regulations of the Swedish Insurance Contracts Act of 2005 (see comments under 2.13). To achieve the uniformity required for the pooling to operate, the Group Clubs have drafted and adopted the Pooling Agreement. It sets the standard for Group Club Rules which must be met for a claim to be poolable. The Pooling Agreement is continuously updated. The Club’s cover through reinsurance has its limits and exclusions in
the same way as the cover for the member. Adherence to the Pooling Agreement is important to the Club and its members.
Part Two: Comments to the P&I Rules

The comments are based on the Rules amended as from 20 February 2012.

If you read the comments to get general information of cover, please make sure that the latest edition of the Rules is on your table. If you seek information on the cover for a certain case, you should use the Rules applicable to the relevant policy year.

Should there be a difference between the Comments and the Rules, check with the Club for any Rule amendment. In case of such a difference the Rules apply.
Chapter I  Introductory

Rule 1  Definitions of rules and language
Rule 2  Nature of cover
Rule 1 Definitions of rules and language

The Swedish wording of these Rules, of which this is an English translation, shall prevail in case of a dispute. Headings and List of Contents form part of these Rules whereas Index to the Rules and Explanatory Notes are for guidance only. In these Rules the following words or expressions shall mean:

Crew
Any person, including the Master, contractually obliged to serve on board the entered ship.

Ship
A ship or other floating structure used or intended to be used in navigation on water or any part thereof or share therein in respect of which the Association has issued a policy of insurance under these Rules.

Association
Sveriges Ångfartygs Assurans Förening (The Swedish Club).

Member
An owner, operator or charterer, whether an individual or a corporation, in favour of whom the Association has issued a policy of insurance under these Rules and any Joint Member mentioned therein.

Approval
"Approval in writing"/"written approval".

Hull Insurance
The insurance effected on the hull and machinery of the entered ship, including hull excess liability insurance, hull interest insurance, freight interest insurance and other total loss insurances.

Consent
"Consent in writing"/"written consent".

Agree/Agreement
"Agree in writing"/"written agreement".

Pooling Agreement
The agreement to which the Association is a party between certain protection and indemnity associations dated 20 February 1998 and any addendum to or variation or replacement of such agreement.

Group Excess Loss Policies
The excess of loss reinsurance policy or policies effected by parties to the Pooling Agreement.
1.1 **Swedish wording prevails**
The Swedish Club is a mutual insurance association formed under Swedish law. It operates under the concession of and is subject to supervision by the Swedish Financial Supervisory Authority (Finansinspektionen). Rule 2 states that Swedish law applies in matters not provided for in these Rules. According to Rule 18, disputes arising out of the contract of insurance shall be decided in accordance with Swedish law. Therefore, as stated in the opening part of this Rule, the Swedish wording of these Rules shall prevail in case of a dispute.

The English wording is a translation from Swedish. The translation may not always be the same word for word. In those cases where the English wording has been chosen, it is because it is considered to reflect the meaning of the basic Swedish text more accurately.

1.2 **Headings and list of contents**
The headings and the list of contents form part of the Rules. Headings mark the framework within which the clause in question should be understood and applied.

1.3 **Nature of comments**
The reference in the second part of the clause to explanatory notes means the comments to the Rules contained in this book titled "Rules and Exceptions". These comments do not form part of the Rules. They are for guidance only. Even if the comments are supposed to reflect the Club's understanding of the Rules, they can neither extend nor reduce the cover as defined in the Rules. Nor can they affect the absolute discretion to be exercised by the Club through its Board under Rule 19, the Omnibus Rule, or elsewhere.

The comments should be seen in the light of Rule 17. If they contain a direct or implied deviation from the effect of the Rules, it shall not constitute a waiver of the Club's rights under these Rules.

The comments form part of the Club's loss prevention program. They have been drafted for the convenience of members to enhance the understanding and purpose of the Rules and the cover they provide. They should constitute a tool for members to avoid liabilities from arising and to reduce the consequences where liabilities still arise. The main target for the comments are those within the member's administration who are directly concerned with underwriting and claims and those who plan or execute the operation of the entered ship.

The comments are provided with an index for the convenience of the user. The index is for guidance only.

1.4 **Definitions**
The clause contains definitions of certain words and expressions which appear in various clauses. The definitions are not ranked in any particular order. They follow the alphabetical order of the basic Swedish wording.
1.4.1 Crew
"Crew" means any person, including the master, with whom the member has a contract which obliges the person to serve on board the entered ship. The obligation to serve makes him the member's servant. Contracts for independent contractors do not have that effect. Such persons, therefore, are not regarded as crew.

The service should be on board the entered ship. This condition excludes categories of persons employed by the member who occasionally perform work on board the entered ship but who are in principle landbased, such as superintendents and repair teams.

1.4.2 Ship
According to the official concession and the aims of the Club adopted by the Board, the purpose of the Club is to provide insurance to ships. What may constitute a ship in a nautical or legal sense may vary. For the purpose of these Rules, "ship" means any object for which the Club has issued a policy of insurance unless it clearly appears that something other than the entered ship is concerned (see for instance Rule 7 Section 2). The words "ship" and "vessel" are used as synonyms in the comments.

1.4.3 The Association
In these Rules, "the Association" (Föreningen) means Sveriges Ångfartygs Assurans Förening, internationally known as The Swedish Club. It is the party which has issued the insurance policy and which carries the responsibilities under that policy in accordance with these Rules. The Association is generally referred to as the Club in the comments.

1.4.4 Member
"Member" is the party, whether an individual or a corporation, in favour of whom the Club has issued a policy of insurance under these Rules. As appears from the second part of Rule 2, the cover for a member is in respect of liabilities, costs or expenses incurred by him in his capacity as owner, operator or charterer of the entered ship. A member should, by definition, have one of these roles. The member is the only party who has a valid claim for compensation from the Club under these Rules. See comments on direct action under 2.9.

Upon the request of the member, the Club may allow one or more individuals or corporations to be mentioned in the policy of insurance as Joint Members. According to the definition in this Rule, a Joint Member is a member with the ensuing rights and obligations under these Rules. For further comments on Joint Members see Rule 30.

Other parties may be allowed the benefit of a member’s cover without acquiring the status of a member, such as co-assureds, as described in Rule 30 and affiliated companies in Rule 32.

A member’s cover is also extended to a mortgagee under Rule 35. The same restrictions of cover apply as for co-assureds and affiliated companies.

1.4.5 Agreement, approval, consent
Where these expressions appear in the Rules, they mean that the agreement, approval or consent should be in writing. The expressions are used in contexts where the Club agrees to extend the cover. As the basic commitment is in the form of a written policy of insurance, any extension of cover should also be evidenced in writing.
As appears from Rule 18, the insurance contract is subject to Swedish law. Swedish courts and arbitrators apply the principle of free evaluation of proof. They would likely accept any customary and accepted electronic transfer of written communications such as a telefax or e-mail as being in writing in the sense of this Rule, provided that the communication is received by the intended recipient in a complete and legible form at the same time as the transmission.

1.4.6 Hull insurance

"Hull insurance" means the insurance effected on the hull and machinery of the entered ship. It includes Hull excess liability insurance, Hull interest insurance, freight interest insurance and other total loss insurances. The general requirements as to the extent of cover under the Hull insurance appear from Rule 11, Section 6.
Rule 2 Nature of cover

The cover afforded by the Association is set out in these Rules subject to any special terms which may be agreed.

The Member is covered in respect of liabilities, costs or expenses incurred by him in his capacity as owner, operator or charterer of the entered ship and arising out of an event during the period of insurance as a direct consequence of the operation of that ship.

Unless the Association otherwise decides the Member is only covered in respect of such sums as he has paid to discharge liabilities, costs or expenses referred to in Chapter II.

The cover afforded by the Association shall not include the deductible fixed by the Association or otherwise agreed with the Member.

The cover afforded by the Association shall not exceed the sum to which the Member would be entitled to limit his liability under applicable law on limitation of liability.

These Rules are subject to the Articles of the Association. Furthermore, the General Swedish Marine Insurance Plan of 2006 (SPL 2006) and Swedish Law in relevant parts to apply in matters not provided for in these Rules.

The Association may amend these Rules at any time during the period of insurance in order to avoid the Association becoming subject to any sanction, prohibition or adverse action by any State or International organisation.

Comments on Rule 2 Nature of cover

2.1 General

The prominent position of this Rule indicates that it contains general important information for the understanding and interpretation of these Rules and the nature and extent of the cover they provide.

2.2 Rule wording constitutes framework of cover

The first part of the Rule states that the cover provided by the Club is set out in these Rules. It means that the cover is no more and no less than expressed by the wording of the Rules. Extension of cover may be agreed on special terms. According to the definition in Rule 1, “agreed” means “agreed in writing”. It follows that any extension of cover must be agreed in writing by the Club to the member concerned. When such an extension has been agreed and the special terms and conditions decided, the cover is still subject to all applicable general terms and conditions contained in these Rules.

Another way of adjusting the extent of cover under these Rules is the Club’s right to issue general or particular regulations according to Rule 10 Section 3. Such regulations must also be in writing.
2.3 Cover is for liabilities
The second part of the Rule states that the cover is in respect of “liabilities, costs or expenses”.

The key word is “liabilities”. The object of cover under the P&I insurance is legal liabilities incurred or likely to be incurred by the member under any legislation which is applicable to the case. It is not necessary for the liability to have been determined by a final court judgement or arbitral award. It is enough that the conclusion of a legal evaluation of all known facts is that the member is likely to lose or that the possibility cannot be excluded. These considerations should be made by the Club, which has the responsibility of ensuring that compensations made are for risks insured under these Rules.

It follows that members should not be compensated for payments or settlements made to please customers and retain commercial goodwill. The Club appreciates that claims are a reflection of the member’s commercial relations and the Club endeavours in the claims handling not to harm those relations. Experience shows that a swift and correct processing of a claim may restore or even increase the goodwill. Still, the endeavour has to yield when it clashes with the overriding concept of mutuality.

The words “liabilities, costs or expenses” appear in many clauses to describe the object of the cover. Some clauses provide cover only for costs or expenses. Then there is no liability to insure, only costs or expenses incurred by the member. The Club also has an obligation to check the accuracy of costs or expenses in order to ensure that they refer to the purpose described in the clause.

The facts, documents and information required by the Club to take the necessary decisions on liability, cover and compensation are described in the comments to the individual Rules.

The liabilities covered may be based on negligence (in tort), on specific laws or on contract. The real need for cover is against those liabilities which the Member has no legal means of avoiding. A liability in contract is undertaken with open eyes and probably for the purpose of earning or saving money. Such risks should not necessarily be shared by the Members of the Club under the concept of mutuality on which the P&I insurance is based. Therefore, cover of contractual liabilities is subject to special conditions as described in these Rules.

The word “liabilities” implies that it should be in relation to third parties. No one is liable to compensate himself. Losses sustained on assets or property belonging to the Member can create a right to compensation only when expressly stated in these Rules.

2.4 Cover is for Member
The second part of the Rule states that it is the Member who is covered. It means what it says. No other party than the Member is entitled to compensation under these Rules. The definition of a Member appears from the definition in Rule 1. See comments under 1.4.4.

Although the cover is for the Member, the liabilities insured are mostly caused by negligence on the part of his servants. It may seem contradictory, but it is one of the basic principles for the P&I insurance that the Member is covered against his servants’ negligence but not necessarily against his own (see comments under 11.1.3) whereas the servants do not enjoy
any cover as they are not Members. In certain instances, however, the servants can be brought in under the Member’s liability exclusion umbrella by a Himalaya clause (see comments under 4.1.7).

The cover for the Member includes claims filed against the Member’s directors and officers personally for their negligence, provided that they acted within the scope of their employment in the management or operation of the entered ship and that the claims fall within these Rules.

The Rules do not allow a substitution of Member under the policy of insurance. That appears from Rule 27. See comments under 27.4.

Certain parties may enjoy the benefit of the cover under these Rules without being Members. That is also applicable for co-assureds under Rule 30, affiliated companies under Rule 32 and mortgagees under Rule 35. See comments under 30.3, 32.1 and 35.2 respectively.

Under certain circumstances, claimants may achieve a separate right to seek reimbursement for their losses direct from the Club by direct action. Direct action can be imposed upon the Club by international conventions adopted as domestic law. In some countries, claimants may be granted a right to direct action by laws not related to any convention. Claimants in direct action should not be entitled to better rights than the Member. This view, however, is not unchallenged. For comments on direct action, see under 2.9.

2.5 Cover is restricted to owner, operator and charterer risks
The P&I insurance is not a general liability cover for the Member. In the performance of his business activities he may incur liabilities in a number of capacities such as the owner of warehouses, terminals, trucks and cranes or when acting as broker, stevedore or forwarding agent. For liabilities incurred in any such capacity, no cover is provided by the P&I insurance, which is strictly vessel related. According to the second part of the Rule, the cover is confined to those liabilities which the Member incurs as owner, operator or charterer of the entered ship.

2.6 Cover is restricted to operational risks
The second part of the Rule underlines that, in order to be covered, the liabilities must have been incurred during the operation of the entered ship. Operation means practical matters like loading, steaming, discharging and issuing freight documents. Liabilities resulting from business transactions such as violation of anti-trust regulations are not regarded as incurred during the operation of the entered ship.

2.7 Cover is restricted to direct consequences
Not even all consequences of the liability risks insured are covered. When the Rules use the words ”liabilities, costs or expenses” to describe the extent of cover, it means those which are a direct consequence of the operation of the entered ship. A serious longshoreman accident may have a number of side effects such as delay of the loading/discharging operations, with waiting time for gangs and vehicles. The ship may come off-hire. Repairs of the ship and its equipment may be necessary to regain compliance with union and safety regulations. All these possible consequences are not necessarily covered simply because the liability for the main event, the personal injury, is covered.
This is emphasised by the words "as a direct consequence" in the second part of the clause. Different expressions may be used in the Rules to describe the demand for causality between the event and its consequences for cover to be provided. In the Swedish wording which, according to Rule 1, shall prevail in case of a dispute, expressions like "föranledd av" (trans: as a result of), "till följd av" (trans: as a consequence of), "på grund av" (trans: because of) or "som orsakats av" (trans: caused by) are to be regarded as synonymous. They reflect the same demand for causality as stated in Rule 2. Corresponding synonymous expressions in the English wording are "as a result of", "as a consequence of" or "caused by".

Indirect consequences of an event are covered only if and to the extent it is so stated in these Rules. Examples of situations where indirect consequences of an event are covered can be found under Rule 4 Section 6 and Rule 7 Section 5.

To prevent situations from arising where the Member incurs liabilities for consequential losses which are not covered under these Rules, the Member should contract out such liabilities in Bs/L, passenger tickets or other contracts entered into. See comments under Rule 10 Section 2.

2.8  
Cover is restricted to events which occur during the period of insurance

According to the second part of the Rule, the cover under these Rules is for liabilities, costs or expenses arising out of an event during the period of insurance. In other clauses or in circulars, words like "occurrence", "accident" or "casualty" are used as synonyms of "event". It is important to establish whether an event arose during the period of insurance, as that is a condition for cover. Therefore, the meaning of an event has to be defined.

For the purpose of these Rules, an event is an occurrence or casualty which may result in liabilities, costs or expenses for which a Member seeks compensation from the Club. Further qualifications for an event may follow from certain Rules (see for instance comments under 6.2.4).

In many cases the liability arises at the moment the event occurs. For example, the ship's winch-wire snaps and a valuable piece of machinery is dropped on the quay and smashed.

Considerable time may elapse between the event and the liability. A drainpipe passing through the hold breaks at a particular time but is not filled with water until a month later.

It often happens that no specific event can be identified. For example, if cargo is missing at the time of discharge it can be impossible to find out when and why it disappeared.

There can be a sequence of events, each of which impose separate liabilities. A ship finds a stowaway on board in one port and the shipowner incurs costs to prepare his disembarkation. In a subsequent port the stowaway escapes, causing the immigration authorities to impose a fine upon the ship.

It follows from the second part of this Rule as well as from Rule 20 that the event which is the proximate cause for the liabilities, costs or expenses should have occurred during the period of insurance, viz. when the ship was entered with the Club, for the cover to be effective. On
the other hand, it is not necessary for the liability to have manifested itself during the time of entry.

Problems of establishing the event which forms the basis of the decision for the cover may arise when the entry of the ship has been transferred from one Club to another. If the event is obvious, the liability should be covered by the Club where the ship was entered when it occurred. If cargo is damaged on a ship for which the entry has been transferred while she was at sea and the event cannot be established, the liability is often shared between the two Clubs in proportion to the number of days of the relevant voyage during which the ship was entered in each Club.

2.9 Direct action
2.9.1 The pay-to-be-paid principle
The third part of this Rule confirms the basic and important overriding principle that the cover provided under these Rules is one for indemnity and not for liability. That is not a contradiction of what has been said under 2.3. The cover is for indemnity of a Member when he has discharged a legal liability covered under the Rules by payment to the claimant. There is no obligation for the Club to compensate the Member until he has effected payment to or otherwise satisfied the claimant. This is referred to as the pay-to-be-paid principle or the payment first principle.

This principle has been challenged in different ways. Attempts have been made to establish a separate right for claimants to seek reimbursement of their losses direct from the Clubs by direct action.

2.9.2 Direct action by conventions
Direct action can be imposed by international conventions adopted as domestic law by its signatories. The International Convention on Civil Liability for Oil Pollution Damage 1969 (protocol 1992), the CLC, makes it a mandatory obligation for owners of ships registered in a CLC state and carrying more than 2,000 tons of oil in bulk as cargo to maintain insurance to cover the liabilities of the convention and further allows claimants to turn directly to the insurer for compensation. The consequences of these legally extended obligations are covered under Rule 6 Section 1. The Club provides Members concerned with a certificate to confirm the existence of such a cover.

A legal right of direct action also follows from the Paris Convention of 1964, in respect of liability for nuclear damage.

2.9.3 Direct action by law
A number of countries have enacted legislation allowing the claimant a right of direct action against the insurer of a debtor who cannot meet his liabilities on account of insolvency or bankruptcy. Claims are sometimes filed directly against the Club based on such legislation when a Member is in financial difficulties. The Club needs the co-operation of the Member or of his bankruptcy estate to put up a defence against such claims. If follows from Rule 10 Section 4 that the Member has an obligation to assist the Club in this respect.
Some states in the U.S., among others Louisiana, have enacted legislation to allow direct action against insurers in all kinds of claims not confined to situations of insolvency. Similar laws can be found in other parts of the world, for instance in Puerto Rico. Jurisdictions which allow direct action may regard a clause such as Rule 2 as being contrary to public policy. In most states, however, the courts appreciate and uphold the difference between an indemnity and a liability policy, as for instance in the States of New York and Florida.

In England, the House of Lords determined that a pay-to-be-paid Rule does not offend against the British Third Parties (Rights Against Insurers) Act of 1930. However, the position has changed to a certain extent pursuant to the new Third Parties (Rights against Insurers) Act 2010. See comments under 3.4.2.

2.10 Pay-to-be-paid
It follows from the pay-to-be-paid principle that a Member who seeks compensation from the Club should be able to provide a receipt or release to prove that he has actually paid the claim.

It is not sufficient for the Member to prove that payments have been made in respect of liabilities covered under these Rules. The purpose of the cover is not to advance money to the Member pending the result of actions against other parties to recover his loss. To be compensated, the Member’s loss must be reasonably final. Recovery possibilities available should first be exhausted. A Member must, for instance, collect any contributions due under the Inter-Club NYPE Agreement (see comments under 9.2.2) before applying to the Club for compensation of his net unrecoverable loss. Only when reasonable efforts have proven fruitless may the Club compensate the Member’s loss and inherit his recovery rights under the C/P through the application of Rule 14. See comments under 14.2-3.

A Member can suffer a provable loss by a claimant by either withholding the claim amount from freight payments, or offsetting it against other sums due to the Member. Any such attempts should immediately be brought to the Club’s attention. Otherwise, the possibilities of recovering the amount withheld may become time-barred or jeopardised. It follows from Rule 10 Section 4 that the Club may reject a claim for compensation if a Member is in breach of this obligation. There are generally several options open to deal successfully with a claimant who tries to cover his loss by way of set-off. Freight due to the Member is a clear and undisputed debt due for payment. A claim, however, has to be considered on the basis of the facts of the case. It may take years before it has been established if and to what extent the claim constitutes a clear debt. In the meantime, any set-off against freight should be legally challenged. If the set-off is in respect of a claim which is likely to be covered under these Rules, the Club will render the Member full assistance. The Member’s loss will be reimbursed when it has been satisfactorily established that the loss is reasonably final and that it refers to a liability covered.

As appears from the third part of the Rule, the fundamental obligation of the Member to pay first can only be waived with the Club’s express approval. The Club may dispense from the obligation on an ad hoc basis, for instance if it has negotiated a large claim to a settlement on the Member’s behalf and it is part of the agreement that the settlement amount should be provided urgently by the Club. This is, however, at the Club’s discretion. It also requires the
Member to pay the deductible in advance to the Club. The reason for this is that according to the fourth part of Rule 2, the deductible is not included in the cover afforded by the Club.

2.11 Limitation of liability

2.11.1 Background and meaning of limitation

Most countries have enacted laws by which a shipowner is allowed to limit his liability for the types of claims covered under these Rules. Those laws are based on international conventions. There are two general conventions on the limitation of liability, the 1957 Brussels Limitation Convention and the 1976 Limitation of Liability for Maritime Claims, revised by protocol in 1996. There are also conventions geared to cover special types of claims which contain rules on the limitation of liability. According to the International Convention on Civil Liability for Oil Pollution Damage of 1969, revised by protocol in 1992, the so called CLC, a shipowner is allowed to limit his liability for oil pollutions. See comments under 6.1.3.1.5. Corresponding rules on limitation of liability for injury or death of passengers and loss of or damage to their luggage can be found in the Athens Convention of 1974, revised by protocol in 2002. See comments under 3.4.16.

That kind of limitation of liability is referred to as global limitation. It should not be confused with the right under the Hague or Hague-Visby Rules to limit the liability to a certain amount per package or other units of cargo, the package limitation. See comments under 4.1.9.3.

It goes without saying that claims of an extent and nature likely to invoke the rules on the limitation of liability should immediately be reported to and be handled by the Club. These comments will, therefore, be confined to the general principles and parts that are important for the understanding of these Rules and the cover they provide.

2.11.2 The 1957 Limitation Convention

The limitation amount under the 1957 Limitation Convention is calculated on the net tonnage of the ship, with the addition of the amount deducted from the gross tonnage in respect of the engine room space. The limitation amount per ton is expressed in Poincaré Francs, the value of which is based on the price of gold. Most signatories of the 1957 Limitation Convention have converted the limitation amounts to Special Drawing Rights called SDR. The value of the SDR is published daily in newspapers and is to be found in the information on currency exchange rates.

The limitation amounts under the 1957 Limitation Conventions are:

(a) Claims for loss of life or personal injury – Pf 3,100 or SDR 206.67 per ton.
(b) Claims for loss of or damage to property – Pf 1,000 or SDR 66.67 per ton.
(c) Claims for both (a) and (b) – Pf 3,100 or SDR 206.67 per ton, of which Pf 2,100 or SDR 140 to be exclusively available for (a).

The right to limit the liability under the 1957 Limitation Convention is denied where the loss was caused by the actual fault or privity of the shipowner. Privity means knowledge and consent in relation to any fault, defect or misconduct. Only fault or privity by a limited number of individuals within an owner’s organisation will have that effect on the right of limitation. Such persons include the shipowner himself and anybody to whom his managerial
power has been delegated, including the head of the technical, operational or safety functions. Situations where shipowners are denied the right of limitation under the 1957 Limitation Convention may be subject to the general exclusion of cover under Rule 11 Section 1. This would leave a Member with an unlimited liability without insurance cover. Borderline cases may arise where limitation is denied but the fault is still not considered serious enough to exclude cover. See comments under 11.1-5.

2.11.3 The 1976 Limitation Convention
The 1976 Limitation Convention was brought about by a twofold criticism of the 1957 Convention. Claimants considered the limitation amounts to be too low, whereas shipowners and their Clubs found limitation under the 1957 Limitation Convention too easy to break through.

Under the 1976 Convention the limitation amounts were, therefore, considerably increased. The amounts are:

(a) Claims for loss of life or personal injury to passengers SDR 46,666 per the number of passengers the ship is certified to carry, subject to a maximum of SDR 25 million.

(b) Claims for loss of life or personal injury to persons other than passengers:
   tonnage not exceeding 500 tons SDR 333,000
   For a ship exceeding 500 tons, the following sums must be added to SDR 333,000:
   tonnage between 501 and 3,000 tons extra SDR 500 per ton
   tonnage between 3,001 and 30,000 tons extra SDR 333 per ton
   tonnage between 30,001 and 70,000 tons extra SDR 250 per ton
   tonnage in excess of 70,000 tons extra SDR 167 per ton
   For a salvor not operating from any ship (or operating solely on the ship being salved): SDR 833,000

(c) Other claims:
   tonnage not exceeding 500 tons SDR 167,000
   For a ship exceeding 500 tons, the following sums must be added to 167,000 SDR:
   tonnage between 501 and 30,000 tons extra SDR 167 per ton
   tonnage between 30,001 and 70,000 tons extra SDR 125 per ton
   tonnage in excess of 70,000 tons extra SDR 83 per ton
   For a salvor not operating from any ship (or operating solely on the ship being salved): SDR 334,000

Under the 1976 Limitation Convention, the right of limitation is lost where the occurrence giving rise to the loss was committed with the intention of causing such loss or recklessly in the knowledge that such loss would probably result. A conduct resulting in the loss of the right to limit liability under the 1976 Limitation Convention will most likely render the exclusion from cover under Rule 11 Section 1 operative. This may leave the Member without insurance protection for an unlimited liability. See comments under 11.1-5.

2.11.4 Protocol to amend the 1976 Limitation Convention
The Protocol to amend the 1976 Limitation convention was adopted by IMO in 1996 and
entered into force 2006. Under the 1976 Convention, the shipowner’s liability for passengers is limited to SDR 46,666 per passenger with a cap of SDR 25,000,000. Under the new Protocol, the limit is SDR 175,000 per passenger with no upper limit. Furthermore, the limit has to be applied to the number of passengers the ship is authorised to carry according to the ship’s certificate and not to the number of passengers actually on board.

The new global limitation amounts for claims other than passenger claims will be increased as follows, according to the new Protocol:

<table>
<thead>
<tr>
<th>Tonnage</th>
<th>Loss of Life/Personal Injury</th>
<th>Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>-2.000</td>
<td>SDR 2 million</td>
<td>SDR 1 million</td>
</tr>
<tr>
<td>2.001 - 30.000</td>
<td>+ SDR 800 per GT</td>
<td>+SDR 400 per GT</td>
</tr>
<tr>
<td>30.001- 70.000</td>
<td>+ SDR 600 per GT</td>
<td>+SDR 300 per GT</td>
</tr>
<tr>
<td>70.001 -</td>
<td>+ SDR 400 per GT</td>
<td>+SDR 200 per GT</td>
</tr>
</tbody>
</table>

2.11.5 Limitation Funds
See comments under 12.3.7.

2.11.6 Direct action to circumvent limitation
The fifth part of the Rule limits the cover to the sum to which the Member would be entitled to limit his liability. This provision is related to the question of direct action as described under 2.9. In situations of direct action, courts may find that limitation of liability is open to shipowners but not to their liability underwriter. This has created an irresistible temptation for claimants to proceed in direct action against Clubs with the sole purpose of circumventing limitation. Therefore, the fifth part of this Rule states that sums in excess of those to which the Member would have been able to limit his liability are not insured.

Rule 30 contains an exception from that principle insofar as certain categories of Joint Members are concerned (see comments under 30.2.2.8).

The problem does not arise under the 1976 Limitation Convention, which also applies to insurers of liability for any claim subject to the convention.

2.11.7 Limitation renders a very high limit of insurance cover
The reason shipowners have been granted the right to limit their liability is because the operation of ships is a highrisk undertaking. Limitation of liability will encourage development of commercial shipping and make it possible to effect liability insurance at reasonable costs. As the insurance aspect is one of the motives for limitation, this justifies its ranking in this basic Rule.

Limitation of liability has made it possible for the Clubs to provide a very high limit of insurance cover (2011/2012 USD 3 billion) for the benefit not only of shipowners but also for potential liability victims. A limited liability backed by insurance is better for the public than an uninsured unlimited liability.

This unique feature of the P&I cover is not self evident. The escalating accumulation of legal liabilities nourishes an ongoing discussion as to which level is the proper one for the P&I insurance cover.
Some risks have a separate limited cover. As appears from the comments to Rule 6 Section 1 there is a limitation of cover under the P&I policy of USD 1 billion (policy year 2010/2011) per accident or event in respect of oil pollution. Furthermore, the cover for a charter Member under Rule 9 has an overall limit of USD 300 million (see comments under 9.6.).

2.12 Cover does not include the deductible
The fourth part of the Rule states that deductibles fixed by the Club or agreed between the Club and the Member, are not included in the cover afforded by the Club under these Rules. They constitute amounts for which the Member remains self insured. For further comments on deductibles, see under 22.5.

The applicable deductible is usually subtracted by the Club before compensation is paid to a Member who has settled a claim under the pay-to-be-paid principle (see comments under 2.9.1). Where the pay-to-be-paid principle has been set aside, for instance in direct action (see comments under 2.9) or where the Club has exercised its discretionary right to provide security (see comments under 12.1), the payment to be made to the claimant will not include the deductible. Members with large deductibles may be called upon to put up separate security for such amounts.

As regards exclusion of cover for deductibles under other types of insurance, see comments under 11.6.4.

2.13 Subsidiary sources of insurance information
The last part of this Rule records the fact that these Rules are subject to the Articles of Association that form the legal basis under which the Club is allowed to operate. Copies of the Articles of Association can be supplied on request.

That part of the Rule also states that Chapter 1 (General Conditions) of the General Swedish Marine Insurance Plan of 2006 (SPL) and Swedish law apply in relevant parts in matters not provided for in these Rules. SPL and any other applicable Swedish legislation thus provide supplementary regulations on issues where these Rules may be silent.

SPL was drafted on the basis of the Norwegian Plan. It contains agreed general guidelines on marine insurance matters. SPL is governed by the Swedish Insurance Contracts Act of 2005. Certain terms of that act are of a mandatory nature and have been considered when drafting these Rules. A Member who wants information on SPL or on applicable Swedish law, including the Insurance Contracts Act of 2005, should contact the Club.

Being a Swedish company, The Swedish Club operates under Swedish law. This is reflected by the last part of the Rule, which makes Swedish law decisive in matters not otherwise provided for in these Rules. This principle is the principal reason for the opening part of Rule 1, according to which the Swedish wording of these Rules will prevail. Rule 18 states that disputes under these Rules should be decided in Sweden in accordance with Swedish law.

2.14 Amendment of Club Rules during the policy year
The Club can amend these Rules during the policy year to protect the Club against sanction or prohibition by any state or organisation as a result of the operation of an entered ship. In 2010 the United States of America issued sanctions against Iran which can expose the Club if cover is inadvertently placed on a ship engaged in listed prohibited activities. In addition
to the US sanctions, United Nations, European Union and United Kingdom have adopted similar sanctions. However the Rule is not purposely limited to sanctions against Iran and can apply to any sanction or prohibition by any state or organisation applied now or in the future.

Sanction or prohibition can be directed against the Club as an insurer or reinsurer of an entered ship and can expose the Club to very high fines. The Rule is there to protect the assets of Club for the common interest of all Members entered in the Club.

Members should satisfy themselves that their ships are not in breach of any applicable sanction or prohibition or adverse actions by any state or organisation that can affect their own organisation or their insurance arrangements with the Club.

**P&I claims distribution, costs**

The Swedish Club claims 2006-2011. Claims cost lower limit USD 5,000, capped at USD 8 million.

**P&I claims distribution, frequency**

The Swedish Club claims 2006-2011. Claims cost lower limit USD 5,000, capped at USD 8 million.
Chapter II  Risks covered

Rule 3  Liabilities in respect of persons
Rule 4  Liabilities in respect of cargo
Rule 5  Liabilities in respect of delay
Rule 6  Liabilities in respect of pollution
Rule 7  Other liabilities
Rule 8  Liabilities for costs
Rule 9  Charterer’s liability
**Rule 3 Liabilities in respect of persons**

**Section 1 Injury, illness, repatriation and death - crew**

(a) Liability under the terms of a crew agreement or other contract of service or employment to pay damages or compensation for personal injury, illness or death of any member of the crew of the entered ship who is on board or proceeding to or from that ship.

(b) Hospital, medical, repatriation, funeral or other expenses necessarily incurred in relation to any member of the crew who is on board or proceeding to or from that ship.

(c) Travelling expenses in providing a substitute as a consequence of injury, illness or death of any member of the crew who is on board or proceeding to or from that ship.

(d) Costs or expenses as specified under (b) above incurred for injury, illness or death of relatives of any member of the crew while on board the entered ship.

(e) Costs for repatriation of the crew necessarily incurred in consequence of the actual or constructive total loss of the entered ship or a major casualty rendering the ship unseaworthy and necessitating the signing off of the crew.

(f) Liability arising on grounds other than under (a) above to pay damages or compensation for personal injury, illness or death of any member of the crew of the entered ship who is on board or proceeding to or from that ship.

**Section 2 Wages - crew**

Sick wages and wages as a consequence of death of a member of the crew of the entered ship.

Wages payable to a member of the crew in consequence of the actual or constructive total loss of the entered ship or a major casualty rendering the ship unseaworthy and necessitating the signing off of the crew.

**Section 3 Loss of or damage to effects - crew**

Liability to pay compensation for loss of or damage to personal effects belonging to a member of the crew of the entered ship as well as liability based on such crew agreement and contracts as mentioned in Rule 10 Section 2 (c), excluding valuables, cash, negotiable instruments and objects of a rare or precious nature.

**Section 4 Payment of crew claims**

Notwithstanding the provisions of Rules 2 and 26, where a Member has failed to discharge a legal liability to pay damages or compensation for personal injury, illness or death of a seaman, the Association shall discharge or pay such claim on the Member’s behalf directly to such seaman or dependent thereof.

Provided always that

(a) the seaman or dependent has no enforceable right of recovery against any other party and would otherwise be uncompensated,
(b) subject to (c) below, the amount payable by the Association shall under no circumstances exceed the amount which the Member would have been able to recover from the Association under the Rules and the Member’s terms of entry,

(c) where the Association is under no liability to the Member in respect of such claim in accordance with Rule 26 by reason of cancellation for non-payment of amounts due to the Association, the Association shall nevertheless discharge or pay that claim to the extent only that it arises from an event occurring prior to the date of cancellation, but as agent only of the Member, and the Member shall be liable to reimburse the Association for the full amount of such claim.

Section 5 Passenger liabilities
Liabilities to pay damages or compensation for personal injury, illness or death of any passenger on board the entered ship.

Liability costs or expenses for loss, shortage, damage or other responsibility relating to luggage or personal belongings of any passenger on board the entered ship.

Liability to pay damages or compensation to passengers on board an entered ship where such liability arises in consequence of a casualty, including the costs of forwarding such passengers and their luggage to their port of destination or returning them to their port of embarkation and of their maintenance ashore.

For the purpose of this rule the word “casualty” shall be defined as follows

An incident involving either
(a) collision, stranding, explosion, fire or any other cause affecting the physical condition of the vessel so as to render it incapable of safe navigation to its intended destination; or

(b) a threat to the life, health or safety of passengers.

The cover provided by the Association shall also include liability for injury, illness or death during carriage to or from the entered ship in its own boats, or, whilst in port, also by means of other boats.

Notwithstanding the terms of the preceding paragraph of this section the Association shall not be liable for any liability in respect of personal injury, illness, death, loss of or damage to property, delay or any consequential loss sustained by any passenger by reason of carriage by air or while they are in the care of any other carrier before or after the carriage on the entered ship.

Furthermore, the Association shall not be liable in respect of the contractual liability of a Member for death, injury and loss of or damage to property during an excursion from the entered ship
(a) if a separate contract has been entered into by the passenger for the excursion, whether or not with the Member, or

(b) if the Member has waived any or all his rights of recourse against any sub-contractor or other third party in respect of the excursion.
Section 6  Limitation of cover for passengers and seamen
The Association’s liability for any and all claims in respect of passengers or seamen arising out of any one event shall be limited to such sum or sums and be subject to such terms and conditions as set out in Appendix II, Rule 1.

Section 7  Injury, illness and death - others
Liability to pay compensation for personal injury, illness and death of any persons on board or in relation to the entered ship other than crew and passengers.

Section 8  Stowaways and refugees
Expenses incurred as a result of the entered ship having stowaways, persons saved at sea or refugees on board to the extent that the Member is legally liable for such expenses or they are incurred with the approval of the Association.

Section 9  Life salvage
Sums legally due to third parties by reason of the fact that they have saved or attempted to save the life of any person on or from the entered ship, but only if, and to the extent that such payments are not recoverable under the Hull insurance of the ship or from cargo owners or cargo underwriters.

Section 10  Deportation
Expenses incurred in respect of persons from the entered ship for whom an order for deportation or detention on board the ship has been issued.

Section 11  Diversion expenses
Costs and expenses for fuel, insurance, wages, stores, provisions and port charges attributable to a diversion, in excess of those which would have been incurred but for the diversion, reasonably undertaken for the purpose of securing treatment of any injured or sick person on board the entered ship, or while awaiting a substitute for such person or for the purpose of landing stowaways, refugees or persons saved at sea, provided that such costs and expenses are incurred with the approval of the Association.

Comments on:
Rule 3  Liabilities in respect of persons
Section 1  Injury, illness, repatriation and death - crew

3.1.1  Liabilities against crew for injury, illness, repatriation and death
3.1.1.1  General views on crew liabilities
This clause describes the cover for liabilities against crew for injury, illness, repatriation and death. A Member may also have an obligation to pay wages to a crewmember or to compensate him for loss of personal effects. The cover for those liabilities is defined in Sections 2 and 3 of this Rule.

Crew liabilities constitute a risk which is rapidly increasing. This is a field where close cooperation between the Member and the Club can prevent and limit rising insurance costs.
Rule 3 Liabilities in respect of person
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3.1.1.2 "Crew"
Rule 1 contains a definition of the word "crew". For the purpose of these Rules it means "any person including the master contractually obliged to serve on board the entered ship". There may be other people on board who do not qualify as crew under this definition such as a supercargo. Catering staff on passenger ships are often not employed by the shipowner but by the firm who has agreed in contract to operate the catering service. Unless that contract says otherwise, the catering staff is not to be regarded as crew. Hairdressers, shop attendants and other independent staff on passenger ships may belong to the same category depending on the contracts, as may engineers who follow a ship for repairs or maintenance. Any contract for such persons which affects the Member's liability, should be submitted to the Club for approval in accordance with Rule 10 Section 2. If the Member's liability in relation to persons of these or similar categories is not covered under this clause because they do not qualify as crew, cover is provided under Rule 3 Section 7.

3.1.1.3 Crew contracts
According to the definition, crewmembers should be contractually obliged to serve on the entered ship. Such contracts could be either personal or entered into by unions collectively on behalf of their members. Whatever the nature of the contract, it should be approved by the Club. See comments under 10.2.4.

The cover under this clause is for the liabilities a Member may incur under any such approved crew agreement. Some crew agreements do not contain provisions on social benefits. The extent of the Member's obligations is then governed by any domestic legislation, often referred to as Workers' Compensation Act applicable by the contract of employment or determined in accordance with the law of the flag.

3.1.1.4 Cover when crew is not on board the ship
Items (a), (b), (c) and (f) of this clause stipulate that the cover is also effective during the time crewmembers are proceeding to or from the entered ship. The reason for this is that the period of employment usually starts before the crewmember sets off on the journey to board the ship to which he has been assigned and does not end until he has returned home. If and to the extent the Member has legal or contractual obligations in relation to a crewmember of the nature described in this clause, he is covered for those liabilities even if they arise outside the ship.

The cover is also effective for illness or accident arising while a crewmember is on shore leave, for instance if he has a car accident in a port of call. In such a situation it is important that the Club and its local correspondent are informed immediately. This is required so as to ensure that the injured crewmember gets instant and adequate medical treatment. The possibilities to exercise any right of recovery against the party who caused the accident also have to be protected. According to Rule 14, the Club inherits the Member's right to recourse against the responsible party. The Member has an obligation to assist the Club in exercising the right of recovery.

For Members who have crew assigned to the entered ship on a longterm basis, the Club may agree to extend the cover to periods when crewmembers are not serving on board the ship. Additional premium may be charged.
In all situations where liabilities arise in relation to crewmembers outside the ship, the Member must be able to prove that the crewmember was contractually employed to serve on the entered ship.

3.1.1.5 Handling of crew claims
Any case under this clause which is serious or may have a serious liability should be reported to the Club as soon as possible. The Club and its local correspondent are there to help the Member to solve problems arising and to exercise the necessary control of money spent. For cases arising, the Club will conduct the necessary investigations as to the extent of the Member’s legal obligations and will negotiate the claim to a settlement. It is important that Members do not make concessions or commitments to the crewmember, his estate, unions or media which could prejudice the result of such negotiations. Settlement should be made against a properly drafted release, thereby preventing further claims from being made against the Member.

3.1.1.6 Other insurance
A shipowner may be obliged by contract or law to take out special insurance to meet his obligations in relation to a crewmember or to provide him with certain benefits. If the authorities cannot be convinced that the P&I entry with the Club is sufficient in that respect, the Club will advise the Member as to how the additional insurance should be arranged. The cover under such additional insurance should be exhausted before compensation is admitted under the P&I policy. As the premium of an extra insurance is paid by the shipowner, any payment under that insurance to or on behalf of the crewmember should reduce the Member’s obligations.

Furthermore, there may be social insurance schemes applicable to the case under which compensation for costs or wages may be provided. It should be checked whether a crewmember is covered by such a scheme. If so, the Member’s obligations to pay compensation should be reduced by any amount recoverable.

3.1.1.7 Common law liabilities can be insured separately or together with other crew risks
Under item (f) of this clause there is cover for common law liabilities incurred by the Member in relation to a crewmember. A Member can either insure all risks listed in this clause or restrict the cover to the non-contractual obligations under item (f). The reduced cover under the last-mentioned alternative means that the Member remains self insured for all his contractual obligations. Any agreed exclusions of liability under this clause should appear as special conditions in the insurance policy. See comments under 20.2. If a Member who has excluded items (a)-(e) becomes liable to pay his contractual liabilities as part of a common law liability under item (f), the compensation from the Club will be reduced accordingly.

3.1.2 Liability to pay compensation in connection with injury, illness or death
The cover under item (a) is for any amount the Member may be liable to pay by final judgement, settlement or as a consequence of a crew agreement in connection with injury, illness or death. Fixed amounts are often stipulated to be paid to a crewmember for injuries or to his estate if he dies. These amounts are sometimes specified in the crew contracts or follow from national Worker’s Compensation Acts applicable to the contract. One of the reasons why the crew contracts should be submitted to the Club for approval in accordance with Rule...
10 Section 2, is to check that the amount of compensation is reasonable and in accordance with normal practice and applicable law. There have been cases where the amounts have been unacceptably high. A Member may be left with or without reduced compensation if he fails to obtain the Club's approval in advance of the contractual terms. Upon request the Club will advise Members of the compensation amounts and other social benefits which follow from applicable domestic Worker's Compensation Acts.

As regards the importance to effect payment of compensation or settlement to the right party and against a suitable release, especially in death cases, see comments under 3.2.4.

**Top ten causes of injury to crew**

![Bar chart showing the top ten causes of injury to crew: Slips and falls, Caught in machinery or equipment, Struck by falling object, Other, Unknown, Burns and explosions, Strain by pulling or pushing, Tool injury (non-powered), Strain by lifting, Struck/caught by object(s).]

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3.1.3 Liability to pay costs in connection with injury, illness or death

3.1.3.1 General views on costs for crew care

Contract or law make the shipowner liable to pay a variety of costs to care for a crewmember who is injured, falls ill or dies.

For the obligation to arise it is not necessary that the condition is the result of the shipowner's negligence. It is sufficient to establish that the condition exists. If, however, the crewmember contributed to the condition by negligence, the extent of the shipowner's obligations may be reduced in proportion to the crewmember's share of responsibility.

Item (b) of this clause provides cover for many of the shipowner's obligations. The clause states that the expenses should be "necessarily incurred". This implies that only those costs
that the Member is legally obliged to pay are reimbursed. Sometimes the special and delicate
nature of those costs makes it difficult to draw a distinct line. Still, the concept of mutuality,
on which the P&I insurance is based, calls for equal treatment of Members. Therefore, some
guidelines are given below. They do not pretend to be exhaustive.

3.1.3.2 Legal obligation to cure
Cure is generally the obligation to provide necessary medical care and services to sick or
injured crewmembers. Failure to comply with that obligation may impose large liabilities
upon a Member and this may include punitive damages.

The legal obligation to provide medical care is often limited to a certain number of months.
The need for cure may, however, continue after the expiration of that period. Such a serious case
should be brought to the Club’s attention at an early stage. Through its local correspondent,
the Club will help the Member to investigate the options available, for instance repatriation
of the crewmember as soon as declared medically stabilized.

It is important for the Member to follow the crewmember’s medical condition and recovery
closely. The Club should be kept informed so that requisite action may be taken if necessary.

The Club has no list of approved doctors. Suitable and qualified doctors and experts can be
consulted instantly through the Club’s local correspondent.

3.1.3.3 Specialist care
Costs of specialist care are covered if required and confirmed by the doctor’s advice. Such
advice should preferably be reconfirmed by the medical examination of an independent
doctor appointed by the Club’s local correspondent. Experience has shown that shipagents
acting for charterers provide little help to a shipowner in such a situation. The only party to
render the owner undivided help is the Club, through its local correspondent.

3.1.3.4 Hospital care
Large hospital bills should be submitted to the Club or its correspondent before being paid.
In some countries, for instance the U.S., there are firms that specialise in checking and,
where justified and possible, reducing hospital bills. The best result is achieved if the firm is
allowed to follow the case from the moment the decision is taken to bring the crewmember
to hospital. The Member or the local shipagent should, therefore, inform the Club or its
correspondent as soon as possible.

Hospitals may require a guarantee for the costs before accepting a crewmember as a patient.
In such a case the Club should be contacted urgently.

When asking for compensation from the Club for hospital and medical costs, the Member
should present a log extract or report from the master setting out the details of the event such
as the date and time for reporting sick, symptoms, treatment administered on board, contacts
with doctors, time and reason for signing off etc.

3.1.3.5 Maintenance
A Member is generally obliged by law to pay maintenance to a crewmember who has signed
off the ship on account of injury or illness. The maintenance is an agreed daily amount to
compensate the crewmember for the free meals and lodging he would have enjoyed on board. Such an obligation is covered under this clause.

3.1.3.6 Preventive medical examination or treatment
3.1.3.6.1 Vaccination
The costs for preventive medical treatment such as vaccination are normally not compensated. If vaccination is required to protect the rest of the crew at the outbreak of an infectious disease on board which might cause liabilities covered by the Club, the costs for the vaccination may be considered for compensation under Rule 8 Section 2.

3.1.3.6.2 AIDS
A crewmember infected with the AIDS virus constitutes a risk for the Member that may incur costs and liabilities. It would then seem reasonable and even prudent that an AIDS test was made a routine part of any standard recruitment procedure.

Such a pre-employment AIDS test may, however, not always be allowed. Still, the Club would encourage such testing, provided that it is not in violation of applicable law or requirements and that the person's written consent to the testing is obtained.

A crewmember who contracts AIDS during his employment is entitled to the medical cure and maintenance required under applicable law and the terms of his contract of employment. The costs are covered as described in this clause.

Infection with the AIDS virus does not generally constitute sufficient grounds to justify dismissal, as long as the crewmember is capable of carrying out his duties. Thereafter he may be discharged by observation of the applicable rules on ill health. Members should be aware of the serious consequences of a discriminatory dismissal which are not covered under these Rules.

Some countries require crewmembers to present an AIDS clearance certificate before being allowed to go ashore. The costs of obtaining such certificates are not compensated.

The owner or operator of a passenger or cruise ship is not likely even under U.S. law to be liable if a passenger contracts AIDS as a result of sexual relations by consent with crewmembers or other passengers or through the sharing of needles to inject an illicit intravenous drug. Liability for a passenger infected with AIDS by medical or dental treatment on board, including the transmission of infected blood, will depend on the observance on board of professional standards to prevent the spreading of infections. This will include proper screening of blood on board or by the supplier.

There are as yet few shiprelated AIDS cases reported and even less tested in court. Therefore, it is difficult to define the shipowner’s liabilities and his cover under these Rules in any precise way. As the problem may increase, all AIDS-related cases which may cause a claim for compensation should be reported to the Club immediately.

3.1.3.6.3 Drug and alcohol policy
Experience shows that consumption of alcohol or other drugs on board ships causes damage and affects liability. Charterers of tankers and other ships carrying pollutant cargoes, therefore,
request clauses to be inserted in C/P’s, according to which the owner assumes an obligation to prevent or detect such consumption and becomes liable for any loss or damage still arising. There are several such clauses in the market. Members should contact the Club at the fixing stage to have any such proposed clauses evaluated under Rule 10 Section 2 so as to comply with the cover under these Rules.

The Group clubs are, in principle, prepared to accept a clause according to which Members confirm that they have adopted a written drug and alcohol policy which meets with or exceeds the standard in the Oil Companies International Marine Forum (OCIMF) Guidelines for the control of drugs and alcohol on board ships. The undertaking may also be given in a separate "Blanket Declaration". Upon request, the Club will assist Members to obtain the OCIMF guidelines. Such a clause should only be accepted where the Member can show that such a written company policy exists and has been implemented on board the Member’s ship/s. The policy should take into account the individual features of the service operated, as well as any obligations or restrictions to test crewmembers for drugs or alcohol generally or at random which may be a result of applicable laws or contracts of employment.

Costs for performing such tests, i.e., whether to comply with mandatory law or to implement an adopted written policy, are not compensated.

3.1.4 Asbestosis, industrial deafness and other vessel-related longterm illnesses
3.1.4.1 General views on environment-related claims
Claims may be filed for longterm injury or illness related to vessel environment. Such claims may be for exposure to asbestos in engine rooms or cargo holds, occupational noise-induced hearing loss, vibration white fingers, poisoning by carbon monoxide from exhaust fumes in engine rooms or from hold trucks or by inhalation of welding rod fumes.

Asbestosis claims are mainly filed in the U.S., but are also common in the U.K. and Australia. In jurisdictions where such claims are filed, the Club has access to lawyers experienced in the handling of that type of claim.

The claims may be filed by or on behalf of crewmembers. The Member’s liability, if any, is covered under this clause. There may also be claims of a similar nature from longshoremen. The liability is then covered under Rule 3 Section 7. See comments under 3.7.2.7.

3.1.4.2 Exposure on several ships
The exposure to the source of illness may take place at a time considered substantial, before the ultimate manifestation of, for instance, asbestosis. This occurs over a long period of time. As a result, the exposure may occur during service on board several ships. Claims are, therefore, filed against every shipowner on whose ships the crewmember or longshoreman has served and over which jurisdiction can be obtained. When claims are filed against several shipowners and the claimant succeeds, he will recover judgement for the whole of his loss against each of the defendants. Their liability is joint and several. The shipowner who has to pay will be faced with the prospect of recovering contributions from the other defendants, one or more of whom could be insolvent. The contribution is normally recoverable in proportion to the time of service on board each ship involved.
In order to protect the Member’s interests in relation to all parties concerned and in view of the late filing of such claims, it is important that the Club be promptly notified in accordance with Rule 10 Section 4. This is also required so as to co-ordinate the handling of any new claim with those already pending and with other interests involved. Lack of co-ordination may result in judgements which could seriously damage the interests of the Club and its members.

When a claim of this nature has been filed so late that the ten year time bar applies in accordance with Rule 15, the question of compensation for liabilities, costs or expenses will be decided under Rule 19, the Omnibus Rule.

3.1.4.3 Recovery from manufacturer
If the manufacturers or suppliers of the asbestos were not initially named as defendants by the claimant, they may be impleaded by the shipowners. This will protect the shipowners’ right to seek indemnity from the manufacturer and to recover any amount paid.

3.1.4.4 Avoidance of occupational hazards
It is important that active steps be taken to avoid or minimise the exposure of crewmembers and longshoremen to conditions on board which may cause them to contract occupational illnesses. It follows from Rule 10 Section 1 that applicable safety regulations must be adhered to. The ship’s officers can actively contribute to avoiding such claims by, for instance, ensuring that adequate ear protection is available in the engine room and that it is encouraged to be used by those working there and that noisy areas are labelled with clear warning signs.

3.1.4.5 Avoidance of excessive contractual liabilities
Members are advised not to enter into any contracts, agreements or no-fault schemes which would extend the liability for occupational disease beyond what is stipulated by crew contracts once approved by the Club according to Rule 10 Section 2.

3.1.5 Repatriation
3.1.5.1 Performance of repatriation
Repatriations are carried out following medical assessment and consent by the treating medical facility. Practically all repatriations for medical purposes are made by air. The costs are compensated for economy class, unless more expensive alternatives are prescribed for medical reasons. Reduced fares offered by airlines for the repatriation of seamen should be used when available.

Compensation for repatriation by ambulance flight requires the advance approval of the Club. Assistance will be rendered to make suitable arrangements.

3.1.5.2 Escort
Costs for escort by nurse or doctor are compensated if prescribed for medical reasons. It is often preferable to fly out escorts from the crewmember’s homeland for language reasons and for preparation for care to be carried out following the repatriation. The Club will assist in making suitable arrangements.

Costs for relatives to visit a sick or injured crewmember are compensated only if the visit has been approved beforehand by the Club. If the presence of a relative can substitute an escort otherwise necessary for medical reasons, the costs may be recoverable under Rule 8 Section 2.
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3.1.6 Funeral costs
3.1.6.1 Funeral costs covered

The word "funeral" under item (b) means more than funeral at the place where death occurred or where the body was taken off the ship. In some countries with a tropical climate, funeral is prescribed to take place immediately and on the spot. The shipowner has to comply with such regulations and they have to be accepted by the family of the deceased. In most places, however, the body may be returned to the homeland of the deceased to be buried there. Funeral under this item includes the costs of preparing and bringing the body home. It is acceptable for the Member to obtain and follow any reasonable wishes the family of the deceased may have in that respect.

Cremation should be performed, if allowed, in the country where the death occurred and if approved by the family of the deceased. Costs for air transport of the urn of ashes or the coffin are covered. The cover includes the sending home of the personal belongings of the deceased.
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The funeral costs compensated are those which are both basic and necessary. A Member will generally not be compensated if he has paid for wreaths, flower arrangements or other traditional decorations. Advertisements, food, mourning clothes, music and other ceremonies are not compensated. They are generally outside the shipowner’s legal or contractual obligations.

3.1.6.2 Life insurance paid by Member to cover funeral costs
As previously mentioned, a shipowner may have to arrange and pay for extra life insurance on behalf of crewmembers. The purpose of such a life insurance is to provide money to pay for funeral costs. It should be used accordingly. If not, the family of the deceased is compensated twice, for which there is no cover. It also follows from Rule 11 Section 6 that any such life insurance should be exhausted before any compensation is due.

3.1.7 Travelling expenses for substitutes
When it is necessary to send a substitute to replace a sick or dead crewmember, the costs are covered under item (c) of this clause. “Necessary” in this context means that the ship would not be properly manned without the substitute and that the problem cannot be solved by upgrading crewmembers already serving on board.

The sending out of a substitute must be linked to the sickness or death of a named crewmember. When seeking compensation from the Club for such costs the Member should, therefore, present a log extract or report from the master to substantiate this.

If the crewmember is due for replacement by a substitute because of vacation or for other reasons unrelated to his health condition and he then happens to fall ill, the costs of bringing the substitute remains the Member’s running costs and should not be compensated.

Costs necessarily incurred to find a substitute, for instance fees charged by crewing agencies, are generally compensated.

The costs of economy class flight tickets at reduced fare price, if available, are compensated. The cover includes costs for maintenance and accommodation.

The substitute may not necessarily be sent to the port where the replaced crewmember fell ill or died. Cover is provided to send only one substitute per crewmember. If a temporary replacement is subsequently followed by a permanent replacement, only the costs of bringing one of them will be reimbursed.

3.1.8 Relatives of crewmembers
3.1.8.1 Status of crew relatives
A crew relative does not qualify as crew under the definition in Rule 1 (see comments under 1.4.1), as he is not obliged to serve on board the entered ship. The fact that regulations in many countries require crew relatives to be included in the crew list does not make them crewmembers in the sense of these Rules.

A crew relative is on board to provide social company to a crewmember, not for the purpose of carriage. Therefore, a relative is not a passenger under the definition in the Athens Convention
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3.1.8.2 Extent of cover for crew relatives
This clause is based on the assumption that relatives should enjoy the same treatment in case of illness or injury as the crewmembers they are visiting. Therefore, the benefits of crewmembers specified under (b) of this clause are extended to relatives.

The Member’s costs for medical treatment and hospital bills in relation to care of relatives are compensated to the same extent as for crewmembers. If relatives have to be repatriated on doctor’s order, the costs are covered including escort, if necessary.

The cover for funeral costs also coincides with that for crewmembers.

The cover in respect of relatives is restricted to costs or expenses specified under item (b) if incurred while the relative is on board the entered ship. There is no cover during the time a relative proceeds to or from the ship or otherwise while the relative is ashore.

3.1.8.3 Member’s precautionary measures
3.1.8.3.1 Passage bonds
The Member may wish to make it a condition for allowing a relative on board that a passage bond is signed in which the Member’s obligations are reduced. The terms of a passage bond may be set aside if they are contrary to the terms of a binding crew contract or in violation of compulsory legislation. Therefore, there is no requirement from the Club that a passage bond should be signed. The Club will supply a suitable text upon request.

3.1.8.3.2 Cover for loss of hire during diversion
As described in the comments to Rule 3 Section 11, the Member has an obligation to divert if on doctor’s order an injured or sick relative of a crewmember requires urgent medical care ashore. The cover is limited to the costs of the diversion. Rule 11 Section 2 (j) excludes compensation for hire lost. The Club will assist Members to obtain insurance cover for loss of hire on behalf of a crewmember who wishes to bring a relative on board.

3.1.9 Repatriation of crew after total loss, CTL or major casualties
Following the total loss or CTL (Constructive Total Loss, see AV 2000 § 26) of the entered ship or a major casualty, the crew may have to be repatriated. The costs are covered under item (e) of this clause. It may be necessary to charter a plane or a bus. The Club should be consulted to arrange the most suitable solution. If repatriation is made by regular flight, the Club will compensate the costs of economy class at reduced fare, if available.
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The cover includes necessary maintenance and accommodation during the repatriation.

Some crewmembers may have to stay at the ship to supervise the repairs or to attend court hearings. Increased costs caused thereby are generally compensated under the Hull policy (see AV 2000 § 7, 5 a).

Costs of repatriating the crew after the entered ship has been sold are not covered.

3.1.10 Common law liabilities
Over and above the allowance for maintenance and cure to which a crewmember is entitled by contract or law, he is generally free to file a common law claim against the shipowner for damages based on negligence (in tort). If the Member is found liable, cover is provided by item (f) of this clause.

A Member may limit his cover for crew liabilities to those based on negligence (in tort) under item (f). See comments under 3.1.1.7.

Common law liabilities in relation to crew relatives are covered under Rule 3 Section 7. See comments under 3.1.8.1.

3.1.11 The U.S. Jones Act
Item (f) is applicable to liabilities incurred by the Member under the U.S. Jones Act of 1920. This act gives a crewmember a cause of action against the shipowner for injuries or death sustained in the course of his employment. Under the Jones Act, the shipowner is liable to pay compensation if the injury or death was caused by his negligence. Even the slightest degree of negligence is sufficient to establish liability. For the seaworthiness of the ship, her owner has an absolute duty not predicated upon negligence to provide a vessel (including appurtenances and crew) reasonably fit for their intended purpose. The protection under the Jones Act has been extended to foreign seamen if they can show that the facts and circumstances of the accident have a substantial connection with the U.S. The act provides the crewman a right to trial by jury. The jury will decide the question of liability and the extent of compensation. Juries are notorious for allowing generous compensation. In cases of this nature the Member’s interests will be looked after by the Club’s lawyers. To achieve a favourable result they depend on full co-operation from the ship’s officers to produce facts and evidence and even to testify in court. According to Rule 8 Section 1 the Member will be compensated by the Club for the defence costs and for costs of bringing witnesses.

3.1.12 Class actions
Under Rule 23 of the U.S. Federal Rules of Civil Procedure, actions brought by several claimants out of the same event can be consolidated to form a class action. In that way it is possible for them to be represented by one lawyer and have their cases decided at one proceeding.

A class action can be brought for one category of claimants, for instance by crewmembers seeking compensation under a crew contract. It may also include several categories if their claims arise out of the same event such as death or injury by crewmembers, passengers and/or longshoremen by a fire on board.
It follows from the procedural rules that class action may be allowed where there are questions of law or facts common to the class. Those prerequisites may fail where there are a variety of claims by injured survivors and representatives of the estates of the descendent or where diverse citizenship of the victims may raise a complex choice of law problem.

Major disasters are generally not considered appropriate for class actions. Claims for death or injury are highly individualised and must be resolved individually. When claimants choose to stay out of a class action, any possible benefits of such an action are lost.

The Club and its lawyers will take care of the Member’s defence against any class action brought in a case likely to fall within these Rules. The Club will then decide whether it is in the Member’s best interests to oppose or accept any motion for class action.

There may be similar types of consolidated actions under the procedural rules of countries other than the U.S.

Section 2 Wages - crew

3.2.1 General views on wages
In addition to the obligations under Section 1 of this Rule, the shipowner is obliged by the terms of a crew contract or by applicable law to pay sick wages to an injured or sick crewmember or wages to his estate if he dies. The cover for such payments is defined in this clause.

3.2.2 Crew contract must be approved
A crew contract often specifies the extent of the wages to be paid and the time in which such payment should be made. As is clear from Rule 10 Section 2 (c), any crew contract must be submitted to the Club for approval. This is essential to charge a fair premium and to help the Member to avoid unusually burdensome terms.

3.2.3 Extent of cover
The wages to be compensated under this clause are those the Member is obliged to pay for at a time when the crewmember has signed off on account of illness or injury. When applying for compensation, the Member should present a log extract showing when and for what reason the crewmember signed off. A copy of the monthly wages account should be submitted to prove the extent and nature of wages paid.

A crewmember who is sick on board has not signed off. His wages are, therefore, not covered even if his absence from work means increased overtime for other crewmembers.

Overtime wages are, furthermore, not compensated whilst the arrival on board of a substitute is awaited for a crewmember who has signed off for illness. The reason is that most probably there has not been such an increase of the Member’s overall costs which is a requirement for compensation according to the principles of Rule 8 Section 2. Before the substitute arrives, the Member saves the costs of his wages but has instead to pay the overtime. The question of compensation only arises when the Member is obliged by law or contract to pay wages as well as overtime on the basis of the same event.
A crewmember may be covered by a social insurance scheme under which he is compensated for wages during illness or injury. This should be checked by the Member before any wages are paid. The Member’s obligations should be reduced by any payment under such an applicable scheme.

Only payment of wages made by the Member are compensated. As appears from comments to Rule 2, a crewmember cannot apply to the Club for payment of wages.

A Member sometimes has to pay social costs and vacation compensation based on sick wages. Such additional charges are not covered.

While being away from the ship on account of injury or illness, a crewmember is often entitled to maintenance in the form of a daily sum so as to compensate him for the free meals and lodging available on board. These are not wages in the sense of this clause. Maintenance paid can, however, be compensated under Rule 3 Section 1 (b).

As regards the application of deductibles to compensation for wages, see comments under 22.5.3.2.

3.2.4 To whom should compensation for wages be paid?
When paying compensation for wages to the estate of a deceased crewmember, it is important to check carefully that payment is made to the legally entitled heirs. Members should not rely indiscriminately on crewing agencies for such payments and are advised to consult the Club before payments are made. The Club will then make the necessary inquiries through its local correspondent or lawyers. They will draft a suitable release against which payment can be made. Payment made to a wrong party without the Club having been consulted will not be compensated.

3.2.5 Payment of wages at total loss and CTL
As appears from the second part of this clause, cover is provided for the contractual or legal obligation to pay wages to the crew after the entered ship has become a total loss, a CTL (Constructive Total Loss see AV 2000 § 26) or suffered a major casualty. The Member should immediately inform the Club of any such occurrence, especially if the ship is not entered for Hull insurance with the Club.

3.2.6 Common law liability to pay wages
Under Rule 3 Section 1 (f) a Member is covered for his obligation to pay wages based on a common law liability provided that the Member has not chosen to remain uninsured for the obligation to pay wages by excluding Rule 3 Section 2.

3.2.7 U.S. penalty wage claims
Under U.S. law a shipowner is obliged to pay a crewmember all of his wages within strict time limits. The obligation is not confined to U.S. flag ships but also applies to foreign ships calling U.S. ports. Failure to comply with the obligation may result in the imposition of a penalty of two days’ wages for each day payment was withheld. In addition to wages due and penalty wages, a court may award damages for emotional distress, punitive damages and damages for lost future income, that could raise a shipowner’s exposure to large amounts.
Similar penalties may be imposed upon shipowners where there is more than one contract applicable to the terms of employment and where wages are paid according to the contract which produces the lowest wages. The articles signed may call for wages pursuant to the ITF (International Transport Workers’ Federation) scale, whereas the crewmember is paid wages below that standard on the basis of an individual employment contract.

Penalty wages and other consequences of a Member not complying with the obligations under U.S. or other applicable law with regard to due payment of wages are covered neither under this clause nor under Rule 7 Section 6. Failure to arrange suitable wage payment routines within the Member’s organisation may imply negligence on a management level and is excluded under Rule 11 Section 1.

Section 3 Loss of or damage to effects – crew

3.3.1 General views on cover for crew effects
This clause goes back to a separate insurance cover for loss of effects caused by the total loss of or a major casualty to the entered ship. When the cover was included in the P&I insurance, the idea was not to extend it. Therefore, this is not a general cover for effects but a cover limited to a member’s legal liability enforced by compulsory law or a contract previously approved by the Club in accordance with Rule 10 Section 2 (c). The clause does not cover theft or robbery of a crewmember’s effects on board, water damage by a leakage in his cabin nor loss of luggage when a crewmember travels to or from the ship.

3.3.2 The extent of cover
The cover is for the legal liability the Member may have towards the crewmember under his contract of employment or applicable compulsory legislation. The obligation to compensate a crewmember is generally limited to an agreed amount. The cover under this clause is restricted accordingly. Rule 11 Section 2 (d) excludes liability for cash, valuables, pieces of art, etc.

As described in the comments to Rule 2, theft of the Member’s property such as the ship’s binoculars or cash box is not covered. Cover for Master’s cash on board can be arranged through the Club.

3.3.3 Cover under this and other Rules for various kinds of persons
The cover is in respect of the Member’s obligations in relation to crewmembers. Effects belonging to other categories of persons on board may be lost or damaged. The cover for passenger luggage is described in Rule 3 Section 5. Liability for effects belonging to crew relatives is covered under Rule 3 Section 5 if the relative is considered legally to qualify as a passenger. Otherwise the liability is covered under Rule 7 Section 1. If equipment or tools belonging, for instance, to people who perform repairs or maintenance on board are lost or damaged in such a way that the Member is liable to pay compensation, the liability is covered under Rule 7 Section 1.

3.3.4 Other insurance should be used first
The cover under this clause is subsidiary to the cover under any other existing insurance policy. This follows from Rule 11 Section 6.
Section 4  Payment of crew claims

3.4.1  General
The Rule is an exception to one of the basic principles of cover under the P&I Rules. According to Rule 2 the cover is for indemnity of the Member who has discharged liabilities covered under these Rules.

This Rule overrides the provision of Rule 2 and stipulates that when the Member fails to pay compensation for personal injury, illness or death the Club will under certain circumstances discharge the liability and pay compensation direct to a beneficiary under the crew contract.

3.4.2  Policy defences
The pay-to-be-paid Rule was upheld in a well known English case, The Fanti and Padre Island. The conclusion was that the Member is the sole party entitled to compensation from the Club and third parties, against whom the Member may be liable, have no such right. Pursuant to the recent Third Parties (Rights against insurers) Act 2010 the effect of the Rule has been modified to a limited extent. The Act excludes contracts of marine insurance from the general restrictions on the “paid to be paid” Rule except where there is a claim for personal injury or death.

The exception to Rule 2 and 26 is when the Club exercises its discretionary right to pay direct to a third party. This right has in the past mostly been used in cases involving personal injury, illness and death claims. The Group Clubs have considered it fair and reasonable that crewmembers and dependants receive compensation direct from the Club without applying any policy defences such as pay-to-be-paid or withdrawal of cover for non payment of premiums and calls.

3.4.3  Conditions of payment
Payment is not made unconditionally. Pursuant to sub-paragraph (a) of the Rule the Club is not liable to pay compensation if recovery could have been made against any other party or would otherwise remain uncompensated.

A basic principle under these Rules is that a third party can never obtain a better right than a Member. This principle is laid down in sub-paragraph (b) which stipulates that compensation can never exceed the amount which the Member would have been able to recover in accordance with these Rules or his terms of entry.

The Club can under certain circumstances terminate the cover according to Rule 26 and as a result the Club is under no obligation to compensate the Member. This Rule overrides Rule 26 and allows for compensation of a claim (c) which has arisen during a period prior to termination of cover. Payment of a claim is then made, in lieu of payment from the Member, as agent only and the Member is liable to reimburse the Club for the full amount of the claim.

Section 5  Passenger liabilities

3.5.1  General
The clause sets out the extent of cover for personal injury, illness or death of passengers. Furthermore, it deals with the cover for liability in respect of cabin luggage, other luggage and
vehicles. Finally, it defines the cover for obligations to forward the passenger and his luggage and to arrange for the passenger’s maintenance in case of a casualty to the entered ship. Delay of passengers and their luggage is covered under Rule 5. For the sake of continuity and completeness, the cover for passenger delay is commented upon under this clause.

3.5.2 “Passenger”
What constitutes a passenger? The definition is not entirely clear. In the Athens Convention of 1974 relating to the Carriage of Passengers and their Luggage by Sea (the Athens Convention), “passenger” means a person carried in a ship under a contract of carriage. Countries which have not ratified the Athens Convention may have other definitions based on domestic law or legal practice. The difference is not expected to be significant. A fee may not necessarily be charged for the carriage of a person to make him a passenger. Customers of the line who are allowed to travel with a ship free of charge for business reasons may be regarded as passengers. Exclusions or limitations of liability in any contract of passage may be set aside to the extent they conflict with mandatory legislation in favour of the passenger.

As regards crew relatives, see comments under 3.1.8.1.

If a person does not legally qualify as a passenger and he is not subject to cover as a crew relative under Rule 3 Section 1 (d), the Member’s liabilities in respect of death or injury are covered under Rule 3 Section 7.

3.5.3 Contracts in passenger service
3.5.3.1 Tickets
The contract of carriage is a standard contract which, according to Rule 10 Section 2 (d), must be submitted to and approved by the Club. A Member who fails to comply with that condition will not be compensated for liabilities which would not have arisen, had the condition been adhered to. The Club regards it as an important part of its loss prevention scheme to assist Members in drafting suitable ticket conditions for any new passenger service. Current passenger ticket terms should be updated and revised at regular intervals, or whenever justified by new legal developments.

The obligation to operate passenger service under suitable and approved standard terms is not limited to regular cruise or passenger ships. The condition applies to any ship that carries passengers in domestic or international service.

3.5.3.2 Other contracts
There are other types of contracts in relation to the carriage of passengers which could have an effect on the extent of a Member’s liabilities. Such contracts should also be submitted to and approved by the Club. Examples of such contracts are those for catering services, doctors, hairdressers, manicurists, shops, excursions, tenders and buses.

It may even be advisable to consult the Club and its lawyers when drafting public relation material such as advertisements, brochures, ticket folders or films as any undertakings, recommendations or exclusions made may influence a court's views on liability in case of an accident. See for instance comments under 3.5.11.4 and 3.5.17.3.
3.5.4  Passenger injury, illness or death

3.5.4.1  General views on passenger liabilities

Whether the domestic legislation applicable to a passenger injury claim is based on the Athens Convention or not, the liability, if any, will probably be decided by the following principles. The basic principle is that the carrier is liable if the accident occurred during the carriage or at a time for which the carrier has assumed liability and if it was caused by negligence of the carrier or of servants for whom he is responsible.

3.5.4.2  Burden of proof

It is upon the claimant to prove that the injury or death occurred during the carriage. The claimant must furthermore prove that the carrier caused the accident by negligence except, under the Athens Convention, if the accident was caused by shipwreck, collision, stranding, explosion, fire or a defect in the ship. In these situations the carrier is presumed to have been negligent and must disprove that presumption to avoid liability.

Where the burden of proof is upon the claimant, experience shows that it does not require much for a court to shift the burden to the carrier. There are several reasons for this. An injured private person making a claim against a foreign company attracts the sympathy of judges and jurors. The court will probably consider that the carrier is in a better position to investigate and explain why things went wrong on board his ship.

3.5.4.3  How to discharge the burden of proof

For a successful defence it is important that everybody on board should have standing instructions immediately to report a passenger accident, however slight to the ship’s officers. They should make a thorough investigation and secure all evidence and testimony available. All crewmembers who may have been involved or who are in possession of information should be interviewed. Their story, together with their full name and other particulars needed to identify and trace them at a later date, should be put on record. That includes all relevant categories of crew such as deck and engine staff, cabin attendants, medical staff and staff operating excursions, shops, elevators or staff who are responsible for the preparation and serving of food.

Signed statements should also be taken from the passenger and any fellow passenger witnesses. This should be done as soon as possible after the incident while recollections are still fresh. Upon disembarkation passengers may be difficult to trace. Even a negative statement can be of great value. A passenger who gave a signed statement to the effect that he saw or heard nothing of the accident will find it hard to come forward later to testify against the ship.

The records should include observations made regarding any possible contributory negligence on the part of the passenger such as violation of safety regulations or precautions, unsuitable footwear or clothing, intoxication etc.

Somebody from the ship should examine the area where the accident occurred to confirm or refute allegations made or to be made on hazardous conditions. All observations should be put on record.
Cameras and video cameras are often available on board passenger ships. They present a valuable tool to secure evidence such as the general outlay of the scene of the accident, the condition of flooring, handrails, warning signs and other elements of interest to determine the cause of and the liability for the accident. In the absence of such equipment or, as a complement, sketches should be drawn and locations measured.

To further a successful defence against a passenger injury claim, the full co-operation of the ship’s medical staff is essential. Sometimes there may be a conflict between their willingness to co-operate and their legal obligation to observe professional discretion. Before obtaining their medical statements and records it may be necessary to secure a formal approval from the claimant. Such formalities are arranged by the Club correspondent or lawyer.

The nearest Club correspondent should be called in to protect the Member’s and the Club’s interests. If the correspondent is not a lawyer, he will engage a specialist lawyer to attend. Needless to say, the lawyer should be given full co-operation and access to the ship, its crew and documents.

Deposition of crewmembers may have to be taken. Deposition is an examination of a witness by the parties’ lawyers outside a trial. If the matter goes to trial, the crewmember may have to appear in person as a witness. The Member will be compensated for the costs to bring the witness to the trial, including any cost to send replacement staff to the ship during the absence of the witness.

3.5.5 Time bar
A carrier would be unable to collect the evidence necessary for his defence if the claimant was allowed to defer the filing of the claim unreasonably. Under most jurisdictions passenger claims are, therefore, subject to a time limit. Under the Athens Convention, claims for personal injury become, where applicable, time barred two years from the date of embarkation. The time limit period may be different under other jurisdictions.

The carrier may also impose a time limit in the passenger ticket conditions. Such clauses stating that any suit for personal injury must be commenced within one year from the day the injury occurred have been held valid by U.S. Courts of Appeal. The courts found that the tickets, examined as a whole, reasonably communicated to an injured passenger that the suit must be commenced within the contractual time bar period. This underlines that Members should avail themselves of the Club’s advice on passenger ticket conditions and layout.

For further comments on time bar see under 4.1.10.

3.5.6 Personal care and attendance
The liability consequences of a passenger accident can be considerably reduced if the injured person is immediately given a high degree of personal courtesy and attention throughout the rest of the voyage and after disembarkation. There is nothing to make a passenger more prone to wanting to make a claim than the feeling of having been neglected physically, mentally or medically.
In addition to the carrier’s legal obligation to provide qualified medical care to an injured passenger, the carrier should see to it that the passenger is visited in the cabin with suitable regularity and is supplied with good food, fruit, flowers, beverages and magazines. He should be given the opportunity to attend as many of the planned social events as his condition allows and the ship's doctor permits. Special precautions may be required to repatriate the passenger. Repatriation should be made as convenient as possible to the passenger, perhaps accompanied by a suitable escort. It is advisable to maintain personal contact with the passenger after his return home and during his extended medical treatment. The nature and extent of such contacts should be discussed with and decided by the Club correspondent. A well-maintained personal contact with the passenger in a positive spirit may pave the way for a settlement without the interference of outside lawyers. That is in the long-term interest of all parties.

3.5.7 Medical malpractice
3.5.7.1 Ship's doctor should be independent contractor
Ships carrying passengers to or from the U.S. and probably also to other destinations are obliged to have certified doctors and medical personnel on board with suitable and prescribed equipment. The medical staff can be either employed by the carrier and, therefore, members of the crew or independent contractors. For a Member there might be a difference from a liability point of view if a doctor is a crewmember or an independent contractor.

If the doctor is a crewmember, the carrier remains liable to a passenger for the doctor’s negligence in the performance of his professional medical duties. The Member may have to answer for wrong examination or diagnosis, wrong or unsuitable treatment or failure to administer proper medicines. The liability consequences under U.S. law can be considerable. The Club recommends Members not to sign on the medical staff as crewmembers.

Instead, medical staff should be hired as independent contractors. The contract for their services should be submitted to the Club for approval and advice through the application of Rule 10 Section 2.

Even as an independent contractor a ship’s doctor or medical staff may impose liabilities upon the carrier. A Member may be considered negligent in the choice of a doctor who proves to be unqualified, incompetent or otherwise unsuitable to act as a doctor on the entered ship. A Member remains responsible towards the passenger for substandard or inadequate medical facilities, equipment or supplies on board. A Member may be responsible for the consequences of the medical treatment of an injury on board, for which he is liable by negligence.

3.5.7.2 Ship's doctor should have own malpractice liability insurance
The contract should stipulate that the doctor has and maintains a malpractice liability insurance assigned in favour of the carrier and providing indemnity for any loss or liability incurred by the carrier.

In the U.S., such malpractice liability coverage may not be effective outside the state where the doctor is qualified to practice. In such a case the shipowner may request the doctor to issue a letter of indemnity beyond the terms of the malpractice insurance cover. A claim for compensation under the P&I policy for a loss under such an indemnity is not poolable.
Cover under these Rules, if any, is therefore limited to the applicable Club Pool retention (for the policy year 2011/2012 USD 8 million). Upon request, the Club may assist Members in having a suitable indemnity drafted.

3.5.8 Nature of claims
In addition to claims for serious personal injuries clearly related to a specific accident on board, there are claims filed for vague symptoms such as sore backs, insomnia or impotence either tied to a minor injury or completely unrelated to any known accident. The symptoms are backed by medical evidence or testimony from doctors or experts, some of whom are notorious for supporting faked claims. The validity of any such allegation is investigated by the Club and its lawyers to the extent it is practically and legally possible. A good result requires the full co-operation of the Member and his people.

In the U.S. and in recent years also in other countries such as the U.K., claims may be filed for posttraumatic stress disorder (PTSD) or "nervous shock". Such claims may be filed by the person involved in a disaster but also by rescuers, relatives or friends. The Member is covered under this clause should he become liable and the claim is caused by a risk covered under these Rules.

Relatives of passengers who have been killed or injured may file claims for loss of consortium and loss of companionship, service, society and support. This includes emotional elements such as loss of companionship and sexual relations but also practical elements like mending the family car or mowing the lawn. Such claims are handled by the Club and its lawyers. Should the claim merit compensation on the Member's behalf, cover is provided under this clause.

3.5.9 Class actions
See comments under 3.1.12.

3.5.10 Settlements
Lawyers representing U.S. passengers usually work on a contingency fee basis. See comments under 3.7.2.5.1. This allows the passenger to pursue his case at a no cost and risk basis. Should he eventually lose, he generally has no obligation to compensate the Member's and the Club's defence costs, which may have run high. Therefore a settlement at an early stage may hurt the Member's records less than protracted litigation even if it is eventually successful.

Experience shows that the best result is achieved without the intervention of lawyers on either side. This requires swift lines of communication between the ship, the Member, the Club and its U.S. correspondent to decide when, how and by whom a recently injured passenger should be approached. A quick offer of a cruise discount could mean the difference between a grateful passenger and a greedy plaintiff.

Settlements should be effected against releases which make the compensation final. Suitable forms will be provided by the Club and its correspondent.

For structured settlements see comments under 3.7.2.6.5.
3.5.11 The geographical extent of cover
3.5.11.1 General views on geographical extent of cover

There is an important distinction between the geographical extent of cover under this clause and that under Rule 3 Section 7 which deals with persons other than crew and passengers. The cover under the last mentioned clause is for accidents "on board or in relation to the entered ship", whereas the cover for passenger liabilities is restricted to accidents on board unless the Club has agreed to extend cover beyond the ship's rail. There are some situations in which cover is provided for liabilities so extended.

3.5.11.2 Gangways and terminals

According to the Athens Convention, "carriage" for which the carrier has a mandatory liability for negligence, includes embarkation and disembarkation. Accidents on gangways may be considered to be sufficiently vessel-related to impose a mandatory liability upon the carrier for which he is covered under this clause. Exactly where the mandatory liability ceases is difficult to say. Embarkation and disembarkation premises and routines may have an influence. Accidents in terminals or on the quay fall in principle beyond the carrier's mandatory liability. For such accidents the carrier should exclude liability in the ticket conditions. That is one of the reasons why ticket conditions should be drafted in co-operation with and approved by the Club. There is no cover under these Rules for a liability arising ashore which could have been avoided if the ticket had contained relevant exclusions. Liability for accidents in terminals should be shouldered by the owner of the terminal and covered under his liability insurance.

3.5.11.3 Tendering

According to the Athens Convention, the carrier has a mandatory liability for accidents caused by negligence during transport by water from land to ship and vice versa if the cost for the transport was included in the fare or if the tender was provided by the carrier. The sixth paragraph of this clause confirms that the Member is covered for liabilities arising during carriage to or from the entered ship "in its own boats". This means boats belonging to and carried by the entered ship. Cover is also provided for liabilities arising during similar transports performed by a tender. This means a local transport vessel which does not belong to the entered ship. Such liability is covered only while the entered ship is in port. Should the service of tenders be required outside ports, the Member should contact the Club in advance to obtain the necessary extended cover. The Club should be given the opportunity to approve and give advice on the terms of contracts for tender services in order to ensure that the Member is exposed to a minimum of liability and that any liability remaining is preferably covered by the tender's insurance.

3.5.11.4 Feedering or other accessory carriage

In connection with the carriage of passengers on board the entered ship, the carrier may bring the passengers to the port of embarkation or from the port of disembarkation by air or by other means of transportation. The carrier may also arrange any accessory carriage of the passenger by ship or otherwise.

According to the seventh paragraph of this clause there is no cover for any liabilities arising out of carriage by air. A Member, who agrees to arrange air transportation of passengers occasionally or on a regular basis to or from a cruise ship, must take proper precautions not to
be left with considerable uninsured liabilities in case of an aircrash. Suitable protective clauses must be included in the passenger tickets. The marketing of any such services has to be made in such a way that passengers can take their own precautions in time with regard to travel insurance. Members are advised to seek the Club’s advice and recommendations.

The cover under this clause is restricted to carriage performed on board the entered ship. If, under a contract of carriage, some part of the journey is performed by another carrier, cover is excluded for any liabilities which arise out of such an accessory carriage. It is important that ticket conditions and other documents are drafted in such a way that the Member’s liability exposure is minimised. The Club will assist upon request.

3.5.11.5 Excursions

Excursions and other similar arrangements are important elements in the entertainment of passengers on cruise ships. The exotic and primitive surroundings are part of the concept but, at the same time, pose threats of injury to the participants unfamiliar with those surroundings and of liability for the Member as organiser of the excursion services.

The Member has an obligation to take all reasonable precautions to care for the passengers’ safety during excursions and to avoid exposing them to unnecessary risks. Members are welcome to obtain the Club’s advice on any problems, preferably before they arise.

It follows from the ultimate paragraph of this clause that the Member is covered for liabilities based on negligence (in tort) in respect of passenger injury or death during excursions. However, liability based on contract, whether such contracts impose liabilities or do not sufficiently restrict them, is excluded from cover in two respects. Under exception (a) there is no cover where there is a separate ticket issued for the excursion ashore, whether that ticket has been bought by the passenger himself or by the Member. Furthermore, under (b) cover is excluded where the Member has entered into a contract with the organiser of the excursion or any other third party on terms which partly or fully waive the Member’s right of recourse for liabilities arising in respect of the excursion. Great care should be taken to negotiate terms for the performance of excursions which protect the Member’s interests. Subcontractors for excursion services should be asked to carry a liability insurance of their own that is also assigned to protect the Member. In addition to the obligations under this clause the general principles of standard terms of contracts under Rule 10 Section 2 apply.

3.5.12 Liability to forward passengers

3.5.12.1 General views on liability to forward passengers

Under certain jurisdictions the carrier has a mandatory obligation to forward the passenger to his destination or to return him to the port of embarkation if the ship is incapacitated to complete the contracted carriage by an accident such as, for example, grounding, fire, collision or an engine breakdown. The obligation may include the maintenance of the passenger in preparation of such transportation. The obligations are mostly restricted to a carriage which has in fact started, meaning that the passenger should have boarded the ship. Corresponding obligations where a ship has a machinery breakdown before reaching the port of embarkation are mostly not of a mandatory nature. They can and should be contracted out in the ticket conditions.
3.5.12.2 Extent of cover

The cover for such mandatory legal obligations is described in the third paragraph of this clause and is for the net costs to fulfil those obligations. The cover is further restricted to the consequences for which the carrier is unable to contract out liability in the ticket conditions. There is no cover for the consequences of a contractual voyage having been discontinued or terminated for commercial reasons.

If a ship has a casualty of such a nature that the passengers have to be taken off the ship, it is appreciated that the Member has to arrange for their maintenance without awaiting Club approval of each expenditure. Still, the Member has the obligation under Rule 10 Section 4 to inform the Club promptly. That will make it possible for the Member to profit from the Club’s active intervention and from experience gained in the handling of previous similar cases.

Examples of expenses to be expected and which may be compensated under this clause are as follows: The carrier may have to lodge passengers in local hotels pending repatriation and to pay for their meals. Passengers may have to be equipped with a reasonable amount of clothing and other necessities and to be paid pocket money, if required. Hotel bills, receipts for articles purchased and for cash advances should be obtained and presented as a basis for compensation. Expenses incurred should primarily reflect the carrier’s mandatory basic obligations. They may also take into account the desirability of retaining the passenger’s positive co-operation to pave the way for future settlements of claims which may be filed for any physical, psychological and economical consequences of the accident. The Club will provide all necessary assistance and advice, including the drafting of suitable receipts and releases to be signed by passengers in exchange for services rendered as above.

Refund of passenger fares is generally not covered by the application of Rule 11 Section 2 (j). If such a refund forms part of a settlement to replace partly or fully a cash payment for liabilities otherwise covered under these Rules, compensation may be allowed under Rule 8 Section 2.

As regards costs for repatriation, the cover under this clause is for forwarding the passengers and their luggage to the destination or to the port of embarkation stated in the contract of carriage. There are no requirements as regards the means of transportation. In consultation with the Club, the Member can choose the most suitable alternative available considering costs and reasonable requests from the passengers. For some passengers a rented car may present the best solution, whereas others may be carried by bus, air or ship.

If a passenger prefers to be repatriated to his home, the Member will be compensated to the extent that such expenses may correspond to the costs for forwarding the passenger to the port of destination or embarkation.

3.5.13 Passage performance guarantees

Members operating passenger service to U.S. ports may be called upon by the Federal Maritime Commission (FMC) to issue a guarantee or provide security for the non-performance of the transportation. Although the risk of non-performance is excluded from cover under Rule 11 Section 2 (a), the Clubs have provided evidence of financial responsibility since
the inception of this legislation as a service to Members. If that service, granted to a certain
category of Members beyond the framework of the insurance cover, becomes too expensive
and cumbersome to the Clubs, it will be discontinued as inconsistent with the concept of
mutuality and the Club’s adopted policy not to issue anticipatory guarantees (see comments
under 12.3.6).

Whether and to what extent the Club may put up a guarantee for financial responsibility in
respect of non-performance of passenger carriage will be decided from case to case. Upon
request, the Club will advise Members in their dealings with the FMC or any similar body
requesting security.

According to Rule 12 the providing of security for risks insured is at the Club’s discretion.
This is even more so for security in respect of risks not insured.

3.5.14 Luggage
3.5.14.1 Cabin luggage
3.5.14.1.1 Carrier’s liability for cabin luggage
Cabin luggage means luggage which the passenger carries with him or keeps in his cabin or
which is in his custody. It also means luggage which the passenger carries in or on his vehicle.

Under the Athens Convention the carrier has a mandatory responsibility for loss of or damage
to cabin luggage caused by negligence of the carrier or any of his servants while the luggage
is on board the ship or in the course of embarkation or disembarkation. Where the Athens
Convention does not apply, the carrier may have wider opportunities to contract out his
liabilities. A prerequisite for cover is that the contract of carriage contains all exceptions and
limitations of liability which are legally enforceable. Passenger ticket conditions should be
approved by the Club according to Rule 10 Section 2 (d).

3.5.14.1.2 Burden of proof
According to the Athens Convention it is upon the claimant to prove that the carrier
caused the loss or damage by negligence. However, where the loss or damage was caused
by shipwreck, collision, stranding, explosion, fire or a defect of the ship, there is a reversed
burden of proof. In such instances, the carrier is presumed to have been negligent and must
disprove that presumption to avoid liability.

For carriage of cabin luggage, which is not subject to the Athens Convention, the burden of
proof is generally upon the claimant.

Whether the burden of proof in a given case is upon the claimant or the carrier, the possibilities
for the Club to defend the Member successfully depends upon the presentation of complete
facts as to the time for and cause of the loss or damage. The full co-operation of the Member’s
staff on board and ashore is essential.

See comments under 4.1.4.

3.5.14.1.3 Steps to be taken at a major casualty
If the passengers have to evacuate the ship following a grounding or fire, it is important
that precautions are taken urgently to seal or otherwise protect the cabins to avoid pilferage
of cabin luggage left behind. Once the cabins are available, the cabin luggage should be collected under proper surveillance, recorded, itemised and stored separately in a safe place pending return to its proper owner. In the meantime, passengers should be asked to list their missing belongings. The list should be matched with the articles recovered. The Club’s correspondent or lawyer will assist Members in arranging a procedure on the spot, which protects the Member against loss of luggage and inflated claims.

Where the Member has a mandatory obligation to forward cabin luggage to its destination or to the port of embarkation following a casualty of the entered ship, such liability is covered under the third part of this clause, provided that the contract of carriage has been approved and found to contain the required exclusions of liability.

3.5.14.1.4 Valuables
It follows from Rule 11 Section 2 (d) that there is no cover for valuables such as cash and jewellery. That should pose no problem to a Member since under the Athens Convention and probably under many other applicable legislations the carrier is allowed to exclude such liability in the ticket conditions. Still, the carrier may be held liable for valuables deposited with the carrier for safekeeping. A Member will be covered for loss of deposited valuables provided that the carriage has been approved by the Club as prescribed in Rule 11 Section 2 (d). For approval, the ticket conditions should contain all limitations and exclusions of liability available. The practical performance of the safekeeping should be adequate. The existence of the service on board should be brought to the attention of the passengers.

3.5.14.2 Other luggage
3.5.14.2.1 Carrier’s liability for other luggage
Other luggage than cabin luggage is often referred to as “registered luggage”. This means that it has been handed over to the carrier against a receipt or a separate contract of carriage. It includes passenger cars which are dealt with under 3.5.14.3 below.

Separate contracts of carriage for other luggage should be approved by the Club according to Rule 10 Section 2 (d). They should contain necessary exclusions and limitations of liability.

The period of responsibility for other luggage under the Athens Convention, when applicable, remains the same as for cabin luggage.

3.5.14.2.2 Burden of proof
According to the Athens Convention, the carrier’s negligence is presumed for damage arising during the period of responsibility. This means that in the absence of information from the ship regarding the time and cause of the damage, the claim has to be paid.

3.5.14.2.3 Passengers deductible for other luggage
The carrier may include a deductible in the ticket conditions for damage to other luggage in order to avoid claims for minor losses. It follows from Rule 10 Section 2 that there is no cover for liabilities which would have been avoided had such exceptions been taken.
3.5.14.3 Passenger cars

3.5.14.3.1 Carrier’s liability for passenger cars
Under the Athens Convention the carrier has the same liability for passenger cars as for other luggage. The period of liability lasts while the cars are on board the ship or in the course of embarkation and disembarkation.

The liability for some categories of vehicles is subject to the Hague or Hague-Visby Rules even if carried on a ticket which includes the driver. That also applies for trucks, lorries or similar articles of transportation where the main purpose of the transport is not to carry the driver but the goods. The Hague and Hague-Visby Rules apply to the carriage of all cars of whatever nature where the carriage is performed under a B/L. Liabilities under the Hague or Hague-Visby Rules are covered under Rule 4 Section 1.

3.5.14.3.2 Burden of proof
Damage arising while the cars are on board the ship or in the course of embarkation and disembarkation is considered to have been caused by the carrier’s negligence unless otherwise proved.

As is usual when it comes to liabilities with a reversed burden of proof, the carrier and his people have to be active to secure full details as to the time and cause of any accident. Most carriers use special forms for the reporting of damage to passenger cars. Upon request, the Club can assist Members in drafting suitable forms. The form should be countersigned by the passenger. Damage of old standing should be noted.

In case of serious damage or when there is an element of personal injury involved, the local Club correspondent should be called in.

3.5.14.3.3 Liability when passenger drives his own car on board
Passenger cars are often embarked or disembarked by being driven by the passenger himself. The carrier should not be held liable for damage which could just as well have been caused while the passenger drove his car ashore. However, even if a high degree of care is required from a passenger while driving on board the unfamiliar environment of a ship, the carrier will no doubt be required to take adequate safety precautions to avoid liability. The height of cargo doors and ramp openings should be properly marked in order to prevent damage to caravans or luggage on roof racks. The passenger should be given adequate assistance while driving or parking in the narrow space available on a cargo deck. Great care should be taken where cars have to be driven or parked on raised ramps, elevators etc.

3.5.14.3.4 Passenger’s deductible for cars
In order to avoid claims for minor damage, the carrier may prescribe a deductible for damage to a vehicle in the ticket conditions. It follows from Rule 10 Section 2 that there is no cover for liabilities which could have been avoided, had such an exception been taken.

3.5.15 Delay of passengers and their luggage and cars
To the extent the carrier has a mandatory liability for delay of passengers, their luggage and cars, such liability is covered under Rule 5. See comments to that Rule. In many jurisdictions the carrier is allowed to exclude liability for delay in the ticket conditions. According to Rule 10 Section 2 any such exclusions should be made.
Where there is a mandatory liability for passenger delay, it is generally limited to a carriage which has started. Liabilities arising out of the late arrival of the ship at the port of embarkation should, therefore, be excluded in the ticket conditions.

As appears from the comments to Rule 5, the liability for delay is restricted to losses caused directly by the delay. A passenger may have been unable to use a rented car awaiting his arrival at the port of destination. However, if he missed a meeting because of the delay he has no valid claim for business so lost.

3.5.16 Limitation of liability - the Athens Convention
The carrier’s right to limit his liability for loss of life and personal injury under the 1957 Brussels Limitation Convention and the 1976 London Convention (revised by protocol 1996) is described in comments under 2.11. The 1957 and 1976 (revised by protocol 1996) limitation conventions provide a right to global limitation.

Under the Athens Convention, where applicable, the carrier can limit his liability per passenger. In the IMO Protocol of 1990, the limitation amounts of the Athens Convention were increased. The Protocols require 10 ratifications or accessions before they could come into force. The limitation amounts of the Athens Convention and the Protocols of 1990 and 2002 are set out below under 3.4.16.4.

3.5.16.1 The 2002 Protocol
The 2002 Protocol shall constitute and be called “the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002”. The Protocol, which has not yet entered into force, introduces increased responsibilities and substantially higher limits of liability on behalf of ship owners and carriers. It is thought likely to enter into force shortly and 12 months after it has been ratified by 10 states (as at 31 May 2011 5 countries have ratified the Protocol). The 2002 Protocol will, if it comes into force, introduce new regimes as exemplified below.

3.5.16.1.1 Amendments of limits
The limits of liability have been increased significantly under the 2002 Protocol, as can be seen in the chart below. Please also note that on account of the raised limits of liability, the International Group and hence also the Club has introduced a rule regarding limitation of the insurance relating to passengers in Appendix II Rule 1 which states that the Association’s aggregate liability arising under any one Member’s entry shall not exceed USD 3 billion regarding any one event in respect of liability to passengers and seamen, see comments under Rule 3 Section 4 and Rule 3 Section 6.

3.5.16.1.2 Strict liability
The Protocol introduces strict liability on behalf of the carrier. For loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier is liable if the incident was due to the fault or neglect of the carrier. Regarding these incidents the burden of proving fault or neglect lies with the claimant, as in the earlier protocols. However, the 2002 Protocol introduces a strict liability regime for shipping related incidents replacing the fault-based liability system. The strict liability is supported by the requirement that the carrier takes out compulsory insurance to cover potential claims.
3.5.16.1.3 Compulsory insurance
The Protocol introduces compulsory insurance to cover passengers on ships. The Protocol requires carriers to maintain insurance or other financial security, such as a bank guarantee, in order to cover the limits for strict liability under the Convention regarding death or personal injury to passengers. The limit of the compulsory insurance or other financial security shall not fall below SDR 250,000 per passenger and incident. Vessels are to be issued with a certificate proving that insurance or other financial security is in force.

The limitation of liability under the Athens Convention

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<tbody>
<tr>
<td>46,666</td>
<td>175,000</td>
<td>250,000 *</td>
<td></td>
</tr>
<tr>
<td>Claims for loss of or damage to cabin luggage</td>
<td>833</td>
<td>1,800</td>
<td>2,250</td>
</tr>
<tr>
<td>Claims for loss of or damage to vehicles including luggage in or on the vehicle</td>
<td>3,333</td>
<td>10,000</td>
<td>12,700</td>
</tr>
<tr>
<td>Claims for loss of or damage to other luggage or valuables deposited with the carrier</td>
<td>1,200</td>
<td>2,700</td>
<td>3,375</td>
</tr>
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*If the loss exceeds this limit, the carrier is further liable up to a limit of SDR 400,000 per passenger on each distinct occasion unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.*

3.5.17 General advice on passenger liabilities and how they should be avoided
3.5.17.1 General views on passenger liability avoidance
In most situations the burden of proof is upon the claimant. It does not require much for a court to shift the burden to the carrier. Courts expect passengers to be generally unaware of the hazards in the ship environment. They require the carrier to eliminate or reduce such hazards and to warn the passengers in an adequate way.

3.5.17.2 Communication with passengers
There are different ways for the ship’s command to communicate with the passengers. Communication can be carried out on a daily basis by messages posted on the notice boards, ship’s daily bulletins or internal circuit loudspeakers or TV. On the first occasion upon embarkation, passengers should be made aware of the means of communication practised
on that ship and that it is important for the common interest of having a safe trip devoid of unnecessary and unpleasant surprises that the passengers on their own initiative regularly and throughout the voyage avail themselves of that source of vital information.

Passengers should be advised to contact the ship’s doctor in case of an accident or if they fall ill. The doctor’s name, hours, telephone number as well as the location of his cabin and practice should be made public to the passengers from the outset and throughout the voyage.

3.5.17.3 Avoidance of known passenger safety risks
Whatever form the communication to passengers takes, it should contain marine and weather forecasts and the safety precautions they justify. If decks can be made slippery by rain, overspray or morning dew, that should be pointed out in time and passengers given adequate warnings and advice to wear appropriate footwear. The same thing goes for decks or other areas open to passengers which have recently been washed down. Visible signs and warnings should be put up at slippery areas. Entry to car decks should be prohibited during the course of the voyage.

Before and during heavy weather, passengers should be cautioned to use handrails. They should avoid using stairs and swimming pools, carrying drinks and glasses and should not remain on deck. They should be told what is available on board for passenger convenience and ease in heavy weather.

There should be handrails and non-slip coverings in bathrooms and showers. Signs to advise passengers to use such facilities should be put up. The temperature of hot water should not be excessive.

Areas around swimming pools can be slippery and should have adequate flooring and warning signs. There should be no access to the swimming pool in heavy weather until its use has been cleared by an authorised person. Areas around the pool from which diving is not suitable should be blanked off and “No diving” signs posted.

Accident-prone parts of the ship are elevators, staircases, raised sills, carpets and doorstoppers. They should be checked regularly for passenger safety.

Adequate safety precautions should be taken at gangways and tenders when passengers are feddered from ship to shore. If there is a swell, safety should be increased accordingly.

The ship’s command and cruise directors should avoid proposing or recommending activities which could be hazardous or for which the ship may not be suitably equipped. Locations ashore which are unsafe for swimming or diving or where there is a known danger of mugging should be made known to passengers. If there are areas with a known danger concerning food, drugs, illness or crime the passengers should be told.

Certain types of entertainment provided on passenger and cruise ships may present safety risks such as scuba diving and clay pigeon shooting. Activities of that kind may be regarded as an additional pleasure which a shipowner has no duty to provide. The Member is covered for liabilities arising from such activities provided he has not voluntarily assumed responsibility.
A written waiver of liability agreement to be signed by a passenger who wishes to avail himself of such added gratuitous services may not be in violation of the shipowner’s duty of safe carriage. Upon request the Club will provide a suitable text for a waiver agreement. Considerable care should be exercised to train the crewmembers in charge of such activities, to supervise the equipment and to select and instruct the passengers who wish to participate.

Section 6 Limitation of cover for passengers and seamen

3.6.1 General
The cover for passengers and seamen has traditionally been limited to the Clubs’ market reinsurance. It was never considered that any claim could reach that limit. However time has changed and when the Kungsholm was delivered to the Swedish America Line in 1966 she had a capacity of 750 passengers. Today passenger ships are built to carry 4-5000 passengers. Suddenly the inconceivable became a reality when such a big passenger ship collides with a tanker setting ablaze the passenger ship, resulting in a total loss of all passengers. This development and the fact that the limitation of liability under the Athens convention has in recent decades more than doubled (see comments under 3.5.16) has made it necessary for the Clubs to limit the market reinsurance cover for passengers and seamen. This Rule deals with the conditions for such a limit as set out in the Appendix II, Rule 1.

3.6.2 Mutuality in relation to ship types
A passenger ship is only one of many ship types entered in the Club. Different types of ships expose the Member and Club to different types of liabilities. To confine the differences in cover it is considered fair that no ship type should expose the Member and the Club to greater liabilities than other ships. In an effort to meet these mutual thoughts the Club apply additional premiums on different types of ships. As an example a tanker trading to ports in the United States represents an increased pollution risk than if she traded elsewhere in the world and the Club therefore applies an additional premium on such tankers. Similarly to reduce the risk of a catastrophic claim following an accident with a passenger ship the cover for liability to passengers and seamen carries a special limit as set out below.

3.6.3 Cover afforded by Appendix II, Rule 1
The Club’s aggregate liability for any and all claims arising out of any one event shall not exceed USD 3 billion for passengers and seamen and USD 2 billion for passenger claims. Should the sum of claims exceed these amounts the International Group has purchased further reinsurance protection of USD 1 billion in excess of the limit of the Group’s excess loss reinsurance (USD 3.05 billion). This additional cover will reduce the risk of an overspill claim in case of a catastrophic claim involving a passenger ship.

A passenger is defined in the Appendix as a person carried onboard a ship under ticket or a passenger accompanying a car or live animals covered by a contract for the carriage of gods. A seaman shall mean any other person onboard a ship who is not a passenger.

Section 7 Injury, illness and death - others

3.7.1 General
Despite its laconic wording, this clause provides cover for a number of frequent and large liabilities in respect of injury or death to persons on board or in relation to the entered ship.
The clause does not specify the types of persons in respect of which the Member’s liability is covered. The cover is described in general terms. It embraces all categories of persons for whom the Member may be liable.

The clause excludes liabilities which are covered elsewhere in these Rules. Liability in respect of crewmembers is covered under Rule 3 Section 1 (a), (b), (c), (e) and (f). Passenger liabilities are covered under Rule 3 Section 5.

Liabilities left to be covered by this clause are, for instance, those related to longshoremen, visitors, maintenance and repair people, pilots and persons on board another ship in a collision situation.

As regards crew relatives, see comments under 3.1.8.1.

Provided that an accident can be considered to be “in relation to the entered ship” it may not necessarily have occurred on board for the liability to be covered by this clause. Cargo, stores or equipment may fall from slings hoisted to or from the ship and injure people ashore. A longshoreman may trip on lashings left on top of a container discharged from the ship, where the lashings belonged to the ship and should have stayed there. Trucks or other vehicles belonging to the ship may cause accidents while being moved ashore. The extent of cover for such vehicle accidents appears from comments under 7.1.14.

3.7.2 Longshoremen

3.7.2.1 General views on longshoremen claims

The longshoremen liability situation in the U.S. constitutes a serious problem for those who trade their ships to U.S. ports and for those who insure their liabilities. These comments will deal mainly with the situation there. It does not mean that the problem is confined to the U.S. It can be found in many parts of the world. Many of the features of longshoremen claims in the U.S. are universal and can be applied to the understanding and handling of similar claims elsewhere. The situation in some specific countries will be dealt with separately.

The aim is not to comment on all aspects of longshoremen claims. The comments will be limited to what is required to achieve an understanding of the legal liabilities covered by this clause and of the possibility for the Member and his people to avoid or reduce such liabilities.

3.7.2.2 The Scindia Standards

3.7.2.2.1 General views on the Scindia case

A leading case on the duty of care owed by a shipowner to longshoremen was decided by the U.S. Supreme Court in 1981 (Scindia Steam Navigation., Ltd. v. de los Santos). It is still good law. It concerned a longshoreman who was struck by cargo while in the ship’s hold. The cargo fell from a pallet held by the ship’s winch. The winch was operated by another longshoreman. The winch brake had been malfunctioning prior to the accident. The principles laid down by the Supreme Court in its ruling are not limited to situations of winch malfunctioning. They apply generally to the duty of care owed by a shipowner to longshoremen.

The basic principle in the Scindia case is that the shipowner owes the stevedoring company and the longshoremen the duty of exercising due care under the circumstances. This general condition is further qualified in the judgement.
3.7.2.2.2 The duty at turnover
A crucial moment is the time when the ship with its equipment is turned over to the stevedoring company for the commencement of the stevedoring activities. The shipowner has the obligation to exercise ordinary care under the circumstances to have both the ship and its equipment in such a condition at that time that an expert and experienced stevedoring company will be able by the exercise of reasonable care to carry on its cargo operations with reasonable safety to both persons and property.

It follows that all ship’s equipment to be used by longshoremen in a U.S. port should be carefully checked out by the ship’s officers or the electrician before arrival at port. To be able to prove this afterwards, the order to carry out the check, the actual performance of the check and the repairs in which it resulted should be recorded in the deck log.

Among other important safety factors to be checked and remedied before the turnover to the stevedoring company are the lighting conditions in the holds. The officers should ensure that all parts of the working area are suitably lit.

Container lashings are often released by the ship’s crew before discharging. If so, all lashing gear should be removed from the working area. If tools to release lashings are supplied by the ship, a check should be carried out to ensure that they are adequate and undamaged.

A common cause of longshoreman injury is the use of defective portable ladders. A stevedore company should bring its own ladders and remain responsible for their condition. To avoid liability, the ship’s supply of fixed and portable ladders should be checked before the stevedoring company starts work. Deficiencies of fixed ladders should be remedied. Alternatively, the ladder should be made inaccessible to longshoremen. Damaged portable ladders should be destroyed or made inaccessible.

3.7.2.2.3 The duty to warn
The Scindia case further states that the stevedoring company should be warned of any hazards on the ship or its equipment which are known or should be reasonably known to the ship, which are likely to be encountered by the stevedoring company in the course of its cargo operations and which are unknown to the stevedoring company and would not be obvious or anticipated if the stevedoring company were reasonably competent in the performance of its work.

This means that if the ship has a new kind of winch or if the operation of the winches or other equipment differs from what is common or could be expected, someone from the ship should give the stevedoring company instructions and advice. Such precautions should be recorded to constitute evidence at a later date, if necessary.

The duty to warn and instruct is linked to the turnover of the ship to the stevedoring company. It should not be extended to a duty continuously to supervise the activities of the stevedoring company. Absent contractual provisions, positive law or customs to the contrary, the shipowner has no duty to supervise or inspect the cargo operations assigned to the stevedoring company. Terms in stevedoring contracts which would increase the shipowner’s liability and assume supervisory functions and responsibilities should not be accepted. It is
equally important that the ship’s officers refrain from interfering in the performance of the stevedoring services which could qualify as supervision and render the ship liable beyond Scindia standards.

3.7.2.2.4 The duty to intervene
Even under Scindia there is a duty to intervene when danger to longshoremen arises from the malfunctioning of the ship’s gear. If the ship’s officers know of the defect and realise that it presents an unreasonable risk of harm to the longshoremen, the duty of the ship is to intervene and effect the necessary repairs. This obligation does not extend to a duty to conduct inspections to determine if any such hazardous conditions exist.

The Scindia ruling states that the shipowner may rely upon the stevedoring company to avoid exposing a longshoreman to unreasonable hazards.

3.7.2.2.5 Negligence in active interference
If the ship’s officers or crew involve themselves in cargo operations and cause injury by negligence, the ship may be liable.

3.7.2.2.6 Controlled areas
The ship may be liable for failure to exercise due care to avoid exposing longshoremen to harm from hazards they may encounter in areas or from equipment under the active control of the ship during the stevedoring operations.

A practical example is bunkering or transfer of bunkers during loading or discharging operations. Such activities should be reported to the stevedore foreman or safetyman before the ship develops a list which may cause shifting of cargo in the holds. Under the Scindia doctrine, the ship may rely on the stevedoring company to avoid any cargo shifting because a list is developed due to uneven loading or discharging.

3.7.2.2.7 Contributory negligence
Observations and evidence of behaviour which indicate contributory negligence on the part of the injured longshoreman constitute forceful arguments in favour of the Member. Even grossly negligent acts such as riding on containers, pallets or hatch beam lifts, or unauthorised presence in holds with the obvious intention to steal, will not automatically relieve the ship of liability if the shipowner is found to be in breach of the basic duty of care owed to longshoremen.

3.7.2.3 Measures to take when an accident has occurred
3.7.2.3.1 The burden of proof
As described in comments under 4.1.4, the law usually states who should provide the facts when an accident has occurred and against whom it should be held if the facts are not available. This is called the burden of proof. In longshoremen injury or death cases the burden of proof is upon the claimant. On the other hand courts tend to make the hurdle for them to overcome low. Therefore, it is important that the shipowner is active and collects his own evidence.
3.7.2.3.2 Call in Club correspondent
Such activities should be undertaken as soon as there has been an accident on board or even when there is just a rumour that an accident has occurred. The first thing to do is to contact the nearest Club correspondent. His name, telephone number and all further details can be found in the List of Correspondents available on board. In most U.S. ports the Club’s correspondent is a law firm ready to assist and to attend on a 24 hour basis. Where the correspondent is not a law firm, he will assist in appointing a suitable lawyer to attend. See comments under 10.4.4.6.

It should be made clear to officers and crew that the Club correspondent and lawyer are there to protect the shipowner’s interests. They should have the best possible co-operation and be given full access to the ship, its equipment and documents. People who serve or repair the ship or its equipment should be instructed only to report to the master and to the Club correspondent or lawyer.

3.7.2.3.3 Secure evidence
Organised investigations undertaken immediately should aim to secure as much factual information and evidence as possible for future use. It is important that notes are made instantly containing the name, address and status of all people who witnessed the accident or who were otherwise involved or in possession of information. The notes should contain their story and observations. Even a negative statement is of value. A longshoreman who has made a contemporary statement to the effect that he saw nothing and did not know anything about the accident, will find it hard to come forward later to testify against the ship.

Any broken gear or equipment which may have caused or contributed to an accident should be taken care of and stored in a safe place. It should be tagged for identification in such a way that a court will be satisfied that it is the right item. If the shipowner is unable to produce the equipment, a court may presume that it was defective and intentionally suppressed as evidence. Another reason why evidence should be secured urgently is that it may otherwise be taken care of by the stevedoring company or longshoreman. When presented in court as evidence against the shipowner, there is no guarantee that it is the same piece of equipment or in its original condition.

Winches or other equipment which may have malfunctioned, should be investigated and tested by an independent surveyor to establish proof as to the cause of the accident and to prevent a re-occurrence. In a winch accident an officer should immediately check that the safety buttons have not been taped over or otherwise made inoperative or disconnected by the stevedore’s winchman.

Accidents may be suitably illustrated by sketches based on observations and measurements on the spot. Photos or video recordings are even better. Before photos are taken the area should be cleared to contain what is necessary to demonstrate the scene of the accident. Photos of ladders should be taken from the bottom up, not the top down.

3.7.2.4 Stevedore’s lien
3.7.2.4.1 Background of stevedore’s lien
Before 1972 the shipowner could recover part of the settlement paid to a longshoreman from
the stevedoring company and its liability underwriter in cases where both the shipowner and
the stevedoring company were at fault. By an amendment of the Longshore and Harbour
Workers’ Compensation Act of 1972, the compensation benefits payable to an injured
longshoreman by the stevedoring company were increased. The stevedoring company was
instead made immune to claims from the shipowner even to the extent that the shipowner was
unable to recover the stevedoring company’s proportion in an accident with shared liability.
The stevedoring company has a lien to cover the compensation benefit out of the amount
recovered by the longshoreman from the shipowner. The stevedoring company is entitled
to full compensation for the lien. It has no obligation to participate proportionately to the
longshoreman’s costs for the recovery. In order to collect fresh money, the longshoreman
needs either to be compensated over and above the amount of the lien or to have a firm
commitment that the stevedoring company and its liability underwriter will waive the lien.
Either solution will affect the amount for which the settlement against the ship will be
concluded, thus making the stevedoring company an interested party in those negotiations.

3.7.2.4.2 Effect of stevedore’s lien

Therefore, the stevedoring company has the same interest as the injured longshoreman to
collect evidence to be used against the shipowner. The stevedoring foremen and other people
acting on behalf of the stevedoring company should be regarded as potential claimants, the
more so as the stevedoring company has a right to bring suit against the shipowner to recover
the amount of the lien. Even if the longshoreman declines to file suit for his injuries, there is
no reason to share any information or evidence with him. On the contrary, those on board
should secure the evidence before it has been taken care of by the stevedoring company or
longshoremen to be used against the shipowner.

There may also come a day when the stevedoring company will be brought into the settlement
discussions. Usually, the Club correspondent tries to persuade the stevedoring company and
its liability underwriter to waive the compensation lien before the longshoreman’s claim
is settled. As the shipowner remains the client of the stevedoring company, the Club may
require the Member’s co-operation to help the liability underwriter to reach a pragmatic
solution by exerting some commercial pressure. It follows from Rule 10 Section 4 that the
Member has an obligation to assist the Club in this respect.

3.7.2.5 Litigation

3.7.2.5.1 General views on longshoreman litigations

The probability is high that a longshoreman injury or death claim will be litigated. Many
claims of this nature are introduced as a lawsuit against the shipowner following the principle
”shoot first and ask questions later”. Due to the size and legal nature, these claims are often
litigated even if the outcome is difficult to predict and the defence costs are very high. The
Member’s defence is handled by the Club’s lawyers. The handling of the cases including the
cost aspect is closely monitored by the Club.

The contingency fee system provides legal assistance to a longshoreman at no costs. It means
that his lawyer keeps an agreed percentage of the settlement or award as his fee. Should
he lose, he receives nothing. On the other hand he is not obliged to compensate the legal
costs incurred by the Member and the Club in the event the claim is successfully defended.
Settlement at an early stage may, therefore, be more advantageous to the Club and to the
Member’s loss records than a glorious but expensive victory in court.
3.7.2.5.2 Evidence
The safest way to a successful defence is the complete co-operation of the Member and his people in providing the evidence necessary to discharge the burden of proof and convince the court that there is no liability on the part of the shipowner. How this should be done is explained in comments under 3.7.2.3.3 and 4.1.4.

3.7.2.5.3 Witnesses
It is often necessary to provide one or more of the ship’s officers and members of the crew to give testimony either by deposition at a separate hearing outside the trial or at the hearing of the case in court or on both occasions. A hearing of a witness includes cross examination conducted by the claimant’s lawyer. Extensive pre-trial preparations and review(s) ensure that this is less dramatic than on TV-shows. The Club will pay any extra costs related to the bringing forth of witnesses and will provide relief officers or crew while the witnesses are away from the ship. See comments under 10.4.4.4.

The latest techniques are used to support testimony and evidence. Depositions are videotaped, computer reconstructions of accidents can be made and models used to make the judges and jurors understand technically complicated events.

3.7.2.5.4 Interrogatories and questionnaires
During litigation the claimant may file a legal request for the presentation of documents or other information. The request, called an interrogatory, questionnaire or request for admissions can concern vessel particulars or facts regarding the ownership of the vessel or shipowning entity. It may seem unreasonably extensive and sometimes indicates that the claimant is on an expedition to fish for information to be used against the Member. Still, the Member’s full co-operation is vital to provide the information requested. Members can rest assured that the Club’s lawyer will use it in the way and to the extent necessary to draft the answers suitable to protect the Member’s interests. The filing of answers to interrogatories and questionnaires has to be made before a certain date set by the court. Failure to comply with the time limit may jeopardise the Member’s position in the litigation. The Member has an obligation under Rule 10 Section 4 to supply the Club and its lawyer with full particulars in order to file a suitable answer in court in timely manner.

3.7.2.5.5 Class actions
See comments under 3.1.2.

3.7.2.6 Settlements
3.7.2.6.1 General views on settlements
In a personal injury case, even in litigation, settlement possibilities are at all times carefully considered. Elements which affect the decision as to whether to settle or not are (1) the expected effect of applicable law, (2) the strength of available witnesses and evidence, (3) the costs to proceed with the case in trial and appeal and (4) the possible negative effects of an adverse outcome as a precedent.

3.7.2.6.2 Effects of witnesses and evidence on settlements
The Member can effectively support the element under (2) by stimulating the presentation of sufficient and convincing witnesses and evidence. The mere fact that the Club can
demonstrate to the claimant that the Member is determined to send witnesses to the trial has a positive effect on the possibilities of settlement. It happens that cases are settled on the courtroom doorstep and that witnesses already on their way to the trial have to be recalled. However, their efforts spent have not been in vain. The fact that they were being flown in constituted a forceful argument for a favourable settlement.

3.7.2.6.3 Waiver of stevedore’s lien
As previously mentioned, the stevedoring company may be brought into the settlement discussions in order to waive the compensation lien.

3.7.2.6.4 Releases
Eventually the settlement is effected against a release executed by or on behalf of the claimant. The purpose of a release is to ensure that the settlement is final and that it eliminates any possibility for the claimant ever to raise new claims for compensation from the Member or from any affiliated party on the basis of the accident concerned. A release should transfer the claimant’s rights to the Member and/or the Club if a recourse action is justified to recover the settlement amount, for instance from the charterers under the terms of the C/P. As regards charterer’s liabilities for longshoremen claims, see comments below under 3.7.2.8. The drafting of a suitable release and its proper execution is made and supervised by the Club’s lawyer.

A settlement means the payment of the agreed amount to the claimant or his lawyer against a general release. It follows from Rule 2 and the pay-to-be-paid principle that the settlement amount should be paid by the Member.

3.7.2.6.5 Structured settlements
Settlements are usually in the form of a lump sum cash payment basis. This satisfies the need for the Member and the Club to know the final extent of the loss and to close the case upon settlement. A claimant, however, may find it difficult to manage a large cash payment. For him, the money should be available as long as the need for it exists and that could be for the rest of his life. In such a case, a structured settlement may present a solution attractive to both parties.

A structured settlement means that the claimant receives continuous payments for life on a regular basis. It can be combined with initial cash payments to adapt the claimant’s residence to his needs, to buy rehabilitation equipment or to pay his legal fees. The structured settlement is funded by the Club paying a fixed lump sum premium to a trust fund or life insurance company, which assumes all future payment obligations in relation to the claimant. The Club has longstanding established contacts with firms who can co-ordinate all structured settlement activities and assist them to arrive at a quick final solution. A structured settlement allows the Club to close its book on the case. This limits the effect on the Member’s records. The overall costs are often less than the lump sum cash payment which would have been required to settle the case.

Both claimants and courts are increasingly receptive to structured settlements. The concept is commonly used in the U.S. Similar arrangements can be made elsewhere.
3.7.2.7 Asbestosis and other vessel-related longterm illnesses
Claims may be filed by or on behalf of longshoremen for longterm injury or illness related to vessel environment. Such claims may be for asbestosis contracted by the inhalation of asbestos fibres in cargo holds or from poisoning by carbon monoxide exhaust fumes from hold trucks. Such exposure occurs over a long period of time and during service on board many ships.

Liability, if any, is covered under this clause, provided it is based on negligence (in tort) or on a stevedoring contract or other agreement approved by the Club according to Rule 10 Section 2.

See comments under 3.1.4.

3.7.2.8 Charterer’s liability for longshoremen claims
3.7.2.8.1 General views on charterer’s liability
For many years longshoremen personal injury claims where considered only to concern the owner of the ship. This situation has changed. In an increasing number of cases, charterers are sued directly by longshoremen or are impleaded by the shipowner.

It follows from Rule 9 that the charterer’s liabilities under this clause are covered under his P&I policy.

As regards practical claims handling, this means that a charterer Member should report any known accidents to the Club and its local correspondent. As described under 3.7.2.3 it is important in longshoreman injury cases to secure evidence and take statements while the matter is still fresh. A charterer Member has to prepare his defence from the outset of a case, either against a claim from the injured longshoreman or from the shipowner under the C/P.

3.7.2.8.2 Operational control
In a U.S. case from 1936 (Ove Skou v. Herbert) the court held that a New York Produce Exchange form C/P clause 8 (see comments under 9.2.2) did not on its own provide a basis for a claim against the charterer by a longshoreman injured in the course of stevedoring operations. The charterer was considered not to have assumed operational control over the loading/discharging. It follows that situations can and do arise when the charterer is considered to have assumed such operational control that liability would follow.

So far it has not been possible to define once and for all the practical situations where sufficient operational control has been undertaken to constitute liability. This will vary from case to case and from court to court, depending on the practice of the Court of Appeal in the circuit to which the local court belongs. In a case from 1973, the court held that the charterer had not assumed operational control merely because he had a supercargo on board.

The New York Produce Exchange form C/P clause 8 has been interpreted differently in other circuits than that in which Ove Skou v. Herbert was decided. Two circuits have held that the clause operated to shift the liability for discharging operations to the charterer. As the liability was considered to have been contractually assumed, the courts refrained from measuring the degree of operational control.
3.7.2.9 Nature of claims
See comments under 3.5.8.

3.7.2.10 Compulsory longshoreman compensation insurance
In some countries a stevedoring company, as the employer, is obliged by law to effect a
no fault accident and life insurance coverage for longshoremen assigned to work on a ship.
The ensuing insurance premium is charged to the shipowner/operator as an item on the
invoice for the stevedoring services.

To assist Members to reduce their running costs, the P&I Clubs previously agreed to issue
letters of indemnity, or make other arrangements by which a separate insurance became
superfluous.

The concept of a no fault cover is inconsistent with the traditional nature of P&I as a liability
insurance. See comments under 2.3. Furthermore, it is against the idea of mutuality that
easily calculable running costs on certain destinations should burden the whole community
of the Club’s Members. Extended cover of this nature has been discontinued. The Club will
assist Members in solving any insurance problems that arise.

3.7.3 Visitors
3.7.3.1 General views on liability for visitors
A ship is visited by many people of various kinds. While on board they run the risk of being
killed or injured. If so, they or their dependents may file claims for compensation from the
shipowner. Compensation may be granted if the claimant can prove that the death or injury
was caused partly or fully by negligence on the part of the shipowner or anybody for whom
he is responsible. Such liability, if any, is covered under this clause.

Any incident brought to the ship’s attention must be immediately and thoroughly investigated.
Evidence and testimony must be secured. The Club’s local correspondent should be called in.

3.7.3.2 Professional visitors
One category of visitors is those who are regularly on board ships on account of their
profession such as repairmen, custom’s, police or Coast Guard officials and people selling or
delivering supplies to the ship or to those on board. This category should be fairly familiar
with a ship and the injury risks it presents. Although a court will probably take that into
account, it is important that all required precautions are taken on board to comply with
requested safety standards.

3.7.3.3 Occasional visitors
Occasional visitors such as guests at receptions and dinner parties on board are less aware
of the risky environment on board a ship. There are often factors that increase hazards such
as ladies’ high heeled shoes and the serving of alcohol. Safety precautions on board have to
take those risks into account. The risks should be adequately pointed out in the invitations.
Crewmembers or watchmen should be posted at critical locations such as the gangway or
ladders to assist and warn the visitors. Extraordinary lighting conditions can be arranged. On
such occasions an extra gangway is often hired for the convenience of the visitors. Although
this is a prudent precaution, experience shows that the safety of all extraordinary arrangements
has to be checked with extra care.
3.7.4 Travelling repair teams

Shipyards and other firms specialised in maintenance and repair work supply repair teams to travel with the ship and to work on board. The Member’s common law liability for death or injury based on negligence is covered under this clause.

Members are advised not to sign repair teams as crewmembers. That would probably increase the Member’s obligations beyond what would otherwise follow under applicable law. On the contrary, the contract under which the services are hired should reflect that they are the employees of the labour contractor and that his insurance policy in respect of the repair team is endorsed to provide coverage to vessel interests. Members are recommended to present such contracts to the Club for approval and advice.

In some countries, the presence of repair teams on board may constitute a violation of local law and regulations to protect unions of ship repair personnel. Members should stay informed of any such regulations in ports of call before hiring a repair team. There is no cover under Rule 7 Section 6 for fines in respect of violation of such law. Nor would a Member be compensated for costs of the repatriation of a repair team if based on contract or imposed by a law which the Member ought to have known.

3.7.5 Pilots

This clause provides cover for a Member against liability based on negligence for death or injury to a pilot on board or in relation to the entered ship. Liability which follows out of a contract for pilot services is covered only if the contract is customary and a prerequisite for obtaining the pilot services, or if the contract has been approved by the Club. See comments under 10.2.6.5.

3.7.6 Stowaways and refugees

The cover provided by Rule 3 Section 8 is limited to the expenses of having stowaways and refugees on board and landing them in a suitable port. While on board they can be killed or injured and may file a claim against the shipowner for compensation. If a Member is held liable on account of negligence, cover is provided by this clause.

3.7.7 Crew relatives

As regards crew relatives see comments under 3.1.8.1.

3.7.8 Collision liability for death or personal injury

3.7.8.1 General views on collision liability for death or personal injury

The Member’s liability for collision with another ship is covered under Rule 7 Section 2. The cover under that clause is limited to liabilities in relation to the owner of the other ship for loss of or damage to that ship. However, there may be other liability consequences of the collision, such as death of or injury to crewmembers, passengers or other people on board both of the colliding ships. As loss of life or personal injury is excluded under a Hull policy (AV 2000 § 7, 3 b) the cover is provided by the P&I insurance. As regards persons on board the Member’s own ship, liabilities to the crew are covered under Rule 3 Section 1. For liabilities to crew relatives, see comments under 3.1.8.1. Liabilities to passengers are covered under Rule 3 Section 5. Liabilities to other categories of persons on board the entered ship as well as the Member’s liabilities to persons of any category on board the other ship are covered under this clause.
Cases of this nature are of such magnitude that the handling is conducted on the Member’s behalf by the Club. Close co-operation is the best way to achieve a good end result.

The handling of the death or personal injury part of a collision case requires co-operation with the Hull underwriter of the entered ship. This is ensured if the vessel is entered for both Hull and P&I risks with the Club.

3.7.8.2 Effect of joint and several liability
Under the Brussels Collision Convention of 1910 (the Collision Convention), colliding ships are jointly and severally liable for any death or personal injury caused by the collision. Provided that both ships are at fault to some degree, the claimant can direct his claim in full against either of them.

The claimant’s choice of target will be influenced by his chances of a successful recovery. This depends on the shipowner’s rights of limitation of liability and on contractual defences in passenger tickets.

The compensation which either ship is forced to pay for death or personal injury will constitute a part of the overall costs to be apportioned between the two colliding ships in accordance with the degree of fault. The principles for apportionment of collision liability are described in the comments under 7.2.3.

It follows from the Collision Convention that in such an apportionment, the owner of the colliding vessel may rely on any defence which would have been available if the claim had been made against him in the first instance.

When the final apportionment of collision liability has been assessed, the Member will be reimbursed under this clause for paid and unrecoverable costs in respect of death or personal injury to persons who were neither crew nor passengers of the entered ship.

3.7.9 Other death or injury claims in respect of persons
There can be a great variety of situations in which the ship is targeted with claims for death or injury and where the connection is distant and the causality vague. It may be alleged that a swimmer on a distant beach was drowned by wash from the ship or that a crewmember killed a man in a local bar during shore leave.

Such claims should always be reported to the Club together with all available details and evidence required to analyse the liability position and the question of cover under these Rules.

Section 8 Stowaways and refugees
3.8.1 General
The most important effect of the cover under this clause is not the compensation for costs incurred by the presence on board of stowaways, persons saved at sea or refugees, but the active assistance by the Club to get them off the ship.
3.8.2 Stowaways

3.8.2.1 Definition

Attempts have been made to solve some of the problems with stowaways through an international convention, the 1957 Brussels Convention Relating to Stowaways. The convention has not been ratified by a sufficient number of states and has not yet come into force. It contains the following definition of a stowaway:

"A person who, at any port or place in the vicinity thereof, secrets himself in a ship without the consent of the shipowner or the Master or any other person in charge of the ship and who is on board after the ship has left that port or place".

Recognising the need to establish practical and comprehensive guidance on procedures to be followed by all the authorities and persons concerned in order that the return or repatriation of a stowaway may be achieved in an acceptable and humane manner, the International Maritime Organisation (IMO) adopted a resolution in 1997, A.871(20) – Guidelines on the allocation of responsibilities to seek the successful resolution of stowaway cases. The position has improved in most parts by the introduction of the international Ship and Port Facility Security Code (ISPS) in 2004.

3.8.2.2 What to look for

The presence of a stowaway on board constitutes a number of problems. His maintenance and repatriation costs money. He represents a potential liability for fines. He can be a hazard to the ship and the people on board. The administrative hurdles that have to be overcome to get him off the ship may be considerable. Solving these problems requires a close cooperation between the Club and the Member’s staff ashore and on board.

When a stowaway has been found, the master should search the ship for more. If one has been able to sneak on board undetected, others may have been able to do the same thing. Experience shows that there is often more than one from the same port.

The stowaway and the surroundings where he was found should be searched for documents or other belongings which could confirm or give a clue as to his identity, such as passport, seaman’s book, identity or social security card. Documents found should be kept by the master in a safe place for future reference.

The stowaway should be questioned in order to verify his identity in preparation of his repatriation. The following details should be obtained:

1. Full name
2. Nationality
3. Postal and residential permanent or last address
4. Date and place of birth
5. Name, date and place of birth of either or both parents or other next of kin including their postal and residential addresses

These details, including particulars of any documents found that confirm the stowaway’s identity should be forwarded immediately to the owner’s head office and to the shipagents in the next ports of call. The Member should urgently inform the Club. A suggested questionnaire for stowaways is available on the Club’s website.
Rule 3 Liabilities in respect of persons
Section 8 Stowaways and refugees

3.8.2.3 Efforts to get a stowaway off the ship

Upon receipt of such information, the Club will start to get the stowaway off the ship. This requires difficult and time-absorbing consultations of immigration authorities in the ports the ship is scheduled to call. It is a realistic assessment that such consultations will not be successful in the ship’s first port of call. The aim must be set at a port further along the line of the ship’s itinerary. It is of importance that the Club is given the full itinerary as far as can be predicted in order to concentrate the efforts on destinations where the authorities may be favourably disposed to let the stowaway off the ship for repatriation.

The Club’s correspondent who conduct the consultations with the authorities will state as early as possible what additional details may be required to get permission for the stowaway to disembark and to obtain travel documents such as passport, visa, immigration permit or laissez-passer. Such details are:

1. Passport size photos of the stowaway.
2. A full set of fingerprints.
3. An affidavit sworn by the stowaway as to his identity, the place and method of embarkation and the motive for stowing away.
4. An extract from the ship’s deck log with full details as to the discovery of the stowaway, his identity etc.

Top ten countries of embarkation

The Swedish Club claims 2006-2011
The formalities to be observed when producing the information listed under 1-4 above and any additional evidence needed, will be specified by the Club’s correspondent according to the requests of the authorities in the planned port of disembarkation.

To meet the requirement under 4 above, it is important that entries are made in the deck log continuously as long as the stowaway remains on board. Such entries are also essential so as to explain the stowaway’s presence on board to authorities in intermediate ports of call. Finally, a full log extract is required to substantiate a claim for compensation from the Club under this clause.

While the stowaway remains on board, the immigration authorities in all ports of call should be informed of his presence and of his status as a stowaway. Failure to inform the authorities properly may result in fines against the ship. Although such fines are covered under Rule 7 Section 6, 1. (b), the expense should be avoided so as to protect the Member’s records.

3.8.2.4 Political complications
The reason why a person stows away on board a ship may be political. If so, he may wish to conceal his identity by destroying identification documents and giving misleading information. Such complications will make it difficult to find a country willing to grant him permission to leave the ship.

The Club and its representatives and lawyers will endeavour to solve the problems as fast as possible. It may be necessary to activate embassies of the countries concerned and the United Nations High Commissioner for Refugees (UNHCR) with head office in Geneva and with regional offices in many countries.

3.8.2.5 Stowaways are not crewmembers
Masters sometimes sign on a stowaway as a crewmember in the hope of avoiding the costs for guards and watchmen, or that it might be easier to sign him off as a seaman than to land him as a stowaway. The Club’s advice is strongly against any such practice. Firstly, the ship may have fines imposed if the authorities reveal the true status of the stowaway and find that they were purposely misled by the ship. Secondly, by temporarily upgrading a stowaway to a crewmember, the Member may assume much wider liabilities in case of injury, illness or death. Such liabilities may not necessarily qualify for cover under Rule 3 Section 1, as the definition of a crewmember under Rule 1 implies that there should be a contract approved by the Club for service and not for disguise.

The Club strongly recommends against using stowaways for any kind of work on board.

3.8.2.6 Detention of stowaways
As indicated, the immigration authorities in the vessel’s ports of call may require a stowaway to be confined to a locked cabin. Guards may have to be employed to prevent him from escaping and entering the country illegally. A stowaway may even be taken off the ship temporarily to be placed in jail or other custody for the duration of the ship’s call. The costs may be charged to the ship. They are recoverable under this clause. It is a requirement, however, that guards should be supplied by a security firm approved by the Club’s local correspondent.
3.8.2.7 Maintenance and repatriation

While the stowaway remains on board until the formalities for his disembarkation have been solved, the ship has to care for his maintenance. Costs may be reimbursed under this clause on a per diem basis equal to the agreed daily maintenance costs for crewmembers.

When the stowaway is allowed to leave the ship, the Club’s correspondent at the port of disembarkation will have taken necessary precautions to meet the requirements of the local immigration authorities. Pending repatriation, the stowaway may have to stay in a hotel, perhaps under guard. He will be equipped with air tickets and with guards or escorts on the return trip, if required by immigration or airline security regulations. Any such necessary costs are compensated under this clause.

Running expenses of the ship are not compensated, nor are loss of time, freight or other revenue according to Rule 11 Section 2 (j).

As a condition for allowing a stowaway to disembark, the local authorities may request a guarantee or other security to cover the costs of detention and repatriation. In so far as the Club is concerned, any such request is subject to Rule 12, according to which it is in the discretion of the Club to provide security.

3.8.2.8 Diversion to land stowaways

It may be tempting for a Member to let the ship make a diversion if an opportunity presents itself to land a stowaway on the way. The costs of such a diversion can be covered under Rule 3 Section 11, if undertaken to secure treatment if the stowaway is injured or falls ill while on board or otherwise agreed by the Club. Diversions just to get him off the ship may amount to an unjustified deviation. Should the ship run aground and her cargo be damaged or lost during an unjustified deviation, the Member may become liable unconditionally and without limitation. Cover for such deviations is excluded under Rule 4 Section 7.

A Member who plans a diversion to land a stowaway should contact the Club well in advance to discuss the position and to obtain the Club’s approval and advice. Some costs of an approved diversion not constituting an unjustified deviation may be compensated under Rule 8 Section 2 or Rule 3 Section 11.

3.8.2.9 Stowaways in containers

There have been an increasing number of cases during recent years when stowaways hide away in containers prior to loading. At the same time, the question arises as to who should ultimately be responsible for costs and expenses to repatriate the stowaway, the owners or the charterers? The owner is normally prevented from checking contents in containers prior to loading. The owner’s responsibility is the ship itself and before departure it is customary for the crew to search the ship for any stowaways. Likewise, it is the charterers who are in control of the employment of the vessel and who are in a better position to prevent stowaways gaining access to containers. As a result, at its meeting in Singapore on 31 May 1993, BIMCO’s documentary committee decided to adopt a clause which established a contractual responsibility between the owners and the time charterers with respect to stowaways. The clause forms part of the NYPE 93 (clause 41), but the Club strongly recommends Members also to incorporate the clause in all other time charterparties. The clause was updated and amended by BIMCO in 2009.
3.8.2.10 Crew complicity
Investigations may reveal that a stowaway was helped to hide on board by a crewmember or was concealed in his cabin. If practically and legally possible, the costs incurred by the Member should be recovered partly or fully from the responsible party, leaving the balance to be compensated by the Club under this clause.

3.8.2.11 Liability in tort
It appears from the wording of this clause that the cover is restricted to expenses incurred as a result of the ship having stowaways on board. Should a claim be filed against the Member because a stowaway was injured, fell ill or died in circumstances that would make the Member legally liable by negligence (in tort), cover is provided under Rule 3 Section 7.

Stowaways may cause damage to the ship her equipment or cargo carried onboard. Damage to the ship or equipment belonging to the Member or a third party is excluded from cover. Damage caused to cargo carried onboard and liability so imposed upon the Member is covered under Section 1.

3.8.2.12 Preventive precautions
Unnecessary trouble, costs and delay can be avoided if stowaways are effectively prevented from boarding the ship. Certain areas or ports are notorious for stowaways and require increased vigilance on board. Each economical crisis and political upheaval produces its own crop of stowaways. The pattern may change from one year to another. Upon request the Club will provide Members with updated information from representatives in ports or areas to be called.

Alertness of the ship’s crew on deck and in holds may prevent people from sneaking on board and hiding. Reliable guards should be posted at the gangway and on RoRo ships at each open ramp. In most ports, longshoremen and other people who are bona fide visitors on the ship carry or can be provided with identification cards or tags which they should wear so as they are easily visible.

Other ways to board the ship are via the mooring lines, from the outboard side of the ship and in containers, whether sealed or empty. To eliminate such possibilities, security has to be tightened up in the cargo handling routines and in the port area. Suitable protective measures should be discussed with the local Club correspondent, the shipagent and local authorities.

A search of the ship and of the cargo holds should be made before departure. The crew should be briefed on the disadvantages to the ship and its complement in getting stowaways on board. They should be asked to report all observations of what may look suspicious.

Stowaways are often unaware of the hazards on board a ship. They may hide in places which would seem highly unsuitable such as reefer holds, ventilation fan shafts, funnels and cargo tanks. Such areas should not be overlooked when the ship is searched.

Costs for preventive precautions are regarded as operational running expenses. They are not compensated.
3.8.3 Persons saved at sea

Persons saved at sea may be survivors in lifeboats or otherwise after marine accidents. The cover is for costs reasonably incurred to save and land them and for their care and maintenance while on board. For those kind of persons there is hardly any obligation for the owner of the saving ship to arrange and pay for their repatriation. Only in exceptional cases should there be difficulties in obtaining landing permission. Still, Members are recommended urgently to inform their shipagents in the next port of call and to report to the Club in order for the Club correspondent to liaise with the shipagent to protect the Member’s interests.

Diversion costs are recoverable under Rule 3 Section 11 only if the diversion is reasonably undertaken to treat injured or sick persons saved at sea following the Club’s approval.

Liability, if any, for injury, illness or death occurring on board the entered ship is covered under Rule 3 Section 7.

The difference between the cover under this clause and that of Rule 3 Section 9 is that the latter covers salvage awards to save the lives of persons on board the entered ship, whereas this clause covers the Member’s costs for having persons saved at sea on board. Therefore, this clause does not cover running costs for the entered ship while saving life from or standing by another ship in distress, nor any loss of time, freight or revenue incurred in connection therewith which follows from Rule 11 Section 2 (j). Such costs or loss of time or freight should be claimed from the ship assisted and may be compensated by its Club.

All actions should be recorded in the deck log to substantiate a claim against the owner or underwriter of the ship assisted. A log extract is required for the Member to obtain compensation from the Club for his expenses.

3.8.4 Refugees

3.8.4.1 Refugee claim characteristics

Whereas persons saved at sea are victims of a marine disaster, for the purpose of this clause refugees are those who leave their country for political or economical reasons and end up in distress at sea, such as refugees from Iran, Iraq and North African countries. Refugees saved may be considerable in number, with increased problems and costs to manage their care and maintenance while on board. In countries that neighbour the sealanes where refugees are frequently found, landing arrangements may be strained to the limit. Due to political implications, the presence of refugees on board may cause severe problems for the Member to obtain permission from the immigration authorities to let them disembark.

3.8.4.2 Compensation by national law

In order for the international community to promote and support the rescuing of refugees at sea, measures have been taken to reduce the inconvenience to shipowners involved. This is achieved by making it easier to get the refugees off the ship and to compensate costs incurred.

Some countries have undertaken to compensate shipowners sailing under their national flag for expenses relating to rescue, maintenance and disembarkation of refugees. The Club will advise Members whether any such national compensation scheme is applicable to refugees rescued by the entered ship. It is important that Members avail themselves of any such opportunity.
3.8.4.3 UNHCR’s practical guidelines relating to stowaway asylum-seekers
The United Nations High Commissioner for Refugees (UNHCR) may render assistance in reducing delays to land refugees. The policy of UNHCR with regard to stowaway refugees and those rescued at sea was outlined in a document dated 1992.

In order to prevent delays, a Member should immediately contact the Club when refugees have been rescued. The Club will assist the Member in solving the formalities in connection with the disembarkation.

Section 9 Life salvage

3.9.1 General views on salvage
According to the International Convention on Salvage of 1989 (the Salvage Convention), those who own property or other assets saved at sea have an obligation to pay a reasonable compensation to a successful salvor. The salvage award is shared between the Hull underwriter (AV 2000 § 5 f) and the cargo underwriter in proportion to the values saved. Where the salvage can be referred back to unseaworthiness, the owner of the ship may also have to pay the cargo’s share of the award. Cover for such payment is provided by Rule 7 Section 4.

3.9.2 Life salvage

3.9.2.1 Lives alone saved
Lives are often endangered in a marine casualty. It is recognised as a public duty that those who are in a position to do so or have suitable means available should render all possible assistance to save human lives. Under the Salvage Convention no awards are due when lives alone have been saved from either the person saved or from the owner of the ship in distress.

3.9.2.2 Lives and property saved
According to the Salvage Convention, awards in respect of life salvage can be granted when the service was undertaken to salve property and it was possible to save lives at the same time. Most Hull and cargo policies exclude cover for any part of the salvage costs which are attributed to life salvage.

In order not to leave the Member uninsured for the balance between the full salvage award and what is recoverable from the Hull and cargo underwriters for salvage of property, the obligation to compensate life salvors is covered under this clause.

3.9.2.3 Sums recoverable from Hull and cargo underwriters
The last part of the clause underlines that the cover is only for such parts of the salvage awards which are not recoverable under the Hull policy of the entered ship or from the owner of cargo or its underwriter. Members are advised to consult the Club in cases of life salvage to ensure that all possibilities of recovering the costs from other underwriters have been exhausted.

3.9.2.4 Persons on or from the entered ship
The cover under this clause is not restricted to life salvage of crewmembers. The word “persons” implies that the cover is for any kind of persons who might have been on board the entered ship such as passengers, stowaways, pilots and riding repair teams.
The person should have been on or from the entered ship. "From" means people in lifeboats, even after the total loss of the entered ship.

**3.9.3 Charges by other ships for stand by, search or rescue**

Following the general duty to render assistance when lives are endangered at sea, ships may be engaged in search or rescue or be standing by at a ship in distress. A loss will arise for the assisting ship since her running expenses will continue. The ship may be put off-hire or miss a cancelling date. Claims are sometimes filed for such losses against the owner of the ship to which the assistance was rendered.

Such assistance does not constitute life salvage. In principle, the owner of the assisted ship has no legal obligation to compensate losses of that kind. Therefore there is no cover under these Rules for the services rendered. Members are still advised to refer such claims to the Club for handling and advice.

Situations may, however, arise when some compensation is reasonable, for instance when the extent of the assistance rendered had a favourable effect on the settlement of loss of life claims or when the absence of assistance might have constituted negligence on the part of the Member. If the circumstances in the individual case warrant compensation to any extent of such charges, cover may follow under Rule 8 Section 2.

It may also be possible to reach a sharing agreement of such charges with other underwriters concerned, as they may have been undertaken in the mutual interest of the ship together with people and cargo on it.

On application, the Club may consider to exercise its discretionary right to compensate a Member under Rule 19, the Omnibus Rule.

**3.9.4 Charges by other parties for search and rescue**

When requested to render service for search and rescue in a marine casualty, it happens that private or official parties such as naval and air forces not only claim reimbursement for their costs but also demand a guarantee before initiating the search and rescue. Members are advised to report any such requests to the Club. It follows from Rule 12 that the Club has no obligation to provide security.

**3.9.5 Convention to promote search and rescue**

According to the International Convention on Maritime Search and Rescue of 1979, several countries have undertaken to ensure that necessary arrangements be made for the provision of adequate search and rescue services for persons in distress at sea around their coasts.

**Section 10 Deportation**

**3.10.1 General**

The cover under this clause is not restricted to expenses incurred in relation to crewmembers. The word "persons" includes passengers, stowaways, refugees and relatives to crewmembers allowed to follow the ship.

**3.10.2 Detainees**

Some persons including crewmembers may not be allowed to leave the ship, according
to a decision by the immigration authorities. In those situations, the Member is generally requested to have proper guards or watchmen. The costs for such guards are covered under this clause if the guards are provided by a security firm either engaged or approved by the Club's local correspondent. If the guards fail and the person escapes, there may be additional costs, including fines against the ship. A condition for compensation is that the guards have been arranged in co-operation with the Club or its correspondent. Compensation for fines follows from Rule 7 Section 6, 1. (b).

If the ship is to stay long in port, or is bound to call at a number of ports in that particular country, it may be more economical to repatriate the detained person than to employ guards on a continuous basis. The Member has to comply with any particular regulations drawn up by the Club in that respect. This follows from Rule 10 Section 2. The costs for repatriation will be compensated by the Club by application of this clause and Rule 8 Section 2. The compensation will include the costs of sending out a substitute if necessary for the safety of the ship. In this respect reference is made to statutory requirements, see comments under 10.1.9.

3.10.3 Deserters
If a crewmember deserts the ship, the authorities of the country where he left the vessel may request the Member to pay for his return home if and when he is apprehended. Crewmembers who do not show up in time for the ship’s departure are regarded as deserers. Although the Club and its local correspondent has no means of tracing a deserter, the fact that a crewmember has deserted the ship should be reported to the Club. An extract from the deck log book should be submitted. The Club’s local correspondent will be able to take action when the deserter turns up to arrange for custody under guards and for his urgent repatriation. The correspondent may also be able to have the costs of repatriation paid, partly or fully, by the diplomatic or consular representation of the crewmember’s native country.

A similar situation may arise when a crewmember has signed off the ship but does not leave the country as planned. In such a situation the Club may have to consider whether the Member took reasonable precautions to ensure that the crewmember really intended to leave the country. Persons with a bad record may have to be escorted to the airport. They should not be left at the ship’s gangway with an air ticket which they could exchange for cash.

To ensure that a deserter actually leaves the country, the authorities may stipulate that he is to be accompanied by escort to his destination. Escort may also be required by airline security regulations. Charges and airfare necessarily incurred for escorts are compensated.

Travel expenses and other costs necessarily incurred to send a substitute to replace a deserter are compensated under this clause. Such costs are considered necessary if the ship is not properly manned without the substitute and if the problem cannot be solved by upgrading crewmembers already serving on board.

If practically and legally possible, any assets left on board by the deserter or any unpaid wages should be used to cover the costs of repatriation. The net balance will be compensated under this clause.

Fines in relation to deserters are covered under Rule 7 Section 6 1. (b).
Section 11 Diversion expenses

3.11.1 General
If a person on board the entered ship is injured or falls ill, the Member has a basic obligation to follow a doctor’s order to divert to the nearest suitable port in order to provide adequate care. Should the doctor’s orders not be followed, the Member may become liable for the consequences of his failure to provide proper medical care.

3.11.2 Persons for whom diversion expenses are covered
The clause uses the word “persons”, which indicates that the cover is in respect of the Member’s costs for diversion in relation to crewmembers and their relatives, passengers, stowaways, refugees or others who follow the ship.

3.11.3 Diversion must be justified
The purpose of this clause is to cover the Member for the costs of complying with his obligations to undertake a diversion which qualifies as a justified deviation. This must be distinguished from unjustified deviations which should not be supported by Club Rules. Reference is made to Rule 4 Section 8, according to which the liability consequences of unjustified deviations are excluded from cover. No cover is provided for a deviation undertaken to land stowaways or refugees unless approved by the Club. As a diversion for that purpose is made to save expenses for the Member, it may be regarded as an unjustified deviation, should the vessel run aground and her cargo be damaged or lost. If a Member plans a deviation for other purposes than to provide necessary medical care under this clause, he should obtain the Club’s approval and advice.

3.11.4 Duration of a diversion
The diversion starts when the ship changes course for the port in which the sick or injured person is landed. It ends when the ship is reasonably back on course to her intended destination. If the person landed has such a key position that the vessel has to await a substitute before sailing, the diversion continues during the delay. The costs are also covered during the stay in port until the substitute has arrived. If the ship continues her voyage without a substitute, the diversion ends when she is back on track. To alter course again at a later stage to pick up a substitute in a subsequent port will probably be a new diversion. It could constitute an unjustified deviation if the substitute is picked up to save costs for the owner or otherwise at his convenience. Therefore, any subsequent new diversion contemplated should be approved by the Club so as to be covered.

3.11.5 The extent of cover
The diversion costs which will be reimbursed are specified in the clause. The enumeration is intended to be exhaustive. Port charges include pilots and tugs as well as port dues and fees.

No compensation will be given for hire lost during the time of a diversion. This follows from the fact that hire is excluded from the list of losses covered. It is reconfirmed by Rule 11 Section 2 (j). To protect his position, in case a shipowner has to divert to provide medical care to a relative of a crewmember, the owner may make it a condition for the presence of the relative on board that the crewmember takes out insurance cover for loss of hire. The Club can assist in providing such insurance. See comments under 3.1.8.3.2.
There is cover under this clause only for costs in excess of those which would have been incurred if it had not been for the diversion. It means that costs which the Member would have incurred anyway should not be reimbursed. Credit should be made for costs saved, if any. This would follow from Rule 8 Section 2.

The Member may be asked to supply details of actual and calculated costs in order for the Club to establish the compensation due. A bunker calculation should be supplied together with a bunker invoice.

If the entered ship has an injured or sick person on board and diverts for a rendezvous with a passenger ship equipped with medical facilities and a ship’s doctor, the deviation costs of the entered ship are compensated under this clause. The passenger ship will not be compensated correspondingly under her P&I policy. She can claim her loss from the ship assisted only if such compensation was agreed at the time of diversion. See comments under 3.9.3.

3.11.6 Precautions to be taken during diversion
When the decision has been taken to divert the ship, the Member should alert the shipagents in the port of diversion or appoint an agent there to take care of the formalities. It may be necessary to have an ambulance and a doctor meet the ship. The local hospital should be informed and parties concerned advised that the charges will be paid by the Member. Such precautions taken effectively before the ship’s arrival will ensure that the Member meets his obligations to bring the sick or injured person under proper care without delay.

If a diversion is contemplated, the Member should also notify the Club. The local Club correspondent can render the shipagent valuable assistance in taking the precautions necessary to provide medical care to the person landed.

3.11.7 Cover for diversion expenses under other rules
Costs for diversions if, for example, searching for crewmembers or other persons lost overboard may be compensated under Rule 3 Section 1, 5 or 7 as the case may be, or under Rule 8 Section 2.
Rule 4 Liabilities in respect of cargo

Section 1 Cargo liabilities
Liabilities, costs or expenses for loss, shortage, damage or other responsibility relating to cargo before, during or after the contracted transport by the entered ship.

The cover afforded by the Association is limited to a period starting fourteen days before the commencement of the transport and ending fourteen days after its completion.

For cargo which is the property of the Member, cover is provided by the Association to the same extent as if the cargo had been the property of a third party.

For deck cargo, cover is afforded by the Association provided that the vessel, cargo and containers and similar articles of transport are suitable for deck carriage in all the circumstances and that the bill of lading, waybill or other document containing or evidencing the contract of carriage contains a valid liberty clause to carry such cargo on deck and either
(a) states that the cargo is being so carried and excludes all liability for loss or damage to such cargo or;
(b) makes the carriage subject to the Hague Rules or the Hague-Visby Rules.

Where the value of any cargo is declared to be more than USD 2,500 by reference to a unit, piece, package or otherwise in the bill of lading, waybill or other document containing or evidencing the contract of carriage and where the effect of such declaration is to deprive the Member of any right of limitation to which he would otherwise have been entitled then liabilities exceeding USD 2,500 in respect of any such unit, piece or package are excluded from cover.

Section 2 Cargo liabilities during through transports and lighterage
Liabilities, costs or expenses in respect of cargo during through transports while the cargo is in the care of another carrier provided that the transport is performed under a through or transshipment bill of lading or other document of carriage approved by the Association providing for carriage partly to be performed by the entered ship.

Liabilities, costs or expenses in respect of cargo during contractual and customary lighterage.

Section 3 Liabilities for bill of lading particulars
Liability for incorrect or incomplete description of the cargo or other incorrect statements in a bill of lading, waybill or other document containing or evidencing the contract of carriage, except that there shall be no recovery in respect of liabilities, costs or expenses arising out of
(a) the issuance of an ante dated or post dated bill of lading, waybill or other document containing or evidencing the contract of carriage, which records the loading, shipment or receipt for shipment on a date prior or subsequent to the date on which the cargo was in fact loaded, shipped or received,
(b) the issuance of a bill of lading, waybill or other document containing or evidencing the contract of carriage with a description of cargo, its quantity or condition, or of its port of loading or discharge which the Member or the Master of the entered ship knew to be incorrect.

Section 4 Liabilities for delivery of cargo

Liability for misdelivery of cargo except
(a) as regards a negotiable bill of lading or similar document of title when delivery has been made without the production of that Bill of Lading or document by the person to whom delivery is made,
(b) as regards a non-negotiable bill of lading, waybill or similar document when delivery has been made to a person who is neither named in the document as the person to whom delivery should be made nor, as regards waybill, is lawfully nominated by the shipper as the person to whom delivery should be made,
(c) as regards a non-negotiable bill of lading, waybill or similar document when delivery has been made without production of that bill of lading, waybill or document by the person to whom delivery is made, where such production is required by the express terms of such bill of lading, waybill or document or by operation of law.

Section 5 Paperless trading

Unless the Association otherwise decides there shall be no recovery from the Association in respect of liabilities, losses, costs and expenses arising from the use of any electronic trading system, other than a system approved by the Association, to the extent that such liabilities, losses, costs and expenses would not (save insofar as the Association in its sole discretion otherwise determines) have arisen under a paper trading system.

An electronic trading system is any system which replaces or is intended to replace paper documents used for the sale of goods and/or their carriage by sea or partly by sea and other means of transport and which:
(a) are documents of title, or
(b) entitle the holder to delivery or possession of the goods referred to in such documents, or
(c) evidence a contract of carriage under which the rights and obligations of either of the contracting parties may be transferred to a third party.

A “document” shall mean anything in which information of any description is recorded including, but not limited to, computer or other electronically generated information”.

Section 6 Extraordinary handling costs

Costs or expenses in excess of those which would normally have been incurred in respect of
(a) discharging or disposing of damaged, rejected or worthless cargo,
(b) discharging, handling, storing and reloading cargo where the ship has sustained damage recoverable under the Hull insurance of the entered ship.

Extraordinary costs under a-b above are recoverable only if and to the extent that compensation is not afforded in General Average or recoverable from any other party and
Liabilities in respect of cargo

Section 1 Cargo liabilities

provided such costs are not caused by the nature of the cargo which was known or should have been known by the Member.

Section 7 General Average

Unrecoverable General Average contributions

The proportion of General Average expenditure, special charges or salvage which the Member is or would be entitled to claim from cargo or from some other party to the marine adventure and which is not legally recoverable solely by reason of a breach of the contract of carriage provided always that the Member obtained adequate General Average security. Without such security recovery from the Association can be obtained only if the Member can prove that, at the time of delivery of the cargo, he neither knew nor ought to have known that there had been an occurrence of General Average nature during the voyage.

Ship’s proportion of General Average

The entered ship’s proportion of General Average, special charges or salvage not recoverable under the Hull insurance by reason of the value of the ship being assessed for contribution to General Average or salvage at a sound value in excess of the insured value under the Hull insurance.

Section 8 Deviation

The Association shall not be liable to compensate the Member for liabilities, costs or expenses for which the Member has become liable as a consequence of a deviation whether geographical or other forms of deviation such as by delay or by non-performance.

Where the Member has reported the deviation to the Association as soon as he became aware of it, the Association may at its discretion agree to cover the Member fully, partly or against special conditions or an additional premium. Where the Association finds it necessary for the Member to arrange a special insurance to cover the deviation, the Association may agree to arrange such a cover on the Member’s behalf and at his expense.

Comments on Rule 4 Liabilities in respect of cargo

Section 1 Cargo liabilities

4.1.1 General

The cover for cargo liabilities generates the majority of cases under the P&I insurance. It takes the lion’s share of premiums paid. A genuine understanding of cargo liabilities by the Member and the people ashore and on board is necessary to reduce insurance costs. The purpose of these comments is not to give a complete presentation of cargo liabilities but to highlight elements which are of importance for Members to avoid losses related to cargo and, where they occur, to reduce their liability consequences.

The two main categories of cargo liabilities are transport liability and documentary liability. Transport liability refers to the physical condition of the cargo, in other words to cargo lost or damaged while in the carrier’s care, custody or control. That kind of liability is dealt with in
Sections 1 and 2 of this Rule. Documentary liability applies in respect of the particulars and the description of the cargo in the contract of carriage. Section 3 deals with that liability. The carrier also has a liability to deliver the cargo to its rightful owner according to the contract of carriage. The ensuing cover is described in Section 4.

Sections 5–6 refer to expenses and losses incurred by the Member himself and Section 7 deals with liability arising from deviation.

There are other Rules which concern liabilities in relation to cargo. The cover against cargo-related fines is described in Rule 7 Section 6. Approved terms of contract for carriage of cargo are defined in Rule 10 Section 2. Important exclusions from cover for cargo liabilities appear in Rule 11 Sections 1–2.

4.1.2 Cargo liability
4.1.2.1 Background of conventions

There is a widespread misunderstanding that the carrier is liable to compensate the owner or underwriter of cargo for all damage or loss which has occurred on board the ship or otherwise in the custody of the carrier. That is not so. The carrier has no strict liability for cargo entrusted to him. No such far-reaching liability is even suggested in any international convention pending. Cargo may get damaged or lost without the carrier being liable under any applicable law. It is an important function of the P&I insurance to find out whether the circumstances of a case are such that a liability for the Member does not exist and then to defend the Member against claims for the loss or damage on the basis of the legal conclusions that can be derived from the result of the investigations.

The extent of the carrier's liability for cargo depends on the contents of the applicable law. Most countries base their domestic laws on one of the international conventions on cargo liability. These conventions are known as the Hague Rules, the Hague-Visby Rules and the Hamburg Rules. Further, the “Convention of Contracts for the International Carrying of Goods Wholly or Partly by Sea” was adopted by the UN General Assembly on 11 December 2008. Pursuant to the signing ceremony being held in Rotterdam, the convention was suggested to be known as the “Rotterdam Rules”. However, please note that according to Article 94 of the convention, the Rotterdam Rules will come into force one year after ratification by the 20th UN Member state. At the time of writing this text, the Rotterdam Rules have so far only been ratified by one state and it is generally expected that it will take some time before the convention comes into force. Some countries such as Colombia, Taiwan and Venezuela have not adopted any of the relevant conventions. For such countries the parties to a freight contract can decide the extent of the carrier's liability within the framework of applicable local national law. Other countries such as Brazil have enacted domestic legislation which imposes even more severe liabilities for cargo than would have followed from the conventions. Members trading to such countries should obtain the Club's advice as to how Bs/L and other contracts of carriage should be drafted in order to afford the Member protection against liabilities and to be approved in the sense of Rule 10 Section 2. The conventions will be dealt with individually below.

The four conventions mentioned are all based on the principle of setting a mandatory minimum standard for the carrier's cargo liability. The carrier cannot reduce that liability by
any clauses in the contract of carriage. On the other hand, the carrier is allowed to extend his liability beyond the standards of the conventions. As the P&I insurance is designed to cover those basic liabilities which the Member is legally unable to avoid or reduce, Rule 10 Section 2 (a) states that the cover for cargo liabilities is conditional upon the contract of carriage having been based upon the Hague Rules or the Hague-Visby Rules. Cargo liabilities beyond those standards, including those following from the Hamburg Rules, are covered only if and to the extent that they have been approved by the Club.

4.1.2.2 The Hague Rules
4.1.2.2.1 General views on the Hague Rules
The Hague Rules were drafted and adopted by an international convention in 1924. They have become domestic law in a great number of countries. Some countries have since replaced the Hague Rules with the Hague-Visby Rules, which will be commented upon below. Upon request the Club will provide information to a Member as to what kind of legislation applies in each country.

The Hague Rules were drafted at a time when cargo transportation systems had not reached the sophistication of today. Therefore one easily gets the impression that they apply only to the carriage of general cargo. This impression is strengthened by the fact that many of the leading legal cases date back to the age of break bulk shipments. The fact is that the Hague Rules – and for that matter the Hague-Visby and Hamburg Rules as well – govern the carrier’s liability for transportation of all kinds of cargo. It is the technical application of the rules that must be adapted to the different characteristics in the transportation of reefer cargoes, oils, chemicals, containers, trailers, etc.

4.1.2.2.2 Paramount Clause
Where adopted, the Hague Rules or Hague-Visby Rules are compulsorily applicable by law. In other countries they can be made applicable by the contract of carriage. To ensure that no wider liability is accepted than that covered under these Rules, Bs/L issued should contain a clause by which the transport is made subject to the Hague Rules or Hague-Visby Rules. Such a clause is called a Paramount clause. An owner Member should ensure that C/Ps contain clauses according to which the charterer undertakes to insert a Paramount clause in all Bs/L issued under the C/P. Owner Members should, however, be careful not to accept a Paramount clause as part of the C/P conditions, at least not without having first consulted the Club. If the B/L as well as the C/P contains a Paramount clause, the charterer will be placed in a back-to-back position. The practical consequence would be that the owner is left with the full liability against the cargo interests in a situation where the sequence of cargoes, handling, stowage and storage is decided and performed by the charterer. It underlines that close contact between the Member and the Club at the time of fixture to obtain suitable C/P conditions provides the most efficient loss prevention.

4.1.2.2.3 Carrier’s and cargo owner’s liabilities
The Hague Rule liability concept is based on a division of liability between the carrier and the owner of the cargo.

The carrier has two basic responsibilities. Firstly he should be reasonably active to ensure that the ship is suitable for loading the intended cargo and carrying it safely to its destination. This
is referred to as the obligation to show due diligence with regard to seaworthiness before and at the beginning of the voyage (see comments under 4.1.5). Secondly the carrier should keep and care for the cargo while it is in his custody (see comments under 4.1.6).

If the carrier has adequately met these two basic responsibilities, he may invoke a list of exceptions from liability. Loss or damage to cargo caused by a risk on that list should be absorbed by the cargo owner (see comments under 4.1.8).

4.1.2.2.4 Burden of proof
The allocation of liabilities between the parties thus depends on the cause of the loss. The cause has to be decided by investigations. This requires rules as to the burden of proof (see comments under 4.1.4). The burden of proof decides which party should be active in securing proof to support his position. If he fails, he will lose the case.

Under the Hague Rules the initial burden of proof lies on the cargo owner. He has to prove not only the nature and extent of the loss or damage sustained but also that it existed at the time when the carrier's liability ceased. If the cargo owner can produce convincing evidence in these respects, the burden of proof shifts to the carrier. He is considered liable to compensate the loss until he has been able to prove how the loss or damage occurred and that the cause qualifies as one of the accepted liability exceptions (see comments under 4.1.8).

The burden of proof can only be met by information from the Member. His people on board and ashore hold the key which can unlock the door to provide escape from liability.

4.1.2.2.5 Time bar
To stand a reasonable chance of discharging his burden of proof, the carrier must be informed of the claim urgently. The Hague Rules contain provisions on time bar of cargo claims (see comments under 4.1.10).

4.1.2.2.6 Limitation of liability
The Hague Rules provide the carrier with a right to limit his liability per package or other units of the goods (see comments under 4.1.9.3).

4.1.2.2.7 Special regulations for special cargoes
The Hague Rules contain special regulations for certain types of cargo such as goods of an inflammable, explosive or dangerous nature (see comments under 4.1.11.4), deck cargo (see comments under 4.1.11.5), live animals (see comments under 4.1.11.11) and valuable cargo (see comments under 4.1.11.16).

4.1.2.3 The Hague-Visby Rules
To meet the needs of modern transports, a new set of rules was drafted in 1968 called the Hague-Visby Rules. They have been adopted by a number of countries and apply to transports from a port in a contracting state, or where the B/L has been issued in such a state or contains a Paramount clause making the Hague-Visby Rules applicable.

The Hague-Visby Rules were modelled on the Hague Rules with some important modifications. A new way of calculating the per package limitation was introduced which
considerably increased the extent of the carrier’s liability (see comments under 4.1.9.3.3). Under the Hague-Visby Rules the particulars contained in a B/L constitute conclusive evidence as to the apparent condition of the goods at the time of shipment (see comments under 4.3.3.2). The time for the carrier to file recovery claims was extended (see comments under 4.1.10.13). Under the Hague-Visby Rules the carrier’s servants are afforded a so-called Himalaya protection which means that they were granted the same rights and immunities as the carrier himself if claims were filed directly against any of them.

The burden of proof under the Hague-Visby Rules remains the same as under the Hague Rules (see comments under 4.1.2.2.4).

4.1.2.4 The Hamburg Rules

The Hamburg Rules were adopted in 1978. They have now been ratified by the minimum of 20 states and came into force in November 1992 (see comments under Rule 10.2.2).

The Hague Rules and Hague-Visby Rules are based on an apportionment of liability between the carrier and the cargo owner. Under the Hamburg Rules, however, there is a presumption that the carrier is responsible for any loss or damage caused to cargo unless he can prove that he took "all measures that could reasonably be taken to avoid the occurrence and its consequences". This burden of proof is considerably more difficult to sustain than that under the Hague and Hague-Visby Rules. The carrier’s liability is seriously increased.

However, as even the Hamburg Rules are based on the principle of presumed fault or neglect, they still give room for the presentation of evidence and arguments in the carrier’s favour. Cargo damage arising under the Hamburg Rules has to be investigated in the traditional way before any commitments are made to the cargo interests. The necessity of obtaining evidence and the way to do it described in comments under 4.1.4 also applies to the fullest extent for claims subject to the Hamburg Rules. During the first decades of any forthcoming Hamburg Rule regime considerable effort and money will be required to explore the boundaries of its legal liabilities.

4.1.2.5 The Rotterdam Rules

4.1.2.5.1 General views on the Rotterdam Rules

The “Convention of Contracts for the International Carrying of Goods Wholly or Partly by Sea” was adopted by the UN General Assembly on 11 December 2008. Pursuant to the signing ceremony being held in Rotterdam, the convention was suggested to be known as the “Rotterdam Rules”.

The purpose of the convention was to modernize the existing international rules relating to contracts of maritime carriage of goods and to achieve international uniformity among states by replacing the existing framework, i.e. The Hague Rules, The Hague-Visby Rules and the Hamburg Rules.

The adopted convention was the result of ten years of intergovernmental negotiations by the United Nations Commission for International Trade Law’s Working Group III (UNCITRAL). The Convention’s preparatory work was drafted by the Comité Maritime International (CMI) at the request of UNCITRAL, which also extended to drafting the preliminary text.
According to Article 94 of the convention, the Rotterdam Rules will come into force one year after ratification by the 20th UN Member state. At the time of writing this text, the Rotterdam Rules have so far only been ratified by one state and it is generally expected that it will take some time before the convention comes into force.

4.1.2.5.2 Carrier’s and cargo owner’s liabilities
The Rotterdam Rules’ liability regime, in respect to the carrier’s liability, is fault-based. That is to say, the carrier is liable where cargo interests can prove that the loss, damage or delay took place during the period of the carrier’s responsibility.

The carrier is, however, relieved if it can be shown that the cause of damage could not be attributed to its fault and/or falls within the scope of the accepted defences listed in article 17. The latter rule also extends to include the fault of the carrier’s servants.

However, the carrier remains liable if cargo interests can show that the carrier’s conduct contributed to the relevant loss, irrespective of whether the carrier has any applicable defence to rely on. The latter development represents a significantly narrower scope of exemption for the carrier in comparison to previous conventions.

The above mentioned development is further highlighted by the exclusion of the error in navigation defence, which the carrier in previous conventions could rely on. It can further be noted that the carriers duty to exercise due diligence to make the vessel seaworthy before and at the beginning of the voyage has been extended to also include the voyage itself, by virtue of article 14. Hence, the carrier’s duty has been drafted as an ongoing obligation to exercise due diligence in respect of the vessel’s seaworthiness.

4.1.2.5.3 Time bar
The Rotterdam Rules contain a provision regarding the time limit for commencement of legal proceedings in respect of cargo claims. Similar to the Hamburg Rules, article 62 of the Rotterdam Rules dictates that the carrier shall be relieved from liability if proceedings are not commenced before the expiry of two years from the date of delivery of the cargo.

4.1.2.5.4 Limitation of liability
Compared with previous conventions, the limits of liability have been increased. Article 59 of the Rotterdam Rules dictates that the applicable limit per kilogram is SDR 3, while the limit per package is SDR 875, see under 4.1.9.3.

4.1.3 Cover for cargo liabilities
4.1.3.1 General comments on cover
The cover under this clause is for the mandatory liability from which no exclusions can be invoked and which follows from the contract of carriage based on the Hague or Hague-Visby Rules as per Rule 10 Section 2 (a).

4.1.3.2 Consequential damage
The liability covered is primarily in respect of loss or damage to the cargo concerned. Liability for consequential damage is covered as long as it is mandatory and caused by loss or damage sustained by the cargo in question. If an important piece of machinery is lost during the transport causing a factory to stop production and the Member is found legally liable to
compensate the loss of production, cover is provided under this clause. There is no cover for consequential losses unrelated to the damaged cargo. If a charter is cancelled due to a breakdown of the reefer machinery or other damage to or loss of a chartered ship, a claim for the loss sustained by the charterers by having to hire substitute tonnage at a higher freight rate is not covered.

4.1.3.3 The period of cover
4.1.3.3.1 The period of liability
4.1.3.3.1.1 The “tackle-to-tackle” principle
A misconception still exists that the carrier’s liability for the cargo is limited to the period from when the tackle is hooked at the port of loading until the cargo crosses the ship’s rail at the port of destination. This is known as the “tackle-to-tackle” principle. It is no longer upheld by the courts.

Instead there is generally a grey zone in liability before loading and after discharging. To defend the Member successfully against liabilities which apply beyond the extent of his mandatory liability period requires full information on a number of factors.

4.1.3.3.1.2 The period before loading
With some exceptions (see comments on FIOS terms under 4.1.6.3) the carrier is liable for the performance of the loading. What is of interest here is the fate of the cargo before loading begins.

For that period we need to know when and how the goods arrived at the terminal or quay where the ship was to load. Was the cargo surveyed? What receipt was given? How was it stored, guarded against theft and protected against any damage that might occur? Who arranged, supervised and paid for any arrangements in relation to the cargo? What practical and legal means did the carrier have to influence the care and handling of the cargo? What contracts exist with stevedores and owners of warehouses and providers of cranes or other means of cargo handling and care?

All information, observations and evidence the Member can provide will help the Club to establish the extent of the Member’s liability, if any.

4.1.3.3.1.3 The period after discharging
The carrier is liable for the performance of the discharging except where the carriage is undertaken on FIOS terms (see comments under 4.1.6.3). Courts are most likely to extend the carrier’s liability beyond the time of the discharging operations. When and where the liability ends depend on the situation in each case. For a successful defence the Club needs information and evidence that the following has been undertaken by or on behalf of the carrier.

The carrier should give the receiver reasonable notice that the cargo has arrived. In so far as the carrier has a choice, the cargo should be entrusted to a reliable warehouse or terminal operator. It should be given adequate care during storage and be protected against theft, heat, cold, rain, dust, etc., as the case may be. Reefer containers should be plugged in. The cargo should be separated and held available for survey. The receiver should be given a reasonable opportunity to pick it up.
As regards evidence of condition at discharging or delivery, see comments under 4.1.4.3.2, 4.1.4.3.3, 4.1.11.9.1.3, 4.1.11.13.9 and 4.1.11.15.5.

Liabilities for release and delivery of cargo are covered under Rule 4 Section 4.

4.1.3.3.2 The period of cover – the 14 days rule
The cover is effective during the time before, during and after the contracted carriage. It includes any terminal stage before loading and after discharge. For any such stage the cover is limited to 14 days before the commencement of the transport and 14 days after its completion. Upon request the Club can extend cover under a Shipowners’ Liability to Cargo at Warehouses and/or Wharves Insurance beyond the 14 days period at an additional premium.

It means that the cover is in force before the ship arrives at the port of loading and after it has left the port of destination. As regards the period before loading it is necessary that a separated, individual and identifiable consignment of cargo has been nominated for transportation by the entered ship.

4.1.3.4 Members’ own cargoes
Being a third party liability insurance, P&I cover excludes loss or damage sustained by the Member’s own property. Where Members carry their own cargoes the cover operates in the same way as if the cargo had belonged to a third party. This does not mean that the P&I insurance would replace a normal cargo insurance. Compensation will be allowed only if and to the extent that the loss or damage was caused by circumstances which made the carrier liable under the Hague or Hague-Visby Rules as applicable. Transports of this kind are common in the oil trade. The owner of the cargo may not necessarily be the registered owner of the entered vessel. The cover under this clause is effective even if they are separate legal entities as long as they belong to the same group of companies with integrated ownership.

4.1.3.5 Deck cargo, live animals and valuable cargo
The cover of liabilities for deck cargo, live animals and for cargo with declared value is described under 4.1.11.5, 4.1.11.10 and 4.1.11.16 respectively.

4.1.4 The burden of proof
4.1.4.1 Background of burden of proof
The Member’s interests are taken care of by the Club in many ways. The first and obvious purpose of the Rules is to describe in which situations the Member is entitled to compensation for liabilities, costs or expenses incurred. For the Member and for the Club it is even more important to avoid liabilities altogether or, where they nevertheless occur, to limit their economic consequences to a minimum. The focus around which this important work revolves is the burden of proof.

To discharge the burden of proof successfully requires the dedicated efforts and complete co-operation of the Member and his people ashore and on board. If the efforts are successful, the Member is bound to have the upper hand. The reward is gratifying. It manifests itself in reduced insurance costs. It is, therefore, necessary to describe the background and purpose of the burden of proof in order for those involved to feel committed to the task and to understand what they should do and why.
Liability is a product of law. Law can only be applied to known and proven facts. Even if the law differs from one country to another, there are basic rules as to who should provide the facts and against whom it should be held if the facts are not available. The burden of proof provides the legal technique to solve these problems.

4.1.4.2 The straight burden of proof
In most liability cases there is a straight burden of proof. It means that the party who has suffered a loss must prove that the loss was caused by negligence of the party against whom he has made the claim. This kind of burden of proof is found in personal injury cases under Rule 3 and in third party liability cases under Rule 7.

The fact that the burden of proof rests on the claimant does not mean that the shipowner can remain idle. If the crucial proof is to be found on board or otherwise within the Member’s organisation, a court will appreciate the claimant’s difficulties in getting hold of that proof and therefore shift the burden of proof to the Member. Information and evidence is required from the ship to counter any proof or allegations made by the claimants. Without proof the Club is unable to defend the Member, whose records will have to include unnecessary payments. The Member has an obligation under Rule 10 Section 4 to co-operate in discharging the burden of proof. A Member who is in breach of this obligation runs the risk of not being compensated by the Club.

4.1.4.3 The reversed burden of proof
4.1.4.3.1 General views on the reversed burden of proof under the Hague, Hague-Visby and Hamburg Rules
The Hague Rules, Hague-Visby Rules and Hamburg Rules are based on the principle of presumed fault or neglect. It means that there is a reversed burden of proof for cargo claims. The carrier is liable to compensate any loss of or damage to cargo as long as he cannot prove in a satisfactory way why the loss occurred and that it qualifies as one of the legally accepted exceptions from liability. This increases the obligation on the carrier to produce full facts. In the absence of facts the claim has to be paid. Insurance records will be negatively affected. Premiums will increase.

4.1.4.3.2 Discharging surveys
The burden of proof shifts during the handling stages of a cargo claim. First it rests upon the cargo owner or his underwriter to prove the nature, extent and value of the loss or damage and that it existed at the time when the goods left the carrier’s custody. The traditional way for the cargo owner to fulfil his burden of proof is to arrange for a survey of the goods at or after the discharging, to which the carrier is generally invited. As the claim against the carrier fails if the cargo owner is unable to sustain his burden of proof at the discharging, one should carefully consider whether the invitation should be accepted. Participation in the survey may make it difficult afterwards to question or criticise its result. On the other hand it gives the carrier an opportunity to verify the true nature of the alleged loss and to prevent a one-sided and exaggerated assessment of its extent. The recommendation is to contact the Club when an invitation to participate in a survey is received. The pros and cons will be considered. If participation is decided, the Club will assist the Member in nominating and instructing a qualified surveyor and will pay his fees in accordance with Rule 8 Section 1. Members should avoid taking part in surveys performed more than three days after the delivery of the goods or where they have been subject to further transports from the port or place of discharge.
4.1.4.3.3  **Outturn reports and shortlanding certificates**

The carrier is sometimes asked to supply evidence which the cargo owner intends to use against him. Requests to release outturn reports or to issue shortlanding certificates should be looked upon with suspicion and generally be refused. Another adverse effect of shortlanding certificates can be seen from comments under 4.1.10.8. Please refer any such request to the Club.

4.1.4.3.4  **Shift of burden of proof to carrier**

If and when the cargo owner has successfully met his initial burden of proof and has shown that the loss or damage existed at the time when the carrier’s liability ceased, the burden shifts to the carrier. He is now liable to compensate the loss until he is able to discharge his burden of proof on the issues of seaworthiness (see comments under 4.1.5), cargo care (see comments under 4.1.6) and liability exceptions (see comments under 4.1.8).

4.1.4.4  **Strict liability**

As mentioned above, liability can be based on the concepts of straight or reversed burden of proof. There is a third category called strict liability. It means that the Member is automatically liable for any damage caused. Pollution liabilities under Rule 6 are strict. Proof is, however, still required to the same extent as in any other case. It is needed to verify the alleged extent of the loss. It may be used as mitigating circumstances in respect of the liability for the loss itself or consequences such as fines.

4.1.4.5  **How to discharge the burden of proof**

4.1.4.5.1  **Free evaluation of proof**

What constitutes proofs? It is a misunderstanding that strict formalities always have to be observed when presenting legal proofs. Such formalities were common years ago. There are still some jurisdictions and situations where proof has to be in a certain form. In the majority of cases, however, courts apply the principle of free evaluation of proof.

This means that a court is prepared to consider any piece of information presented by a party as a proof of its position. There is great freedom for everybody to collect and present facts, information and evidence in their favour. The main consideration is that the significance of the proof and its connection with the incident can be established to the satisfaction of the court.

4.1.4.5.2  **Proof of precautionary measures**

Evidence may be required not only when an accident has happened but also to prove that adequate precautions were taken to prevent it. Inspections of holds and tanks before loading should be recorded. Clean Tank Certificates, written approval of reefer plants and compartments, Pre Trip Inspection (PTI) certificates of reefer containers are examples of important documentary evidence to prove that the carrier lived up to his obligation to avoid loss or damage. The importance of proving that measures were taken to prevent drug smuggling is described in comments to Rule 7 Section 6.

4.1.4.5.3  **Logbooks and extracts**

A central source of information and evidence are the logbooks which the ship is obliged to keep on board. Old logbooks must be stored for at least ten years at Owners premises.
Logbooks are regarded by courts as especially valuable proof on account of the legal obligation to enter important events in the books and also because the entries are made instantly. This qualifies log entries as contemporary evidence which is considered to carry more weight than observations made later on. Unfortunately this may have the effect that early entries made on what seemed like foregone conclusions, but with insufficient support, may outweigh the accurate result of close expert investigation carried out at a later stage. Caution should be exercised not to base entries in the logbooks on unsupported theories and speculations.

Log extracts should be what they say – true word-by-word extracts of what was entered in the logbook. Extracts presented are sometimes a mixture of entries and additional comments. Comments are welcome as evidence and constitute an important source of information, but they should be kept separate from log extracts.

If a piece of information or entry made in the logbook proves to be wrong, it should not be erased and made illegible. A single line should be drawn through the faulty word or section in such a way that the original entry is completely readable. The amendment should be dated and initialled for future identification of the person who made it. Thereafter a new and correct entry should be made.

Amendments of any kind in a logbook are regarded with suspicion by the courts and diminish its value as proof. With the best intention of helping the court, an owner marked with red pencil the relevant entries in Swedish in a logbook which had been presented to the court in an English translation. The court spent considerable time questioning the purpose of the markings, and when and by whom they had been made. It clearly harmed the credibility of the entries.

What has been said above applies to the rough as well as the original logbooks and also to deck, engine and reefer logs.

4.1.4.5.4 Reports
Reports from the master, officers and crew are of considerable importance as evidence. Theories and speculations can be made more freely in a report than in a logbook. Observations and clues as to the cause and extent of a loss should be reported. Names of witnesses should be stated. It is of great help to know the names of those who were on watch or at the scene of an accident. If this is not recorded instantly, valuable witnesses and sources of information will be lost. Names of pilots, surveyors, stevedoring foremen and other potential witnesses should be recorded.

It is of great value to have reports illustrated and supported by photographs, video recordings or sketches. Photographs can be authenticated by the signature of two witnesses for further identification. Date, time and place should be noted on the back of each photograph.

4.1.4.5.5 Hardware evidence
Hardware evidence should be preserved with care before anybody else intervenes. See comments under 3.7.2.3.3. A broken wire, shackle or twistlock may have to be presented in court or be subjected to examination afterwards. Any equipment involved in an accident or cargo damage should be secured, put in an envelope, wrapped up in paper or tagged. For
subsequent identification the package should be sealed and authenticated by the signatures of two witnesses.

4.1.4.5.6 Samples
Samples taken should be representative of the type of cargo and damage sampled. It should be possible to identify them if they are brought as evidence in court proceedings. Where several parties are represented at the survey, there should be a joint sample-taking procedure during which all parties draw and equally share samples from a sufficient quantity of damaged goods. The samples taken should be stamped, signed or otherwise marked by all parties for future identification. A protocol should be drawn up accordingly.

If no surveyor is available, the officers have to act on their own to secure representative samples of damaged cargo. Contaminated oil can be collected in clean bottles, sealed and supplied with a label which identifies the consignment and tank, states the date of sampling, and is authenticated by two witnesses. Due consideration should be paid to what has been said regarding free evaluation of proof in comments under 4.1.4.5.1. The owner or the nearest Club correspondent should be informed of samples taken. If they cannot be removed from the ship, they should be kept for at least a year. Contact the Club before old samples are disposed of.

4.1.4.5.7 Protests
If careless cargo handling is observed on board or ashore, the first and obvious thing to do is to stop the operation and to urge the longshoremen to apply a more adequate cargo-handling procedure. Should this be impossible, and no help is available from Club representatives, surveyors or shipagents, a written protest should be filed with the stevedoring company to prove that the carrier tried to stop or improve the operation. Local stevedoring companies will probably not admit liability. It may be sufficient if they can be persuaded to sign for the receipt of the protest.

Noting of sea protests is dealt with in comments under 10.4.3.2.

4.1.4.5.8 Other documents
Other documents of importance as proof in claims matters are general arrangement plans, stowage plans, mate’s receipts, weather-routing outprints, tally sheets, outturn reports, customs shortage certificates, ullage tables, time sheets, plans of tank and piping systems, maintenance records, overtime reports and crew lists. See also comments under 4.1.6.5.

4.1.4.5.9 Witnesses
Personal testimony of officers or other staff members in court or outside constitutes an important element in discharging the burden of proof. See comments under 10.4.4.3.

4.1.5 The carrier’s obligation to provide a seaworthy ship
4.1.5.1 General views on the duty of seaworthiness
As previously mentioned the carrier has two basic obligations in relation to cargo. First he should exercise due diligence with regard to the seaworthiness of the vessel before and at the beginning of each voyage. Secondly he should keep and care for the cargo while it is in his
custody. If he can prove that he has met his obligations in these respects, he has no liability for cargo damage provided he can further prove that it was caused by one of the excepted perils listed in the Hague Rule Article 4.2 and commented upon under 4.1.8.

The term "seaworthiness" means more than the capacity to stay afloat. It includes every element in the ship which contributes to the safe performance of the contracted transport. An appropriate term is "cargoworthiness".

Seaworthiness includes the technical maintenance of the ship, its proper manning with competent and capable crew, updated navigational aids, proper stowage and distribution of cargo and observance of applicable regulations.

Courts require a high standard from carriers with regard to seaworthiness. Dedication in the performance of obligations in this respect is necessary to avoid cargo liabilities.

4.1.5.2 How to exercise due diligence

Under the Hague and Hague-Visby Rules, the carrier does not guarantee seaworthiness. The obligation is to exercise due diligence with regard to seaworthiness before and at the beginning of the voyage. It means that the ship’s officers should be intelligently and efficiently active to ensure that the ship and its cargo compartments are in such a condition that the cargo to be loaded is expected to make the contracted voyage without any risk of being lost or damaged. In practice it means that the chief officer should check the hatches for leakages by inspection or hose testing. He should verify that the cargo compartments are dry and clean to suit the needs of the cargo to be loaded. Pipes, valves, pumps, heating coils, reefer plants or container fittings should be tested for efficiency. These are just some factors in respect of which the carrier is expected to exercise due diligence.

The word "exercise" implies activity on the part of those on board. The fact that there was no hatch leakage on the previous voyage is no reason why the hatches should not be examined adequately before the commencement of the next voyage. The obligation to exercise due diligence exists before and at the beginning of each voyage. This means the time period before the loading of the cargo and until the ship leaves the port.

There are many factors influencing the degree of observance to be exercised. If the previous cargo was discharged with grabs, the hatch coamings may require close examination. If it was discharged with fork trucks, pipes in the holds may have to be examined for cracks or ruptures. After a previous cargo of coal, cleaning of the hold must be closely checked. The Club circular P.2/1959 dated 16 January 1959 contains recommendations which are still valid in respect of cleaning and inspection following many kinds of contaminating cargoes.

When performing his duty of examining the suitability of the vessel for carrying the cargo safely to its destination, the officer must consider the characteristics and needs of that particular cargo. The officer is not supposed to have scientific qualifications to cover all cargoes, but he should have qualified experience and knowledge of the cargoes normally carried on that type of a ship. If in doubt he is expected to ask for advice or assistance from shippers or to consult the nearest Club correspondent or to engage a cargo surveyor or expert.
4.1.5.3 How to prove that due diligence was exercised

It is not enough to exercise due diligence by adequate pre-loading inspection activities. As can be seen from the comments under 4.1.4, the carrier has the burden of proving due diligence. He will be called upon to demonstrate what he actually did to exercise it. The pre-loading inspection activities undertaken should, therefore, be adequately recorded. The issuance of tank clean certificates or Lloyd’s certificates on the suitability of reefer holds and plants serve the purpose of such proof. They should be kept on board for at least a year. The inspection and its result should be entered in the deck log.

The carrier does not need to prove that the vessel was seaworthy in any other respect other than that which caused or contributed to the loss or damage claimed.

4.1.5.4 “To shipper’s satisfaction”

C/Ps sometimes contain a clause to the effect that tanks or holds should be cleaned to the satisfaction of the shipper’s or the charterer’s surveyor. Approval by such a surveyor does not absolve the carrier from liability if the holds or tanks are still not adequately cleaned. At best the failure of the surveyor, if acting for the shipper, could allow the carrier to invoke the Hague Rule exception (i) commented upon under 4.1.8.9.

4.1.5.5 No cover for costs to render ship seaworthy

Costs to render a ship seaworthy to carry the cargo are not covered according to Rule 11 Section 2 (b), nor is there any cover for survey fees to confirm and prove the seaworthiness. These are operational running costs. See comments under 4.6.2.1 and 11.2.2.2.

4.1.5.6 Effect of owner’s negligence with regard to seaworthiness

If a ship is found to be unseaworthy for a reason which can be described as negligence by her owner or somebody in a managerial position, the carrier may not be allowed to rely upon the exceptions from liability under the Hague or Hague-Visby Rules (see comments under 4.1.8) nor on limitations of liability (see comments under 2.11). Such a situation may also involve Rule 11 Section 1 and leave the Member without insurance protection.

4.1.6 The carrier’s obligation to carry, keep and care for the cargo

4.1.6.1 General views on the duty to care

Beyond his duty with regard to initial seaworthiness, the carrier has an important obligation under the Hague and Hague-Visby Rules properly to carry, keep and care for the cargo when it is in his possession. While it is enough to show due diligence with regard to seaworthiness, the duty to care for the cargo is strict but not absolute. The word “properly” implies that the measures taken by the carrier should be reasonable and correspond to what is considered customary.

4.1.6.2 Stowage

An important element in care for the cargo is to provide proper stowage. It includes elements such as lashing and securing to prevent shifting, separation from deck, bulkheads or cargo which could cause condensation or contamination, and precautions to arrange or avoid ventilation as the case may be. The measures taken should be proper and based on the carrier’s qualified experience and commonly available information on the cargo to be carried.
A famous U.S. court decision describes the standard as follows:

“In the carriage of goods the trade must always come to some accommodation between ideal perfection of stowage and entire disregard of the safety of the goods; when it has done so, that becomes the standard for that kind of goods. Ordinarily it will not certainly prevent any damage and both sides know that the goods will be somewhat exposed; but if the shipper wishes more, he must provide for it particularly.”

4.1.6.3 FIOS
During a charter the stowage is often arranged by the charterer. The apportionment of liability against the cargo owners follows the terms agreed in the C/P. A frequent problem is the interpretation of the FIOS terms (Free In and Out Stowed). Such terms are not in conflict with the Hague Rules obligation to stow the cargo properly. The meaning of the Hague Rules is that whatever stowage the carrier performs, he should do it properly. The problem with the FIOS terms is to find out what the parties have agreed that the charterer should perform in respect of stowage. There are three alternatives:

1. The charterer should pay for the stowage.
2. The charterer should pay for and arrange the stowage.
3. The charterer should pay for, arrange and remain responsible for the stowage.

If the word FIOS appears only in the freight box of the C/P, alternative 1 most probably applies. If an owner wants the charterer to assume responsibility for the stowage, the C/P should contain a clause which clearly spells out alternative 3. An owner should not accept charter terms which leaves him to pick up liabilities caused by the charterer’s commercial operations. That would allow the charterer to save money by insufficient preparation of the holds or inadequate stowage of the cargo, all at the owner’s expense. The Club will assist owner Members in drafting suitable clauses to that effect. Such clauses serve to protect the Member’s records and constitute an effective loss prevention. The effect of FIOS alternative 3 is also achieved by fixtures on a New York Produce Exchange form subject to the Produce Formula (see comments under 9.2.2).

4.1.6.4 Duty to mitigate
The duty to care for the cargo includes a duty to take proper action during the voyage to prevent or minimise damage. Certain oil products must be kept heated, reefer cargo frozen and other types of cargo properly ventilated. If such measures have to be discontinued due to a breakdown of the heating coils, failure of the reefer machinery or restricted ventilation due to heavy weather, the reason has to be properly documented and recorded in the deck log in order for the carrier to meet his burden of proof. Steps have to be taken and recorded to restore proper carrying conditions. This may involve calling at a port of refuge to save a valuable cargo from destruction. Please refer to comments to Rule 11 Section 4. Any such decisions and actions should be taken in close consultation with the Club.

4.1.6.5 How to prove compliance with duty to care
Each case will be decided on the facts available. As the only source for such information is the ship, the burden of proof is on the carrier. Detailed information from those on board is a must for a successful defence.
The following records constitute valuable contemporary evidence if kept regularly, in a detailed way and in a neat and orderly manner. They will, furthermore, allow subsequent consideration and conclusions as to the compliance on board with the duty to care for the cargo:

- bilge and ballast tank sounding book with pumping records
- ventilation records including dewpoint, relative humidity and temperature records
- hold and cargo stowage and lashing checking records with observations, action taken and result
- heavy weather records
- hatch cover maintenance records
- cargo-handling gear records.

4.1.6.6 No cover for costs of care

Costs to meet the carrier’s mandatory obligation to carry, keep and care for the cargo are not covered. Rule 11 Section 2 (a) excludes compensation for costs and expenses for the normal fulfilment of a transport obligation. Item (c) of that clause excludes compensation for costs to remedy overloading, bad trim or incorrect stowage of the ship. These exclusions serve to illustrate the principle that operational costs to meet the lawmakers’ mandatory standard of care are for the Member’s own account.

The Swedish Club claims 2006-2011

Top ten known causes of cargo claims
There are, however, exceptional situations where compensation may be allowed. Rule 8 Section 2 provides cover for preventive costs and amounts saved. Extraordinary handling costs can also be compensated under Rule 4 Section 6. Please refer to comments on these clauses for further advice.

4.1.7 The carrier’s liability for servants
4.1.7.1 General views on liability for servants
It is a basic principle for the P&I insurance that cover is provided to the Member for liabilities imposed upon him because his servants were negligent. See comments under 2.4.

Some categories of servants often cause loss of or damage to cargo. A reduction of those liabilities means an improvement of the loss records and a reduction of the premiums.

4.1.7.2 Stevedoring companies
Much cargo damage is caused in handling operations during loading or discharging performed by longshoremen. Under the Hague and Hague-Visby Rules the carrier remains responsible for such damage against the owners or underwriters of the cargo.

Stevedoring companies do not operate under similarly severe and mandatory liability provisions. They are generally allowed to draft the stevedoring contracts in such a way that they have no liability for damage caused by their negligence. Members are advised to use their bargaining power when negotiating stevedoring contracts to achieve such terms that the stevedoring companies assume a basic liability for the consequences of their negligence. Contractual terms which would impose full responsibility upon stevedoring companies and terminal operators are welcome but not required. Acceptance of a reasonable proportion of liability may be sufficient to give them the incentive to improve cargo-handling procedures and to invest in better equipment. Absence of responsibility spells irresponsibility. Sometimes it is impossible to achieve such terms because all stevedoring companies in a certain area operate under the same restrictive standard terms. Members can often use their influence where there are several competing stevedoring companies in the same port. If a Member accepts less favourable terms than are obtainable locally, such terms may be considered unusually burdensome in the sense of Rule 10 Section 2.

If longshoremen are seen to cause loss of or damage to cargo, it follows from Rule 10 Section 4 that the master has a duty to intervene. The cargo operations should be stopped pending the introduction of more adequate practice or more suitable equipment. It is important to secure proofs as to protective steps taken by the ship. Such proof will be needed in defence of a claim from the cargo owner and to substantiate a recovery action against the stevedoring company. It will probably not be possible to obtain a signed admission of liability. It is of great help if the stevedoring company or the foreman can be persuaded to sign for the receipt of a written protest specifying the damage and the practice which caused it.

The Member has an obligation under Rule 10 Section 4 to protect the Club’s interests in pursuing a recovery action against the stevedoring company. Even if the terms of the stevedoring contract are unfavourable, it may be possible to have some or all of the terms set aside as unfair. A way which has proved to be effective in forcing stevedoring companies to mop up the consequences of their own negligence regardless of the contractual terms is to
withhold an adequate amount of money from a bill due for subsequent stevedoring services. It forces the stevedoring company to take action to recover the amount withheld. It may hesitate to do this in the knowledge that it would expose its own negligent involvement.

### 4.1.7.3 Terminals

Terminal operators are equally reluctant to accept liability. It is still the case that frequent and extensive loss or damage occurs to cargo while in the custody of terminal operators for which the carrier has a mandatory liability under the Hague and Hague-Visby Rules. The Member ought to take precautions to safeguard the recovery possibilities (see comments under 4.1.7.2).

In April 1991 an international convention, the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade, was adopted which will impose a certain liability upon terminal operators. It will probably take many years before the convention brings an improvement in practice of the carrier’s chances of recovery.

### 4.1.7.4 Licensed wharfingers

According to official regulations in certain ports such as Melbourne and Liverpool, the carrier may have to appoint a licensed wharfinger to receive all unloaded goods into his care. The regulations may stipulate a liability for the licensed wharfinger beyond the carrier’s liability under the Bs/L. The carrier may also have an obligation to compensate the licensed wharfinger for any such overspill of liability paid to the cargo owner. For Members trading in ports where such regulations exist, the Himalaya clause in the B/L should therefore be drafted in such a way that it can be applied by the licensed wharfinger and provide him with adequate protection against claims from the cargo owner.

### 4.1.7.5 Himalaya Clause

A cargo owner or his underwriter should not be able to bypass the exceptions from and limitations of liability afforded to the carrier by the Hague and Hague-Visby Rules by filing the claim direct against the carrier’s servants. B/L forms should contain a Himalaya clause which extends the carrier’s liability exclusions to include his servants. Such a protection is automatically provided under the Hamburg Rules.

### 4.1.8 Cargo losses for which the carrier is not liable

A Member as carrier is indeed not responsible for all loss or damage arising to cargo while in his custody even if it is considerable and extensive.

If the carrier can successfully discharge his burden of proof according to the Hague and Hague-Visby Rules as described above, he will escape liability if he can further prove that the loss or damage was caused by one of the following excepted perils according to Article 4.2.

It is an important task for the Club effectively to guard the Member against any payment in respect of such claims.

### 4.1.8.1 Hague Rule Exception 4:2 (A):

*Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;*
It is an accepted principle of justice that if you cause damage by negligence, you have to pay for it. The Hague Rule exception (a) constitutes an exception from that principle. The carrier is not liable to pay certain loss or damage caused by negligence of his servants. It is sometimes hard for those involved to believe that mistakes committed on board, even serious ones, can constitute a valid defence against claims made. The explanation lies in the philosophy behind the Hague Rules. Those risks which are typical of the transport of goods at sea should be shouldered by the cargo owner.

It is not the purpose of these comments to analyse in detail the types of negligence which would qualify as a defence for the carrier under this exception. One practical example, which has been decided in court and which has occurred a number of times on ships entered in the Club, is the following. When taking in fresh water the hose was not connected to the forepeak tank but to the No. 1 lower hold or deep tank, where the cargo was soaked with water. This is considered as an error in the management of the ship for which the carrier is not responsible. The damage to the cargo is to be absorbed by the cargo owner and his underwriter. The lesson to be learnt is that no situation is as bad as it may seem. If the Club is given full and true facts regarding the cause of the damage, the Member’s interests can be looked after effectively. Unnecessary payments can be avoided.

4.1.8.2 Hague Rule Exception 4:2 (B):
Fire, unless caused by the actual fault or privity of the carrier;
The carrier is not liable for damage by fire unless the fire was caused either by qualified negligence by the carrier or by a breach of his basic obligation in relation to initial seaworthiness. Fire requires open flames. Smouldering is not a fire. The carrier is exempted from liability for such consequences of the fire as smoke, smell, heat and damage by water used to extinguish it. To protect the Member from claims for damage to cargo caused by fire, it is necessary to have full details as to the cause, nature and extent of the fire and of the measures taken to prevent and fight it.

4.1.8.3 Hague Rule Exception 4:2 (C):
Perils, dangers and accidents of the sea or other navigable waters;
From the practical viewpoint of defending the Member against claims, this is one of the crucial exceptions. It contains the basic principle behind the Hague Rules that sea perils should be absorbed by the cargo owner. Unforeseeable and unexpected events or conditions at sea constitute an exception from liability for damage caused to cargo. Examples of such excepted perils are heavy weather, collisions and strandings.

It is difficult to define what constitutes such heavy weather that it amounts to a peril of the sea. Even very bad weather should be expected in winter in the North Pacific and the North Atlantic. The information to be supplied by the ship in defence of a claim should contain wind forces and the nature and height of the waves. Foreseeability and duration should be reported as well as the track of the storm as compared with the position and routing of the ship. Other observations which indicate that the conditions were extreme and unexpected are invaluable. Intensity of depressions, cross sea, structural damage caused to the ship itself, speed reductions, course changes, and accidents to other ships in the area are some elements which could help the Club to convince the claimants that this liability exclusion is applicable.
Weatherrouting is a valuable tool to avoid or minimise the effect of bad weather in transit. Should the vessel run into heavy weather despite weatherrouting, wind and wave forecasts, route recommendations, maps and print outs received on board should be kept for at least a year. They constitute vital evidence to defend the carrier under this provision.

To successfully persuade a court in whatever jurisdiction to accept a heavy weather defence requires convincing proof that the loss or damage was caused by an extraordinary force which could not reasonably be guarded against. However, most heavy weather claims are settled out of court in direct negotiations with the cargo owners. In such negotiations any fact or piece of information will contribute to reducing the sum the Member has eventually to pay in settlement. The main source and provider of these facts are the people on board the Member’s ship.

4.1.8.4 Hague Rule Exception 4:2 (D): Act of God;
This is the general force majeure exclusion. The carrier is not liable for damage caused by completely unexpected and uncontrollable events such as the ship being struck by lightning.

4.1.8.5 Hague Rule Exception 4:2 (E): Act of war;
The carrier is not liable for cargo damage caused by war or warlike acts whether in a civil war or a dispute between states. It could be a direct consequence of war such as hits by missiles or an indirect consequence such as a grounding caused by navigational aids having been damaged or withdrawn. For comments as to the cover for war risks, see under Rule 11 Section 5.

4.1.8.6 Hague Rule Exception 4:2 (F): Act of public enemies;
This exception can be applied to the consequences of action taken by enemies of the state under whose flag the ship is sailing or attacks from pirates or terrorists. To an increasing extent ships become the target of attacks inside or outside ports by armed gangs of robbers where cargo is damaged or stolen. Acts of pirates have significantly increased over the last few years with the consequent risks to cargo on board laden ships attacked

Any such attack should be immediately reported to the Club to prepare a defence against any forthcoming claim and because the Club co-operates with international organisations to prevent, investigate and combat robbery at sea. See comments under 11.5.4.3.

4.1.8.7 Hague Rule Exception 4:2 (G): Arrest or restraint of princes, rulers or people, or seizure under legal process;
In principle the carrier is protected from liability for seizure, embargo or confiscation of cargo by governments. The situation may be different if the confiscation refers to contraband or unlawful cargo. For further comments please refer to Rule 11 Section 2 (k). The problem of drug smuggling is dealt with under Rule 7 Section 6 (d).
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4.1.8.8 Hague Rule Exception 4:2 (H):

*Quarantine restrictions;*
For comments on the cover for the consequences of quarantine please refer to Rule 7 Section 7. If and to the extent that quarantine restrictions cause loss of or damage to the cargo, the carrier has no liability.

4.1.8.9 Hague Rule Exception 4:2 (I):

*Act or omission of the shipper or owner of the goods, his agent or representative;*
The carrier is not liable to compensate loss or damage to cargo caused by the fault of the shipper, the cargo owner or his representative. On the contrary, the shipper may be liable to compensate the carrier for any loss sustained through the fault of the shipper. The situation may arise in connection with, but is not limited to, shipments and declaration of dangerous cargo. See comments under 4.1.11.4 and 4.1.11.15 This exclusion underlines the necessity of all cargo losses being thoroughly investigated and the result presented to the Club.

4.1.8.10 Hague Rule Exception 4:2 (J):

* Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;*
The carrier has no liability for damage caused to cargo by strikes or lockouts but the basic obligation to care for the cargo remains. Considering what is possible in view of the strike situation, the carrier should arrange for reefer containers to be plugged in and sensitive or valuable cargo to get adequate protection. The Club will assist and advise Members regarding what to do to avoid cargo liabilities in a strike situation.

Whereas the carrier is relieved of liabilities to cargo for the consequences of a strike under this Article, a strike may cause the carrier to lose time, freight, hire or other revenue. It follows from Rule 11 Section 2 (j) that there is no cover under these Rules for such losses.

Upon request the Club will assist Members to cover these risks under a Strike Insurance.

Cover can be obtained for:
1. Delay by strikes of officers and crew.
2. Delay caused by a strike or lockout of any class of labour or personnel other than officers and crew affecting the business of the entered ship.
3. Delay caused by post-strike congestion.

The cover is for a daily sum agreed between the Member and the strike underwriter. It is based on a reasonable estimate of daily operating costs. A time charterer may insure the charter hire and a voyage charterer the demurrage rate.

The cover is for an agreed maximum duration of the delay and may be subject to a deductible period.

4.1.8.11 Hague Rule Exception 4:2 (K):

*Riots and civil commotions;*
This exception is related to that under (f). It refers to the consequence of civil commotions and insurrections which do not amount to warfare.
4.1.8.12 Hague Rule Exception 4:2 (L):
Saving or attempting to save life or property at sea;
The contractual voyage should be performed without any unjustified deviation. The liability consequences for the carrier of damage caused by unlawful deviation may be devastating. This problem and the exclusions of cover are dealt with in the comments to Rule 4 Section 8.

Deviations made to save or attempt to save life or property at sea are, however, considered justified. The carrier is protected against liability for loss or damage to cargo as a consequence of such salvage. Please refer to comments to Rule 3 Section 9 and Rule 7 Section 8.

4.1.8.13 Hague Rule Exception 4:2 (M):
Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;
According to Article 3.3 of the Hague Rules, the carrier shall issue a B/L showing among other things the apparent order and condition of the cargo. The B/L is regarded as evidence that the description of the condition is accurate. The liability for the B/L particulars and the insurance cover is described in the comments to Rule 4 Section 3.

Even if the apparent order and condition of the cargo may look good at the time of loading and cause the carrier to issue a clean B/L, there may be hidden and inherent defects which do not manifest themselves as damage until the voyage has started. According to this exception, the carrier has no liability for such damage. Grain may be infested, the life span of perishable cargo may have been used up by excessive storage before shipment, products may not have been sufficiently dried before being sealed in plastic wrapping for shipment. Similar problems on some cargoes frequently exposed to claims are mentioned below (see comments under 4.1.11.13 and 4.1.11.14).

If, for instance, steel coils turn out to be internally rusty at the port of destination, the facts and information received from the ship as to the cause or most likely cause means the difference between success and failure in the defence of the Member. Following the principle of the reversed burden of proof (see comments under 4.1.4.3) the carrier is considered liable until he can prove that the coils must have already been internally wet in a concealed way at the time of loading and that they could not have been exposed to water while in the carrier’s custody.

4.1.8.14 Hague Rule Exception 4:2 (N):
Insufficiency of packing;
The obligation to issue a B/L describing the apparent order and condition of the cargo also refers to its packing and its ability to provide the cargo with adequate protection for the expected strains of the contractual voyage. If in the carrier's opinion the packing is insufficient, the cargo should either be refused for shipment or the condition of the packing noted on the B/L. Please refer to 4.1.11.12 and 4.1.11.14 for further comments on some cargoes where claims may occur on account of inadequate packing.

It sometimes happens that packing which looks good at the time of loading proves to be inadequate to protect the cargo during the voyage. If this can be proved with the help of facts and observations from the ship's officers or a surveyor, liability can be rejected and the
Member can be spared a considerable outlay which would have had a negative effect on his records.

4.1.8.15 Hague Rule Exception 4:2 (O):
Insufficiency or inadequacy of marks;
According to the Hague Rules Article 3.3 the B/L issued by the carrier should include the necessary marks to identify the cargo.

Insufficient or inadequate marks may cause loss of or damage to the goods. Consignments of fruit in crates may be mixed up. Pieces of timber may be discharged at the wrong port. Bags may be refused by the receiver or not allowed entry by the customs authorities in the country of destination. Where there are claims of this sort the carrier can reject liability on the strength of this exclusion.

4.1.8.16 Hague Rule Exception 4:2 (P):
Latent defects not discoverable by due diligence;
The exception under (m) above refers to latent defects of the cargo. The exception under (p) is in respect of latent defects in the ship.

This is a logical consequence of the basic obligation for the carrier to show due diligence with regard to seaworthiness at the beginning of the voyage. See comments under 4.1.5.2. If the carrier has shown such diligence and is able to prove it and there is still a defect in the ship causing damage to the cargo, the defect qualifies as latent in the sense of this exclusion and relieves the carrier from liability.

It takes a lot to satisfy a claimant or a court that unseaworthiness which caused a leakage into the hold during the voyage was impossible to detect before the commencement of the voyage. Full and adequate information from the Member and the officers of his ship can constitute the proof necessary to defend such a claim.

4.1.8.17 Hague Rule Exception 4:2 (Q):
Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

This is the general exclusion which can be used when those under (a)–(p) may not provide a valid defence. For the exclusion to apply the carrier must prove that no fault by the carrier or his servants caused or even contributed to the loss or damage. The exclusion may be invoked when cargo has been stolen despite active and adequate safety precautions taken by the carrier. It may also apply when weather conditions have been bad yet not bad enough to provide a separate and absolute defence under exception (c). Under exception (q) the carrier will have to show that the vessel attempted to avoid the storm and properly stowed and cared for the cargo.

There is nobody else to provide a helping hand with regard to evidence, information, facts and observations apart from the officers of the ship. With dedicated assistance to overcome the burden of proof, the Member can save large amounts of money.
4.1.9 Limitation of liability

4.1.9.1 Background of limitation

As previously described, the carrier may or may not be liable for cargo loss or damage depending on the circumstances of each individual case and his ability to fulfil his burden of proof successfully. In those situations where he is indeed liable, he may still be allowed to limit his liability to a certain amount of money. The right of limitation follows from international conventions adopted as national law by many countries.

There are two types of limitation, global limitation and package limitation.

4.1.9.2 Global limitation

The right to apply global limitation follows from either of two conventions of 1957 and 1976 (revised by the 1996 protocol) respectively. The right to global limitation is not restricted to cargo claims. It applies to marine casualties of various kinds, for instance liabilities under Rule 7 Sections 1–3 and 5. For comments on global limitation of liability, see 2.11.

Limitation and time bar - differences between the relevant conventions

<table>
<thead>
<tr>
<th>Analysis</th>
<th>Hague Rules</th>
<th>Hague-Visby Rules</th>
<th>Rotterdam Rules</th>
<th>Hamburg Rules</th>
</tr>
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<tbody>
<tr>
<td>Limitation</td>
<td>GBP 100 gold value per package or unit unless value declared and inserted in the B/L</td>
<td>SDR 2 per kilo or SDR 666.67 per package</td>
<td>SDR 3 per kilo or SDR 875 per package</td>
<td>SDR 2.5 per kilo or SDR 835 per package or shipping unit</td>
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<td>Time bar</td>
<td>1 year</td>
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<td>2 years</td>
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4.1.9.3 Package limitation

4.1.9.3.1 General views on package limitation

To ease the carrier’s liability burden, the Hague Rules, Hague-Visby Rules and Hamburg Rules allow the carrier to limit his liability to a certain amount of money per package. With each new convention the package limitation amount has been increased.

4.1.9.3.2 Limitation under Hague Rules

According to the Hague Rules the carrier can limit his liability to GBP 100 per package. The corresponding amount under the U.S. Carriage of Goods by Sea Act is USD 500. Other countries have adopted varying amounts in local currency. The Club will supply Members with information on the applicable limitation amount. With some justification the package limitation amount under the Hague Rules has been criticised for being too low, although in some countries the amount has been considerably increased by being calculated in terms of gold value.

4.1.9.3.3 Limitation under Hague-Visby Rules

One of the main arguments for the introduction of the Hague-Visby Rules was to increase the package limitation amount. To avoid the amount varying in local currency, the limitation
under the Hague-Visby Rules is calculated in terms of a fictitious currency called the Poincaré franc, defined to contain a certain quantity of gold. The Poincaré franc has since been converted into Special Drawing Rights (SDR) in such a way that the limitation amount under the Hague-Visby Rules equals SDR 666.67 per package or SDR 2 per kilo, whichever produces the highest amount. The value of SDR 1 follows the fluctuation of the currencies on which it is based. The daily rate is listed in newspapers under currency rates of exchange. Upon request the Club will advise Members as to the SDR rate to be applied.

4.1.9.3.4 Limitation under Hamburg Rules
In the Hamburg Rules the package limitation is noted in SDR. It constitutes SDR 835 per package or SDR 2.5 per kilo, whichever produces the highest amount.

4.1.9.3.5 Package
The limitation amount is to be applied to each package or other unit of the goods. What does constitute a package of the countless types of goods and consolidated units crossing the oceans? That problem will keep lawyers busy for years to come.

The definition of a package will be given by the courts on the facts of cases tried. It means that there will be a great variation in definitions from country to country, which does not simplify the practicalities of handling claims. It also follows that B/L clauses trying to define the meaning of a package for limitation purpose will carry little weight.

These are just guidelines as to what may constitute a package. One important factor among others is how the unit is described in the shipping document. The Hague-Visby and Hamburg Rules make it clear that a container is accepted as a unit for package limitation purposes if the number of packages within the container are not specified in the B/L. The same thing goes for pallets. All the packages together in the package column ought to be described as "one". When handling claims in the U.S., in particular, it would be helpful for the freight to be charged at a flat sum per container or pallet. A B/L drafted along these lines could save considerable amounts in the settlement of a claim, to the benefit of the Member's records.

On the other hand, where the number of packages within the container is specified in the B/L, the number of limitation units equals the number of packages as specified plus one unit for the container itself if it is damaged or lost and does not belong to the carrier. See comments under 4.1.11.3.5 and 11.2.2.2.7.

For bulk cargoes, where there are no packages, the unit on which the freight has been calculated may be used as the limitation unit. For other types of cargo as well the freight unit may constitute the applicable limitation unit. An unboxed car or tractor may be regarded as a package for limitation purposes if the freight was calculated on a flat rate per car or tractor and not based on weight or a cubic measure.

4.1.9.3.6 Effect of ad valorem B/L
The package limitation applies unless the nature and a value of the goods has been declared to be higher than USD 2,500 by the shipper and inserted in the B/L or other contract of carriage. Then an ad valorem B/L has been constituted which makes the carrier liable up to the declared value of the goods. In exchange for such an extended liability, the carrier makes
a higher freight charge. P&I cover excludes any liability if it exceeds USD 2,500 per package or unit when such liability arises from carriage under an ad valorem B/L or other document in which a value of more than USD 2,500 is declared. An extended liability under an ad valorem B/L is covered only if and to the extent that a special cover has been approved by the Club. The special cover is limited to a value of USD 50 million. Members are recommended to contact the Club in connection with ad valorem Bs/L, see comments under 4.1.11.16.4.

4.1.9.3.7 Effect of deviation
A deviation may deprive the carrier of his right to apply package limitation. For further comments, see 4.7.5.

4.1.10 Time bar on cargo claims
The legal rules on time bar are considered not to be material but procedural law. It means that they vary considerably from one country to another. Therefore, it is impossible to give a full overall picture of the situation. However, even if the rules vary, the underlying principles are much the same.

4.1.10.1 General rules on time bar
Most countries have a general law on time bar applicable to all debts and obligations for which no special regulations exist. In Sweden the general time limit for such debts is 10 years from the day the debt arose. This is the background for the regulations in Rule 15 regarding time bar under these Rules.

4.1.10.2 Special rules on time bar
In several legal fields the general regulations are replaced by special regulations on time bar. Maritime law is one of those fields. Even within maritime law there are different rules on time bar applicable to different types of claims such as personal injury claims, oil pollution claims and cargo claims.

4.1.10.3 What is the time limit for cargo claims?
Cargo claims become time barred one year from the day the cargo was delivered or should have been delivered at the destination. However, there are variations internationally. The Club will provide information on the position in any given country through the local correspondent or lawyers there.

4.1.10.4 Why is there a special time limit for cargo claims?
The one-year limit for cargo claims is sometimes regarded as an unjustified privilege granted to shipowners. A short time limit is, however, a necessary complement to the burden of proof. As previously described, the shipowner has a reversed burden of proof. It means that he is considered liable unless and until he can prove how the loss occurred and that it falls under one of the Hague Rules exceptions. To fulfil this burden of proof it will be necessary to talk to witnesses while they still remember what happened and to trace documents before they have been disposed of. Therefore, claimants must be forced to file claims within a time that allows meaningful investigations to be conducted.
Rule 4 Liabilities in respect of cargo
Section 1 Cargo liabilities

Time bar is a necessary and justified part of the carrier's liability concept agreed in international conventions and domestic law. To be covered under these Rules, a Member is supposed to use that defence when available.

4.1.10.5 When does the time limit expire?
In order to establish the expiry date of the one-year limit, it is necessary to find the day it starts. The time starts to be counted when the carrier's liability for cargo ends, viz. normally when the cargo

- has been discharged
- has been safely placed at receiver's disposal
- should have been discharged if it had safely arrived at destination.

It follows that it is sometimes difficult to pinpoint a certain day for the commencement of the time and for its termination.

4.1.10.6 How may the time limit be interrupted?
The time limit can be interrupted by the issuance of a writ. In most places an express agreement from the carrier to extend the time has the same effect.

The length of any extension granted should be defined. If an indefinite extension is granted, the general rules on time bar mentioned above will probably apply.

The traditional length of an extension granted is three months at a time. That is what claimants expect and what they should be given. A longer period than three months should only be granted in exceptional cases. A shorter period than three months could be granted to a claimant who has already received several extensions and still does not seem interested in actively pursuing the claim.

Internationally other ways for claimants to interrupt the time may be found. Please contact the Club for advice if such problems occur.

4.1.10.7 Questions to be considered when an extension of time is requested
There are some questions which should be considered before a request for a time extension is granted.

The claimant should produce a complete set of basic documents/information in support of the claim such as

- identification of shipment and B/L
- amount of claim and loss specification
- identification of claimant. If the claimant is or is acting for a cargo underwriter, the documents should include a letter of subrogation executed in the proper way and at the proper time by which the cargo owner has transferred his rights against the carrier to the underwriter.

If the claimant is unable to produce this basic information, he is probably not in a position to draft a proper writ to be filed in court for time to be interrupted.
It is for the claimant to protect his time. The carrier has no obligation to help him. If the date is uncertain, the uncertainty could be preserved by granting, say, "a three months extension" instead of agreeing to a fixed termination date. If it is uncertain whether the time is up and you still wish to continue the dialogue with the claimant, the extension can be granted "subject to the time not having already expired".

It should be closely checked whether the request for an extension is made in time. If the time has already run out or if there is even a remote possibility that it has, the request should be declined.

It should be considered whether there is enough time left for the claimant to file a writ in court. If the request for extension is made on the last day, there may not be enough time. If that is so, the request should be declined.

Where an extension has been denied, the claimant can only protect the time from expiring by filing a writ. If he does, it is a pure formality and nothing for the Member to worry about. The Club is there to help you.

Restoring a time bar period once it has expired should be avoided. Where the use of a time bar as a defence is not feasible, it is better to advise the claimants that the discussions should be continued on an ex gratia basis but that the claim remains time barred. The claimant, being responsible for the claim having become time barred, cannot reasonably complain.

### 4.1.10.8 Can time be extended without writ or agreement?

There are some claims handling activities which could prejudice a time bar defence.

Continued discussions or negotiations without reference to the fact that time has expired could be interpreted as a tacit waiver of time. Time bar objections should be made at the earliest possible opportunity, which means at the first contact with the claimants after the time has run out.

It has happened that shipowners have given a claimant misleading information or withheld documents to make it impossible for the claimant to file a writ in time. Such attempts, when revealed, have not attracted the sympathy of the courts. Failure to answer the claimant's request for a time extension will, however, in most cases not constitute a waiver of the time limit.

Admission of liability is sometimes considered to change the dispute from a maritime claim to a general debt subject to the general rules on time bar. The views taken vary internationally. In Scandinavia an admission of liability must take the form of a promissory note to have this adverse effect. In Italy the issuance of a shortlanding certificate may drastically increase the length of the time limit.

### 4.1.10.9 What are the legal consequences of time bar?

The effect of time bar under maritime law is the complete extinction of the claim. A claim, once time barred, cannot even be used as a set-off against a counterclaim. Clauses are sometimes included in C/Ps to give charterers a right to set-off. Such clauses should be avoided.
4.1.10.10  In whose favour does the time limit operate?
Generally the time limit operates not only in favour of the carrier but also in favour of the
carrier’s servants and persons engaged in the performance of the contract of carriage. This
would follow from the so called Himalaya clause included in most B/L forms and now a part
of the Hague-Visby Rules.

4.1.10.11  What should be done in a charter situation?
Should the time limit have been extended without the approval of the C/P partner, it does
not necessarily mean that the matter has become time barred against him. Under some laws,
for instance in Scandinavia, an additional time limit for recovery claims is provided. Claims
under C/Ps are generally subject to other and longer time limits than those under Bs/L.

Still, it is advisable to keep the claim valid against the C/P partner. This can be achieved
by asking the C/P partner to approve the extension before it is granted. This is sometimes
expressly required in C/P conditions.

An extension could also be granted under the express condition that the claimant should
obtain a similar extension from the C/P partner. If such a conditional extension has been
given, stick to it.

Preserving a time limit in a C/P relationship is a tricky business. It requires close co-operation
with the Club during the handling of the claim, and even at the negotiations for the fixture
where proper clauses in the C/P can save a lot of trouble, time and money. Such clauses could
grant either party a right to extend time limits for claims arising under the C/P period. In that
case, there should be an obligation for that party to inform his counterparty, who has a vested
interest in knowing about outstanding liabilities. In an urgent situation it is helpful to have
the names of the two P&I Clubs concerned included among the C/P particulars.

The question of time bar of recovery claims under a NYPE Produce C/P was decided in the
Strathnewton case. Although the C/P incorporated the Hague Rules via a Paramount clause,
the court held that the one-year time limit under the Hague Rules did not apply to the Inter-
Club NYPE Agreement (see comments under 9.2.2). Following that decision the Inter-Club
NYPE Agreement has been amended to the effect that any claim under the agreement should
be notified to the other party in writing as soon as possible but in any event within two years
of the date the goods were discharged. In the absence of such a notification, any recovery
claim is time barred. The time can be extended by agreement between the parties.

As described in comments under 10.2.2, arbitration clauses in other C/Ps such as the
Centrocon arbitration clause may render any recovery claim under the C/P time barred long
before the time for filing cargo claims has expired. It will make the agreed apportionment
of liability in the C/P illusory. Such terms may be regarded as unusually burdensome in the
sense of Rule 10 Section 2.

4.1.10.12  Time bar for deck cargo claims
There are court decisions in England and the U.S. according to which claims for unauthorised
deck shipments (see comments under 4.1.11.5.3) are still subject to a one-year time limit
even though the carrier is usually deprived of all other limitations and exclusions in such a
situation.
4.1.10.13 Time bar for recovery claims
The Hague-Visby Rules introduced a special time bar for the situation where one party has settled a claim and undertakes a recovery action against another party who is ultimately responsible for the loss by negligence (in tort) or contract. The time bar for instituting such a recovery claim shall be not less than three months from the date the claim was first settled or the party against whom that claim was made was served with a legal action.

4.1.11 P&I viewpoints on certain types of cargo
4.1.11.1 General views on certain types of cargo
This is not a cargo handbook. There are several useful books available on general cargo handling and stowage. There is also a great choice of books dealing more specifically with special types of cargo. It is recommended that an updated supply of basic literature on cargoes which the ship carries or may be asked to carry is available in the ship’s library to enable her officers to find answers to questions on cargo handling, stowage, ventilation, cleaning, securing, etc. The chief officer is not required to have a scientific degree on cargoes carried but he should have qualified knowledge and experience and reasonable access to basic information.

There are other ways for an officer to obtain information as to the needs and requirements of cargo to be carried. Surveyors and experts can be engaged through the Member’s head office, through local shipagents or Club representatives. If no Club surveyors or experts are available, the nearest Lloyd’s surveyor should be contacted.

Members, including officers on their ships and staff in their office, are welcome to contact the Club for advice on stowage and handling. We have frequent and personal contacts with all large international cargo survey and expert organisations world-wide. We can obtain their qualified advice regarding matters such as cleaning of holds or tanks, securing, separation from other commodities, restrictions and safety precautions in respect of the handling and storage of hazardous cargoes. This service is free of charge. It constitutes one of the ways in which the Club promotes loss prevention.

The Club’s staff members are also at the Members’ disposal to investigate and develop effective and economical solutions to cargo damage problems. On numerous occasions our claims handlers have followed shipments from the production line to the ultimate consumer in order to identify and remedy those elements in the chain of transportation where damage is found to occur.

There follow some types of cargoes where the Club has special instructions and recommendations which should be brought to Members’ attention.

4.1.11.2 Coal
Ships have experienced difficulties when carrying coal from U.S. Gulf ports, particularly in the summer months and also from other countries such as Colombia and China. Serious heating of the cargo has occurred at the time of shipment or during the voyage. It has endangered the ship and necessitated discharge of the cargo at a port of refuge.

The problem was considered by the Clubs, who issued a joint circular which was distributed to Members by the Club circular No. P.2285/1991. The circular contains the following information.
Carriage of coal from anywhere in the world should be carried out in compliance with the schedule of Appendix B of the "Code of Safe Practice for Solid Bulk Cargoes". It was issued by the International Maritime Organisation (IMO) and was substantially revised as from 1 July 1991. The revised schedule deals specifically with the following:

1. Segregation and stowage requirements.
2. General requirements for all coals.
3. Special precautions for coals emitting methane.
4. Special precautions for self-heating coals.

Full details of the revised schedule can be obtained directly from the IMO and should be available on ships which carry or are likely to carry coal.

Prior to shipment the master should obtain details of the characteristics of the cargo in writing from the shipper. This should include the contract specification for moisture, sulphur and size. It should furthermore state whether the cargo is liable to emit methane or self-heat so that precautions for carriage as specified in the revised schedule can be followed.

When coal is loaded directly from lighters it is recommended that barge temperatures be obtained prior to shipment.

Trimming of cargo is important. Through the shipper the master should receive the necessary co-operation from the loading terminal.

The ship should be equipped with proper instruments to monitor the coal during carriage. The master and officers should be instructed in the use and maintenance of the instruments, including service and calibration. The instruments should measure the concentration of methane, oxygen and carbon monoxide in the atmosphere and test the pH of the bilge water sample. Instruments should also be available on board to measure the temperature of the cargo in the holds without entering the holds or opening the hatch covers. The results of the testing should be properly recorded for future use and reference. The frequency of the testing should depend upon the information provided by the shippers and the results obtained during and after loading.

If at the time of loading the master is in any doubt about the safety of the cargo or about the precautions which should be taken to ensure its safe carriage, he should immediately contact the local Club correspondent for assistance.

4.1.11.3 Containers
4.1.11.3.1 General views on containers
Considerable volumes of cargo travel in containers. It is important to highlight some aspects of the container concept which may affect the carrier’s liability covered under these Rules.

4.1.11.3.2 Containers stuffed by carrier
For containers stuffed by the carrier, the latter has the same obligations with regard to the internal stowage as for any other cargo stowed on the ship. The carrier, furthermore, has the obligation to show due diligence with regard to the seaworthiness and suitability of the
container before and at the beginning of the voyage. He must be able to prove afterwards that the container was adequately checked with regard to tightness, cleanliness and ability to ventilate the container properly if that is necessary for the successful performance of the transport. Most containers are submitted to such tests when entering or leaving the container bay. The records of tests performed on each numbered container should be able to be produced as evidence even years later.

4.1.11.3.3 Containers stuffed by shipper
The obligations are less far-reaching when the container has been stuffed by the shipper or consolidated by a freight forwarder. Then the container is often received by the carrier closed, locked and even sealed. The carrier has no responsibility for the internal stowage of the cargo in a container where he has neither performed the stowage nor had an opportunity to check it. The carrier should nevertheless examine the external condition of the container and record irregularities such as holes, leakage of cargo from the container, imbalance, etc. The B/L should be claused accordingly. If the irregularity may cause damage to the cargo during the transport, the carrier should take adequate action, such as mending a hole in the container’s roof. It may be necessary to invite the shippers to attend, or even to refuse an unsuitable container for shipment.

The condition of the container seal should be checked and the container seal number noted on loading and discharge to establish whether it has been tampered with during transit.

4.1.11.3.4 Storage before and after sea carriage
The carrier is also responsible for the containers when stored in the terminal prior to or after the sea leg. Containers with attractive or valuable contents should be stored in areas which can be easily checked and with good lighting conditions. Such containers should preferably be stowed “face to face” in such a way that the locks are inaccessible and the doors cannot be opened. Reefer containers should be plugged in.

4.1.11.3.5 Responsibility for container content
The fact that a container has been stuffed by the shipper and delivered to the carrier in a sealed condition does not exclude the fact that the carrier may be held liable for the particulars entered in the B/L regarding the nature, number and weight of the cargo. The extent of such liability may vary from one country to another. A court’s decision will probably be influenced by the carrier’s opportunity to check the B/L particulars. Carriers are generally not supposed to strip, tally and restuff the container as that would be counterproductive to the concept of containerisation. However, where the carrier has reasonable means to weigh the container it should be weighed to satisfy the court that the B/L particulars were verified as far as was possible.

If a Received for Shipment B/L is issued, the container should be weighed when received, preferably at the terminal gate. An On Board B/L requires the weighing procedure to take place as close to the point and time of loading as possible.

Where the carrier has no reasonable means of checking the B/L particulars, he may rely on warning clauses in the B/L such as “Shipper’s weight, load and count” or “Said to contain”. Such clauses are permitted in the U.S. under the Pomerene Act of 1916 and should be included in all Bs/L for container shipments.
4.11.3.6 Responsibility for the container itself
The cover includes the Member’s liability for loss of or damage to containers owned by a third party. Containers owned by the Member are not covered, and neither are containers borrowed, leased or bought under reservation of title. This follows from Rule 7 Section 1 and from the exclusion in Rule 11 Section 2 (g).

4.11.3.7 Other comments on containers
For containers stowed on deck, see comments under 4.11.5.2.4. For reefer containers, see comments under 4.11.13. For package limitation on containers, see comments under 4.1.9.3.5.

4.11.3.8 Access to container ships voluntary agreement

4.11.3.8.1 Code of Practice
The Code of Practice is a voluntary agreement between the International Group Clubs regarding access to a ship following a casualty and disclosure of relevant ship’s documents. The intention is to try to avoid involving lawyers and courts to obtain orders to come onboard ships and obtain disclosure of documents. A mutual agreement will also avoid unnecessary delay of the ship.

Each party will appoint a surveyor or expert and if many charterers are involved such as sub-charterers or slot charterers they can probably agree to appoint a single surveyor or expert. Before giving access to the ship an indemnity agreement is signed where the surveyor or expert agrees not to file any claim of whatsoever nature against the owner of the ship. A surveyor/expert who is allowed onboard will be accompanied by a representative of the owners and should be given reasonable access to relevant parts of the ship. Upon request owners shall make available relevant ship’s documentation, which shall be treated by charterers as confidential and cannot be released to third parties. Interviewing the crew and obtaining statements of the master, officers or the crew would not be allowed.

The Code of Practice has been used successfully not only for container ships but all types of ships and is considered a workable solution between Group Clubs. Please contact the Club for a copy of the agreement.

4.11.4 Dangerous cargo
4.11.4.1 General views on dangerous cargo
By definition the carriage of dangerous cargo enhances serious liability risks. To avoid the manifestation of those risks, it is important for the Member to follow closely the regulations for cover laid down in these Rules.

4.11.4.2 Exclusions of cover
As appears from Rule 11 Section 2 (f) there is no cover for liabilities, costs or expenses in relation to carriage of poisonous, inflammable, explosive or corrosive cargoes unless the carriage has been approved by the Club. It follows from the definition in Rule 1 that the approval should be in writing.
4.11.4.3 Dangerous cargo in packages
Carriage of dangerous cargo is approved under the condition that the carriage, including packaging, handling, stowage, lashing and segregation, is carried out in compliance with the regulations contained in the International Maritime Dangerous Goods Code (the IMDG code) issued by the International Maritime Organisation (IMO). A corrected and updated copy of the IMDG code should be available in the Member’s cargo booking and operational departments and on board any entered ship employed or likely to be employed in the carriage of dangerous cargoes.

The IMDG code contains important information as to the characteristics and requirements of dangerous cargo in packed form. Even so, booking and operational staff and the officers of the entered ship require further information to ensure a safe carriage. Details on characteristics and handling should be supplied by the shipper. Further information can be obtained from qualified surveyors or cargo experts. The Club will at all times assist Members in obtaining recommendations and advice. In order to provide quick and adequate assistance the Club needs:

1. The IMDG UN number of the cargo.
2. The IMDG class of the cargo.

The request for recommendations and advice from the Club should, for example, be in respect of “Isopropanol - UN number 1219, class 3.2”.

Shipment of certain types of dangerous cargoes should be accompanied by certificates from authorities verifying the characteristics of the cargo.

4.11.4.4 Marking
The IMDG code contains regulations as to the proper marking of each package of dangerous cargo. When it is received for shipment and loading the carrier should check that the cargo is adequately marked. Cargo without, or in violation of, proper marking should not be accepted for shipping. A Member would be exposed to serious liabilities in respect of personal injury, cargo damage or fines by the carriage of improperly marked dangerous cargo. Such fines are covered under Rule 7 Section 6 (a).

4.11.4.5 Dangerous cargo manifests
Dangerous cargo should usually be listed and declared separately in a dangerous cargo manifest. Any such regulations should be observed. Failure to comply with such formalities may result in fines. The fines are covered under Rule 7 Section 6 (a). Nevertheless, it is in the Member’s interest to avoid fines in order to protect his loss records.

4.11.4.6 Shipper’s responsibility
Under the Hague and Hague-Visby Rules the shipper has an obligation to declare the dangerous nature of the goods to the carrier before shipment. If he fails to do so, he is responsible for loss or damage sustained by the carrier or the ship. The carrier may land or destroy cargo which he would not have carried had he been informed of its true nature before shipment.

The Club will assist Members in performing recovery actions against shippers.
4.11.4.7 Dangerous cargo in bulk
The IMDG code applies to dangerous cargo shipped in packages. Dangerous cargo is, however, shipped in large quantities as bulk cargo.

IMO has issued a booklet under the title of “The International Maritime Solid Bulk Cargoes Code” (IMSBC Code) which became mandatory 1 January 2011 when amendments to the International Convention for the Safety of Life at Sea (SOLAS) entered into force. IMSBC supersedes the earlier “Code of Safe Practice for Solid Bulk Cargoes” (the BC Code). The code is mandatory for all vessels carrying solid bulk cargoes, regardless of the vessels gross tonnage or age.

The latest edition of the code should be available in the Member’s cargo handling and operational departments and on board any entered ship employed or likely to be employed in the carriage of dangerous bulk cargoes.

It is a condition for cover that the carriage is performed in accordance with the requirements of the code.

4.11.4.8 Other regulations than IMO codes for carriage of dangerous cargo
In addition to the IMO codes for package or bulk cargoes of a dangerous nature, there may be other regulations applicable to the shipment by domestic legislation or regulations imposed by local authorities such as the U.S. Coast Guard. It rests upon the Member to find out any such regulations applicable to any planned shipment.

It is a condition for cover under these Rules that such local regulations are adhered to.

4.11.4.9 Crew education
Courses and seminars are arranged to educate ships’ officers and booking and operational staff in matters concerning the carriage of dangerous cargoes. Members’ key personnel should be brought up to date on the new products and shipping techniques being rapidly developed.

4.11.4.10 Other comments on dangerous cargo
Carriage of radioactive products and nuclear substances is dealt with under Rule 11 Section 7.

Carriage of chemicals or other toxic products on waste disposal or incinerator ships is dealt with under Rule 11 Section 3.

Carriage of weapons of war is dealt with under Rule 11 Section 5 (c).

For comments on shipments of coal see under 4.11.2.
For comments on carriage of direct reduced iron pellets see under 4.11.6.

4.11.4.11 HNS Convention
In 1996 IMO adopted a new convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances. This convention or its 2010 Protocol is not yet in force. The HNS convention covers some 3,000 substances but excludes coal, woodchips and nuclear substances. The limitation of liability, which was the subject of lengthy discussions within the IMO, is relatively high and, for example, a vessel
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of 50,000 gt has a limit of SDR 82 million (USD 110 million) and a vessel of 100,000 has a limit of SDR 100 million (USD 135 million).

4.1.11.4.12 Indemnities
Members may be requested to provide indemnities for the carriage, storage or handling of dangerous cargo or in connection with damage to or leakage and pollution from such cargo. Any such request should be referred to the Club for approval before acceptance. It follows from Rule 10 Section 2 that a Member may be left without cover for liabilities undertaken on the terms of an indemnity not approved by the Club.

4.1.11.5 Deck cargo
4.1.11.5.1 General views on deck cargo
When the Hague Rules were drafted, a ship’s deck was considered an unhealthy environment for cargo. Deck stowage was guided by special regulations on liability. Today, when ships and articles of transportation are designed to provide safe and convenient stowage on deck, technical progress sometimes clashes with existing legislation and with an overprotective attitude by courts which have to apply old rules to new techniques.

There are two basic situations which will be discussed separately, viz. shipment on deck under a deck or optional B/L, and shipment on deck under an underdeck B/L.

4.1.11.5.2 Shipment on deck under a deck or optional B/L
4.1.11.5.2.1 Liability may be contracted out
The mandatory liability for cargo carried under the Hague or Hague-Visby Rules is in respect of what the Hague Rules define as ”goods” in Article 1 (c). ”Cargo which by the contract of carriage is stated as being carried on deck and is so carried” does not qualify as goods in the sense of the Hague Rules. Therefore, deck cargo is excluded from the mandatory liability system. The carrier is free to contract out all liabilities relating to deck risks for cargo so carried and stated in the B/L accordingly. A cargo owner who insists on deck stowage, probably to achieve considerably lower freight, should bear the ensuing risks and insure for them separately.

There are two important requirements which must apply. First the goods must be stowed on deck. Secondly the deck stowage must be clearly stated in the B/L or W/B.

4.1.11.5.2.2 ”Deck”
As to the first requirement it may be difficult to classify certain locations on the ship as a deck. The Measurement Convention can provide some clues but the decisive factor must be whether the goods at the actual location are exposed to risks typical of deck stowage. Goods placed in the ship’s hospital have not been considered as given deck stowage. Nor is a covered but open garage on the top deck of a Ro/Ro vessel regarded as deck.

4.1.11.5.2.3 Deck stowage must be declared
The second requirement, viz. that the deck stowage must be declared in the B/L, is important. If the deck stowage has not been brought to the cargo owner’s attention by such a declaration in the B/L, he may be unaware of the risk and overlook buying extra insurance protection. It is important that a B/L or other suitable contract of carriage is issued, that it is clause
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with regard to the deck stowage and that it is transferred to the cargo owner. Article 3 of the Hague Rules does not make it an absolute obligation for the carrier to issue a B/L. In a case where important exclusions from liability must appear in the B/L, the carrier has an interest of his own in issuing a B/L. For the carrier it may have the same serious effect if he issued a B/L for deck cargo which did not declare the deck stowage as if he had prepared a B/L with a proper declaration of the deck stowage and never released it to the shipper. In both situations the carrier is in breach of the fourth part of Rule 4 Section 1 and will find himself without cover under these Rules. The same effect would follow from Rule 10 Section 2 according to which the cover is jeopardised if a Member has entered into a contract containing unusually burdensome terms or lacking the usual protective clauses, unless with the approval of the Club.

The carrier may be asked to prove that the shipper actually agreed to carriage on deck. Correspondence at the time of booking, booking notes, shipping confirmation, dock receipts or similar documents should be kept and held available for at least a year.

Where cargo is carried on deck and is so declared in the B/L, it is still recommended that the following clause be inserted on the face of the B/L: "Carried on deck without liability for loss or damage howsoever caused". Where an on deck B/L is issued for carriage of cargo to or from the U.S. the following clause should be used: "Carried on deck, any warranty of seaworthiness of the vessel being hereby expressly waived by shipper, and such carriage shall in all other respects be governed by the terms of this B/L and the provisions of the Carriage of Goods by Sea Act of the United States, approved 16 April 1936, notwithstanding Section 1 (C) thereof”.

4.1.11.5.2.4 Containers
The carrier is entitled to carry containers on deck on purpose-built container vessels. Consolidated cargo in containers can also be carried on deck of a container vessel whilst flats racks are more suitable for under deck stowage. Another cargo where deck shipment is considered customary is logs on board log carriers.

It is very important that Bs/L issued for container vessels contain a liberty clause giving the carrier the right to stow a container on or under deck. The context is that adequate overall stowage requires a distribution of the containers in the ship according to weight, contents and destination. It may be difficult to state in advance where in the ship a certain container will be placed.

4.1.11.5.2.5 Risks for which liability may not be contracted out
There have been different opinions as to how the liability exclusion for declared deck stowage should be interpreted. The traditional interpretation is that once out of the mandatory liability system, the carrier is free to contract out all and every liability for deck cargo. Some say, however, that the carrier is still obliged to properly load, stow, care for and discharge the cargo. To be able to defend himself against such viewpoints and in jurisdictions where those views prevail, the carrier should always take due and normal precautions to protect the cargo. It should be secured in a seaworthy manner. Goods such as wood, wood pulp or crates of citrus must be covered by tarpaulins. Certain types of goods should not be placed on deck at all, such as generators or printing machines transported on flats or in open top containers.
The place of stowage is also important. An open top container should not be stowed in a front tier at the forward end of the ship. It could find a safe and adequate stowage location within a block stow further aft. A block of containers should be intelligently composed, with no heavy cargoes stowed on top of empty return containers. A block of containers depends on the internal weight and securing of the individual container, the place in the stow of each unit and the proper locking and securing of the containers in the block individually and as a whole.

Failure to take these basic steps could impose liability, whereas the carrier should be relieved of those perils which are typical of deck cargo such as long exposure to salt water, rain, heat, smoke and, of course, the impact of heavy overbreaking seas. This confirms the old truth that the Member and the Club stand and fall with the factual information received from the ship. Even if it may be possible to contract out liability entirely for declared deck cargo, Members may wish to assume the standard of liability provided under the Hague and Hague-Visby Rules (see comments under 4.1.2.2 and 4.1.2.3 respectively). By application of Rule 10 Section 2 (a) such liability for declared deck cargo is covered. Members are recommended to contact the Club for assistance in drafting a suitable B/L clause or freight contract terms.

4.1.11.5.2.6 Ship should be suitable for carriage of deck cargo
For a Member who carries containers on deck it is important that his ship is properly adapted to carry such cargo. Modern ships have high freeboards and are equipped with effective locking devices for containers on deck. It is not sufficient to weld some elephant feet on to the fore deck of an old ship with a low freeboard. It will flow through the sea like a submarine and the cargo in the containers is bound to get wet – if the containers reach shore at all. There is a great risk that the inadequate adaptation of such a ship for the carriage of containers on deck will render her unseaworthy. As the conversion of a ship is bound to involve her owner in the stages of planning, decision and performance, such situations may amount to owner’s gross negligence. The result may be unlimited liability for the cargo lost and no cover under these Rules by application of Rule 11 Section 1. Conversion of old ships to carry containers should be closely discussed with the technical, underwriting and claims departments of the Club.

4.1.11.5.3 Shipment on deck under an underdeck B/L
If cargo is carried on deck under a B/L which does not explicitly state that the cargo is so carried or which does not contain a valid liberty clause, the carrier is exposed to claims for any loss or damage which is related to the breach of contract or deviation (see comments under 4.8.4.1). The consequences will probably be an unlimited liability without the benefit of the Hague Rules liability exceptions. According to court decisions in England and the U.S., the carrier is still considered to enjoy the benefit of the one-year time limit for such claims. In practice the carrier may become the underwriter of the cargo. At the same time the fourth part of Rule 4 Section 1 makes it clear that a Member has no cover for unauthorised deck shipments.

It is possible for a Member to insure the breach of contract risk under a Deck Cargo Insurance for an additional premium. The reason why such a cover is provided is the following. It may appear at the last minute of loading that there is no room on a fully laden ship for all the cargo booked. The reason may be that certain consignments have occupied a larger space than was reported at the time of booking. To leave cargo behind would expose the Member to
claims for non-performance of the contract. If the carrier under such exceptional conditions puts the remaining cargo in a safe place on deck and covers it closely with tarpaulins, the breach of contract risk could be accepted on an ad hoc basis. It is a prerequisite for this cover that no service concept should be based on regular and intentional overbooking where the deck risk is transferred to the Club. Deck shipments of this nature should be declared to the Club in advance or as soon as the deck stowage comes to the Member’s attention. The extent of cover is for the declared value of the cargo. The premium is based on the cargo value.

4.1.11.6 Direct reduced iron
By circulars P.2182/1980, P.2197/1981 and P&I 2497/2010 the Club distributed joint Group circulars containing warnings against serious problems which have occurred during shipments of this product. Requirements for carriage have since been issued IMO ”Code of Safe Practice for Solid Bulk Cargoes” which should be available on board and to which masters are referred.

4.1.11.7 Grain
In circular P.2229/1984 the Club recommended the following precautionary measures regarding shipments of grain:

a) Ensure that draft surveys are carried out at both ends.

b) Arrange for hatches to be sealed upon completion of loading in the presence of a local magistrate/bailiff who should issue a certificate to that effect.

c) Ensure that the seals are inspected before breaking by any official organisation such as the local branch of the Chamber of Commerce.

d) Obtain a statement upon completion of discharge from an official organisation such as the local Chamber of Commerce that all cargo has been discharged and that the holds are completely empty.

Masters are advised not to sign statements of shortages established without control or participation from the ship’s side nor to authorise the shipagents to sign any such document on the ship’s behalf. If such signing is made a condition of permission being granted for the ship to sail and the master finds himself without any effective help from his agents or the Club correspondent, the statement should be endorsed with the words: "All cargo discharged; neither the ship nor her representatives participated in the weighing of the cargo".

4.1.11.8 Heavy lifts
The ship’s own lifting gear such as cranes and booms should carry proper SWL (Safe Working Load) markings. They should at all times hold valid and prescribed certificates. Fines for lack of such certificates are excluded from cover under Rule 7 Section 6 item 3 (v). See comments under 7.6.3.5.

Contracts for hire of cranes, sheer legs and similar equipment should be approved by the Club. See comments under 10.2.6.2.

The cover excludes liabilities arising for semi-submersible heavy lift vessels. See further Rule 11 Section 3 (e) and comments under 11.3.2.7.
4.111.9 Liquid bulk cargo
4.111.9 Shortage
4.111.9.1 General views on shortage

Carriage of liquid bulk cargoes, mainly oil products, is plagued with serious claims for shortage. The context for shortage claims is the carrier’s obligation for the particulars in the B/L as a document of title. For further comments see under 4.3.3.2.

A shortage claim has to be decided on the documentary evidence available. With rising oil prices such claims are for large amounts. It is of importance for the carrier to secure and produce full and adequate figures from loading and discharging. The evidence needs to be convincing to overcome the receiver’s allegation that the full cargo was not discharged. The carrier can make large economies on his records if his figures are in order.

4.111.9.1.2 Loading
Before loading, all cargo tanks should be inspected either to confirm that they are empty or to establish the OBQ (On Board Quantity). The condition should be confirmed in writing by a surveyor (Tank Clean Certificate) in the presence of a representative of the shipper.

After loading, the cargo should be allowed to settle before measuring the ullage, temperature and water content. Immediately after loading the cargo may contain air bubbles which cause an ullage taken too early to show a larger quantity than actually loaded. If the water content is measured before proper settling has been allowed, there may be a claim for shortage of the product and for an excessive quantity of water, making it difficult for the carrier to prove that the water did not enter the tank during the voyage.

If ship-to-ship operations are involved, accurate records should be kept of each transfer.

Other observations such as land tank figures, stops during loading, shore lines used, etc., may be of assistance in the investigation of an oil claim. The vessel’s time sheet should be included among the documents sent to the Club as a valuable source of information. Upon loading, the ship’s draft should be measured and recorded.

If the ship’s figures differ from the shore installation figures and from those presented for signature in the B/L, the master should lodge a protest and contact his owner and the nearest Club correspondent for assistance.

4.111.9.1.3 Discharging
If the cargo has to be heated during the voyage or in preparation for discharging, the cargo temperatures should be measured and noted to establish volumes. It is important that an adequate discharging temperature is maintained to minimise the cargo ROB (Remaining On Board).

As described in comments under 4.3.3.2–3 the carrier has an obligation to discharge and deliver the quantity of cargo carried as evidenced by the B/L particulars. ROB means that cargo is left on board and that a corresponding shortage exists in the quantity discharged, for which the carrier may be held liable under the Hague or Hague-Visby Rules. Tanker C/Ps often contain a cargo or freight retention clause which allows the charterer to make a
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deduction from freight or hire for the value of any cargo which an independent surveyor ascertains remains in the ship’s tanks and which is pumpable.

For the effect of such a clause to be covered, it should be confined to the method of payment, viz. by way of set-off against freight. The clause should not extend the carrier’s liability beyond what would follow from the Hague or Hague-Visby Rules. This follows from Rule 10 Section 2. Unconditional acceptance of liability for ROB is not covered. The clause should allow the charterer to make a deduction from freight only when he can prove that he has suffered a loss.

For a cargo retention clause to apply, the ROB should have been established by the surveyor to be pumpable, not just as liquid or free flowing. The ROB survey should be performed before the hoses are disconnected in order to allow further stripping of any pumpable ROB that is established. If possible a surveyor should be appointed on the Member’s behalf to conduct the ROB survey jointly with the charterer’s surveyor. As a running expense the costs of an ROB survey are not covered. See comments under 8.1.6.4.

A cargo retention clause favourable to the owner’s interests and recommended by the Club is the following:

Cargo retention clause to be included in Charterparties.

If on completion of discharge any liquid and pumpable cargo by the vessel’s equipment remains on board, the presence, pumpability and quantity of such cargo having been certified by an independent surveyor appointed and paid jointly by owners and charterers, and charterers thereby suffer a financial loss, charterers shall have the right to claim up to a maximum amount equal to the FOB loading port value of such cargo plus freight thereon. Provided, however, that any claim is subject to any Hague or Hague-Visby defences or rights and to any other rights or defences available to owners under this charter or otherwise, and provided further that if owners are liable to any third party in respect of failure to discharge such liquid cargo, or any part thereof, charterers shall indemnify owners against such liability up to the total amount claimed under this clause.

Before discharging is allowed to start, the ship’s draft should be recorded. Temperatures and ullages should be measured in all tanks in the presence of a surveyor and of representatives for the receiver. All relevant observations made during the discharging should be recorded. It could be of value afterwards to know to which land tanks the oil went and through what shore pipes. Stops during discharging may be of importance. The extent of the COW (Crude Oil Washing) should be noted. Even here the vessel’s time sheet may be of value for those investigating a claim.

Upon completion of discharge it is necessary to establish that the tanks are empty or ascertain the extent of remaining unpumpable residues. Employment of a surveyor to obtain proof in this respect is recommended (Tank Empty Certificate).

Should a complaint be filed by the receivers that the full cargo has not been discharged, detailed investigations should be made in anticipation of a claim. The nearest Club correspondent should be called.

Masters are advised not to sign statements of shortages established without control or participation from the ship’s side nor to authorise the shipagent to sign any such documents
on the ship’s behalf. If such signing is made a condition of permission being granted for the
ship to sail and the master finds himself without any effective help from his agents or the
Club correspondent, the statement should be endorsed with the words: "All cargo discharged,
no representative for the ship participated in the establishing of outturn figures presented by the
receiver”.

4.1.11.9.1.4 Inevitable transit losses
A traditional bone of contention in discussions of an oil shortage claim is if and to what
extent the carrier should be given credit for inevitable transit losses. There is always a margin
for measurement tolerances, settlement of water and cargo clinging to the tank bulkheads.
The old tolerance of 0.5% for transit losses may no longer be accepted by the courts. The
acceptable extent of transit losses will depend on such factors as the volatility or water content
of the product or the temperature of carriage compared with the solidification characteristics
of the cargo.

4.1.11.9.2 Contamination
Many of the principles for collecting and presenting evidence previously described are
applicable to the investigation and defence of claims for contamination. The crucial point
is a thorough and adequate cleaning of tanks, pumps and lines. The extent of cleaning has
to be seen in relation to the cargo previously carried and that to be loaded. As appears from
comments under 4.1.5.4 the carrier is not absolved from liability if the tanks have been
inspected and approved by the shipper’s or the charterer’s surveyor even if the C/P contains a
stipulation to that effect. On the other hand, the shipper’s advice should be sought regarding
the cleaning standard and procedure required as the shipper is the party best placed to know
the requirements of his own cargo to be carried. The Club will assist in providing advice as
well, if required.

A Tank Clean Certificate should be obtained from a surveyor. First foot samples should
be taken and analysed before the loading is allowed to continue. Further samples should
be taken at the ship’s manifold or where the shore installation piping system ends. Upon
completion of loading further samples should be taken at different levels in all tanks. Please
see under 4.1.4.5.6 for advice as to the taking of samples.

During discharging further sets of samples should be taken at the ship’s manifold or at the
end of the ship’s hose or discharging device.

Samples should be taken by surveyors in clean bottles, tagged for identification and
authentication, and sealed and stored for a sufficient period of time. See comments under
4.1.4.5.6.

Plans of the ship’s tank and piping system are necessary when investigating a contamination
claim. Names and whereabouts of all persons involved may be of great help.

When contamination has occurred, the first hurdle for the carrier to overcome is to prove
that due diligence was exercised with regard to seaworthiness at the beginning of the voyage.
To this effect evidence is needed, for instance, that the tanks, valves and pipes were duly
inspected and tested, that the crew was competent to handle the pumps and valves, and that
the valves were properly marked in writing and by colours to prevent opening of the wrong ones.

4.11.9.3 Co-mingling and blending
Requests to comingle or blend oil liquid cargoes usually come from charterers or shippers. This procedure is potentially complicated and can expose Members to very large claims for off-spec cargo at the port of destination. One has to keep in mind that the master and his crew have no scientific knowledge of inherent characteristics of chemicals or other oil products and it is therefore of utmost importance that Members and Masters consult specialists in this field on loading with the assistance of the Club. Two very important factors when accepting to co-mingle or blend cargo are clausing of Bs/l and sampling. Members should closely follow the club’s recommendations below in order not to prejudice cover.

4.11.9.3.1 Co-mingling
Cargo of same specification loaded from different shippers, terminals or ports is considered to be co-mingling. Bills of lading must be claused to reflect that cargo has been loaded from different sources and co-mingled onboard the ship. To mitigate the risk of a claim for contamination at the port of destination samples of each product should be drawn from the ships manifold at the inception of loading. First foot samples should also be taken on completion of loading of each grade and after co-mingling onboard.

Co-mingling of cargo of the same specification from the same shipper and terminal but from different shore tanks is not considered a co-mingling but a normal loading operation.

4.11.9.3.2 Blending
Blending cargo is the notion of mixing two or more grades of different specifications onboard the ship for discharge as one homogenous cargo. Since it is very difficult if not impossible to scientifically blend cargo onboard a ship receivers may complain that the blend does not correspond to the cargo description in the Bills of lading. Such claims may fall outside the Club cover unless Bs/l have been properly claused reflecting in detail loading procedures. The master should ensure that the two grades loaded are individually described in the Bs/l including the name of the ports and dates.

In addition the Club recommends that Members request a Letter of Indemnity from shippers or charterers. Sampling should be carried out as per 4.1.11.3.1

4.11.9.3.3 Pollution
Liquid bulk cargoes may be lost overboard during loading, carriage or discharging. For comments on pollution liabilities please see Rule 6 Sections 1 and 2.

4.11.10 Live animals
According to the Hague and Hague-Visby Rules live animals do not qualify as goods. Therefore, the compulsory liability does not apply to the carriage of live animals.

Shipments of live animals such as livestock, circus animals and racehorses should be carried out under contracts of carriage which exclude liability for illness, injury and death. If a Member becomes liable because the possibilities of excluding liability have not been effectively exhausted, there is no cover under these Rules.
Carriage of live animals may cause the ship to deviate or be subject to quarantine or disinfection. For certain consequences of this there is cover under these Rules. Please refer to Rule 5, Rule 7 Section 7 and Rule 4 Section 7. There is, however, no cover for hire and time lost according to Rule 11 Section 2 (j). Shippers should, therefore, be asked to assume liability for any damage, loss or expense caused to the carrier by the shipment of live animals.

Under the Hamburg Rules the carrier is not liable for loss, damage or delay resulting from any special risk inherent in the shipment of live animals. If the carrier can prove that he followed the shipper’s instructions in respect of the animals and that, in the circumstances of the case, the loss could be attributed to those risks, the loss is presumed to be so caused, unless there is proof that the loss or part of it was caused by negligence on the part of the carrier or his servants.

No general exclusion of liability for live animals is valid under the Hamburg Rules. The possibility of avoiding liability will depend on the information and evidence received from the ship as to the cause of the loss. Such facts are essential for the carrier to fulfil his burden of proof.

Members who plan to carry live animals are recommended to contact the Club for assistance and advice on the drafting of freight documents and on other precautions to minimise the liability exposure. This is important when it comes to large or special shipments or shipments of high-value animals such as racehorses.

4.1.11.11 Nuclear cargo
See comments under Rule 11 Section 7.

4.1.11.12 Paper
4.1.11.12.1 General views on carriage of paper
Shipment of paper and other similar products in rolls has always constituted a problem. The rolls have little if any packing which can be described as adequate in relation to the weight, value and vulnerability of the product. To some extent the liability exclusion under the Hague Rule exception (n) should apply (see comments under 4.1.8.14).

Much of the international knowhow on paper shipments is concentrated in Scandinavia, where the main producers and paper carriers are domiciled as well as their underwriters and P&I Clubs. The parties have worked in close co-operation to develop new means of handling and transportation to avoid or reduce handling damage and losses.

4.1.11.12.2 Paper agreements
These parties also drafted and signed a claims-settling formula, the Scandinavian Paper in Rolls Agreement. The idea behind the agreement is that the roll constitutes its own packing. Cuts below 1/2” are not compensated by the carrier. Damage by cuts exceeding 1/2” are compensated to 60%.

There are other agreements or formulae in practice based on similar principles. The Finnish Paper Agreement also covers the frequent problem of ovalisation.

Notice of termination was filed by cargo interests for both agreements as from 1 January 1992 to allow renegotiation of the terms.
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The agreements were drafted to cover damage to newsprint but have also been applied to claims on various kinds of paper products with the same handling problems. They have been widely accepted as a basis for the settlement of paper claims by cargo underwriters. The principles are still in use although the agreements are no longer in force.

Members are recommended to contact the Club for advice as to handling and stowage of paper products and settlement of paper claims.

4.1.11.13 Refrigerated cargo
4.1.11.13.1 General views on refrigerated or frozen cargoes
Cargoes which require a controlled and constant temperature are either refrigerated or frozen. Although there is a great difference in the nature and handling of the two types of cargo, the liability aspects are mainly the same. What is said in the comments regarding reefer cargo, therefore, also applies to frozen cargo.

If reefer cargo is not provided with an adequate environment with regard to temperature and ventilation, loss of the entire cargo stowed in that compartment generally results. Not only is reefer cargo by definition heavily dependent on ideal conditions being maintained throughout the voyage, but the cargo is also intended for human consumption and, therefore, subject to strict regulations from the market and from governmental health authorities. Even minor changes in the quality may cause authorities to order the complete destruction of a consignment.

In order for Members who operate reefer services to protect their records, it is important to pay close attention to the condition of the ship, its reefer plant and compartments and to the experience and education of officers and crew.

Although much could be said as to how claims should be avoided on reefer shipments, these comments are confined to recommendations as to how co-operation between the Club and the Member could improve the securing of necessary proof.

4.1.11.13.2 Pre-loading surveys of reefer plants
From comments under 4.1.5 it can be seen that the carrier has the burden of proving that he exercised due diligence with regard to seaworthiness before and at the beginning of the voyage. When it comes to reefer shipments this means that the carrier must produce a valid Refrigerating Machinery Certificate issued by the classification society. It confirms the overall suitability of the reefer plant. Furthermore, the carrier must prove that the compartments are clean, free of odour and suitable for carrying the intended type of reefer cargo before loading is allowed to start. The proper operation of the reefer plant and the distribution of cooling air must be substantiated. All this can be done by employing a class surveyor to check and test the relevant parts of the ship and issue a certificate accordingly. Such a certificate does not constitute conclusive evidence. It is regarded as prima facie evidence. If other proven facts show that the surveyor’s conclusions were wrong, the carrier will probably not be considered to have sufficiently discharged his burden of proof by presenting the certificate.
4.11.13.3 PTI of reefer containers

Similar principles apply to reefer containers. The usual procedure is to let the container undergo a Pre Trip Inspection (PTI) before it is placed at the shipper’s disposal or before being stuffed by the carrier. A PTI includes all relevant aspects of the suitability of the container and its reefer machinery. All tests performed should be entered into the PTI certificate, which should be kept easily available for at least a year.

4.11.13.4 Shipper’s carrying instructions

Other evidence of importance from the time of loading is any carrying instructions received from shippers and/or charterers. Members should request such instructions to be in writing for future reference. The instructions should be followed unless they appear inadequate, based on the experience and expertise available. If in doubt, the officers should contact the owner or the Club for advice.

Carrying instructions and temperatures to be maintained should not be inserted in the B/L. Even less should the carrier agree that the B/L be claused guaranteeing product or hold temperature at a certain level during the voyage.

If the temperature of reefer cargo received for shipment is different from that in the carrying instructions or from what experience indicates it should be, the B/L should be claused accordingly. Otherwise the carrier will be responsible for damage inherent in the cargo or caused during a time when the cargo was not in his possession.

4.11.13.5 Pre-loading examination of cargo

The special nature of reefer cargoes increases the carrier’s obligation to examine the goods before loading. Random checks should be made of its temperature. Samples should be taken to establish the nature and condition of the cargo. From what has been said previously regarding the burden of proof (see comments under 4.1.4.5) it is important that such pre-loading examinations are recorded for future reference. The B/L should be claused as the result of the examination may require. If the pre-loading condition of the cargo is in doubt, a surveyor should be called in to advise the Member whether or under what reservations the cargo should be accepted for shipment.

As mentioned under 4.1.8.13 one of the important exceptions from liability is the inherent vice of the goods according to Hague Rule Article 4:2 (m). This exception is often applicable to shipments of vegetables, fruit or meat. The goods might have been infested or their life span reduced by early harvesting or excessive pre-shipment storage. To invoke such a defence, the carrier must prove that the inherent condition could not be detected at the time of loading (see comments under 4.3.3) and that its consequences could not be avoided or mitigated by precautions during the transport. The possibilities of pleading such a defence successfully depend on the evidence and observations received from those on board.

4.11.13.6 Reefer logs

There is important evidence to be collected and maintained in respect of the carrying conditions during the voyage. The reefer log is a fundamental piece of evidence and should be kept carefully. See comments under 4.1.4.5.3. Data readings and recordings should be kept for future reference.
4.1.11.13.7  Automatic temperature readings
Reefer containers are today equipped with an electronic microprocessor as a data log for automatic temperature readings. Extracts from the electronic microprocessor constitute the only evidence available as to the performance of the container and its reefer machinery.

The electronic microprocessor should continuously record the temperature from the moment the container is closed at the place of stuffing until the doors are opened for stripping. If the recording is activated too late, inactivated temporarily during the transport or completed too early, there will be blind spots which will seriously undermine the Member’s defence should the cargo turn out damaged at destination.

4.1.11.13.8  Obligation to mitigate loss
Should the temperature readings or the regular daily inspections of the reefer cargo during the transport indicate that damage may occur, the carrier has an obligation to mitigate any loss occurring.

Ships carrying reefer containers should have sufficient knowhow, tools, spare parts and a supply of appropriate cooling medium to effect basic emergency repairs on board. Improvisation may offer temporary solutions pending final repairs in port. Empty containers may be used to house the cargo temporarily or as a source for spare parts. All steps taken and observations made on the cargo condition should be recorded continuously in the reefer and deck logs. The Club or its representatives should be contacted in time to assist the Member in taking adequate protective measures in the next port of call.

In case of a serious casualty such as a reefer machinery breakdown, it may be necessary to take extraordinary action such as calling at an intermediary port for reefer engine repairs or to discharge, tranship or even sell the cargo. Any such decisions should be taken in close cooperation with the Club, who will assist with expert and legal advice.

Costs incurred in mitigating a loss may be recoverable under Rule 8 Section 2.

4.1.11.13.9  Discharging surveys
If anything abnormal has been observed during loading, in transit or on discharging, Members are recommended to contact the Club or its local correspondent in order to arrange a survey. The Club will provide qualified and independent experts on any type of reefer cargo.

4.1.11.14  Steel
4.1.11.14.1  General views on steel shipments
Steel shipped at sea is bound to get rusty. Many factors may contribute such as exposure to rain or snow before shipment or during loading, condensation when steel is shipped cold, leakage through hatches, exposure to moist air in transit, etc. The carrier can avoid or minimise some of the risks but he cannot change the law of nature - steel and wetness produce rust.

4.1.11.14.2  Clausing of Bs/L
Steel is mostly already rusty when presented for shipment. The right thing for the carrier to do is to clause the B/L accordingly. A conflict arises when the cargo interest and banking system, who generally preach for the necessity of for the carrier to adequately describe the
condition of the goods in the B/L, now protest against well-founded remarks which they want to have deleted for a clean B/L. The carrier is in a dilemma because under Rule 4 Section 3 he is not covered against the consequences of having issued a clean B/L for a damaged cargo in exchange for a backletter.

As can be seen from circular P.54 of 24 March 1964 it has been agreed that Bs/L for steel shipments, whenever it is justified, can be claused either with the word ”rusty” or with any of the following qualifications:

- Partly rust stained.
- Rust stained.
- Rust spots apparent.
- Some rust spots apparent.
- Rust spots apparent on top sheets.
- Some rust spots apparent on top sheets.
- Top sheets rusty.
- Some top sheets rusty.
- Rusty edges.
- Some rusty edges.
- Rusty ends.
- Some rusty ends.
- Rust spotted.
- Rust and oil spotted.
- Wet before shipment.
- Wet steel tubes.
- Wet bars.
- Rust on metal envelopes.
- Covered with snow.
- Pitted.
- Rusty.
- Rust with pitting.
- Goods in rusty condition.
- Edges bent and rusty.
- Partly rusty.

When packed sheet iron is shipped the following two clauses may be used:

- Covers rusty/wet.
- Packing rusty/wet.

The idea is that any such justified remarks shall not render the B/L unclean.

Qualifications such as ”atmospherically” or ”superficially” should not be used in the description of the rust or the rusty condition. This would reduce the impact of the remark and be counterproductive to the carrier’s interests.

4.1.11.14.3 Clause in C/P

It is important that these remarks find their way from the Mate’s Receipt into the B/L. Bs/L are often issued by charterers after the ship has sailed, which gives the master no opportunity to check that they were adequately claused as per the M/R. The authority contained in the C/P for the charterers to sign Bs/L should, therefore, be drafted in such a way that the Bs/L are to be issued in conformity with Mate’s Receipts or Tally Clerk’s Receipts and that the charterers are to hold the owner harmless if in breach of that obligation. See comments under 4.3.3.3.

4.1.11.14.4 Pre-shipment surveys

It is impossible for a chief mate to check all individual bars, pipes or coils in a steel cargo when the ship loads in several hatches simultaneously. The Club recommends Members to arrange pre-loading surveys of steel cargoes during loading. Upon request the Club will assist Members in appointing suitable surveyors.
The Club's Board has decided that pre-shipment surveys of steel cargoes are to be considered as running expenses and should not be compensated. The survey costs can be estimated in advance and calculated into the freight. It is not in line with the concept of mutuality that operational costs for a single type of transport should be shared among the community of Club Members. See comments under 8.1.6.2.

The Club is still prepared to survey and investigate any damage to steel cargoes which may arise during the voyage. If there is a claim, the pre-loading survey report may come in useful as evidence of the condition of the cargo at the time of loading. In such a case the costs for the pre-loading survey will be reimbursed by application of Rule 8 Section 1.

4.1.11.14.5 Loading in rain or snow
Shippers/charterers often insist that loading of steel products should take place in spite of rain or snowfall. It is true that certain qualities of steel are less susceptible to damage from exposure to light rain. Some products arrive at the port of loading on open railcars and are stored on the quay unprotected and exposed to the elements. Nevertheless, a master should not be persuaded by assurances that no damage or liability will result. The master has not only the right but the legal obligation to stop loading and call for the expertise and advice of the attending surveyor or Club correspondent.

4.1.11.14.6 Transit damage
A frequent cause of claims for rust damage to steel products is leaking hatches. A steel cargo produces a low centre of gravity and a stiff ship which suffers severely in heavy weather. Considerable attention should be given to the condition of the hatches. Hose testing should be arranged before loading is allowed to commence. Even small defects should be remedied. Any such precautions should be recorded in the deck log as the Member may be called upon long afterwards to prove what was actually done on board to ensure that the vessel was in a seaworthy condition before and at the beginning of the voyage.

Accurate securing in the holds of heavy steel units is important to avoid shifting, chafing, bending, ovalisation or unwinding.

Cargo holds are usually washed with seawater, leaving chloride-laden liquid behind. The final washing should be carried out with fresh water. If this is not done, ship's sweat containing salt crystals will contaminate the steel. It will not only accelerate the development of rust but also give cargo interests and their surveyors the false impression that the hatches have been leaking during the voyage and that the ship’s seaworthiness is at stake. With the reversed burden of proof it could be difficult for the carrier to disprove that allegation.

Holds where steel is to be stowed must be carefully cleaned, especially if they have contained previous cargoes containing sulphur such as coal, iron ore or phosphate.

If the steel loaded is colder than the atmosphere in those areas through which the ship will proceed during her voyage, no ventilation should be carried out. The temperature of the steel would be lower than the dewpoint of the external atmosphere so that cargo sweat would occur. If, on the other hand, the steel is loaded in a warm climate, the holds should be ventilated in order to avoid the internal hold structures cooling below the dewpoint of the atmosphere within the hold. That would cause ship’s sweat to develop and drip on to the
steel. On trades where this combination of temperatures occurs, steel is often stowed together with moist products like logs or plywood. That should be avoided.

4.1.11.15 Trailers
4.1.11.15.1 General views on trailers
The Ro/Ro concept is widely accepted. A considerable part of the Ro/Ro cargo is carried on trailers within Europe. Such transports cause frequent and large claims. It is important to the Club and its Members that such damage be avoided and, when it nevertheless occurs, that the claims are effectively defended.

Most trailers are consolidated by shippers or by freight forwarders. They perform the internal securing of the units. As producers or sellers of the cargo they ought to have a special interest in the safe and successful performance of the transport. Furthermore, they should be the party most familiar with the needs and characteristics of the goods, such as their weight, stability, friction, etc. Regretfully the goods are still stowed in trailers with insufficient or sometimes a complete lack of securing. The reason is either ignorance or a misguided attempt to save money. Before the trailer leaves the shipper, its cover is often TIR sealed to comply with international customs regulations. When the trailer is received for shipment in the loading port, it is then physically and legally impossible for the carrier to inspect the internal stowage and securing. One would think that it would be an easy task for the carrier to reject a claim for damage to the trailer and its cargo. Still, such claims are strongly enforced against the carrier. Furthermore, cargo shifting in a trailer may cause a chain reaction to adjacent trailers. An unsecured piece of heavy machinery on one trailer can run havoc and cause complete destruction to all cargo stowed in that area of the ship. Owners or underwriters of such innocent cargo will file claims against the equally innocent carrier to recover their losses.

4.1.11.15.2 Education of shippers
The noble art of self-defence against such claims begins long before the fatal voyage starts. A carrier who can prove that he tried to educate his customers on the requirements of a successful trailer shipment is in pole position at the start of the claim race. Members operating a liner service based on a Ro/Ro trailer concept should prepare and distribute cargo-securing instructions and advice to shippers and let experienced people educate the shippers’ key staff. The Club can provide recommendations on suitable educational material for trailer shipments.

4.1.11.15.3 Pre-carriage inspections
As for the individual shipments, the carrier must perform as much checking of the unit as it is technically possible to carry out and be able to prove it afterwards. The first opportunity comes when the trailer enters the terminal area in the loading port. The external condition of the trailer should be properly examined. If the canopy is bulging, the trailer leaning or other observations are made which could indicate damage or shifting of the cargo or inadequate securing or stability, the reason should be investigated and the condition remedied. If this cannot be done by the carrier or to his satisfaction, the trailer should be set aside and the shippers requested to attend.

It should be checked that the trailer is equipped with a sufficient number of suitable lashing points to allow the carrier to fulfil his basic obligation to secure the trailer properly on board.
The external condition of the canopy or cover should be checked and noted for cuts or other damage to the tarpaulin. The Club has seen cases where the same cut in the canopy was claimed against all the shipping lines which had carried the trailer during the latter months.

The shipping documents should be examined as they can reveal important information as to the cargo inside the trailer. It may appear that the trailer contains a heavy piece of machinery or drums stowed three tiers high. Then the carrier may have to inquire of shippers as to how the securing has been arranged.

The stowage plan is generally drawn up in the terminal. To the extent possible, trailers with dangerous, heavy or sensitive cargo should be given selected stowage.

The second opportunity to check the trailer presents itself when it is towed on board. Unusual performance of the trailer in tow, for instance when climbing the ramp, justifies a further check of the contents and its securing.

4.1.11.15.4 Securing of trailers on board
It is vital that the trailer is properly attached to the ship’s deck by an adequate number of suitable lashings fixed to permanent securing points. The condition of the trailer’s supporting legs should be carefully noted. They are often already damaged when the trailer is received for shipment. They are required for the proper storage of the trailer in the terminal before loading and after discharge.

The trailer chassis should be kept as stable as possible by compressing the springs by means of lashings to the deck or by jacking up the undercarriage prior to securing. Trailers should be supported by a trestle or a jack. However even if the trailer itself is properly secured to the deck the weakest link is still the cargo concealed under the tarpaulin.

The best loss prevention is therefore to avoid heavy movements of the ship while at sea.

4.1.11.15.5 Evidence of internal securing
If damage or shifting occurs, it is extremely important to collect evidence as to the internal securing of the cargo in the trailer and its possible influence on the damage. The number, nature and application of internal lashings and securing must be closely recorded. If no surveyor is available, this has to be done by the officers. The purpose and necessity of this operation is the following. According to the Hague Rule Article 4:3, the shipper is responsible for loss or damage sustained by the carrier or the ship through the shipper’s negligence. The importance of this regulation is not confined to the defence of the claim for damage to the consignment causing the accident. As previously mentioned, insufficiently secured cargo on one trailer can cause damage to adjacent trailers and cargo. It may even cause damage to or the loss of the ship itself. The Member has an obligation to support and secure any opportunity for the Club (see comments to Rule 10 Section 4 and to Rule 14) or the ship’s Hull underwriters (see AV 2000 § 45) to claim compensation from shippers for losses sustained. According to Rule 14 the Club inherits the Member’s rights to proceed in recovery against a negligent shipper.
4.1.11.16 Valuable cargo

4.1.11.16.1 Rules applicable to valuable cargoes

There are two separate Rules applicable to shipments of valuable cargo. Rule 11 Section 2 (d) excludes liability for “specie, bullion and precious metals or stones, plate or other objects of a rare or precious nature, cash, bank notes or other forms of currency, bonds or other negotiable instruments” unless the carriage of such valuables has been approved by the Club. Rule 4 Section 1 states that the Club’s liability in respect of goods for which the value has been declared in the B/L is limited to the amounts which appear in the regulations issued by the Club. The right to issue regulations follows from Rule 10 Section 3.

4.1.11.16.2 Valuables

The first category of valuable cargoes excluded under Rule 11 Section 2 (d) is for special shipments of extremely high value which are mostly not of a commercial nature. It could be shipments of mint coins and bank notes or international exhibitions of antiques or precious pieces of art. In view of the nature of these shipments, the Hague Rules provide a possibility for the carrier to issue a contract of carriage containing wider exclusions from liability than those generally allowed. A condition for approval by the Club is that the contract of carriage is adapted to the nature of the transport and preserves any legal rights the carrier may have to limit his liability. The choice of contract of carriage and its terms should be discussed with the Club before the cargo is firmly booked for shipment. It is advisable to include all the legal and practical terms of the transport in a written agreement between the cargo owner and the carrier. The Club is prepared to assist the Member in drafting such an agreement and in sharing previous experience of similar shipments. The Club will advise whether the transport should be performed under a B/L or a non-negotiable document such as a W/B. A waiver of recourse from the cargo owner and his underwriter should be requested. The transport itself may be surrounded with extra security precautions such as stowage in a locker or in a cabin. Special guards or attendants may have to accompany the shipment.

According to Rule 10 Sections 2 and 3 the Club may refuse or reduce compensation where a Member did not obtain the Club’s approval of contracts or did not follow regulations issued by the Club.

4.1.11.16.3 Other valuable cargoes

Other types of cargo may have considerable value without being of the special nature which, according to the Hague Rules, qualify them for shipment on reduced liability terms as described above. The carrier is mainly protected against excessive liability for cargo of high value by the rules on per package limitation which follow from the Hague, Hague-Visby or Hamburg Rules. See comments under 4.1.9.3. The cover under Rule 4 Section 1 is for the amount to which the Member is or would have been allowed to limit his liability under the law applicable to the contract of carriage. If the carrier has agreed to extend his liability beyond the amount of the limitation, the extended liability is covered only if and to the extent that it has been approved by the Club.

4.1.11.16.4 Ad valorem Bs/L

The technique provided by Article 4 of the Hague Rules to extend the liability beyond the package limitation is to insert the declared value of the cargo in the B/L. By accepting a higher responsibility, the carrier can charge a higher freight based on the value of the cargo.
This type of B/L is referred to as Ad valorem. As the increased liabilities are assumed with open eyes and for the purpose of earning more freight, the concept of mutuality in relation to fellow Members of the Club justifies the advance approval required by the Club and the charging of an additional premium.

It follows from decisions by U.S. courts that a B/L form should afford the shipper a fair opportunity to declare a higher cargo value if he so wishes and to pay the corresponding increased freight. It means that the B/L form should contain a suitable box for that purpose. In order adequately to protect the carrier, the limitation clause of the B/L should read: "Neither the carrier nor the ship shall in any event be liable for any loss or damage in an amount exceeding USD 500 per package or other unit of limitation unless the nature and value of such goods has been declared by the shipper before shipment and inserted into the applicable box of this B/L and additional freight has been paid”.

By the C/P terms a charterer is often authorised to issue Bs/L. An owner Member could protect himself against any adverse consequences described above by drafting the relevant C/P clause in such a way that the charterers are not authorised to issue Ad valorem Bs/L.

4.1.11.16.5 Bs/L with unwanted Ad valorem effect

There are some situations in which the carrier may find that he has assumed a liability over and above the package limitation without intending to achieve that result and without having been rewarded by higher freight.

For some cargoes neither weight nor volume constitutes a suitable basis for freight calculation. Freight is then often charged on the invoice value. If so, the cargo value is stated as the freight basis in the freight box of the B/L form. Even if the value has not been inserted for the purpose of assuming liabilities beyond the package limitation, the system is often interpreted as having that effect and the B/L regarded as Ad valorem. Members are recommended not to use this method as a general way of freight calculation. If it is still not possible to avoid, the following reservation should be inserted in the freight box: "Value of cargo has been inserted as basis for freight calculation only and is not a declaration of value for increased per package liability purpose”.

It follows from governmental regulations in some countries, for instance in Puerto Rico, that the value of the cargo should be mentioned in the Bs/L for all cargo imported. The regulations are meant to simplify the proper assessment of import taxes to be paid by the receivers. Most likely, however, attempts will be made by cargo receivers to treat any such B/L as Ad valorem. Members are, therefore, recommended to check whether the authorities will accept alternative documentation of the cargo value such as the separate presentation of invoices. If the cargo value really has to be inserted in the B/L, it should be immediately followed by the reservation: “Cargo value is inserted solely to comply with regulations by the proper authorities for tax assessment purposes and is not a declaration of value for increased per package liability purposes.”

Yet another even more insidious way of sneaking increased package liabilities upon a carrier is practised in countries such as Turkey, Egypt, Syria and the United Arab Emirates. There the authorities require Bs/L to make reference to and include the serial number of the letter of credit, sales contract or pro-forma invoice. Local cargo underwriters have tried to overcome
The package limitation by arguing that by virtue of the additional information, the carrier must have acquired knowledge of the value of the cargo and that the B/L should, therefore, be regarded as Ad valorem. There have been local court decisions to that effect. The problem has been considered by the Clubs and by BIMCO. As a possible remedy the following clause has been suggested to be imprinted by a rubber stamp on the face of the B/L: “Particulars of sales contracts and/or order and/or bank Letter of Credit shown herein were inserted at shippers’ request and for their own personal convenience in order to facilitate the negotiation of the B/L. Such particulars were not checked by carriers, and/or Master and/or shipagents, nor were any documents related thereto presented to them. It is, therefore, agreed that the insertion of such particulars or the like in this B/L must not be regarded as a declaration of value of the goods shipped.”

The methods described are designed to deprive the carrier of his legal right to claim the benefit of the per package limitation and to grant the cargo owner free of charge the privileges which would have followed from an Ad valorem B/L. One remedy – and possibly the most effective – is to treat each B/L containing unnecessary particulars as a genuine Ad valorem B/L and charge increased freight accordingly. This may make shippers think twice before insisting that any such particulars are inserted in the B/L. Issuance of such an Ad valorem B/L must be reported to the Club for additional insurance cover to be effected.

4.1.11.16.6 Extent of cover for valuable cargo
As regards cover under an ad valorem B/L please see under 4.1.9.3.6.

Valuable cargo travelling under a normal B/L does not require any extra insurance unless the cargo is of the nature described in Rule 11 Section 2 (d), for which the insurance cover has been described above.

Section 2 Cargo liabilities during through transports and lighterage

4.2.1 General
Traditionally the cargo owner himself or through a freight forwarder made individual contracts with each link in the chain of transportation to bring the goods to their destination. To an increasing extent, transport systems have been developed where the cargo owner only needs one contract with the carrier who will organise the whole transport on his own ship in combination with other necessary means of transportation.

A through transport is a chain of sea transports, whereas a combined or multimodal transport includes various modes of transportation such as road, rail, air combined with sea transport.

The chain of transportation must include the entered ship for liability to be covered under this clause. If the entered ship is not involved, the Member acts as a forwarding agent. As stated in comments under 2.5, liabilities incurred in that capacity are not covered.

A Member who has agreed to arrange a through or combined transport may become liable against the cargo owner for loss or damage which occurred when the cargo was in the custody of any of the other carriers involved. It follows from comments under 2.6 that the cover is strictly related to the operation of the entered ship. Liabilities arising on transports other than on the entered ship are not covered unless stated in these Rules or otherwise agreed. This clause describes the extent of cover for liabilities arising while the cargo is in the care of another carrier or being lightered.
4.2.2 Through transports

Members carrying out through transports where cargo is intended to be in the custody of another carrier and partly onboard the entered ship must submit terms and conditions of the through B/L to the Club. Furthermore the Member must satisfy the Club that when cargo is not in the custody of the entered ship cargo is carried on approved terms such as CMR or similar conventions or liability legislation. This is important since the door must be kept open for a recourse action against the underlying carriers if the Member is forced to pay in the first instance under a through B/L. See under Rule 10 Section 2 (b). The Club will assist Members to draft contracts on terms which protect the Member’s rights and insurance cover.

A Member has no legal obligation to assume liability for those who perform separate legs of the transport. On the contrary, The Hague and the Hague-Visby Rules allow the carrier to exclude liability for any loss, damage or delay which occurs during a stage of a through or combined transport not performed by the carrier. However, even if the carrier makes such an exclusion, he may have to pay the claim eventually where it cannot be established in whose custody the cargo was when it was damaged or lost.

Investigating, handling and settling claims under a through or combined transport B/L requires knowledge and experience of the applicable system imposing legal liability in respect of transport on sea, road, rail and air. It is recommended that Members contact the Club when damage or claims have been reported on cargo travelling on a through or combined transport B/L issued by the Member.

Usually the handling of such a claim requires close contact with the carrier in whose custody the loss or damage occurred and with his liability underwriter. As the money paid in settlement to the cargo owner will be claimed back from the carrier who is ultimately responsible, it may be necessary to keep him or his liability underwriter informed of major developments and to secure extensions of any applicable time bar.

As in all recovery situations, Rule 14 applies according to which the Club inherits the Member’s right of recovery if it has agreed to compensate the Member for his loss. As described in comments to Rule 14, the Member has an obligation to assist the Club in exercising his right of recovery.

A convention on International Multimodal Transport of Goods (1980 UN) has been drafted but has not yet entered into force.

4.2.3 Transhipment under direct B/L

The cover for transhipment liabilities under this clause requires the issuance of a B/L to meet the standards of Rule 10 Section 2(b). If transhipment of cargo travelling on a direct B/L is undertaken, the carrier may be held liable for deviation in certain jurisdictions (see comments under 4.8.3.6). All B/L forms should, therefore, contain a suitable clause allowing the carrier to transship or feeder the cargo in transit. If such relay of the cargo is considered customary as, for instance, in the container ship industry, the court may find that the transshipment did not constitute a deviation or, at least, that it was not unreasonable.
4.2.4 Lighterage
The second part of this clause describes the Member’s cover for liabilities arising during lighterage.

4.2.4.1 Lighterage must be contractual
To be covered, the lighterage must be contractual. The are two types of contracts involved. Firstly, the lighterage must be in accordance with the contract of carriage for the cargo in question. If the B/L, C/P or other freight contract does not permit lighterage or if it is otherwise considered to be a breach of contract, there is no cover under this clause. Secondly, there is probably a contract between the Member and the owner or provider of the lighter. Such contract should be on standard terms or on the most favourable terms obtainable locally. If the Member has contracted lighters on unusually burdensome terms, cover may be lost under Rule 10 Section 2.

4.2.4.2 Lighterage must be customary
To be covered, the lighterage must be customary. This means that the lighterage must be carried out in port. Lighterage outside a port or during tow from one port to another is not considered customary in the sense of this clause. Liability during such lighterage is covered only if approved by the Club. Furthermore, even lighterage within a port may not be customary. To be covered, it requires that such an operation constitutes an established practice in that particular port for ships and cargo of the relevant type.

Section 3 Liabilities for bill of lading particulars
4.3.1 General
According to the Hague and Hague-Visby Rules, the carrier shall on demand of the shipper issue a B/L showing among other things either the number of packages or the quantity or weight of the goods together with its apparent order and condition. The B/L is considered to be evidence that the description it contains is accurate. The carrier may be liable if the nature, quantity or condition of the cargo does not match the description in the B/L. The Hague and Hague-Visby Rules, however, also contain some important exclusions from this liability. For further details see comments under 4.1.8.13-14.

The world trade of goods is based on the presumption that the B/L particulars constitute a true description of the goods and that the B/L can be negotiated as a substitute for the goods. The legislation is strictly enforced against carriers. Therefore, Members should take great care to thoroughly control the goods at the time of loading to ensure that the B/L issued truly reflects the actual quantity and condition.

This section of Rule 4 defines the extent of cover against liability for B/L particulars. The Member is covered for liability he may incur for an incorrect or incomplete description of the cargo or other incorrect statements in a B/L, waybill or other document containing or evidencing the contract of carriage with two important exceptions. Firstly, according to (a) there is no cover for antedated or postdated Bs/L. Secondly, under (b) cover is excluded when a B/L is issued which deliberately contains an incorrect description of the goods. This is particularly evident when a back-letter or letter of indemnity has been issued in lieu of a clean B/L.
4.3.2 Antedated or postdated Bs/L

4.3.2.1 A B/L should be dated when loading is completed

The issuance of a B/L is confirmation that the goods of a nature, quantity and condition as specified in the B/L have been received by the carrier and loaded onto the ship (On Board B/L). The date of the B/L should be the date when loading was completed.

An antedated B/L records the loading as having been completed prior to the date the cargo was in fact loaded. A postdated B/L bears a date subsequent to the actual loading.

A Received for Shipment B/L can be equally wrong if it is dated before or after the day the cargo was actually received by the carrier. The same principles apply to waybills.

4.3.2.2 Effects of antedating and postdating

Carriers do not always appreciate the significance of the B/L date and the liability risk which a wrongly dated B/L may present. Market prices for many commodities vary from day to day. New market prices are quoted weekly or monthly. A buyer may find that he paid March prices for a cargo where the loading was not completed until early April and that the market price quoted for April was lower than that for the March shipment. He will no doubt claim the difference in price from the carrier alleging that he was purposely deceived by the issuance of the misleading B/L. He can easily establish the correct loading date from the ship's deck log and from other official documents at the port of loading. Being in breach of the freight contract, the carrier may have to pay not only the difference in price but also consequential damage and fines. The usual limitations and exclusions of liability will probably not apply.

The situation can be even worse. There may be official export or import permits valid only for loading before a certain date. Currency restrictions or the terms of the letter of credit may make the sale of the goods conditional upon loading before a certain date. If the carrier agrees to provide a shipper with a B/L dated to comply with the terms or conditions and it is subsequently revealed that loading was still not completed at that time, the receiver may be refused the import permit or the money to negotiate the B/L. The liability consequences for the carrier who issued the misleading B/L can be disastrous.

An innocent carrier is also liable for the false date of a B/L when issued by shipagents in the normal course of their duties.

4.3.2.3 No cover for antedating and postdating

The essence of item (a) of this clause is that there is no cover under the P&I insurance for the consequences of an antedated or postdated freight contract. The exclusion applies regardless of whether or not the Member knew that the B/L was antedated or postdated.

Shippers eager to persuade the carrier to issue a wrongly dated B/L may offer a back-letter in favour of the carrier. If the carrier subsequently succeeds in tracing the shipper at all, he will be disappointed to find him equally persuasive that he has neither the means nor the intention to honour his obligations under the back-letter.
4.3.3 Incorrect B/L particulars

4.3.3.1 General views on incorrect B/L particulars

The second exclusion from cover under Rule 4 Section 3 is contained in item (b). It is in respect of liability for description in a B/L of cargo, its quantity and condition, which the Member or the master of the entered ship knew to be incorrect. The exclusion can also be applied to situations where the Member had no actual knowledge of the incorrect B/L particulars but where the B/L was issued by a shipagent whom the Member knew or ought to have known was being lax in his duties.

4.3.3.2 The carrier’s obligations with regard to B/L particulars

As mentioned earlier, the carrier shall upon demand of the shipper issue a B/L showing among other things either the number of packages or the quantity or weight of the goods together with their apparent order and condition. A reference to the cargo’s country of origin is regarded as part of the description of the cargo. The B/L is considered evidence that the description it contains is correct. Under the Hague-Visby Rules, a clean B/L is even conclusive evidence, which means that the carrier is estopped from bringing evidence that the goods were damaged when received.

The B/L particulars should be confined to the main object/s shipped and should not contain more information than the carrier has reasonable means to check. For instance, to state in a B/L for unboxed cars that they are equipped with battery, spare tyre, wind-shield, wipers and repair tool kit may imply that the presence of those items listed were duly checked and confirmed on each car by the carrier at the time of loading. It would impose a documentary liability for the carrier where such equipment was found to be missing at destination. It is bad enough for the carrier to be exposed to the liability rules on transport liability for such theft-prone and easily accessible items, which ought to have been shipped separately and crated although, admittedly, that is seldom done.

To establish the apparent order and condition of the goods requires an organisational routine at the time of loading capable of performing a reasonable inspection of the goods to verify the particulars to be inserted in the B/L. Packages should be tallied. The quantity of bulk cargo should be established by reading of ullage or draft. See comments under 4.1.11.9.1-3. The external condition of goods should be checked in a reasonable way and samples taken where necessary. It has been said elsewhere in these comments that the ship’s officers are not required to have a scientific degree on cargo carried, but they should be qualified, knowledgeable and experienced and have reasonable access to basic information. If in doubt as to the condition of the cargo they should call in qualified, independent surveyors and avail themselves of the experience, assistance and service of the Club’s local correspondent.

4.3.3.3 Clausing of B/L

Any observations made which confirm or indicate that the cargo is not complete or does not match the nature, quality or description, should be noted in the B/L. For practical examples in relation to certain types of goods, see comments under 4.1.11.3.5, 4.1.11.5.2.3, 4.1.11.9.1.3, 4.1.11.13.5, 4.1.11.14.2 and 4.1.11.16.4. Such qualifications are usually first made in a Mate’s Receipt or similar document. It is important that the notations as made be copied into the B/L.
That may sometimes be difficult to achieve where a vessel is in charter and the Bs/L are drawn up and issued by the charterer. Members are especially warned not to accept clauses which compel the master to issue clean Bs/L in exchange for an undertaking by the charterer to indemnify the Member against cargo claims. That would be regarded as contractual terms not approved by the Club according to Rule 10 Section 2. On the contrary, a C/P should contain stipulations to the effect that charterers are only authorised to issue Bs/L in conformity with Mate’s Receipts or Tally Clerk’s Receipts and that charterers shall hold the owner harmless if in breach of contract.

A notation to be inserted in a B/L must clearly and in unequivocal terms define the nature and extent of the unsatisfactory condition of the cargo. If 23 paper reels are found oil stained at the time of loading the remark should say so and not “some reels damaged”. No praise or understanding is to be expected from the shipper when the carrier tries to fulfil this obligation laid upon him by applicable law. Even shipagents tend to take the shipper’s side in such a situation. The Club’s local correspondent, who has no commercial interest in the dispute, is available to assist a Member and his master to adequately clause the B/L.

4.3.3.4 Back-letters

The reason why shippers want a clean B/L or at least try to dilute the force of the notation is that most trading of cargo is financed by a letter of credit. Mostly, it is part of the terms of such a letter of credit that the B/L should be clean. As usual, the carrier is caught in the middle and under heavy pressure to either turn a blind eye to the cargo damage or accept a back-letter in exchange for a clean B/L. Shippers may even threaten the carrier to stop the loading and have the entire cargo discharged in order to have it further examined. As this would mean delay, extra expense and probably a claim for non-performance of the freight contract, it is recommended that Members contact the Club for advice and legal assistance at an early stage of any such pending dispute.

A Member who gives in to pressure exerted by shippers and agrees to issue a B/L with a description of the cargo, its quantity or condition which either he or the master knew was incorrect, has no cover under these Rules for any ensuing liability. He would soon find himself in trouble. A claim would be filed against him by the receiver on the strength of the clean B/L. There would be no point in revealing the existence of the back-letter as this would make the carrier unconditionally liable. At the same time, the carrier would be unable to discharge his burden of proof under the Hague or Hague-Visby Rules for the simple reason that the damage as claimed did not occur during the period of transport. It remains for the carrier to settle as best he can with the owner or underwriter of the cargo, and then try to recover his uninsured loss from the shipper under the terms of the back-letter. The carrier will probably find the shipper less favourably disposed to foot the bill - if the shipper can be found at all. In a number of countries, the carrier has no legal means to sue the shipper under a back-letter following the principle that a claim based on a fraudulent document is unenforceable.

A master who has failed to have a B/L adequately clause may wish to let off steam by making an entry accordingly in the deck log. However, by doing so, he would produce evidence easily accessible to the owner or underwriter of the cargo that an incorrect B/L was, in fact, issued. That is not recommended.
If no other solution is available, the carrier may have to consider the possibility of accepting a guarantee in his favour. As the extent of liability is considerable and as those risks are excluded from cover, it is important to the carrier that the guarantee is drafted and reinforced in such a way that he is protected to the fullest extent. See further comments on guarantees under 4.4.5.4.

4.3.3.5 Claimant’s burden of proof
For a claimant to prove that the carrier failed to deliver at the port of discharge goods of the nature, quantity and condition as specified in the B/L, he must fulfil his burden of proof as described under 4.1.4.

Evidence of shortage should be carefully scrutinised even if issued by official authorities such as customs shortage certificates. The certificates do not carry more weight as evidence than the reality they reflect. If the tally or measurement system is poor, which it often is, or the certificate reflects observations made long after discharging, the certificate should be contested and the claim rejected as lacking sufficient evidence. It underlines the importance of information and observations from the ship and the local shipagent on local conditions in general and at the ship’s call in particular.

Section 4 Liabilities for delivery of cargo
4.4.1 General
Even if the carrier has fulfilled his obligations to care for the physical well-being of the goods under Sections 1 and 2 of this Rule and to describe it properly in the B/L under Section 3, the purpose of the transport would still be unfulfilled if he eventually released it to somebody who was not entitled to receive it. Failure to observe regulations regarding proper delivery of the goods may render the carrier liable for considerable amounts. The cover for such liability is described in this clause.

4.4.2 Delivery against original B/L
4.4.2.1 Requirements for delivery
The basic rule for delivery under a B/L or other similar negotiable document is that it should be made to the first party who turns up at the port of destination in possession of and presenting an original B/L, which is either issued in the party’s name as receiver or contains an unbroken chain of endorsements in the party’s favour.

The credentials of the B/L holder should be checked before delivery. If the result leaves doubt in the carrier’s mind or if there are other circumstances indicating that the receiver’s title to the goods is questionable, the cargo should be withheld pending further investigation such as presentation of all original Bs/L. If this request cannot be met, the carrier should let the appropriate court decide to whom the cargo should be released. Any such complications should be reported to the Club at an early stage to obtain advice and legal assistance.

4.4.2.2 No delivery against copies
Attempts have been made to introduce a system where cargo should be released against photocopies of the original B/L. To gain some respectability, such copies have been labelled ”First Original Specimen” or similar. Whatever it is called, it remains a copy against which no delivery should ever be made. Release of cargo against a copy B/L is equal to delivery of cargo.
Rule 4 Liabilities in respect of cargo
Section 4 Liabilities for delivery of cargo

without presentation of B/L for which there is no cover under these Rules. See comments under 4.4.5.

4.4.2.3 No more than one set of original Bs/L
The carrier should, under no circumstance, allow more than one set of original Bs/L for each consignment to be on the market at the same time. There may be bona fide requests for the replacement of a set of Bs/L once issued. The new set should then replace the previous set through a "hand in hand" exchange. When returned, the old set should be destroyed or otherwise invalidated. It is recommended that Members contact the Club for advice if needed.

4.4.2.4 Original B/L travelling with the ship
The carrier is sometimes asked by shippers to leave one of the B/L originals in the ship’s mail to be delivered to the shipagents in the port of discharge. The idea is that the agents have it signed by the receiver in such a way that delivery can be made against that original. There is a danger, however, that the other originals have been acquired by another receiver or are in the hands of the bank arranging the letter of credit. If the letter of credit is not honoured by the receiver because of insolvency or commercial disputes among the parties, the bank may not be compensated for the purchase price advanced to the shipper. Normally the bank would be able to control the situation by having all original Bs/L in its possession. If the cargo has been released against the original travelling with the ship, the bank’s credit is unsecured. It will no doubt explore a way to get compensation from the carrier by questioning the legality of the procedure under which delivery was effected. In a joint circular issued in July 1990, the Group Clubs warned Members against this practice. If Members still have to comply with such a request, the Bs/L issued should be clauscd as follows:

"One original Bill of Lading retained on board against which Bill delivery of cargo may properly be made on instructions received from shipper/charterers”.

This would act as a warning to any body considering acquiring the remaining Bs/L or granting any credit for the sale. It is still recommended that Members request a letter of indemnity from receivers/charterers and to follow any instructions given by the shippers, check who is the proper receiver and ask for an explanation why none of the remaining Bs/L are presented. For liabilities arising from delivery against a B/L travelling with the ship, the Club will consider whether, under the circumstances of the case, it qualifies for cover under this clause. If not, it only remains for the Member to apply for compensation under Rule 19, the Omnibus Rule.

4.4.2.5 Change of destination
The obligation of the carrier to request the presentation of one of the original Bs/L is in respect of delivery at the port of destination mentioned in the B/L. To comply with a request from the cargo owner to take delivery in any other port, the carrier must insist on presentation of a full set of all the originals. Delivery against less than a full set is equal to delivery without presentation of Bs/L. The liability is excluded from cover by application of item (a) of this clause and also by Rule 11 Section 2 (i). See comments under 11.2.2.9.

If, in a charter situation, there is a change of destination for which the Bs/L have been issued, an owner Member should make it a condition before agreeing that a letter of undertaking is
4.4.3 **Blank Bs/L**
Sometimes masters are requested to sign blank Bs/L as a part of an early departure procedure. Masters should bluntly refuse and immediately contact the owner or the nearest Club correspondent for instructions and assistance.

4.4.4 **False Bs/L**
False Bs/L are used as tools to commit maritime fraud. They can be for either a completely fictitious cargo or a consignment which already exists and for which there is a genuine set of Bs/L on the market.

The possibility of a successful defence against a claim from the acquirer of a B/L of the first type is good in most jurisdictions. A deceived receiver will, however, have the sympathy of a local court, especially if the preparation of the false B/L can be traced back to the carrier’s organisation. Members are advised to tighten access to information, blank B/L forms, rubber stamps, signatures and other means which could be used to prepare a false B/L.

The problem is more serious if delivery of a consignment is made against a false B/L before the rightful holder of the genuine B/L has collected his goods. It is difficult to predict the outcome of legal proceedings regarding the carrier’s liability. An analogy will probably be made with local rules on the creditor’s obligations against the debtor when payment has been made on a false IOU. Suffice it to say that the carrier will be asked to prove that he acted in good faith, that he prudently checked the authenticity of the document and its endorsements and that his servants did not participate in the preparation and distribution of the false document.

If the carrier is held liable, it will probably be for at least the full market value of the consignment at the port of destination. The amount can be considerable.

Depending on the details of each case, the Club will consider whether liability under a false B/L qualifies for cover under this clause. If not, it remains for the Member to apply for compensation under Rule 19, the Omnibus Rule.

4.4.5 **Delivery of cargo without production of B/L**
4.4.5.1 **General views on delivery without production of B/L**
Carriers of goods at sea often meet the demand of speedy transport only to find that those who made the demand did little to achieve an equally speedy processing of the shipping documents, which are often held up in the banking system, the mail or governmental export/import or exchange control. The result is that the cargo arrives at the port of destination before the documents which the receiver needs to take delivery.

Instead of praise for speedy performance, the carrier is requested to release the cargo instantly in the absence of the shipping documents. Receivers seem to believe that they are entitled to delivery of the cargo once it has arrived at the port of destination. The presentation of the
Bs/L is looked upon as a pure formality and an owner who insists on his lawful rights as the worst kind of bureaucrat.

Receivers often refer to the "impossibility" of producing the Bs/L. Members should not believe those statements. We have seen too many cases where a firm attitude on the part of the carrier has caused the "missing" document to turn up miraculously the following day. A slow system in trade or banking is no excuse. Today’s communication systems make it possible to process and send documents all over the world within 24 hours.

Systems of computer transmitted Bs/L are being developed. They may eventually solve or at least reduce the problem of unavailable Bs/L. For further comments, see Rule 4.5.2.

4.4.5.2 No cover for delivery without production of B/L

The truth is that the carrier simply has no legal right to release the cargo unless proper Bs/L are presented. As stated in this clause, there is no cover for a carrier who gives in to a persuasive receiver. As we are talking about cargo worth a considerable amount, it is asking much of a carrier to stick his neck out and risk his future to please a slow receiver. The Club’s advice is and will always be that Members should take a firm stand against any request to release cargo without presentation of the B/L.

There is no cover under this clause even if cargo has been released through no fault of the Member by shipagents acting against or beyond instructions. The only remedy open to the Member is to attempt a recovery from the agents. They may, however, be protected by the contract under which they operate or just have no assets to meet their obligations. If they have liability insurance cover it probably contains a limit on compensation. If the Member is entered for FD&D, the Club may handle the recovery action.

There is no cover when, for instance, under Islamic law, the carrier is required to release the cargo and accept a bank guarantee if the B/L is not available. Compensation can only be sought under Rule 19, the Omnibus Rule.

4.4.5.3 Storage of cargo inaccessible to receiver

There are situations where the ship cannot be left lying idle indefinitely with the cargo on board waiting for a missing B/L. Members should then investigate whether it is possible to discharge the cargo to a custom’s bonded warehouse or any other separate location where it could be stored, inaccessible to the receiver until the B/L turns up. Such storage may be difficult to arrange for reefer or bulk cargoes. The Club’s local correspondent will assist the shipagents to solve possible problems.

4.4.5.4 Guarantees

If no other solution is available, the carrier may have to consider the possibility of accepting a guarantee in his favour. As the extent of liability risks are considerable and as those risks are excluded from cover, it is of importance for the carrier that the guarantee is drafted and reinforced in such a way that he is protected to the fullest extent.

With the understanding that the Member takes full responsibility for the decision to accept the guarantee, the Club is prepared to assist the Member in making suitable arrangements.
The Club should be consulted in time such that problems arising can be solved before discharging starts.

The Club circular P.2227/1984 contains a suitable text for a guarantee drafted jointly by the Group Clubs. The Club will assist Members in adapting the text to the circumstances of each individual case.

When an owner asks a receiver to provide a bank guarantee, he is often told that other owners have been ready to accept the receiver’s own guarantee or other less protective arrangements. Such statements should be ignored.

Members should insist that the guarantee be issued by a first class bank. In the U.S., a corporate surety bond should be issued by a reputable bonding company. It is incumbent upon the Member to decide whether to accept a guarantee signed by the receiver or the charterers only. If so, it has to be a receiver or a charterer whose ability and willingness to honour his obligations is beyond doubt. Still, it is advisable to have the guarantee countersigned by a first class bank.

The amount of the guarantee should be open. If an open guarantee is unobtainable, the amount should not be less than twice the CIF value of the goods. The reason is that a court would consider the receiver’s claim to be based on a breach of contract which would probably make the carrier unconditionally liable for the loss without the usual Hague Rule limitations or exclusions of liability and for indirect consequential damage. The carrier’s exposure may exceed the CIF value considerably.

The lifetime of the guarantee should not be restricted. Owners are often offered guarantees limited to 13 months from the date of issue. The suggestion is that such a guarantee would protect the carrier during the 12 months that he is open to claims under the Hague Rules (see comments under 4.1.10) and provide him an additional month’s time to file a recovery action under the guarantee. The Hague Rule time limit, however, may not be applicable to a claim for breach of contract. Then the 6-year limit under English or U.S. law may apply, which would require a lifetime of at least that duration. Banks may not always be willing to issue an open ended guarantee. Such restrictions do not apply to guarantees issued by charterers or receivers.

4.4.5.5 Charter situations
Ships on charter may be threatened to be declared off hire for delays caused by the master refusing to start the discharging, pending the presentation of proper Bs/L. Where the refusal to release the cargo is not caused by an unjustifiable act on the part of the Master but in compliance with his dual duty to protect both the owner and the charterer in the situation of an unavailable B/L, the charterer is not entitled to declare the vessel off hire. The situation may be different if the owner has agreed in the C/P to release the cargo without presentation of original Bs/L in exchange for a guarantee. Owner Members are advised not to accept clauses to that effect.

A situation where the charterer’s routine for delivery of cargo may conflict with the owner’s wish to obtain adequate security against uninsured risks occurs when a chartered ship is
operated in liner service. The release of the cargo is then arranged by the charterer’s agents, often a considerable time after the discharging. Should the charterer or his agent intentionally or negligently release the cargo without producing Bs/L, the rightful cargo owner may attempt to arrest the ship and file his claim against its owner. Even if there is no contract to be breached between the owner and the receiver, in some jurisdictions the owner may be held liable. When negotiating a fixture for liner service where this liability could materialise, it is recommended that Members include a clause in the C/P to the effect that the charterer agrees to release cargo only against presentation of proper B/L and that he assumes full responsibility in relation to the Member including posting of security in case the Member’s property is attached. Whether such a commitment in the C/P should be reinforced by a guarantee issued by or on behalf of the charterer is a question which the uninsured Member has to decide on the basis of his trust in the charterer’s ability and willingness to honour his obligations if put to the test.

4.4.6 Misdelivery under non-negotiable freight documents
Whereas item (a) of this clause deals with the situation of negotiable documents such as Bs/L, item (b) is in respect of non-negotiable documents such as non-negotiable or straight Bs/L and waybills. The meaning of non-negotiable is that the document and the rights that go with it cannot be transferred to a third party. The person has to identify himself as either the receiver named in the document or lawfully nominated by the shipper as the person to whom delivery should be made. If a Member incurs liability because cargo travelling under a non-negotiable document is released to persons other than those two categories authorised to take delivery, such liability is excluded under item (b) of this clause. Before agreeing to release the cargo to any person not authorised to receive it under a non-negotiable document, the carrier has to consider, at his own risk, whether to take the precaution of obtaining a guarantee as described above.

4.4.7 Production of non-negotiable document
Sub-paragraph (c) takes delivery under a non-negotiable B/L, Waybill or similar document one step further and requires production of the non-negotiable document if that is an express condition of the non-negotiable document.

The non-negotiable document constitutes an important part of modern trade and to demand presentation would limit the benefit of a fast and simple delivery of cargo. A decision in the House of Lords, The Rafaela S, has however changed this and the most significant implication of the decision is that a non-negotiable B/L is a document of title and needs to be presented unless it is clear from the document that production is not required. In addition to England, France and Holland have similar interpretations of non-negotiable documents.

Member’s attention is therefore drawn to this new practise and failure to deliver cargo against presentation of a non-negotiable B/L, Waybill or similar document when required could jeopardize club cover.

Section 5 Paperless trading
4.5.1 General
This Rule was introduced after cooperation between the International Group Clubs in reviewing electronic trading systems proposed by Bolero and Electronic Shipping Solutions (ESS). These systems intend to establish a technological environment in which paper Bs/L
and other trade documents may be replaced by secure electronic messages. The aim of the Clubs has been to ensure that liabilities arising under an electronic transaction is the same as would arise under a paper transaction. However as long as there is a risk of exposure of certain liabilities which are not of a traditional P&I nature Members need to be aware that other insurance arrangements may be required.

4.5.2 Cover of electronic trading system
According to circular P&I 2506/2010 two electronic trading systems have been approved by the International Group of P&I Clubs namely Bolero and ESS. Consequently cover is afforded under the Rule for these two systems but only to the extent that liabilities, losses, costs and expenses would not have arisen under a paper trading system. The Club will in its sole discretion decide whether such claims that might arise under a paper trading system will be covered.

According to a-c of the Rule an electronic trading system intends to replace negotiable paper documents which are documents of title, entitles the holder to receive cargo and to transfer the right and obligations to a third party.

An electronic document is a document where information is recorded which could either be computer or electronically generated.

Section 6 Extraordinary handling costs
4.6.1 General
The cover under this clause is in respect of certain handling costs incurred by the Member. It constitutes an exception from the basic principle that the P&I insurance provides protection only against third party liabilities. As an exception, the clause should be given a restrictive interpretation.

The adverse consequences of cargo damage for the carrier are not limited to the risk of claims from the cargo owner and his underwriter. The carrier is often left with the difficult and expensive task of removing the damaged cargo from the ship. If the consignees refuse to take delivery of the damaged cargo, the carrier may have to arrange storage before the cargo can be disposed of. Worthless cargo may have to be dumped or destroyed at the carrier's expense.

Such costs may be high. Water damaged cement may burn in the hold and have to be removed through the use of jackhammers. Asphalt, paraffin wax and high viscosity oil products may solidify after a heating coil breakdown. Special storage tanks may have to be rented for contaminated oil pending reprocessing. The unforeseeable nature of such potential costs justifies the extended protection under the P&I cover which was introduced in 1967.

There is no requirement that the Member should be legally liable to take the action for which compensation is requested. The Member is entitled to compensation for such costs reasonably incurred.

4.6.2 Discharging or disposing of damaged, rejected or worthless cargo
4.6.2.1 "Discharging"
"Discharging" under item (a) implies that the cargo should have been on board the entered ship. Handling costs in relation to cargo left behind in the port of loading are not covered.
Discharging means bringing the cargo ashore. At some stage, the discharge of damaged cargo may turn into cleaning of the cargo compartments in preparation for the next voyage. The costs of such cleaning operations are not covered. Where to draw the line between discharging and cleaning may be difficult. It has to be decided on a case-to-case basis.

Discharging should be performed at the contractual port of destination. Discharging costs in an intermediate port are covered only to the extent item (b) of this clause is applicable. Costs for restowage of damaged or shifted cargo in an intermediate port can only be reimbursed under Rule 19, the Omnibus Rule.

Liability or costs for restowage of cargo which shifted because it was incorrectly stowed are excluded under Rule 11 Section 2 (c). See comments under 11.2.2.3.

For practical and administrative reasons, it may be impossible to perform the discharging of the damaged cargo at the port of destination. In such a case, the ship may have to deviate to another port. The costs of such a deviation are not covered. Compensation for loss of time, freight or hire are excluded under Rule 11 Section 2 (j).

4.6.2.2 Extraordinary handling costs
Costs to be compensated should be of an extraordinary nature. This means that a deduction should be made for costs saved for the normal discharging and handling of the cargo had the damage not occurred. The cover is limited to costs which are clearly for extra labour and equipment. The Member may be asked to supply records of previous, similar discharging operations in order to establish by comparison the extraordinary expenses recoverable under this clause.

In addition to extraordinary costs of discharging, the carrier may be forced to store the cargo separately or destroy it if this is required by the authorities or the cargo is just worthless. All costs reasonably related to such handling are covered.

To be covered, the extraordinary expenses should be related to cargo which is damaged, rejected or worthless. No special reason for the rejection is required. It is sufficient that the receiver has failed to clear his cargo. When disposing of such cargo, it is important that all regulations be observed in relation to the receiver, customs and other parties involved. The Club and its local correspondent will assist the Member. It may be necessary to sell the goods at public auction. If any surplus is generated, it should be used to limit the consequences of the loss or action taken.

Crew wages or overtime for the use of the ship and its equipment in connection with the handling, discharging or dumping at sea of damaged, rejected or worthless cargo are not compensated following the principle that the Member should use his own organisation to reduce his insurance costs. Rule 8 Section 2, however, may apply.

4.6.2.3 Handling costs of counterfeit/fraudulent cargo
It has become increasingly common that containerised cargo contains counterfeit or fraudulent cargo. Counterfeit cargo when detected by customs authorities is usually confiscated. Costs for unstuffing the container into customs custody are either preformed by and/or paid for
by the carrier. The cost of unstuffing is covered under this Rule. Fraudulent cargo is usually exchanged for the intended product described in the B/L. As an example a container of new tyres is exchanged for used tyres or waste products in exchange for the weight of the intended cargo of TV sets. Costs of discharging such fraudulent containers are also covered under this Rule.

4.6.3 Extraordinary handling related to Hull damage

Item (b) of the clause defines the cover for certain costs or expenses in relation to the cargo where the ship has sustained damage recoverable under the Hull policy. When such damage has been sustained - and only then - the costs and expenses to discharge, handle, store and reload the cargo are recoverable.

Cargo handling described under this item is covered, for instance, to allow the entered ship to drydock for repairs following a casualty covered under the Hull policy. Storage of cargo during ship’s drydocking is however limited to 3 months. If cargo is stored longer than 3 months Members are requested to contact the Club to arrange additional insurance cover. If one of the ship’s cranes is damaged by heavy weather during the voyage, the cost of hiring a shore crane to perform the necessary cargo operations is covered. There is no cover, however, if the crane breaks down due to wear and tear as that is not a marine peril recoverable under the Hull policy.

Costs or expenses for extraordinary cargo handling may sometimes be recoverable in general average. Compensation under this clause is allowed only if and to the extent no such recovery is possible.

4.6.4 Cover is subject to Rule exclusions

The cover is subject to the exclusions under these Rules, especially Rule 11 Section 2. It follows for instance from item (c) of that clause that there is no cover for costs or expenses incurred to discharge, reload, restow, store or tranship cargo or other similar measures caused by overloading, bad trim or incorrect stowage of the ship. Should the Club exercise its discretion to allow compensation under Rule 19, the Omnibus Rule, a deduction will be made, for instance, for costs saved by the Member by not having effected the additional securing of the cargo, which might have prevented it from shifting.

4.6.5 Member’s knowledge

If the Member knew or should have known that the nature of the cargo might cause extraordinary costs as described in this clause, no compensation will be allowed. A product requiring heating may have been accepted for shipment in a tanker not equipped with adequate heating facilities, or a consignment of bitumen loaded although the drums were leaking.

4.6.6 Extraordinary costs of a preventive nature

If costs or expenses of this nature have been incurred to prevent or limit liability covered under these Rules, compensation may be allowed under Rule 8 Section 2.
Section 7 General Average

4.7.1 General


The rules on general average introduced in 1890 are now contained in the York Antwerp Rules of 1994.

Bs/L and other freight contracts should include a clause to the effect that a general average occurring during the contracted carriage should be adjusted in accordance with the York Antwerp Rules. The absence of such a clause may jeopardise the Member’s cover under Rule 10 Section 2.

4.7.1.2 Definition of general average

The York Antwerp Rules define general average as follows:

“There is a general average act when, and only when, any extra ordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.”

The following requirements must be satisfied for a loss to be recoverable in general average:

- the ship and the cargo must have been threatened by a common danger
- to avert the common danger a sacrifice must have been made or an extraordinary expense incurred
- the sacrifice must have been real and intentional
- the endangered property must have been saved by the sacrifice or extraordinary expenditure

4.7.1.3 Parties liable to contribute

The two interests most frequently involved in a common danger are the ship and the cargo. When saved by circumstances that constitute a general average, they are liable to contribute. If the common danger constitutes an insured peril, the risk of having to pay such contributions is covered for the ship by the Hull insurance (AV 2000 § 5 b) and for cargo by the cargo insurance.

The party entitled to collect freight at risk (freight payable at destination) is liable to contribute in general average. The risk can be insured.

The owner of bunkers on board is liable to contribute in general average if the bunkers are saved. Bunker insurance can be arranged through the Club.

4.7.1.4 General average security

With the exception of those cases where cargo alone has been sacrificed to avert a common danger, it is the carrier who made the sacrifice or incurred the extraordinary expense. The other interests saved owe him their respective parts to be determined later by the general average costs.

As long as the cargo remains on the ship or under the carrier’s control, he has a lien which can be exercised on the goods. This means that the carrier can retain the cargo as security.
for payment of his contribution. In order not to jeopardise that security, the carrier should release the cargo against either a cash deposit or an average bond signed by the cargo owner or backed by a guarantee from his underwriter.

4.7.1.5 General average adjustment

General average is adjusted by an average adjuster. The place of adjustment should be set out in the appropriate clause in the contract of carriage.

In straightforward cases, and upon agreement by the parties, general average can be adjusted by their respective underwriters.

The initial intervention of the average adjuster is generally to assess and arrange the cash deposits or to collect the average bonds and guarantees.

The average adjuster will then proceed with the allocation of the sacrifice made and the extraordinary expenses incurred proportionally on interests saved. This procedure generally takes considerable time, especially when there are a large number of cargo owners to contribute on a general cargo ship.

When published, the general average adjustment contains a complete breakdown of each party’s obligations to either compensate or be compensated. Those obligations will be met out of the security posted.

4.7.2 Unrecoverable general average contributions

4.7.2.1 General views on unrecoverable contributions

As indicated, the shipowner is mostly out of pocket with the costs of a general average whether those costs were caused by sacrifices made or extraordinary expenses incurred. However, he will be compensated under the Hull insurance for general average damage to the ship, allowed in the general average adjustment but unrecoverable from cargo.

There may be several reasons for the inability to recover such contributions. This clause defines the situations where unrecoverable general average contributions are compensated under the P&I insurance.

4.7.2.2 Effect of fault

4.7.2.2.1 Cover where Member is liable for fault

A party who caused or contributed to the general average by negligence may not be entitled to contributions from the other parties. To have that effect, the negligence has to be of a nature, the consequences of which the party has legal liability for. As appears from comments under 4.1.8, there are situations where liability for the carrier is excluded under the Hague or Hague-Visby Rules even if caused by his negligence. In most countries, the carrier retains his right to contributions in such a situation.

However, in cases where a contribution is unrecoverable because the general average was caused by negligence for which the carrier is liable, the Member’s loss is covered under this clause.
It requires that the Member’s negligence is not of such a nature that any exclusions of cover under these Rules apply.

4.7.2.2.2 New Jason Clause
Under U.S. law, the shipowner is unable to recover contributions from the other parties if he or his servants caused the general average by negligence regardless of whether that negligence entailed liability or not.

To avoid that effect, the contract of carriage should contain a New Jason clause according to which the cargo owner shall contribute to any general average whether due to the carrier's negligence or not. According to Rule 10 Section 2, there is no cover for contributions unrecoverable because the contract of carriage lacked a New Jason clause.

4.7.2.2.3 Payment of compensation
The shipowner is mostly out of pocket for cargo’s proportion in GA and he so remains until that proportion has been assessed and collected. That may take time and the amount may be considerable. Still, it is not the purpose of the cover under this clause to provide the Member with a loan until the contributions have been collected. The clause states that the cover is for those contributions which are unrecoverable. It should be applied accordingly.

Compensation is generally allowed by application of the following principles. A final GA adjustment should have been issued, and it should be reasonably clear that the contributions are refused or otherwise not forthcoming. Reasonable efforts should have been made by or on behalf of the Member to investigate and overcome those objections in order to recover the contributions. The Club should be informed and given the opportunity to advise and assist the Member. When efforts have failed or a favourable result is unlikely or expected to involve considerable delay, the Member may claim compensation under this clause.

For any compensation paid, the Club inherits the Member’s rights against the contributor by application of Rule 14. Against payment of the contribution the Club may ask the Member formally to assign his rights against cargo and to post any necessary security for the return of the advance if that situation should arise.

It is not possible exactly to define the moment when compensation is due. It will be judged on a case-to-case basis. However, a minimum of six months must have passed from the date of the issuance of the GA adjustment. No more than 80 percent of the outstanding contributions will be advanced. The balance will be paid when it has to be accepted that the contributions are finally unrecoverable.

4.7.2.3 Effect of deviation
If general average is caused by an unjustified deviation, the other parties may refuse to contribute. What constitutes an unjustified deviation appears from comments under 4.8.2.

According to Rule 4 Section 8, liabilities arising out of an unjustified deviation are not covered. Consequently, there is no cover for general average contributions unrecoverable because of an unjustified deviation.
4.7.2.4  Obligations to complete the contracted carriage and its effect on liability and cover

4.7.2.4.1  General views on obligations to complete the contracted carriage

A casualty to the entered ship does not automatically terminate the contract of carriage. The carrier’s obligation to complete the voyage continues until it is reasonably clear that performance of the transport is impossible. Such decisions are difficult to take and the liability consequences serious. Therefore, Members should avail themselves of the Club’s advice and recommendations.

4.7.2.4.2  Abandonment

If the damage to the ship is extensive or if it is otherwise impossible to continue the voyage, the contract of carriage may be frustrated. If and when a contract shall be considered frustrated has to be decided according to the situation in each individual case. A contract may become frustrated by an event which makes it physically or commercially impossible to continue the voyage. The carrier’s decision can be challenged by the cargo interests.

If the contract of carriage has become frustrated, the carrier is entitled to abandon the voyage. This means that the voyage ends where the cargo is. The carrier retains the basic obligation to care for the cargo as circumstances permit and to release it to its rightful owner.

The Member is covered under these Rules for the actual duration of the abandoned voyage but should co-operate closely with the Club and its representatives in order to make suitable arrangements to minimise liability.

4.7.2.4.3  Transhipment

4.7.2.4.3.1  General views on transhipment

Even if the damage to the ship is not serious enough for the contract of carriage to become frustrated and cause the abandonment of the voyage as described under 4.7.2.4.2, it may still be impossible to complete the voyage without extensive repairs. In order to effect such repairs, the cargo may have to be discharged. The duration of the repairs, lack of storage facilities or the nature of the cargo may necessitate the transhipment of the cargo to its destination by another ship or other means of transportation.

The carrier remains responsible for the cargo as under any other transhipment. Within the options available, the carrier has to be selective in the choice of on carrier in order not to expose the cargo to unnecessary risks. The transhipment should be undertaken on a contract of carriage which does not impose terms upon the Member which could render the exclusion of cover under Rule 10 Section 2 applicable.

4.7.2.4.3.2  Non-separation agreement

The York Antwerp Rules 1994, Rule G, makes it unnecessary for the shipowner to obtain a non-separation Agreement from the cargo owner or his underwriter. The Member should make sure that the York Antwerp Rules 1994 are included in all Bills of Lading and charter parties.

4.7.2.4.4  Insurance of general average disbursements

When the contracted voyage is resumed, whether after transhipment or on board the original vessel, the ship and the cargo may have claims for compensation in general average against
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each other for which the value of those interests constitute the security. During the continued
voyage, new events may occur which reduce or eliminate the contributory value of the
respective interest.

If the cargo is damaged or lost, the carrier may be left without or with insufficient security for
cargoes’ proportion in the general average. A loss caused by a reduction of the contributory
value of the cargo is covered under neither the Hull nor under the P&I insurance.

In a similar way, the cargo owner may suffer a loss if the ship's contributory value is affected
by an event occurring after the general average.

4.7.2.4.5 Insurance of discharged cargo
The cover afforded the Member by insurance of average disbursements against a reduction of
the cargo's contributory value is terminated when the general average ends viz. when ship and
cargo separate at the discharging.

If the cargo is not instantly taken receipt of by the receiver at the discharging port against an
average bond or other security for the general average contribution, the carrier should insure
the cargo against fire, theft or other damage. The insurance will replace the cargo as security
for the general average contribution, should it be damaged or destroyed while in storage
pending delivery to the receiver.

As a loss caused by the reduction of the cargo's contributory value is not covered under
the Hull or P&I insurance, a Member should check that insurance of cargo discharged is
arranged by the Hull underwriter or arrange such cover himself.

4.7.2.5 Member owns the cargo or other contributing assets
If ship and cargo involved in a general average are owned by the Member, the cargo is
supposed, for the purpose of these Rules, to be covered by separate insurance against normal
risks amongst which is the obligation to pay cargo’s contribution in general average. This
follows from Rule 11 Section 6.

Should the cargo interests have legal grounds to contest the obligation to contribute, these
Rules apply to the cover for a loss sustained by the Member as a result thereof regardless of
the fact that the cargo belongs to the Member.

The same principle applies to other contributing assets with the exception of the ship, such
as freight at risk and bunkers.

4.7.2.6 “Special charges or salvage”
The words "special charges or salvage” in the first part of this clause refer to expenses incurred
on behalf of the cargo owner for the safety and preservation of the cargo in compliance with
the obligation of the carrier to care for the cargo. Where those expenses are incurred solely in
the interest of cargo and not of the ship, the common danger to constitute a general average
does not exist.
Such expenses when incurred, should be paid by cargo or its underwriter. Should the cargo have valid grounds to refuse payment, the Member’s loss may be compensated under this clause.

### 4.7.2.7 “Not legally recoverable”

#### 4.7.2.7.1 General comments on unrecoverable contributions

As mentioned in comments under 4.8.2.2.1, a Member is covered under this clause for a loss sustained when a contribution is unrecoverable because general average was caused by negligence for which the Member is liable.

There are several situations when a Member may be unable to recover a contribution or may lose it while it is being transferred to his account.

#### 4.7.2.7.2 Insolvency of cargo owner

Cover under this clause requires the Member to obtain adequate general average security. There is only one exception from that obligation commented on in 4.7.2.7.5.

If the Member has obtained security which, when obtained, seemed to be adequate, and the party behind the security goes bankrupt, becomes insolvent or is otherwise unable to pay the contribution, the loss sustained by the Member is covered.

Before the loss is compensated, the Member should take reasonable steps to recover the loss. It may, for instance, be possible to offset the contribution against outstanding freight.

When the loss is reasonably final, the Club will consider compensation. It follows from Rule 14 that by compensating the Member, the Club inherits the Member’s rights against the cargo interests and can rely on the Member’s co-operation in performing a recovery action.

#### 4.7.2.7.3 Insolvency of others

A Member may be deprived of a contribution because it is paid to an agent or a bank which goes bankrupt or otherwise embezzles the money. As the contribution was in fact paid, it is not unrecoverable. It follows from Rule 11 Section 2 (m) that such a loss is not covered.

#### 4.7.2.7.4 Loss or reduction of contribution by currency or exchange regulations

Occasionally currency or exchange regulations may affect the payment or transfer of contributions paid by cargo interests in such a way that a loss arises for the Member.

Transfer may be allowed only in local currency where an unfavourable rate of exchange reduces the amount received by the Member.

Transfer of the contribution may be denied completely and the Member left to spend the amount locally.

Devaluations may occur before the amount is due for payment, which could reduce the value of the contribution.
Although such losses have to be considered for compensation based upon the circumstances of each case, they are, in principle, covered under this clause as unrecoverable contributions.

Before being compensated, the Member may have to accept a reasonable part of the contribution to pay for bunkers, stores, wages or repairs locally to reduce the final loss. The Club acquires the right to the part of the contribution compensated and may spend it on claims settlements or disbursements within the country concerned.

### 4.7.2.7.5 Failure to obtain average bonds

As appears from comments under 4.7.1.4, the carrier’s right to contribution in general average is protected by a lien on the cargo. The lien is effective only as long as the cargo remains in the carrier’s custody. To replace the cargo as security for the contribution, the carrier should release the cargo against a cash deposit or an average bond signed by the cargo owner and backed by a guarantee from his underwriter.

For commercial or other reasons, carriers sometimes refrain from obtaining an average bond or other reasonable security. In such a case, there is no cover under these Rules if no contribution is forthcoming from the cargo interests.

According to the first part of this clause, a Member who failed to obtain adequate general average security, is covered only if he can prove that, at the time the cargo was released to the receiver and the security should have been obtained, he neither knew nor ought to have known that there had been an occurrence of a general average nature during the voyage. There might, for instance, have been reasons to believe that cargo thrown overboard was worthless and, therefore, did not constitute a sacrifice.

Ignorance that general average requires the issuance of average bonds or other security is no excuse.

The regulations contained in this clause emphasise that a Member should act in co-operation with the Club and obtain its advice when a casualty is known to have occurred in relation to the entered ship.

### 4.7.2.7.6 Payment of compensation

See applicable parts of comments under 4.7.2.2.3.

### 4.7.2.8 Time limit for general average contributions

The time limit for the parties involved in general average to claim contributions varies from country to country. Not only does the extent of the time vary, but also the date from which the time starts to count. In some countries, the time starts from the date of the casualty; in others, from the date of the average adjustment.

It is recommended that Members consult their Hull underwriter or the Club for advice.

### 4.7.3 Ship’s proportion in general average

When general average is adjusted, the ship’s value on which her contribution will be based, may be assessed at a sound value in excess of the value insured under the Hull policy.
According to Rule 11 Section 6, it is a condition for cover under these Rules that the entered ship is Hull insured for an amount which at any time should be the market value without commitments. The implication of this regulation is commented on in 11.6.2.4.

Provided that those conditions are met, there is cover under this clause when the ship's contributory value has been assessed at an amount in excess of the Hull insurance value.

4.7.4 Loss covered under other insurance

Among exclusions which may apply to the cover under this clause are those in Rule 11 Section 2 (i) and Section 6.

As mentioned in the comments under 2.3, the cover under these Rules is for third party liability. Losses sustained by the Member to his own property and to the entered ship are covered only when it is explicitly stated in the Rules.

Sacrifice of the entered ship or any part thereof are generally not covered especially as such losses are probably compensated under an approved Hull policy on full terms (see comments under 11.6.2.3), which the vessel is obliged to have in accordance with Rule 11 Section 6.

GA contributions to be paid by cargo for damage to the propeller sustained during refloating attempts will be compensated under the Hull insurance if unrecoverable.

Section 8 Deviation

4.8.1 General

As appears in the first part of this clause, the basic principle is that liability arising from a deviation is not covered. Liability only follows from unlawful or unjustified deviations. Consequently, the exclusion under this clause is for the consequences of unjustified deviations.

The reason for the exclusion is that most deviations are the result of operational decisions taken within the Member's organisation. They are non-mutual risks which should either be borne by the Member himself or be insured separately.

4.8.2 What is a deviation?

The effect of an unjustified deviation is the loss of limitation by applicable conventions (see comments under 2.11) or of immunity and liability exceptions afforded to the carrier by the Hague or Hague-Visby Rules. (see comments under 4.1.8). Still, the Hague and Hague-Visby Rules do not contain a definition of a deviation. Instead, they describe some situations which do not constitute an unjustified deviation. Hague Rule Article 4:4 reads:

"Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of this convention or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom."

As under the Hague and Hague-Visby Rules, the carrier has a general obligation to care for the cargo, deviations for the purpose of saving the ship or cargo are considered justified.
Deviations to search for a crewmember or other persons lost overboard would be regarded as justified. The costs may be compensated under Rule 3 Section 1, 5 or 7 as the case may be or under Rule 8 Section 2.

It follows indirectly from Hague Rule Article 4:2 (j) that the carrier may deviate to another port if the contractual port of destination is strike bound.

The U.S. Carriage of Goods by Sea Act of 1936 as amended (COGSA) contains the following addition to Hague Rule Article 4:4:

"Provided, however, that if the deviation is for the purpose of landing or unloading cargo or passengers it shall, prima facie, be regarded as unreasonable."

The conclusion to be drawn is that the international conventions on cargo liability provide limited guidance, and that domestic legislation on the subject may vary. It leaves the answer to be given by leading cases adjudged by domestic courts. This means that the view will vary from country to country regarding what constitutes an unjustified deviation.

In general, it can be said that a deviation is a departure from the contractually agreed voyage or adventure.

A departure from the contractually agreed adventure means that a deviation is not limited to geographical departures from the contractual destinations. Other departures from the contractually agreed performance of the transport may constitute a deviation. Unauthorised carriage of cargo on deck, drydocking with cargo on board, transhipments not accounted for in the contract of carriage, use of substitute vessels or conveyances and storage in lighters or warehouses may be regarded as unjustified deviations.

4.8.3 Geographical deviations
4.8.3.1 Route should be customary and suitable
The ship should follow a route that is customary and suitable from a navigational point of view for the due performance of the contractual carriage.

4.8.3.2 Deviation in error
If a deviation from the proper route is made in error, it may qualify as an error in navigation, the consequences of which the carrier is not liable for according to Hague Rule Article 4:2 (a). See comments under 4.1.8.1.

4.8.3.3 Deviation for accepted purposes
As mentioned earlier, the carrier may deviate to save the ship and its cargo, and to save or attempt to save life and property at sea. He may change course and stand by in answer to a call of distress. Diversions to avoid strike bound ports may not be regarded as unjustified deviations. A diversion must be in compliance with the carrier’s general duty to care for the cargo not to call at a port where there has been an earthquake or other hindrances of a force majeure nature.
4.8.3.4 Deviations from contracted destinations

A contract of carriage specifies the destination for goods or passengers carried. The destination can be a specified port. It can also be a number of optional ports or an area, the final destination to be nominated at a later moment.

The carrier is obliged to call at the ports as described in the contract of carriage and to proceed there on a route which is customary and suitable from a navigational point of view and reasonable for the ship and the service operated or agreed to by the cargo owner.

A departure from the proper route may qualify as an unjustified deviation especially if undertaken by the carrier to save time and money. Practical examples of such situations are when the ship calls at a port to disembark a stowaway (see comments under 3.8.2.8) or to pick up crewmembers, the presence of whom are not necessarily required to render the ship seaworthy (see comments under 3.11.3).

A scheduled liner service may allow the carrier greater freedom in respect of the ports to be called at and the order in which to call at them.

4.8.3.5 Liberty clauses

A contract of carriage may contain a clause which allows the carrier the right to depart from the proper route described under 4.8.3.4 above. Such clauses are called liberty clauses. The terms of a liberty clause will probably be applied restrictively if tested in court. It does not give the carrier the right to route the ship to suite his own needs at the risk of the cargo owner.

Contracts of carriage should contain a proper liberty clause. The absence of such a clause may render the contractual terms unusually burdensome in the sense of Rule 10 Section 2 which may reduce any compensation from the Club.

4.8.3.6 Transhipment

Transhipments not accounted for in the contract of carriage may be regarded as unjustified deviations in certain jurisdictions, especially in the U.S. A B/L clause granting the carrier the right to transship at his convenience may not be upheld in court.

A contract of carriage should contain a suitable transhipment clause in the absence of which the contractual terms may be regarded as unusually burdensome in the sense of Rule 10 Section 2.

The cover for liability in respect of cargo during through transports appears in Rule 4 Section 2. See comments under 4.2.2 and 4.2.3.

4.8.3.7 Lighterage

In some jurisdictions and in certain circumstances, lighterage of cargo during the transport may be considered to be an unjustified deviation.

Rule 4 Section 2 describes the cover for liability in respect of lighterage. See comments under 4.2.4.
4.8.3.8 Deviations caused by unseaworthiness
The ship may have to deviate in order to replenish an insufficient supply of bunkers or to effect repairs of defects to hull or machinery which materialise during the voyage. Although the deviation may not be considered unjustified, the carrier may be in breach of his obligation under the Hague or Hague-Visby Rules to exercise due diligence with regard to the seaworthiness of the ship before and at the beginning of the voyage (see comments under 4.1.5). Liability on those grounds as distinct from liability for deviation means that the carrier still enjoys the right of limitation and of time bar.

A departure from the proper route to bunker because bunker prices are favourable in that particular port may be considered an unjustified deviation undertaken in the sole interest of the carrier unless the freight contract contains a P&I Bunkering Deviation Clause, which specifically provides that he may do so.

4.8.3.9 War
A contract of carriage should contain a suitable war risk clause. In the absence of such a clause, the contract may be considered to be on such unusually burdensome terms as described in Rule 10 Section 2 which may cause the Club to refuse compensation.

The purpose of a war risk clause is to ensure the carrier the right to depart from the usual route to avoid a war zone without running the risk of committing an unjustified deviation.

For more comments on the cover for war risks see Rule 11 Section 5.

4.8.4 Deviations other than geographical
4.8.4.1 Unauthorised deck shipments
Unless the contract of carriage calls for stowage on deck, it is considered as a contract for under deck stowage. Deck stowage in breach of such an implied undertaking will be considered a deviation.

For more comments on liability for unauthorised deck stowage and the extent of cover, see 4.1.11.5.3.

4.8.4.2 Delay
A serious delay in the performance of the contract of carriage may be considered a deviation.

In many situations, the carrier would still be able to invoke the accepted exclusions under the Hague and Hague-Visby Rules as a defence, for instance, where the delay has been caused by heavy weather or by a latent machinery defect.

Sometimes cargo is not discharged at its destination because it was overstowed by other cargo and, therefore, inaccessible. The carriage to a port beyond its destination and the delay caused by the reshipment may not necessarily amount to a deviation. If, on the basis of facts presented, the carrier is found to be in breach of this obligation to stow the cargo properly under Hague Rule Article 3:2, he would still be liable, but entitled to rely on traditional limitations of liability and time.
To constitute a deviation, the duration of the delay must be considerable compared with the normal time to fulfil the contract of carriage. Cargo which is intended to be carried on a liner ship without any agreement of a specific time for delivery at port of discharge must accept considerable delay up to many months.

For more comments on liability for delay and on the cover, see under Rule 5.

4.8.4.3 Drydocking with cargo on board
To drydock the ship with cargo on board may be considered as exposing the cargo to risks not accounted for in the contract of carriage.

As regards cover for this risk, see comments under 4.8.6.3.

4.8.4.4 Other non-geographical deviations
Other situations may arise where a departure from the adventure as evidenced by the contract of carriage is regarded as an unjustified deviation.

A court will probably try to establish in whose interest an alleged deviation was undertaken. If the answer is that it was the carrier who profited from the breach of contractual obligations exposing the cargo owner to risks he could not foresee, the situation may amount to an unjustified deviation.

4.8.5 Effect of an unjustified deviation
As mentioned earlier, an unjustified deviation is by definition a breach of contract of carriage. If the cargo owner decides to treat the contract as broken, it will not provide the carrier with the immunity and limitations of liability which would normally follow according to applicable law.

The carrier may not be able to limit liability, either global (see comments under 2.11) or per package (see comments under 4.1.9.3). In some jurisdictions the carrier may be denied the one year time limit under the Hague or Hague-Visby Rules or any similar privilege.

The carrier would not be able to rely on any of the excepted perils listed in the Hague Rule Articles 4:2 (a) - (q). See comments under 4.1.8. The carrier’s liability would become strict (see comments under 4.1.4.4). In the U.S., it is sometimes said that the carrier becomes the insurer of the goods.

As a breach of contract, a deviation may make the carrier liable for consequential damage such as loss of production and markets. See comments under 2.7.

4.8.6 Extent of insurance cover
4.8.6.1 Cover excluded
The first part of the clause states that there is no cover for liabilities, costs or expenses arising from a deviation whether geographical or otherwise.

The exclusion of cover under this clause for the consequences of unjustified deviations also applies to unrecoverable general average contributions. See comments under 4.7.2.3.
As previously mentioned, a deviation in the sense of this clause means an unjustified deviation as justified deviations do not impose any liability to insure. A justified deviation may, however, cause costs or expenses. There is cover under several Rules for costs or expenses caused by justified deviations. See, for instance, Rule 3 Sections 9 and 11.

4.8.6.2 Cover provided
According to the second part of the clause, the Club may cover liabilities arising from an unjustified deviation on terms to be agreed. On the information presented by the Member, the Club will try to decide the degree of flagrancy of the potential deviation under applicable national law. The result can be that the deviation is not considered flagrant enough to violate the concept of mutuality. If so, the cover continues unprejudiced with or without an additional premium and any special regulations or restrictions the Club may care to apply by virtue of Rule 10 Section 3 as a condition for cover.

For flagrant types of deviation, there is no cover under these Rules. The Club may assist the Member in arranging special insurance cover on terms and at a premium offered by the market underwriters.

For a number of specified types of deviation, the Club has arranged Deviation Insurance cover available to Members. See comments under 4.8.6.3.

An application for cover should be made preferably before the deviation is undertaken. That would enable the Club to assist the Member in reducing the liability exposure of any deviation planned.

If the Member was unaware of the deviation until it was undertaken, an application for cover should be made immediately upon receiving information that it had occurred.

Members are advised to contact the Club at the earliest stage possible where they believe that a deviation will occur or where they are in doubt as to whether a particular course of action will or will not constitute a deviation.

4.8.6.3 Special deviation insurance
As previously mentioned, the Rule is strict in excluding cover for liability arising out of unjustified deviations. However, The Club has arranged for a special deviation insurance with a limit of USD 50 million for Members entered with the Club either for owner’s or charterer’s risks. Members should apply for cover under the Deviation Insurance prior to a deviation being undertaken, see comments under 4.8.6.3.

The Deviation Insurance provides cover when isolated situations for urgent deviations arise. No concept of operation must be based upon intentional and institutionalised breaches of contract.

There is no cover under these Rules for any overspill beyond the terms of the Deviation Insurance.

Compensation is not paid for reduction of time charter hire in connection with loss of time.

The cover for deviation risks is sometimes referred to as a SOL cover (Ship Owner’s Liability).
4.8.7  How to avoid deviation liability

4.8.7.1  Increased awareness regarding cargo operations
As described under 4.8.5, an unjustified deviation is likely to make the carrier liable for direct or indirect consequences of the deviation without exceptions and exclusions. Basic risk management says that such serious risks should be eliminated or minimised.

This appears to be easily achieved as most deviations are the result of operational decisions taken by the Member’s own office or by his servants. Movements of cargo are often short-sightedly directed with the aim of cutting costs without appreciation of the risks of creating deviations. Greater knowledge and awareness of the risks among the Member’s operational staff would eliminate or reduce deviation-related situations.

The mere fact that a situation may have deviation potential provides the claimants with powerful negotiation arguments. Uncertainty as regards the final legal outcome will have its price even in the event of an amicable settlement.

As described in comments under 4.1.11.5.2, unauthorised deck stowage of cargo should be avoided.

Cargo planning staff should have sufficient knowledge of local legal peculiarities concerning the concept of deviation such as the danger of transhipment of cargo in the U.S. and the obligation under Belgian law to declare deck shipment of containers in the B/L.

4.8.7.2  Suitable freight contracts
Deviation risk avoidance starts with preparation of the freight contract. If there is a possibility of a transhipment in transit, it should be reflected in the contract of carriage. The contract should, furthermore, contain all recommended and suitable protective clauses.

The Club will assist Members in drafting terms for the carriage, which secure any protection available against deviation claims.

Operational staff should attend Club loss prevention seminars where liability analysis and avoidance is taught.

4.8.7.3  Increased awareness regarding ship operations
Not only masters and officers but also those in the Member’s office who operate and route the ships should be reminded of the importance of following customary, suitable, agreed and advertised routes to avoid deviations.

4.8.7.4  Information needed in defence against deviation claims
In order to successfully defend the Member against deviation claims, the Club requires the full co-operation of the Member and his staff.

In cases of geographical deviation, the Club needs documentation reflecting the contents of the contract of carriage agreed on between the parties. It should be remembered that the B/L or C/P may be considered only to be an evidence of the agreed terms. Other supporting evidence is correspondence between the parties preceding the final booking, the booking
note, information on customary routes taken in the past and notices and advertisements on
destinations and itineraries before the voyage.

The reason for any change of the route must be documented. If it was to avoid adverse
weather conditions, log extracts and weather maps should be produced. Distress calls or other
reasons for diversion to save life or property should be entered in the deck log, which should
give a full account of the events and duration of the diversion including time and position
when the diversion started and was completed.

Such information is required if the Member wishes to recover his loss from the owner of the
ship which was assisted and which caused the diversion. See comments under Rule 3 Section
9, in particular 3.9.3.

As regards claims for deviation by delay, a successful defence depends on the reason for the
delay, which must be substantiated by documentation, log extracts etc.

Defence against unauthorised deck shipment deviation claims requires proof as to what was
agreed at the booking. Reports and log extracts should be produced to confirm or refute that
the loss claimed was caused by the deck shipment.
Rule 5 Liabilities in respect of delay

Liability pursuant to mandatory rules of law for loss caused by delay in the carriage by the entered ship of passengers, luggage and cargo.

Comments on:
Rule 5 Liabilities in respect of delay

5.1 General
The Hague Rules do not contain any regulations regarding the carrier’s liability for delay of cargo. Clauses excluding such liability have been standard in Bs/L and are mostly effective.

An express liability for delay of cargo was introduced through the Hague-Visby Rules. The Hague-Visby liability is mandatory. To the extent the Hague-Visby Rules are applicable to a transport, an exclusion of liability for delay by a clause in the B/L is invalid and can be set aside. Instead, the carrier needs protection from that liability by way of insurance. This is provided by this clause.

The cover under this clause is for “liability pursuant to mandatory law”. An increasing number of transports have to meet a certain delivery date. Shippers often make the booking conditional upon delivery of the cargo at the destination within or before a certain time. By agreeing, the carrier extends his liability by contract beyond what would have followed from applicable law. Being in breach of a contract, he would probably be liable to compensate the receiver for consequential damage such as loss of production of a factory in the absence of a vital piece of machinery. It is a basic principle for P&I insurance that extended contractual liabilities are not covered unless approved by the Club in advance.

Under this clause the Member is also covered for his legal liabilities for delay in the carriage of passengers and their luggage. For the sake of continuity and completeness, the cover for those liabilities is dealt with under Rule 3 Section 5. See comments under 3.5.15.

See also comments under 11.2.2.8 regarding exclusion of cover under Rule 11 Section 2 (h) for delay caused by late arrival of the ship at the port or place of loading.

A mandatory liability for delay is fairly new. There are few leading legal decisions to illustrate the extent of a liability and to answer the questions of what constitutes a delay and what consequences of a delay the carrier is responsible for.

5.2 What constitutes a delay?
It is easy to define a delay when the carrier has agreed to deliver the cargo at or before a certain date. On the other hand, the liabilities for such a delay are excluded from cover under this clause.

Other types of delay have to be judged according to the type of cargo and trade concerned. The margin for time constituting a delay is shorter in North Sea traffic than for carriage...
Rule 5 Liabilities in respect of delay

overseas. Liner service of general cargo under a timetable will allow shorter delays than a tramp service with bulk cargoes, although a timetable in itself should not be regarded as a guarantee for delivery within the time published. The absence of leading court cases makes it difficult to define a certain percentage of the expected transportation time as an unacceptable delay constituting a liability for the carrier. Some guidelines as to the definition of a delay can be derived from Article 19 of the Convention on the Contract for the International Carriage of Goods by Road (CMR): "Delay in delivery shall be said to occur when the goods have not been delivered within the agreed time limit or when, failing an agreed time limit, the actual duration of the carriage having regard to the circumstances of the case ........ exceeds the time it would be reasonable to allow a diligent carrier".

The question of delay is not exclusively related to the time of the ship's arrival at the port of destination. The ship may have arrived on time but the discharging or delivery of the goods might have been slow enough to constitute a delay.

5.3 For what delays is the carrier liable?
The mandatory liability under the Hague-Visby Rules does not apply to all delays. The carrier is entitled to invoke any applicable liability exception under Article 4:2 listed under 4.1.8. The carrier can reject claims for delay when he can prove that it was brought about through the perils of the sea, such as heavy weather under exception (c), by attempts to save life or property at sea under exception (l) or by a machinery breakdown being a latent defect under exception (p). For the Club to defend the Member successfully against such claims, it is necessary to receive particulars and information from the ship and full support in carrying out the necessary investigations. How this should be done and what the Member’s obligations are for co-operating with the Club are described in comments to Rule 4 Section 1 and to Rule 10 Section 4.

Claims for delay are subject to other privileges under the Hague-Visby Rules such as package limitation and time bar.

In contrast to the Hague-Visby Rules, the Hamburg Rules contain a special limitation of liability for delays. The limitation amount is 2.5 times the freight due for the delayed goods. According to the Hamburg Rules, goods which have been delayed more than 60 days from the time reasonably required of a diligent carrier to reach destination, will be considered lost. This transforms the claim from one for delay to a confirmed shortage claim.

5.4 For what consequences of delay is the carrier liable?
It follows from the general principles on the burden of proof that it is upon the claimant to prove in what respect and to what extent he suffered a loss as a consequence of a delay. This is an important aspect in the defence of the Member’s interests and one which the Club will follow up thoroughly.

If the claimant can prove that he suffered a loss, he must furthermore show that it was directly caused by the delay. An example of a consequence may be that he had to buy similar goods elsewhere to fulfil his obligations to effect delivery in timely fashion to buyers under a sales contract. The delay may also have increased the shipper’s or receiver’s costs for storage and transhipment and for customs’ fees, import duties or insurance premiums.
Claims of this nature often contain items which cannot be regarded to be such direct consequences of the delay that compensation from the carrier is legally merited.

5.5 Measures to prevent delay
To avoid a delay, a carrier may take special precautions to bring the goods to the destination in time. The goods may be on-carried by another ship or by train or truck. It happens that urgently required goods are flown out by air. The increased costs may be compensated under Rule 8 Section 2. A condition for such compensation is that the costs were incurred to avoid a mandatory liability for delay. A Member will not be compensated if the preventive costs were incurred to meet a specific delivery date agreed to by the carrier, nor if the reason for the delay is one of the accepted exceptions under the Hague Rules such as latent defect, heavy weather or a lawful deviation. A Member should consult the Club before spending money to avoid an upcoming delay.

Cargo is sometimes discharged by mistake in a port other than that mentioned in the B/L. To avoid a shortage claim or one for delay, the carrier may forward the goods to the destination. The increased costs may be compensated under Rule 8 Section 2. For goods intentionally discharged at a port other than that stipulated in the B/L, compensation is excluded under Rule 11 Section 2 (i). The liability consequences of a delay caused by the Member’s intentional failure to have the ship arrive late at the port of loading are excluded under Rule 11 Section 2 (h).

5.6 Recourse against those who caused the delay
Although the carrier remains responsible under the B/L against a receiver for a delay, he may have a right of recourse against the party whose negligence caused the delay. The stevedoring company at the port of loading may have given an urgent container bottom stowage that was contrary to instructions. Warehouse operators in the port of discharge may have delayed delivery of goods to the receiver because it was misplaced in the terminal. The Club will assist Members in pursuing any such recovery action. If the Club has agreed to compensate the Member for the loss, the Club inherits the Member’s rights against the third party according to Rule 14. The Member has an obligation to assist the Club in pursuing the recovery. See comments under 14.2.
### Rule 6 Liabilities in respect of pollution

#### Section 1 Pollution liabilities

Liabilities, costs or expenses incurred as a result of the discharge or escape from the entered ship of oil or any other substance or the threat of such discharge or escape unless such liabilities, costs or expenses form part or could form part of General Average under the York/Antwerp Rules 1994.

Unless the Association shall otherwise decide, there is no cover in respect of any liability for loss, damage, costs and 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 landbased dump, storage or disposal facility.

#### Section 2 Oil pollution limitation of cover

Subject to (a) and (b) below the Association’s liability for any and all claims in respect of oil pollution shall be limited to such sum or sums and be subject to such terms and conditions as the Association may from time to time determine.

(a) If the Association shall determine that claims on the Association shall be limited to a specified sum in respect of any one entered ship each accident or occurrence, then, unless the Association shall otherwise decide, the limit shall apply irrespective of whether the accident or occurrence involves the escape of oil from one ship or more than one ship and to all claims brought by the Owner or Joint Owners of the ship in respect of such accident or occurrence whether under one Rule or more than one Rule. If the aggregate of such claims exceeds that limit, the liability of the Association for each claim shall be such proportion of the sum determined by the Association as such claim bears to the aggregate of all such claims.

(b) Unless the Association shall otherwise decide, where the ship provides salvage or other assistance to another ship following a casualty, a claim by the Member in respect of oil pollution arising out of the salvage, the assistance or the casualty shall be aggregated with any liabilities or costs incurred in respect of oil pollution by any other ships similarly engaged in connection with the same casualty when such other ships are either

- (i) insured by the Association in respect of oil pollution or
- (ii) covered for those risks with any other Association which participates in the Pooling Agreement and the Group Excess Reinsurance Policies.

In these circumstances the limit of the liability of the Association shall be such proportion of the sum determined by the Association as the claim by the owner of the ship bears to the aggregate of all the said claims.

If the total amount of any oil pollution claim against the Member under Rule 6 Section 1 exceeds a sum to which the Association has determined to limit its liability according to Rule 6 Section 2, the Association will not be liable to make any payment in respect of any amount by which the claim exceeds the sum to which the Association has determined to limit its liability.
6.1.1 General
For a long time, pollution liabilities were a marginal risk to shipowners and of little concern to the P&I Clubs. The situation changed overnight. The rapid escalation of pollution liabilities is marked with milestones which bear the names of ill-fated ships. A brief look into the history of oil pollution liability may further the understanding of the cover provided. See comments under 6.1.2.

Contrary to Section 2 of this Rule, the cover under this clause is not restricted to pollution by oil. It applies to liabilities in respect of pollution of any kind such as by oil, chemicals, water, steam, smoke, sewage, etc. The pollution may originate from the vessel’s bunkers, supply or cargo. Since pollution by oil and similar substances is the overriding international problem, the comments will be mainly confined to that area. Most principles of pollution liabilities and avoidance dealt with in these comments can be applied to other kinds of pollution.

The interest of the public and media is focused on pollution almost to the point of obsession. There is a widespread misapprehension that the taxpayers or the population in the coastline communities always have to pay the cleanup costs. Even among those who take part in the public environment debate, few seem to know that insurance exists especially geared to cover a shipowner’s established pollution liabilities.

6.1.2 Pollution liability history
Shipowners originally had a traditional liability for pollution based on negligence (in tort). The burden of proof was straight. It meant that the party who suffered damage by pollution had to prove that the shipowner caused it by negligence. The liability was subject to the general provisions on global limitation. A large part of the pollution liabilities were covered under the Hull insurance.

The floodgates for pollution liabilities started to swing open when the Torrey Canyon hit the Seven Stones Reef on 18 March 1967 on her maiden voyage laden with a cargo of crude oil.

In the aftermath of the disaster, the British Government approached IMCO (The Inter-Governmental Maritime Consultative Organisation) which was later to become IMO (The International Maritime Organisation). In co-operation with the non-government shipping organisation CMI (International Maritime Committee), the text of a new international legal instrument was developed and was eventually adopted in November 1969 as the International Convention on Civil Liability for Oil Pollution Damage (the CLC). A further convention called the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (the Fund Convention) was adopted in 1971. These two conventions became effective in 1975 and 1978 respectively.

After the occurrence of subsequent major oil spills such as the Amoco Cadiz off Ushant in north west France in 1978, voices were raised that wanted to increase the compensation
available to pollution victims under the CLC and the Fund Convention. In 1984, the IMO hosted a diplomatic conference to discuss a revision of the two conventions. The resulting Protocols, which considerably increased the level of compensation amongst other things, require the ratification of a specified number of states before coming into force. In 1992 the IMO adopted these two Protocols after having amended the entry into force provisions so as to bring the CLC and Fund Protocols into effect at an earlier date. The 1992 Protocols entered into force in 1996. One important factor for speeding up the entry into force of the 1992 Protocols was to reduce the number of states which might otherwise favour the adoption of domestic legislation with heavier obligations for shipowners than those which follow from the CLC and the Fund Convention. In 2000 the limitations for both the CLC and Fund Conventions were amended and raised. In 2003 the IMO developed the Supplementary Fund, which entered into force in March 2005. The Supplementary Fund establishes a third layer of compensation above the CLC and Fund Conventions.

The CLC and Fund Conventions are limited to vessels that transport persistent oil. In order to address the threat of bunker spills from vessels other than tankers (including tankers without traces of persistent oil onboard) the IMO established the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker Convention). The Bunker Convention entered into force in 2008, see comments under 6.1.3.1.7.5.

Many coastal states have adopted domestic legislation that imposes liabilities upon a marine polluter equal to or in excess of that provided by the CLC and the Fund Convention. The Exxon Valdez disaster in Prince William Sound, Alaska on 24 March 1989 caused the adoption of federal and state legislation in the U.S. in 1990, the so-called OPA 90. This legislation is commented upon under 6.1.4.2.

As the pollution liabilities increased, cover under the Hull insurance was restricted. As explained in comments under 11.6.2.2, this meant that the liabilities were transferred to the P&I insurance. The only pollution risk left to be covered under AV 2000 is expenses incurred to prevent pollution damage from a ship in drydock for survey or repairs that are of average damage in nature and the costs to clean the drydock internally after such a pollution (AV 2000 § 7, 3 a. 1).

6.1.3 International conventions

6.1.3.1 The CLC

6.1.3.1.1 Application

6.1.3.1.1.1 Persistent oil from tankers

The CLC only applies to persistent oil from tankers. Persistent oil means crude oil, fuel oil, heavy diesel oil, lubricating oil, whale oil, asphalt and the like.

It is a further condition that the tanker should be laden, although the oil cargo need not necessarily be persistent. Thus the CLC applies also to a spill of persistent bunkers, provided that the tanker is not in ballast. Ballast voyages are not included in the CLC, even if the ship has retained slops on board. This applies to the CLC of 1969 only but not to the CLC of 1992, which extends the convention to cover spills from sea-going vessels constructed or adapted to carry oil in bulk as cargo so that it applies to both laden and unladen tankers, including spills from or bunker oil from such ships.
A Member who is in doubt as to whether a certain type of oil is persistent or not should contact the Club for advice.

6.1.3.1.1.2 Geographical application
The only geographical criterion for the application of the CLC is where the pollution damage occurs. If the pollution occurs in the territory or within the territorial waters of a contracting state, the convention applies. The flag of the ship and the nationality of its owner are irrelevant.

6.1.3.1.2 Type of damage
The CLC is applicable to loss or damage caused outside the ship by the escape of oil from the ship. It includes the costs of preventive measures and further loss or damage caused by preventive measures.

It is a prerequisite for the CLC to apply that there has been a spill of persistent oil. Preventive measures fall under the convention only if taken in respect of an actual spill, not to remove the threat of a spill that does not then occur.

The convention does not fully explain the words "pollution damage", thus leaving the ultimate interpretation to national courts.

The most obvious impact occurs when coastal resources, boats, mooring lines, piers, jetties, oyster beds or edible seaweed farms have been smeared by oil. The cleaning and reconditioning of such areas or articles constitute preventive measures and are covered by the CLC. This includes the hire of suitable equipment such as oil booms, skimmers, caterpillar tractors, trucks, steam-producing or spraying devices and the consumption of rags, brushes, dispersants, sorbents and other articles used for reconditioning.

Large spills may require ships or helicopters for co-ordination and surveillance. Costs such as these qualify as preventive measures under the CLC.

Oil pollution may cause a shortage or loss for which the owner of the oil may claim compensation from the carrier. Liability for cargo damage is covered under Rule 4 Section 1 (see comments under 4.1.11.9.2), for cargo shortage under Rule 4 Section 3 (see comments under 4.3.3) and for bunker damage and shortage under Rule 7 Section 1 (see comments under 7.1.13.1). Fines are covered under Rule 7 Section 6 (see comments under 7.6.2.3).

6.1.3.1.3 Type of liability
The CLC provides strict liability (see comments under 4.1.4.4) for loss or damage resulting from the discharge of oil. The shipowner is, however, exonerated from liability if he can prove that

a) the damage results from an act of war or a grave natural disaster
b) the damage is wholly caused by sabotage by a third party, or
c) the damage is wholly caused by the failure of the authorities to maintain navigational aids.
6.1.3.1.3.1 Act of war
A shipowner is not liable for oil pollutions caused by acts of war. For comments on war and war risks, see under 4.1.8.5 and 11.5.3.

6.1.3.1.3.2 Natural disaster
In situations of force majeure with no negligence on the part of the shipowner, there is no liability for the pollution damage. See comments under 4.1.8.4.

6.1.3.1.3.3 Intentional acts of a third party
There is no liability for pollution damage wholly caused by the intentional acts of a third party, such as terrorism or an act of sabotage perpetrated by a crewmember.

6.1.3.1.3.4 Governmental negligence in maintenance of navigational aids
Where a government or other authority has failed to maintain lights or other navigational aids through negligence or other wrongful acts, a shipowner cannot be held liable for any pollution damage resulting wholly therefrom. The authority must have failed in its duty by, for example, repairing or adjusting a lighthouse or replacing a missing buoy. In one Swedish Supreme Court case, the failure to mark a known hazard on the chart was considered to constitute negligence in the maintenance of navigational aids.

6.1.3.1.4 Shared responsibility
In cases where oil escapes from two or more ships, for example following a collision, the owners are jointly and severally liable for any pollution damage which cannot be reasonably attributed to one of the ships. An owner who has discharged such a joint liability may include the expenses in the collision claim against any party involved. See comments under 7.2.3.

When pollution damage is caused or contributed to by a malicious act, omission or negligence by the person who suffered the damage, the shipowner may be exonerated from liability in whole or in part.

6.1.3.1.5 CLC Limitation of liability
The limitation of liability under the 2000 amendment within the 2002 protocol is as follows:

- SDR 4.51 million for a ship not exceeding 5000 GT
- SDR 4.51 million + SDR 631 for each additional GT for ships between 5000 and 140 000 GT
- SDR 89.77 million for a ship over 140 000 GT or more

The right to limit the liability under the CLC is denied in cases where the pollution is caused by the shipowner's actual fault or privity. Privity means knowledge and consent in relation to any fault or misconduct. Situations where shipowners are denied the right of limitation under the CLC may be subject to the general exclusion of cover under Rule 11 Section 1. See comments under 2.11.2-3 and 11.1.1-5.

6.1.3.1.6 Time bar
Claims for pollution damage under the CLC become time barred unless an action is brought against the shipowner within three years of the date when the damage occurred. Under no
circumstances can an action be brought six years after the date of the incident which caused the damage.

6.1.3.1.7 CLC certificates
6.1.3.1.7.1 General
According to the CLC, a ship which is registered in a CLC state and carries more than 2,000 tons of oil in bulk as cargo must maintain insurance or other financial security for the liabilities under the convention up to its limitation of liability as specified under 6.1.3.1.5.

As evidence of such insurance, the shipowner should obtain a CLC certificate issued by the authorities in the state in which the ship is registered. The CLC certificate confirms the existence of such insurance and contains certain details of cover.

To obtain a CLC certificate, Members should make an application to the Club.

6.1.3.1.7.2 1969 and 1992 Civil Liability Convention
In May 1998 State Parties to the 1992 CLC ceased to be party to the 1969 CLC. This means that there are now two separate regimes in force, those who are parties to the 1969 CLC and those who are parties to the 1992 CLC. For vessels registered in State Parties to the 1969 CLC, it will be necessary to obtain a 1969 CLC certificate from their flag State and a 1992 CLC certificate from a State Party to the 1992 CLC. The latter certificate will be issued by The Department of Transport in the United Kingdom. Vessels registered in State Parties to the 1992 CLC need only obtain a 1992 CLC Certificate for their Flag State. This should be sufficient evidence of insurance, even when calling at ports in a 1969 CLC State.

6.1.3.1.7.3 Blue Card and CLC certificate
For ships not registered in Sweden, the Member should apply to the Club to issue a Blue Card. That application does not need to be in or on a specific form. However, it should contain
- the name of the ship
- the owner’s name and address
- port of registry
- call sign or IMO no

Based on that information the Club will issue a Blue Card which certifies that a policy of insurance is in force that satisfies the requirements of Article VII of the CLC.

If requested to do so, the Club can assist by sending the Blue Card to the proper authority in the country of registry. The authority issues a CLC certificate and sends it to the registered owner.

6.1.3.1.7.4 Swedish ships
All vessels flying the Swedish flag are parties to the 1992 CLC convention. Upon request the Club will send a confirmation of P&I entry to the Member who has to forward this confirmation to the Swedish Financial Supervisory Authority (Finansinspektionen) together with an application form found on their website http://www.fi.se/Tillstand/Bevis/Forsakringscertifikat-for-oljetransport in order obtain a CLC certificate.
6.1.3.1.7.5 The Bunker Convention – Certification requirements

The International Convention on Civil Liability for Bunker Oil Pollution 2001 (the “Bunkers Convention”) entered into force on 21 November 2008, see comments under 6.1.3.4. However Sweden is not a party to the convention.

Ships registered in a State which is not party to the Convention and which require a certificate because they are calling at a port in the territorial waters of a State Party to the Convention must obtain a State issued certificate from a State Party to the Convention. A small number of State Parties have agreed to issue certificates to ships registered in non-State Parties irrespective of whether they are calling at a port in their territorial waters after the entry into force date.

For Swedish ships the Club will make an application to such a state confirming that there is in force a policy of insurance satisfying the requirements of the convention. Although the application is addressed to such a state it is sent to the Member who has to make the formal application.

For non Swedish Ships the Club issues a Bunker Blue Card to the Flag state and again it is sent to the Member who has to make the application.

### Immediate cause of pollution

The Swedish Club claims 2006-2011

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<th>Cause</th>
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<tr>
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6.1.3.2 The Fund Convention

6.1.3.2.1 General

As mentioned under 6.1.2, the 1992 Protocol to the International Convention on the Establishment of an International Fund for the Compensation for Oil Pollution Damage (the Fund Convention) entered into force in 1996. In 2000 the limitation amount was increased and entered into force in 2003.

6.1.3.2.2 The IOPC Fund

The IOPC Fund is a worldwide inter-governmental organisation established to administer the regime of compensation created by the Fund Convention and Supplementary Fund. The main function is to provide additional supplementary compensation to victims of oil pollution damage in Member States who cannot obtain full compensation for the damage under the applicable Civil Liability Convention. The IOPC Fund is located in London.

The Fund is financed by contributions paid by any person who has imported, by sea, in excess of 150,000 tonnes of crude oil in the relevant calendar year in to ports or terminals in a State which is a member of the relevant Fund. The Supplementary Fund has an additional limitation, oil importers within contracting states will only have to contribute if the state’s aggregate annual receipt of oil is above 1,000,000 tonnes.

6.1.3.2.3 Compensation under the Fund Convention

The Fund Convention provides supplementary compensation where

(a) no liability for pollution damage arises under the CLC, e.g. because the owner can invoke one of the exemptions under that convention (see comments under 6.1.3.1.3)

(b) the owner is financially incapable of meeting his obligations under the CLC and his insurance is insufficient to satisfy the claims for compensation for pollution damage

(c) the damage exceeds the owner’s liability under the CLC.

Compensation under the Fund Convention can be claimed for pollution damage caused to the territory or territorial waters of a state which is a party to the CLC and the Fund Convention.

The cover under the Fund Convention is limited to SDR 203 million per incident. That amount is not placed on top of but includes any compensation paid by the shipowner under the CLC. Furthermore if three contracting states receive more than 600 million tonnes cover is raised to SDR 300.74 million.

The Supplementary Fund in addition to the CLC and Fund Convention will increase the total available compensation to 750 million SDR.

6.1.3.3 The 2001 Bunker Convention

6.1.3.3.1 General

As stated in 6.1.2, the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage entered into force in 2008. The convention does not establish a limitation amount per se, rather the limitation is in accordance with the 1976 Convention on Limitation of Liability for Maritime Claims and later protocols (LLMC). If a state has not ratified the LLMC or its protocols then the limitation can not be higher than the national liability limitation regime.
Rule 6 Liabilities in respect of pollution
Section 1 Pollution liabilities

Illustration of the CLC/Fund Compensation Regime

6.1.3.3.2 Limitation under the LLMC
The limitation amounts under the 1996 LLMC Protocol that entered into force in 2004 are as follows.

The limit of liability for property claims for ships not exceeding 2,000 gross tonnage is SDR 1 million.

For larger ships, the following additional amounts are used in calculating the limitation amount:
- For each ton from 2,001 to 30,000 tons, SDR 400
- For each ton from 30,001 to 70,000 tons, SDR 300
- For each ton in excess of 70,000 tons, SDR 200

6.1.3.4 The 1989 Salvage Convention
As regards cover for special compensation to salvors for services rendered to avoid pollution liabilities, see comments under 7.4.2.3.

6.1.3.5 MARPOL 73/78
Whereas the CLC and the Fund Convention regulate pollution liabilities and compensation, the International Convention for the Prevention of Pollution from Ships 1973, and the subsequent Protocol of 1978 (MARPOL 73/78), focus on pollution prevention on board ships.
MARPOL 73/78 has been ratified by a considerable number of states. It applies to ships which are either registered in a contracting state or operated under the authority of such a state. Many contracting states have enacted domestic legislation under which MARPOL 73/78 regulations apply to all ships within the territorial waters of that state.

MARPOL 73/78 regulates the design, construction and equipment of tankers and other ships. It contains provisions on the discharge of oil and noxious liquid substances.

It requires the maintenance on board of detailed oil and cargo record books and for all vessels over 400GT the implementation of a Shipboard Oil Pollution Emergency Plan (SOPEP) and the Shipboard Marine Pollution Emergency Plan for Oil and or Noxious Liquid Substances (SMPEP) for vessels over 150GT carrying noxious liquid substances.

It defines the obligations of the ship in case of pollution.

Violations of MARPOL 73/78 regulations are subject to fines. There may be cover under Rule 7 Section 6 depending on the reason for the fine.

6.1.3.6 ITOPF
The International Tanker Owners Pollution Federation (ITOPF) was originally established to administer TOVALOP. TOVALOP was terminated on 20 February 1997 but ITOPF remains an important source of pollution know-how and a provider of technical service and on-site expertise at an oil spill.

The Club avails itself of ITOPF’s services when there has been a substantial oil spill from an entered ship. The Club’s staff, including local representatives, surveyors and lawyers co-operate closely at the site of the accident with ITOPF’s experts.

ITOPF can assist Members in preparing contingency plans (see comments under 6.1.5) and in undertaking other advisory assignments.

6.1.4 Domestic legislation
6.1.4.1 General
Few liabilities covered under the P&I policy are as politically affected as those related to oil pollution. Therefore, the legislation upon which such liability is founded is not always guided primarily by considerations as to what is reasonable and practical from the point of view of compensation, cleanup, ship operation and insurance. Instead of accepting that society is dependent upon carriage by sea of oil and, therefore, ought to share the entailing risks, the full blame is put on the carrier as polluter. The result may be that reliable carriers are scared away from those destinations which might otherwise attract fortune hunters. Furthermore, the public may find the liabilities promised to be illusory, as it may not always be possible to back them by insurance on the available markets.

6.1.4.2 The U.S.
6.1.4.2.1 General
The liability situation in the U.S. reflects the traditional dualism with federal law applicable to the whole of the U.S., together with a variety of state legislation with local application.
Rule 6 Liabilities in respect of pollution
Section 1 Pollution liabilities

For Members, it is equally important to be familiar with both types of legislation applicable to oil pollution liabilities in states in which the entered ship may trade.

6.1.4.2.2 Federal law
6.1.4.2.2.1 General
The Federal law in the U.S. is the Oil Pollution Act of 1990 (U.S. OPA 90).

6.1.4.2.2.2 To whom does the U.S. OPA 90 apply?
The U.S. OPA 90 applies to a “responsible party” in respect of the entered ship. The responsible party is defined as ”any person owning, operating or demise chartering the vessel”. The act applies not only to tankers but to virtually all types of ships.

6.1.4.2.2.3 Nature of liability
Under the U.S. OPA 90, the responsible parties are jointly, severally and strictly liable for oil pollution. With regard to strict liability, see comments under 4.1.4.4. A responsible party is, however, exonerated from liability if he can prove that the damage was caused by

- an act of God
- an act of war
- an act or omission of a third party

6.1.4.2.2.4 What is the liability for?
Under the U.S. OPA 90, the responsible party has a strict liability for:

- the costs for preventing, minimising or mitigating oil pollution from a substantial threat of a discharge of oil from the vessel upon U.S. navigable waters, joining shorelines or the U.S. exclusive economic zone
- all removal costs and damage where there is a discharge of oil from the vessel.

Liability for damages includes:

- injury to, destruction of, or loss of natural resources including the loss of use of natural resources
- injury to or economic loss resulting from the destruction of real or personal property
- loss of subsistence use of natural resources
- loss of revenues to federal, state and local governments from injury or loss of real property, personal property or natural resources
- loss of profits or impairment of earning capacity due to injury to or loss of real property, personal property or natural resources
- costs of additional public services provided during or after removal activities.

The concept “natural resources” is defined so broadly that it can be given a virtually limitless interpretation.

6.1.4.2.2.5 Limitation of liability
Under the U.S. OPA 90, the responsible party can limit his liability:

- for tank vessels of less than or equal to 3,000 gross tons with a single hull to USD
3,200 per gross ton or USD 6,408 million, whichever is the greater (this includes tank vessels fitted with double sides only or double bottom only)

- for tank vessels of less than or equal to 3,000 gross tons with a double hull to USD 2,000 per gross ton or USD 4,272 million, whichever is the greater

- for tank vessels over 3,000 gross tons with a single hull to USD 3,200 per ton or USD 23.496 million, whichever is the greater (this includes tank vessels fitted with double sides only or double bottom only)

- for tank vessels over 3,000 gross tons with a double hull to USD 2,000 per ton or USD 17.088 million, whichever is the greater

- for other vessels up to USD 1000 per gross ton or USD 8.544 million whichever is the greater.

(Note: these limits are under periodical review; please consult the club for latest amendments.)

The right of limitation is lost where the accident is proximately caused by:

- gross negligence or wilful misconduct

- violation of any applicable federal safety, construction or operating regulations

- failure or refusal to report the incident or to co-operate with a responsible official in a removal action when requested

- failure or refusal without cause to comply with an order issued under the Federal Water Pollution Control Act or Intervention on the High Seas Act.

Elements of a nature that might break limitation will probably be found in most pollution situations. In practice, the liability under the U.S. OPA 90 is almost unlimited.

6.1.4.2.2.6 USCG Certificates of Financial Responsibility (COFR)

6.1.4.2.2.6.1 General
The Coast Guard’s Interim Final Rule on Certificates of Financial Responsibility was published in the Federal Register on 1 July 1994. The Rule requires owners and operators of vessels over 300 gross tons (except a self-propelled vessel not carrying oil as cargo) to establish and maintain financial responsibility sufficient to meet the limit under OPA 90 and CERCLA (hazardous substances). Upon request, the Club will provide the member with advice and assistance on how to provide the entered ship with a valid COFR.

6.1.4.2.2.7 Double hull requirements
The OPA 90 plans to phase out the use of single hull tankers serving U.S. ports by 2015.

6.1.4.2.3 State law
Several states in the U.S. have enacted legislation imposing strict and unlimited liabilities or obligations with regard to evidence of financial responsibility or contingency preparations upon ships calling at ports in those states, for example Alaska and California.

It is neither practical nor possible to present a breakdown of existing or expected local regulations within the framework of these comments. Members are recommended to obtain
the latest information through available sources such as their local agents, the shipowning associations or the Club.

6.1.4.2.4 Cover under these Rules
Under this clause, the Member is covered for liabilities, costs or expenses under any applicable legislation which are incurred as a result of discharge or escape from the entered ship of oil or other substances, or the threat of such discharge or escape.

As regards cover under the Hull insurance for certain pollution liability risks, see comments under 6.1.2.

The cover under this clause is primarily related to accidental pollutions but may also apply to certain rare situations where oil is intentionally discharged. The effect of intentional pollutions is covered only when made reasonably in compliance with Rule 8 Section 2, to prevent or limit liabilities covered under these Rules. Discharge overboard of oil to refloat a grounded vessel and to save the ship, her cargo and people and to prevent an even larger pollution may qualify for compensation, whereas the intentional discharge overboard of slops or residues from tank cleaning is not covered under any circumstances.

The cover is not confined to oil or similar products. It applies to chemicals and all substances which may cause damage or which may require cleanup and other removal or destruction activities.

The cover is also for measures taken to prevent or limit the consequences of a threatening pollution. Such cover follows also from Rule 7 Section 4 and Rule 8 Section 2.

As mentioned in comments under 7.5.2.1, liabilities for obstruction to navigation caused by oil booms or other consequences of a pollution, are covered under this clause.

The cover for pollution is subject to a limit as described in comments under 6.2.2.

It follows from Rule 10 Section 1 that the Club may reject or reduce compensation to a Member who has failed to observe obligations imposed by competent authorities. That is also a situation where the Member may be denied limitation of liability under the CLC Convention (see comments under 6.1.3.1.5) and the U.S. OPA 90 (see comments under 6.1.4.2.2.5).

Fines for pollution by oil or other substances are covered under Rule 7 Section 6 (g). According to item (v) of the last part of that clause, a Member will not be compensated for fines imposed because the ship lacks valid or prescribed certificates to provide evidence of financial responsibility. See comments under 7.6.3.5.

The deductible for oil spills includes fines as appears from comments under 22.5.3.2.

Under the United States Ship Mortgage Act, a maritime lien arising from a claim in tort will normally have priority over a mortgage claim. Under Rule 35, a mortgagee is covered under the Member’s policy with the same exclusions and limitations as apply to the Member’s cover (see comments under 35.2.1). As the Member’s cover for pollution risks is limited, as
described in comments under 6.2.2, a mortgagee may find that a large pollution claim pushes the priority of the mortgage over the edge of the insurance cover available. The mortgagee may, therefore, require a cover of his own to protect him against liabilities which may outrank the priority of his mortgage. This is even more likely as the ship may be detained after a pollution which may cause a loss of time, freight or other revenue excluded under Rule 11 Section 2 (j) which affects the solvency of the mortgagor. Furthermore, the ship may be forfeited and this in itself constitutes another risk for the mortgagee who is uninsured under these Rules.

6.1.5 Contingency plans
6.1.5.1 General
A contingency plan is an oil pollution emergency plan. A complete and adequate contingency plan should constitute a vital part of the ship’s documents.

The basic requirements of a contingency plan are that it is:
• realistic, practical and easy to use
• agreed and understood by all parties involved on board and ashore
• tested, evaluated and updated regularly
• adapted to the construction, equipment, manning and operation of the entered ship and to the structure and routines of the shipowning and management organisation, including the land-based facilities such as terminals.

6.1.5.2 Geographical application
Within the states that have ratified MARPOL 73/78, regulation 37 annex 1 makes it mandatory for all vessels over 400 GT and tankers over 150 GT to have a Shipboard Oil Pollution Emergency Plan (SOPEP). In addition there is the Shipboard Marine Pollution Emergency Plan for Oil and or Noxious Substances (SMPEP) which is mandatory for all vessels over 150 GT carrying noxious liquid substances.

The U.S. OPA 90 provides that owners or operators of tankers, defined as any vessel carrying oil or hazardous substances operating in U.S. navigable waters or transferring such cargoes in U.S. ports, must prepare and submit a contingency plan.

Some U.S. states have already adopted and several others are in the process of adopting state law containing local requirements on contingency plans and their implementation. Upon request, the Club will advise Members of the present legal position and the current requirements of each state where the entered ship may call. Various states have looked to the U.S. OPA 90 as a guideline for formulating their own contingency plan requirements. However, the states are free to enact and enforce different and more stringent requirements than those contained in the federal law.

All toll paying vessels travelling through the Panama Canal with an oil carrying capacity of over 400 MT as cargo or as fuel require a Panama Canal Shipboard Oil Pollution Emergency Plan (PCSOPEP), which will need to be duly authorised by the Panama Canal Authority (ACP).
6.1.5.3 Essential elements of a contingency plan
6.1.5.3.1 Appointment of responsible person on board
In the contingency plan, the Member should appoint and name one person on board the ship, as well as a substitute in case of his absence, who is authorised to take decisions that are binding and urgent actions on the Member’s behalf in a pollution situation.

6.1.5.3.2 Appointment of suitable contractors
The casualty response plan drafted by the Club’s general claims correspondent for the U.S. lists central co-ordinators in New York and correspondents, lawyers and contractors in major U.S. ports. The contractors are experienced and well equipped. They are aware of their appointment to act for ships entered in the Club and ready to intervene instantly on notice. Members should use the list and not appoint their own and other contractors in ports or places covered by the list. If Members wish to appoint contractors in other ports or places, the Club should be contacted in order to inform the general claims correspondent for the U.S. and to render necessary advice and assistance.

6.1.6 C/P clauses
A variety of C/P clauses appear on the market dealing with pollution liabilities directly as well as indirectly, for instance through provisions on trading.

Some of those clauses impose pollution liabilities and obligations on the owner beyond the cover under this or any other applicable Rule.

For a clause to be acceptable, its provisions should strike a balance between the interests of the owner and the charterer. It should recognise the fact that the ship’s movements to destinations of potentially dangerous liability such as the U.S. are directed by the charterer. The liability consequences must be well within the extent of cover under these Rules.

The Club circular P.2345/1996 contains the wording of a C/P clause recommended by the Group Clubs.

With regard to C/P clauses where the owner assumes an obligation to prevent or detect consumption of alcohol or drugs on board tanker ships and agrees to adopt a written alcohol and drug policy for the ship, see comments under 3.1.3.6.3.

In view of the rapid developments of pollution liabilities, Members are advised to submit all proposed C/P clauses on pollution liabilities and obligations to the Club for approval in accordance with Rule 10 Section 2. The Club will assist Members at the fixing stage to draft acceptable terms.

6.1.7 Oil pollution and 1994 York Antwerp Rules
According to Rule C in the 1994 York Antwerp Rules no allowance is made in General Average for losses, damages or expenses incurred in respect of damage to the environment or in consequence of the escape or release of pollutants. The exception to the above Rule is costs of measures taken to prevent or minimise damage to the environment which are allowable in General Average as per Rule XI (d).
Some tanker charterers have introduced clauses excluding from General Average any costs attributable to preventive measures taken to avoid or minimise pollution. These clauses should be firmly resisted and members are recommended to contact the Club whenever attempts are made to introduce such terms into a charterparty. In this respect, reference is made to P&I Circular No. P.2372/1998 and P.2354/1997.

6.1.8 MARPOL ANNEX VI Prevention of Air Pollution from Ships

6.1.8.1 General

In May 2005 Annex VI “Prevention of Air Pollution from Ships” entered into force. The annex contains rules that set limits on the sulphur oxide (SOx) content in fuels and nitrogen oxide (NOx) emissions from ship exhausts. In addition it prohibits the deliberate emission of ozone depleting substances.

The Member should be diligent in complying with the regulations set out in Annex VI. It should be noted that the Club will not cover fines imposed due to non-compliance with national regulations.

6.1.9 Some practical observations

6.1.9.1 Pollution avoidance

Many pollutions occur during loading or discharging of cargo or during bunkering.

At most loading and discharging sites, the land installation provides written cargo handling plans or other instructions as to how the procedure should be carried out. Such instructions should be followed and filed on board as they may constitute evidence in case of a pollution.

Adequate communication, visually or by telephone or VHF between all individuals involved in the operation, is essential. There should be an unbroken line of communication all the way from the ship’s engine room to crew supervising the operation on deck to the pump station and final installation ashore.

Experience shows that many pollution incidents are caused by people along that line of communication who literally do not speak the same language. That can result in hoses bursting because pumps have been started before the lines have been opened up, or valves being closed before the pumps have been stopped.

Lines and hoses belonging to the ship should be tested regularly and have prescribed and valid certificates. Pressure should not be allowed to exceed prescribed limits.

The ship should be moored in such a way that hoses may not be jammed between the ship and the quay or other parts of the mooring installation. Mooring line slack caused by tide or increased draft during loading should be taken up mechanically or by constant attention by the ship’s crew or linesmen to prevent hoses or lines from being ruptured in case the ship is exposed to interaction from a passing ship (see comments under 7.1.4).

Topping of tanks is a crucial moment. The final stages require on-line communication between persons reading the ullage on board and those operating pumps or valves ashore. The ambition to receive as much freight-earning cargo on board as possible must not lead
to an intake exceeding the maximum tank volume tolerance, especially if increased cargo temperature may occur in transit by heating or otherwise which could cause an expansion of the cargo volume.

A ship may easily develop a list in the course of bunkering, loading or discharge operations. That may create pockets of air in the tanks which could cause a pollution to occur when released.

During bunkering, loading and discharge there should be an adequate readiness to cope with a pollution situation. There should be empty drums, shovels, rags and a supply of sorbent available. The scupper holes should be plugged.

Through the adoptance of a contingency plan, all crewmembers should know what to do in case of a pollution. Regular briefing and training of pollution scenarios should be carried out.

6.1.9.2 Steps to be taken when a pollution has occurred

The first and obvious step to take is to stop the source of pollution and to limit its extent. The successful result depends on good seamanship and on the adherence to suitably developed and well-trained routines as specified in the contingency plan.

Experience shows that successful pollution control depends heavily on adequate initial reporting from the ship.

The contingency plan should contain all facts to enable those on board to establish a rapid contact with all parties assigned to assist in reducing the actual and legal consequences of a pollution.

Source of pollution

The Swedish Club claims 2006-2011

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Experience shows that successful pollution control depends heavily on adequate initial reporting from the ship.

The contingency plan should contain all facts to enable those on board to establish a rapid contact with all parties assigned to assist in reducing the actual and legal consequences of a pollution.
The ship’s officers should be aware that of all parties to be contacted after a pollution there is one whose exclusive task it is to defend and protect the Member, the ship and the people on board. That party is the Club’s correspondent and any surveyors, experts and lawyers he appoints to attend. The Club correspondent should, therefore, be called in at the earliest possible moment and should be given full support in his attempts to combat the pollution and to investigate its causes.

### 6.1.9.3   Information needed in defence of pollution claims

Even if the pollution liability under the existing convention and most domestic legislations is strict, which means that the shipowner is liable regardless of the cause (see comments under 4.1.4.4), the successful settlement of a pollution claim depends on full information from the ship. This requires the dedicated co-operation of the people on board with regard to fact finding. Relevant parts of the comments on the importance of evidence and the ways of collecting it under 4.1.4 apply.

The need for information from the ship is also obvious where pollution has occurred which is not subject to the CLC or to domestic legislation based on, or inspired by, that convention. The burden of proof may then be straight, which means that the shipowner is liable only where the claimants can prove that he caused the pollution through negligence (see comments under 4.1.4.2).

In order to adequately combat pollution and for the securing of evidence in defence of the Member and his ship, it is of considerable importance that the initial report from the ship describes the pollution, its extent and cause in an adequate and realistic way. On too many occasions, a pollution has initially been reported to be “a few litres” or “just a bucket”, whereas it later turns out that it was a matter of many tons. Wishful thinking or intentional underestimation of a pollution serves only to delay and hamper the pollution response and to worsen the Member’s legal position. It may even constitute a violation of applicable regulations and cause fines to be imposed against the ship unnecessarily, on top of expenses which may already be heavy enough.

The names, functions and whereabouts of all persons involved in the operation during which the pollution occurred, should be recorded in order for all witnesses to be identified and traced even a long time after the incident.

Any possible involvement of the shore installation or of any other party should be closely followed up. The cargo’s way ashore to or from the ship should be closely analysed and documented for future use. The shore lines, valves, couplings, pumps and tanks used should be identified and documented by a sketch, photo or video.

Oil observed around or near the ship is sufficient to justify an investigation, even if it seems clear to those on board that the oil did not and could not have come from the entered ship. That is exactly what the ship may be asked to prove to the authorities who may be less interested in justice than in inducing somebody to pay for the cleanup. In such a situation, samples of the oil should be taken (see comments under 4.1.4.5.6). The direction and strength of the wind, tide and current should be established and recorded, together with the location of nearby ships, installations or other possible sources of the pollution.
As regards bunkering, it is important that bunkering contracts are not entered into on terms which may be unusually burdensome and, therefore, excluded from cover under Rule 10 Section 2.

6.1.9.4 Liability under CERCLA
The second paragraph of Rule 6 deals with liabilities that can arise under The Comprehensive Environmental Response Compensation and Liability act (CERCLA). This piece of legislation became a very powerful weapon for the U.S. authorities in cleaning up existing hazardous waste dumps, landfills and disposal facilities where amongst others ships had discharged hazardous material, slops etc. CERCLA imposes a wide range of environmental liabilities for the responsible party such as clean up costs, up to USD 50 million in natural resources damages and fines up to USD 25,000 for each day of violating the act. In addition U.S. courts can levy punitive damages corresponding to up to three times the total cost of the clean up.

CERCLA was considered by the International Group Clubs who decided that a unified approach should be adopted by all clubs in relation to cover for these liabilities arising out of escape of waste from landfill sites where the waste had been originated from the ship. The result was a decision that there should be no cover for CERCLA liabilities and that cover should be afforded only at the discretion of the individual club. Discretion should be exercised more favourably in cases where the ship was the sole responsible party under the Act than when many ships were involved.

The second paragraph of this Rule was drafted by the International Group and now forms part of all clubs’ rules.

Section 2 Oil pollution limitation of cover
6.2.1 General
This clause contains certain limitations of the cover provided by Section 1 of this Rule insofar as liabilities for pollution by oil are concerned.

To enable pooling of those risks (see comments under B.4) all Group Clubs apply identical limitations and conditions of cover as reflected by this clause.

6.2.2 Monetary limitation of cover
The liability for oil pollution is strict under the CLC Convention and under most domestic legislations (see comments under 6.1.3.1.3 and 6.1.4). It is sometimes unlimited (see comments under 6.1.4.2.3). In addition to that, an oil pollution is often combined with other heavy losses. In one and the same event, for instance a collision between two VLCC’s, there will be an accumulation of large losses to be covered by the marine insurance market and its reinsurers. Total loss compensation will have to be paid for the value of two expensive ships and their respective cargoes. Loss of life and personal injury may have to be compensated. There will be payments under Hull interest insurances and loss of hire insurance. Wreck removal costs may be incurred. For that reason it has been necessary to limit the cover under these Rules for oil pollution.

The amount to which the cover is limited is not stated in this clause, as it is subject to changes which may result from the annual renewal discussions with the reinsurers of the
Group Clubs. The amounts applicable to the coming policy year are reported annually in the head circular issued at the beginning of each year.

For the policy year 2011/2012 the limitations of cover for oil pollution is USD 1 billion per vessel and event. See comments under 6.2.4. The limitation of cover is not confined to tankers but applies to ships of all kinds.

For charterers of tankers the cover is limited USD 500,000 each accident or occurrence.

In the event that more than one charterer, other than a bareboat or demise charterer, is insured in respect of the same ship by the Club or by any other Group Club participating in the Pooling Agreement and/or the Group Excess Reinsurance Policies, the aggregate recovery in respect of oil pollution arising out of any one accident or occurrence shall not exceed the sum of USD 500 million, and the liability of the Club shall be limited to such proportion of USD 500 million as the claim of such charterer bears to the aggregate of all such claims recoverable from the Club and any other such Club.

Convention limitation means the amount to which the owner of the entered ship would be entitled to limit his liability in respect of any particular matter under any applicable international convention or under any rule or law analogous to any international convention relating to limitation of liability.

It appears from this clause that the Club may from time to time determine the terms and conditions under which pollution risks may be covered. This depends largely on the Group reinsurance facilities available. Any amended terms and conditions affecting the extent of cover will be brought to Members’ attention by circulars or otherwise by the application of Rule 10 Section 3.

In consequence hereof, Members are advised not to enter into long-term commitments based on the present extent of cover. See comments under 20.6.

6.2.3 U.S. Oil Pollution Surcharge for tankers

The Group Clubs have decided that an additional premium should be charged for tankers as well as owners of OBO and OO vessels loading or discharging persistent oil in bulk as cargo at any port within the U.S. or the U.S. exclusive economic zone (EEZ). Circulars on U.S. Oil Pollution Surcharge are issued quarterly and contain a schedule of definitions and a declaration form. Members should provide the Club on a quarterly basis with a declaration of voyages with oil to the U.S. Declaration forms can be obtained from the Club.

When necessary, the Club can issue further provisions on the strength of this clause and of Rule 10 Section 3.
Rule 6 Liabilities in respect of pollution
Section 2 Oil pollution limitation of cover

Pollution limits, tankers

Pollution limits, non-tankers
6.2.4 Limitation per event
As mentioned in comments under 6.2.2, the limitation of cover applies per event. For the definition of "event", see comments under 2.8. Item (a) of this clause contains a further qualification of an event.

The clause states that, unless otherwise decided by the Club, the limitation of cover applies, irrespective of whether the event involves pollution from one ship or more than one ship. If a collision between two ships entered with the Club causes a pollution by a common escape of oil, the total compensation from the Club shall not exceed the limitation of cover per event applicable to that policy year.

The last part of this item states that if the total amount of claims arising out of such an event exceeds the applicable limitation, the compensation shall be apportioned between the Members concerned in proportion to each Member's valid claim for compensation in relation to the aggregate of compensation claims.

It also follows from item (a) that the limitation of cover applies to the aggregate of claims for compensation which can be based on one or more than one Rule. The limitation amount applicable per event to the relevant policy year constitutes the limitation of compensation, even if several Rules apply to the consequences of the pollution such as Rule 4 Sections 1 and 3, Rule 6 Section 1, Rule 7 Sections 1, 5 and 6 (g) or Rule 8 Section 2.

6.2.5 Limitation of cover in connection with salvage
Item (b) of this clause is applicable to events of salvage or assistance.

If oil pollution liabilities arise out of such salvage or assistance or from the casualty itself, the limitation of cover applies to the aggregate of liabilities incurred by the entered ship and ships providing such services or otherwise in connection with the same casualty. A provision for the limitation of cover to apply is that the ships involved are either entered in the Club for oil pollution risks or covered for those risks by any other Club which participates in the pooling agreement (see comments under B.4) and the Group excess re-insurance policies.

The limitation of cover applicable to compensation to the Member is the proportion of valid claims for compensation made on the Club in relation to the aggregate of claims filed in connection with that event.

The reason for this provision is that the reinsurance contract of the Group Clubs contains a similar limitation of cover per event.
Rule 7 Other liabilities

Section 1 Liabilities for other property
Liabilities, costs or expenses for loss of or damage caused to property not owned by the Member whether on board or outside the entered ship to the extent such risks are not specified in other Rules.

However, the Member shall not be entitled to be reimbursed by the Association in respect of loss of or damage to objects or property which he has borrowed, leased or bought under reservation of title.

Section 2 Collision with other ships
Liabilities, costs or expenses incurred as a result of a collision with another ship if and to the extent such liabilities, costs or expenses are not covered under the Hull insurance of the entered ship and limited to
(a) one fourth of the liability arising out of the collision,
(b) that part of the Member’s liability, arising out of the collision, which exceeds the sum recoverable under the Hull insurance of the entered ship solely by reason of the fact that the liability exceeds the Hull insurance value.

The limitations under a-b above do not apply should the liability, cost or expense relates to the raising, removal, destruction, lighting or marking of the wreck from another ship, or the removal or the destruction of the cargo on board another ship.

Section 3 Damage to fixed and floating objects
Liabilities, costs or expenses incurred as a result of a contact with fixed and floating objects if and to the extent such liabilities, costs or expenses are not covered under the Hull insurance of the entered ship.

Furthermore, that part of the Member’s liability, arising out of the contact, which exceeds the sum recoverable under the Hull insurance of the entered ship solely by reason of the fact that the liability exceeds the Hull insurance value.

Section 4 Special compensation to salvors
Liability to pay special compensation to a salvor of an entered ship in respect of work done or measures taken to prevent and minimise damage to the environment provided
(a) 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,
(b) that such liability is not payable by those interested in the salved property.

Section 5 Obstruction to navigation and wreck liabilities
Liabilities, costs or expenses incurred where the entered ship as a result of a casualty has caused an obstruction to navigation.
Liabilities, costs or expenses relating to the raising, removal, destruction, lighting or marking of the wreck of the entered ship, its cargo or equipment which relates to the ship or wreck, when such acts are compulsory by law or the costs thereof are legally recoverable from the Member except to the extent they are covered by the Hull insurance of the entered ship. The value of the wreck and other property saved shall be credited to the Association.

Liabilities, costs or expenses incurred as a result of the presence or involuntary shifting of the wreck of the entered ship or its cargo. However, where the Hull Underwriters have not acquired title to the wreck, the cover afforded by the Association is limited to a period of three years from the day the insurance ceased.

Section 6 Liabilities in respect of fines
1. Fines (dues, penalties or charges) as set out under a-d whether judicially imposed upon the Member, a member of the crew or a representative of the Member whom the Member may be liable to reimburse or reasonably reimburses with approval of the Association
(a) fines imposed for short or overdelivery of cargo, or failure to comply with regulations concerning the declaration of goods, or documentation of cargo provided that the Member is insured by the Association for liability in respect of such cargo and subject to the terms of the entry in respect of such cargo cover,
(b) fines imposed for breach of any immigration law or regulation,
(c) fines imposed in respect of the accidental escape or discharge of oil or any other substance, provided that the Member is insured for pollution liability by the Association, and subject to the applicable limit of liability under Association entry,
(d) fines imposed for smuggling by the Master or a member of the crew provided that such activity is unknown to the Member.

2. Other fines judicially imposed may be recoverable provided that
(a) the Member has satisfied the Association that he took such steps as appeared to be reasonable to avoid the event giving rise to the fine or penalty.
Any amount claimed in respect of such fines shall be recoverable to such extent only as the Association in its absolute discretion may determine without having to give any reason for its decision.

3. Irrespective of points 1 and 2 above, the Association shall have no liability in respect of fines for
(i) overloading of the ship,
(ii) carriage of more passengers than permitted,
(iii) illegal fishing,
(iv) insufficient upkeep on the ship’s lifesaving and navigational equipment,
(v) lack of valid or prescribed certificates,
(vi) infringement of MARPOL regulations where the ship’s oily water separator or similar pollution prevention device has been bypassed or rendered inoperable.
Section 7 Quarantine expenses
Additional costs or expenses incurred by the Member in connection with quarantine and disinfection of the entered ship, its crew or passengers as a consequence of an infectious disease, except that there shall be no recovery from the Association for the ship’s running expenses during the delay or indirect consequences thereof.

Section 8 Towage liabilities
Where the entered ship is towed,
(a) liability arising from the towage for the purpose of entering or leaving port or manoeuvring within the port during the ordinary course of trading or from towage of such ships which are habitually towed in the ordinary course of trading from place to place,
(b) liability arising from other towage, however where such liability arises under the terms of a towage contract cover is afforded only where such contract has been approved by the Association.

Where the entered ship is towing,
(a) liability arising from towage during a voyage with the purpose of saving life or property in distress,
(b) liability arising from other towage but only when the Association has agreed in advance to afford cover for such towage.

Section 9 Confiscation of ship
Notwithstanding the terms of Rule 11 Section 2 (l) the Association shall have the discretion to compensate, in whole or in part, the Member’s claim for loss of the entered ship following confiscation of the ship by any legally empowered authority by reason of the infringement of any customs law or customs regulation.

The compensation from the Association shall not exceed the market value of the ship without commitment at the time of confiscation.

The claim will be considered by the Association only
(a) if the Member has been deprived of his interest in the entered ship for a time of not less than six months,
(b) if the Member shall have satisfied the Association that he took such steps which in the opinion of the Association were reasonable to prevent the infringement of the customs law or regulation giving rise to the confiscation.

The Association shall be under no obligation to give reasons for its decision.
Comments on Rule 7 Other liabilities
Section 1 Liabilities for other property

7.1.1 General
This is the general third party liability clause. In accordance with Swedish tradition in law-making and drafting of insurance conditions, the extent of cover is described in broad general terms. The corresponding clause under British Rules is often drafted as a range of risks covered subject, under English law, to careful linguistic interpretation. The advantage of a general legal concept is increased flexibility in applying the clause to changing reality.

The cover under this clause is mainly in respect of certain risks excluded under the Hull & Machinery policy.

Most common types of "Other P&I"

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</tr>
</thead>
<tbody>
<tr>
<td>Misc. third party damage</td>
<td>25%</td>
</tr>
<tr>
<td>Fine/penalty</td>
<td>20%</td>
</tr>
<tr>
<td>Anchor/Moorings</td>
<td>15%</td>
</tr>
<tr>
<td>Wash damage</td>
<td>10%</td>
</tr>
<tr>
<td>Wreck removal</td>
<td>5%</td>
</tr>
</tbody>
</table>

The Swedish Club claims 2006-2011

7.1.2 Hull liability exclusions
This clause is not exclusive when it comes to cover of risks excluded under the Hull insurance conditions. Some of the main exclusions are reflected in Rule 3 (Liabilities in respect of persons), Rule 4 (Liabilities in respect of cargo) and Rule 6 (Liabilities in respect of pollution). Further exclusions are dealt with separately in subsequent sections of Rule 7.

Compared with AV 2000, Hull insurance on Institute Time Clauses Hulls 1/10 1983 (ITC) excludes two other important risks. The first exclusion refers to liability for collision with objects other than ships, such as quays, piers, buoys, dolphins, etc. This risk is called FFO (Fixed and Floating Objects). For a ship Hull insured on ITC, that risk is covered under Rule
7 Section 3. The second exclusion is a consequence of the fact that Hull insurance on ITC only covers 3/4 of the collision liability (for collision with ships). It leaves the remaining 1/4 collision liability to be covered as 1/4 RDC (Running Down Clause) under Rule 7 Section 2.

This clause is geared to cover the remaining, unspecified, traditional limitation of cover for third party liability under the Hull policy.

It is a prerequisite for cover of the collision liability under the Hull insurance that the entered ship has been in direct physical contact with the damaged ship or object. Such a collision may occur even if only one of the ships is moving. A collision regarding Hull conditions can also be constituted by pressing against or otherwise striking, bumping or touching another ship or object as long as there is a direct contact. Damage caused by pulling when towing does not constitute a collision. Pulling may, however, lead to a collision covered by the Hull policy.

The damage to another ship or object can be transmitted, for instance, by ice or a floating log. Although there is no direct contact, liability is covered under the Hull policy.

When damage is caused without a direct contact, the Member's liabilities against third parties are excluded in the Hull conditions. Cover should then be provided by P&I and be sought under this clause.

7.1.3 Noncontact damage by manoeuvring
Without having been in direct contact with another ship, the entered ship may cause that ship to run aground or collide with a third ship. The cause of the accident can be negligent manoeuvring on the part of the entered ship or the consequence of interaction as described under 7.1.4. As there is no direct contact, the liability of the entered ship is not covered under the Hull policy. Cover is instead provided under this clause.

This does not exclude that in certain situations the cover remains with the Hull insurance. This would be the case if the manoeuvre which caused the accident was deliberately made to avoid a collision covered under the Hull policy (AV 2000 § 5, c) and f)).

Furthermore, if a direct contact with the entered ship caused the other ship to collide with a third ship, the Hull policy for the entered ship will cover any liability against the two other ships (AV 2000 § 5 d)) viz. also the ship that was not in a direct contact with the entered ship.

The Club should be immediately informed when indirectly caused damage of this nature has occurred. The result of the investigation will affect not only liability against the third party but also the question of cover under the insurance policies involved.

7.1.4 Interaction or “wash damage”
7.1.4.1 General views on interaction
Another example of liability excluded under the Hull policy is what is commonly and inadequately referred to as ”wash damage” (AV 2000 § 7, 3.2). Fields of pressure and suction of various strength and intensity are built up when a ship proceeds through the water. The phenomenon should be described as interaction between the fields of pressure and suction from ships or objects involved.
7.1.4.2 What is interaction?
When two or more ships are in close proximity, such interaction can occur. Pressure fields around the two vessels interact with each other to produce lateral forces and movements in both ships. The forces or movements can change direction rapidly depending on the relative positions of the ships. These forces do not arise from sea or weather conditions but are due solely to the presence of the ships. Shallow and confined waters magnify the effect so that a ship may deviate from her intended course with disastrous consequences.

Pressure and suction forces are increased by the size and speed of each ship and by the depth of water. The forces increase and can change character unexpectedly when a ship passes close to a fixed surface such as a quay wall or a bank. "Bow-in" or "bow-out" forces may suddenly appear of such strength that they cannot be counteracted even by instant rudder manoeuvres. This is a serious danger when a tug moves alongside a large ship. "Bow-in" or "bow-out" forces may cause the tug to get sucked under the stern of the ship or into her propeller. A ship exposed to interaction may sheer and run aground, or collide with another ship or object. Regardless of what caused the accident, the presence or absence of a direct contact will determine whether the case falls under Hull or P&I policy.

7.1.4.3 Effect of interaction on moored ships
The most frequent type of damage caused by interaction is when a ship moored at a quay gains interaction momentum from a passing ship and starts to move along the pier. It often causes the moorings to brake. Their value plus the cost of safely returning the ship to her mooring place will be claimed against the owner of the passing ship. The consequences can be worse. Damage can be caused to the ship, her gangway or to loading/discharging equipment such as conveyor belts, cranes, hoses or loading/discharging arms. Damage can be inflicted to shore installations such as bollards or even to the entire pier and anything on it.

7.1.4.4 Burden of proof
7.1.4.4.1 General views on liability and burden of proof
For this type of damage, the passing ship has traditional liability for negligence (in tort) with the burden of proof resting on those who suffered damage. In practice, courts have a tendency to assume negligence based on the damage. This means that they may accept such a low standard of evidence produced by the claimant that the burden of proof is reversed or liability becomes almost strict. (See comments under 4.1.4.4.) In certain ports or jurisdictions, liability is indeed strict by mandatory port conditions, which may be applicable to traffic in waters where the accident occurred.

There could be many reasons why the courts try to shift the burden of proof to the passing ship. One reason is that evidence for the passing ship is mainly to be found on board that ship. It is important that such evidence is made available to the Club. When proceeding in narrow waters where such damage is likely to occur, the proceeding ship should regularly record the time for passing noticeable landmarks such as locks, bridges, quays, etc. This will make it possible afterwards to calculate her speed in order to establish whether it was excessive or not. The name of the attending pilot and of people on the bridge should be noted. Strength and direction of wind, tide and current should be recorded. The course and speed recorder should be working properly and constantly be supplied with fresh paper. The printout should be kept on board for a reasonable time for future reference. All observations of ships passed,
their location and the number and state of their moorings should be recorded in the deck log. The name of ships met or overtaken should be noted, including position and time.

In a wash damage case, the claimants have the initial burden to prove:
1. That the interaction was actually caused by the ship against which the claim is made.
2. That her passing was negligent.
3. That the ship on behalf of which the claim is made did not contribute to the damage by negligence.

7.1.4.4.2 Causation
With regard to 1) it is sometimes difficult for a claimant to establish a causal connection between the damage and the passing ship. The alleged time for the damage may not coincide with the time of the passing. There may have been other ships around at or about the time reported. It is the burden of the claimant to exclude the possibility that those ships caused or contributed to the damage.

7.1.4.4.3 Negligence
Even if the claimant is successful in proving that the damage was caused by interaction with the passing ship, this is not enough to constitute legal liability to compensate for the damage. Large ships inevitably cause considerable interaction when proceeding in shallow water even if they are underway just at the necessary steering speed. Therefore, the claimant needs to prove that the passing was negligent. An important factor in establishing negligence is whether speed regulations exist and were violated. If so, it is a strong argument against the passing ship. Also speed within or under the limit can be considered as excessive if the fairway was shallow and narrow and the ship could have travelled safely at a slower speed. Witnesses presented by the claimant have a tendency to exaggerate the speed of a passing ship. They have seldom more than their subjective impression to go on. Their statements are based more on the result of the passing than on firm observations suitable as objective grounds to calculate the speed. It underlines the importance of such observations being made and recorded on board the passing ship.

7.1.4.4.4 Contribution
When it comes to the third element in the claimant’s burden of proof, the location of the damaged ship, the degree of lookout and vigilance and, in particular, the number, quality, application and tightness of moorings are of importance. A ship, moored at an exposed location near a shallow fairway frequently used by large ships, must be adequately moored and have a sharp lookout. It is of great importance to establish the number and application of the moorings and the condition of the lines especially whether they are wire or synthetic. The tide and/or the lowering/raising of the hull during loading/discharging operations might have made the moorings slack enough for the ship to gain momentum. The claimants should be asked to produce evidence that any slack was taken up mechanically or by regular attendance by the ship’s crew or linesmen.

7.1.4.4.5 What to do when interaction has caused damage
The first report of wash damage is often received while the ship remains in port. Upon receipt of such an indication, the master should contact the nearest Club correspondent in order to
have the evidence secured in a proper legal way for the defence when a specified claim is filed. The correspondent will arrange for the damage to be surveyed in order to establish the nature and extent of the loss.

7.1.4.4.6 No cover for damage to own property
The cover under this clause is in respect of the liability of the passing ship for damage caused to third parties. No compensation is allowed under this clause or anywhere else under these Rules for damage caused to the entered ship, her moorings, gangways or other belongings by wash from another ship. However, see comments under 7.1.15.

7.1.5 Propeller water
A type of liability related to that of interaction is when damage is caused by the jet of propeller water from the entered ship. As there is no direct contact, liability is excluded by the Hull insurance and covered under this clause. Such damage can occur when the propeller is running on a ship moored at a pier or in the course of mooring or unmooring operations. The damage can be extensive. Large parts of a pier may become undermined and slide into the water with warehouses and cranes. The jet of propeller water may cause barges to sink or capsize, or cause damage to other ships at the quay. It is difficult to disprove an allegation of negligence in a situation like that. The best remedy is not to let the situation occur.

7.1.6 Use of anchor
There are a number of liability situations where a contact has occurred which, in the sense of the Hull conditions, is not of a nature to allow compensation under the Hull policy.

Although an anchor is an integral part of the ship, liability caused by use of anchors is excluded from Hull cover (AV 2000 § 7, 3.2) unless the anchor is dropped reasonably and purposely to avert peril insured against under the Hull Rules (AV 2000 § 5 c) and f). In such a case, the damage may be allowed compensation in general average as an intentional sacrifice. For a vessel Hull insured under ITC, damage caused by anchors to avoid a collision with a quay or any other object which does not qualify as a ship, will still come under the P&I policy as FFO is an excluded risk under British Hull conditions. See comments under 7.3.2.

Liability for damage caused by use of anchors is a risk which has increased in frequency and extent. Not only ports and fairways but also the oceans are tangled with high tension cables, telephone cables, oil pipes, gas pipes, etc. Local law or port regulations may impose strict liability (see comments under 4.1.4.4) upon the shipowner for damage caused by use of anchors. If the liability is for negligence (in tort), it is upon the claimant to prove that the ship was negligent. However, it may be difficult to explain how a cable happened to end up on the ship’s anchor through no fault of the ship. Information as to the time and position for the dropping of the anchor is essential and should always be available. The charts should be checked to see whether the cable was properly marked. It underlines the necessity of having updated charts on board. The pilot’s name, his orders and involvement in the anchoring procedure should be noted. Detailed and adequate information from the ship is invaluable for rejecting or reducing a claim of this nature.

Considerable caution is recommended before the anchor is dropped or weighed. The condition of the capstan and its brakes should be checked to avoid a spontaneous drop of the
anchor. Still, the most unexpected reasons for dropping an anchor can occur. An unmanned tow was equipped with an anchor which could be released by a radio signal from the tug in the event of an emergency. An amateur radio operator found the crucial wavelength which released the anchor under tow with serious damage caused before those on board the tug found out why the speed of the tow was unexpectedly reduced.

Concerning the P&I cover, liability should relate to the use of the anchor. The anchor is not in use when it is in its fixed position in the hawsepipe. If it is lowered and hanging free in preparation for or after anchoring, it is considered to be in use. P&I exposure starts and ends at the point when the anchor is completely in its traditional resting position.

7.1.7 Use of lines and ropes
Liability for damage caused by use of mooring lines and tow ropes is excluded from the Hull cover (AV 2000 § 7, 3.2) and falls within the category of cover under this clause. Mooring lines often cause damage to bollards but could also entangle cranes or other installations ashore. Liability for use of tow ropes is generally related to the conditions under which the towage is performed. That liability is dealt with in comments to Section 8 of this Rule.

7.1.8 Use of loading/discharging devices
The Hull conditions exclude liability for the use of loading and discharging devices (AV 2000 § 7, 3.2). Use means that the devices are in any stage of operation, or in preparation for or completion of such operation. It does not matter whether the damage was caused by the ship or movement of the device. Only collision damage caused by ship’s movement when the device is completely in its resting position is covered under the Hull policy.

One could discuss whether a ship’s ramp is a part of a ship’s hull structure temporarily used for cargo operations or a loading/discharging device used as part of the ship’s structure while the ship is at sea. From an insurance point of view it has been decided that ramps are to be considered loading/discharging devices. When used for this purpose, any liability arising will fall under this clause. Damage caused by the use of ramps can occur when the ramp is lowered on top of fire posts or electrical installations ashore. The result may be a discharge of water or a short circuit of the neighbouring port area with considerably wider economic consequences than the immediate structural damage to the object hit by the ramp.

7.1.9 Use of gangway
Damage caused to third parties by the use of the ship’s gangway is excluded under the Hull policy (AV 2000 § 7, 3.2). Such damage can be caused by movement of either the gangway when lowered or raised or the ship when the gangway is attached to the hull. Both situations are considered to involve the use of the gangway. Liability for damage arising is covered under this clause. The only situation where the Hull policy is concerned is if a gangway takes the impact when in its traditional storage position where it cannot be considered to be in use. The cover is the same whether the gangway belongs to the Member or not.

7.1.10 Discharge of water, smoke etc.
The discharge overboard of cooling water from a ship can cause damage by short circuiting electrical installations on shore or filling barges moored alongside the ship. Liability for such
damage is covered under this clause. Paint spray from work performed on board belongs to the same category. So does liability for a fire which starts on or initiates from the entered ship and spreads to neighbouring ships or warehouses.

Emissions of many kinds from the ship such as smoke from the ship’s funnel may constitute pollution in the sense of Rule 6 Section 1. The Member’s liability, if any, is then covered under that clause.

7.1.11 General unspecified third party liability
This clause is intended to absorb various situations of unspecified third party liability for loss of or damage to property. For example, a valuable computer brought on board by people performing repairs or maintenance is damaged by crew negligence. As long as the liability is of a common law nature or flows from a contract approved by the Club according to Rule 10 Section 2, it is covered under this clause.

7.1.12 Damage caused by cargo
The Hull conditions exclude liability caused by cargo (AV 2000 § 7, 3.2). The most frequent example of such damage is when cargo is dropped from the sling on trucks, railway cars or barges at the ship’s side. These are third party risks covered by this clause.

During land transport, containers or other units of cargo may fall off trailers and cause damage to property or injury to persons. Those who suffer damage may choose to file their claims against the sea carrier. The purpose of the P&I insurance is to cover sea-related legal third party liability. The Clubs are not truck liability underwriters. Therefore, there are situations where liability of this nature is not covered by P&I.

If the accident occurred in reasonable relation to loading, shifting, discharging or other similar cargo operations on the quay or in the terminal area, liability may be sufficiently sea-related to be covered.

Third party liability for cargo on land which falls outside the cover can be insured separately. Please contact the Club for advice.

7.1.13 Loss of or damage to bunkers
7.1.13.1 Charterer’s bunkers
Bunkers on board may not necessarily belong to the owner of the ship. In fact, they often belong to a time charterer. If they are lost with the ship or damaged by contamination, the charterer may have a claim against the owner whose liability is decided by the terms of the C/P. If there is such liability and if the charter has been on traditional and approved terms, the owner’s liability to compensate the charterer is covered under this clause. This risk used to be excluded under the P&I insurance. The increase of bunker prices in the mid-1970s increased the owner’s liability exposure if the bunkers belonged to a charterer. The extent of the exposure justified insurance protection. This was achieved by liability for bunkers belonging to a charterer being singled out from the exclusion of cover for liability in respect to supplies and stores under Rule 11 Section 2 (l). The cover is provided under this clause.
7.1.13.2 Member’s bunkers
Loss of or damage to the shipowner’s own bunkers is covered under Hull insurance on ITC, American Hull conditions, Swedish conditions and Norwegian conditions.

7.1.14 Damage caused by ship’s vehicles
Large container or RoRo ships often carry trucks or other vehicles permanently stationed on board the entered ship for cargo handling. Liability for damage caused by such vehicles is covered as long as the damage is caused within the intended operation of the vehicle on board or in the immediate vicinity of the entered ship. The Club does not provide general traffic liability insurance. If the trucks are operated in a larger area and especially if they are run on public roads outside the terminal area, they require separate liability cover. The Club can assist Members to obtain such cover.

Death or injury caused by a ship’s vehicles follow the same principle. Liability is covered under Rule 3 Sections 1, 5 or 7 as the case may be.

No cover is provided for damage to the vehicles themselves. Separate cover is required to the extent that the risk is not covered under the ship’s Hull insurance in connection with a casualty to the ship or heavy weather encountered (AV 2000 § 7, 7.h)).

7.1.15 Borrowed property
P&I insurance is, by definition, insurance against third party liability risks. Therefore, the cover under this clause is limited to liability for property which is not owned by the Member. In its second part, the clause puts property borrowed, leased or bought under reservation of title in the same category as property owned by the Member himself. The only exception is in Rule 4 Section 1 dealing with the Member’s own cargoes according to which cover is provided to the same extent as if the cargo had been the property of a third party. AV 2000 does not contain a similar clause for Hull purposes usually known as the sister-ship clause. However, according to Rule 2 (see comments under 2.13) and the Hull and P&I policies issued by the Club, the conditions of SPL are supplementary to the Rules on points where they remain silent.

SPL § 78 says (translated):

When the insured vessel collides with a vessel or an object belonging to the same owner, this circumstance shall not affect the insurer’s liability.

The conclusion could be drawn that a Hull policy based on AV 2000 will cover damage caused by contact with a pier or other object belonging to the owner of the ship whereas the P&I policy will cover such damage when excluded under a Hull policy based on ITC. SPL only mentions damage by contact. Whether an analogy should be made on non-contact damage caused by interaction, propeller water, etc. to quays, piers or other objects belonging to the owner of the entered ship is uncertain but remains an argument for the application of Rule 19, the Omnibus Rule.

There is no cover under Rule 9 for property owned by a charter Member nor has he a cover for property borrowed, leased or bought under reservation of title. The same exclusions from cover apply to other parties in favour of whom the Member’s cover has been extended such as...
Section 2 Collision with other ships

7.2.1 Adaption of P&I to Hull cover for liability risks

The main function of the Hull insurance is to compensate the Member for loss of or damage to the insured ship. In that sense, the Hull insurance is a property insurance. Important but strictly limited elements of insurance against liability and salvage risks have been added to it. This makes the Hull insurance a hybrid of various types of insurance. The extent of liability cover under the Hull insurance is strictly defined in the applicable Hull conditions. The shipowner’s traditional liability cover, the P&I insurance, should be dovetailed with the Hull policy in such a way that no gap arises between the two covers, and the Member is afforded full insurance protection. This is best achieved if the two types of insurance are covered by one and the same underwriter.

This does not mean that a Member is provided less protection under P&I insurance in The Swedish Club if the Hull cover has been placed elsewhere. There might, however, be situations where conflicts can arise as to the extent of cover under other Hull rules which affect the application of the P&I cover. Conflicts may also arise as to the insured Hull value. In particular too low a Hull insurance value may affect the cover for excess collision liability under the P&I policy.

The collision liability left to be covered under the P&I policy depends on the exclusions under the Hull cover. Some important exclusions are covered under other Rules such as Rule 3 (Liabilities in respect of persons) and Rule 6 (Liabilities in respect of pollution). Various clauses in Rule 7 also serve as safety nets to cover a shipowner against liabilities excluded under the Hull policy. Section 1 takes care of risks like interaction and damage caused by the use of anchors whereas Section 3 deals with the exclusion under ITC in respect of liabilities for collisions with objects other than ships, the so called cover for FFO (Fixed and Floating Objects).

This clause provides insurance protection against some other important exclusions under the Hull insurance viz. under (a) any limitation in a Hull cover based on ITC to 3/4 of the collision liability and under (b) liability in excess of the Hull insurance value. It also covers any part of collision compensation payable under U.S. law which refers to cargo carried on board the entered ship.

7.2.2 1/4 RDC (Running Down Clause)

7.2.2.1 General views on 1/4 RDC

Following an English High Court decision in the first half of the 19th century, the Hull underwriters decided to limit insurance protection to cover only 3/4 of the collision liability. The idea was that an uninsured deductible of the remaining 1/4 would discourage the shipowner from exposing his ship to serious risks and promote prudent behaviour in the operation of the ship. It coincided in time with the step from sail to steam. With increased technical and economic uncertainty, and with the escalation of liability exposure, shipowners felt a need to band together to cover those excluded risks on a mutual basis. The 1/4 collision liability risk exclusion from the Hull cover contributed to the formation of the first P&I Clubs; 1/4 RDC (Running Down Clause) rates as one of the traditional P&I risks.
Rule 7 Other liabilities
Section 2 Collision with other ships

7.2.2.2 4/4 RDC covered under AV 2000
Hull insurance under AV 2000 provides cover for full collision liability or 4/4 RDC. In such a case no cover for 1/4 RDC is required under the P&I policy. It is technically possible to transfer cover of 4/4 RDC to P&I. One of the advantages for a shipowner to have the full collision liability insured under the Hull policy is that the Hull insurance premium is on a fixed basis. A transfer of the collision liability partly or fully to P&I would make the premium subject to supplementary calls.

7.2.2.3 Cover of 1/4 RDC makes P&I the leading underwriter in collision cases
A P&I Club who has 1/4 RDC cover for an entered ship often finds that his stake is the single largest of those involved in the insurance cover of the collision liability. The reason is that the 3/4 RDC under the Hull cover is usually divided into small parts and distributed among many underwriters. As the leading underwriter, the P&I Club handles a collision liability claim and negotiates it to settlement and distribution among the underwriting interests concerned. Having been Hull underwriters since 1872, The Swedish Club has unrivalled experience in handling such claims.

7.2.3 Collision liability apportionment - single or cross?
7.2.3.1 General views on collision liability apportionment
The apportionment of collision liability is simple where one of the ships is 100% to blame or where neither of the two ships is at fault. In the first case, the Hull underwriter pays the
entire liability or $4/4$ RDC if the ship is Hull insured on AV 2000. If the ship is Hull insured on ITC, the Hull underwriters pay $3/4$ and P&I $1/4$ RDC. When neither ship is at fault, each ship bears its own loss.

In the majority of collision cases, fault is found by both ships leading to a shared blame based on the degree of fault. The division of liability is generally reached through negotiation between the two underwriters concerned. If the negotiations fail to produce a settlement, the case has to be decided in court.

There are two ways of apportioning collision liability viz., the single and the cross liability systems.

7.2.3.2 Single liability
The single liability system means that the agreed liability apportionment is applied to the aggregate amount of the loss sustained by the two ships. The ship with the greater loss will receive compensation from the underwriter of the other ship until the final loss suffered is proportionate to the degree of fault. The disadvantage of a single liability settlement is that the loss of each party consists of insured Hull damage and uninsured loss of time in varying proportions. The ensuing apportionment of the incoming compensation between the Hull underwriter and the shipowner for his uninsured loss of time must then be based on an assumed cross liability settlement.

7.2.3.3 Cross liability
The cross liability system means that the liability is apportioned not on the aggregate of the two losses but on the loss each ship sustained individually. It is then possible to apportion each part of the individual loss, whether it is insured Hull damage or an uninsured loss sustained by the shipowner himself.

The application of the cross liability system becomes complicated where global limitation applies to the liability of one of the ships. According to NPL and SPL, Swedish Hull underwriters should still apply the cross liability system, whereas the Rules of British Clubs generally state that collision liability cases, where global limitation applies, should be settled according to the single liability system. Experience has shown that uninsured gaps in cover can arise for owners who are entered in British Clubs for ships Hull insured on Scandinavian conditions such as AV 2000. The British Rules do not dovetailed with Scandinavian Hull conditions. The only remedy available under British Rules would then be the Omnibus Rule.

The present Section of Rule 7 does not make it a condition for collision liability to have been based on either the single or cross liability systems. It simply allows compensation for collision liabilities not covered under the Hull insurance of the entered ship. This provides adequate and properly adapted insurance cover and protection for the Member.

7.2.4 Excess collision liability
7.2.4.1 Cover when collision liability exceeds Hull insurance value
The Hull cover is in respect of a certain value agreed upon by the Member and the Hull underwriter (AV 2000 § 2). The value is decided at the commencement of the policy year. It is often adjusted during the policy year to reflect the changing second-hand market. If the
entered ship becomes a total loss in a collision, the insurance value will be consumed by total loss compensation to the Member. Damage may, however, have been caused to the owner of the other ship or property for which the Member may have liability covered under the Hull policy. According to AV 2000 § 6, 3 the agreed Hull insurance amount can be consumed a second time to cover such outstanding liabilities. This is the ultimate limit for the liability cover under the Hull policy. Should the legal liabilities, of a nature to be covered by the Hull insurance, exceed the Hull value, the balance is provided by the P&I insurance under this clause as excess collision liability.

The Hull damage part and the collision liability part of the Hull cover are not cumulative. If damage to the entered ship is below her insured value, the unused part cannot be transferred to the liability cover to reduce the P&I exposure for excess collision liability.

There are Hull conditions with no separate insurance amount set aside to cover collision liability. Under such a cover, the insured amount may be completely consumed to compensate the Member under the Hull policy for the loss of or damage to the entered ship. This leaves most of or the entire collision liability to be covered under P&I. The evaluation of the extent of cover under the existing Hull policy is important before or during entry for P&I. It may also influence the premium to be paid.

7.2.4.2 Importance of sufficient Hull insurance value

The exposure of the P&I policy for this risk is related to the amount insured under the Hull policy. If that risk is covered by The Swedish Club there is no problem. The acceptance by the Club of a Hull insurance value is sufficient to approve it as suitable for the P&I insurance if it is within the Club. For ships which do not have Hull coverage with The Swedish Club, Members are advised to report any change of the Hull value to the Club as P&I underwriter in order to avoid a situation where the value is considered too low. Such a situation would arise if the Hull value was found to be below the ship's full market value or if the cover under the Hull policy was only for a part of the Hull value other than the traditional 3/4 RDC.

7.2.5 Collision liabilities for wreck removal of another ship

The last paragraph of this Rule stipulates that limitations of cover under (a-b) do not apply for wreck removal and related liabilities of the ship the Member is colliding with. The reason for this is that the Hull insurance excludes not only the wreck removal of the insured ship but also the removal of the wreck of any other ship involved, see AV 2000. The same exclusion under AV 2000 applies to removal or destruction of cargo onboard another ship.

Since AV 2000 has a clear exclusion of these liabilities P&I will have to cover the excess liability. If our Member’s liability arising out of a collision exceeds ¼ RDC covered by P&I the excess liability is also covered in respect of the removal of the wreck and cargo of the other ship.

7.2.6 Liability for collision compensation under U.S. law in respect of cargo carried on the entered ship

As appears from the comments under 4.1.8.3, collision constitutes an accepted exclusion of liability for loss of or damage to cargo carried on the entered ship according to the Hague Rule exception 4:2 (c). The owner or underwriter of cargo so lost may instead seek compensation
from the other ship involved in the collision. According to the Brussels Collision Convention of 1910 (the Collision Convention), cargo can only recover a part of the loss equal to that ship’s degree of fault. Consequently, there is no overspill of liability to be included in the collision claim against the ship on which the cargo was actually carried. In this way the Hague Rule liability exclusion becomes effective even in a collision situation.

The U.S. has not ratified the Collision Convention. This means that in cases subject to U.S. jurisdiction, owners of cargo on one ship can recover the loss in full from the non-carrying vessel provided that it has some degree of fault. The non-carrying vessel is free to include the loss in the collision claim and recover the carrying vessel’s share of the loss proportionate to its degree of fault. Despite the Hague Rule liability exclusion of liability, the carrying vessel is then liable for compensating loss or damage to its own cargo. Such liability is excluded from cover under the Hull policy (AV 2000 § 7, 3 b). The Member will instead be covered under this clause.

To avoid this circumvention of the Hague Rule liability exception, the Both-to-Blame Collision Clause was introduced. In short, the clause provides the cargo owner to indemnify the carrying ship for any amount paid to the non-carrying ship in compensation for loss or damage to that cargo. Although the Both-to-Blame Collision Clause has been held invalid in the U.S., it is considered to be a standard condition in the sense of Rule 10 Section 2 which should be included in all Bs/L and C/Ps.
Section 3  Damage to fixed and floating objects

7.3.1  General
As described in the comments in Sections 1 and 2 of this Rule, liability cover under a Hull policy has important exclusions which require cover under the P&I policy so as not to leave a shipowner without insurance protection.

7.3.2  Cover for FFO when excluded under Hull policy
One such exclusion is found in Hull policies under ITC or AICH. It refers to liability for FFO (Fixed and Floating Objects). This clause provides the necessary cover for a Member who has the entered ship insured on Hull Conditions excluding FFO. If the Hull policy is under AV 2000, the clause does not apply as AV 2000 adequately protects the Member against liability for FFO under the Hull policy.

7.3.3  “Fixed and floating objects”
Fixed and floating objects are those which do not qualify as ships. Quays, docks, bridges, piers and jetties belong to this category and are indeed ”fixed.” Cranes, buoys, dolphins, lightships, fishing nets and breeding stations for fish and seafood are also FFO. Oil rigs are FFO if attached to the seabed but ”ships” if towed or proceeding under own power. A barge is a ship even if it has no propulsion of its own. A wreck has ceased to be a ship and qualifies as FFO. Increased concern for the environment has caused claims to be filed for damage caused to coral reefs after a grounding. Any such collision liability would qualify as FFO. Liability for damage to objects of this nature is covered under this clause to the extent that no cover is provided under the Hull policy.

7.3.4  Excess FFO collision liability
The second part of this clause refers to the situation where FFO is covered under the Hull policy but where the Hull value is insufficient to cover the liability caused. The same cover applies as under Rule 7 Section 2. See comments under 7.2.4.

Section 4  Special compensation to salvors

7.4.1  General
7.4.1.1  General views on salvage remuneration
It is in the interest of the shipping community to support and encourage the salvage of ships in distress. This is achieved by the successful salvor being adequately remunerated. Remuneration depends on the terms of the contract under which the salvage is undertaken.

7.4.1.2  Salvage contracts
Salvage contracts belong to the category of contracts that should be approved by the Club through application of Rule 10 Section 2. Salvage is usually undertaken on the basis of Lloyd's Standard Form of Salvage Agreement of 2000 called Lloyd's Open Form 2000 (LOF 2000). That contract is considered approved and does not need to be submitted to the Club.

7.4.1.3  Lloyd's Open Form 2000
The main principle of remuneration under LOF 2000 is ”no cure, no pay”. The salvor assumes the economic risk of the salvage operation. If he fails, he gets no compensation from the property interests; and if he succeeds, he is entitled to a salvage award from the interests salvaged.
Assessment of the salvage award is usually subject to negotiation. If negotiation fails, the award is decided through arbitration in London before an arbitrator instructed by the council of Lloyd’s.

Several factors should be taken into account when assessing the award. They are:

(a) the salved value of the vessel and other property;
(b) the skill and effort of the salvors in preventing or minimising damage to the environment;
(c) the measure of success obtained by the salver;
(d) the nature and degree of danger;
(e) the skill and effort of the salvors in salving the vessel, other property and life;
(f) the time used and expenses and losses incurred by the salvors;
(g) the risk of liability and other risks taken by the salvors or their equipment;
(h) the promptness of the services rendered;
(i) the availability and use of vessels or other equipment intended for salvage operations;
(j) the state or readiness and efficiency of the salver’s equipment and the value thereof.

7.4.1.4 Insurance cover of the salvage award
The salvage award is generally apportioned by an average adjuster on the values saved. The amount allocated in respect of the salvage of the ship is covered under the Hull insurance (AV 2000 § 5 f). Any contribution for the salvage of the cargo is paid by the cargo underwriter. Other interests saved and liable to contribute to the salvage award are bunkers and freight at risk. They can be insured.

7.4.1.5 Refusal of cargo to pay contribution
If the salvage is in respect of a casualty caused by unseaworthiness of the ship salved, the cargo interests may refuse to pay their part of the salvage award. Sometimes cargo interests have been forced to pay a contribution under a guarantee, and they then have to recover their part from the shipowner if the vessel is found unseaworthy. In certain jurisdictions, the shipowner can be forced to pay cargo’s contribution in salvage. The owners will then suffer a loss. The cover for such a loss is described in Rule 4 Section 6. See comments under 4.6.2.2.

7.4.1.6 Life salvage
For salvage of human lives, see comments under 3.9.2.

7.4.1.7 Salvage ships
For cover of salvage ships, see comments under 11.3.2.2.

7.4.2 Salvage awards to avoid environmental damage
7.4.2.1 Effect of “No Cure, No Pay” principle
The traditional principle of “no cure, no pay” may in the past have acted as a disincentive for a salver to become involved in a salvage where the prospects for success were remote, and the potential risks of damage to the environment were large.
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7.4.2.2 The International Convention on Salvage of 1989
In 1989, the wording of a new convention was produced. This was called the International Convention on Salvage 1989 and is referred to as the 1989 Salvage Convention. This convention replaced the Salvage Convention of 1910. On 1 July 1996, the new Convention came into force after ratification by 15 states.

7.4.2.3 Special compensation under the 1989 Salvage Convention
The problem of encouraging the salvage of a ship or cargo which represents a threat to the environment is addressed in Article 14 of the 1989 Salvage Convention.

If salvage services have been rendered in circumstances where the vessel or cargo threatens to cause environmental damage, the salvor may be awarded special compensation. This is not limited to salvage of tankers but applies to "any ship or craft or any structure capable of navigation." It covers all kinds of pollutants including bunkers and hazardous or noxious substances.

The special compensation is payable solely by the shipowner because pollution liabilities fall only upon him. See comments under 6.1.3.1.3.

The special compensation will normally be equivalent to the salvor’s cost of providing salvage services (Article 14.1). If the salvor succeeds in preventing or reducing damage to the environment, he is entitled to an increment over and above his expenses up to 30% of those expenses. The increment may be increased further to a maximum of 100% of the expenses if such an increase is considered "fair and just" in view of the conditions under which the salvage was performed (Article 14.2). It is expected that the increased compensation above 30% will be awarded only in cases where the salvor avoided extensive environmental damage through exceptional performance.

The special compensation is payable only if and to the extent that it is greater than a salvage award based on normal principles. This provides the salvor with a safety net where the salvage fails and he is not entitled to an award for the unsuccessful salvage under the principle “no cure, no pay”.

A condition for the increased award is that the operation has started in order to salvage ship or cargo. No claim for special compensation can be based on the 1989 Salvage Convention for operations that are exclusively to protect the environment. Nor will costs for post salvage cleanup be included in the special compensation to be paid.

7.4.2.4 Cover for obligation to pay special compensation
The obligation for a Member to pay special compensation is covered under this clause.

It requires that the Club maintain close scrutiny on all salvage or salvage attempts undertaken in respect of the entered ship. The Club must be given an opportunity to follow the purpose, performance and result of the salvage activities. The Club may choose to exercise control through its staff members, surveyors or other experts. The Club has access to salvage experts ready to attend almost immediately upon notice. It is important that Members immediately inform the Club about any event, which may develop towards an obligation to pay special compensation.
Before a Member can be compensated for payments of this nature, an investigation should have been done to see if the payments could be recovered from other parties. If salvage is necessary because of a collision, the payments should be included in the claim against the other ship and be apportioned to follow the collision liability.

It follows from item (b) of this clause that the costs to be compensated are those which are not payable by parties interested in the salved property.

7.4.2.5 Security
When the entered ship is being salvaged and the salver has a claim against the owner pursuant to article 13 or article 14 of the Salvage Convention, the salver has the right to request satisfactory security from the person liable for the payment under article 21. From the salver’s point of view and depending on the likely salved value of the property, security is usually seen as essential to cover the cost of work likely to be undertaken since there may be little or no value left in the wreck against which the salver can exercise his lien.

The request for security is subject to Rule 12 according to which it is within the Club’s discretion to provide security. Before a decision can be taken, the Club may wish to investigate the circumstances surrounding the casualty to see that it is not subject to any exclusions of cover under these Rules. The extent to which any of the limitation Conventions might apply to a given set of circumstances should also be considered, although limitation may not necessarily apply if a wreck removal is being requested as a Government order.

7.4.2.6 SCOPIC – Special Compensation P&I Club Clause
As the assessment of special compensation under Article 14 of the 1989 Salvage Convention has proven to be cumbersome and uncertain, the International Group of P&I Clubs has, together with the International Salvage Union, produced an alternative instrument, SCOPIC, to be used for assessing special compensation.

The SCOPIC clause can be contractually agreed as a substitute for Article 14 in LOF 2000 Salvage Contracts.

The main advantages of SCOPIC are:

- No risk of damage to the environment is required.
- No proof of success in preventing damage to the environment is required.
- A fixed uplift of 25% should be allowed.
- A firm commitment by the P&I Clubs to provide security within 48 hours after SCOPIC is invoked.
- Shipowners/P&I Clubs and property interests shall have the opportunity to appoint representatives to monitor the salvage operation.
- No geographical restrictions.
- Fixed rates for tug personnel and equipment.

The SCOPIC clause was introduced as a contractual alternative to Article 14 in 1999.
From the P&I Clubs’ point of view, salvage operations under SCOPIC provide the Clubs with an opportunity to monitor and endorse or object to measures taken by the salvors and an opportunity to terminate their exposure to pay remuneration under the SCOPIC clause through 5-days notice, in case the operation is deemed not to lead to a useful result.

### Section 5 Obstruction to navigation and wreck liabilities

#### 7.5.1 General

Liabilities covered in the first part of the clause arise when the ship is still a ship. The remaining part of the clause refers to liabilities arising when it has ceased to be a ship and has become a wreck.

#### 7.5.2 Obstruction

##### 7.5.2.1 What constitutes an obstruction?

The first part of the clause refers to liabilities arising when the entered ship has caused an obstruction to navigation. The obstruction must have been caused by a casualty to the entered ship. There is no cover where navigation has been obstructed or impaired by the way a ship has been moored or anchored. An obstruction can be caused by the hull of the ship if she is aground in a narrow strait or river. She can also cause an obstruction by running down a bridge or hitting a lock gate in such a way that it cannot be opened or closed.

Liability arising from oil pollution and a port partially or fully obstructed by oil booms, is covered under Rule 6.

##### 7.5.2.2 Liability for obstructions

The nature of the legal liability for the consequences of an obstruction may vary. Strict liability (see comments under 4.1.4.4) may follow from the application of port regulations, contractual conditions for the use of berths or other local law applicable to navigation in canals, locks or other waterways. Any such contracts should be approved by the Club in accordance with Rule 10 Section 2 unless they are customary in the trade concerned. In case of doubt, the Club should be consulted. In the absence of any such local rules, liability would probably be for negligence (in tort) with the burden of proof on the claimant.

Claims for the consequences of an obstruction generally consist of time lost by delayed or trapped ships and of loss of income by the port, tug owners, factories or others who happen to be on the wrong side of the obstruction.

When handling claims of this nature, one must determine what consequences of an obstruction would be legally recoverable. Courts are generally restrictive in allowing compensation for consequential damage. Those who suffered physical damage stand a greater chance of being allowed compensation for economic consequences than, for instance, the owner of a vessel who missed a cancelling date because the fairway was obstructed.

Claims for obstruction often involve large amounts of money and require close legal evaluation and analysis. They will be handled by the Club’s legal adviser in the jurisdiction concerned.
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7.5.3 Wreck

7.5.3.1 When is the ship a wreck?
Most legal systems contain definitions of a ship for the purpose of tax, registry, measuring, etc. The generally accepted definition under English law is that it is a unit capable of navigation. If those characteristics cannot be restored for either technical or economic reasons, the ship is a wreck. When this occurs is a question of fact.

Even if it is fairly easy to determine that a ship has been blown to pieces by an explosion or broken up because of grounding, the exact hour the ship becomes a wreck may be difficult to determine. A ship may not be a wreck even if it has sunk below the surface of the sea.

Regardless of the difficulty, it is important to establish the details in each case as to when the ship became a wreck. The transformation from ship to wreck means a difference in liability and insurance cover as described below.

7.5.3.2 Ownership of the wreck

7.5.3.2.1 Payment of total loss compensation
After a ship has been involved in an accident, the remains, whether a ship or a wreck, belong to the owner of the ship. After the accident, the Hull underwriter has some time to consider whether salvage operations should be undertaken, followed by repairs to restore the ship, or whether the ship should be declared a total loss (AV 2000 §§ 24 and 25) or a CTL (AV 2000 § 26). If salvage is considered technically or economically impossible, the Hull underwriter should notify the owner accordingly and advise him to submit the required documents for calculating compensation (AV 2000 § 42). Such calculation should be submitted to the owner within 14 days. Total loss compensation should be paid within one month from the date the Hull underwriter and the owner agreed on the compensation.

7.5.3.2.2 Hull underwriter’s option to acquire title to the wreck
When total loss compensation is due, the Hull underwriter should declare if he wants to acquire title to the wreck in the hope that a salvage will produce a surplus to reduce his loss. If the Hull underwriter uses his option to acquire the wreck, he assumes the ensuing liabilities. This means that the P&I cover is no longer concerned as there are no liabilities left in connection with the wreck for the Member to insure.

In most cases, the Hull underwriter abstains from taking title to the wreck, which then continues to be the liability of the Member.

7.5.3.2.3 Effect on cover of total loss payment
According to Rule 27 (b), the cover under these Rules ceases when the Member is entitled to total loss compensation from the Hull insurance. See comments under 27.3.

By application of Rule 28 the Club remains liable under these Rules for events which occurred before such cover ceased. The Member is therefore covered for liabilities arising after the cover ceases but which are consequent upon events occurring before such cover terminated.

The Member may incur liabilities, costs or expenses as a result of the presence or involuntary shifting of the wreck of the entered ship or its cargo or equipment. Other ships may run into
the wreck. Ships, lives and cargo may be lost. Pollution may be caused. As long as such a loss is the direct result of the initial event and cannot be labelled as a new event, the Member’s liability remains covered.

The words “involuntary shifting” indicate that there is no cover where the Hull underwriter or the Member interferes with the wreck for their own purpose. By shifting the wreck, its cargo or part of it, liabilities could be created or aggravated for which there is no cover under these Rules. Such actions would constitute a new event arising after the cover had ceased under Rule 28.

7.5.3.2.4 Effect on cover of a compromised CTL
A Hull underwriter, who has exhausted the salvage possibilities or thinks that salvage is not technically or economically feasible, may agree to a compromised CTL. This means that the owner accepts a reduced total loss compensation and retains title to the wreck with the understanding that he shall try to salvage it on his own.

Liabilities, costs or expenses arising as a consequence of salvage attempts performed by the Member are not covered. Firstly, the salvage is a new event in the sense of Rule 28. Secondly, there is a breach of the fundamental condition in Rule 2 that the liability should be a direct consequence of the operation of the entered ship. The Member is acting as a salvor. Liabilities incurred in relation to salvage are only covered to the extent described in Rule 3 Section 9, Rule 4 Section 7, Rule 6 Section 2 and Rule 7 Sections 4 and 8.

Even for ships especially equipped for salvage, liability for salvage operations is excluded under Rule 11 Section 3 (a). A Member engaged in the salvage of his own ship needs separate insurance for liabilities so incurred.

7.5.3.2.5 Duration of cover
The cover under this clause is limited to a period of three years from the day the insurance ceased according to Rule 27.

If the wreck, its cargo or equipment is still considered to constitute a liability at the end of that period, the Club will consider upon request from the Member whether and under what conditions cover may be arranged.

7.5.4 Wreck removal
7.5.4.1 General views on wreck removal
A wreck may constitute a hazard or an inconvenience. It may be a danger to safe navigation or obstruct the proper use of fairways, ports, berths, oil rigs, pipelines, cables etc. It may be a potential source of pollution. It may prevent or damage fishing or be a nuisance to the environment. In short, governmental or private interests may wish that the wreck, its cargo or equipment be removed.

Many countries have enacted legislation according to which the owner of a ship has an obligation to remove the wreck, its cargo or equipment. When such a mandatory obligation exists, it is covered under this clause.
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7.5.4.2  Obligation to remove wreck

7.5.4.2.1  Obligation mostly strict

An obligation to remove the wreck, its cargo or equipment is often strict (see comments under 4.1.4.4). This means that the obligation exists even if the entered ship became a wreck through no fault on the part of the Member.

7.5.4.2.2  Wreck removal orders

The obligation to remove the wreck, its cargo or equipment derives from a wreck removal order in the form of a court judgement or a governmental submission. It is important to check that the order is legally founded and the matter subject to the jurisdiction of the issuing authority. The wreck may be positioned in international waters outside national jurisdiction. The Member should immediately inform the Club of any received request, regardless of its form, to remove the wreck of the entered ship.

7.5.4.2.3  Performance of wreck removal

The issuance of a wreck removal order does not mean that the Member can be forced to do the job himself but must pay the cost of having it done. Having received and examined the validity of the order, it is incumbent upon the Club and the Member to decide whether to carry out the wreck removal or leave it to the authorities.

The Club should be closely involved in any such negotiations. A refusal to comply with a wreck removal order issued by a competent authority may be considered a new event separate from the casualty which rendered the ship a wreck. As taken on a management level the decision may affect the right otherwise available to the Member to apply global limitation. See comments under 2.11 and 11.1.3. The options and the effect of any decisions taken have to be analysed and considered.

An argument for the Club to remove the wreck is if it could be done cheaper than by a public authority.

In most cases, wreck removal operations are left to the authorities. The costs will then be claimed against the owner of the wreck. The Club will supervise actions taken and money spent.

To comply with any obligations with regard to the wreck, its cargo or equipment, it may not be necessary to raise it. If the wreck constitutes a hazard or obstacle to navigation, it may be sufficient to blow it up to level with the seabed if that can be done without the risk of pollution.

A wreck removal order may concern part of the wreck, its cargo or equipment. It can also be in respect of cargo or equipment lost overboard from a ship which is not a wreck. Lost anchors may constitute a hazard in a shallow waterway or in an anchorage area. Containers or other large parts of cargo lost overboard may have to be removed.

The Club should be credited for the value of the wreck salvaged or of equipment and parts recovered.
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7.5.4.2.4 Global limitation
Wreck removal costs are subject to global limitation, which puts a limit on the payment to be made on the part of the Member. See comments under 2.11.

7.5.4.2.5 Security
As the value of the wreck is insufficient as security for removal costs, the request for security may be combined with an arrest of another ship or property of the same or associated ownership within the jurisdiction.

The request for security is subject to Rule 12 according to which it is within the Club’s discretion to provide security. Before taking a decision, the Club may wish to investigate the circumstances surrounding the casualty to see that it is not subject to any exclusion of cover. The extent and application of global limitation as compared to the extent of the requested security, also has to be determined.

7.5.4.2.6 Contracts must be approved by the Club
The terms of any contract to remove or otherwise defuse a wreck, its cargo or equipment should be submitted in advance to the Club for approval in accordance with Rule 10 Section 2 in order to avoid contractual liabilities beyond the cover of these Rules.

A Member may sell the wreck “as is, where is”. The sales contract should be approved by the Club according to the same Rule to ensure that all liabilities with regard to the wreck are transferred to the buyer.

Permission to dive on a wreck to salve equipment or souvenirs should be in writing and contain appropriate conditions. The Club will assist Members to draft suitable terms.

7.5.4.2.7 Recovery of wreck removal costs in collisions
The cost of removing the wreck of a ship sunk after a collision can be made part of the collision claim. It is recoverable in proportion to the collision liability subject to any right of the colliding ships to limit the liability.

An order to remove the wreck can also be issued against the owner of a colliding ship which was not to blame. The full removal costs will then be claimed against the responsible ship and be recoverable within the amount of her applicable limitation.

Wreck removal costs which form part of a collision liability are covered under Rule 7 Section 2.

7.5.4.2.8 Weapons of war used for wreck removal
According to Rule 11 Section 5 (c) the Member is covered where weapons of war have been used to eliminate liabilities, costs or expenses which would otherwise fall within these Rules in respect of the wreck of the entered ship. The wreck, its cargo or equipment may be in such a position or the hazards of such a nature that they can only be eliminated by use of torpedoes, bombs or shells. Such action should be either by governmental order or with the Club’s approval to be covered.
7.5.5  **Obligation to mark the wreck**
The owner has an obligation to mark the wreck, its cargo or equipment and to notify the proper authorities where the ship, wreck or its cargo constitutes or may constitute a hazard to navigation. In many countries it is the duty of the authorities upon notification to mark the wreck, its cargo or equipment with buoys or lights and to issue the necessary navigational warnings. In other countries, the owner has a legal obligation to take those steps himself. If he fails, he may become liable for damage caused.

As any such failure may have been made on a management level, it may affect the owner’s right to limit his liability and may jeopardise the cover under these Rules by application of Rule 11 Section 1.

The Member should co-operate closely with the Club. Assistance and legal advice will be rendered.

**Section 6  Liabilities in respect of fines**

7.6.1  **General**

7.6.1.1  **Purpose of cover for fines**
Fines are generally regarded as well-deserved sanctions imposed by society for offences committed against law and regulations adopted for the common best. Therefore, there is normally no insurance protection available against fines. The shipping industry has, however, seen a tendency for countries to indiscriminately use fines as a source of public revenue. The fines are often for trivial or provoked violations of obscure administrative regulations. They are applied arbitrarily and outside the due process of law. The shipowner becomes the innocent target of sanctions against his ship when used without his knowledge by unknown parties as a vehicle for illegal activities. The fines are often of an amount that bears no reasonable relation to the offence committed and the involvement of the shipowner.

The fines can even be for the full value of the ship and result in confiscation of the ship by a valid and final decision of the proper customs authorities. In such a situation Rule 7 Section 9 provides a certain protection.

In a number of situations there is, therefore, a justified need for insurance protection against fines in shipping. The purpose of the cover is to allow a bona fide shipowner to continue trading his ship if he is victimised by exorbitant fines for legislation he did not know about or actions he could not control or foresee. As the risk is spread by the concept of mutuality among the Members of the Club or, in large cases to the entire shipping community by way of pooling, good and prudent behaviour and performance, which ought to be the purpose of any legislation sanctioned by fines, is more efficiently promoted by the Clubs than if the fine was allowed to wipe out and ruin an individual owner were the risk not covered.

The extent of cover under P&I insurance is defined in this clause. The nature of the risk justifies a restrictive interpretation of the cover provided.

7.6.1.2  **“Fines”**
The cover is for liability in respect of fines. Great imagination is shown by those who draft administrative regulations. Sanctions similar to fines are often called dues, penalties or
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charges. One should look more to the nature and purpose of the sanction than its legal label. One of the sanctions for oil pollution in Sweden is called charges (oljeskadeavgift). This is covered. "Tonnage tax" in the U.S. is not covered.

7.6.1.3 Cover is for fines against Member
The cover is primarily in respect of fines against the Member for which he can be held legally liable by applicable law and for the payment of which the ship can be arrested. Fines arising out of the personal misconduct of the Member himself may qualify as intent or gross negligence excluded under Rule 11 Section 1.

Fines against the ship are often formally directed against the master, chief engineer or other members of the crew. Where the individual fined could be regarded as a stand in, substitute or scapegoat for the owner, the same cover applies as if the fine had been imposed on the Member himself. A provision is that the Member had a legal or contractual obligation to reimburse the crewmember or that it was otherwise reasonable to reimburse him. The second proviso requires the approval of the Club. It underlines the necessity of close contact between the Member and the Club from the outset of any such case.

When a crewmember is involved in smuggling, the cover is only involved if and to the extent it is necessary to protect the interest of the Member. In these situations, it is important for the Member to immediately notify the Club.

7.6.2 Fines covered
7.6.2.1 Short or over-delivery of cargo
7.6.2.1.1 Evidence required to oppose fines for short or overlanded cargo
This is the classic situation of fines against shipowners. The pretext for such fines is that customs authorities assume that the shipowner has caused any missing package, which he cannot properly account for, to illegally enter the country. In order to oppose such fines it is necessary to produce proper documentation. A shortlanding requires a short shipment certificate from the port of loading or other evidence to prove that the missing package was never shipped, was wrongly discharged in another port or was lost overboard at sea. The last mentioned situation should be supported by log extracts or by a sea protest noted at the port of discharge. In short, the authorities imposing the fine should be satisfied that the cargo did not enter the country. For bulk cargoes it is important to check that ullage tables are correct and draft readings properly recorded.

The best remedy against this type of claim is efficient routines for documentation and follow up of the discharging result. The Club will assist Members to work out and implement such routines with their local agents and the Club’s representatives in places where fines are likely to be expected. Among such countries are Algeria, Egypt, Libya, Syria, India and Brazil. Customs officers in many countries are poorly paid and may be allowed a certain percentage of fines collected as part of their salary or a reward. They should not be given a reason to fine a ship.

7.6.2.1.2 Late filing of cargo related fines
Fines can be imposed years after the completion of the voyage. It is within the authorities’ discretion to decide when a voyage should be considered complete and the fines be due for
assessment and payment. This could be 10 years or more after discharging, which makes it difficult or impossible for an owner to trace documents needed to prepare a proper defence. In certain countries, the authorities refrain from timing their filing routines with the regulations for execution of fines. Customs files may be destroyed 5 years after the vessel's arrival whereas the time for filing claims for fines may not expire until several years later. It has happened that customs kept the documents, which support their claims and destroyed the rest. Although it is not reasonable to ask Members to have documents available after such a long time, it must be kept in mind that the presenting of counterevidence in the form of ship's documents, is the only defence available to an owner.

7.6.2.1.3 Usual defences and limitations are not applicable to fines
Liability to compensate the owners or underwriters for loss of cargo and liability against the authorities for paying fines follow different legislation. This can produce unexpected and unfavourable results. A shipowner may be able to reject the cargo claim and still have an obligation to pay the fines. In a shortage case, an owner may be able to limit his liability for the cargo claim by application of per package limitation whereas the fine for the same shortage may amount to several times the unlimited value of the missing goods.

7.6.2.1.4 Deficiency of documents
Deficiency of documents such as manifests and Bs/L can also result in a fine. Improper manifesting of dangerous cargo frequently causes fines. Such manifests are often drawn up by a charterer or operator of the ship. Still the owner may have to pay the fine under threat of arrest of the ship. By proper clauses in the C/P, the burden of ultimate liability should be passed to the party whose negligence caused the fine.

Fines are not recoverable under this clause where the cause of the fine is excluded elsewhere in these Rules. A fine imposed for a wrongly dated B/L is excluded from cover by application of Rule 4 Section 3 (a).

The cover does not include fines imposed because certificates which the vessel is supposed to carry were missing, or their validity date had expired. See comments under 7.6.3.5.

7.6.2.2 Violation of immigration regulations
This item covers fines imposed against the ship in connection with detainees, deserters, stowaways or other situations where immigration regulations have been violated. See further comments regarding detainees under 3.10.2, deserters under 3.10.3 and stowaways under 3.8.2.

7.6.2.3 Pollution
Pollution is one of the risks increasing in number and extent. Most countries have enacted legislation under which an owner could be heavily fined in connection with oil, chemical or other substance pollution. Discharge of steam, smoke, fumes, sewage, garbage or water could have the same consequences. The unauthorised use of detergent from ships to clean pollution on a do-it-yourself basis can cause as high fines as the pollution itself.

Fines of this kind are often formally directed against the master or chief engineer. The defence of such claims is generally undertaken by the Club, provided that the master acted reasonably...
and within the scope of his employment. When a master deliberately discharges oil into
the sea after tank washing and is personally fined, the insurance does not pick up the fines.
Provided that he is acting outside the scope of his employment, there is no cover for him
personally but only for the Member in respect of cleanup costs for the oil spill. If he is
acting on the owner’s instructions, there is no cover for any party as the issuance of orders
deliberately to cause damage in order to save time and expenses, would involve the general
exclusion under Rule 11 Section 1.

To prepare the Member’s defence against fines for oil pollution, precautions have to be taken
immediately as described in the comments in Rule 6 Section 1. It is important to immediately
contact the local Club correspondent for assistance and advice.

Fines for lack of valid or prescribed certificates are excluded from cover under Rule 7 Section
6 (v). See comments under 7.6.3.5.

7.6.2.4 Smuggling
7.6.2.4.1 General views on fines for smuggling
Smuggling or other infringements of customs laws and regulations is a frequent cause of
fines. The cover under this clause does not apply where the owner himself is involved in the
smuggling. In such cases, cover is excluded under Rule 11 Section 1 and Rule 11 Section 2
(k). The clause applies to smuggling performed by crewmembers or third parties.

The Member’s cover for the consequences of smuggling is reinforced beyond the framework
of this clause by Rule 7 Section 9. According to that clause, the Club has the discretion to
compensate in whole or in part the Member’s loss of the entered ship by confiscation for
infringement of any customs law or regulation. See comments under 7.9.4.

7.6.2.4.2 Drug smuggling
Drug trafficking is a big problem for shipping. Ships are often used as vehicles for drug
smuggling. Drugs or illegal substances can be hidden in the ship or in its cargo. Customs
authorities all over the world try different means to prevent drugs from getting on board
ships. To achieve this, they have intensified the search for drugs on board. They impose
heavy fines and sanctions on the owner when drugs are found. The intention is to force upon
owners utmost awareness at all levels to keep drugs off the ships.

7.6.2.4.2.1 The U.S. Anti-Drug Abuse Act 1986
7.6.2.4.2.1.1 Assessment of fine
According to the U.S. Anti-Drug Abuse Act 1986 (the “Act”) a certain amount of money has
been fixed on a weight basis as a fine for each kind of drug found on board a ship or in its
cargo. The fine for 1 ounce of heroin, morphine, cocaine, isonipecaine (type of pain killer),
opiate is USD 1,000 and for 1 ounce of marijuana, smoking opium, or opium prepared for
smoking is USD 500. The fine for 1 ounce of crude opium is USD 200. Cases have been
reported where the U.S. Customs Service has filed claims under the act for amounts of nearly
USD 500 million.

The amount of the applicable fine multiplied by the weight of the quantity found on board
constitutes the fine against the ship. This fine can be enforced as a lien against the ship
manifesting in a seizure of the vessel. A fine can be mitigated only if the owner can prove his innocence. Such burden of proof is difficult to sustain. The owner or operator, master, pilot and other employees responsible for maintaining and insuring the accuracy of the cargo manifest must show that he exercised “the highest degree of care and diligence”.

7.6.2.4.2.1.2 Sea Carrier Security Criteria
It is difficult to define what such imprecise legal language as “the highest degree of care and diligence” means in practice. In 2006, CBP issued a Sea Carrier Security Criteria in which it describes routines and procedures which CBP it expects an owner and officers to implement. Countries have been ranked by degree of risk for drug smuggling. The level of security on board the ships should be adjusted in accordance with each ship's itinerary. Compliance with the Criteria can be accepted as proof that the owner exercised “the highest degree of care and diligence” which may result in a reduction or withdrawal of the fine. Additional copies can be obtained from CBP's website.

It is important that the Sea Carrier Security Criteria is available on board all ships calling at U.S. ports occasionally or regularly, that it is closely studied and that its terms are implemented.

7.6.2.4.2.1.3 Upgrading of all routines
Detailed plans must be made by the owner to exercise necessary control of ship, crew and cargo. The plans must be practically enforced. This requires massive education of staff ranging from operational and technical directors to the youngest hand on board. Safe routines for booking and handling of cargo and containers must be introduced involving agents, stevedoring companies, terminals and others. The ship must be examined in detail to eliminate the possibility of bringing and hiding drugs on board. Plans must be drawn up and enforced to check credentials and records of officers and crew to be hired, background and status of shippers, security in terminals including checking of containers and their seals, gangway and ramp security and even waterborne activities around the vessel.

7.6.2.4.2.1.4 Upgrading must be possible to prove
It is not enough to take all these steps. An owner must be able afterwards to prove what precautions he took. If drugs are found on a ship in a U.S. port, the owner will have to satisfy the CBP in detail that full and adequate steps were taken to comply with the Act. Each step taken from broad planning at a management level to practical enforcement of protective actions such as welding a bolted plate in the engine room behind which drugs could be hidden, must be possible to prove in years to come. Everything should be properly documented and the documents kept up-to-date and easily available for presentation to the authorities.

7.6.2.4.2.1.5 Effect of failure to upgrade
The amount of the fine will be directly related to the performance of the owner. A Member who fails to take adequate action, may further jeopardise his cover under these Rules as such a decision or lack of decision must be considered to have been taken at a management level in the Member's organisation and may invoke the general exception from cover under Rule 11 Section 1. One of the options available to the CBP is confiscation of the ship. As stated in the comments under 7.9.7, compensation in case of confiscation will be considered only
if the Member has satisfied the Club "that he took such steps which in the opinion of the Association were reasonable to prevent infringement of the customs law or regulation giving rise to the confiscation". This means that a Member can lose his ship without insurance compensation if he cannot convince the Club that he lived up to the standards of the Act. The Club does not need to give a reason for its decision.

7.6.2.4.2.1.6 Customs-Trade Partnership Against Terrorism (C-TPAT) and the Sea Carrier’s Initiative Agreement
In 2001, CBP merged the Sea Carrier’s Initiative Agreement into the C-TPAT. Much of the same benefits that existed under the Sea Carrier’s Initiative Agreement exist under C-TPAT. Membership and compliance with the security procedures under C-TPAT still allows for potential mitigation of fines under the Act. The real value of membership under C-TPAT in relation to the Act comes when trying to prove that proper procedures were in place to prevent illegal substances from entering the vessel. In addition to the aforementioned benefit, membership in C-TPAT provides: a reduced number of CBP inspections (reducing delay at the border), priority in processing of CBP inspections, services of a Supply Chain Security Specialist, and eligibility in the CBP Importer Self-Assessment program.

7.6.2.4.2.1.7 No cover for time lost
The cover under this clause is limited to the fine. According to Rule 11 Section 2 (j) the loss of time or hire is not covered nor are the running costs during the time a ship is lying idle as a consequence of an arrest or other delay caused by authorities’ investigations of drug smuggling.

7.6.2.4.2.1.8 Posting of security
If the Club in its discretion according to Rule 12 agrees to put up security to release a ship arrested by customs, the posting of such security will take longer than usual. One reason is that the size of the amount will be high. Another important reason is that it is necessary to await the outcome of investigation into the background of the smuggling and the steps taken by the Member to avoid it. If these steps are found to be inadequate, there may be no cover under the Rules as described under 7.6.2.4.2.1.5. Then the Club is unable to provide security.

7.6.2.4.2.1.9 C/P clauses regarding drug smuggling
Various C/P clauses have been drafted to allocate liability for drug smuggling fines between the owner and the charterer. Members are recommended to contact the Club for advice.

7.6.2.4.3 Spirits, cigarettes, firearms
Smuggling or illegal possession of spirits and cigarettes inevitably lead to fines. The ship’s inventory must be properly declared. This is especially important when it comes to articles in the bonded store.

In most countries, any firearms or other weapons including ammunition should be declared to the authorities even before the ship’s arrival and remain in the master’s care and protection for the duration of the stay. Members should be familiar with any such applicable regulations in ports to be called on. They should be strictly adhered to.
7.6.2.4.4  Dogs, pets and other animals
Fines for dogs or pets having been brought illegally on or off the ship or for smuggling of protected species of animals, may be compensated under this item. The clause was applied when a cruise ship was fined because a passenger took her dog on an urgent yet unlawful walk to a lamppost on shore.

7.6.2.4.5  Recourse against smuggler
Before fines for smuggling are paid, it should be investigated whether the money could be paid by or recovered from the smuggler, if apprehended. If the Member is compensated under these Rules, the Club acquires the Member’s right of recovery against the party who caused the loss. Rule 14 applies.

7.6.3  Fines not covered
7.6.3.1  No cover for overloading
The first exclusion (i) is for fines in respect of overloading of a ship. Overloading is a serious violation of the safety of the ship, its crew and cargo. Any attempt to earn additional freight on such a violation must be prevented.

Overloading means bringing a ship below her marks. It does not matter whether the fatal effect on the draught was caused by excessive intake of cargo, ballast water, bunkers or fresh water.

This exception includes fines for local overloading of decks or hatches.

Rule 11 Section 2 (c) contains further exclusions in respect of overloading. See comments under 11.2.2.3.

7.6.3.2  No cover for excessive number of passengers
Exception (ii) is applicable to fines where restrictions or limitations on the right to carry passengers have been violated. This exception is also justified by important safety aspects.

7.6.3.3  No cover for illegal fishing
Cover for fishing vessels is generally provided on limited terms by application of Rule 11 Section 3 (e) (see comments under 11.3.2.8). In this clause fines for illegal fishing are excluded from cover under item (iii). The exclusion applies to fines for fishing in prohibited zones, use of prohibited equipment or the catching of prohibited species.

7.6.3.4  No cover for substandard lifesaving and navigational equipment
The Club is an underwriter for Hull & Machinery risks and for P&I. The concept of mutuality, on which both types of insurance are founded, puts a special obligation on the Club and its Members to promote loss prevention. To compensate a Member for fines which have been rightly imposed by authorities for violation of basic lifesaving and navigational regulations would be inconsistent with the Club’s aims and a contradiction of its adopted policy.

It follows that this clause should be given a fairly wide interpretation. The word ”upkeep” means lack of repairs and maintenance and includes lack of prescribed equipment. ”Navigational equipment” includes necessary and applicable charts corrected to date.
Rule 7 Other liabilities  
Section 6 Liabilities in respect of fines

This item borders to the general exception of liability under Rule 11 Section 1 (but each claim will have to be decided on its merits).

7.6.3.5 No cover for lack of valid or prescribed certificates

According to Rule 10 Section 1, the entered ship shall comply with statutory regulations and obligations relating to its construction, adaption, condition, fitness and equipment. The clause further states that the validity of certificates issued to cover such requirements must at all times be maintained. Where a Member is in breach of the conditions, the Club may reject any claim or reduce any sum payable under these Rules. See comments under 10.1.6.

The requirements regarding certificates are followed up by the general exclusion in item (v) of this clause for fines imposed for lack of valid or prescribed certificates.

The purpose of certificates is to show evidence of compliance with officially adopted standards for the safety of the ship, crew, cargo, environment and the public. For reasons mentioned under 7.6.3.4 above, Club money should not be spent to compensate those who disregard such regulations.

The exclusion applies to fines for lack of prescribed certificates but also to fines where there is a certificate which for any reason is not valid.

For the clause to apply, the word "certificate" may not necessarily appear on the document or in the regulation under which it is issued. The decisive factor is that the document serves a purpose similar to that described in Rule 10 Section 1.

Members should urge those ashore and on board to adhere closely to any applicable regulations which require issuance of certificates, to keep them accessible for presentation and to take action in time to renew them before they expire.

7.6.3.6 Infringement of MARPOL regulations

This section of the Rule deals with fines imposed by Port State Control for MARPOL violations where ships' oily water separators have been bypassed or rendered inoperable, see our circular P&I 2440/2005. MARPOL regulates that only 15 ppm of oil residues can be discharged through the oily water separator. This limited amount of oil makes it tempting to tamper with the oily water separator to increase the flow of oil over board. Port state authorities in various countries but most notably in the United States are taking a very hard line in respect of breach of the MARPOL Regulations.

The U.S. Coast Guard has over the past years launched multiple inspections on foreign flag vessels to ascertain whether the oily water separator is being used improperly or is being bypassed. The U.S. Coast Guard is particularly interested in finding flexible hoses hidden in the engine room which could have been used to bypass the oily water separator and pump the oil directly overboard. Furthermore the overboard discharge valve and piping is of great interest to the USCG and if oil residues are found inside this is used as justification for a bypass of the oily water separator.

Another way of establishing bypassing of the oily water separator in violation of the MARPOL regulations is in finding incorrect entries in the oil record book, incinerator log or
records of port discharges. The USCG is especially interested in discrepancies in the oil record book for instance regarding quantities of water pumped overboard through the oily water separator compared with the vessel’s pumping capacity. Furthermore, the USCG is interested in miscalculations of quantities of oil contaminated bilge waste and sludge discharged or remaining onboard. Incorrect entries in the oil record book are considered by USCG to be a false statement or obstruction of justice which is subject to criminal proceedings against the relevant crewmembers.

Sanctions imposed by the U.S. authorities are penalties, fines or imprisonment. Fines imposed are on a massive scale and the highest fine imposed to date is USD 37 million. A reward of 50% of the fine imposed is offered to those who report an alleged violation, so called “whistleblowers”. In the above case 12 whistleblowers each received USD 437,500. During the investigations of an offence by the U.S. Department of Justice which can take a very long time to complete crewmembers charged usually remain in custody. If sentenced, long imprisonment of up to ten years will follow.

Fines or penalties imposed for breaches of the MARPOL regulations are not covered by the Club other than in case of purely accidental discharge. Whilst proceedings are underway against crewmembers or the Member the Club is unable to provide security except in exchange for counter security in the form of cash or bank guarantee. If the Club is asked to fund costs in defending criminal or civil proceedings additional security will be required.

As part of the Safety Management System, Members are strongly recommended to carry out periodic reviews onboard their ships to check that waste oil treatment equipment and ship’s records such as the oil record book comply with MARPOL regulations to avoid being targeted by USCG.

7.6.4 Punitive damages
On the subject of exclusion of cover for fines in cases of Member’s intent or gross negligence according to Rule 11 Section 1, the question arises as to the extent of cover, if any, under these Rules for punitive damages.

Punitive damages are a kind of penalty in excess of and unrelated to the actual extent of a loss caused to third parties. The penalty is imposed under U.S. law against companies guilty of wilful, malicious or wanton conduct. The wrongful act must have been committed by or on behalf of the company and not by an individual acting in excess of his express authorisation or ratification by his employer and outside the scope of his employment.

The question of cover has to pass the test under Rule 11 Section 1 based on the circumstances of the individual case. Considering the prerequisites under U.S. law for the application of punitive damages, it seems likely that those cases are excluded from cover.

Section 7 Quarantine expenses
7.7.1 Costs covered
The basic requirement for compensation under this clause is that quarantine and/or disinfection has been required as a consequence of an infectious disease which affects the entered ship.
Rule 7 Other liabilities
Section 7 Quarantine expenses

The expenses to be reimbursed are those directly caused by the quarantine or disinfection such as the costs of performing the procedure, accommodating the crew ashore and surveying the ship to obtain a health certificate.

The quarantine or disinfection may involve crew or passengers. Those costs, including medical examination and treatment in hospital, are covered.

Deduction should be made for costs saved whilst the ship is lying idle during the procedure.

7.7.2 Costs excluded
It follows from the clause that there is no cover for the ship’s operating expenses during the delay such as quay hire, crew wages, use of bunkers and consumption of fresh water.

The clause excludes indirect consequences of the delay such as off-hire or the cancelling of a freight contract. This is reconfirmed by Rule 11 Section 2 (j) which also applies.

7.7.3 Call at infected port
The outbreak of an infectious disease on board the entered ship is not required for cover. It is sufficient that competent authorities order the quarantine or disinfection after the ship has visited a port where there was an outbreak of the disease. If the Member deliberately sends his ship to a port which requires a subsequent quarantine or disinfection, no cover is provided.

7.7.4 Hague Rule exception for quarantine
The carrier is protected from liability under the Hague Rule exception (h) if loss or damage is caused to cargo by quarantine restrictions. See comments under 4.1.8.8.

The Hague Rule exception should also provide the carrier with a valid defence against claims for delay caused by quarantine restrictions. See comments under 5.3.

7.7.5 No cover for treatment of holds
The ship may have to treat the holds to get rid of infestation either in preparation for a voyage or after having carried an infested cargo. Where instructions have been issued by authorities, for instance in the U.S. and Canada in respect of the Asian gypsy moth, or where infestation is characteristic of the cargo carried such as grain and crushed bones, treatment of the holds is regarded as a foreseeable operating cost. Such costs are not eligible for compensation. There is no compensation for the cost of inspecting the holds.

There may be situations where the costs of treatment of holds before or after a voyage may qualify for compensation under Rule 11 Section 2 (b).

There is no cover for the costs of rat extermination.

Section 8 Towage liabilities
7.8.1 General
This clause is divided into two parts. The first part deals with the extent of cover for liability arising from the entered ship being towed. The second part concerns the entered ship towing another ship or object.
7.8.2 What is towage?
Which situations qualify as towage within the meaning of this clause? It is those services ordinarily provided by a tug such as pushing, pulling, holding, moving, tendering or escorting.

The word “towage” has to be examined further. In the course of towage, in the broader sense of the word, the tug may make direct contact with third parties or with the ship or object to be towed of such a nature that collision liability under the Hull policy is involved. Still, AV 2000 § 7, 3 c) excludes damage to third parties caused by the insured ship towing another ship. Traditionally, international towage contracts tend to include, as the towage period, the time a tug leaves its station to perform the agreed towage services to the time it is back and safely moored at its station. This wide contractual interpretation is valid only between those affected by the towage contract and those who insure their increased contractual liabilities. In the absence of such a contract, courts will look to the natural meaning of the word towage. In this sense of the word, there is no towage until an adequate tow line has been reasonably connected and the tug has started to pull. Contact damage through collision or ranging before the tow line has been engaged or in attempts to have it engaged, is, therefore, covered under the Hull policy, provided that liability is “in tort” not affected by any contractual terms.

7.8.3 Where the entered ship is towed
7.8.3.1 Towage contracts
Towage can be performed under various contracts, the terms of which can increase or reduce the liability which would otherwise result. The two items (b) of this clause both make it a condition that a towage contract be approved by the Club in advance for its liability to be covered under these Rules. This would also follow from Rule 10 Section 2 (e).

This does not mean that each and every new contract has to be sent to the Club for approval. Customary contracts such as the United Kingdom Standard Towage Conditions (1986), The Netherlands and Scandinavian Towage Conditions and the TOWCON and TOWHIRE contracts introduced by BIMCO are approved provided that no amendments, such as partial or complete deletion of original clauses or insertion of new clauses, have been made, which affect the traditional liability system under these contracts. A Member who is offered towage under other contracts or on modified or unspecified terms, should contact the Club for advice. The Club would then analyse the liability under the proposed contract and help the Member to negotiate more favourable terms if obtainable. The Club would also make it clear to the Member if and under which conditions cover is available under these Rules.

7.8.3.2 Effects of towage contracts
The U.K., Netherlands and Scandinavian towage conditions go very far in relieving the owner of the tug from liability. The tow assumes liability for damage done by or to the tug, tow and any other object or property. The tow also assumes liability for loss of the tug or the tow and for any claim for damage to third parties. It does not matter whether the damage was caused by the negligence of the tug owner or his servants or agents, unless it resulted from failure on the part of the management of the tug owning company to exercise reasonable care to make the tug seaworthy.
Rule 7 Other liabilities
Section 8 Towage liabilities

The TOWCON and TOWHIRE contracts are based on a different concept of liability. The operational risks of towing are allocated between the tug and the tow on a knock-for-knock basis. This means that each party is responsible for loss of or damage to its own property, and injury to or death of its own servants or agents.

7.8.3.3 Liability unrelated to towage
It follows that those who agree to be towed or who enter a towage contract have to accept widespread liability for what may happen during the towage as defined in the contract. The tow may be responsible for damage unrelated to the actual towage. A tug may collide with a lock gate, cause wash damage to other ships or damage its own propeller by sailing over a water-soaked log on its way to or from the ship to be towed. These losses will have to be paid by the tow whether those on board the tug were negligent or not.

7.8.3.4 Liability related to towage
The towage itself involves serious risks. Wrong manoeuvres by the tug or the tow or late disengagement of the tow line, can cause the tug to overturn and sink rendering the owner of the tow responsible for the loss of lives, oil pollution and wreck removal in addition to the loss of the tug. Even without contractual obligations, certain consequences of such an accident would still involve cover under these Rules as the accident was not caused by direct contact but by the use of a tow line. Pulling down of the aft tug by the tow line, if the engine of the towed ship is put full ahead by mistake, would thus also be covered by application of Rule 7 Section 1.

If the same engine manoeuvre made the ship hit and sink the forward tug, the result would be a collision subject to cover under the Hull policy as the faulty manoeuvre no doubt would have made the towed ship responsible. If there was shared blame for the collision but the tow was fully liable under the terms of the towing contract, the increased contractual liability would still be covered under Hull insurance under AV (AV 2000 § 5 d). Such cover is restricted to the loss of or damage to the tug. If the collision with the towed ship caused the tug to contact and damage another ship or object, liability for such damage whether contractual or not, would be for the P&I underwriter to cover.

7.8.3.5 Extent of cover
This clause thus deals with extensive contractual liabilities including those unrelated to the behaviour of the Member. The cover is, therefore, firstly restricted to such towage that is necessary and customary for the Member in the ordinary course of trading the entered ship. Liability arising under towage contracts or otherwise during towage to enter or leave a port, or to shift berth or proceed within the port area, is covered. The cover is extended to towage of such ships, which are habitually towed in the ordinary course of trading from place to place. This goes for barges or similar vessels with no propulsion and for ships which by mandatory local regulations or otherwise must be assisted by one or more tugs when proceeding coastwise from one port to another because of possibly hazardous navigation on account of heavy tide, strong currents, shallow waters, sharp bends or heavy traffic.

In all other situations where the entered ship is being towed under what can be described as ocean towage, there is cover under this clause only if the towage is performed under a contract, the terms of which have been approved by the Club.
7.8.4 Where the entered ship is towing
7.8.4.1 Ship is not a tug
This part of the clause is intended for situations where a ship which is not a tug performs towage services.

The clause starts with the declaration that liability arising from towage undertaken during a voyage for the purpose of saving human lives and ships in distress is covered. For salvage of human lives see Rule 3 Section 9.

No other towage is covered unless the Club has agreed in advance not only to the tow being undertaken but also to the contractual terms of such towage. If the Club agrees to such a towage, the terms must protect the towing ship at least to the extent of recognised and traditional towing contracts. Further consideration should be taken when drafting the contract to the fact that the towing ship is not a tug and probably lacks suitable equipment and a crew with enough experience to carry out a towage operation.

7.8.4.2 Ship is a tug
If the entered ship is a tug professionally engaged in towage, the insurance cover has to be tailor-made to suit the risks which could materialise in the kind of service operated. Such a ship comes under Rule 11 Section 3 where the insurance conditions should be agreed to at the time of entry. The same applies to other specialised ships where towage could be one of their purposes, such as salvage ships and supply vessels. See comments under 11.3.2.8.

Section 9 Confiscation of ship
7.9.1 General
General insurance protection for an owner against loss of the entered ship is provided by Hull insurance or by War Risk insurance. The P&I policy is not affected. It acts as a shield against claims for third party liability and does not cover - with some exceptions - property belonging to the Member. This is confirmed by Rule 11 Section 2 (1).

An owner may lose a ship for reasons other than casualties such as grounding, collision and fire. One reason is confiscation of a ship by authorities. In many cases, such losses concern Hull underwriters (AV 2000 § 7, 2 d) or War Risk insurers. See comments under 11.5.4.

Under special circumstances, described in this clause, the risk of confiscation is covered under the P&I policy.

7.9.2 Club’s decision is discretionary
It is important to note that this clause does not constitute a right to compensation for the Member. It obliges the Club to consider the Member’s claim for compensation and to exercise its discretion in deciding if the Member’s claim should be met and, if so, in whole or in part.

The general conditions for discretionary compensation are contained in Rule 19, the Omnibus Rule. The fact that discretionary compensation for confiscation has been singled out, indicates a difference from the Omnibus Rule.
As the Omnibus Rule is applicable to risks "which are not covered under these Rules", there is a presumption against compensation. That presumption is weakened when this clause indicates that confiscation might be compensated and specifies the conditions for such compensation.

From the Omnibus Rule it appears that only the Board has the power to allow compensation for risks not covered. See comments under 19.2. Since this clause indicates that confiscation might be compensated and specifies the conditions for such compensation, discretion can, in principle, be exercised by the Club's ordinary claims processing functions. A claim of this nature and magnitude will, however, still be reported to the Board.

The Club is under no obligation to give any reason for its decision.

7.9.3 "Confiscation"
The reason for the loss must be confiscation of the entered ship by a competent authority. There are situations similar to confiscation - for instance, when a fine is imposed equal to or exceeding the ship's value and the ship is arrested to obtain payment of the fine. If the fine is covered under Rule 7 Section 6, the cover will be for the value of the ship, if that is the amount of the fine. This clause is intended to cover situations where confiscation is a separate sanction imposed upon the Member.

It follows from the discretionary nature of the cover that the Club may consider compensation when a part of the ship or its equipment has been confiscated.

7.9.4 Infringement of customs law
To be covered, the confiscation must arise as a result of a violation of customs law or regulations. The most common reason for confiscation of a ship is smuggling, especially of drugs, and non-manifested or inadequately described goods.

No cover is provided under these Rules for confiscation for other reasons such as illegal fishing, entering prohibited areas or the ship being used for other illegal purposes. Confiscation may result even if the Member has no knowledge of the offence.

There are a number of countries where confiscation of the ship is an option legally available to the authorities. Some of these countries are Colombia, Venezuela, and the U.S.

For further comments on the cover for fines for smuggling or any infringement of customs law see 7.6.2.4.

7.9.5 Duration of confiscation
A claim for compensation under this clause will be considered by the Club only if the Member has been deprived of his interest in the entered ship for a time of not less than six months. This period will allow the Member and the Club to examine opportunities for appeal or otherwise to raise the issue of confiscation and have the title of the ship restored to its owner. The length of time is also justified in establishing that the effect of the authorities' action is not just temporary but final and irrevocable.
If, at the end of the six-month period, it has not yet been finally decided if the Member has actually lost his title to the ship, the discretionary nature of the clause would allow the Club to defer any decision on the question of compensation pending the result of an appeal, negotiation with the authorities or further legal analysis of the situation.

7.9.6 Security
Since it is a condition for compensation under this clause that the confiscation is final and irrevocable, the Club would probably not exercise its discretion to put up bail or other security at an initial stage of the case. When the confiscation is final there is no longer a need for security.

7.9.7 Member’s burden of proof
To obtain compensation under this clause, the Member must satisfy the Club that he had taken all steps which in the Club’s opinion were reasonable to prevent the violation of customs’ law or the regulation on which the order of confiscation was based. Elements which may be considered by the Club appear from comments under 7.6.2.4. The requirements under this clause underline how important it is that a Member spend not only sufficient effort, time and money to comply with customs regulations internationally, but also be able to show authorities and the Club afterwards what was actually done in that respect.

7.9.8 Market value
The amount to be compensated under this clause is limited to the market value of the ship at the time of confiscation. The market value will be assessed without consideration of the Hull insurance value. It will not be affected by the ship’s employment or the existence of profitable freight contracts.

7.9.9 Recourse against authorities
With payment of compensation under this clause, the Member’s rights against the authorities are transferred to the Club in accordance with Rule 14. Should the Club eventually succeed in having the confiscation rescinded, it follows from Rule 14 that the Club acquires title to the ship or its value.
Rule 8 Liabilities for costs
Section 1 Sue and labour and legal costs

Legal costs and other expenses incurred by the Member to defend or protect himself against liability which is falling or is likely to fall under these Rules and for which insurance has been effected provided the cost or expense has been approved in advance by the Association or determined by the Association in its absolute discretion to have been reasonably incurred.

Costs incurred after instructions from the Association.

Section 2 Preventive costs and amounts saved

Costs by the Member incurred in order to prevent or limit liability covered by the Association under these Rules provided the cost has been approved in advance by the Association or determined by the Association in its absolute discretion to have been reasonably incurred. If such costs have been incurred jointly for the interest insured and for other interest, only such portion is compensated that falls on the interest insured.

Where the Member, as a result of a casualty or event for which he is covered under these Rules, has obtained extra revenue, saved expenses or avoided liability, which would otherwise have been incurred and which would not have been covered by the Association, the Association may deduct from the compensation an amount corresponding to the benefit obtained.

Comments on
Rule 8 Liabilities for costs
Section 1 Sue and labour and legal costs

8.1.1 General

The purpose of P&I insurance is to protect the Member against third party liability. The protection is not limited to reimbursement of amounts that the Member has been legally obliged to pay as compensation to third parties. It is equally important for the Member to be protected against the cost to defend him against the claims or otherwise to avoid or minimise liabilities against which the Member is insured. However the Rule clearly underlines the criteria that costs and expenses incurred by the Member must have been approved in advance by the Club or in its absolute discretion been determined to have been reasonably incurred.

Section 1 of this Rule deals with costs and expenses incurred in defending or protecting the Member from liabilities insured under these Rules.

8.1.2 Club staff

The first line of defence for the Member is the Club’s staff of qualified experts. Claims handlers in various teams hold Master of Law degrees or are Master Mariners. On the technical side, the teams are backed by the Club’s technical experts. This expertise is at Members’ disposal at no other charge other than the annual premium.
8.1.3 Club correspondent costs
Although the Club’s own staff has ultimate responsibility for the handling of claims, a large part of claims handling is done by Club correspondents all over the world. The representatives have been handpicked to provide the best service available in their respective regions. Unless otherwise agreed, the attendance fees charged by the representatives for handling matters covered under the Member’s P&I insurance are paid by the Club. The costs will burden the records of the Member concerned.

8.1.4 Legal fees
The same principle applies to legal fees. Unless agreed otherwise, the fees are paid by the Club if incurred in the defence of a case covered under the Member’s P&I insurance. It is a condition that the appointment of lawyers must be made by the Club or with its advance approval. This ensures that the lawyers instructed are best qualified to handle the case successfully. The Club has long-established relations in most places with the best law firms available to handle maritime matters.

8.1.5 Survey and expert fees
To protect a Member’s interests, it is often necessary to engage surveyors or other experts. Appointments should be made by the Club or with its approval unless otherwise stated. The fees are covered if the case to which the services are related is covered.

8.1.6 Operating expenses
Certain costs and expenses are regarded as uninsured operating expenses such as the Member’s agency fees, port charges, bunker consumption shifting expenses, etc. even if they are incurred to avoid or reduce liabilities covered under these Rules.

8.1.6.1 Tally costs
Tallying of cargo is an obligation on the part of the carrier to ensure that the compulsory B/L particulars are correct. Even if the tally may prevent shortages, its cost is not covered.

8.1.6.2 Pre-loading survey fees
The purpose of a pre-loading survey, generally, is to comply with the carrier’s basic obligation to describe the cargo in the B/L. The cost of such surveys are regarded as operational expenses and are not subject to compensation. Regarding preshipment surveys of steel cargo, see comments under 4.1.11.14.4.

8.1.6.3 Costs for general surveys
General discharging survey costs such as hatch surveys are not covered. To be considered for compensation, survey costs should be related to specific damage to the cargo or, at least, to well-founded fears that such damage has occurred during the voyage.

8.1.6.4 Certificate costs
In certain situations, the carrier may have to produce certificates regarding the condition of holds or tanks before loading or after discharging. When carrying reefer cargo, it may be necessary to prove proper operation of the reefer plant before loading. Carriage of oil may require the issuance of Clean Tank Certificates, ROB (Remaining On Board) or OBQ.
The Swedish Club

Rule 8 Liabilities for costs
Section 2 Preventive costs and amounts saved

(On Board Quantity) reports. The cost of obtaining these and similar documents are of an operational nature and, therefore, not covered.

8.1.7 Costs incurred on instructions from Club
It follows from the last part of the clause that compensation is provided for costs of the nature described in this clause incurred after instructions from the Club. The power to issue instructions is derived from Rule 10 Section 3, according to which, the Club may issue regulations in writing. If the Member does not comply with the regulations and does not incur the costs as per the instructions, the Club may refuse or reduce any compensation due under these Rules.

The clause does not mean that all costs are subject to compensation because they were incurred after instructions from the Club. For instance, there is no cover if the instructions were for the Member to comply with existing obligations such as to follow class requirements or to provide a seaworthy ship.

Section 2 Preventive costs and amounts saved
8.2.1 General
The Rules describe a great number of liability risks covered under the policy. The key to reduced insurance costs is to prevent such situations from ever arising or, where they still do, to take adequate action to avoid or reduce their liability potential.

8.2.2 Preventive costs
8.2.2.1 Cover for preventive costs under this clause
One way to reduce costs is for the Member and his people to take proper and intelligent action in each individual case to avoid or reduce covered liability. Under this clause, the Club may compensate a Member for costs incurred to that effect. However the same criteria as in 8.1.1 also apply to preventive costs.

The costs must be of an extraordinary nature, above and beyond the Member’s general obligations - for instance, to care for the cargo or the Member’s obligations with regard to casualties and claims. See comments under 10.4. Costs to mend broken cartons or bags are not subject to compensation. Nor does the clause cover costs like brushing contaminated bales of wood pulp or transferring reefer cargo to a new container when the reefer plant of the original one has broken down.

Hold and tank cleaning costs are not subject to compensation even if incurred to avoid damage to subsequent cargo. Such cleaning constitutes compliance with the carrier’s obligation to provide a cargoworthy ship. See comments under 4.6.2.

No compensation is given for action taken by the ship’s crew or the Member’s own staff to avoid or limit damage or liability even if overtime is involved. The Member is expected to have his organisation available to reduce his insurance costs.

Operational costs and expenses during detention or during negotiations to settle a dispute or free the vessel are not covered. These costs and expenses are not intentionally or voluntarily
incurred in order prevent, avoid or minimize any liability covered under the Rules. Instead they arise in connection with the detention which is the result of an already existing claim.

Situations where compensation under this clause has been allowed are, for instance, where a Member has taken extraordinary action to limit the consequences of water leakage in a hold. Damaged cargo may have been replaced with undamaged cargo at the Member’s expense to avoid cargo claims or claims for fines at the port of destination.

It is not necessary that the extraordinary action taken by the Member eventually have the favourable result intended. It is in the Club’s interest to encourage initiative and attempts to avoid or reduce loss. It is a prerequisite for compensation, however, that the action is in respect of an insured risk, and that the cost must be incurred for the purpose of avoiding or minimising liability to the Club.

If the costs have been incurred jointly with another interest not insured under these Rules, compensation will be reduced accordingly. An example of this principle is the following. A salvage tug had been ordered to attend a passenger ship after an engine room fire at sea. When the fire had been extinguished, the attendance of the tug was not necessary from a Hull insurance point of view. However, a number of passengers requested that the owners have the tug follow the ship to port. It was obvious that a refusal would have caused some passengers to file claims in U.S. courts on emotional grounds. After consultation with the Member, it was agreed that the request should be met. The cost of the tug's assistance was shared between the Hull and the P&I insurance on a time basis.

Compensation under this clause is for costs which would substitute a liability risk covered under the Rules. The substitutional costs incurred are subject to the same deductible, limitations and exclusions of cover as the risk substituted.

8.2.2.2 Cover for preventive costs under other Rules
The general principle expressed in this clause can also be found in other Rules applied to specific situations, for example, Rule 3 Sections 9 and 11, Rule 4 Section 6 (a) and Rule 11 Section 2 (c).

8.2.3 Amounts saved
According to the second part of this clause, a Member should not make a profit on a case under these Rules. If a Member has earned extra revenue, or avoided expenses or liability, the Club may reduce the compensation due under the applicable Rule accordingly. If the entire cargo for a certain port has to be dumped in a previous port after a reefer breakdown, compensation to the Member might be reduced by the savings made by the ship not having to proceed to, enter and perform discharging operations at the contractual port of destination.

The clause states the principle that only the extra and increased costs which the Member has been caused by a covered event are to be compensated. For an example, see comments under 3.2.3.

Net proceeds from the sale of residues, or overlanded, recovered or unidentified cargo should be used to reduce any compensation made by the Club on the voyage.
Rule 9 Charterer’s liability

Liabilities, costs or expenses under Rules 3-8 incurred by the Member in his capacity of charterer of the entered ship.

However, the liability of the Association is subject to the following conditions, exclusions and limitations

(a) all exclusions and limitations applicable to the cover of a Member who has entered his ship for Owner’s risks,

(b) liability in excess of the amount to which the Member should have been able to limit his liability if he had been the registered Owner of the entered ship,

(c) liability in respect of loss of or damage to the entered ship or equipment, spare parts and stores on board,

(d) the Association’s liability for any and all claims in respect of a Charterer’s liability shall be limited to such sum or sums and be subject to such terms and conditions as the Association may from time to time determine,

(e) unless otherwise agreed the Association is not liable for consortium claims (see Appendix II, Rule 2),

(f) a consortium agreement must be submitted and approved by the Association,

(g) the Association’s liability in respect of a consortium claim shall be limited to such sum or sums and be subject to such terms and conditions as the Association may from time to time determine and the aggregate amount recoverable from the Association and/or all other Associations participating in the Pooling Agreement for consortium claims arising out of one and the same incident or occurrence shall not exceed that limit (see Appendix II, Rule 2).

The Member is not entitled to laid-up returns as provided in Rule 29.

Comments on Rule 9 Charterer’s liability

9.1 General views on charterer’s liability

Historically, the P&I Clubs were formed by shipowners to meet their needs of insurance protection against third party liabilities. This need has not been reduced over the years; rather, it has increased due to the accumulation of legal liabilities imposed by international conventions and domestic law. For several reasons the need for a similar protection of charterer’s liability risks has also increased. Much of the old liner services operated with owned tonnage have disappeared and been substituted by charter-operated services. The overall international liability increase has also affected charterers. Charterers have to assume large chunks of liability under most C/Ps.
9.2 Different types of C/P’s

9.2.1 Demise or bareboat charter
Such charters are for the lease of the ship without crew. They are often on a long-term basis.

A demise or bareboat charterer can either insure his risks separately under this Rule or be entered as a Joint Member or co-assured under the owner’s policy. See comments under 30.2.2.9 and 30.3.3.

9.2.2 Time charter
Such hire of the ship is for a certain and specified period of time. There are a great number of standard C/P forms for a time charter.

Frequently used C/P forms for time charter fixtures are the New York Produce Exchange form and Boxtime. The Group Clubs have agreed to recommend their Members to apply a special formula, the Produce Formula or the NYPE Interclub Agreement in the handling and apportionment of certain types of cargo claims such as those for unseaworthiness, condensation, bad stowage and short delivery.

A time charterer requires a separate cover under this Rule unless he is affiliated to or associated with the owner to such an extent that the Club may accept him as Joint Member or co-assured. See comments under 30.2.2.9 and 30.3.3.

9.2.3 Voyage charter
Such hire of the ship is for one or more specified voyages. There are several standard C/P forms for a voyage charter. A voyage charterer requires a separate cover under this Rule.

9.2.4 Space charter
A space charter is for hire of less than the ship’s full carrying capacity. It can be for a certain specified hold/s or compartment/s or for a part of the ship’s cargo carrying capacity.

Space charter C/P’s are often drawn up by the parties to cover their respective requirements.

Any such agreement should be presented to the Club to ensure that liabilities and claims handling have been duly co-ordinated between the parties and their respective Clubs. It is important to ensure that Bs/L issued for such service are suitable.

Where a space charter agreement is part of a joint venture or of part of the operation of a consortium, the Club may agree to enter the participants as co-assureds (see comments under 30.3.3). To be more fully protected, the participants may require cover in their own right for charterer’s risks under this clause. Members should contact the Club for advice.

9.2.5 Slot charter
A slot charter is a C/P in which the parties agree to carry a certain number of containers in each other’s ships or reserve a certain space for such carriage. Each party of a slot charter agreement requires cover under this Rule for his responsibilities as carrier.
Slot charter agreements are used in the container trade between parties of a joint container operation. Any such agreement should be approved by the Club to ensure that liabilities and claims handling have been duly co-ordinated between the parties and their respective Clubs. It is also important to ensure that Bs/L issued for such service are suitable.

Where a slot charter agreement is part of a joint venture or of the operation of a consortium, the Club may agree to enter the participants as co-assureds (see comments under 30.3.3). To be more fully protected, the participants may require cover in their own right for charterer’s risks under this clause. Members should contact the Club for advice.

9.2.6 Other charter agreements
There are various contracts or agreements similar to or with the same effect as C/P’s such as quantum contracts and freight agreements for project shipments. To be sure that any contractual liabilities are minimised and that those remaining are covered, the Member should obtain the Club’s advice at the fixing stage, or at least submit the contract to the Club for approval in advance.

9.3 Extent of cover
9.3.1 Parasite clauses
C/P’s often contain clauses the purpose of which are for a charterer to parasite on the owner’s P&I insurance. The clause may have the following wording: "Charterers to have the benefit of owner’s P&I insurance as far as the Club Rules permit." The fact is that these Rules do not permit a charterer any cover under an owner’s policy. Nor may an owner Member extend that cover by contract without the approval of the Club. At best such a clause is meaningless and hopefully harmless. The clause may, however, give the charterer the impression that he is in fact covered. That could cause him to abstain from obtaining an independent P&I cover of his liabilities under the C/P. The owner will then have to deal with an uninsured charterer, which is not in his best interest. No parasite clauses should be accepted.

9.3.2 Independent cover of charterer’s risks
The Club can instead provide a charterer with an independent cover under these Rules. The cover is subject to a premium to be decided on the basis of the charterer’s individual records.

A charter Member is a Member in his own right within the terms of the cover. Acts or omissions by the owner do not affect the charterer’s cover unless exclusions of cover under these Rules are made applicable by the charterer’s own behaviour.

The extent of the cover for a charterer’s liability risk is defined in this clause. This is done in a simple way. The clause states that cover against liabilities, costs and expenses are provided to a Member in his capacity as charterer of the entered ship under the following Rules:

- Rule 3 - Liabilities in respect of persons
- Rule 4 - Liabilities in respect of cargo
- Rule 5 - Liabilities in respect of delay
- Rule 6 - Liabilities in respect of pollution
- Rule 7 - Other liabilities
- Rule 8 - Liabilities for costs
The insurance protection is subject to all other Rules with definitions, conditions, exclusions and limitations of cover, period of insurance, termination etc. In addition, this clause contains some further exclusions and limitations especially applicable to the cover for charterer’s liabilities.

9.4  **Effect of C/P conditions**

The liabilities that are undertaken by a charterer and covered under these Rules derive from the C/P in each individual case. The C/P in turn is the product of negotiations at the time of fixture and, therefore, influenced by the negotiating power of the parties and by the general freight market.

In most cases, a C/P divides the liability among the two contractual parties. As they do not always realise the effect of clauses agreed to, a C/P is not necessarily logical, suitable or even understandable from a liability point of view. As previously explained, the advisory service provided by the Club and available on an around-the-clock basis ought to be used more often in fixing situations to avoid unfavourable or contradictory charter conditions.

The Club has arranged a number of seminars that concentrate on charter problems. More such targeted seminars will be arranged.

Liability arising from charter agreements on unusually burdensome terms not approved by the Club may not necessarily be covered. Unusual pro formas offered, or individual clauses, the effect of which the Member does not understand, should be referred to the Club for approval and advice.

An adequately and clearly drafted C/P constitutes easily arranged, cheap and effective loss prevention.

9.5  **Does a charterer require a P&I cover?**

The question is often raised whether P&I insurance cover is required for a charterer who has back-to-back terms or where the conditions of the relevant C/P seem to transfer all liability to the owner or any other link in the chain of charterers. The answer is that no guarantee can be given that a party under charter contract shall escape unhurt.

In a back-to-back situation, a charterer may receive the unpleasant surprise that the party to whom liability should have been passed on, has gone bankrupt or is otherwise unavailable. Another way which is sometimes used to force a charterer into a conflict is to arrest the charterer’s bunkers on the ship or other assets belonging to the charterers, such as collected B/L freights. In many jurisdictions, a claimant has the option to choose whom to attack. Nobody, therefore, is immune to these claims. All charterers need the protection and service provided by a P&I Club to look after their interests.

Owner Members are also advised to ensure that charterers of their ships really have a liability insurance cover. The reason is that it is difficult to come to terms with an uninsured charterer even if it is clear according to the C/P that the liability lies with the charterer. We recommend the names of the respective P&I Clubs to be included as one of the particulars in a C/P. In an urgent situation of, for instance, a time extension or arrest, it may be of considerable
importance to effect a contact between the two P&I Clubs concerned. Experience shows that valuable time may be lost chasing this information.

A C/P generally places some share of the cargo liability on the charterer. Therefore, it is important that he has full cargo liability protection under Rule 4.

There is an increasing tendency in the U.S. to make charterers responsible for longshoremen injuries, on the grounds that they were employed by the charterers. Insurance protection against liabilities in respect of persons under Rule 3 is therefore important, as these claims often involve large sums of money.

An owner may seek compensation from the charterers in cases where stowaways have boarded the ship in the course of loading or discharging operations arranged by the charterers.

Charterers may end up with tug liabilities under a tug contract signed by the charterer. Cover according to Rule 7 Section 8 is then important. Charterers are not immune to fines and require protection against Rule 7 Section 6.

Admittedly, some of the risks enumerated in Rules 3-8 seldom concern a charterer. Still, it is advisable to provide a full and complete cover of no lesser quality than that afforded to owners.

9.6 Limited cover for fixed premium
There are at least two fundamental differences between an owner’s and a charterer’s P&I cover.

A charterer’s cover is limited (policy year 2011/2012) in respect of all claims up to USD 500 million for each accident or occurrence. A lower policy limit can be agreed with the Club.

The limitation of a charterer’s cover for oil pollution claims appears from comments under 6.2.2.

The second difference between an owner’s and a charterer’s P&I cover is a consequence of the first. The fact that a charterer’s cover is limited makes it possible for the Club to offer insurance to charterers on a fixed premium basis. Unlike an owner’s policy, a charterer’s policy is not subject to additional calls under Rule 23.

The fixed premium basis means that Members entered for charterer’s risks are not liable to pay overspill calls under Rule 24.

9.7 Same or different Clubs
An owner and a charterer often enter their respective P&I risks in different Clubs. Occasionally, however, it happens that they are in the same Club. Disputes can be handled and settled within the organisation to the satisfaction of the two Members.

In case of a compromise settlement, payment on behalf of each Member is subject to his own policy deductible.
9.8 Exclusions and limitations of liability

9.8.1 Same exclusions and limitations as owner

The first exclusion (a) confirms what has been said above, viz. that all exclusions and limitations applicable to an owner's P&I cover also apply to a charterer's P&I cover.

9.8.2 Global limitation

The second exclusion under (b) refers to the fact that an owner, but not necessarily a charterer, may have a legal right according to applicable domestic law based on international conventions on global limitation to limit his liability (see comments under 2.11). If a charterer is refused such limitation because he is a charterer, the cover within the framework as described under 9.6 is restricted to the amount to which he would have been able to limit his liability, had he been the owner of the ship.

Charterer Members are automatically provided cover under the Charterers' Liability Insurance Time for liabilities in excess of the global limitation amount. The cover has a limit of USD 500 million for each occurrence (policy year 2011/2012). The insurance is against risks covered under these Rules. A premium is charged only for vessels calling in the U.S. Such calls should be reported to the Club.

9.8.3 Charterer's Liability to Hull

It is an important principle for P&I insurance that it does not provide cover for loss of or damage to the entered ship. That principle is reflected by Rule 11 Section 2 (l), applicable to cover for owner's risks.

Cover for charterer's risks contains a similar exception under item (c) of this clause, which refers to liability in respect of loss of or damage to the entered ship, its equipment, spare parts and stores on board.

Damage may be caused to the ship as a consequence of the charterer's operations without imposing any liability to compensate its owner. An owner may have to accept a certain amount of damage or wear and tear to his ship depending upon the type of trade for which he has put it on the charter market. If logs or scrap are carried as lawful cargoes according to the C/P conditions, the owner cannot expect his ship to be in mint condition at the off-hire survey.

However, where the charterer can be held legally liable under the C/P conditions for loss of or damage to the chartered ship, that liability is covered under the normal Charterers Liability Insurance Time.

The cover includes liability for damage to the machinery and the consequences thereof caused by the charterer having provided substandard diesel oil. It also includes contribution in general average in respect of charterer's freight at risk and contributions which are attributable to the chartered ship and which arise directly because of loss or damage to the chartered ship following an accident for which the charterer is legally liable and which is covered under these Rules.
The cover contains the provision that it is subject to the conditions of these Rules as applicable. The cover has a limit and this is to be agreed between the Member and the Club when the insurance is contracted. The limit is usually set to coincide with the estimated value of the ship insured. The cover usually carries a deductible.

9.8.4 Charterer's limited cover
Charterer's cover under (d) of this Rule is limited to such sums and subject to such terms as the Club may from time to time determine. See comments under 9.6.

9.8.5 Consortium claim
A consortium claim is a claim arising under a P&I entry of an insured ship from carriage of cargo on a consortium ship. Such claims are not covered unless previously agreed with the Club (e).

9.8.6 Consortium agreement
An agreement between the Member and an operator of a consortium ship not being entered in the Club for reciprocal sharing of cargo space on the entered ship and the consortium ship is a consortium agreement. According to this Rule the consortium agreement must be submitted to the Club for approval (f), see also comments under 9.2.5 and 10.2.6.

9.8.7 Limitation of Consortium cover
The aggregate of all claims against the Club and/or all other clubs from any one such Consortium Ship shall not exceed USD 350 million from any one event (g).

9.9 Laid up returns
The clause makes it clear that a charterer is not entitled to laid up returns as provided in Rule 29.

9.10 Surplus
A Member entered for charterer's risks is not entitled to a surplus under Rule 36.
Chapter III  Conditions for cover

Rules for P&I Insurance 2012/13

Rule 10  Conditions
Section 1  Member’s obligations with regard to classification and requirements by Classification Society, flag State or otherwise

Unless otherwise agreed the following conditions are terms of the insurance of the entered ship.

1. With regard to the classification of ships
(a) The ship must be and remain throughout the period of insurance classed with a Classification Society approved by the Association.
(b) The Member must promptly call to the attention of that Classification Society or the Society’s surveyors any incident or condition which has given or might have given rise to damage in respect of which the Classification Society might make recommendations as to repairs or other action to be taken by the Member.
(c) The Member must comply with all the Rules, recommendations and requirements of that Classification Society relating to the entered ship within the time or times specified by the Society.
(d) The Member must authorise the Association, for whatever purpose it may consider necessary, to receive information and to inspect and obtain documents relating to the class of the entered ship from a Classification Society with which the ship is or has been classed.
(e) Where the Member is in breach of Section 1 (a) above of this Rule, the Member shall cease to be insured by the Association in accordance with Rule 27 (f). Where the Member is in breach of Section 1 (b)-(d) above of this Rule, the Association may reject any claim or reduce any sum payable under these Rules.

2. With regard to statutory requirements
The Member must comply with the flag State’s or other competent authorities’ requirements relating to the entered ship’s design, construction, adaptation, fitment, condition, equipment, manning, safe operation, management and maritime security.

Valid certificates covering such requirements, including ISM Code certificates and ISPS Code certificates, must at all times be maintained. If the Member fails to fulfil his obligations under this point, the Association may reject to compensate liabilities, costs or expenses caused by such failure.

Section 2  Standard terms of contracts
The following applies to standard terms of contracts or agreements entered into by or on behalf of the Member.
(a) Contracts for carriage of goods
Such contracts shall not impose upon the Member a higher liability than would follow from the Hague Rules or the Hague-Visby Rules.

(b) Contracts for through transport of goods
Such contracts shall not impose upon the Member a higher liability than would follow from any mandatory provisions applicable to any separate part of such through transport.

(c) Crew agreements and contracts of service and employment
Such contracts or amendments thereto must be submitted to and approved by the Association.

(d) Contracts for carriage of passengers
Such contracts must be submitted to and approved by the Association.

(e) Other contracts
Such contracts must be submitted to and approved by the Association.

There shall be no recovery from the Association for liabilities, costs or expenses which would not have arisen had the Member complied with the conditions set out above.

Upon application by the Member the Association may agree to provide insurance cover for contracts containing terms less favourable than required under a-b above.

Notwithstanding what has been said above, the Association may reject to compensate the Member for liabilities, costs or expenses arising from the Member having entered contracts or agreements on unusually burdensome terms without the approval of the Association.

Section 3 Regulations
The Association may issue general or particular regulations in writing.

The Association may reject any claim or reduce any sum payable in respect of claims arising as a consequence of the Member not complying with such regulations.

Section 4 Obligations with regard to casualties and claims
The Member must take all reasonable steps to avert or minimise liabilities, costs or expenses in respect of any casualty or event which may give rise to a claim upon the Association.

The Member must promptly notify the Association of any such casualty or event and of any related formal enquiry or legal proceedings involving the entered ship. The Member must also promptly notify the Association when a claim has been made against the Member which may give rise to a claim upon the Association.

The Member must promptly provide the Association with all documents and evidence which may be relevant to the case and must produce any person for interview or to give evidence. Furthermore the Association must at any time be allowed admittance to the ship to conduct any surveys and investigations which the Association considers necessary.
Rule 10 Conditions
Section 1 Member’s obligations with regard to classification and requirements by Classification Society, flag State or otherwise

The Member shall not settle or admit liability for any claim for which he may be insured by the Association without the prior consent of the Association.

Where the Member commits any breach of these obligations, the Association may reject any claim by the Member against the Association or reduce any sum payable by the Association arising out of the casualty.

Where the Member does not accept a settlement of a claim recommended by the Association, the Association’s liability in respect of such claim shall be limited to the amount so recommended.

Comments on
Rule 10 Conditions
Section 1 Member’s obligations with regard to classification and requirements by Classification Society, flag State or otherwise

10.1.1 General
The classification societies were founded by Hull underwriters to set safety standards on the construction and maintenance of ships to be insured. There are many classification societies competing for a shrinking world fleet on a competitive market. Those with the strictest requirements and the tightest control may not attract most registrations. We have seen ships which ought to have steamed direct to the repair yard - if not to the scrap yard - but still had fresh and clean class certificates.

For a mutual organisation and its Members, it is of considerable importance that all ships entered are and remain in first class condition. As this is the foundation for low and stable insurance costs, it pays to be selective in the choice of class.

10.1.2 Class to be approved by Club
This clause makes it clear that it is a condition for insurance that the ship is and remains entered with a classification society approved by the Club. As indicated above, there are good and less good classification societies. Based on long experience, the Club can advise which classification societies are approved.

10.1.3 Change of class to be approved by Club
Any change of classification during the period of entry should be reported to and approved by the Club. If the new class is approved, the cover remains unaffected. Should the change of class not be reported to the Club for approval and the new classification society belong to the unapproved category, Rule 27 (f) will apply and the insurance immediately cease without notification to the Member.

10.1.4 Class to be maintained
The Member has an obligation to maintain the entry with the classification society throughout the period of insurance. For comments on the period of insurance, see under 20.4.1-3. The Member must not leave the society or act in such a way that the entry is expelled under the statutes or regulations of the society.
10.1.5 Member’s obligation to call in class
According to item (b) the Member is obliged promptly to call in class in case of an incident which is or may be of a nature or extent to cause class to recommend repairs or other action. If in doubt the Member should consult the Club.

Rule 10 Section 3 empowers the Club to issue regulations to the effect that the classification society should survey the ship. See comments under 10.3,4-5.

10.1.6 Member’s obligation to follow class recommendations
A Member must follow the rules laid down by the class and all requests, recommendations or subjects to effect repairs, perform surveys or to take other action as described under item (c). Such requests are often subject to a time limit. Requested action must be taken in time.

Certificates issued to confirm the compliance with such requirements or obligations must be maintained at all times. Lack of valid certificates may qualify as unseaworthiness and have serious liability consequences for the Member. It may also affect the cover under these Rules through the application of the last part of this clause or Rule 11 Section 1. According to Rule 7 Section 6 (v) there is no cover for fines imposed upon a Member because of lack of valid or prescribed certificates. See comments under 7.6.3.5.

10.1.7 Member’s obligation to release class records
To be able to investigate an accident and prepare the Member’s defence, it is necessary for the Club to have full access to information and documents held by class in relation to the entered ship. The release by class mostly requires the authority and approval by the vessel owner. According to item (d), the Member is obliged to authorise class to disclose and make available to the Club or its representatives any information and any documents for whatever purpose they are required. The fullest co-operation from the Member to achieve the desired result is necessary. The disclosure is in respect of all previous class records and notifications made by the present or previous classification societies and its surveyors during the lifetime of the entered ship.

10.1.8 Effect of Member’s breach of obligations under this clause
If a Member is in breach of any of his obligations under a-d of this clause, the Club may refuse to compensate the Member for any amount due under the Rules or reduce the payment of the compensation as deemed necessary.

The most serious consequence for a Member who is in breach of his obligation to have his ship entered in a classification society approved by the Club appears from Rule 27 (f). The Member shall cease to be insured by the Club from the moment the entered ship ceases to be classed in accordance with Rule 10 Section 1 (a). The effect is instant. No notice is required or given. For further comments see under 27.7.

10.1.9 Statutory requirements
It is stated under item 2 of this Rule that the Member shall comply with any statutory requirements of the state of the ship’s flag or obligations imposed by other competent authorities. Such authorities can be in or outside the state of the ship’s flag. There are many authorities and organisations that act to improve safety on a national or wider basis.
Based on an agreement of 1982, Paris Memorandum of Understanding (Paris MoU), 14 European countries agreed to operate a system of Port State Control to ensure that visiting ships comply with the standards laid down in fundamental international conventions and protocols on safety at sea.

The requirements or obligations imposed by authorities can be in relation to the construction, adaptation, condition, fitness or equipment of the entered ship.

The focus is also directed at other important safety factors beyond the technical condition of the ship such as the education and training of the crew and the qualification of the management. Members must comply with any regulations in that respect imposed by class or by competent authorities.

10.1.10 International Safety Management Code (ISM)

The International Safety Management Code was adopted by IMO in 1993 and included in the SOLAS Convention, chapter IX, Management for the safe Operation of Ships in 1994. On 1 July 1998 the new chapter IX of the SOLAS Convention entered into force for passenger ships, oil tankers, chemical tankers, gas carriers and bulk carriers. For other cargo ships, chapter IX entered into force in 2002. The ISM Code provides an International Standard for the safe management and operation of ships and for pollution prevention. Shipping companies are required to develop a safety management system according to the ISM Code. A Document of Compliance will be issued to a shipping company that complies with the requirements of the ISM Code and a copy of that document should be kept on board the ship. A Safety Management Certificate will be issued to a ship when it has been established that the Company’s Safety management System (SMS) has been fully implemented on board.

The second paragraph of this Rule stipulates that if Members fail to comply with the flag State’s ISM Code requirements and maintain ISM certificates the Club may reject compensating liabilities, costs or expenses caused by such failure to comply.

Section 2 Standard terms of contracts

10.2.1 General

The real need for insurance protection is against those liability risks which the Member has no technical or legal means of avoiding. Restriction must be exercised as to the extent of cover for liability risks which a Member assumes with open eyes for commercial reasons by entering a contract and which would not have existed had there been no such contract. It follows from the concept of mutuality on which P&I insurance is based, that only those contractual risks should be shared among the community of Members that are both traditional and common in most kinds of trading. A Member who wants to assume a special or exceptionally wide risk cannot expect his fellow Members of the Club to share that risk. He has to insure it separately and treat the premium charged as an operational expense.

This is the background of this clause which deals with various types of contracts and the extent to which the ensuing liabilities are covered under these Rules.
10.2.2 Contracts for carriage of goods

This includes all kinds of contracts for carriage of goods such as long term contracts of carriage, time and voyage C/P’s, Bs/L and W/B. The cover under these Rules extends only in so far as the liability imposed upon the Member is equal to that of the Hague or Hague-Visby Rules. The nature and limitations of that liability are described in the comments to Rule 4 Section 1. If a Member is offered terms which seem to go beyond those approved limits, or if the Member is just not sure of the legal implications of a freight contract proposed, the Member should contact the Club for advice.

When contacted, the Club will assist the Member to negotiate better and less onerous terms. Should that be impossible to achieve, the Club will decide if the cover can be extended to embrace the risk according to the third part of the clause. If the risk has to be insured separately, the Club will assist the Member in obtaining quotations for premiums and conditions of cover.

A Member should be especially careful about terms in freight contracts which imply a warranty or guarantee of seaworthiness or which impose other important obligations.

When entering into contracts with shipowners for carriage of mail, national post offices or authorities may attempt to impose terms which deprive the carrier of the exceptions, limitations and time bar of the Hague Rules. Such extended liabilities are excluded from cover under this clause. They can be covered at an additional premium. Mail should preferably be carried under a waybill incorporating the Hague or Hague-Visby Rules.

The Hamburg Rules entered into force in November 1992 after having been ratified by twenty states. Most ratifying states came from third world countries, none of which was a major maritime nation. The Hamburg Rules have limited application and most contracts will continue to be governed by the Hague/Hague Visby Rules. The Hamburg Rules establish an entirely new system of rights and liabilities and it is therefore important that Members who engage in a substantial volume of trade to or from any of the contracting states should consider redrafting their shipping documentation to reflect the provisions of the Hamburg Rules. In this respect we refer to our Circular No P.2298/1998

Attention should be paid not only to material clauses but also to the effect of those clauses which a Member may regard as being of a formal nature. Examples of such clauses are those which decide jurisdiction and applicable law, including arbitration clauses. Acceptance of extraordinary jurisdictions which do not recognise the Hague or Hague-Visby Rules may render the protective clauses of the freight contract illusory and expose the carrier to an almost strict liability. The inclusion of or reference to the Centrocon arbitration clause could reduce the time limit to file claims under a C/P to three months and eliminate what otherwise would have been a clear recovery claim against the other party under the C/P. These are examples of some terms which could be considered unusually burdensome and could jeopardise the cover under these Rules.

This clause also applies to situations when larger liabilities have been incurred because there was no contract of carriage issued at all.
10.2.3 Contracts for through transport of goods
The concept of the carrier’s liability for through transport of goods and the cover under these Rules is commented upon under Rule 4 Section 2.

A Member should not accept through transports on terms where the liability is larger than would have followed from legislation compulsorily applicable to each single link of the through transport. Most through transport or combined transport Bs/L have been drafted in such a way that the carrier’s liability is duly protected.

According to the third part of the clause the Club may agree to provide cover for contracts on less favourable terms than stated under item (b). The Club will decide the conditions for any such extended cover.

Special care is required when accepting tailor-made conditions for more unusual through transit operations such as project shipments. Experience has shown that unnecessary trouble and expense can be avoided if the Club is consulted at the planning and fixing stage of such a transport. There is no reason for a Member not to avail himself of the service and expertise of the Club, to which he has already paid the annual premium.

10.2.4 Crew agreements and contracts of service and employment
Crewmembers are normally employed on the basis of either a collective agreement or an individual employment contract. Collective agreements, often negotiated and entered into by trade unions and shipowners’ associations or management companies, are as a rule detailed and deal with most aspects of the employment. An individual employment contract is normally less detailed and sometimes refers to or incorporates a certain collective agreement. Otherwise, regulations in accordance with the law of the flag of the vessel will supplement the individual employment contract.

Examples of commonly used collective agreements are the Philippine Overseas Employment Administration Standard Employment Contract and the ITF (International Transport Workers’ Federation) Agreement.

As there are such a wide variety of agreements in use, item (c) of this clause requires crew contracts to be submitted to and approved by the Club. For this purpose, it is necessary that the Member supplies the Club with information regarding the ship’s flag and the nationality of crewmembers, as well as copies of the crew contracts and/or collective agreements. The Club should be notified of any important amendment to such an agreement.

A number of liabilities and obligations commonly stipulated in crew contracts are not accepted by the Club. Here are some examples:

Some collective agreements provide that the shipowner shall pay dentists’ fees for routine checks. Similar provisions exist with regard to routine health checks. Such costs are not recoverable under these Rules.

Occasionally, a collective agreement may incorporate a provision to the effect that the employer is obliged to pay medical treatment or similar costs for members of the crewmember’s family, whether they are on board or at home. Such costs will not be reimbursed.
In return for certain contractual benefits it may be reasonable to include a clause in the crew contract by which the crewmember and his relatives give up their rights to claim damages as well as the compensation payable under the contract. Although the law governing the contract may prohibit such a provision, the contract should be worded in such a way that any amount to which the crewmember is entitled under the contract should reduce the compensation for which he or his dependants may have a claim in damages.

Members are recommended not to take out personal life insurance or accident insurance in favour of the crewmember. The existence of such life insurance may not reduce any claim the crewmember may have in damages. The contract should make it clear that the crewmember is entitled to contractual benefits and not to insurance benefits.

In certain crew contracts the employer undertakes to provide benefits to a crewmember during vacation or similar periods. Under Rule 3 Section 1 (a) a Member is only covered for liabilities arising while the crewmember is on board, or proceeding to or from the entered ship unless otherwise agreed. Any such undertaking requires cover by a separate accident insurance. Members are recommended not to accept such benefits.

10.2.5 Contracts for carriage of passengers
Passenger tickets should be submitted to the Club on a regular basis in order to have them updated so that they contain applicable and acceptable limitations of and exclusions from liability in respect of passengers, their cars, luggage and other belongings.

There are several other documents that may affect a Member’s liabilities for passengers. See comments under 3.5.3.1, 3.5.3.2 and 3.5.7.1-2. Such contracts should be submitted to the Club for approval.

10.2.6 Other contracts
10.2.6.1 General views on other contracts
In the operation of his ship a Member has to enter into numerous contracts for a wide variety of services. It is neither practical nor technically possible to submit all contracts to the Club for approval. A Member should be able to spot those contracts, clauses or situations where liabilities could be involved and contact the Club for advice. To overlook a damaging clause may prove to be expensive and leave the Member’s claim for compensation to the uncertain test under Rule 19, the Omnibus Rule.

The following are some examples of contracts which may require submission to and be approved by the Club.

10.2.6.2 Barges, cranes, sheer legs and other similar equipment
Contracts for the hire of barges, pontoon cranes, sheer legs and similar equipment often contain terms that transfer liabilities to the hirer far beyond his cover under these Rules. Such contracts may make the hirer liable, unconditionally and without limitation, for damage caused to or by the crane from the time it leaves its station until it returns safely. There are contracts where the hirer is asked to undertake the responsibility for the crane being hit by lightning or run into by an airplane during the time of hire. It does not take a great deal of
imagination to understand that such contracts should be referred to the Club for approval, or for additional insurance cover to be arranged before signing.

10.2.6.3 Ports, piers, jetties and similar facilities
Contracts for the use of ports, piers, jetties, oil loading/discharging buoys or booms may impose liabilities upon the user which may require extra insurance.

10.2.6.4 Stevedoring services
Stevedoring contracts often contain conditions which exclude or unreasonably reduce any liability for damage to cargo, the ship and its equipment or death or injury to members of the crew caused by negligence on the part of the stevedoring company. Such contracts may also increase the Member's liability for death of or injury to longshoremen or other stevedore personnel beyond the legal standard under applicable law. The effects for the Member of any such contractual exclusions from or extensions of liability may not be covered under these Rules in cases where the contract has not been approved by the Club. See comments under 3.7.2.2.3 and 4.1.7.2.

10.2.6.5 Pilot services
Contracts for pilot services may contain far-reaching exclusions from or limitations of liability for loss or damage caused by the pilot’s negligence, for instance in the case of a stranding or collision. As such contracts may affect the cover under the Hull and P&I policies, they should be sent to the respective underwriter for approval. As regards the cover for liabilities in respect of death of or injury to a pilot, see comments under 3.7.5.

10.2.6.6 Helicopter services
Helicopter service is used to transfer pilots, crewmembers, spare parts and supply to or from ships. The performance at sea of such services involves obvious risks for both people and property.

The Member’s liability risks involved are covered under these Rules if based on common law. Liabilities based on contract are covered, provided that the contract with the helicopter operator does not include any indemnity or waiver provisions in favour of the operator that are more unfavourable to the Member than those contained in the KLM Rotterdam Shore to Ship Agreement. Upon request, the Club will provide copies of those terms. It is important that Members contact the Club for approval and advice before signing or agreeing to any contracts or terms for such service.

As regards the technical performance of the helicopter operation and safety precautions to be observed, Members are advised to comply with the regulations contained in the Guide to Helicopter/Ship Operations issued by the International Chamber of Shipping (ICS). All ships should be supplied with the latest edition of the ICS Guide and equipped to comply with its requirements. The liability provisions of the ICS Guide have not been approved by the Clubs. In that respect, the KLM terms provide the yardstick.

Members are recommended to contact their Hull underwriters to check the extent and conditions for cover in case the entered ship is damaged or lost in an accident related to helicopter service.
10.2.6.7 Towage services
As mentioned in comments under 7.8.3.1, towage should be undertaken on the basis of the United Kingdom Standard Towage Condition (1986), the Netherlands or Scandinavian towage conditions or on the TOWCON and TOWHIRE contracts. If towage is proposed on amended terms or on terms other than those mentioned, the Club’s approval should be obtained.

10.2.6.8 Salvage services
Whenever possible, salvage should be carried out on the basis of Lloyd’s Standard Form of Salvage Agreement (1995), known as LOF 1995. See comments under 7.4.1.2. If time permits, other contracts offered should be referred to the Hull underwriter. The approval of the Hull underwriter of such a salvage contract will be accepted by the Club as P&I underwriter.

10.2.6.9 Wreck removal
Wreck removal can be undertaken either under a salvage contract or under a contract specially drafted to cover wreck removal services. Any such contract proposed should be submitted to the Club at the negotiating stage in order to avoid terms which may not be covered under these Rules.

10.2.7 Contracts on unusually burdensome terms
The last part of the clause applies generally as well as to all the foregoing items.

The Club may refuse to compensate a Member for the consequences of a contract or agreement on unusually burdensome terms entered into by, or on behalf of, the Member without the Club’s prior approval.

The terms may be considered to be unusually burdensome either because they positively assume wide liabilities or lack usual protective clauses or liability exceptions. Examples of such situations appear in comments to many clauses.

The meaning of “unusually burdensome” should be seen in relation to normal and customary standard terms for the services offered or received and the possibilities for the Member to abstain from entering the contract on those terms or to contract on better terms.

10.2.8 Separate cover of contractual risks
A contract which has not been approved by the Club and which is later found to have surpassed the boundary of cover under these Rules, constitutes a serious uninsured risk. Members are, therefore, recommended to contact the Club for advice on the "better safe than sorry" principle.

According to the third part of the clause, the Club may agree upon application to provide cover for contracts which contain less favourable terms than prescribed for the carriage of goods under item (a) and for through transport of goods under item (b). For such extended cover, the Club may charge an additional premium or make special conditions.
Additional cover may be required for other types of contracts than those mentioned under item (a) and (b). The Club is prepared to assist a Member in solving any such problems that arise in such a way that the Member’s liability exposure is either eliminated or at least minimised.

Section 3 Regulations

10.3.1 General views on regulations
The power to issue regulations afforded to the Club by this clause should be seen as an outflow of the obligation to exercise loss prevention. Experience gained by handling a considerable number of cases under the P&I insurance and information on legal, technical and nautical matters obtained from lawyers and representatives and not least by the ongoing discussion and exchange of information between the Group Clubs, should be shared by all Members. A refund of information and experience to Members is part of the concept of mutuality in the same way as a refund of an insurance surplus, if any.

10.3.2 Circulars
Regulations to Members are generally contained in circulars issued by the Club. Circulars are of a different nature.

The majority of circulars issued contain general information which the Club considers important for Members. These circulars may not qualify as regulations in the sense of this clause.

A number of circulars contain recommendations to Members to act in a certain way. Such a recommendation should be regarded as a regulation in the sense of this clause. It allows the Club to consider whether compensation to a Member who did not follow the recommendation in order to save money, should be reduced or, in more serious cases, completely denied.

Finally, there are circulars from which it appears that compliance with the regulations contained in the circular is a condition for cover under these Rules.

The lifetime of a circular and the regulations it contains may vary considerably. A full set of circulars which in the Club’s opinion are still valid, partly or fully, can be supplied on request. The effect of a breach of regulations will be considered by the Club in relation to the age of the circular and the possibilities for a Member to observe its contents unless the circular contains an absolute exclusion of cover.

Members’ attention is especially drawn to the head circular issued annually in December following a Board meeting at which time the conditions for the policy year to follow are decided. The head circular specifies the general conditions for owners’ and charterers’ P&I. All circulars can be found on the Club’s website.

10.3.3 Other regulations in writing
Regulations can be given individually to Members by mail or by letter. To have the effect described in the second part of the clause, the regulations must be in writing.
10.3.4 General regulations
General regulations can be directed to all Members or be in respect of all ships entered. Regulations can be general also in the sense that they concern all ships of a certain type or age or trading in certain areas or with certain cargoes.

The Club may for instance request surveys of ships beyond a certain age or equipped with hatches of a type which has caused repeated cargo damage.

The clause empowers the Club to issue trading warranties which exclude or restrict trading in areas where war, or similar dangerous conditions exist or allow trading only at an additional premium. See comments under 11.5.3.

10.3.5 Particular regulations
The words "particular regulations" indicate that regulations can be made in respect of a specific Member or a certain ship. The Club may require a Member to submit his ship to be surveyed at any time by appointment of a surveyor nominated by the Club (condition surveys).

The result of such a survey may cause the Club to issue new particular regulations under this clause for the Member to effect necessary repairs forthwith or within such a time as specified by the Club.

The Club may call upon the classification society to survey the ship, should the Club become aware of any condition which could endanger the safety of the ship, its crew, passengers or cargo.

The right of the Club to survey the ship follows not only from the power to issue regulations under this clause. It is expressly stated in the third part of Rule 10 Section 4. The Club can exercise that right by any surveyor of its choice.

The Club may also issue regulations to exclude cover for claims which arise out of or are contributed to by any defect in the ship in respect of which a surveyor has made a recommendation as to repair. A tanker with a defective coating may get a restriction of cover for types of cargo to be carried until the defect has been remedied and surveyed to the Club's satisfaction. A ship with repeated cargo damage due to leaking hatches may lose cover for cargo carried in that particular hold until its hatches have been suitably repaired.

Regulations issued by the Club for a Member to effect repairs, for instance, to comply with class regulations or to render holds suitable to receive cargo do not render the ensuing costs recoverable from the Club. It is a general prerequisite for cover under these Rules that Members comply with mandatory obligations. The costs of doing it are running expenses not subject to insurance cover whether incurred on instructions or not.

10.3.6 Effects of failure to comply with regulations
If a Member fails to comply with such regulations, the last part of the clause provides the Club with power either to reject a claim for compensation or reduce any amount payable to the Member under these Rules.
The ultimate remedy against a Member who fails to comply with regulations issued by the Club under this clause is provided in Rule 26 (c). It gives the Club the right to terminate the period of insurance with seven days’ notice.

Section 4 Obligations with regard to casualties and claims

10.4.1 Member’s obligations at a casualty

10.4.1.1 Member’s obligations to take action

The first part of this clause states the obvious - when an accident has occurred which may cause a claim for compensation under these Rules, the Member has an obligation to take action to limit its extent and consequences.

This is part of the Member’s basic obligation not only under these Rules but in relation to those who have suffered damage. The Member is expected to have his organisation available for this purpose with no right to compensation other than what would follow under Rule 4 Section 6 or Rule 8 Section 2.

10.4.1.2 “Reasonable steps”

The clause requires the Member to take steps which are reasonable. The possibilities of mitigating a loss may be restricted by risks involved to the ship, people or cargo on board. There may also be legal restrictions as to what an owner is able to do. Customs or health authorities may not allow handling or reconditioning of damaged cargo. Unauthorised use of chemical detergents to clean up an oil spill may cause even worse damage or liabilities than the pollution itself.

10.4.2 Member’s obligation to notify promptly

It follows from the clause that the Member should promptly notify the Club of any incident likely to be covered under these Rules. This could be done in many ways, of which one does not exclude the other. The master, who is usually closest to the scene of the accident, should inform his owner and the nearest Club correspondent. All particulars necessary to establish contact with the correspondent at any time of day or night are included in the Club’s List of Correspondents posted on The Swedish Club’s web site. A new edition is published annually and should be made easily available on board. If the matter is reported to the local ship agents, they should be instructed to liaise urgently with the Club correspondent concerned. With the sophisticated means of communication on board ships today, establishing the necessary and urgent contacts with the Club and its correspondents should not be a problem.

If no assistance is available despite persistent attempts, the master must act alone. This may involve the appointment of a surveyor to act on the owner’s behalf.

10.4.3 Formal enquiries and legal proceedings

10.4.3.1 General views on formal enquiries and legal proceedings

According to this part of the clause the Member has an obligation to promptly notify the Club regarding formal enquiries in connection with an accident and the filing and development of legal proceedings.
Formal hearings before courts or other competent authorities often follow immediately after an accident has occurred. This is the opportunity when much of the contemporary and crucial evidence is collected. It is important that the Club is given the opportunity to attend and protect the Member's interests in time to make the necessary preparatory investigations and inquiries.

10.4.3.2 Sea protests
It is often asked whether a master should note a formal sea protest after an accident or after having encountered bad weather during a voyage. Generally the position is as follows. In most parts of the world courts apply the principle of free evaluation of proof. It means that the evidence presented does not need to be in a special form such as a sea protest. A bad weather defence under the Hague Rules (see comments under 4.1.8.3) can be supported by other evidence such as log extracts, statements from the ship's officers or reports from meteorological stations. A sea protest is just one way of discharging the burden of proof. The filing of such a protest has no magic power to relieve the ship of liability. Even if a sea protest is required as proof of bad weather in the country where the discharging took place, the dispute when a claim is filed may be decided elsewhere, either according to the jurisdiction clause in the B/L or because the shipment was on CIF terms and the cargo insurance covered in the country of shipment. The need for a sea protest is thus limited. Still, courts in some countries, such as Brazil, only accept evidence of liability exceptions if brought in the form of or substantiated by a sea protest noted in due form. If in doubt the Club correspondent should be contacted and will advise the master what to do.

10.4.3.3 Service of writs
If legal proceedings have been instituted against a Member, a writ will be served and will be followed during the proceedings by other documents. All such documents must be treated as extremely important. They should immediately be forwarded to the Club, even if the matter is already in the hands of the Club's lawyer. Failure to comply with the contents of such documents in a timely manner may have serious adverse effects on the Member's position in the proceedings. It can result in a judgement by default being made which may be difficult or impossible to reverse. There is no compensation to Members for judgements by default.

10.4.3.4 Service of notification to appoint arbitrator
A similar situation, which could have serious consequences for a Member, is when a notification of appointment of an arbitrator under a C/P or other contract has been received. Unless an arbitrator is nominated in timely manner on the Member's behalf, the opponent's arbitrator may act as a sole arbitrator. This is probably not in the Member's interests. A Member who has received or been served a notice of appointment of an arbitrator should immediately contact the Club for assistance to have a suitable arbitrator appointed on Member's behalf.

10.4.4 Handling of claims
10.4.4.1 Filing of claims
For several reasons a Member should immediately contact the Club in case a claim is filed. The investigations necessary to prepare the Member's defence must start as soon as possible while the evidence is still available (see comments under 4.1.4.5). The Member's position against other parties may have to be protected, for instance by commencing recovery against shippers or charterers or preventing such actions from becoming time-barred. The case has
to be registered by the Club and the exposure evaluated to form the Member’s records on which renewal premiums are based. As regards the time bar of the Member’s claims for compensation from the Club, please refer to Rule 15.

10.4.4.2 Claims handling routines
The successful handling of a claim requires close co-operation between the Club and the Member. It is in the interest of both parties that the claims handling routines are simple yet effective.

The mere receipt of letters and other communications are generally not acknowledged. When the Club has received a letter from a Member, it takes the action required and will come back on the matter when there are developments to report or the Member’s assistance or advice is required.

All correspondence exchanged should carry a suitable heading to identify the case and trace previous correspondence. The heading should contain

- the name of the entered ship
- a specification of the place and time where the claim occurred
- the nature of the claim

The specification of time and place in the heading cannot be substituted by the Member’s voyage number as that means nothing to the Club. However, if the Member operates a system of voyage numbers, the Club will quote that in the heading as well.

Each new claim reported is given a unique number by the Club which serves as an identification and is quoted in all correspondence as the case reference. The unique number is based on the year of the claim and four numbers, for example 20111234. This number is used when the claim is stored in the computer system. Members should quote the unique number in all communications with the Club. In exchange the Club will endeavour to quote any reference used by the Member to identify the claim.

E-mails and letters from the Club usually contain the initials and/or the name of the responsible claims handler. It is helpful if Members quote such initials in their replies or mark the correspondence for the attention of a named claims handler.

10.4.4.3 Member to support Club in handling of claim
Throughout the handling of a case, the Member must provide the Club with all documents and information which in the Club’s opinion are relevant to the case. As mentioned in the comments to many Rules, the only way to avoid or reduce liabilities, is for the Member to discharge his burden of proof. The source for such proof is the Member and his people on board or ashore. Without their full support and co-operation, there is little the Club can do to protect the Member.

The obligation for the Member to provide documents and evidence and to produce any person for interview or evidence applies to the handling of all cases under these Rules, regardless of whether there is or may be a dispute between the Club and the Member.
Rule 10 Conditions
Section 4 Obligations with regard to casualties and claims

It follows from the opening sentence of this clause that the Member must take reasonable steps throughout the handling of the case to minimise liabilities and costs. As an example, the Club may ask the Member to withhold payments under freight or stevedoring contracts if that is considered beneficial to the Member’s position and does not violate applicable law.

10.4.4.4 Witnesses
In court or arbitral proceedings and in other stages of the handling of a case, it is often necessary to produce officers, members of the crew or other staff members as witnesses to be heard by lawyers in or outside courts. The Club and its lawyers are aware of the difficulties of having the master or the chief officer leave the ship to attend a hearing held in another part of the world. Still, the Member has an obligation to comply with such a request where the Club - all aspects considered - decides that attendance is necessary for the proper defence of the case. Wages are not compensated but travel and hotel costs generally are. The costs for a relief officer are paid.

10.4.4.5 Survey of ship
The Club may at any time survey the ship by the Club’s in-house or appointed surveyors or by class surveyors. The surveyors should be allowed admittance to the ship. Documents should be allowed and available to be copied and members of the crew interviewed. Such a survey may be performed to prevent damage from arising or to investigate the cause of an accident which has already occurred. The Club does not need to give a reason for the survey. It may seem unnecessary to mention this in the clause, but experience has shown that people acting to protect the Club and the Member do not always receive full co-operation. It follows from Rule 10 Section 3 that the Member must comply with any regulations which may result from the survey.

10.4.4.6 Shipboard investigations
According to the third part of the clause the Member must allow the Club admittance to the ship at any time to conduct any investigations which the Club considers necessary. This obligation is in respect of anyone the Club cares to nominate to perform the investigation. It could be the Club’s own staff, its representatives, lawyers, surveyors or experts.

In the aftermath of an accident there may be many people around to see the master, ask questions and request documents or other evidence. Some of them may represent prospective claimants and be on a fishing expedition. It is recommended that officers be on the alert for anything suspicious. Information should only be volunteered to that person who can identify himself as acting for the Club or whose identity has been cleared by the Club, the Member or his local agents.

10.4.4.7 Member should not admit liability
As appears from the fourth part of the clause, the Member should not admit liability or settle any claim without the Club’s approval. It is part of the services provided by the Club that it should investigate, evaluate and negotiate any claim to the lowest possible final figure. This possibility may be destroyed or reduced if a Member makes statements on his own on facts and law to a claimant or to other parties concerned.

There are situations when a master can be asked or put under pressure to “admit liability” before being cleared to sail. Masters should be instructed not to give in to threats of that
kind but instead urgently seek help and assistance from the Club, either directly through its local correspondent or through the intermediary of the Member or the local shipagents. If a document has to be signed, it should be noted on it in writing that the signing is only to confirm the receipt of the document and is in no way an admission of liability. A suitable sentence could read:

"Signed for receipt only with no admission of facts and/or liability

.................................... Master”

10.4.4.8 Authority for Member to settle claims
Despite what has been said above, the Club is prepared to consider giving certain Members or their local agents a limited authority to settle minor claims without prior reference to the Club or its representatives. It is a condition that the Club is reasonably familiar with the service the Member operates and the experience and ability of the Member and his agents to handle such claims. The authority must have an agreed upper limit above which claims should be referred to the Club’s organisation and handled in the normal way. For record purposes, claims settled must be reported regularly. The purpose of such a system is to reduce costs and administration for the handling of routine and minor claims. The inception of the system must be preceded by discussions between the Member and the Club and the outcome must be followed up.

10.4.4.9 Settlement of claims
It is the Club’s policy to keep a Member informed and involved in the handling and settlement of claims for several reasons. One important reason is that the Club depends heavily on facts, documents and information from the Member to satisfy the burden of proof. Claims arising should inspire Members to improve their ships and safety routines on board and ashore. Finally, claims are connected with the Member’s relations with his customers and (can) affect his commercial reputation in the freight market.

The Club cannot and will not support payments to please important customers. Payments compensated by the Club under these Rules should reflect the Member’s legal liability. Anything beyond that will have to be paid by the Member himself.

The opposite situation can occur viz. that the Club wishes to settle a claim, whereas the Member wants to carry on legal proceedings in the hopes of eventually winning. The Club’s policy is the following. The Club has a general obligation to spend as little as possible of the Member’s money. In certain situations a settlement presents a less costly alternative to litigating the matter through several legal procedures with an uncertain end result. The Club can also find that all legal arguments have been exhausted, whereas the Member still wants to try his luck. In such cases, although infrequent in number, the Club may limit the compensation to the recommended settlement amount. The Club may also discharge its obligations by providing the recommended amount and letting the Member carry on the handling of the case at his own risk and expense.

10.4.5 Effect of Member’s breach of his obligations
If a Member is in breach of his obligations under this clause to avoid, report, investigate or handle claims, the Club may reject or reduce any compensation owing to the Member.
Chapter IV Exclusions from cover

Rules for P&I Insurance 2012/13

Rule 11 Exclusions

Section 1 Member’s intent or gross negligence
The Association shall not be liable for liabilities, costs or expenses caused by the intentional or grossly negligent acts or omissions of the Member nor for such acts or omissions which the Member knew or ought to have known would cause liabilities, costs or expenses.

Section 2 General exclusions
The Association shall not be liable for

(a) costs or expenses incurred for the normal fulfilment of a transport obligation,

(b) costs or expenses incurred to make the ship fit to receive cargo,

(c) costs or expenses incurred to discharge, reload, restow, store or tranship cargo or other similar measures caused by overloading, bad trim or incorrect stowage of the ship,

(d) liability in relation to specie, bullion and precious metals or stones, plate or other objects of a rare or precious nature, cash, bank notes or other forms of currency, bonds or other negotiable instruments unless the carriage thereof has been approved by the Association,

(e) vacant (Previous exclusion under this item transferred to Rule 11 Section 7.),

(f) liabilities, costs or expenses in relation to carriage of poisonous, inflammable, explosive or corrosive substances or other dangerous cargo unless approved by the Association,

(g) loss of or damage to containers or similar articles of transportation owned, borrowed, leased or bought under reservation of title by the Member,

(h) liabilities, costs or expenses arising out of the failure to arrive or late arrival of the entered ship at the port or place of loading or the failure to load any particular cargo in the entered ship,

(i) liabilities, costs or expenses arising out of intentional discharge of cargo at a port or place other than that stipulated in the contract of carriage,

(j) the Member's loss of time, freight or other revenue or Member's liability towards a charterer to pay such loss, extra fuel consumption, port charges or other similar expenses which would have been his own operational costs save for the Charter,

(k) liabilities, costs or expenses arising out of the entered ship carrying contraband or being employed in blockade running or in an unlawful trade or in a trade which under the circumstances is imprudent, unsafe, unduly hazardous or improper,

(l) loss of or damage to the entered ship or any part thereof, its equipment, accessories, spare parts, stores or supplies whether owned by the Member or not, save for liabilities in respect of bunkers belonging to a charterer,

(m) loss arising out of irrecoverable debts or out of the insolvency of any person.
Section 3 Special exclusions for certain ships

The cover afforded by the Association shall exclude liabilities, costs or expenses arising

(a) for salvage ships or other ships intended to be used for salvage operations when the liability arises as a result of any salvage service or attempted salvage service,

(b) for drilling ships or ships, used for drilling operations core-sampling, oil production or gas production including any accommodation unit moored or positioned on site as an integral part of any such operations when the liability arises as a result of such operations. The Association shall, however, be liable for storage of oil or gas in ships provided that the Association has given its advance approval of all circumstances and safety precautions which may be of importance for the assessment of the risk,

(c) for dredgers when the liability arises as a result of dredging operations,

(d) for ships used in the operation of pile-driving, pipe or cable laying or blasting when the liability arises as a result of such operations,

(e) for semi-submersible heavy lift vessels or any other vessels designed exclusively for the carriage of heavy lift cargo when the liability arises for loss of, damage to, or wreck removal of, or destruction of cargo carried on board, save to the extent that such cargo is being carried under the terms of a contract approved in advance by the Association,

(f) for other ships used for special operations unless approved by the Association when the liability arises as a result of such operations.

Section 4 Sanctions

The Association shall not be liable for liabilities, costs or expenses

(a) where the reimbursement or any payment in respect thereof would expose the Association to the risk of being or becoming subject to any sanction, prohibition or adverse action under United Nations Resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America,

(b) in respect of that part of any liabilities, costs and expenses which is not recovered by the Association under the Pooling Agreement, Group Excess Loss Policies or any other reinsurance arranged by the Association because of a shortfall in recovery from such parties or reinsurers thereunder by reason of a sanction, prohibition or adverse action against them under United Nations Resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America or the risk thereof if payment were to be made by such parties or reinsurers. For the purposes of this Rule “shortfall” includes any failure or delay in recovery by the Association by reason of such parties or reinsurers making payment into a designated account in compliance with the requirements of United Nations Resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America. The provisions of this Rule shall cease to apply in respect of any shortfall to the extent the same is subsequently recovered by the Association under the Pooling Agreement, Group Excess Loss Policies or any other reinsurance arranged by the Association.
Rule 11 Exclusions

Section 5  War risks
There shall be no recovery from the Association for liabilities, costs or expenses arising from loss, damage, injury, illness, death or other accidents caused by

(a) 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 (provided that, in the event of any dispute as to whether or not, for the purpose of this paragraph (a) an act constitutes an act of terrorism, the Association shall in its absolute discretion determine that dispute and the Association’s decision shall be final),

(b) capture, seizure, arrest, restraint or detainment - baratry and piracy excepted - and the consequences thereof or any attempt thereat,

(c) mines, torpedoes, bombs, rockets, shells, explosives or other similar weapons of war save for those liabilities, costs or expenses which arise solely by reason of the transport of any such weapons whether on board the entered ship or not provided always that this exclusion shall not apply to the use of such weapons, whether as a result of government order or with the agreement of the Association where the reason for such use is avoidance or mitigation of liabilities, costs or expenses which would otherwise fall within the cover given by the Association.

The above conditions shall apply irrespective of whether a contributory cause of the liability arising or the costs or expenses being incurred, is any negligence on the part of the Member, his servants or agents.

Section 6  Other insurance
The Association shall not be liable for liabilities, costs or expenses which would have been covered under the Hull insurance if the entered ship had been fully insured under Hull insurance conditions approved by the Association for a sum which at any time should be the market value without commitment.

The Association shall not be liable for liabilities, costs or expenses in respect of the entered ship, its cargo, passengers carried, members of the crew or other persons performing work in the service of the ship which are recoverable under any other insurance.

The Association shall not be liable for any franchise, deductible or deductions of a similar nature borne by the Member under any other insurance.

Section 7  Nuclear risks
The cover afforded by the Association shall exclude liabilities, costs or expenses directly or indirectly caused by or contributed to by or arising from

(a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel,

(b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof,

(c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
Rule 11 Exclusions
Section 1 Member's intent or gross negligence

(d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter.

However, the Association may cover liabilities, costs or expenses arising out of the carriage of "excepted matter" as defined in Section 26 (1) of the Nuclear Installations Act 1965 of the United Kingdom, provided that it is carried as cargo and that the carriage has been approved by the Association. "Excepted matter" consists of radioisotopes which are used or intended to be used for industrial, commercial, agricultural, medical or scientific purpose, natural uranium and depleted uranium.

This clause shall override anything contained in these Rules inconsistent therewith.

Comments on Rule 11 Exclusions
Section 1 Member's intent or gross negligence

11.1.1 General
This is a clause of central importance.

It reflects the general insurance principle that there is no cover for loss or damage inflicted by the insured himself. It has a special connotation in insurance, based on the concept of mutuality. The true feeling of mutual trust, which is the necessary basis for the sharing among the community of Members of each other's risks, can only be nourished by a common conviction that all Members are committed to exercise qualified and responsible behaviour in the operation of their entered ships.

11.1.2 Intentional acts
The clause excludes cover for liabilities, costs or expenses caused by intentional acts or omissions of the Member.

If an act or omission was made intentionally, it is not necessarily the case that the Member knew at that time, or had reasons to believe, that loss or damage would result. The Member may have ordered the entered ship to carry out a certain transport even though he knew that cracks had been observed in the hull.

11.1.3 Gross negligence
Cover is also excluded for liabilities, costs or expenses caused by grossly negligent acts or omissions of the Member.

The concept of gross negligence (grov vårdslöshet) under Swedish law, applicable under Rule 18, generally requires a high degree of negligence. In practice it borders on intention. It is probably parallel to the provisions of the 1976 Limitation Convention (see comments under 2.11.3) which states that the right of liability limitation is lost if an action is undertaken "recklessly in the knowledge that a casualty would probably result". It is reasonable to find a parallel between the 1976 Limitation Convention and the Rules, in such a way that there
Rule 11 Exclusions
Section 1 Member’s intent or gross negligence

is no cover for behaviour which is bad enough to justify the loss of the right to limitation of liability.

The degree of negligence required to break limitation under the 1957 Limitation Convention (see comments under 2.11.2) is lower than that under the 1976 Convention. Situations may occur where limitation is denied under the 1957 Convention and the negligence shown is still not serious enough for the liability to be excluded from cover under this clause. In such a case, the unlimited liability is still covered under these Rules.

The same situation may arise under domestic law, such as in the U.S. Regardless of the level of negligence the legislation applies to the loss of limitation, the loss of cover is measured and decided by the standards of behaviour laid down in this clause.

The fact that an act or omission by the Member has caused him to be convicted by a court judgement is one element among several to be considered when deciding whether the act or omission was grossly negligent in the sense of this clause. A court conviction does not necessarily have that effect.

11.1.4 Acts or omissions
Action or inaction on the part of the Member may lead to exclusion of cover under this clause. It makes no difference if the Member did either the wrong thing or did nothing when he ought to have acted.

11.1.5 Member’s knowledge
Cover is excluded for acts or omissions which the Member knew, or ought to have known, would cause liabilities, costs or expenses.

This second part of the Rule requires knowledge on the part of the Member that the performance would probably have resulted in a loss, or that he acted in such a way that it is reasonable to conclude that the Member totally disregarded the consequences of his actions and omissions. This wording is similar to that contained in the 1976 Limitation Convention, as referred to under 11.1.3.

11.1.6 Who is the Member?
Rule 1 defines a Member as “an owner, operator or charterer, whether an individual or a corporation in favour of whom the Association has issued a policy of insurance under these Rules”. As a Member is usually a company, the question arises as to which acts or omissions of the Member’s staff would have the fatal consequences under this clause.

Acts or omissions by top management, such as members of the Board, the managing director and the vice managing director would implicate the Member. Although the lines have to be drawn on the blueprint of the organisation and the pattern of distribution of responsibilities in the individual case, it can be assumed that persons within the Member’s organisation to whom the power of authority has been delegated to make decisions regarding the ship’s construction, condition, maintenance and operation are identified together with the Member for the purpose of this clause. Heads of technical and operational departments may, therefore, be regarded as Members.
The master does not belong to the category of people whose acts or omissions may cause the loss of cover. On the contrary, it is the function of the P&I insurance to provide cover to the Member for the consequences of the master’s negligence. If the master is at the same time the owner or part-owner of the company that is defined as the Member, it becomes necessary to analyse whether the act or omission was undertaken in his capacity as either a master or as an owner.

Section 2 General exclusions
11.2.1 General
This clause contains a list of exclusions. Each item on the list represents a type of situation for which it is agreed that no cover is available. The exclusions should be given a reasonably wide interpretation and embrace risks which are broadly ejusdem generis to those listed.

11.2.2 Listed exclusions
11.2.2.1 Fulfilment of transport obligations
The purpose of insurance is to discount future unforeseeable extraordinary costs into a premium which can be included in the pre-transport cost estimation on which the freight is calculated. Foreseeable costs do not require insurance. Costs of this nature are those which a carrier of cargo is obliged to undertake by law to fulfil his transport obligations according to the freight contract. The basic obligation is to bring the goods or passengers to the agreed destination.

The word "normal" does not imply that there is a cover for all costs which are not normal. When something goes wrong, the carrier has an obligation to take action to avoid or limit loss, damage or costs without necessarily being compensated by insurance. See comments under 4.1.6.6. and 8.2.2.1. Insurance cover should be restricted to those cases described in these Rules where the circumstances are indeed abnormal.

11.2.2.2 Seaworthiness and cargoworthiness
One of the carrier’s important obligations is to make the ship seaworthy before and at the beginning of each voyage. See comments under 4.1.5. Costs to meet the obligation can be considerable, for instance when it is necessary to overhaul hatches to make them tight or to clean tanks before the next voyage. Still, such costs are of an operational nature and not subject to insurance cover. As mentioned in the comments under 4.6.2.1, extraordinary discharging costs may at some point turn into costs to clean the holds in preparation for the next voyage. That point is the watershed for cover.

As appears from the comments under 7.7.5 there is no cover for fumigation of cargoes or holds. The exclusion also applies to costs for surveys to establish the suitability of the holds or to obtain certificates to that effect.

11.2.2.3 Overloading, bad trim and incorrect stowage
Overloading of a ship is a serious breach of safety regulations imposed by class or by other competent authorities. According to Rule 10 Section 1 the Club may reject any claim or reduce any sum payable under these Rules if a Member is in breach of such a regulation. Cover for fines imposed upon a Member for overloading is excluded under Rule 7 Section 7.
Finally, the basic exclusion under Rule 11 Section 1 may apply. Costs or expenses to discharge and tranship cargo where a ship has been overloaded are excluded under this item. It does not matter whether the intake of cargo, ballast water, bunkers or fresh water brought the ship below her marks.

Rule 4 Section 5 provides cover for extraordinary costs to discharge or dispose of damaged cargo and to discharge, handle, store and reload cargo when the ship has sustained damage recoverable under the Hull insurance. This item excludes compensation of such costs when caused by overloading, bad trim or incorrect stowage. See comments under 4.6.2.1.

11.2.2.4 Valuables
This item applies not only to liabilities in respect of cargo under Rule 4 Section 1 but also to any valuables in crew effects under Rule 3 Section 3 and passenger luggage under Rule 3 Section 5. See comments under these Rules.

Cover for valuables of such a nature as listed under this item is provided only when the carriage has been approved by the Club.

11.2.2.5 Vacant
This item contained exclusions for nuclear risks. As from 20 February 1991 those exclusions were transferred to Rule 11 Section 7. See comments under that clause.

The vacant item (c) of this clause may be used if, at some future time, it should be necessary to include further exclusions in these Rules.

11.2.2.6 Dangerous cargo
See comments under 4.1.11.4.

11.2.2.7 Containers
This exclusion is an outflow of the principle that the P&I insurance provides cover against third party liability risks and that it does not cover the Member’s own belongings. Therefore, it states that the loss of or damage to containers owned by the Member is not covered.

It is also a confirmation in respect of containers and similar articles of transportation of the exclusion under Rule 7 Section 1 for objects which a Member has borrowed, leased or bought under reservation of title. A Member can protect himself by taking out object insurance on such articles or having such insurance provided by its actual owner and ensuring the costs are included in the lease.

Where a container belonging to a third party is lost or damaged and which is not borrowed, leased or bought under reservation of title by the Member, his liability is covered under Rule 4 Section 1 if the container is carried as cargo, otherwise under Rule 7 Section 1.

11.2.2.8 Failure to arrive, late arrival and failure to load
If the carrier has agreed to undertake a transport and fails to arrive at the port of loading, that failure constitutes a breach of contract. Breach of contract risks are not covered under these Rules unless stated or agreed.
The late arrival at the port or place of loading may cause a delay of the goods. As described in comments under 5.1, the carrier has a mandatory liability for delay under the Hague-Visby Rules covered under Rule 5. The mandatory liability is confined to goods which are in the charge of the carrier. That may include goods awaiting carriage in the carrier’s terminal.

The exclusion of cover under item (h) of this clause refers to delay in those instances where the goods are not yet in the carrier’s charge. At that stage no B/L has been issued either “on board” or “for shipment”. Still, there may be a C/P or a booking note which obliges the carrier to load at or within a certain time. Such a contract should contain a valid exclusion of liability since late arrival to pick up a cargo which is not yet in the charge of the carrier is not mandatory. Therefore, there is no cover under these Rules. The exclusion also applies if the late arrival is considered to constitute a breach of contract rendering the carrier’s contractual liability exclusions invalid.

Item (h) of this clause also excludes cover for the failure to load any particular cargo. Such failure constitutes a breach of contract. The exclusion does not apply to those situations where cargo is left behind at the port of loading by negligence, for instance by stevedoring companies, terminal operators or other servants of the carrier.

11.2.2.9 Discharge outside destination
The issuance of a contract of carriage obliges the carrier to discharge the cargo in the stipulated port(s) or place(s) of discharge. Discharging the cargo elsewhere intentionally is a breach of contract, the consequences of which are excluded from cover under item (i) of this clause.

Still, it happens that the carrier is requested by the cargo owner to discharge his cargo outside its contractual destination. Any ensuing liability risks are uninsured. A Member, who intends to comply with such a request, should take adequate precautions. The Member should insist on the presentation of a full set of all original Bs/L before releasing the cargo. If the ship is on charter, an owner Member should request a letter of undertaking to be issued by the charterer and to be reinforced by bank security, if necessary. Upon request the Club will provide forms of undertaking suitable for that purpose. See comments under 4.4.2.5.

Discharge outside the contractual destination may amount to an unjustified deviation with serious uninsured liability consequences for the carrier. See comments under 4.8.3.

11.2.2.10 Loss of time and freight
As the P&I insurance provides cover against third party liability risks, there is no cover for the Member’s own loss of time, freight or other revenue. This principle applies to all kinds of risks insured. ”Other revenue” includes, for instance, passenger fares.

Cover is also excluded under this item if an owner Member has to compensate the charterer under the C/P conditions for time, freight or other revenue, extra fuel consumption, port charges or other similar expenses which would have been his own operational costs if the vessel had not been trading on charter.

There may be situations where losses described under this item might qualify for compensation under Rule 8 Section 2, for instance when a Member has intentionally sacrificed time or hire in order to prevent or limit liabilities covered under these Rules.
Claims are sometimes withheld from freight or hire due to a Member. Although this may be regarded as a loss of freight, it is just another way for a claimant to get satisfaction for his claim and put pressure on the Member. If the claim qualifies for compensation under these Rules, all other aspects considered, the Member will be compensated for the freight lost.

The Club will assist Members upon request to cover loss of charter hire, freight and other earnings.

The cover under a Loss of Charter Hire Insurance is for loss due to the entered ship being wholly or partly deprived of her earning capacity as a consequence of damage sustained.

The cover is for an agreed daily amount for an agreed period of time. It is subject to an agreed deductible period. As the underwriter’s exposure is affected by the time it takes to repair the damages, he may require tenders to be obtained and decide which yard is to be used. Compensation may be reduced if other repairs are effected simultaneously which are unrelated to the damage for the consequences of which loss of charter hire is insured.

11.2.2.11 Contraband, blockade, unlawful trading and sanctions
If the entered ship carries contraband, is employed in blockade running, unlawful trade, breaches sanctions or prohibitions by any state or organisation or employed in trade which under the circumstances is imprudent, unsafe, unduly hazardous or improper, there is no cover for liabilities, costs or expenses arising out of such operations.

Contraband means cargo or supply to one country which runs the risk of being intercepted and seized by another country.

Blockade running means attempts, whether they are successful or not, to call at ports or places which are blockaded by military or naval forces or which have been declared as blockaded by states or supranational organisations such as the UN.

For the purpose of these Rules, an unlawful trade is a trade which is unlawful to operate by law and which can be applied to decide the liability of the Member. Furthermore breach of applicable sanctions or prohibitions by state or organisation is also regarded as an unlawful trade, see comments under 2.14.

An example of imprudent, unsafe, unduly hazardous or improper trade could be loading of cargo without following guidelines issued by IMO or any other relevant authority or expertise.

The exclusion applies whether the Member knew of the operation or not. The Member himself, in communication with his people both on board and ashore is expected to be reasonably well informed of the ship’s trading.

Not only are the liability consequences of the Member’s deliberate unlawful operations excluded from cover under this clause. A further and even more serious effect is that the period of insurance ceases automatically and with no prior notice through the application of Rule 27 (e).
11.2.2.12 Loss of or damage to the entered ship

Even if it is sufficiently clear that the P&I insurance provides cover for the Member against third party liability risks and not for the loss of his own property, this basic fact is underlined by the exclusion under this item. Neither loss of nor damage to the entered ship nor to any part thereof is covered. Such risks should be insured under a Hull & Machinery policy.

Furthermore, there is no cover for loss of or damage to equipment, accessories, spare parts, stores or supplies, whether owned by the Member or not. Examples of such items are trucks stationed on board the ship (see comments under 7.1.14), food, beverages and souvenirs on passenger ships and the ship’s radio receiver and transmitter if leased.

This item contains an exception from the exclusions. Liabilities for damage to or loss of bunkers belonging to a charterer are covered under Rule 7 Section 1. See comments under 7.1.13.1.

11.2.2.13 Loss due to insolvency

The P&I insurance does not provide cover against del credere risks, hence the exclusion under this item. To be excluded, the loss should have been caused by irrecoverable debts or the insolvency of any individual or corporation. This is not the case where, for instance, the Member has had to settle a claim and the recovery action against the charterers fails because they are insolvent. The Member will then be compensated for his final loss in the usual way. If the recovery against the charterer is successful but the money is lost because the ship agent went bankrupt before he was able to transfer the amount recovered to the Member, then this exclusion applies. In the same way, there is no cover for cargo’s contribution in general average once paid but lost because of the local ship agent’s bankruptcy. See comments on 4.7.2.7.3.

Section 3 Special exclusions for certain ships

11.3.1 General

The concept of mutuality upon which P&I insurance is based means the sharing of those risks that are characteristic of shipping and reasonably common to the community of Members. Even if the operation of a cruise ship and the liability risks generated therefrom differ from those of a gas tanker, there are still enough similarities to nurse the feeling of mutuality and risk-sharing.

There are, however, marine undertakings of such a highly specialised nature that the concept of mutuality does not apply, at least not to the liability risks generated by the performance of those specialised operations. For such ships, the cover is basically restricted to those risks that they share with any other conventional ship.

Even for those traditional risks, the Club may not always be able to offer full and unlimited cover (see comments under 2.11.6) depending on the reinsurance facilities available. The terms of cover will have to be discussed and defined between the Club and the Member at the time of entry.

In principle, professional liability risks for specialised ships are excluded under this clause. This is definitely the case where a Member contracts to perform specialised operations, and
Rule 11 Exclusions
Section 3 Special exclusions for certain ships

claims are brought by the parties to such a contract. There is no cover for liabilities arising out of the failure to properly perform or fulfill the contract.

The wording of the clause also excludes liability against third parties for damage caused by specialised operations. If a dredger snaps an underwater cable with its buckets during dredging, the ensuing liability against third parties may not be covered even if there was cover for identical damage or loss inflicted by the dredger for damage to the cable by its anchor in the process of normal mooring procedures. In that and similar situations, the circumstances of the case may justify the application of Rule 19, the Omnibus Rule.

The professional liability risks of specialised ships in the sense of this clause should be insured separately. The Club will assist Members in taking adequate steps to reduce their exposure to liability risks uninsured under this clause.

11.3.2 Extent of cover for certain ships
11.3.2.1 Supply ships
Cover is provided for statutory or common law liability (in tort). Contractual liability is covered provided that the contract has been submitted to and approved by the Club. To be approved, the contract should make the respective parties responsible for loss of or damage to their own property or equipment and for death or injury to their own employees irrespective of whether such loss, damage, death or injury has been caused by the negligence of the other party or his servants.

SUPPLYTIME introduced by BIMCO is considered approved provided there are no major amendments of the traditional apportionment of liability.

It follows from item (a) of Rule 10 Section 2 that liability in respect of cargo carried on a supply ship is covered only if the Hague or Hague-Visby Rules apply or would have applied.

As regards cover where a supply ship performs towage, see comments under 7.8.4.2 and 11.3.2.9.

11.3.2.2 Salvage ships
Where the entered ship is a salvage ship or intended to be used for salvage operations, those liabilities are excluded under (a) which are incurred as a result of salvage services or attempted salvage services.

Cover is also excluded for liabilities arising out of the operation of professional or commercial divers, diving bells, submarines or other similar equipment whilst engaged in diving operations.

As regards cover where a salvage ship performs towage, see comments under 7.8.4.2 and 11.3.2.9.

The Member’s liability to pay salvage awards or other compensation to a salvor of the entered ship is covered under Rule 7 Section 4.
11.3.2.3 Drilling ships

The Club mainly supports traditional shipping. Ships involved in the offshore oil and gas drilling market are normally entered only if and to the extent that such ships have features similar to traditional ships such as supply ships.

Should, however, more specialised ships be entered, item (b) excludes cover for operational liabilities in respect of drilling ships or other ships used in connection with oil or gas production such as well stimulating ships, ships undertaking blasting or core sampling operations, production and construction ships and accommodation units if an integral part of any oil or gas operation.

The extent of cover provided will be further defined in the policy of insurance.

11.3.2.4 Oil storage tankers

Tankers used for storage of oil or gas in direct connection with drilling or production operations fall in the same category as drilling ships. A storage tanker shall be deemed to be carrying out production operations if oil is transferred directly from a producing well to the storage tanker or the storage tanker has oil or gas separation equipment on board and gas is being separated from oil whilst on board the storage tanker other than by natural venting.

Oil or gas are also stored in storage tankers without any connection to production operations. Such storage is covered provided that the Club has given its prior consent to the storage. In this respect it is important that the Member provides the Club with information regarding any safety precautions made for the storage.

11.3.2.5 Dredgers

Dredger liability arising out of dredging operations is excluded under item (c).

11.3.2.6 Ships used for pile driving, pipe or cable laying and blasting

Item (d) excludes operational liabilities for these kinds of ships.

11.3.2.7 Semi-submersible heavy lift vessels

For semi-submersible heavy lift vessels (e) or other vessels designed for carrying heavy lift cargo, liability due to loss, damage, wreck removal or destruction of cargo carried is excluded under these rules unless the contract of carriage has been approved by the Association in advance. The use of the BIMCO Heavycon Charter Party, which provides that charterers are liable for cargo damage and wreck removal, together with a cargo receipt, is acceptable.

11.3.2.8 Other ships used for special operations

Rapid technical developments produce new kinds of ships designed for specialised purposes. Item (f) contains general regulations as to liability exclusions for any such ship.

This item also applies when traditional ships are used for special purposes, for instance, when passenger ships are converted to house exhibitions open to the public or moored more or less permanently as restaurants or hotels.
Rule 11 Exclusions
Section 3 Special exclusions for certain ships

The meaning of "special operations" will be discussed and defined between the Club and the Member at the time of entry. It is, therefore, of great importance that the Club is given full information as to the nature and intended operation of each new ship entered.

Recent examples of ships subject to the liability exclusion under item (e) are those which burn chemicals or other toxic products at sea, or dump or dispose of waste, sewage or similar substances. Liability arising out of such burning or dumping, whether from the entered ship or from towed barges, or any similar activities are excluded from cover. Third party liability arising, for instance, from negligent operation of a waste incinerator ship would not even be recoverable under Rule 19, the Omnibus Rule. The exclusion includes liabilities arising out of disposal, dumping, conveyancing, carriage or transportation of the substances.

Other types of ships which may fall under this clause are lash carriers, ice breakers, self-propelled heavy lift cranes and nuclear powered ships.

In addition to the liability exclusions contained in this clause, the terms of cover will be specified in the policy of insurance. Upon request, the Club will assist the Member with any such ship to take appropriate steps to limit the liability exposure of any risks uninsured under the clause.

11.3.2.9 Tugs
Primarily tugs are subject to the conditions described in the second part of Rule 7 Section 8. See comments under 7.8.4.2.

Item (b) of that clause states that liability for towage other than for the purpose of saving life or property in distress, is covered only when the Club has agreed in advance to afford cover for such towage.

The Swedish Club Tug Clause defines the cover further and specifies certain situations to be considered as agreed in the sense of item (b) of the second part of Rule 7 Section 8.

According to the Tug Clause, liability is covered for towage performed under
1. The United Kingdom Standard Towage Conditions (1986) and the Netherlands and Scandinavian towage conditions.
2. Lloyd’s Standard Form of Salvage Agreement 1990. See comments under 7.4.1.2.
3. A reasonable towage contract based on the knock-for-knock principle. See comments under 7.8.3.2.

It is a condition for cover under 1 and 2 above that no amendments have been made to the contractual terms to extend the liabilities of the entered tug.

The TOWCON and TOWHIRE contracts introduced by BIMCO are based on the knock-for-knock principle in such a way that they are considered agreed contracts under 3 above in the sense of item (b) of the second part of Rule 7 Section 8.

Where no towage contract has been signed or where the tug is liable under a towage contract for loss, damage or expense caused by negligence on the part of the tug or her owner, there is no cover for liabilities in relation to the tow or to cargo carried in or on the tow. Liability (in tort) against third parties is, however, covered.
11.3.2.10 Fishing vessels
The Club can provide cover on limited terms for fishing vessels. The terms are specified at the time of entry.

The cover is in respect of liability against third parties for personal injury or loss of life and for damage to property.

In respect of crew liability, the cover is limited to amounts exceeding what would be recoverable under the Swedish Work Injury Insurance Act of 1976.

Liability for passengers is excluded. It can be covered at an additional premium for the number of passengers the ship is certified to carry.

Liability for cargo carried is not covered. Damage to or loss of catch is not subject to compensation.

Rule 7 Section 6, 3. (iii) excludes fines for illegal fishing. See comments under 7.6.3.3.

Legal obligations in respect of wreck removal are covered.

Section 4 Sanctions
11.4.1 General
In 2010 there was a considerable increase in the number of international sanctions imposed by, amongst others, the United Nation, the European Union, the United Kingdom and the United States of America. These sanctions, such as those imposed against Iran, influence international trade and in particular the maritime industry and could prevent Members’ access to insurance cover. Trade to and from countries which are subject to such sanctions is open to substantial risks.

11.4.2 Payments of claims
Under (a) of this Rule cover is excluded for P&I claims where payment of such claims would expose the Club to any risk of sanction, prohibition or adverse action by any state or organisation. Furthermore Members facing claims in countries subject to sanctions run the risk that the Club will be unable to provide security or arrange a bank guarantee or make payments to claimants of such claims. It is therefore of utmost importance that Members satisfy themselves that their ships are not in breach of any applicable sanctions.

11.4.3 Recoveries from reinsurers
Similarly (b) if the Club is unable to recover part of a claim from reinsurers or parties to the Pooling Agreement because of sanctions legislation then Members’ claim may not receive full indemnity from the Club. This protects the Club from any shortfall of recovery from the Pool or reinsurers if another Club in the International Group of P&I Clubs or a reinsurer refuses to pay by reason of a sanction risk to which it is exposed. A shortfall in this respect is the same as if reinsurers have to pay funds into a designated account to satisfy any state authority or organisation. If a shortfall is later recovered from reinsurers the exclusion under this Rule will cease to apply.
Section 5 War risks

11.5.1 General

This clause contains the important exclusion from cover of war risks. It applies to war risks in peacetime. In case of the outbreak of a major war or a war involving the state of registry of the entered ship or the state where the insurance company is domiciled, the insurance may be terminated. The effect of such a situation on insurance covers with The Swedish Club is dealt with under 11.5.8 below.

Item (a) of this clause lists a number of general situations, the consequences of which are excluded. Items (b) and (c) identify specific instances where cover is excluded regardless of whether the situation under (a) exists.

11.5.2 Exclusion concerns all risks covered

The war risk exclusion under this clause applies to all risks insured under these Rules such as liabilities in respect of persons, cargo and pollution. As appears from the first part of the clause, a causal connection between the war and the loss is required for the exclusion to take effect.

11.5.3 War and war-like situations

Under item (a) in the first part of this clause cover is excluded for liabilities, costs or expenses arising from loss, damage, injury, illness, death or other accidents caused by war, civil war, revolution, rebellion, insurrection or civil strife arising therefrom or any hostile act by or against a belligerent power.

The application of any of the situations listed has to be made on the characteristics of the position at hand. There are situations of riots or civil commotion of an extent and nature not serious enough to involve any of these situations. On the other hand, it is not a prerequisite for the exclusion to apply that there has been a formal declaration of war. The Group Clubs closely monitor the political and military situation in different parts of the world. Members are recommended to stay in contact with the Club when trading in areas where political unrest is current or expected.

There is no cover for a Member who continues to trade into a known war risk area. Members who knowingly expose themselves to such risks should not benefit at the expense of those who act with reasonable care.

In most cases, the carrier should not be held liable for loss of or damage to cargo caused by acts of war by application of Article 4:2 (e) of the Hague or Hague-Visby Rules. All contracts of carriage for cargo and passengers should contain suitable war risks clauses. In the absence of such clauses, Rule 10 Section 2 may leave the Member without cover.

By virtue of Rule 10 Section 3 the Club may issue trading warranties which exclude trading in certain areas where war or warlike conditions exist or allow trading only at an additional premium. The Club may reject or reduce a claim for compensation under these Rules if the Member is in breach of such regulations. It may even cause the insurance to be terminated according to Rule 24 (c).
11.5.3.1 Terrorism

Piracy is by definition committed for private motives. If the motives are political, it is a matter of terrorism. Such acts are not subject to item (b) of this clause but to the exclusion under item (a). Liabilities, costs or expenses incurred by a Member if his ship is hijacked by terrorists or otherwise exposed to an attack or attempted attack by terrorists are not covered under these Rules. Shipowners usually take out a Hull War Risks cover which includes terrorist acts.

If there is a dispute with a Member as to whether a terrorist act has taken place or not, the Club will in its sole discretion decide that dispute and the decision will be final.

The taking of hostages by terrorists is a risk not covered. Any liability consequences for instance in respect of passengers will have to be considered by application of the discretion under Rule 19, the Omnibus Rule.

Members will be rendered all possible advice and assistance to avoid terrorist attacks and to solve problems that arise should such an attack occur.

11.5.4 Capture or seizure

11.5.4.1 Exclusion of cover for capture and seizure

Item (b) excludes cover for liabilities, costs or expenses arising from loss, damage, injury, illness, death or other accidents caused by capture, seizure, arrest or detainment of the entered ship or any attempt thereat.

Capture means the taking of the vessel as a prize in time of war. Seizure, arrest or detainment are actions which are at least initially intended to be temporary.

The entered ship may be seized or otherwise detained as a consequence of an action, the consequences of which are excluded elsewhere in these Rules such as carriage of contraband or employment in an unlawful trade under Rule 11 Section 2 (k). In such a case the cover may also cease under Rule 27. All exceptions applicable should be applied cumulatively to the extent they are not overlapping each other.

On the other hand a ship may be arrested for a risk which is indeed covered under these Rules. The arrest may have been undertaken by a claimant to obtain security for damage to cargo or for personal injury or loss of life. Although the loss sustained by the arrest is excluded under this item, the Member may still have a valid claim for compensation for the risk covered.

The exclusion under this item for arrests underlines the provisions under Rule 12 that the Club has no obligation to provide security to obtain the release of or to prevent the arrest or attachment of the entered ship.

The Hague and Hague-Visby Rules Article 4:1 (g) contain an exclusion of liability in relation to cargo for loss or damage caused by arrest or seizure. See comments under 4.1.8.7.
Rule 11 Exclusions
Section 5 War risks

11.5.4.2 Barratry
There are two exceptions from the exclusion.

The first is for barratry, the liability consequences of which are covered. Barratry means a criminal, fraudulent or similar wrongful act undertaken by the master or crew against the interest of the shipowner.

Barratry can be the intentional scuttling of the entered ship or a mutiny. A condition for cover is that the barratry was committed without the consent or knowledge of the Member.

11.5.4.3 Piracy
Piracy is excepted from the exclusion under item (b) of this Rule and is thus covered by P&I. However piracy is also covered by the Swedish War Risk policy which means that the P&I insurance is subsidiary to the war cover and piracy is therefore covered under the Swedish War Risk policy, see comments under 11.6. The same applies under the Norwegian War Risk insurance. However if war is covered by the Institute War and Strikes Clause piracy is excluded from cover and will have to be covered by P&I. This piracy cover could however fall back on the war cover if the pirates are using weapons of war as described under (c) of this Rule.

Piracy is defined as an illegal act of violence or detention committed for private motives by persons on a private ship and directed against another ship, person or property on the high seas or in a place outside the jurisdiction of any state. In this respect reference is made to the United Nations Convention on the Law of the Sea (UNCLOS) of 1982.

The International Maritime Bureau (IMB) defines piracy as:

“The act of boarding any vessel with intent to commit theft or any other crime, or with an intent or capacity to use force in furtherance of that act.”
By far the majority of piracy attacks take place in the Gulf of Aden and off the coast of Somalia. Attacks have also been increasing in frequency in the Arabian Sea.

The area is today patrolled by a European Task Force consisting of war ships from various European nations which is assisting ships passing through the Gulf of Aden. War ships from other nations are today also patrolling the area such as Japan and South Korea. Members are strongly recommended to register with the Maritime Security Centre – Horn of Africa (MSCHOA) established by the task force. This website is the best source of regular updated information on the present situation in the area. As regards precautionary measures before entering the Gulf of Aden Members are strongly recommended to carefully study Best Management Practice to Deter Piracy in the Gulf of Aden and off the Coast of Somalia which you will find on The Swedish Club website. Here you will also find other information on piracy. A further source of information is the International Maritime Bureau website which contains weekly piracy reports.

The use of armed guards to defend the ship’s crew is a controversial issue. There are many risks inherent in the use of arms onboard Members ships. P&I cover does no restrict or prohibit per se the deployment of onboard armed guards but proper care and diligence should be exercised. In this respect Members are strongly recommend to read the Club’s guidelines regarding armed guards on the Club’s web site.

Soon after a ship has been seized by pirates a ransom demand is usually made for the release of the ship. A ransom is however not a risk covered by P&I. A claim from a Member will have to be considered by application of the discretion of the board under the omnibus provision, see under Rule 19. Many shipowners take out a Marine Kidnap & Ransom Insurance policy which covers payment of ransom.

A ransom payment made to obtain the release of a hijacked ship is generally accepted as a General Average expense for which shipowners are entitled to recover contributions. Contributors in GA include those with a financial interest in the adventure typically shipowners, cargo owners and potentially Charterers.

In most cases the shipowner would not be held liable for loss or damage to cargo caused by an act of piracy against the ship. The shipowner should be able to invoke the exception under Article 4:2 (f) of the Hague or Hague Visby Rules.

11.5.4.4 Other attacks
Attacks other than piracy as defined under 11.5.4.3 are frequent and constitute an increasing problem for shipping.

Those attacks take place while ships are proceeding at reduced speed in coastal waters, are at anchor off the coast or lying moored at a quay. Armed robbers enter the ship in order to steal from its cargo or to take cash or articles belonging to the ship or its crew. The Singapore Straight, West African and South American ports are notorious for such attacks.

A Member is covered under these Rules for the liability consequences of an attack or attempted attack of this nature against the entered ship.
Rule 11 Exclusions  
Section 5 War risks

11.5.5 Weapons of war

11.5.5.1 Exclusions of cover for weapons of war

Regardless of whether a situation as described under item (a) exists or not, liabilities, costs or expenses arising from loss, damage, injury, illness, death or accidents caused by mines, torpedoes, bombs, rockets, missiles, shells, explosives or other similar weapons of war are excluded under item (c).

The exclusion of liabilities caused by bombs or other explosives means that there is no cover for the consequences of a bomb threat. Loss of time, freight or other revenue during the time the ship is immobilised is excluded under Rule 11 Section 2 (j). Ransom demanded or costs to remove or defuse bombs cannot be compensated by the application of Rule 8 Section 2 as liabilities caused by a bomb threat do not constitute a risk insured. It leaves a Member to seek compensation under Rule 19, the Omnibus Rule.

For the exception to apply, the ship does not need to have been in contact with the explosive devices. Blast damage or other transmitted damage is also excluded.

The nature of the weapons listed implies that the consequences of the use of small arms such as rifles and pistols is covered unless the use on board is part of the situation as defined in the exceptions under item (a) and (b).

As regards nuclear weapons see Rule 11 Section 7.

Item (c) identifies two situations in which the exception does not apply. These situations are dealt with below.

11.5.5.2 Carriage of weapons of war as cargo

The exclusion of cover under this item does not apply to liabilities, costs or expenses arising solely by the carriage of weapons as cargo whether on board the entered ship or not.

The carriage of weapons and other explosives as cargo on board the entered ship is subject to the exclusion under Rule 11 Section 2 (f) which makes it a condition for cover that the carriage has been approved by the Club. For comments on the cover for dangerous cargoes see under 4.1.11.4.

Rule 10 Section 2 may also be applicable as the carriage of dangerous cargoes should be performed under contracts which secure all limitations of and exceptions from liability available to the carrier for the transport in question.

The exclusion of cover under item (c) does not apply to liabilities arising out of a collision with a warship or a ship carrying ammunition or other weapons of war as cargo.

11.5.5.3 Weapons of war used to mitigate loss

The second part of item (c) deals with the situation where weapons of war have to be used against the entered ship to sink her in order to avoid or mitigate liabilities, costs or expenses covered under these Rules. The ship may be leaking or on fire with a pollutant, explosive or toxic cargo on board. It may also be possible to take similar action against the entered ship as a part of wreck removal activities.
In addition to the purpose to avoid liabilities covered, the action must have been carried out on the order of governmental or other competent authorities, or have been approved by the Club. According to Rule 1, approval is given in writing.

This part of the clause is the application to a specific situation of the general principle contained in Rule 8 Section 2.

11.5.6 Effect of Member’s negligence
The last part of the clause states that the exclusions apply even if negligence on the part of the Member, his servants or agents contributed to the liabilities, costs or expenses.

There may be situations where the proportion of the negligence is so dominant and the contribution of war risks correspondingly small that the application of the strict war risk exclusion seems unreasonable. If so, the Member can make an application to the Board to consider compensation under Rule 19, the Omnibus Rule.

11.5.7 P&I war risk insurance
The fact that the war risks are excluded from cover, does not mean that these risks cannot be insured or are not insured. On the contrary and as is stated on the head circular issued annually, there is a separate P&I War Risk Cover. The cover has an upper limit of USD 500 million (policy year 2011/2012). It contains certain trading warranties. The war risk cover is provided to all owner Members automatically and at no extra charge.

11.5.8 Outbreak of a major war
11.5.8.1 Swedish flag vessels
What may happen in case of the outbreak of a major war is described in The Swedish Club Outbreak of War Clause (P&I) 1982-01-01 which forms part of the insurance conditions for all Swedish flag vessels.

The Swedish Club outbreak of war clause (P&I) 1982-01-01

*Should normal communications between Sweden and other countries be interrupted subsequent to the outbreak of a war which will greatly affect Swedish trade, commerce and industry, an organisation in the name of Svenska Transportförsäkringspoolen (hereinafter referred to as The Pool), formed by all the Swedish Marine Insurance Companies, will commence operations on a date to be decided upon by the Government War Risks Insurance Office.*

*Should this occur during the duration of this policy, the liability of the Association according to this policy will be transferred to The Pool as from the date upon which The Pool commences operations. The policy will then remain in force and subject to the same terms until 12 o'clock midnight on the thirtieth day of acceptance of liability by The Pool, unless it has been agreed to terminate the validity of the policy at an earlier date.*

*In the event of the liability terminating prior to the date indicated in the policy, the Assured is entitled to a refund from the Association of the excess premium paid. If on the other hand, the validity of the policy is to be maintained during a period for which no premium was paid, the Assured shall pay premium pro rata parte for this period.*
Rule 11 Exclusions
Section 6 Other insurance

When the above mentioned contingencies arise, it will be incumbent upon the insured to notify the Association or The Pool without delay of the position and the voyage of the vessel.

11.5.8.2 Non-Swedish flag vessels
The procedure of cover described in The Swedish Club Outbreak of War Clause (P&I) 1982-01-01 under 11.5.8.1, applies to Swedish flag vessels only.

For non-Swedish flag vessels the Club may terminate the insurance by application of Rule 26 at the outbreak of a major war.

The arrangement of new cover will depend on the market situation and any applicable regulations in the ship’s state of registry.

Section 6 Other insurance
11.6.1 General
An important purpose of the P&I insurance is to provide the Member with cover for those liabilities, costs or expenses which are not and cannot be covered under any other kind of insurance.

Most additional kinds of insurance of a nature described by this clause can be covered either by the Club or with the assistance of the Club in available markets. It is recommended that Members avail themselves of the Club’s advice on insurance matters and professional service to arrange a suitable combination of insurance in order to reduce the Member’s liability and cost exposure.

11.6.2 Hull insurance
11.6.2.1 General views on Hull insurance
The consequences of the above mentioned principle can be seen in many clauses such Rule 7 Sections 1, 2, 3 and 5 from which follows that the cover is for liabilities, costs or expenses not covered under the Hull insurance of the entered ship. The cover under these Rules presupposes the existence of a Hull cover of a certain quality as described in this clause. To the extent any existing Hull cover provides less protection without the Club’s approval, the Member will be exposed to uninsured risks.

11.6.2.2 Flexibility
One may think that the demand for Hull insurance on full and approved terms would create a rigid extent of cover. However, the clause indirectly creates favourable flexibility. If the general terms of the Hull insurance are amended in so far as cover for third party liability is concerned, the Club will consider whether the so extended terms should still be considered as approved. If so, no amendment of the P&I Rules is necessary for the risk to be covered.

11.6.2.3 Hull insurance on full terms
The first part of the clause implies an obligation for the Member to have and maintain the entered ship fully insured under Hull insurance conditions approved by the Club.

If the entered ship is Hull insured with The Swedish Club, the terms of such insurance are automatically considered to be approved for the purpose of these Rules.
The terms of Hull insurance not effected by The Swedish Club should be presented to the Club at the time of entry for P&I risks. The Club will decide whether the ship shall be considered to be fully insured in such a way that the conditions may be approved for the purpose of these Rules. It is equally important that any change of Hull insurers or of the Hull insurance conditions is instantly placed before the Club for approval. Failure to do so may leave a Member exposed to uninsured risks.

The Club’s P&I Rules have been based on the terms of Hull insurance in Swedish Hull conditions (AV 2000). This does not mean that AV 2000 are the only conditions on which the Club can effect Hull insurance, or that AV 2000 are the only Hull conditions approved as a basis for P&I insurance with the Club. As a Hull underwriter, the Club does, indeed, insure ships on various foreign conditions such as English (Institute Time Clauses - Hulls), Norwegian, U.S., German conditions etc. Recently Norwegian, Danish, Swedish and Finnish Ship-owners Associations agreed to draft a Nordic Marine Insurance Plan. The Nordic Plan will come into force 1 January 2013. P&I cover under these Rules can be adapted to any Hull conditions approved by the Club. Such adaption means, for instance, that cover may have to be included for 1/4 RDC under Rule 7 Section 1 and for FFO under Rule 7 Section 2 if the Hull cover is under Institute Time Clauses Hulls 1/10 1983 (ITC).

According to Rule 1, the definition of Hull insurance includes Hull excess liability insurance, Hull interest insurance, freight interest insurance and other total loss insurance.

11.6.2.4 Hull insurance value
The first part of the clause goes on to qualify that the Hull insurance should be for a sum that at any time should be the market value without commitments.

11.6.2.4.1 “At any time”
As described in comments under 7.2.4.1, the Hull cover is in respect of a certain value agreed upon between the Member and the Hull underwriter (AV 2000 § 2). The insured value is based on the second-hand market situation at the time of entry or at the renegotiation of the insurance terms in preparation of the policy year. However, the second-hand market is subject to considerable fluctuations which may occur during a policy year. If so, the insured value under the Hull policy must be adjusted as necessary during the policy year in such a way that the cover adequately reflects the market value. Although, generally speaking, the second-hand market is closely monitored by Hull underwriters, it is incumbent upon the Member to take the initiative for such an adjustment in order not to be in violation of the prerequisite under this clause.

11.6.2.4.2 “The market value”
The value insured under the Hull policy is a product of discussion between the Hull underwriter and the Member at the time of entry or renewal. Both parties will probably have a good professional understanding of the situation and of current trends in the second-hand market. As a P&I underwriter, the Club will at any time accept the value under a Hull policy with The Swedish Club. Should there be any reason for the Club to dispute a value insured under any other Hull policy, the Club may request the ship’s value to be assessed by a broker or a ship’s value appraiser.
11.6.2.4.3 "Without commitments"
A ship’s value may be influenced by the presence of freight or operational commitments. The value may be higher if she has a favourable long-term charter in a falling market or lower if she is committed on unfavourable terms. When assessing the market value in the sense of this clause, any such commercial commitments should be disregarded. It is, however, unavoidable that the value of a highly specialised ship be related to the market situation in that particular area of shipping.

Any additional value created by the presence of a favourable charter or by the fact that the ship is an important link in a commercial shipping concept can be insured under Hull interest insurance. The presence of such a cover does not affect the liability exposure under Rule 7 Section 2.

11.6.2.4.4 Cover dependant upon Hull insurance value
The cover under some Rules depends entirely upon compliance by the Member with the standards for Hull insurance in this clause.

The cover for liabilities in excess of the Hull value in connection with collision with other ships under Rule 7 Section 2 (see comments under 7.2.4) and with fixed and floating objects (FFO) under Rule 7 Section 3 (see comments under 7.3.4) requires Hull insurance value as described in this clause as does the cover for the ship’s proportion in general average, special charges and salvage under Rule 4 Section 7 (see comments under 4.7.3) when the ship’s value has been assessed at a sound value in excess of the value insured under the Hull policy.

11.6.3 Insurance other than Hull insurance
11.6.3.1 General
Besides Hull insurance, other types of insurance are affected by P&I insurance. There is no requirement under these Rules for a Member to take out any such extra insurance. A Member may still decide to do so to protect his interests or because he is obliged by law or a separate contract to cover risks beyond the P&I cover. It follows from this clause that the Club does not cover any liabilities, costs or expenses that are or would have been recoverable under such insurance.

11.6.3.2 Social insurance
By law or contract, a Member may be obliged to take out extra insurance in favour of passengers, crewmembers, longshoremen or other categories of people on board or in relation to the entered ship. See comments under 3.1.1.6. According to the second part of this clause, there is no cover under these Rules for liabilities, costs or expenses that are or would have been recoverable under such insurance.

This also goes for extra life insurance paid by the Member on behalf of crewmembers to pay funeral costs. See comments under 3.1.6.2.

11.6.3.3 Other types of insurance
Several other types of insurance are available to cover various risks excluded under the P&I policy. The opportunity to cover those risks is open only to Members. Examples of such insurance are:
• War risk insurance see comments under 11.5.7
• Loss of Hire insurance see comments under 11.2.2.10
• Strike insurance see comments under 4.1.8.10
• Deviation insurance see comments under 4.8.6.3
• Deck cargo insurance see comments under 4.1.11.5.3

According to the second part of this clause, there is no cover under these Rules for liabilities, costs or expenses that are or would have been recoverable under any such additional insurance. Comments on insurance that augments or complements the P&I cover can be traced through the Index under “Insurance.” Insurance concerning a Member’s extended liability can be covered by or through the Club.

11.6.4 Deductibles
As appears from the last part of this clause, there is no cover under these Rules for any franchise or deductible under any other insurance taken out by the Member. Nor is there any cover if the insurance amount is insufficient to cover the Member’s loss or for the Member’s costs to protect his rights and to proceed against the underwriter of any such insurance.

As regards exclusion of cover for the deductible under the P&I insurance, see comments under 2.12.

Section 7 Nuclear risks
11.7.1 General
The Chernobyl accident highlighted the potential aggregate of liabilities that could be incurred in the event of a single nuclear accident. Similar casualties could occur in shipping involving several vessels and large areas in and outside harbour installations. The liability effects of such an accident could exceed the capacity of marine insurance cover available.

Therefore, it was decided that the wording of the Group Clubs’ traditional nuclear liability exclusions should be tightened up. Effective 20 February 1991, the relevant exclusion was transferred from Rule 11 Section 2 (e) into a new, separate and extended Section 7 of Rule 11.

11.7.2 Exclusion of paramount importance
The last part of the clause is paramount. It states that the exclusion of liability risks under this clause overrides any conditions that may be contained in these Rules or any policies or documents issued thereunder if such conditions are inconsistent with the contents of the clause.

11.7.3 Nuclear powered ships
The exclusions under (a) - (b) mean that nuclear risks arising from the fuel of a nuclear-powered entered ship are excluded. In this respect the clause serves as a completion of Rule 11 Section 3 in respect of that kind of ship. The policy issued for a nuclear-powered ship will reflect the limited extent of the cover. If not, the cover is still subject to the liability exclusions of this clause due to its paramount nature.
Rule 11 Exclusions
Section 7 Nuclear risks

11.7.4 Collision
Items (a) - (b) of the clause exclude liability for nuclear risks arising out of a collision between the entered ship and another vessel carrying nuclear material as fuel or cargo.

11.7.5 Nuclear weapons
Liabilities arising from nuclear weapons are excluded under item (c).

11.7.6 Nuclear cargo
11.7.6.1 Nuclear cargo exclusions
The effect of this clause is that liability for carriage of nuclear products under (a) – (d) as cargo is generally excluded.

11.7.6.2 Nuclear cargo the carriage of which may be approved
Shipments which can be covered are radioactive products and nuclear substances with a low level of radioactivity. The products and substances concerned consist of radioisotopes used or intended to be used for industrial, commercial, agricultural, medical and scientific purposes. They include natural and depleted uranium.

The products for which carriage may be approved are further defined in Section 26 (1) of the U.K. Nuclear Installations Act of 1965. The reason why reference is made to a British law is that the law contains the definition of radioactive products and substances, the carriage of which has been authorised by the Club’s reinsurers. It is important for the Club and its Members that the clause mirrors the extent of reinsurance protection available for such large and serious risks. Members who wish to study the relevant section of the Nuclear Installation Act of 1965 should contact the Club for a copy.

As a result of the above the International Group Clubs have agreed that whenever a request is made by a Member or a Charterer regarding carriage of nuclear cargo the Member shall refer the specification of such nuclear cargo to the Club who in turn will refer it to RPC Transport Consultants, Roger Cheshire, rcheshire@aol.com or rchishire@netlocal.co.uk, tel. +44 1829 73 2059 mobile +44 7841 661266 who will check that the nuclear cargo in question coincides with Section 26 (1) of the U.K. Nuclear Installations Act of 1965.

A further condition of cover is that the radioactive products or substances are carried as cargo. This means that the carriage should be performed on standard terms of contracts or agreements as defined in Rule 10 Section 2. The reason is that such contracts should contain all legal exclusions from and limitations of liability available. The terms should be discussed with and approved by the Club before the radioactive products or substances are accepted for shipment.
Chapter V Other provisions

Rule 12 Security for claims and certificates
Rule 13 Set-off
Rule 14 Right of recourse
Rule 15 Time bar
Rule 16 Payment by the Association
Rule 17 Forbearance
Rule 18 Disputes
Rule 19 Omnibus clause
Rule 20 Period of insurance
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Rule 24 Overspill calls
Rule 25 Right of lien for amounts due to the Association
Rule 26 Termination
Rule 27 Cesser
Rule 28 Effect of termination and cesser
Rule 29 Laid-up returns
Rule 30 Joint members and co-assureds
Rule 31 Fleet entry
Rule 32 Affiliated companies
Rule 33 Membership of ITOPF
Rule 34 Small Tanker Oil Pollution Indemnification Agreement (STOPIA)
Rule 35 Mortgaged ships
Rule 36 Surplus
Rule 12 Security for claims and certificates

In no circumstances shall the Association be obliged to provide security to obtain the release of or to prevent the arrest or attachment of the entered ship or of any property or assets of the Member.

The Member shall upon demand reimburse to the Association such sum or sums as the Association has paid on behalf of the Member under any bail, guarantee, certificate or security whatsoever provided by the Association to the extent that such payment either is, or, in the opinion of the Association is, in respect of liabilities, costs and expenses not recoverable from the Association.

Notwithstanding the exclusions in Rule 11 Sections 5 and 7, the Association will discharge on behalf of the Member liabilities, costs, expenses arising under a demand made pursuant to the issue by the Association on behalf of the Member of

(a) a guarantee or other undertaking given by the Association to the Federal Maritime commission under Section 2 of U.S. Public Law 89-777, or

(b) a certificate issued by the Association in compliance with Article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 or 1992 or any amendments thereof, or

(c) an undertaking given by the Association to the International Oil Compensation Fund 1992 in connection with the Small Tanker Oil Pollution Indemnification Agreement (STOPIA), or

(d) a certificate issued by the Association in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001

Provided always that

(i) The Member shall indemnify the Association to the extent that any payment under any such guarantee, undertaking or certificate in discharge of the said liabilities, costs and expenses is or would have been recoverable in whole or in part under a standard P&I war risk policy had the Member complied with the terms and conditions thereof, and

(ii) the Member agrees that

(a) any payment by the Association under any such guarantee, undertaking or certificate in discharge of the said liabilities, costs and expenses shall, to the extent of any amount recovered under any policy of insurance or extension to the cover provided by the Association, be by way of loan; and

(b) there shall be assigned to the Association to the extent and on the terms that it determines in its discretion to be practicable all the rights of the Member under any other insurance and against any third party.
Comments on
Rule 12 Security for claims and certificates

12.1 General
As appears from the comments to Rule 2, P&I insurance is based on the pay-to-be-paid principle. This makes the P&I insurance an indemnity insurance. The Member is the sole party entitled to compensation from the Club. Third parties against whom the Member may be liable for injury or damage caused, have no such right unless it has been explicitly given to them by applicable law. See comments under 2.9.

The posting by the Club of security, bail or guarantees has the effect that the pay-to-be-paid principle is set aside. Within the terms of the security, the Club commits itself to pay compensation direct to the beneficiary of the guarantee who is generally the party who suffered the loss or his underwriter.

All Group Clubs state in their Rules that the providing of security is at the discretion of the Club. Although the Club has no obligation to provide security, it gives any such request high priority and consideration.

12.2 Nature of claim must be investigated before security is given
The purpose of security is for those who have suffered injury or damage to ensure that there is money available to meet the loss. The obvious asset present at the scene of an accident is the ship itself. Therefore, the request for security is generally coupled with an arrest of or threat to arrest the ship. It follows that the arrest is often made early in the lifetime of a claim before the ship has been allowed to leave the port where the accident occurred or the damaged cargo was discharged. At that early stage the information available as to the extent, nature and cause of the accident is still incomplete and contradictory.

The Club cannot exercise its discretion to put up security until it has been reasonably clarified that the accident is of a nature that is covered under these Rules and that none of its exceptions apply. The Club is unable to invoke the limitations and exceptions of the Rules against the beneficiary of security once provided. It would be a violation of other Member’s rights under the concept of mutuality. Furthermore, the Club may be left without reinsurance protection by the pooling of the claim within the Group if the Club, on the basis of insufficient information, provided security in a case where it was eventually found that one of the liability exclusions applied. A Member who has got his ship arrested must allow the Club a certain amount of time to investigate the matter before a decision on security can be taken. Should those investigations leave important questions with no satisfactory answers, or should even slight doubts remain as to the cover under these Rules of the loss for which security is demanded, the Club must refuse to provide security at all.

12.3 Types of security
12.3.1 Club Letter Guarantees
The traditional form of security provided by P&I Clubs and widely accepted is a Letter of Undertaking (L/U), generally referred to as a Club Letter of Guarantee (L/G). It is drafted as a promise to the named beneficiary that the Club will pay a specified limited amount of money that will be found to be the Member’s legal liability by amicable settlement or by final
judgement by a competent court. The amount specified should include any interest accrued. It often takes some time and negotiation to reach an agreement with the beneficiary as to an acceptable wording of the guarantee.

12.3.2 Bank guarantees
A Club L/G is preferable because there are no costs involved and the procedure of issuance is quick once the terms have been agreed. Sometimes claimants insist on bank guarantees. This will delay the procedure as there are two further parties to satisfy, the bank in the Club’s location and where the guarantee is to be issued. It could take days before all formalities are completed. Further delay can be caused by time differences, local holidays etc. A bank guarantee costs money, as commission is charged by the banks.

12.3.3 Surety bonds
In the U.S. it is generally beyond the power of a bank to issue a guarantee. There you have to act instead through companies who provide corporate surety bonds financed by insurance companies. A premium is charged. The Club has established a working relationship with International Sureties in New Orleans for bonds to be issued quickly inside and outside the U.S.

12.3.4 Cash deposits
Even bank guarantees and bonds are not always accepted as sufficient security. A claimant may ask for a cash deposit equal to or exceeding the estimated loss at the place where the ship is arrested. The final payment by settlement or by court judgement has a tendency to coincide with the amount deposited. Cash deposits are often lost the moment they are provided.

The Club has a firm practice not to provide cash security. The fact that under certain circumstances the Club may provide a deposit required to establish a limitation fund (see comments under 12.3.7) can be seen as an exception from that consistently applied principle. Exceptional situations may occur which are so similar to the providing of a limitation fund that the Club may consider to exercise its discretion under this clause. The request for cash security should then be contained in a final enforceable court order. The deposit must be held by the court or under its control by a first class bank. It should be released by the court only if and to the extent the Member is held liable by a final judgement. Before the discretionary decision is taken, the Club will fully evaluate the situation, explore the possibilities of alternative security and counter security and establish that the claim is of a nature to be covered under these Rules. In the meantime, the ship may be detained.

12.3.5 Payment on demand guarantees
Utmost care must be given to the wording of any security posted. Guarantees proposed are sometimes on “payment on demand” terms. This means that once issued, the beneficiary can cash it in full on the first banking day. “Guarantees” on such terms will not be provided.

12.3.6 Anticipatory guarantees
Sometimes a guarantee is requested on behalf of a ship even before it has reached her port of call and with no known damage or loss. The stated purpose of the guarantee is to cover such claims as may arise. These are called anticipatory guarantees. The Group has decided that Clubs should not provide such guarantees.
Exceptions to the Clubs’ adopted policy not to issue anticipatory guarantees are the issuance of CLC certificates (see comments under 6.1.3.1.7), USCG certificates (see comments under 6.1.4.2.2.6) and passage performance guarantees (see comments under 3.5.13).

12.3.7 Limitation funds
As appears from comments under 2.11, an owner may be allowed to limit his liability under applicable law and conventions. Where loss or damage caused may exceed the limitation, the owner can set up a fund equal to the applicable limitation. The fund is usually established under the supervision and directions of a local court. The Club will assist the Member to establish the extent of the fund and to comply with the applicable formalities. The Club will exercise its discretion to deposit the amount of the fund if it is reasonably clear that it is established in respect of a liability covered under these Rules.

When the fund has been established, it serves as a substitute for the ship as security for claims filed. Therefore, the ship should be free to sail. If the ship remains under arrest so that security will be provided in the event the owner is denied the right to limit his liability, the Club will probably not provide additional security, as the denial of limitation may invoke exceptions from cover under these Rules.

12.4 Property arrested
12.4.1 Only property belonging to Member
The arrest action is generally against the ship itself being the Member’s most valuable asset within the jurisdiction. It is often described as an action ”in rem” which means that it is directed against the ship as property. The purpose is to constitute security for the due payment of the claim. The security in the ship could be substituted either by alternative or more suitable security, or by payment of the claim. Should neither be forthcoming, the ship can be sold by public auction and the claim met from the proceeds. It is a reasonable request that assets used to meet claims are confined to those which are the property of the debtor. A ship other than that which caused the accident should only be arrested where the claimant can prove that both ships are under the same or closely related ownership.

It would follow from the same principle that the ship should not be arrested for claims against the charterer. As appears from comments under 12.5 this principle is not without exceptions.

12.4.2 Other property than ship
An arrest is not always confined to the ship. A claimant can attach other property or assets belonging to an owner or charterer such as bank accounts, freight collected or total loss compensation to be paid by a Hull underwriter. If such assets are effectively arrested, for instance under the enforcement of what is known as a ”Mareva injunction” or freezing order granted by an English court, the Club has to take the decision based on information available whether to use its discretion under this Rule to provide security.

12.4.3 Arrest of persons
The Club does not put up bail or security to release crewmembers or other persons who have been arrested or put in jail. In such a situation the diplomatic or consular representative of the person’s home country should be approached and take the necessary action to defend and protect the citizen of the country they represent.
12.5 Security and counter security in charter situations
An arrest action may be directed against property which belongs to a charterer. Under charter conditions the bunkers on board a ship are often the charterer’s property and can be the object of a separate arrest action “in rem”. Security may be required to obtain the release of the bunkers. An arrest of this kind is sometimes undertaken more to put pressure on the charterers than to obtain security in the value of the bunkers, which may be insufficient to meet the loss claimed. In such a situation a solution may be to pump the bunkers ashore and let the claimants keep them as security while new bunkers are taken on board which are clearly the property of the owner.

Another situation where security is demanded from a charterer is when security has been given on behalf of the owner following an arrest for a casualty which under the C/P conditions seems to be the charterer’s ultimate liability. In such a situation, the charterer’s Club usually provides a counter guarantee for the liabilities of its Member under the C/P.

In some countries, such as Belgium and France, a court may not agree to lift the arrest of a ship until security has been posted on behalf of both the vessel owner and its charterer for their respective liabilities against the claimant. A security provided by or on behalf of the owner for the totality of the liabilities and backed by counter security from the charterer, may either not be accepted by the court or agreed by the owner and his Club. If so, a charter Member should apply to the Club for separate security. The Club will exercise its discretion to provide security on the Member’s behalf along the lines described in the comments to this Rule.

12.6 Other situations of counter security
Another situation where an exchange of counter securities between Clubs is necessary, is when the Club which holds the entry when a ship is arrested, is asked to put up security in respect of a casualty which occurred while the ship was entered with another Club.

12.7 Arrests to change contractual terms
Arrests are often undertaken to force an owner to agree to a jurisdiction more suitable to the claimant than that stated in the freight contract. Attempts to bypass terms of the contract already agreed upon should be opposed, if possible.

12.8 Repeated arrests
The providing of security does not exclude the possibility that the claimant attempts to arrest the ship or other assets a second time for the same claim in order to obtain cumulative or extended security or an alternative jurisdiction. It should be prevented by the wording of the guarantee first issued. It follows from the discretionary nature of the Club’s decision to provide security and also from Rule 17 that a decision by the Club to issue a guarantee to lift the first arrest does not prejudice the Club in providing further security.

12.9 Member’s obligations
If the Club decides to put up security on behalf of a Member, the Club may make it a condition that the Member provides counter security in favour of the Club. The Club may wish to protect itself against the possibility that eventually the liability is found to fall beyond
Rule 12 Security for claims and certificates

the Rules, its exceptions and limitations. In such a situation the Club has a right of recourse against the Member under the last part of this clause and under Rule 14. The counter security should be to the Club’s satisfaction, perhaps in the form of a bank guarantee.

Before security is considered, the Member should pay outstanding premiums and other sums due to the Club.

As a guarantee will bind the Club to pay any settlement amount to the claimant and as according to Rule 2 the deductible is not included in the cover, the Club may ask the Member to pay the deductible to the Club before security is posted.

12.10 Member’s reimbursement

The second paragraph of this Rule makes it a condition for the Member to reimburse the Club if payment under any bail, guarantee, certificate or security has been made in respect of liabilities, cost and expenses which are not recoverable from the Club.

There are a number of certificates issued by the Club that qualify as a guarantee under which the Club is obliged on behalf of the Member to discharge liabilities, costs and expenses arising as a direct consequence of a demand made under a certificate.

Examples of such certificates are listed under a-d and are FMC certificates, see under 3.4.13, CLC certificates, see under 6.1.3.1.7, an undertaking to the 1992 IOPC Fund in respect of STOPIA, see under 6.1.3.2.3 and certificates under the Bunker Convention, see under 6.1.3.1.7.5.

The Member is obliged to indemnify the Club if the Club’s payment under any such guarantee, undertaking or certificate turns out to be recoverable under Member’s standard P&I war risk policy had the Member complied with the terms and conditions thereof.

Furthermore the Member agrees (a) that any payment made under any such guarantee, undertaking, or certificate shall be regarded as a loan if the payment is recoverable under any policy of insurance or extension to the cover provided by the Club.

The Member further agrees (b) that the Club in its discretion shall be assigned all rights of the Member under any other insurance and against any third party, see also under Rule 14.
Rule 13 Set-off

The Association shall be entitled to set off any amount due from the Member against any amount due to the Member from the Association under these Rules or any other policy.

Comments on Rule 13 Set-off

13.1 General
Premiums are due for payment on demand which means on the date stated in the premium bill. Payment of premiums is often delayed. The concept of mutuality requires all Members to fulfil their obligations in timely fashion. It cannot be accepted that Members who are compensated quickly are allowed to delay payment of premiums. This is especially disturbing if compensation is requested for cover and no premium has actually been received.

13.2 Only Club has right to set-off
As a remedy for those situations, this Rule provides the Club an opportunity to offset compensation against unpaid premiums. The right is one-sided. The Rule does not allow Members to offset premiums against what they consider justified compensation. There are two reasons for this. The premium is due for payment on demand. It is a clear and undisputed debt. The right to compensation has to be considered on the basis of the documents and facts of the case as reflected on the insurance conditions under these Rules. Therefore, a request for compensation does not constitute an undisputed debt against which premiums can be offset. When the request has been duly processed and approved, payment will follow as soon as the remittance procedure and banking system allow. The second reason is that a system of current accounts should not become standard practice.

13.3 Amounts due from the Member
According to this Rule, the Club is entitled to offset compensation against unpaid premiums or other debts in relation to any policy a Member has with the Club. It is the Club’s adopted policy to provide Members with all the necessary kinds of insurance required to operate ships. It would be unsatisfactory if the Club were unable to collect outstanding premiums for one type of insurance and still found itself having to pay compensation to the Member under other accessory policies.

13.4 Amounts due to the Member
The right to set-off is not limited to compensation under these Rules. The Club may exercise its right against any other amounts due to the Member under these Rules, such as premium refunds under Rules 28 and 29 and refund of a surplus under Rule 36.
Rule 14 Right of recourse

For any amount paid by the Association to the Member or to a claimant, the Member’s right of recovery from third parties is transferred to the Association, which is entitled to collect any amount recovered.

The Association has a right of recourse against the Member for any amount which the Association has paid on behalf of the Member and for which the Member is not entitled to compensation under these Rules.

Comments on
Rule 14 Right of recourse

14.1 General
This Rule deals with two different situations of recourse.

14.2 Right of recourse against third parties
It follows from the first part of the Rule that by compensating the Member, the Club inherits the Member’s rights of recovery against third parties. It could be the Member’s right to proceed against a charterer under a C/P, against a shipper under a B/L, against the owner of the other ship in a collision situation or against a stevedoring company under a stevedoring contract. The Member should assist the Club in any way possible to exercise the right of recovery, for instance by formally assigning the right of recovery to the Club or allowing any recovery action to be performed in the Member’s name.

The clause acts as a subrogation and empowers the Club to collect any amount recovered.

The right of recourse against third parties and the right to collect the amount so recovered also follows from SPL § 13.6, which may be applied according to Rule 2 (see comments under 2.13).

14.3 Right of recourse against Member
The second part of the Rule is applicable to situations where the Club has paid claims or other expenses for which the Member is not entitled to compensation under these Rules. The Club may have exercised its discretion to provide security in a case where subsequent and closer investigations prove that the liability is not of a nature to be covered under these Rules, or subject to one of its exclusions or limitations. See comments under 12.2.

This part of the Rule also applies in cases where a Member fails to meet his obligations to help the Club to exercise his right of recovery as mentioned in the first part of the Rule. The Club can claim the compensation to be repaid by the Member.

The Club can exercise its right of recourse by set-off according to Rule 13 against other compensation or premium refund due to the Member from the Club.
Rule 15 Time bar

The Member’s claim against the Association shall be extinguished if he
(a) fails to notify the Association of any casualty or event or claim referred to in Rule 10, Section 4 within six months after he has knowledge thereof,
(b) fails to claim compensation from the Association within three years after having discharged liability or having paid costs or expenses.

Where the Member’s claim against the Association has not been extinguished earlier, his right to claim compensation shall be extinguished after ten years from the time of the casualty or other event. However, where final judgement or adjustment has to be awaited before a claim for compensation from the Association can be made, the claim shall not be extinguished until one year after such judgement or adjustment having acquired legal force.

Where the Association has requested the Member in writing to submit his claim against the Association for decision in accordance with Rule 18 within a specific time which shall not be shorter than six months, the Member’s rights to compensation shall be extinguished if he fails to comply with the request.

Comments on Rule 15 Time bar

15.1 General
The traditional practice in P&I insurance of charging advance and additional premiums is described in the comments to Rules 22 and 23, from which it appears that the Club favours stable premiums and tries to minimise additional calls. To achieve this goal, it is necessary for the Club to be aware of outstanding or upcoming liabilities as early as possible.

Premiums are based on a five-year record period. Late reporting of a claim reduces the number of years under which that claim has an influence on the Member’s records. It causes insufficient premiums to be charged, to the detriment of other Members.

This Rule should be seen as an incentive to Members to report all claims urgently to the Club and as a safeguard against any Member who might delay reporting, with the result that his records do not reflect the true extent of his pending liabilities.

The Rule contains different time limits to be observed.

15.2 Six months’ time limit
The time limit under (a) in the first part of the Rule, refers to casualties and events mentioned in Rule 10 Section 4. Any casualty or event which may give rise to a claim for compensation must be reported to the Club within six months from the time the casualty became known to the Member. Knowledge of the casualty on board the entered ship implies knowledge by
her owner. For casualties only known by charterers or shipagents, the six month period starts when the matter is first reported to the Member.

15.3 Three years’ time limit
Item (b) in the first part of the Rule refers to the Member’s right to claim compensation from the Club. If this is not made within a period of three years after claims or expenses recoverable under these Rules were paid by the Member, his right to compensation is extinguished.

15.4 Ten years’ time limit
According to the second part of the Rule, there is an absolute time limit for compensation under these Rules of ten years. The time is counted from the date the casualty or event occurred which gave rise to the claim against the Member.

The only exception is when a claim against the Member is subject to legal or arbitration proceedings or adjustment in general average. In such a case, the Member can file a request for compensation until one year after such judgement, award or adjustment has acquired legal force. This does not mean that a judgement is a condition for compensation. If a claim in litigation is concluded by amicable settlement more than ten years after the casualty, the Member’s right to compensation is unaffected as long as the request for compensation is made to the Club within one year from the settlement.

As mentioned in the comments to Rule 7 Section 6, claims for fines are sometimes made more than 10 years after completion of discharging. The Club will use its discretionary right to consider compensation of any such late claim under Rule 19, the Omnibus Rule.

15.5 Time limit to submit a dispute to decision under Rule 18
The last part of the Rule refers to a situation in which there is a dispute between the Club and the Member subject to Rule 18. The Club may request a Member, in writing, to submit his claim for decision either by average adjuster or by arbitration within a certain time, which should be at least six months from the date when the Member received the Club’s request. Should the Member fail to comply in timely fashion with the request, his claim against the Club for compensation is extinguished.

15.6 Effect of time bar under this Rule
If a Member fails to observe the time limits mentioned in this Rule, his claim against the Club is extinguished. This means that it cannot be invoked against the Club in any way, not even as set-off against unpaid premiums.
Rules for P&I Insurance 2012/13

Rule 16  Payment by the Association
Payment to the Member of any sums due shall fully discharge the Association of its liabilities under these Rules unless otherwise agreed.

Comments on
Rule 16  Payment by the Association

16.1  Member’s claim for compensation
A claim for compensation under these Rules should be made in writing. It should be supported with such documents required by the Club to establish the cover under the Rules and the extent of the compensation due for payment to the Member.

It follows from the pay-to-be-paid principle that the supporting documents should include a receipt or release in the original, signed by or on behalf of the claimant or any other proof acceptable to the Club that the final payment of the claim has been effected including the date, amount and recipient of the payment. For further comments on losses to be compensated, see under 2.10.

16.2  Club’s processing of Member’s claim for compensation
A Member’s claim for compensation will be considered and processed urgently. The loss covered, less the applicable deductible, is generally remitted within one month of receipt by the Club of the supporting documents and any additional information required.

Payment of compensation due to the Member can be technically effected in a number of ways to suit the practical needs of the Member and the Club and to avoid unnecessary formalities.

No interest is paid on claims for compensation under these Rules.

16.3  Effect of payment of compensation
This Rule states that, through the payment of the compensation, the Club has fully discharged its liabilities under these Rules. No receipt or release is therefore requested from a Member.

This does not exclude the Member from being entitled to further compensation should additional liabilities, costs or expenses covered under these Rules arise or surface in connection with the casualty.
Rule 17 Forbearance

No act, omission, course of dealing, forbearance, delay or indulgence by the Association shall constitute a waiver of the Association’s rights under these Rules.

Comments on Rule 17 Forbearance

17.1 No prejudice on present case
As appears from comments on several Rules, the handling of a P&I case is an ongoing process of nautical, technical and legal investigations and considerations. Such investigations are necessary to decide the extent of the Member’s liability against those who suffered loss or injury and also to determine whether the liability is covered under these Rules. No action taken or statement made by the Club at any stage of the handling of a case should be considered as a waiver of the Club’s rights under these Rules if, through further investigations or developments, it appears that the action taken or statement made was wrong or founded on incomplete or inadequate information.

17.2 No prejudice on other cases
Furthermore, the Rule means that, if the Club has taken action on behalf of the Member or allowed compensation or exercised its discretion to post security under these Rules, the decision should not prejudice or bind the Club to act in the same way in cases concerning that Member or other Members.
Rule 18 Disputes

The contract of insurance shall be governed by Swedish law subject to the right of the Association under Rule 25 to enforce its right of lien. Disputes arising out of the contract of insurance shall be decided by a Swedish Average Adjuster or at the request of either party be referred to arbitration in Gothenburg in accordance with Swedish law.

Comments on Rule 18 Disputes

18.1 General
As mentioned in the comments to Rules 1 and 2, The Swedish Club is a Swedish company subject to Swedish jurisdiction. Therefore, disputes between the Club and a Member under these Rules should be decided in Sweden according to Swedish law. The exception to this is when the Club is exercising its right of lien over Members' ships for outstanding premiums under Rule 25 where foreign law and jurisdiction can apply.

This Rule provides two different ways to deal with such disputes. The first and most traditional way is to refer the dispute to a Swedish average adjuster. The Member or the Club can, however, instead request the dispute to be solved by arbitrators in Gothenburg.

The Rule applies to all disputes of whatever kind arising out of the contract of insurance. It binds not only Members but also co-assureds according to Rule 2830 and those who may have inherited a Member's rights against the Club. See for instance comments on direct action under 2.9.

In practice this Rule is seldom applied. Almost all problems arising are resolved in direct consultations between the Member and the Club.

18.2 Disputes solved by average adjuster
In Sweden an average adjuster is appointed by the government. For some years now there has been only one average adjuster in Sweden. According to the Swedish maritime code, the average adjuster should be a Swedish citizen, hold a law degree, enjoy personal and financial integrity and have no position or interest in any shipping or insurance business.

His position is similar to that of a court of law. Decisions rendered can be appealed to the District Court of Gothenburg and be further appealed against up to the Supreme Court. If no appeal is filed, the decision acquires legal force in the same way as a court judgement.

This way of solving a dispute is quick, qualified and impartial.

18.3 Disputes solved by arbitration
At the request of the Member or the Club, a dispute can be referred to arbitration in Gothenburg in accordance with Swedish law. There are no special requirements as to the
qualification of an arbitrator. Nothing prevents a party from nominating a non-Swedish citizen to represent him. On the other hand, Sweden has a long tradition of international arbitration. A number of independent and qualified Swedish arbitrators are available.

According to the Swedish arbitration act, the parties appoint one arbitrator each who then jointly nominate a chairman. If they cannot agree on the choice of a chairman, the appointment is made by the District Court of Gothenburg. It is up to the parties to decide whether the procedure should be on documents alone or at a hearing. Written testimonies are allowed. An award is given by majority decision. As it cannot be appealed against it can be enforced immediately. To the extent the parties agree, they are given considerable freedom to adapt an arbitration procedure so that it suits their needs.

18.4 Member’s legal representation

There are several large law firms in Sweden specialising in maritime matters. Many of them have branch offices in other parts of Europe, the U.S. and the Far East. A Member would find no difficulties in obtaining independent and qualified legal representation to solve a dispute.
Rule 19 Omnibus clause

The Association shall have the absolute discretion to compensate the Member for liabilities, costs or expenses as referred to in the second paragraph of Rule 2 even where such compensation would not have followed under these Rules.

Comments on Rule 19 Omnibus clause

19.1 General
The opening part of the basic Rule 2, which describes the nature of cover, states that the cover by the Club "is set out in these Rules". It means that the wording of the Rules provides the limit for the Club's obligations to compensate Members for liabilities, costs or expenses arising.

Situations may arise when, with all facts considered, it is reasonable and in the spirit of Club cover to compensate a Member for a loss even if it is outside the cover defined in these Rules. In such a case the Member has no right to compensation, but may place the question of compensation before the Club.

19.2 Discretion is exercised by the Board
The Club’s ordinary claims processing functions possess the necessary authority to handle and compensate claims within the framework of these Rules. Approval of compensation for claims not covered under these Rules can only be made by or with the authority of the Club's Board. The discretion under the Omnibus Rule to compensate the Member partly or fully is, therefore, exercised by the Board to whom such claims are referred.

19.3 Nature of liabilities to be considered under the Omnibus Rule
It is a condition that the liabilities, costs or expenses for which the Board may exercise its discretion, are of the nature described in the second part of Rule 2. They should have been incurred in the Member's capacity as owner, operator or charterer of the entered ship. The event should have arisen during the period of insurance. It should be a direct consequence of the operation of the entered ship. These conditions are a prerequisite for compensation of liabilities covered under these Rules and must apply with even greater force to liabilities outside the Rules.

19.4 Board’s decision is absolutely discretionary
As the dispute has not arisen from but rather outside the contract of insurance and as the Board's decision is completely discretionary, it is final and cannot be tested under Rule 18.

The Board does not have to give any reason for its decision.
19.5 Board’s discretion is limited to Club Pool retention
By exercising its discretion under this Rule the Board cannot bind the Group Clubs to participate in the loss by way of pooling. The Group will decide whether any compensation admitted under this Rule beyond the applicable Club Pool retention (for the policy year 2011/2012 USD 8 million) should be pooled.

19.6 Board’s decision does not constitute precedent
It follows from Rule 17 that any indulgence by the Board in exercising its discretion in favour of a Member does not constitute a waiver of the Club’s rights under these Rules. This does not, however, create a precedent for further claims of a similar nature concerning that Member or other Members.
Rule 20 Period of insurance

The cover afforded by the Association as set out in these Rules is for liabilities arising out of an event during the period of insurance.

The period of insurance shall commence at the time and date stated in the policy of insurance issued by the Association and shall continue until 1200 hours UTC (Universal Time, Co-ordinated) on 20 February and thereafter from policy year to policy year unless it has been terminated or has ceased in accordance with these Rules.

The policy year begins at 1200 hours UTC on any 20 February and continues until the same time on the next following 20 February.

Comments on

Rule 20 Period of insurance

20.1 General
The first part of this Rule repeats the basic principle established in the second part of Rule 2, namely that the cover under these Rules is for liabilities arising out of an event during the period of insurance. What that entails is explained in the comments under 2.8.

20.2 Entry Survey and Ship Manager Evaluation (SME)
When a ship is entered in the Club it may be subject to an entry survey performed either by the Club’s in-house surveyors or by other surveyors appointed by the Club. However a Ship Manager Evaluation is always performed on the Member’s organisation and carried out at Owner’s office.

20.3 Policy of insurance
When the Member and the Club have agreed that a ship should be entered for P&I insurance with the Club, a Certificate of Entry (CoE) is issued to state the terms agreed upon and then sent to the Member.

The CoE identifies the Member, the ship and any Joint Members and/or co-assureds. It confirms the period of insurance and deductibles.

The CoE lists the special conditions which may apply to the cover. It includes a confirmation that the insurance is subject to these Rules and to the subsidiary sources of insurance information listed in the last part of Rule 2 and commented upon under 2.13. The Club will also issue circulars to Members in which important information which has been incorporated in the conditions for entry is included.

The CoE specifies the exclusions from or extensions of cover under Rules which may have been agreed upon between the Member and the Club. It is important that the specification is checked by the Member when the documentation is received in order to avoid any disputes concerning the agreed extent of cover when a casualty under the Rules has occurred.
Changes in the cover during the insurance year agreed upon between the Member and the Club may result in a new CoE being issued or an addendum thereto. Regarding restrictions of Certificates – see comments under 20.7.

Members are advised to contact the Club if contents of the CoE or the addendum are unclear.

20.4 Period of insurance
20.4.1 Start of the period of insurance
The period of insurance starts at the time and date stated in the CoE.

20.4.2 The continuation of the period of insurance
As is stated in the second part of the Rule, the period of insurance shall continue until 1200 hours UTC on 20 February. If the period has not been terminated in accordance with Rule 26 or has ceased in accordance with Rule 27, it runs from policy year to policy year. (Other periods of insurance may in specific instances be agreed upon between the Member and the Club.)

Premiums and other terms for the new policy year are agreed upon at annual negotiations between the Member and the Club. When these negotiations have been completed, the Club will issue a new documentation as described under 20.3 above.

20.4.3 Termination of the period of insurance
See comments under Rules 26 and 27.

20.5 Policy year
A policy year begins at 1200 hours UTC on any 20 February. It continues to be valid until the same time on 20 February of the following year. The significance of 20 February has historical explanations. All Group Clubs apply the same policy year as this simplifies the transfer of an entry from one Club to another. (Other periods of insurance may in specific instances be agreed upon between the Member and the Club.)

20.6 Effect of policy year terms and limitations of cover on Member’s long-term charter commitments
The policy of insurance specifies the extent of cover for that particular policy year. For subsequent policy years, the terms may be subject to amendments brought about by changes in the pooling facilities within the Group or by changes in its reinsurance arrangements. Members are therefore advised in a long-term charter or freight agreement not to warrant the maintenance – for the duration of the charter – of any specified limits or other terms of insurance which may be subject to amendments of available Club cover.

Members are recommended to phrase the commitment in the C/P as an undertaking to maintain the insurance cover for the risks concerned which from time to time will be available from the Club on its standard terms of entry for the type of ships involved.
20.7 Confirmation of entry, payments of call and ship’s age

Clubs are sometimes requested to issue confirmations or certificates that a ship is entered for P&I risks. Such requests are generally met only to the extent that Clubs issue certificates for tankers to confirm the existence of insurance cover for oil pollution risks. See comments under 6.1.3.1.7, 6.1.4.2.2.6 and 6.1.4.2.3.

The Club will, upon request from the Member, issue certificates with generally accepted wording to institutes offering Certificates of Financial Responsibility (COFR) for owners trading to the U.S. Such certificates and other relevant documents have been approved by the International Group of P&I Clubs.

There are C/P clauses by which an owner is obliged to produce a certificate from his Club that all calls are fully paid and will be paid throughout the duration of the voyage or charter period in question. Such certificates are generally not issued by the Club. The Club may not disclose information regarding the financial standing of the Member with the Club. No guarantees can be given for payment of future calls.

Certificates confirming the age of the entered ship are requested by charterers or shippers when letters of credit require the carrying ship to be below a certain age. The Club is not in a position to make positive statements regarding the age of a ship.

While the Club wishes to render its Members as much practical assistance as possible within the guidelines of the Rules, it must be appreciated that the issuance of certificates should be restricted. Firstly, it tends to create an unwarranted bureaucracy. Secondly, the issuance of certificates imposes responsibilities upon the Club regarding the accuracy of statements made which are inconsistent with the concept of mutuality.

All Group Clubs have agreed to the same restrictive policy with regard to the issuance of such and similar certificates.
Rules for P&I Insurance 2012/13

Rule 21 Insurance premium tax
In the event that the Association has or may become liable for any tax or other demand relating to premiums or other sums due from or paid by the Member to the Association, the Member shall pay any such amount to the Association on demand.

Comments on
Rule 21 Insurance premium tax

21.1 General
Some countries levy a tax on the insurance premium. This is often connected with an obligation for the insurer to declare premiums to the relevant tax authority. Sometimes the Club has to pay the tax on behalf of the Member and in such cases this Rule will enable the Club to recover the amount so paid from the Member.
Rule 22 Premiums and deductibles

Premiums and deductibles for the policy year to come are decided annually by the Association.

The premium is due for payment in four equal instalments, on 20 February, 20 May, 20 August and 20 November.

Should the period of insurance commence during the current policy year, a pro rata premium shall be paid at the time when the period of insurance begins, for the period until the next 20 August or 20 February whichever date comes first. Thereafter the premium shall be paid as stated in the second paragraph.

Comments on
Rule 22 Premiums and deductibles

22.1 General
The first part of this Rule states that premiums and deductibles for the policy year are decided annually by the Club.

The premium level is decided by several factors. Firstly, a general increase of the premium may be warranted by increased liabilities (for instance through adopted international conventions), by inflation or by the Club’s underwriting result. Other elements which should be taken into account are the Club’s anticipated investment income, reinsurance costs, payment of pool claims and the Club’s budgeted overheads and running expenses. The Member’s loss performance as reflected by his records may necessitate an individual adjustment of the premium.

General increases are decided by the Club’s Board. Notice of general increase decisions is generally given to Members in the head circular issued before the policy year begins.

Individual adjustments are decided upon at the renewal discussions between the Club and the Member where full and agreed records and statistics are presented. The general increase is applied to the Member’s premiums before any individual adjustments are made.

22.2 Advance calls and additional calls
At renewal discussions, which take place before the policy year has started, it is impossible to quantify with any degree of certainty what final impact the many decisive factors mentioned under 22.1 will have on the actual premium level. P&I insurance, therefore, quote an estimated total call (ETC). Rule 23 allows the Club to charge Members one or more additional calls should the figures prove, as the policy year develops, that more money is required for ends to meet.
22.3 Premiums

22.3.1 Premiums at entry

The premium is based upon the Member’s records, which reflect the Member’s performance during the last five years compared to the premiums paid for those years. For a new Member or for a new ship there are no records available on which the premium can be based. Therefore, when the entry is a transfer from another Club, the loss records from that Club should be presented. In addition to that information, the Club must form an opinion on the liability exposure by evaluating information presented on the type, the age and the condition of the ship, the manning and management status and the trade and cargoes to be operated.

The Club will compare the premium level with that of other Members operating similar ships in comparable trades.

The concept of mutuality between clubs means that premiums should mirror the costs of shared liabilities. Rate cutting to attract more business would violate that principle and allow one Member to enjoy lower premiums at the expense of others. To avoid this, the International Group Agreement (the IGA) was drawn up in 1981 among the Group Clubs. It still applies with certain amendments.

The purpose of the IGA is to restrain competition on rates and leave the Clubs to compete for business on other grounds, such as the quality of their services and stability of their calls.

After completion of one full policy year, the new Club and the Member are free to make any justified amendments to the terms of entry.
Rule 22 Premiums and deductibles

The IGA contains special rating provisions by a Club of ships which have been newly acquired by a Member and whose fleet is already entered with another Club.

It also regulates the situation where a fleet is divided between two or more Clubs.

As of 1999, all Clubs in the International Group have to publish their Average Expense Ratio ("AER") based on an agreed formula in the Group. The AER will provide additional information of the cost for service by different Clubs.

22.3.2 Premiums at renewal
A Member should pay a premium which reflects the risk potentials of the entered ship. Too low a premium means that he is being subsidised by the Club's other Members. If the premium is too high, he is the subsidiser. Striking the right balance is not easy.

At the time of renewal, experience has been gained and records are beginning to build up. Then it is easier to determine any adjustment of the premium level to achieve the goal of a realistic advance call.

22.3.3 Premiums when cover is terminated or has ceased
When the period of insurance is terminated according to Rule 26 or a Member ceases to be insured under Rule 27, the premium is due to be paid up to and including the date of termination and cesser.

22.3.4. Premiums based on Grosstons (GT)
When premiums are based on gross tons (GT), the GT is measured as per the International Convention on Tonnage Measurements of Ships 1969.

22.3.5 Payment of premiums
22.3.5.1 Payment dates
The premium is due for payment in four equal instalments 25% of the premium should be paid on 20 February, 25% on 20 May, 25% on 20 August and 25% on 20 November.

22.3.5.2 Payment on time
As described under 13.1, the concept of mutuality requires all Members to pay their premiums on time. Interest on premiums paid is an essential part of the Club's income and an important tool to keep premiums low.

That the premium is due means that the money should be available for the Club on the prescribed payment dates in accordance with the payment instructions contained in the premium bill or as otherwise agreed by the Club.

22.3.5.3 Payment in policy currency
The premium should be paid in the currency specified in the premium bill. Payment in any other currency does not constitute payment in full unless otherwise agreed by the Club. Payment in the wrong currency may have the effect described under 22.3.5.5.
22.3.5.4 Set-off
It follows from Rule 13 that the Club has a right to set off unpaid premiums against any amount due to the Member under these Rules or under any other policy issued by the Club.

22.3.5.5 Effect of unpaid premiums
According to Rule 26, the Club may terminate the period of insurance on three days’ written notice if the premium is not paid without delay. See comments under 26.5.

22.3.5.6 Fixed premiums
The system of advance and supplementary calls applies to mutual P&I insurance for owner’s risks. Cover for charterer’s liabilities under Rule 9 is on a fixed premium basis not subject to any additional calls. See comments under 9.6.

Fixed premiums are payable on demand, which means on the date stated in the premium bill. Payment should be effected in the way and in the currency stated in the payment instructions contained in the bill.

22.3.5.7 Payment of other sums
Payment of other sums due - such as premiums for accessory types of insurance, deductibles or Club outlays on the Member’s behalf for costs or expenses - should be made on demand and as stated in the instructions.

22.3.5.8 Interest
If payment of premiums and other sums are not received on the due date, the Club may charge interest of 1 per cent per month of the amount due as stated in the current circular. The interest is debited per calendar quarters.

22.3.5.9 No lien
The continuation of cover by payment of the premium due is not an internal matter between the Member and the Club. It also concerns third parties affected by the cover for compulsory liabilities, for instance for crew, cargo and pollution. On 12 March 1999 the new International Convention on Arrest of Ships was adopted. For the purpose of the 1999 Arrest Convention, claims for insurance premiums - including mutual insurance calls - constitute a maritime claim which gives rise to the right to arrest a Member’s ship or other assets.

22.4 Records
22.4.1 Reserves
A Member’s premiums are based on his records. The records depend on the aggregate of reserves allocated to cases reported to the Club in connection with the entered ship.

Once a case has been reported which seems to be of a nature to fall under these Rules and which may give rise to a claim for compensation upon the Club or cause expenses for investigations or defence, the Club must earmark an adequate amount of money to meet those obligations and costs. As the case develops, estimates of expected costs are replaced by the actual costs as and when they are paid and adjusted, if necessary.
The ideal estimation of a case should predict the total amount of money spent by the Club on that particular case when the file is closed several years later. The final outcome is affected by a considerable number of separate factors, which are equally difficult to predict and quantify. An estimation is always uncertain and vulnerable to criticism. Nevertheless, the Club has the obligation to reserve enough money to meet its obligations under these Rules. The Club defines a proper reserve as a conservative estimation on the basis of known facts of the most likely end result.

The reserve of each individual case is checked each time the file is on a claims handler’s desk. In addition, all outstanding files are reviewed to update the estimations at least three times a year.

22.4.2 Adequate reserves require notification of claims to Club

It follows from Rule 10 Section 4 that the Member has an obligation to notify the Club when a casualty has occurred or a claim has been made which may give rise to a claim upon the Club. Rule 15 contains regulations as to the time within which such notification should be made. Failure to report a claim under Rule 10 Section 4 may cause the Club to reject or to reduce a claim for compensation. The effect of time bar under Rule 15 is that the claim for compensation becomes extinguished. See comments under 15.6.

The reason why failure to report or the late reporting of claims is subject to such severe sanctions is that accurate records are the cornerstone for the determination not only of the Member’s but also of the Club’s financial position under this insurance.

The premium is based on the Member’s records during a period of five years starting from and including the last completed policy year. Late reporting of a claim reduces the number of years under which that particular claim has an influence on the Member’s records. It causes inadequate premiums to be charged to the detriment of other Members.

The five year claims record can be found on Swedish Club On Line (SCOL). Members are strongly recommended to discuss outstanding claims and reserves with the Club’s claims handlers well in advance of the renewal.

22.5 Deductibles
22.5.1 What is a deductible?

It follows from the fourth part of Rule 2 that a deductible is an amount agreed between the Club and the Member which is not included in the cover afforded by the Club. See comments under 2.12.

22.5.1.1 What is the purpose of a deductible?

Insurance protects the Member against unforeseeable heavy costs. Minor claims or expenses can be calculated in advance as running expenses. A deductible serves the purpose of keeping such expenses out of the insurance system.

To remit money costs money. Minor expenses do not justify the administration for the Member to compile accounts, for the Club to examine them and for both parties to handle the payment of the compensation due.
A balanced deductible leaves the Member with a stake in the claim. It gives the Member an increased interest in preventing the casualty from arising and in co-operating in the efforts to reduce or reject the claim.

22.5.1.2 How should deductibles be decided?
Deductibles should be balanced against the risks to which they are applied. Large risks which seldom materialise could carry high deductibles. For more frequent risks, the deductibles should reflect the Member's ability to handle and finance claims below the deductible.

Deductibles which are too high often create difficulties and disputes in the handling of claims, especially when it comes to payment of fees and expenses charged by representatives and lawyers who have acted on instructions from the Club but at the Member's expense.

A word of caution may be justified against the practice of using deductibles as an element of underwriting. At premium discussions, a Member may wish to trade a justified premium increase against an increase in the deductible. This may create deductibles which lack proper adaptation to the risks insured and which are unbalanced in relation to the Member's claims handling and payment capacity. This is neither in the Member's nor in the Club's interests.

22.5.2 Special deductibles
As appears from the first part of this Rule, the deductibles are decided annually. This means that the Club and the Member are free to decide on deductibles for any amount adapted to the risks insured and suitable to the Member's and Club's interests in general. Any such tailor-made deductibles should be stated under special conditions in the policy of insurance as described under 20.3.

22.5.3 Other P&I risks
No risk is compensated without deductible unless otherwise stated or agreed.

Concerning the obligation to pay compensation, costs or wages to crew under Rule 3 Sections 1 and 2, the deductible is applied per event. An event can be either the obligations in respect of all crewmembers who sign off on account of injury or illness in a certain port or the obligations in respect of the injury, illness or death of an individual crewmember regardless of where he left the ship.

For liabilities connected to loss of life and personal injuries under Rule 3 Sections 5 and 7, the deductible is applied per event.

When applied to oil spills under Rule 6, the deductible includes fines related to pollution under Rule 7 Section 6.

22.5.4 One event can generate several deductibles
One event can give rise to several liabilities covered under separate clauses. An explosion on board may cause personal injury and loss of life to crew, longshoremen and passengers, loss of or damage to cargo, extraordinary handling costs, oil pollution, wreck removal or fines. Each such liability may be subject to an agreed separate policy deductible. Unless otherwise agreed, the individual deductible of each risk involved should be applied to the compensation as and when paid to the Member.
22.5.5 Costs in cases below the deductible

Payment of the premium entitles the Member to cover under these Rules and to service by the Club in the handling of cases arising. The Club and its organisation is at the Members’ disposal at no further charge. Fees charged by the Club’s representatives, lawyers, surveyors and experts are paid by the Club without deductible unless otherwise stated or agreed.

It is a condition that the representatives, lawyers, surveyors or experts have been appointed by the Club and remain under the Club’s instructions.

Expenses paid will burden the case on which they have been spent. They will affect the Member’s records. See comments under 22.4.3.

What has been stated above applies to cover on general terms. For cover on special terms, it should be agreed between the Member and the Club who should pay for costs of this nature. This is particularly important for Members who wish to carry large deductibles on a per-claim basis. It may be appropriate that the Member pays the handling expenses for claims below the deductible and that the deductible is applied to the costs and the liabilities or their aggregate.

22.5.6 Deductibles under other insurance

As stated under Rule 11 Section 6, there is no cover for deductibles borne by the Member under any other insurance.

22.5.7 Franchise

Under these Rules, the Club applies the system of deductibles. This entails that Members are compensated for the difference between the recoverable amount and the applicable deductible.

A franchise is an agreed limit which, if exceeded, allows compensation for the full amount of the loss. There are no such franchises under these Rules.
Rule 23 Additional premiums
During or after the end of a policy year which has not been declared closed, the Association may levy one or more additional premiums to be paid by each Member in respect of ships entered for that policy year. Such additional premiums shall be calculated pro rata on the net premium debited for the policy year.

The Association may decide in its sole discretion that any premium paid in advance or charged as an additional premium or otherwise, shall be used for transfers to any reserves or provisions including reserves or provisions in respect of any deficiency which has occurred or which may be thought likely to occur in respect of any closed policy year.

Unpaid additional premiums may be levied on other Members pro rata on the net premium debited for the policy year.

Should the insurance cease or be terminated, the Association may levy an estimated additional premium on the Member.

Additional premiums are due for payment on demand.

Comments on Rule 23 Additional premiums

23.1 General
As appears from the comments to Rule 22, the premium first charged for a policy year is preliminary and referred to as the advance call. As time goes by, the result of the policy year can be more accurately determined. If, in the Club’s opinion, more money is needed to cover the Club’s aggregate of known and expected liabilities, the Board may decide that additional premiums or calls should be charged. An additional call can be looked upon in two ways. Firstly, it recognises the fact that, in a mutual organisation, the Members should make their contributions only if and when required. In the meantime, the Members should keep their money and let it work within their own organisations.

Secondly, a demand for contributions is always undesired. It will disturb the Members’ budget and burden financial years which are already closed and in which no further freight income is available. The Club favours the idea that the advance call should be reasonably sufficient to meet the Club’s obligations. If an additional call is forecasted, Members should be advised accordingly at the earliest possible moment and the call be kept as small as possible. Members’ active and dedicated co-operation in keeping the Club informed of casualties and claims in accordance with Rule 10 Section 4 will help to achieve that goal.

23.2 Closing of policy years
The closing of a policy year entails that a decision is taken by the Board that no more additional calls will be levied for that policy year. Members are informed by circulars when
a policy year has been closed. Catastrophe calls as per Rule 24 may be called irrespective of whether a policy year has been closed.

As long as a policy year has not been declared closed, the Board may levy one or more additional calls for that year.

23.3 Calculation of additional calls
Additional calls are expressed as a percentage of the net advance call paid by the Member for the relevant policy year. “Net premium” means the premium less commissions, laid-up returns and other deductions, if any.

23.4 Payment of additional calls
According to the last part of the clause, additional calls are due for payment on demand. This means that they should be paid on the date stated in the bill and in accordance with the payment instructions contained in the bill.

23.5 Transfer of premiums to reserves
In the second paragraph of this Rule the Club may in its sole discretion decide how premiums and calls should best be distributed within the Club either to designated reserves or deficiencies in respect of any closed years.

23.6 Unpaid additional calls
Additional calls represent the means needed by the Club to meet its obligations. It follows from the concept of mutuality that the Club may have to ask the other Members to fill in a loss created when one Member has failed to pay additional calls charged upon him.

Regarding the absence of a lien over the entered ship for unpaid calls, see comments under 22.3.4.9.

23.7 Set-off
It follows from Rule 13 that the Club has a right to set off unpaid additional calls against any amount due to the Member under these Rules or under any other policy issued by the Club.

23.8 Effect of unpaid additional calls
Where an additional call is not paid without delay, the Club has a right - in accordance with Rule 26 - to either serve a written reminder, whereupon the Club shall be relieved of liability after seven days, or terminate the period of insurance on three days’ written notice. See comments under 26.5.

23.9 Estimated additional calls can be levied at termination or cesser of insurance
Where the period of insurance has been terminated under Rule 26 or has ceased under Rule 27, there may still be one or more policy years which have not been declared as closed and for which the Member may be called upon to pay additional calls. In order to avoid such additional calls remaining unpaid and being passed on to other Members, the Club may levy an estimated additional call upon a Member whose insurance has terminated or ceased. Such an estimated additional call is referred to as a release call. The extent of the release call should
not be less than the aggregate amount of anticipated calls on the policy years not declared closed at the time of termination or cesser. The Club may charge a release call in excess of the estimated additional calls.

The Member has two options to discharge his obligation regarding payment of release calls. The Member may either pay the release calls in full which is considered a full and final payment of the calls. Secondly he can put up a bank guarantee for the corresponding amount but the guarantee will have to be kept open until that policy year is finally closed.

A Member who has paid a release call is not entitled to a surplus under Rule 36.
# Rule 24 Overspill calls

The cover afforded by the Association is limited as defined in Appendix I to these Rules.

The Association may at any time decide at its discretion to levy one or more overspill calls in the event that funds are or may be required to pay any part of a claim incurred by the Association or by any other party to the Pooling Agreement in excess of the reinsurances cover limit arranged by the parties to the Pooling Agreement.

The part of any claim incurred by the Association under these Rules which exceeds the reinsurances cover limit shall not be recoverable from the Association in excess of the amounts specified in Appendix I.

The provisions of Appendix I shall be incorporated in and shall form part of these Rules. In the event of any conflict between the provisions of the English wording of Appendix I and the Swedish and English wording of these Rules the provisions and wording of the English text, including those provisions concerning jurisdiction and choice of law, of Appendix I shall prevail.

## Comments on Rule 24 Overspill calls

### 24.1 General

Rule 24 limits the amount recoverable from the Association in relation to a claim (other than a claim arising with respect to oil pollution, which is limited under Rule 6) and limits the liability of Members to contribute to claims. The detailed provisions for this are contained in the Appendix to the Rules. The provisions reflect the requirements of the International Group Pooling Agreement – the rules of all parties to the Pooling Agreement are required to contain similar provisions.

For the purpose of the Appendix, all claims arising under the entry of any one vessel from any one incident are treated as one claim.

As is discussed elsewhere (see Part One, Sections B.3, B.4 and B.5), the Association pools, i.e. agrees to share, with the other parties to the Pooling Agreement that part of any claim which is in excess of a retention (USD 8 million for the policy year 2011/2012). The parties to the Pooling Agreement have collectively purchased reinsurances from the insurance market under the terms of the Group General Excess Loss Contract. For the policy year 2011/2012, the layer is from USD 60 million to USD 3 billion.

The part of any claim in excess of the cover afforded by the Group General Excess Loss Contract is shared between the parties to the Pooling Agreement under special provisions in the agreement. This excess part of any claim is called an "Overspill Claim" in the Appendix. The term applies both to a claim on the Association by one of its Members and to a claim on any other P&I Club which is a party to the Pooling Agreement by one of that Club’s
members. Where the claim is on another party to the Pooling Agreement, the Association will be required to contribute to it in accordance with the terms of the Pooling Agreement.

24.1.1 Overspill Calls
Prior to 1996, cover for Overspill Claims was available to shipowners without limit. The position changed on 20 February 1996, after which time there has been a limit on the level of cover available for Overspill Claims and a corresponding limit on the calls that can be levied on Members to provide funds to pay those claims.

The arrangements to implement these limits are contained in Rule 24 and in the Appendix to the Rules.

A limit is placed on contributions which Members can be required to make to the funds of the Association in order to enable the Association to pay an Overspill Claim.

Such contributions are payable by way of Overspill Calls and are levied with respect to all vessels entered (other than on a fixed premium basis) on the date of the incident which gave rise to the claim. There is one exception to this: a Policy Year may be closed for the levying of Overspill Calls three years after its inception. Where an Overspill Claim is notified after the relevant year has been closed, the contributions will be levied on vessels entered at noon UTC on 20 August of the Policy Year which is kept open for the purpose of levying such contributions in accordance with the provisions of the Pooling Agreement (this is generally the earliest subsequent open Policy Year).

Overspill Calls are calculated as a percentage of the vessel’s limitation fund for property damage claims (not claims for loss of life or personal injury) under the Convention on Limitation of Liability for Maritime Claims, 1976. The total of the Overspill Calls levied by the Association on any one vessel to pay the Association’s share of any one Overspill Claim will not in the aggregate exceed a specified percentage (2.5% for the 2011 Policy Year) of the limitation fund of that vessel.

24.1.2 Overspill Claims
A limit is placed on the amount of an Overspill Claim which the Member can recover from the Association. This limit is the aggregate of:

• the amount the Association can raise by means of Overspill Calls on its Members (which is itself limited in accordance with the arrangements referred to above) and
• the amount the Association is able to recover from the other parties to the Pooling Agreement.

Given that the rules of all parties to the Pooling Agreement are required to contain the same provisions, the amount a Member can recover from the Association is accordingly limited to 2.5% of the aggregate of the limitation funds of all vessels entered with parties to the Pooling Agreement.

This amount may be reduced:

• to the extent that the Association is not able to make a recovery from another party to the Pooling Agreement;
Rule 24 Overspill calls

- to the extent that Overspill Calls levied on the Members are not economically recoverable;
- to the extent that the Association incurs costs in seeking to recover Overspill Calls from its Members.

The Association is entitled to delay payment of Overspill Claims to the extent that there is an unavoidable delay in its collection of Overspill Calls.

The Pooling Agreement and the Appendix to the Rules contain further detailed provisions on the calculation of the above limits, together with arrangements for a panel of experts to determine certain issues.

The Association can require a Member to put up security for an Overspill Call in the circumstances described in Appendix Rule 7.

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**Graphic illustration of the International Group Clubs’ Pooling and Reinsurance Structure**

- **Overspill**
  - USD 3 billion “Seaman Limit”
  - USD 2 billion “Passenger Limit”
  - Oil pollution limit

- **Overspill cover**
  - International Group
  - Excess R/I

- **Hydra**
  - Pool
  - Retention

USD (million)

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~5 600
3 060
2 060
1 000
560
60
30
8
0
Rule 25 Right of lien for amounts due to the Association

The Association shall be entitled to a lien on the insured vessel, and any other insured vessels, which are part of a fleet in accordance with Rule 31, for all premiums and any other amounts due to it under these rules. Such lien shall be in addition to and in no way be construed as a waiver or amendment to, any other contractual or maritime lien which the Association may expressly or impliedly possess in respect of the said vessel or vessels. In order to exercise this right and notwithstanding Rule 18 the Association may take action and/or commence proceedings to enforce its right of lien in any jurisdiction in accordance with local law in such jurisdiction.

Comments on

Rule 25 Right of lien for amounts due to the Association

25.1 General
As result of the mutual nature of the Club it is in the interest of all Members to ensure that the premium agreed by any particular Member for entry in the Club is paid in full. The Club has a duty to take such steps to ensure that recovery is made from a defaulting Member.

25.2 The Club’s right to exercise a lien
This Rule provides a lien in favour of the Club over the Member’s ship and all other ships in the same fleet for all premiums and any other amounts due under these Rules. This contractual lien is in addition to any other rights available to the Club notwithstanding Rule 18 but including any maritime lien or right in rem available by statute or the law of any jurisdiction.

As an example the 1999 Arrest Convention recognizes a long list of claims which gives rise to a right of arrest. New in the list and unlike the previous arrest convention is a lien for insurance premiums which provides yet another tool for the Club to obtain payment from a defaulting Member.
Rule 26 Termination

The period of insurance may be terminated by a written notice of termination from the Member to the Association or from the Association to the Member not later than 1200 hours UTC (Universal Time, Co-ordinated) on the 20 January. Where such notice of termination has been given the period of insurance shall terminate at noon on the next 20 February.

It shall be a condition precedent of the Members’ right to recover from the Association in respect of any liabilities, costs or expenses that all premiums and other amounts due by the Member to the Association shall have been paid in full. Where the premium is not paid timeously, the Association shall not be liable and shall have the right to terminate the period of insurance on three days' written notice. Where the premium is paid before such termination, the Association shall be liable from the date of payment only.

Where the premium for an ensuing period, an additional premium or an overspill call is not paid without delay, the Association shall have a right either to serve a written reminder regarding the date of payment, whereupon the Association shall be relieved from liability after seven days, or to terminate the period of insurance on three days' written notice.

Where the period of insurance and/or the entry of a ship is terminated or has become terminated due to the non payment of premiums at a time when premiums or any other sums due to the Association are outstanding, it is agreed that the Association is entitled to a lien over the previously entered ship.

The Association may further terminate the period of insurance
(a) with immediate effect upon notification, at an event referred to in Rule 11 Section 1,
(b) on three days' notice, where the Member has failed to pay, when due and demanded, any sums other than premiums,
(c) on seven days' notice, where the Member has failed to comply with regulations issued by the Association,
(d) on fourteen days' notice, where the Member becomes bankrupt or otherwise insolvent,
(e) on thirty days’ notice, without giving any reason.

Comments on Rule 26 Termination

26.1 General
26.1.1 General views on termination
As appears from Rule 20, the period of insurance shall continue from policy year to policy year unless it has terminated or ceased in accordance with these Rules. This means that the cover continues automatically as long as the Member and the Club agree on the premiums...
and the terms of insurance. To bring the period of insurance to an end requires either that one of the parties notifies his intent to terminate the period of insurance under this Rule or that one of the situations applies which causes the insurance to cease under Rule 27.

The termination of the period of insurance can be initiated by the Member or the Club under the first part of the Rule and by the Club as a consequence of certain situations listed in the remaining part of the Rule.

26.1.2 **Difference between termination and cesser**
Termination of the period of insurance is a right. It is an option open to the parties under the conditions specified in this Rule. When those conditions apply, the party concerned may file a written notice of termination but is free to allow the period of insurance to continue, if he so wishes.

As stated in Rule 27, the insurance ceases automatically and with no prior notice if any of the listed situations should arise. Cover can only be reinstated if the parties agree on a new period of insurance and a policy of insurance is issued accordingly.

26.1.3 **Effect of termination**
The effect of termination is described in Rule 28.

26.1.4 **To whom should written notice of termination be made?**
Notice of termination should be given to the Member and or the broker as identified in the policy of insurance.

Notice given to one Joint Member or co-assured will, in accordance with Rule 30, be considered to have been communicated to all those concerned.

26.2 **Termination by notice before 20 January**
If the Member or the Club wishes to terminate the period of insurance, written notice should be given to the other party accordingly. The notice of termination should be received by the other party not later than 1200 hours UTC on 20 January. The period of insurance will then terminate at noon UTC on 20 February, which is the end of previous policy year and the start of the new as stated in Rule 20.

26.3 **Termination due to unpaid premiums**

26.3.1 **Initial period**
The second part of this Rule deals with the consequences where the premiums are not paid without delay.

The meaning of "the premiums" in this part of the Rule is decided by the words "the premiums for an ensuing period" in the third part of the Rule. An ensuing period is any period which follows after the initial period.

The second part of the Rule is, consequently, applicable where the payment of premiums for the initial period is delayed. For any subsequent period, the third part of the Rule applies.
The consequence where payment of the premiums for an initial period is delayed is that the Club “shall not be liable”. This means that there is no cover under these Rules from the inception of the initial period until the premiums are duly received by the Club.

The Club may also terminate the period of insurance on three days’ written notice. If a notice of termination is filed, the Member may pay the premiums before the termination becomes effective. In such a case, the cover starts from the date of payment, which is the day when the delayed premiums became available to the Club in accordance with the payment instructions.

26.3.2 “Premiums for an ensuing period”
The third part of the Rule deals with the late payment of premiums for “an ensuing period”. An ensuing period is any period which follows after the initial period.

Where the payment of premiums for such a period is delayed, the Club has two options. The Club may serve a written reminder to the Member regarding the unpaid premiums. The Club will then be relieved of its obligations under these Rules after seven days while the period of insurance remains in force and cover can be reinstated by payment of the premiums.

The Club also has the option of terminating the period of insurance on three days’ written notice.

26.3.3 “Lien”
It follows from the fourth part of this Rule that if the Association makes use of its right to terminate the insurance due to non-payment of premium, the Association is entitled to a lien over the ship for which the outstanding premium is referred.

26.3.4 “Delay”
What constitutes a delay in payment of premiums should be judged with regard to the circumstances prevailing.

The payment dates for premiums are well known to Members and specified in Rule 22. Remittances should be effected in such a time and way that the money is available on the Club’s account on the dates specified by ordinary banking practice in the countries concerned by the transaction.

It follows that a delay should be minor and have an acceptable cause in order not to justify the options open to the Club under this Rule.

The concept of mutuality requires Members to fulfil their obligations to pay premiums on time. Investment income on premiums paid is an important tool to keep the premiums low and stable. By ensuring that payment is made on time, all Members contribute equally to this common goal.

26.3.5 Set-off
As stated in Rule 13, Members are not allowed to offset premiums against what they consider to be justified compensation. Offsetting of premiums without the Club’s prior approval is equal to non-payment and may cause the Club to file a notice of termination under this Rule. For further comments see under 13.2
26.4 Immediate termination
According to item (a) of the fourth part of this Rule, the Club may terminate the period of insurance with immediate effect once it has been notified of an event which has been caused by such an intentional or grossly negligent act or omission by the Member that Rule 11 Section 1 applies. See comments under 11.1.1-5.

Such behaviour is so completely alien to the concept of mutuality on which the P&I insurance is based that it is in the best interest of the Club and its Members to terminate the period of insurance for that particular Member. The termination may then be for all ships entered under the same or associated ownership.

According to Rule 30, an act or omission by a Joint Member or a co-assured which entitles the Club to terminate the insurance will be considered an act or omission of all those concerned.

26.5 Termination on three days’ notice
Under the second and third parts of this Rule, the Club has the right to terminate the period of insurance on three days’ written notice where the premium for an ensuing period (see comments under 26.3.1-2), an additional premium (see comments under 23.7) or an overspill call (see comments under Rule 24) is not paid without delay.

Item (b) of the fourth part of the Rule provides the Club with the same right when the Member has failed to pay sums other than premiums when due and demanded. Such sums could be premiums for accessory types of insurance, deductibles or the Club’s outlays incurred on the Member’s behalf for costs or expenses. As stated in the comments under 22.3.5.7, such sums are payable on demand.

26.6 Termination on seven days’ notice
The Club’s power to issue regulations and the consequences of failure by the Member to comply with such regulations are commented upon under Rule 10 Section 3.

If a Member fails to comply with such regulations, the Club may reject a claim for compensation or reduce any amount payable under these Rules.

The ultimate remedy against a Member who fails to comply with regulations is for the Club to terminate the period of insurance on seven days’ written notice.

26.7 Termination on fourteen days’ notice
In the event that a Member becomes bankrupt or otherwise insolvent, the Club may terminate the period of insurance on fourteen days’ written notice. The wording of the Rule confirms that no formal decision or declaration of bankruptcy has to be awaited. Notice of termination may be given when the Member has reached such a degree of insolvency that he is not expected to adequately fulfil his obligations under these Rules. The financial fulfilment of such obligations can be the timely payment of premiums, the ability to pay claims under the pay-to-be-paid principle (see comments under 2.9.1 and 2.10) or to finance the proper maintenance of the entered ship.
The notice of termination can be for all ships entered under the same or associated ownership.

The Clubs may delay or refrain from filing a notice of termination if security acceptable to the Club is posted by or on behalf of the Member for present and future sums due to the Club.

26.8 Termination on thirty days' notice

Item (e) of the fourth part of this Rule gives the Club the right to terminate the period of insurance on thirty days' written notice without having the obligation to disclose the reason for the termination.

One situation in which this part of the Rule may be applied is at the outbreak of a major war which affects the parties to the insurance contract or when such an outbreak seems likely or imminent. The reason is that those situations are not specifically listed in the other parts of this Rule or in Rule 27 on cesser. There is consequently no automatic termination or cesser in such a situation. This gives the Member a respite of thirty days to rearrange the insurance to suit the prevailing situation. See comments under 11.5.8.
Rule 27 Cesser

The Member shall cease to be insured by the Association

(a) where the entered ship is posted at Lloyd’s as missing or is missing for thirty days since last heard of, whichever is the earlier,

(b) where the entered ship becomes a total loss or is accepted by the Hull insurance as being a constructive, compromised or arranged total loss, in which case the insurance shall cease at the time when the Member is entitled to total loss compensation from the Hull insurance,

(c) where the entered ship is transferred to a new owner by sale or otherwise, in which case the insurance shall cease at the time of such transfer. Should the operation of the entered ship be transferred to another company or manager, the Association is entitled to decide that the insurance shall cease.

(d) where the entered ship is requisitioned, in which case the insurance shall cease at the time of such requisition,

(e) where the entered ship, with the knowledge of the Member, is being used to carry contraband or employed in blockade running or in an unlawful trade,

(f) where the Member is in breach of Rule 10, Section 1 (a)

Comments on Rule 27 Cesser

27.1 General

27.1.1 General views on cesser

There are situations which affect the basis for the insurance to such an extent that the cover should cease automatically and at no prior notice. Considering the importance of continuous insurance cover to the Member, the situations in which that cover ceases should be limited and clearly defined. This Rule contains the provisions.

27.1.2 Difference between cesser and termination

The difference between cesser and termination appears from comments under 26.1.2.

27.1.3 Effect of cesser

The effect of cesser is described in Rule 27.

27.2 Entered ship is missing

As described in the comments under 2.5, the P&I insurance is strictly vessel-related. For the cover to exist, there must be a vessel to insure. If the entered ship becomes a total loss, the insurance ceases by application of item (b) of this Rule (commented upon below). The mere fact that the entered ship is out of operational control and in all probability is lost is reason enough for the insurance cover to cease. According to item (a) of this Rule, the insurance
ceases when the entered ship is posted at Lloyd’s as missing or is missing for thirty days since last heard of - whichever is the earlier.

To establish the date of cesser, it is important to know the date when the entered ship was last heard of. This could be in the form of visual observations or contacts by radio with the owner or other ships. The cover ceases thirty days after the last confirmed contact, if that date is earlier than the date when the ship was posted at Lloyd’s as missing.

"Posted at Lloyd’s as missing” entails the following: a certain time after a ship has been reported to Lloyd’s as missing, the name of the ship is inserted in the Posted Missing Book by the Loss Book Clerk. The date of that entry is the crucial date under this Rule.

27.3 Entered ship is a total loss
For obvious reasons, the insurance ceases when the entered ship is a total loss and by definition is no longer a ship. When a ship becomes a total loss is decided by application of the conditions for the Hull insurance. For a Hull insurance on AV 2000, the conditions on total loss are contained in §§ 24 and 25.

A constructive total loss (CTL) under AV 2000 § 26 has the same effect as a total loss and causes the P&I insurance under these Rules to cease.

If the entered ship becomes a total loss or a CTL, the P&I insurance ceases according to item (b) of this Rule when the Member is entitled to total loss compensation. That moment is established as follows. At a total loss, the Hull underwriter must submit his calculation of compensation to the Member within 14 days upon receipt of documents required to calculate the compensation (AV 2000 § 42). If the Hull underwriter and the Member agree on the calculation presented, the compensation is payable within one month following the agreement. The Member is entitled to the total loss compensation once the Member and the Hull underwriter reach a binding agreement. The fact that the amount is payable within one month does not affect the agreement reached; the date of the agreement is therefore the date when the P&I insurance ceases under this Rule.

Should the parties not agree, the total loss compensation will be determined by a Swedish average adjuster. In such a situation, the Member is entitled to the total loss compensation when the average statement has acquired legal force or when, if an appealed is submitted, the final court judgement has acquired legal force. Cesser of the P&I cover follows suit.

27.4 Transfer of ownership
The policy of insurance reflects a contract between the Member and the Club, either of which cannot be substituted without the approval of the other. If the Member is substituted by any other party as a result of change of ownership or otherwise without the Club’s approval, the insurance ceases by application of item (c).

The Club should be informed in time of any contemplated change of ownership of the entered ship. A transfer of ownership between two companies owned or controlled by the Member would only cause minor paperwork so as to allow the insurance documents to reflect the true position.
If the entered ship is sold to a completely new owner, the Club will decide whether he can be accepted as a Member of the Club. The new ownership and any amended terms agreed upon will be reflected in the issuance of a new policy of insurance in such a time period that the cover for the ship will continue uninterrupted.

The change of manager is a material fact which is relevant to the risk and which must be disclosed to the Association. This is as important to the Association as a change in owner as the manager usually is responsible for the technical management and crewing of the ship.

27.5 Requisition
A requisition by authorities of the entered ship will bring about the same substitution of parties to the insurance contract as described in the comments to item (d) above. The insurance ceases at the time of requisition.

27.6 Contraband, blockade running and unlawful trades
According to item (k) of Rule 11 Section 2, there is no cover for liabilities, costs or expenses incurred if the ship is carrying contraband or is employed in blockade running or in unlawful trade. See comments under 11.2.2.11.

Such a deliberate disregard of the Member’s obligations under these Rules and in relation to fellow Club Members justifies cessation of insurance in accordance with item (e) of this Rule.

27.7 Failure to be classed
To be entered with a classification society approved by the Club according to Rule 10 Section 1 is the hallmark of a ship for which Members of a mutual Club are prepared to share the liability risks.

According to item (f) of this Rule, the insurance ceases if and when the entered ship fails to be classed. It follows from Rule 10 Section 1 that “classed” with respect to these Rules entails that the ship should be entered with a classification society approved by the Club. The cesser automatically comes into effect at the moment when the entry of the ship in the classification society comes to an end in accordance with the statutes or regulations of the society.

The ship’s class is also regarded as lost if the Member or anybody acting on his behalf requests that class be cancelled or if class is suspended, cancelled, interrupted or withdrawn.

If class that once has been lost is reinstated or if the ship is entered in a new classification society approved by the Club, a new period of insurance starts on conditions to be agreed upon. A new policy of insurance must be issued accordingly.
Rule 28 Effect of termination and cesser

Termination or cesser of the insurance shall have the following effect.

The Member shall remain liable for all premiums due for the current or previous policy years up to the date of termination or cessation but shall be entitled to a refund of premiums paid which refer to a period after that date.

The Association shall remain liable for all claims under these Rules arising out of events which occurred prior to the date of termination or cessation provided that premiums due shall have been paid.

Comments on Rule 28 Effect of termination and cesser

28.1 General
The difference between termination and cesser is explained under 26.1.2.

The effect of termination and cesser is described in this Rule.

28.2 Effect for Member
The Member remains liable for payment of premiums and additional calls which are due for all open policy years up to the date of termination or cessation. That obligation remains unaffected even after the termination or cesser has come into effect. As regards the Club’s right to charge release calls, see comments under 23.8.

The Member has an obligation to pay his share of overspill calls as stated in Rule 24, even after the cover has terminated or ceased.

28.3 Effect for Club
As stated in these Rules, the Club remains liable to cover liabilities, costs or expenses which arise out of events which occurred prior to the date of termination or cessation. A condition for cover is that not only premiums have been paid for the period of insurance when the event occurred but also that the slate has been wiped clean with respect to all premiums due (such as additional calls for policy years still open).

For comments as to when an event has occurred see under 2.8.
Rule 29 Laid-up returns

The Member shall be entitled to a return of premiums if the entered ship shall be laid-up in a safe port in compliance with any applicable requirements or regulations for a consecutive period not less than thirty full days, provided the ship has no cargo and has no more crewmembers on board than necessary for maintenance or security.

No claim for laid-up returns shall be recoverable from the Association unless written notice thereof has been given within twelve months after the expiry of the policy year concerned.

Comments on Rule 29 Laid-up returns

29.1 General

Premiums paid are a reflection of risks insured. As mentioned in the comments under 22.3.1, the premium at entry is affected by the operated trade and cargoes. As records build up, the impact of the operational performance upon the premium is increased. If and to the extent that those operational risks are reduced when the ship is idle when being laid up, the premiums ought to be reduced accordingly. The principles for laid-up returns are contained in this Rule.

Laid-up returns are generally neither granted for vessels under 500 GT nor for tugs, barges and passenger ships/ferries in coastal trade.

29.2 Duration of laid-up period

According to the first part of this Rule, a Member is entitled to a laid-up return if the entered ship is laid-up for a consecutive period of not less than thirty full days. "Full days" means that the days of arrival to and departure from the laid-up site are not counted.

Shifting of lay-up site within the port or local area does not interrupt the calculation of time. A new time period starts if the ship is moved to a different port or area.

29.3 "Safe port"

The words "safe port" do not necessarily have the same meaning in this Rule as in the interpretation of safe berth and safe port clauses in C/P’s.

The port must be safe in accordance with the standards applied by the Hull underwriter of the entered ship. This must be decided from case to case based on all relevant facts, such as the nature and size of the ship, the anchoring and mooring facilities, etc.

Members are recommended to contact the Club before the ship is laid up so as to obtain the Club’s approval as well as benefit from the Club’s experience as Hull and P&I underwriters.
29.4 Compliance with regulations
Throughout the duration of the lay-up - including the procedures of arrival and departure - the ship must comply with applicable requirements and regulations issued by competent authorities and by the classification society. This also follows from Rule 10 Section 1 and is a condition for cover. The regulations can be with respect to the method of mooring, shore communications, equipment, manning, etc.

29.5 Manning
The number of crewmembers on board while the ship is laid up must meet applicable requirements or regulations issued by authorities, the classification society and the Club. The extent and composition of the crew must be generally adequate in order to carry out what is necessary for the maintenance and safety of the ship at her laid-up site.

On the other hand, it is part of the laid-up return concept that the risks covered should be reduced. Crew constitutes such a risk. The number of crew should, therefore, be balanced in such a way that risks are reduced during the laid-up period without creating new or increased risks.

29.6 Cargo
A ship which is laid up with cargo on board does not meet the required risk reduction to qualify for a laid-up return. No such return is allowed in cases where there is cargo on board unless the full concept of the lay-up has been approved by the Club in advance and found to contain sufficient reductions of risks to justify a return.

In fact, the presence of cargo while the ship is laid up may increase the risk in view of machinery shutdown, nearness to shore, etc.

29.7 Application for laid-up returns
In order to be considered, a written application for a laid-up return must be received by the Club from the Member within twelve months after the expiry of the policy year in question.

Should one lay-up period concern two policy years, the application for a laid-up return can be made within twelve months after the expiry of the last of the two years.

29.8 Extent of laid-up returns
Laid-up returns are calculated as a percentage of the gross premium less a minimum retention for the Club so as to cover fixed overheads such as reinsurance costs.

The extent of the laid-up return for the coming policy year appears from the head circular issued annually prior to the new Policy year.
Rule 30 Joint members and co-assureds

Joint Members
The Association may allow several Members to be covered jointly (Joint Members) by the same insurance on the following conditions unless otherwise agreed.

The Joint Members shall be jointly and severally liable for all sums due to the Association.

The Association may fully discharge its obligations with regard to payment under these Rules by payment to any one of the Joint Members.

Any communication by the Association to any one of the Joint Members shall be deemed to be communicated to all. Failure by any one of the Joint Members to disclose material information shall be deemed to be the failure of all.

Act or omission of any one of the Joint Members which causes the insurance to cease or which entitles the Association to terminate the insurance or to reject or reduce any compensation shall be deemed an act or omission of all.

The liability of the Association to the Joint Members shall not exceed the limitation under the fifth paragraph of Rule 2 had the registered Owner of the entered ship been the sole Member, except where the Joint member is

(a) any person interested in the operation, management or manning of the entered ship,

(b) the holding company or the beneficial owner of the Member or of any Joint Member falling within category (a) above

and provided that the liability arises out of operations and/or activities customarily carried on by or at the risk and responsibility of shipowners and which is within the scope of the cover afforded by these Rules and any special terms set out in the Certificate of Entry.

Co-assureds
The Association may allow other parties to become co-assureds under a Member's insurance on the following conditions unless otherwise agreed.

The liability of the association to co-assureds shall be limited to liabilities, costs or expenses which the Member would have incurred if the claim had been pursued against him and which would have been reimbursed by the Association under these Rules.

The Association may fully discharge its obligations with regard to payment under these Rules by payment to any one of the co-assureds.

Any communication by the Association to any one of the co-assureds shall be deemed to be communicated to all. Failure by any one of the co-assureds to disclose material information shall be deemed to be the failure of all.
Act or omission of any one of the co-assureds which causes the insurance to cease or which entitles the Association to terminate the insurance or to reject or reduce any compensation shall be deemed an act or omission of all.

The liability of the Association to the co-assureds shall not exceed the limitation under the fifth paragraph of Rule 2 had the claim been pursued against the registered Owner of the entered ship.

Comments on
Rule 30 Joint members and co-assureds

30.1 General
As described in the comments to the basic Rule 2, the cover under these Rules is in respect of liabilities, costs or expenses incurred by the Member as defined in Rule 1. The application of the pay-to-be-paid principle under Rule 2 (see comments under 2.9.1 and 2.10) also ensures that no parties other than the Member can claim compensation under these Rules.

Claims in respect of the entered ship and of a nature to be covered under these Rules may, however, be filed and enforced against parties other than the Member. Such parties may constitute more attractive targets for a claim because they have better solvency than the Member, are domiciled in a more suitable jurisdiction or exposed to unlimited liability where the Member could apply global limitation.

It is important for the shipowner that certain parties have reasonable insurance protection against such claims, which could otherwise backfire on him by way of recovery under contracts or otherwise.

Under this Rule, the Club may allow certain individuals or corporations closely related to the Member to be covered jointly by the same insurance as Joint Members or co-assureds.

30.2 Joint Members
30.2.1 What constitutes a Joint Member?
For a party to acquire the status of Joint Member requires an application from the Member to the Club to enter the candidate as a Joint Member in the Member’s policy of insurance. It is in the Club’s discretion to decide whether the application should be accepted. The Club does not need to give a reason for its decision. The party becomes a Joint Member when the Club has issued a policy of insurance or an addendum to an existing policy in which the party is named as a Joint Member.

Companies closely affiliated with the Member may be covered under Rule 32 on terms to be agreed upon without being mentioned in the policy of insurance. The extent of cover for such affiliated companies appears in comments under 32.3.

30.2.2 General views on relations between the Club and Joint Members
The extension of cover to a Joint Member gives considerable advantages to the Member and his organisation at large. To the extent cover is provided under these Rules, the Joint Member does not need to take out separate liability insurance. Premiums are saved. Money does not
need to be spent on a subsequent crosswise recourse between the parties and their respective underwriters, as it would if they had had to buy separate insurance.

Being provided the facility of cover, a Joint Member has to accept obligations in relation to the Club as described below.

30.2.2.2 A Joint Member is a Member
As appears from the definition in Rule 1, a Joint Member is a Member. What is said in these Rules regarding a Member’s rights and obligations also applies to a Joint Member.

This Rule contains certain regulations required to co-ordinate the rights and obligations of a Joint Member under these Rules with those of the Member whose cover he shares.

30.2.2.3 Liability for sums due to the Club
A Joint Member is jointly and severally liable for all sums due under these Rules to the Club. This means that Joint Members are liable collectively and individually for due payment of any such sums. The liability is in respect of advance calls under Rule 22, additional calls and release calls under Rule 22 and overspill calls under Rule 24. A Joint Member can also be asked to pay deductibles or the Club’s outlays for lawyers and experts on the Member’s behalf when such payments are not forthcoming in a timely fashion from the Member.

30.2.2.4 Payments from the Club
The Club may discharge its obligations under these Rules by payment to any of the Joint Members. Payment to one Joint Member is equal to a payment to the Member and to all Joint Members.

30.2.2.5 Communications from the Club
Any communications from the Club to a Joint Member are considered to have been communicated to the Member and to all Joint Members.

Examples of such communications are regulations under Rule 10 Section 3, requests to submit disputes to arbitration under Rule 18 and the Club’s approval or disapproval of contracts submitted under Rule 10 Section 2.

30.2.2.6 Failure to disclose material information
If a Joint Member fails to disclose material information, it is deemed a failure of the Member and of all Joint Members.

Such disclosure could be the reporting of cargoes, trades or contracts which require the Club’s prior approval to be covered.

30.2.2.7 Conduct of a Joint Member
The same standard of conduct is required from a Joint Member as stated in these Rules as from a Member. The Club may reduce or refuse compensation as the Rules permit. It may file notice of termination under Rule 26 and the cover may cease under Rule 27 as a consequence of the conduct of any of the Joint Members.

Should this occur, the rights of the Member and of all Joint Members under these Rules are affected accordingly.
Rule 30 Joint members and co-assureds

30.2.2.8 Limitation of liability
As appears from comments under 2.11.6, the cover afforded by the Club shall not exceed the sum to which the Member would be entitled to limit his liability under applicable law. According to the last part of this Rule, the basic principle also applies to Joint Members, however, with an important exception.

There are jurisdictions where the right of limitation is more or less exclusively reserved for shipowners and where parties who may qualify as Joint Members under these Rules are not allowed limitation at all. In such a jurisdiction the Joint Member is a likely target of a legal action to provide the claimant a vehicle to unlimited recovery. For the Joint Member and also for the shipowner against whom the action may be channelled back by recovery under contract or otherwise, it is important to have reasonable insurance cover.

That cover is provided in the last part of this Rule. It states the conditions required to set aside the basic principle in Rule 2.

The Joint Member must be a party interested in the operation, management or manning of the entered ship. The Joint Member could also be the holding company or the beneficial owner of the Member or of any Joint Member operation or function as described above.

Furthermore, the liability must arise out of operations or activities that are customarily carried out by or at the risk of the insured shipowner.

Finally, the liability must be within the scope of cover afforded by these Rules and any special terms agreed upon.

If these requirements are met, the Joint Member enjoys a separate cover beyond the sum to which the shipowner would be entitled to limit his liability.

30.2.2.9 Who can be a Joint Member?
As the rights and obligations of a Joint Member mirror those of the Member, a Joint Member should be closely related financially or organisationally to the Member.

The company or its subsidiaries, part owners and trustees may become Joint Members. Those in control of the operation, employment, management and manning of the entered ship as is customarily exercised by its owner, may also be accepted as Joint Members.

Bareboat or demise charterers can be Joint Members. Charterers who are affiliated or associated with an insured owner of the entered ship can also be accepted as Joint Members. Other charterers should not be accepted as Joint Members. Their liabilities should be covered separately by charterers P&I insurance. See comments under 9.2.2.

Cargo interests or other parties against whom the Member has contractual obligations should not be included as Joint Members under the Member’s policy.

30.3 Co-assureds
30.3.1 What constitutes a co-assured?
To become a co-assured requires an application from the Member to the Club to allow the candidate to become a co-assured. The co-assured will be mentioned in the policy of insurance under special conditions. See comments under 20.3.
30.3.2 Relations between the Club and co-assureds

As co-assureds are not mentioned in the definition of a Member in Rule 1, a co-assured is not a Member. The rights and obligations of a co-assured are restricted to what follows from this Rule.

The main principle contained in the Rule is that the Club’s liability under these Rules in relation to a co-assured is limited to liabilities, costs or expenses that the Member would have incurred if the claim had been pursued against him and not against the co-assured and which would have been covered under these Rules. The cover afforded to a co-assured is under no circumstances greater than that of the Member.

Another difference between a Joint Member and a co-assured is that a co-assured is not jointly and severally liable for sums due to the Club under these Rules.

Not being a Member, a co-assured has no right to a laid-up return under Rule 29 or to refund of a surplus under Rule 36.

What has been said regarding Joint Members in the comments under 30.2.2.4-7 also applies to co-assureds.

30.3.3 Who can be a co-assured?

Upon application from a Member the Club may allow individuals or corporations which act as the Member’s servants and perform duties in relation to the operation and employment of the entered ship to become co-assured under the Member’s policy.

Parties who qualify as Joint Members may be entered as co-assureds if that form of association with the Member’s cover is considered more suitable. See comments under 30.2.2.9.

A reason for acceptance as a co-assured may be that the candidate may otherwise have to buy liability cover of his own, the costs of which would be charged to the Member and which would cover liabilities which the candidate may be able to pass on to the Member anyway by contract.

Charterers mentioned in the comments under 30.2.2.9 can be accepted as co-assureds. Other charterers are not accepted as co-assureds and should cover their liabilities under the C/P by separate charterers P&I insurance, but for the following exceptions; the Club may agree to enter participants in a joint venture or a consortium under a space charter (see comments under 9.2.4) or a slot charter (see comments under 9.2.5) as co-assureds. The Club may also agree to enter a charterer under an approved contract containing a knock-for-knock agreement.

Cargo interests or other parties against whom the Member has contractual obligations should not be included as co-assureds under the Member’s policy.
Rule 31 Fleet entry

When the entered ship forms part of a fleet of ships insured by the Association, the Members of the fleet shall be jointly and severally liable for premiums or any other sums due to the Association in respect of any ship in the fleet.

Failure of any Member to pay premiums or other sums shall be deemed to be a failure of all the Members of the fleet and the Association shall be entitled to give notice of termination under Rule 26 and to set-off under Rule 13.

Comments on
Rule 31 Fleet entry

31.1 General
The first rung on the ladder of mutuality is for the Member to spread the risks within a fleet of ships entered with the Club under the same or associated ownership. A ship entered as part of a fleet is rated as a member of that fleet. She will enjoy lower premiums than if she had been entered as a singleton.

If the entered ship has a low premium as part of a fleet, it is reasonable that the due payment of that premium is supported by the fleet.

This is achieved by this Rule.

31.2 Fleet Members
A fleet is constituted by all ships entered under the same ownership. The fleet can also consist of ships where the registered owners are separate legal entities, but where those entities are under the same or associated ownership.

A ship is a member of such a fleet when the terms of entry for the ships in the fleet have been negotiated at the same time or otherwise affected each other.

31.3 Fleet Members are jointly and severally liable for payments
According to the first part of the clause, Fleet Members remain jointly and severally liable for the payment of premiums and other sums due to the Club in respect of any ship in the fleet.

As regards premiums, the obligation is in respect of advance calls, additional calls, release calls and overspill calls.

Other sums due may be deductibles or lawyers’ and experts’ fees, advanced by the Club on the Member’s behalf.

31.4 Failure to pay premium
If one Fleet Member fails to pay premiums or other sums due to the Club on time, that failure shall have the effect described in these Rules on the cover of all members of the fleet.
The Club may file a notice of termination under Rule 26 with the effect as described in Rule 28 against any or all of the Fleet Members.

The Club has a right under Rule 13 to set-off the amount due against any sum due to any of the Fleet Members from the Club under these Rules or any other policy issued by the Club.

31.5 Mortgaged ships
As follows from Rule 35, the cover afforded by the Club shall be extended to a mortgagee.

If the Club has issued a Letter of Undertaking in favour of the mortgagee, or if the policy of insurance includes a Loss Payable Clause, a payment under these Rules due to a Fleet Member will be paid in accordance with the terms so agreed and will not be used to set-off debts of other members of that fleet.
Rule 32  Affiliated companies

The Association may agree to extend the cover afforded by the Association to affiliated companies of the Member on such terms as may be agreed.

The liability of the Association to the Member and to affiliated companies to whom cover is extended shall be limited to liabilities, costs or expenses which the Member would have incurred if the claim had been pursued against him and which would have been reimbursed by the Association under these Rules.

The liability of the Association to the Member and to affiliated companies shall not exceed the limitation under the fifth paragraph of Rule 2 had the registered Owner of the entered ship been the sole Member.

Comments on
Rule 32  Affiliated companies

32.1  General
For a variety of reasons, a claimant may choose to target parties other than the insured Member. See comments under 30.1. A Member may wish to protect certain individuals or corporations closely related to the Member to be covered by the same insurance as Joint Members or co-assureds under Rule 30.

32.2  Affiliated companies
A Joint Member and a co-assured are mentioned as such in the policy of insurance or in an addendum to an existing policy. They assume the rights and liabilities of the Member under that policy with the restrictions and limitations specified in Rule 30.

An affiliated company, however, is not mentioned in the Member’s policy of insurance. Its rights and obligations follow from the terms agreed between the Member and the Club and from the restrictions and limitations contained in this Rule.

An affiliated company should by definition be a company and not a private person. It should be affiliated to or associated with the Member, for instance by being under the same or associated ownership and control.

32.3  Extent of cover
An affiliated company is covered on such terms as may be agreed between the Member and the Club.

It follows from the second part of this Rule that the cover is limited to liabilities, costs or expenses which the Member would have incurred had the claim been pursued against him and which would have been compensated by the Club under these Rules.
The third part of the Rule limits the cover for an affiliated company to the sum to which the Member would be entitled to limit his liability under the applicable law on limitation of liability, had the registered owner of the entered ship been the sole Member.

The words "on such terms as may be agreed" imply that the Club may impose special conditions for the cover of an affiliated company including a limitation of cover.

The Club may charge an additional premium for such cover.
Rule 33 Membership of ITOPF

The Member of the Association shall become

(a) in respect of a tank ship, member of the International Tanker Owners Pollution Federation Limited (ITOPF)

(b) in respect of a non-tank ship, an associate of the ITOPF.

The Association shall arrange for such membership or associated status and pay the fees of ITOPF.

Comments on Rule 33 Membership of ITOPF

33.1 General

On 20 February 1997, the Tanker Owner Voluntary Agreement concerning Liability for Oil Pollution, TOVALOP was terminated. At the same time the other voluntary compensation agreement, CHRISTAL, ended. From now on, those who suffer oil spill damage resulting from a tanker accident must rely on the provisions of the relevant international compensation conventions. In May 1996 the 1992 CLC Convention entered into force, introducing considerably higher limitations than those under the 1969 CLC.

ITOPF was originally established to administer TOVALOP. For more than 25 years ITOPF developed a broad range of expertise and technical services in dealing with oil pollution around the world. When TOVALOP was terminated it became important to preserve this technical expertise and it was decided that ITOPF should continue to service the industry as an independent organisation. This means that shipowners and their P&I Clubs will continue to benefit greatly from ITOPF’s services.

33.2 Tankers and non-tankers

As from 20 February 1997, all tanker Members of the Association are automatically members of ITOPF. The Association will also pay the entry fee.

As a result of an increased number of oil spills from non-tankers (mainly bunker spills), ITOPF decided in November 1998 to include non-tanker operators as well, but only as associate members. The Association will pay the fees for non-tankers to ITOPF and they will have full access to ITOPF’s spill response service.
Rule 34 Small Tanker Oil Pollution Indemnification Agreement (STOPIA)

A Member insured in respect of a ship which is a “Relevant Ship” as defined in the “Small Tanker Oil Pollution Indemnification Agreement (STOPIA) shall, by virtue of entry with the Association, and unless the Association otherwise agrees in writing, become a party to STOPIA for the period of entry of that ship in the Association. In the event that the Member exercises his rights under STOPIA to withdraw from that agreement, and unless the Association has agreed in writing, there shall be no cover under Rule 6 in respect of such ship so long as the Member is not a party to STOPIA.

Comments on

Rule 34 Small Tanker Oil Pollution Indemnification Agreement (STOPIA)

34.1 General

The Small Tanker Oil Pollution Indemnification Agreement (STOPIA) took effect as from February 2006. STOPIA applies to pollution damage in States in which the 1992 Fund Convention is in force. It is a contract between owners of small tankers to increase on a voluntary basis the limitation amount applicable to the tanker under the 1992 Civil Liability Convention. STOPIA provides that all tankers will be considered a “Relevant Ship” if they are of 29,548 tons or less and are entered in one of the P&I Clubs which are Members of the International Group of P&I Clubs and/or reinsured through the pooling arrangements of the International Group. The effect of STOPIA is that the maximum amount of compensation payable by owners of all ships of 29,548 GT or less is SDR 20 million.

34.2 Extent of cover

For ships covered by STOPIA the Fund Convention will continue to be liable for pollution claims if the total amount of all claims for that ship exceeds the CLC limit. However the Fund would be entitled to indemnification by the owner of the difference between the ships CLC limit and SDR 20 million.

A Member insured in respect of a ship which is a “Relevant Ship” as above shall by virtue of entry in the Club become a party to STOPIA for the period of entry of that ship. If the Member decides to withdraw his ship from STOPIA there shall be no cover under Rule 6 for that ship. The Club provides an undertaking to the 1992 Fund covering Members liability under STOPIA.

STOPIA is similar to STOPIA apart from two substantial differences. Firstly, under TOPIA tanker owners undertake to indemnify the Supplementary Fund at 50% of the amount of any claim falling on the Supplementary Fund. Secondly TOPIA applies to all relevant tankers regardless of size.
Rule 35 Mortgaged ships

Where the entered ship is mortgaged to a third party, the cover afforded by the Association shall be extended to the mortgagee but shall not provide better rights than those of the Assured.

Where the mortgagee has notified the Association in writing of his interest in the entered ship, the Association may not without the written consent of the mortgagee:

(a) allow the Member to terminate the insurance,
(b) allow a substantial reduction of the cover afforded by the Association.

The Association may not terminate the insurance without at the same time giving notice thereof to the mortgagee.

35.1 General

Newbuildings and the purchase of ships are no longer self-financed. Money is lent from banks or other financial institutions against the mortgage of the ship. As the ship constitutes security for the loan, the lender of money has an insurable interest in the ship.

The most obvious interest is to have the ship insured for Hull & Machinery risks up to its full value. Should the ship be lost, the total loss compensation replaces the ship as security for the loan. This is achieved by the Loss Payable Clause in the Hull policy.

Under AV 2000 § 43, Hull insurance in The Swedish Club is also valid for the benefit of the mortgagee but does not provide more extensive rights for the mortgagee than for the assured.

It is also important for the mortgagee that the ship has and maintains P&I insurance on full terms. According to the International Convention on Maritime Liens and Mortgages or any similar domestic legislation, a number of important liabilities are protected by maritime liens which have a higher ranking priority than the mortgage on a sale of the ship at public auction.

Should such liabilities lack sufficient insurance cover, the corresponding part of the ship’s value is consumed to satisfy the claimant. The value of the ship as security for the mortgage is reduced accordingly and may even disappear altogether.

35.2 Cover of mortgagee’s interests

35.2.1 Cover under this Rule

The first part of this Rule states that when the entered ship is mortgaged, the cover afforded by the Club is extended to the mortgagee but will not provide him with better rights than the Member. The mortgagee is automatically and without any obligation imposed upon the
Member to notify the Club, insured under the Member’s cover. Thereby, the mortgagee is in the same position as the mortgagor.

The cover for the mortgagee is subject to the same exclusions and limitations as apply to the Member’s cover. The mortgagee’s position is dependent upon the Member’s/ mortgagor’s behaviour. If, for instance, Rule 11 Section 1 or any other exclusion of cover applies, the mortgagee is without cover and has no separate right(s) under these Rules.

35.2.2 Cover under a mortgagee’s indemnity insurance
It is possible to establish a separate and independent right under these Rules for a mortgagee through Mortgagee’s Indemnity Insurance. Upon request, such a cover can be provided by the Club.

This renders the insured mortgagee unaffected by any acts or omissions by the Member, which deprives him partly or fully of the cover under these Rules.

Mortgagee’s Indemnity Insurance is used to protect a mortgagee’s interests under Hull policies. For reasons explained under 35.1 above, a similar cover may also be justified for P&I risks.

35.3 Effect of pay-to-be-paid principle
As described under 35.1 above, it is in the mortgagee’s interest that claims that have a higher ranking priority than the ship’s mortgage are eliminated by payment under the P&I cover. It follows from Rule 2 (see comments under 2.10) that it is a condition for compensation under these Rules that the Member has paid the claim first. If the Member lacks the means to effect a settlement of a claim on account of insolvency and if the mortgagee’s position is threatened by a public sale of the ship to satisfy the claim, the Club may use its discretion not to insist upon the pay-to-be-paid principle and agree to settle the claim direct to the claimant. Such a payment would not include the deductible, which is uninsured according to Rule 2. It may also require the mortgagee to pay or to provide acceptable security for any unpaid premiums or other sums due from the Member to the Club, as the Club would be entitled to set-off the Member’s debts against the compensation under Rule 13.

35.4 Club protection of the mortgagee’s position
By notification in writing to the Club of his interest in the entered ship, the mortgagee may secure the co-operation of the Club to protect his position in two respects.

35.4.1 Mortgagee’s protection in relation to Member
According to item (a) of the second part of the Rule, the Club may not upon receipt of such a notification allow the Member to terminate the insurance in accordance with Rule 26 without the written consent of the mortgagee.

Furthermore, according to item (b), the Club may not allow the Member a substantial reduction of the cover without the written consent of the mortgagee. A substantial reduction of the cover could be the exclusion of certain vital risks such as crew or cargo liabilities. A large increase of deductibles uninsured according to Rule 2, or the introduction of a limitation of cover to a certain amount, would also constitute a substantial reduction of the cover.
35.4.2 Mortgagee’s protection in relation to the Club

According to the last part of the Rule, the Club may not terminate the insurance without giving notice to the mortgagee at the same time. This means that a written notice of termination under Rule 26 must be sent both to the Member and the mortgagee.

The times specified in Rule 26 for the notice of termination to become effective also apply in relation to the mortgagee. For the Club to hold back the effects of a notice of termination, the mortgagee may have to pay any premiums or other sums due or provide security acceptable to the Club by a date stipulated by the Club.
Rule 36 Surplus

The Association may decide partly or fully to refund surplus arising in a policy year. Such refund shall be distributed proportionally amongst Members on net premiums paid for that year.

Comments on
Rule 36 Surplus

36.1 General
As explained in comments under 22.1, premiums charged are calculated as accurately as possible to cover the Member’s obligations insured under these Rules and the Club’s operative costs for the relevant policy year. Should ends not meet, the Club may charge additional calls in accordance with Rule 23.

However, should a surplus arise for a policy year, it may be used to increase the Club’s general reserves as required by law, requested by the supervisory authorities or decided by the Board.

36.2 Refund of surplus
As and when the situation permits, the Club, through its Board, may decide to refund to the Members a surplus arising in a policy year partly or fully. Such a refund should be distributed to the Members proportionately on the net premiums paid for that policy year. "Net premium" means the premium less commissions, laid-up returns and other deductions, if any.

36.3 Set-off
According to Rule 13, the Club is entitled to set-off the refund of a surplus against unpaid premiums or other amounts due from the Member.

36.4 Who is entitled to a surplus refund?
The Rule states that a surplus refund should be distributed amongst Members. The definition of what constitutes a Member appears in Rule 1. See comments under 1.4.4.

A Member who has paid a release call under Rule 23 after termination or cesser is not entitled to a surplus for that year. See comments under 23.8. Nor is a Member entered for charterer’s risks under Rule 9 entitled to a surplus.
Appendix I, Rule 1     Interpretation
Appendix I, Rule 2     Recoverability of overspill claims
Appendix I, Rule 3     Payment of overspill claims
Appendix I, Rule 4     Overspill claims — expert determinations
Appendix I, Rule 5     Levying of overspill calls
Appendix I, Rule 6     Closing of policy years for overspill calls
Appendix I, Rule 7     Security for overspill calls on termination of cesser
For comments to Rules in Appendix I, please see Rule 24

Appendix II, Rule 1     Passengers and seamen
Appendix II, Rule 2     Consortium claims
For comments to Rules in Appendix II, please see Rule 3 Section 6 and Rule 9
Part Three: Appendices

The Appendices form part of the Rules for P&I Insurance 2012/13. In the P&I Rules & Exceptions some references have been made to various parts in the Appendices such as Rules 3, 9 and 24.
Appendix I, Rule 1 Interpretation

Interpretation

1.1 In these Rules the following words and expressions shall have the following meanings:

Convention Limit

In respect of a vessel, the limit of liability of the 7 of that vessel for claims (other than claims for loss of life or personal injury) at the Overspill Claim Date, calculated in accordance with Article 6 paragraph 1 (b) of the International Convention on Limitation of Liability for Maritime Claims 1976 (the "Convention") and converted from Special Drawing Rights into United States Dollars at the rate of exchange conclusively certified by the Association as being the rate prevailing on the Overspill Claim Date, provided that,

(a) where a vessel is entered for a proportion (the "relevant proportion") of its tonnage only, the Convention Limit shall be the relevant proportion of the limit of liability calculated and converted as aforesaid, and

(b) each vessel shall be deemed to be a seagoing ship to which the Convention applies, notwithstanding any provision in the Convention to the contrary.

Group Reinsurance Limit

The amount of the smallest claim (other than any claim arising in respect of oil pollution) incurred by the Association or by any other party to the Pooling Agreement which would exhaust the largest limit for any type of claim (other than a claim arising in respect of oil pollution) from time to time imposed in the Group General Excess Loss Contract.

Overspill Call

A call levied by the Association pursuant to Rule 5 for the purpose of providing funds to pay part of an Overspill Claim.

Overspill Claim

That part (if any) of a claim (other than a claim arising in respect of oil pollution) incurred by the Association or by any other party to the Pooling Agreement under the terms of entry of a vessel which exceeds or may exceed the Group Reinsurance Limit.

Overspill Claim Date

In relation to any Overspill Call, the time and date on which there occurred the incident or occurrence giving rise to the Overspill Claim in respect of which the Overspill Call is made or, if the Policy Year in which such incident or occurrence occurred has been closed in accordance with the provisions of Rules 6.1 and 6.2, noon UTC (Universal Time, Coordinated) on 20 August of the Policy Year in respect of which the Association makes a declaration under Rule 6.3.

1.2 All claims (other than claims arising in respect of oil pollution) incurred by the Association or by any other party to the Pooling Agreement under the entry of any one vessel arising from any one incident or occurrence including any claim in respect of liability for the removal or non-removal of any wreck shall be treated for the purposes of these Rules 1-8 as if they were one claim.

1.3 Any reference to a claim incurred by the Association or by any other party to the Pooling Agreement shall be deemed to include the costs and expenses associated therewith.
Appendix I, Rule 2 Recoverability of overspill claims

Recoverability of overspill claims

2.1 Without prejudice to any other applicable limit, any Overspill Claim incurred by the Association shall not be recoverable from the Association in excess of the aggregate of

(a) that part of the Overspill Claim which is eligible for pooling under the Pooling Agreement but which, under the terms of the Pooling Agreement, is to be borne by the Association; and

(b) the maximum amount that the Association is able to recover from the other parties to the Pooling Agreement as their contributions to the Overspill Claim.

2.2 The aggregate amount referred to in Rule 2.1 shall be reduced to the extent that the Association can evidence

(a) that costs have been properly incurred by it in collecting or seeking to collect

   (i) Overspill Calls levied to provide funds to pay that part of the Overspill Claim referred to in Rule 2.1 paragraph (a), or

   (ii) the amount referred to in Rule 2.1 paragraph (b); or

(b) that it is unable to collect an amount equal to that part of the Overspill Claim referred to in Rule 2.1 paragraph (a) which it had intended to pay out of the levy of Overspill Calls because any Overspill Calls so levied, or parts thereof, are not economically recoverable, provided that if, due to a change in circumstances, such amounts subsequently become economically recoverable, the aggregate amount referred to in Rule 2.1 shall be reinstated to that extent.

2.3 In evidencing the matters referred to in Rule 2.2 paragraph (b) the Association shall be required to show that

(a) it has levied Overspill Calls in respect of the Overspill Claim referred to in Rule 2.1 on all Members entered in the Association on the Overspill Claim Date in accordance with and in the maximum amounts permitted under Rule 5; and

(b) it has levied those Overspill Calls in a timely manner, has not released or otherwise waived a Member's obligation to pay those calls and has taken all reasonable steps to recover those calls.
Appendix I, Rule 3 Payment of overspill claims

Payment of overspill claims

3.1 The funds required to pay any Overspill Claim incurred by the Association shall be provided

(a) from such sums as the Association is able to recover from the other parties to the Pooling Agreement as their contributions to the Overspill Claim, and

(b) from such sums as the Association is able to recover from any special insurance which may, in the discretion of the Association, have been effected to protect the Association against the risk of payments of Overspill Claims, and

(c) from such proportion as the Association in its discretion determines of any sums standing to the credit of such Reserves as the Association may in its discretion have established, and

(d) by levying one or more Overspill Calls in accordance with Rule 5, irrespective of whether the Association has sought to recover or has recovered all or any of the sums referred to in Rule 3.1. paragraph (b) but provided the Association shall first have made a determination in accordance with Rule 3.1 paragraph (c), and

(e) from any interest accruing to the Association on any funds provided as aforesaid.

3.2 The funds required to pay such proportion of any Overspill Claim incurred by any other party to the Pooling Agreement which the Association is liable to contribute under the terms of the Pooling Agreement shall be provided in the manner specified in Rule 3.1 paragraphs (b)-(e).

3.3 To the extent that the Association intends to provide funds required to pay any Overspill Claim incurred by it in the manner specified in Rule 3.1 paragraph (d), the Association shall only be required to pay such Overspill Claim as and when such funds are received by it, provided that it can show from time to time that, in seeking to collect such funds, it has taken the steps referred to in Rule 2.3 paragraphs (a) and (b).
Appendix I, Rule 4 Overspill claims – expert determinations

Overspill claims - expert determinations

4.1 Any of the issues referred to in Rule 4.2 on which the Association and a Member cannot agree shall be referred to a panel (the “Panel”) constituted in accordance with arrangements established in the Pooling Agreement which, acting as a body of experts and not as an arbitration tribunal, shall determine the issue.

4.2 This Rule 4 shall apply to any issue of whether, for the purpose of applying any of Rules 2.2, 2.3 and 3.3 in relation to any Overspill Claim (the ”relevant Overspill Claim”)

(a) costs have been properly incurred in collecting or seeking to collect Overspill Calls, or

(b) any Overspill Call or part thereof is economically recoverable, or

(c) in seeking to collect the funds referred to in Rule 3.3, the Association has taken the steps referred to in that Rule.

4.3 If the Panel has not been constituted at a time when a Member wishes to refer an issue to it, the Association shall, on request by the Member, give a direction for the constitution of the Panel as required under the Pooling Agreement.

4.4 The Association may (and, on the direction of the Member, shall) give such direction as is required under the Pooling Agreement for the formal instruction of the Panel to investigate any issue and to give its determination as soon as reasonably practicable.

4.5 The Panel shall in its discretion decide what information, documents, evidence and submissions it requires in order to determine an issue and how to obtain these, and the Association and the Member shall cooperate fully with the Panel.

4.6 In determining any issue referred to it under this Rule 4 the Panel shall endeavour to follow the same procedures as it follows in determining issues arising in respect of the relevant Overspill Claim which are referred to it under the Pooling Agreement.

4.7 In determining an issue the members of the Panel

(a) shall rely on their own knowledge and expertise, and

(b) may rely on any information, documents, evidence or submission provided to it by the Association or the Member as the Panel sees fit.

4.8 If the three members of the Panel cannot agree on any matter, the view of the majority shall prevail.

4.9 The Panel shall not be required to give reasons for any determination.

4.10 The Panel’s determination shall be final and binding upon the Association and the Member (subject only to Rule 4.11) and there shall be no right of appeal from such determination.
4.11 If the Panel makes a determination on an issue referred to in Rule 4.2, paragraphs (b) or (c) the Association or the Member may refer the issue back to the Panel, notwithstanding Clause 4.10, if it considers that the position has materially changed since the Panel made its determination.

4.12 The costs of the Panel shall be paid by the Association.

4.13 Costs, indemnities and other sums payable to the Panel by the Association in relation to any Overspill Claim, whether the reference to the Panel has been made under this Rule 4 or under the Pooling Agreement, shall be deemed to be costs properly incurred by the Association in respect of that Overspill Claim for the purposes specified in Rule 2.2 paragraph (a).
Appendix I, Rule 5 Levying of overspill calls

Levying of overspill calls

5.1 If
(a) the Association shall at any time determine that funds are or may in future be required to pay part of an Overspill Claim (whether incurred by the Association or by any other party to the Pooling Agreement); and
(b) the Association shall have made a declaration under Rule 6.1 or 6.3 that a Policy Year shall remain open for the purpose of levying an Overspill Call or Calls in respect of that Overspill Claim,
the Association in its discretion, at any time or times after such declaration has been made, may levy one or more Overspill Calls in respect of that Overspill Claim in accordance with Rule 5.2.

5.2 The Association shall levy any such Overspill Call
(a) on all Members entered in the Association on the Overspill Claim Date in respect of vessels entered by them at that time, notwithstanding the fact that, if the Overspill Claim Date shall be in a Policy Year in respect of which the Association has made a declaration under Rule 6.3, any such vessel may not have been entered in the Association at the time the relevant incident or occurrence occurred, and
(b) at such percentage of the Convention Limit of each such vessel as the Association in its discretion shall decide.

5.3 An Overspill Call shall not be levied in respect of any vessel entered on the Overspill Claim Date with an overall limit of cover equal to or less than the Group Reinsurance Limit.

5.4 The Association shall not levy on any Member in respect of the entry of any one vessel an Overspill Call or Calls in respect of any one Overspill Claim exceeding in the aggregate two and one half percent (2 ½ %) of the Convention Limit of that vessel.

5.5 If at any time after the levying of an Overspill Call upon the Members entered in the Association in any Policy Year, it shall appear to the Association that the whole of such Overspill Call is unlikely to be required to meet the Overspill Claim in respect of which such Overspill Call was levied, the Association may decide to dispose of any excess which in the opinion of the Association is not so required in one or both of the following ways:
(a) by transferring the excess or any part thereof to the Reserve; or
(b) by returning the excess or any part thereof to those Members who have paid that Overspill Call in proportion to the payments made by them.
Appendix I, Rule 6 Closing of policy years for overspill calls

Closing of policy years for overspill calls

6.1 If at any time prior to the expiry of a period of thirty-six months from the commencement of a Policy Year (the “relevant Policy Year”), any of the parties to the Pooling Agreement sends a notice (an “Overspill Notice”) in accordance with the Pooling Agreement that an incident or occurrence has occurred in the relevant Policy Year which has given or at any time may give rise to an Overspill Claim, the Association shall as soon as practicable declare that the relevant Policy Year shall remain open for the purpose of levying an Overspill Call or Calls in respect of that Claim and the relevant Policy Year shall not be closed for the purpose of making an Overspill Call or Calls in respect of that claim until such date as the Association shall determine.

6.2 If at the expiry of the period of thirty-six months provided for in Rule 6.1, no Overspill Notice as therein provided for has been sent, the relevant Policy Year shall be closed automatically for the purpose of levying Overspill Calls only, whether or not closed for any other purposes, such closure to have effect from the date falling thirty-six months after the commencement of the relevant Policy Year.

6.3 If at any time after a Policy Year has been closed in accordance with the provisions of Rule 6.1 and 6.2, it appears to the Association that an incident or occurrence which occurred during such closed Policy Year may then or at any time in the future give rise to an Overspill Claim, the Association shall as soon as practicable declare that the earliest subsequent open Policy Year (not being a Policy Year in respect of which the Association has already made a declaration in accordance with Rule 6.1 or 6.3) shall remain open for the purpose of levying an Overspill Call or Calls in respect of that claim and such open Policy Year shall not be closed for the purpose of making an Overspill Call or Calls in respect of that claim until such date as the Association shall determine.

6.4 A Policy Year shall not be closed for the purpose of levying Overspill Calls save in accordance with this Rule 6.
Appendix I, Rule 7 Security for overspill calls on termination of cesser

Security for overspill calls on termination or cesser

7.1 If
(a) the Association makes a declaration in accordance with Rule 6.1 or 6.3 that a Policy Year shall remain open for the purpose of levying an Overspill Call or Calls, and
(b) a Member who is liable to pay any such Overspill Call or Calls as may be levied by the Association in accordance with Rule 5 ceases or has ceased to be insured by the Association for any reason, or the Association determines that the insurance of any such Member may cease

the Association may require such Member to provide to the Association by such date as the Association may determine (the “due date”) a guarantee or other security in respect of the Member’s estimated future liability for such Overspill Call or Calls, such guarantee or other security to be in such form and amount (the “guarantee amount”) and upon such terms as the Association in its discretion may deem to be appropriate in the circumstances.

7.2 Unless and until such guarantee or other security as is required by the Association has been provided by the Member, the Member shall not be entitled to recovery from the Association of any claims whatsoever and whenssoever arising in respect of any and all vessels entered in the Association for any Policy Year by him or on his behalf.

7.3 If such guarantee or other security is not provided by the Member to the Association by the due date, a sum equal to the guarantee amount shall be due and payable by the Member to the Association on the due date, and shall be retained by the Association as a security deposit on such terms as the Association in its discretion may deem to be appropriate in the circumstances.

7.4 The provision of a guarantee or other security as required by the Association (including a payment in accordance with Rule 7.3) shall in no way restrict or limit the Member’s liability to pay such Overspill Call or Calls as may be levied by the Association in accordance with Rule 5.

Rules & Exceptions
For comments, please see Rule 24
Appendix II, Rule 1 Passengers and seamen

Passengers and seamen
For the purpose of this rule and Rule 3 Section 5 in the Rules for P&I Insurance, and without prejudice to anything else contained in these Rules or in Rules for P&I Insurance, a “Passenger” shall mean a person carried onboard a ship under a contract of carriage or who, with the consent of the carrier, is accompanying a vehicle or live animals covered by a contract for the carriage of goods and a “Seaman” shall mean any other person onboard a ship who is not a Passenger.

Unless otherwise limited to a lesser sum, the Association’s aggregate liability arising under any one Member’s entry shall not exceed:
- USD 2 billion any one event in respect of liability to Passengers; and
- USD 3 billion any one event in respect of liability to Passengers and Seamen

Provided always that:
Where there is more than one Owner’s entry in respect of the same ship in the Association and/or in any other association which participates in the Pooling Agreement

(a) the aggregate of claims in respect of liability to Passengers recoverable from the Association and/or such other associations shall not exceed USD 2 billion any one event and the liability of the Association shall be limited to such proportion of that sum as the claim recoverable by such persons from the Association bears to the aggregate of all such claims otherwise recoverable from the Association and from all such associations;

(b) the aggregate of all claims in respect of liability to Passengers and Seamen recoverable from the Association and/or such other associations shall not exceed USD 3 billion any one event and the liability of the Association shall be limited:

(i) Where claims in respect of liability to Passengers have been limited to USD 2 billion in accordance with proviso (a) to such proportion of the balance of USD 1 billion as the claims recoverable by such persons in respect of liability to Seamen bears to the aggregate of all such claims otherwise recoverable from the Association and all such associations; and

(ii) in all other cases, to such proportion of USD 3 billion as the claims recoverable by such persons in respect of liability to Passengers and Seamen bears to the aggregate of all such claims otherwise recoverable from the Association and all such associations.
Appendix II, Rule 2 Consortium claims

Consortium claims

Definitions
For the purpose of Rule 9 in Rules for P&I Insurance the following words or expressions shall mean

Consortium Agreement: any arrangement under which a Member agrees with other parties to the reciprocal exchange or sharing of cargo space on the entered ship and consortium vessels.

Consortium Vessel: a ship or space thereon, not being the entered ship, employed to carry cargo under a consortium agreement.

Consortium Claim: a claim shall be a consortium claim where:
(a) it arises under a P&I entry of an insured ship; and
(b) it arises out of the carriage of cargo on a consortium vessel; and
(c) the Member and the operator of the consortium vessel are parties to a consortium agreement; and
(d) at the time of the entry of the Member in respect of consortium claims, the Member employs an insured vessel pursuant to that consortium agreement.

Limitation of cover
The aggregate of all claims recoverable from the Association and/or all other associations participating in the Pooling Agreement from any one consortium ship shall not exceed USD 350 million any one event.

Rules & Exceptions
For comments, please see Rule 3 Section 6 and Rule 9.
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