The Swedish Club

P&I Rules and Exceptions 2021

4th edition

P&I Rules and Exceptions 2021

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

Welcome to the fourth, fully revised edition of The Swedish Club's P&I Rules & Exceptions, containing all the information you need to understand the Club's Rules.

These guidelines are intended as a useful tool, helping to provide an in-depth understanding of the Rules for all who work in the field of P&I worldwide.

At the time of printing, this publication reflects the latest changes to our P&I Rules (as of 20 February 2021) and the most recent relevant legislation developments. Nevertheless, it is essential to be aware that, as part of the dynamic shipping industry, information on P&I Insurance can change. To be sure of the latest information about a specific topic, please do not hesitate to contact The Swedish Club directly or search for the latest news 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, June 2021

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Contents

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

Developments in shipping and navigation have, at best, reduced some of the risks inherent in the business. They have never succeeded in eliminating those risks entirely and, in some instances, they have created new risks of their own.

Those involved in shipping had striven to spread the risks and losses involved. Hull mutuals for sailing ships were formed in a number of shipping centres, particularly in England but also in Scandinavia. The advantage of these mutuals was that premiums could be kept low, since 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. They were, however, reluctant to include the "new-fangled" steam driven vessels, seeing them as significantly more of a risk.

This was the scenario when the decision was taken to found The Swedish Club: the time was ripe for the establishment of a steamship mutual.

A.2 How it started

A shipping boom towards the end of the nineteenth century resulted in the rapid expansion of Swedish shipowning and, by the early 1870s, in the investment in steam propulsion. On 7 December 1872 the first general meeting of the Sveriges Ångfartygs Assurans Förening – which later became known, internationally, as The Swedish Club - was held. Applications for 26 steamships to join this new hull mutual were received.

By the time the Club celebrated its 25th anniversary in 1898 some 275 ships were entered. 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.

In the end, in order to offer P&I cover to its hull mutual members, a new company with the catchy name "Sveriges Ångfartygs Assurans Förenings Delägares Ömsesidiga Försäkringsbolag Protection & Indemnity" was formed on 8 December 1910. In 1950 the two companies were amalgamated.

A.3 Operation of The Swedish Club

The English Clubs are often operated by separate professional management companies. Some of those Clubs are as well known by the name of their

managers as they are by their own names. The Swedish Club is a mutual insurance company formed under Swedish law and manages itself directly. A Board of Directors is elected by and from its Members. Under the control of the management are a number of departments handling P&I, Marine, Technical expertise and Underwriting.

The Board consists of members holding executive positions within the field of shipping, the Managing Director of the Club and two representatives of the employees. The Board 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 every June. At the AGM, each Member is entitled to one vote per SEK 100,000 of the sum total of his estimated premiums for the current fiscal year. Voting entitlement is regulated so that all Members present at the AGM have a reasonable and democratic say in matters and no large Member can take 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. A programme of social events and lectures accompanies the AGM itself.

A.4 Expansion of liabilities

Hull cover traditionally left Owners exposed to one quarter, or (as it is idiosyncratically expressed in the marine insurance sector) 1/4th, of their collision liability and also their liabilities in excess of the sum insured. Similarly, liability for personal injury and death of crew was not covered. To meet this exposure, Protection & Indemnity mutuals were developed.

In the early decades of P&I, with only limited regulation, it was easy enough for a carrier to exclude all liabilities. With increasing emigration to the US, Australia and New Zealand, and increasing global trade, came increased regulation. As regulation became more sophisticated, liabilities increased and the ability to exclude them diminished.

In 1846 the UK the Fatal Accident Act enabled dependants to claim for the death of relatives caused by the negligence of shipowners.

In 1870 it was held that the Owners of the “Westenhope”, which sank off South Africa, following a geographical deviation, were unable to rely on the contractual exceptions and limitations and, as a result, were liable for the full value of the cargo that had been lost with the ship.

In 1893 the US adopted the Harter Act regulating liability for cargo loss and damage and, following peace in Europe in 1918, the International Maritime Committee (CMI) met at The Hague in 1922 and set out a framework for

regulating cargo liabilities. These were adopted then as a convention in 1924 to become the Hague Rules. With the European empires still stretching round the globe, the Hague Rules applied almost universally.

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

Liability for oil pollution increased from virtually zero to such an extent as to become almost uninsurable. P&I cover had traditionally been unlimited but, in the light of this development, the International Group of P&I Clubs (the Group) introduced a limit of USD 1 billion (see comments under 6.2.2).

B. Protection & Indemnity Insurance

B.1 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 other's risks. Since it is a mutual, certain standards are expected of and imposed upon the Members.

A number of Rules dictate how a Member is expected to behave. Cover may be prejudiced where a Member fails to comply with the standard expected.

On the other hand, where a Member meets or exceeds the standard expected, this benefits the Club as a whole. Accordingly, The Swedish Club strongly promotes loss prevention measures and initiatives.

The concept of mutuality should be applied with diligence. It does not require a complete sharing of risk. Risks which are confined to certain jurisdictions or certain types of ships or cargo may be shared amongst those in that trade but not by the whole community of Members. That is still mutuality.

Exclusions of cover are not designed to punish the member against which they are applied, but to protect the membership as a whole.

The close reliance among members on each other's 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 expect the Club to administer the Rules consistently. This commentary aims to explain how the Rules apply in order to make them transparent.

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 set at a reasonable level and paid in accordance with the Rules. Premiums are based on the individual Member's loss records which are directly linked to and therefore influenced 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 a timely fashion.

The Club regards it as part of the mutual concept to share experience and information gained. This can be achieved through knowledge sharing and Loss Prevention publications.

B.2 The International Group

The International Group of P&I Clubs, in this commentary referred to as the Group, is formed of 13 P&I Clubs: two operated from Norway, one from Japan, the U.S.A. and Sweden, and the remaining eight based essentially in England.

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 its Members, particularly with regard to new conventions and legislation affecting the liabilities of shipowners and Charterers and their insurance. It carries out this function in relation to inter-governmental bodies such as the IMO and UNCTAD, as well as in relation to national governments. The Group has its secretariat in London.

B.3 Reinsurance

An important function of the Group is to provide reinsurance for 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.

By way of example, for the policy year 2021/2022 the reinsurance is arranged as follows.

Each club retains the first USD 10 million of each claim. This means that The Swedish Club will pay out of its own funds the first part of any claim of one of its Members. Part of the Club's retention is reinsured to mitigate the risk exposure.

Where the amount of a claim exceeds that retained portion, the payment is pooled between the Group clubs up to a fixed amount (currently USD 100 million). Pooling means that the Group clubs share the excess amount among themselves according to an agreed formula.

Beyond that amount, for the next portion of a claim 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, Charterers' risks and P&I war risks the cover is limited as described under 6.2.2., and 11.5.7 respectively.

Traditionally P&I cover was unlimited, but from 1996 the Group has applied a global limit based on a formula referring to all the vessels entered. The limit was further reduced in 1998. The overall cover afforded by the Association is, unless otherwise stated in the policy or in the Rules, limited to a maximum contribution of 2.5% of each entered vessel based on the International Convention on Limitation of Liability for Maritime Claims 1976 and its protocols.

Should payment of a claim exceed USD 3.1 billion, the overspill is again referred back to the Clubs for pooling. In the event of such an overspill claim, the Club may have to levy an overspill call. Rule 24 then applies.

B.4 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 it is among the Members of the individual clubs.

Uniformity of the rules of the Group clubs is, therefore, necessary. That does not mean that the rules must be 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 rules of the Group clubs 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 2021.

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

Rules for P&I Insurance 2021/2022

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 bareboat 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.

Commentary

Rule 1 Definitions of rules and language

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 this commentary.This commentary does not form part of the Rules. It is for for guidance only. Even if the commentary is supposed to reflect the Club's understanding of the Rules, it can neither extend nor reduce the cover as defined in the Rules. Nor can it affect the absolute discretion to be exercised by the Club through its Board under Rule 19, the Omnibus Rule, or elsewhere.

The commentary 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 commentary forms part of the Club's loss prevention program. It has been drafted for the convenience of Members to enhance the understanding and purpose of the Rules and the cover they provide. It should constitute a tool for Members to avoid liabilities arising and, when liabilities do arise, to reduce the consequences.

The commentary is 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 (contractors), 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 land based, such as superintendents and repair teams.

1.4.2 Ship

According to our licence and our Articles of Association, 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, otherwise 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 commentary.

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 Bareboat 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 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 it is transmitted.

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 relationship between P&I and Hull insurance is explained in Rule 11, Section 6.

Rules for P&I Insurance 2021/2022

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 shall have the burden of proving that any claim against the Association results from a risk covered by the Rules.

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

The Association will process the Member's employees' and representatives' personal data in accordance with applicable data protection legislation and the Association's integrity policy. The Member undertakes to inform its employees and representatives of the Association's processing of their personal data and that the Member will transfer personal data to the Association.

Commentary

Rule 2 Nature of cover

2.1 General

This Rule sets out the nature and extent of the cover provided.

2.2 Rule wording constitutes framework of cover

The first paragraph 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.

In line with Swedish law, the Member has the burden of proving that a claim is covered.

2.3 Cover is for liabilities

The second paragraph 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 judgment or arbitrational award. It is enough that a legal evaluation of all known facts results in the conclusion that the Member is likely to be found liable or that possibility cannot be excluded. These decisions should be made by the Club, which has the responsibility for ensuring that payments are made only for risks covered by 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 its handling of the claims not to harm those relations.

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 in negligence (in tort), on specific laws (statutory or regulatory) or in contract. The cover is for those liabilities which the Member has no legal means of avoiding. If liabilities are taken on unnecessarily, say, for commercial reasons, such risks should not necessarily be shared by the Members of the Club. This is in line with 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 overarching principle is that the Member is expected to act as a "prudent uninsured". Having insurance should not be a reason to act imprudently. The member should act prudently, at all times, firstly to avoid and secondly to minimise exposure to costs, liabilities and expenses which may be covered by the insurance.

The word "liabilities" implies that it should be in relation to third parties. No one is liable to compensate himself. Losses sustained by 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 the Member

The second paragraph of the Rule makes it clear that it is only the Member who is covered. No party other than the Member is entitled to compensation under these Rules. The definition of a Member is stated 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 of P&I Insurance that the Member is covered for his servants' negligence but not necessarily for his own negligence (see comments under 11.1.3). However, his servants do not enjoy any cover of their own since they are not Members. In certain instances, however, the servants can be brought under the Member's liability exclusion umbrella by a Himalaya clause (see comments under 4.1.7).

The cover for the Member does not generally include claims filed against the Member's directors and officers personally since the P&I cover should not be viewed as a D&O cover for directors and employees of a Member. Instead, the

concept of affiliation or association should derive from an ownership interest in the entered vessel. In terms of companies with many shareholders, cover extends to persons having a controlling interest and/or operational involvement in relation to the vessel.

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 of direct action by laws not related to any convention. Claimants bringing a direct action against the Club should not be entitled to better rights than the Member. This view, however, is not unchallenged. For further comments on direct action, see under 2.9.

2.5 Cover is restricted to owner, operator and Bareboat 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 (non-shipowning) capacities, for example 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 paragraph of the Rule, the cover is confined to those liabilities which the Member incurs as owner, operator or Bareboat Charterer of the entered ship. Cover for other charterers such as Time or Voyage Charterers is provided separately and laid down in a separate set of rules.

2.6 Cover is restricted to operational risks

The second paragraph 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, navigating, 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 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. “Operation of ship” means the physical operation, such as the acts of loading, stowing and discharging cargo, navigating the vessel and caring for the cargo while it is on board the vessel, rather than the commercial aspects for which those activities are performed (such as the earning of hire or freight for profit).

This is emphasised by the words ”in direct connection with” in the second part of the clause. Different expressions may be used in the Rules to describe the requirement of a direct causal connection between the event and the liabilities, costs or expenses incurred by the Member 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 a direct causal connection 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 indirect consequential losses which are not covered under these Rules, the Member should contract on terms which expressly exclude liability for such losses in bills of lading, 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 paragraph 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.

In some cases, however, considerable time may elapse between the event and the liability. For example: a pipe passing through the hold is fractured or breaks but this does cause damage immediately; it only causes damage when it is filled with water 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 may be impossible to find out when and why it disappeared.

There can be a sequence of events, each of which impose separate liabilities. For example: 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 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 paragraph 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. In 1964, a legal right of direct action was introduced by the Paris Convention in respect of liabilities for nuclear damage. In 1969, the International Convention on Civil Liability for Oil Pollution Damage 1969 (protocol 1992), made it a mandatory obligation for owners of ships registered in a convention 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. As of 2019, the following additional conventions which provide for direct actions against clubs are in force: The International Convention on Civil Liability for Bunker Oil Pollution (2001), The Athens Convention relating to the carriage of Passengers and their luggage by Sea 1974 and the Protocol of 2002 (including the equivalent Regulation (EC) No. 392/2009), The Maritime Labour Convention (2006), and The Nairobi International Convention on the Removal of Wrecks (2007). One common denominator is that these conventions contain a certification requirement which means that an approved insurer – of which Group clubs are one – must provide a “blue card” to the flag state who in turn will issue a certificate confirming there is financial security for liabilities under the relevant convention. The certificate should be carried on board. Further information about certificates under the 1969 Convention can be found under 6.1.3.1.7.

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. Under Swedish law direct action is only possible regarding liability insurance which is obligatory by law, or if the insured has been declared bankrupt. The Club needs the co-operation of the Member or of his trustee in bankruptcy or liquidator or administrator to put up a defence against such claims. It follows from Rule 10 Section 4 that the Member (or his successor) has an obligation to assist the Club in this respect.

Some states in the U.S.A., 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 Third Parties (Rights Against Insurers) Act of 1930. However, the position has changed to a certain extent pursuant to the 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 final or at least reasonably appear to be 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 Charterers' Liability 2.2) before applying to the Club for compensation of his net unrecoverable loss. Only when reasonable efforts appear to be fruitless may the Club compensate the Member's loss and be subrogated to his recovery rights under the charterparty through the application of Rule 14. See comments under 14.2-3.

A Member can suffer a provable loss by a claimant either withholding the claim amount from freight payments, or offsetting it against other sums due to the Member. Any such conduct 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 recover 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 of the claim against freight should be legally challenged. If the set-off is in respect of a claim which is likely to be covered under the 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 reasonably appears to be, or is, final and that it refers to a liability covered under the Rules.

As appears from the third paragraph 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 settlement of a large claim 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 (as amended in 2012). 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 pollution. 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 3.5.16.

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, which is known as 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 by the International Monetary Fund 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

2.11.4.1 1996 Protocol to amend the 1976 Limitation Convention

The 1996 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 1996 Protocol, the limit was increased to SDR 175,000 per passenger with no upper limit. Furthermore, the limit has to be applied to the number of passengers the ship is authorized to carry according to the ship's certificate and not to the number of passengers actually on board.

Until the 2012 increase enters into force (see below), the global limitation amounts under the 1996 Protocol remain as follows:

Tonnage	Loss of Life/Personal Injury	Property
- 2.000	SDR 2 million	SDR 1 million
2.001 - 30.000	+ SDR 800	+ SDR 400
30.001- 70.000	+ SDR 600	+ SDR 300
70.001 -	+ SDR 400	+ SDR 200

2.11.4.2 2012 increase in the 1996 Protocol global limitation amounts

In 2012 an increase in the global limitation amounts adopted by the 1996 Protocol was initiated by IMO member states through the tacit acceptance procedure, a simplified method for adopting new limits under the LLMC. An increase of 51% was agreed as reflecting the changes in monetary values since the 1996 Protocol limits were set. The new global limitation amounts replaced the limits set in the 1996 Protocol in June 2015 and are as follows. They apply to all claims other than passenger claims as follows:

Tonnage	Loss of Life/Personal Injury	Property
- 2.000	SDR 3.02 million	SDR 1.51 million
2.001 - 30.000	+ SDR 1,208	+ SDR 604
30.001- 70.000	+ SDR 906	+ SDR 453
70.001 -	+ SDR 604	+ SDR 302

2.11.5 Limitation Funds

See comments under 12.3.7.

2.11.6 Direct action to circumvent limitation

The fifth paragraph 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 to that principle insofar as certain categories of Joint Members are concerned (see comments under 30.2.2.9).

Affiliated Charterers have a separate limit of USD 350 million (see comments under 30.4.3).

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 high risk undertaking. Limitation of liability will encourage development of commercial shipping and make it possible to effect liability insurance at reasonable cost. 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 (USD 3.1 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 P&I cover is not self-evident. The escalating accumulation of legal liabilities feeds an ongoing discussion as to which level is the proper one for P&I 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 per accident or event in respect of oil pollution. Furthermore, the cover for passengers and seamen is capped at USD 2 billion and USD 3 billion respectively, see Appendix II Rule 1.

2.12 Cover does not include the deductible

The fourth paragraph 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 Member is required to pay the deductible to the Club when security is posted.

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 sixth paragraph 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. The Articles of Association are available on the Club's website and they are also attached to the Rule book.

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, may 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 seventh paragraph provides that 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. By way of example, when EU and USA issued sanctions against Iran in 2010, those sanctions targeted insurance companies that covered vessels engaged in shipping Iranian petroleum products. Sanctions or prohibitions can be directed against the Club as an insurer or reinsurer of an entered ship and can expose the Club to very high fines. In such a situation the Club must have the possibility to adjust the Rules so that it does not provide unlawful insurance cover. The purpose of the Rule is to protect the assets of the Club for the common interest of all Members entered in the Club. It should be noted that the Rule is not limited to sanctions against Iran but instead it can apply to any sanction or prohibition imposed by any state or organisation. Further comments about sanctions and insurance cover can be found under 11.4.1.

It should be noted that that the Club may issue general or particular regulations according to Rule 10 Section 3. Such regulations may also affect the scope of cover during the currency of a policy year, see comments under 10.3.1.

2.15 Personal data

The last paragraph concerns the Club's handling of personal data. The provision follows from obligations under the EU's General Data Protection Regulation which is mandatory law in Sweden. The paragraph serves to inform Members that the Club handles personal data according to its integrity policy which can be found on the Club's website. The Club has legitimate interests to handle personal data in order to fulfil its obligations under the insurance contract. The Member, on the other hand, has an important obligation to inform its employees and representatives that their personal data can be transferred to the Club and handled in accordance with its policy.

CHAPTER II RISKS COVERED

Rules for P&I Insurance 2021/2022

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 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.

(e) 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

(a) 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 provided always that the seaman or dependent has no enforceable right of recovery against any other party and would otherwise be uncompensated, the Association shall discharge or pay such claim on the Member's behalf directly to such seaman or dependent thereof.

(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 termination 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 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. 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) under a separate contract which 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
Additional costs and expenses for fuel, any extra insurance, overtime, stores, provisions and port charges attributable solely to a diversion, in excess of those which would have been incurred but for the diversion, reasonably undertaken for the purpose of saving persons at sea or 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.

Commentary

Rule 3 Liabilities in respect of persons

In relation to the handling of claims referring to persons it is essential to observe that the time bar for claims filed against a Member will vary not only subject to the category of person covered under this Rule but also subject to the jurisdiction in which a claim is filed. The Club will ensure that all measures are taken to protect the best interests of the Member and it is accordingly important that the Club is notified of all claims and potential liabilities covered under the insurance.

General Data Protection Regulation, GDPR
The GDPR is a set of EU laws that came into effect on 25 May 2018 with the aim to harmonize data privacy laws across Europe, protect and empower the data privacy of all EU citizens. Similar legislation is in force in many other jurisdictions. Measures have been taken by the Club to ensure that the GDPR is complied with and one such action is to avoid naming the individual on whose behalf a claim is handled both in the heading of the case but also in correspondence. Particular caution has to be taken in respect of medical records and other information enabling the identification of and sensitive information about the person involved.

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 comments on crew liabilities

This section 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 crew member 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 an area where close co-operation between the Member and the Club can prevent and limit exposure as well as rising insurance costs.

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 contractually agreed to operate the catering service. Unless the 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 ride on 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, crew members should be contractually obliged to serve on the entered ship. Such contracts could be either individual 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 section is for the liabilities which a Member may incur under any such approved crew contract or 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 applicable to the contract of employment or determined in accordance with the law of the flag state.

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 crew members are proceeding to or from the entered ship. The reason for this is that the period of employment usually starts when the crew member 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 crew member 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 crew member 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 crew member 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 is subrogated to the Member's right of 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 long term basis, the Club may agree to extend the cover to periods when crew members are not serving on board the ship. Additional premium may be charged.

In all situations where liabilities arise in relation to crew members outside the ship, the Member must be able to prove that the crew member was contractually employed to serve on the entered ship.

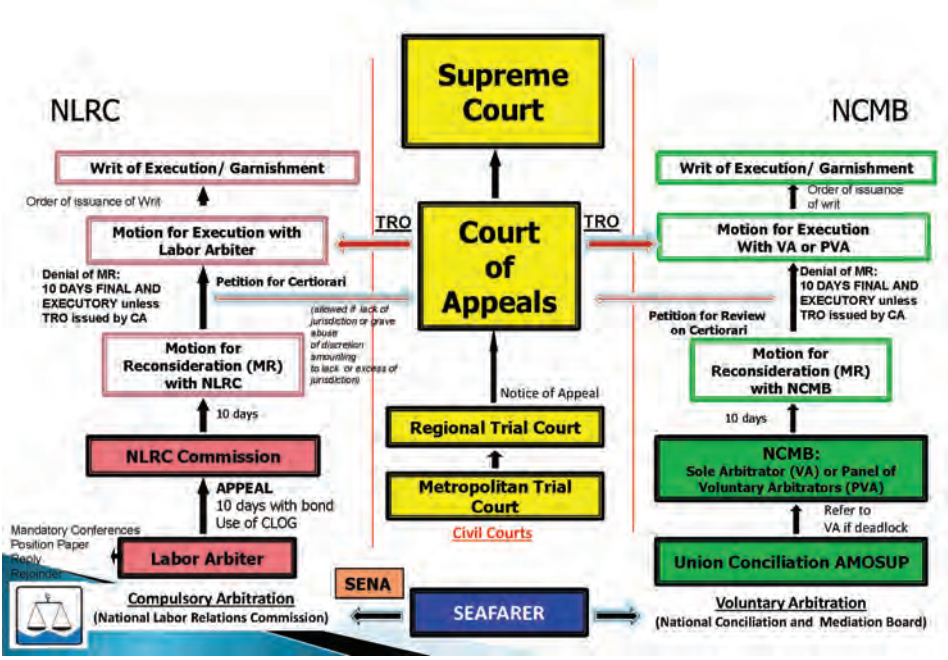
3.1.1.5 Handling of crew claims

3.1.1.5.1 General handling of crew claims

Any case under this section 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 which arise and to exercise the necessary control of medical treatment provided and related costs. For cases arising, the Club will conduct the necessary investigations to establish 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 crew member, his estate, unions or media which could prejudice the result of such negotiations. Settlement should only be made against a properly drafted release, thereby preventing further claims from being made against the Member.

3.1.1.5.2 Filipino Crew Claims

The Philippines is the world's main supplier of seafarers and as a result many claims are brought in that jurisdiction both for injuries and illnesses. There are special concerns relating to Filipino crew claims and it is essential to observe the specifics of the handling of those claims in order not to prejudice the position of the Member or the Club. The below is only general advice and the Club should be consulted directly in respect of all specific claims. The Club will assist directly or through its local correspondents.



As noted in the above flowchart there are two parallel arbitration systems: the NLRC (National Labor Relations Commission), referred to as "compulsory arbitration"; and the NCMB (National Conciliation and Mediation Board), referred to as "voluntary arbitration". The POEA contract stipulates that if a collective bargaining agreement, "CBA", has been entered into, disputes should be submitted to the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators, i.e. the NCMB.

Three important points to note when handling Filipino crew claims:

(i) the requirement that a crew member has to report any physical or psychological incapacity to the manning agent within three working days of repatriation and failure to do so may result in benefits under the POEA contract being forfeited;

(ii) where the findings of the medical assessments differ, a third doctor is appointed (jointly by the crew member and the employer) whose assessment is final and binding.

(iii) it is most important to monitor and observe the 120 /240 Day Rule in order not to increase the exposure and liability of the Member or the Club.

In principle the 120/240 Day Rule means that a crew member unable to work for more than 120 days is by default considered permanently and totally disabled. As of 2008 the 120 days can be extended to 240 days if medical justification is

provided by the company-designated physician, "CDP", subject to certain criteria being met: there has to be a clear declaration that further treatment is required beyond 120 days; and full disclosure has to be given to the crew member in respect of his final assessment, medical condition and extended treatments. In 2010 the POEA Standard Employment Contract was amended to state that disability shall not be determined by the number of days that the crew member was under treatment but by the schedule of disability in the relevant contract. In any event, in spite of such amendment, the 120/240 Day Rule must be closely monitored.

In conclusion, it is important that the Club is advised of all relevant cases of medical treatment provided to Filipino crew members in order for the Club, through its correspondents, to monitor treatment at the 30th, 60th and 90th day after the date of injury or date of diagnosis of an illness. This is to make certain that an interim assessment and interim disability grading is conducted and sufficiently justified before the 120th day and that a final disability grading is assessed and confirmed before the 240th day. Medical treatment should not be provided beyond the 240th day nor should treatment be stopped prior to the 120th day without consulting the Club to avoid the risk of liability and exposure being unnecessarily incurred beyond that covered under P&I Insurance.

Because decisions rendered by the NLRC and the NCMB are final and executory after a denial of a Motion for Reconsideration, unless a temporary restraining order ("TRO") is issued by the Court of Appeals, execution and garnishment are a major problem under Philippine legislation. This is particularly so because the Member and his manning agent are jointly and severally liable. Since restitution does not work in practice, the Group is together with local and foreign interests promoting the establishment of an escrow regime which would solve some of the major concerns encountered with Filipino crew claims.

Pre-Employment Medical Examinations, "PEME"
To come to terms with and minimise the risk of crew members being employed who are neither psychically nor mentally fit to serve on board a vessel the Club introduced an enhanced PEME scheme in 2010 as a service to its Members to facilitate proper medical examinations beyond that required by local authorities and national legislation.

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 crew member 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 for extra insurance is paid by the shipowner, any payment under that insurance to or on behalf of the crew member 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 crew member 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

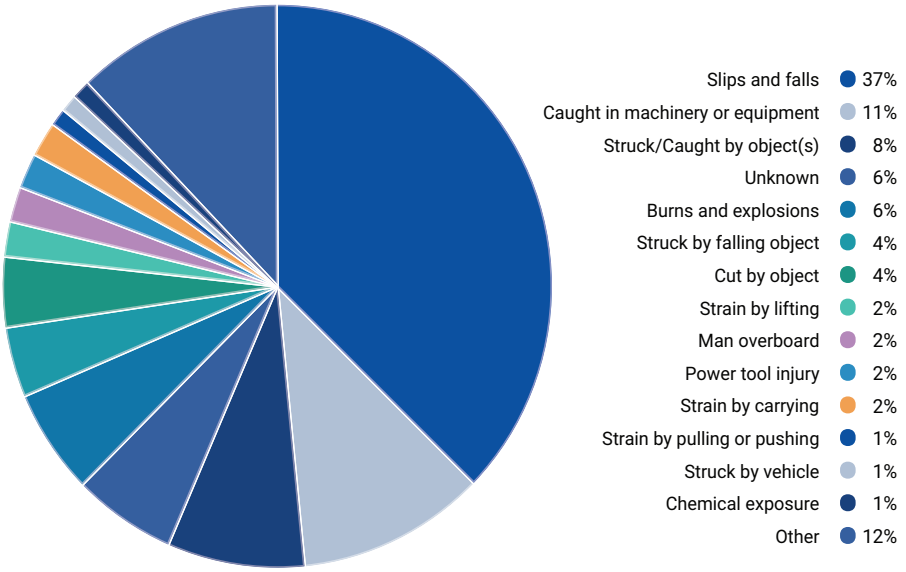
Under item (f) of this section there is cover for Common Law liabilities incurred by the Member in relation to a crew member. A Member can either insure all risks listed in this section or restrict the cover to the non-contractual obligations under item (f). The reduced cover under the latter alternative means that the Member remains self-insured for all his contractual obligations. Any agreed exclusions of liability under this section should appear as special conditions in the insurance policy (see the comments under 20.3). 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 judgment, 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 crew member for injuries or to his estate if he dies. These amounts are sometimes specified in the crew contracts or follow from national legislation 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 without or with only reduced compensation if he fails to obtain the Club's prior approval of the contractual terms. Upon request the Club can advise Members of the compensation amounts and other social benefits which follow from applicable domestic legislation.

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.

Causes of injury to crew
No of claims 2015-2019



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, statute or Common Law make the shipowner liable to pay a variety of costs to care for a crew member 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 crew member contributed to the condition by negligence, the extent of the shipowner's obligations may be reduced in proportion to the crew member's share of responsibility.

Item (b) of this section provides cover for many of the shipowner's obligations. The section 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 the equal treatment of Members. Therefore, some guidelines and examples are given below.

3.1.3.2 Legal obligation to cure

Cure is generally the obligation to provide necessary medical care and services to sick or injured crew members. Failure to comply with that obligation may

impose large liabilities upon a Member and this may include punitive damages and liabilities beyond the scope of P&I cover.

The legal obligation to provide medical care is often limited to a certain number of months. The need for care 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 crew member as soon as declared medically fit to travel.

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

The Club does not have a 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 medical advice. Preferably, such advice should be reconfirmed by the medical examination of an independent doctor appointed by the Club's local correspondent. It is essential that the Club or its correspondent is promptly advised to provide assistance in finding the best medical facility based on the merits of the specific case.

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.A., 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 crew member to hospital. The Member or the local ship agent should, therefore, inform the Club or its correspondent as soon as possible.

Hospitals may require a guarantee for the costs before accepting a crew member as a patient. In such a case the Club should be contacted as a matter of urgency.

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 crew member who has signed off the ship on account of injury or illness. The maintenance is an agreed daily amount to compensate the crew member 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 HIV

A crew member infected with HIV may constitute a potential risk for the Member. It would then seem reasonable and even prudent that an HIV test be made a routine part of any standard recruitment procedure, always provided that it is not in violation of applicable legislation and that the person's written consent to the testing is obtained.

Some countries may require crew members to present an HIV clearance certificate before being allowed to go ashore. The costs of obtaining such certificates are not compensated.

3.1.3.6.3 Drug and alcohol policy

Consumption of alcohol or other drugs on board ships causes damage and affects liability. Charterers of tankers and other ships carrying pollutant cargoes, therefore, often request clauses to be inserted in charterparties, according to which the Owner assumes an obligation to prevent or detect such consumption and becomes liable for any loss or damage that arises in spite of this. There are several such clauses in the market and Members may contact the Club for assistance.

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 can assist Members to obtain a copy of the OCIMF guidelines. The Club's recommendation is to only accept such a clause where the Member is confident it can show that such a written company policy exists and has been implemented on board the Member's ship(s). Preferably, the policy should take into account the individual features

of the service operated, as well as any obligations or restrictions regarding the testing of crew members for drugs or alcohol routinely or at random pursuant to 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 under P&I Insurance.

3.1.4 Asbestosis, industrial deafness and other vessel-related long-term illnesses

3.1.4.1 General comments on working environment-related claims

Claims may be filed for long term injury or illness related to working on board vessels. Such claims may be for exposure to asbestos in engine rooms or cargo holds, occupational noise-induced hearing loss, vibration white finger, poisoning by carbon monoxide from exhaust fumes in engine rooms or from equipment used to discharge cargo from the holds or by inhalation of welding rod fumes.

Asbestosis claims are mainly filed in the U.S.A., 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 such claims.

The claims may be filed by or on behalf of crew members. The Member's liability, if any, is covered under this section. 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

Exposure to the source of an illness may take place over a considerable period before it ultimately manifests itself. A good example of this is asbestosis. As a result, the exposure may occur during service on board a number of different ships. Claims are, therefore, generally filed against every shipowner on whose ships the crew member or longshoreman has served and over which jurisdiction can be obtained. When claims are filed against several shipowners and the claimant succeeds, he may recover judgment for the whole of his loss against any one or more of the defendants, if their liability is held to be 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 and will be handled by the respective P&I Club 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 is 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 judgments which could seriously damage the interests of the Club and its members.

When a claim of this nature has been filed so late in the day 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 crew members 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 unless otherwise approved by the Club.

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 at economy class rates, 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 air ambulance requires the advance approval of the Club which can assist in making suitable arrangements.

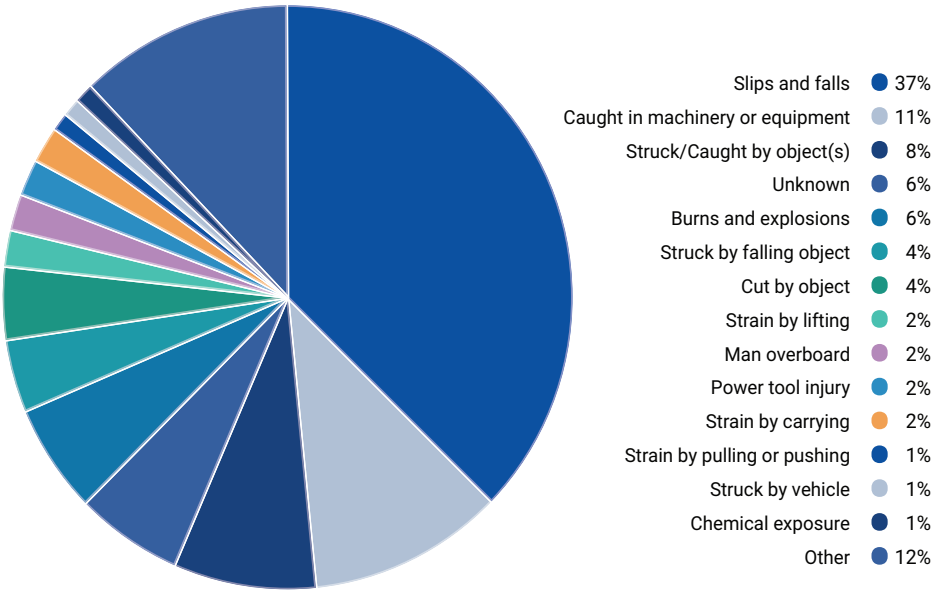
3.1.5.2 Escort

Costs for an escort by a nurse or doctor are compensated if prescribed for medical reasons. It may be preferable to fly out escorts from the crew member'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 and has a network of medical practitioners for that purpose.

Costs for relatives to visit a sick or injured crew member 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.

Known causes of illness

No of claims 2015-2019



3.1.6 Funeral costs

3.1.6.1 Funeral costs covered

The word “funeral” under item (b) means more than disposal of the body at the place where death occurred or where the body was taken off the ship. In some countries with a tropical climate, disposal 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 ashes or the body are covered. Cover includes the sending home of the personal belongings of the deceased.

The funeral costs compensated are those which are necessary. As a rule, a Member will 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 crew members. 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, injured or deceased crew member, the costs are covered under item (c) of this section. "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 crew members already serving on board.

The sending out of a substitute must be linked to the sickness, injury or death of a named crew member. 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 crew member 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 remain the Member's running costs and are not compensated.

Costs necessarily incurred to find a substitute, for instance fees charged by crewing agencies, are generally compensated as are costs such as costs incurred in obtaining a VISA required for the service on board.

The costs of economy class tickets at reduced fare price, if available, are compensated. The cover includes costs for maintenance and accommodation but not for working gear, PEME, flag state certificates, national certificates or pre-departure orientation seminars which are all considered operational costs.

The substitute may not necessarily be sent to the port where the replaced crew member fell ill, was injured or died. Cover is provided to send only one substitute per crew member. If a temporary replacement is subsequently followed by a permanent replacement, only the costs of bringing one of them will be reimbursed. That would ordinarily be the first substitute but the Club's discretion is exercised on a case by case basis depending on the required rank of the substitute but also ship safety regulations.

3.1.8 Relatives of crew members

3.1.8.1 Status of crew relatives

A crew member's relative does not qualify as crew under the definition in Rule 1 (see comments under 1.4.1), as there is no obligation 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 crew members in the sense of these Rules.

A relative of a crew member is treated as being on board the ship to provide social company to a crew member, not for the purpose of carriage. Therefore, a relative is not a passenger under the definition in the Athens Convention (see comments under 3.5.2). Still, it cannot be excluded that in some jurisdictions relatives on board may be legally considered to qualify as passengers. Where a Member becomes liable under legislation applicable to passengers, he is covered under Rule 3 Section 5.

Under these Rules, a crew relative is considered to be an "other person" under Rule 3 Section 7, and liabilities for injury, illness or death of a relative, for example due to negligence (in tort), other than as a passenger is thus covered under Rule 3 Section 7.

3.1.8.2 Member's precautionary measures

3.1.8.2.1 Application to Stay On Board

The Member may wish to make it a condition for allowing a relative or other person on board that an Application to Stay On Board is signed in which the Member's obligations are reduced or excluded so far as may be permitted by law. The terms of an Application to Stay On Board may be set aside if they are in violation of compulsory legislation or there is a legitimate claim caused by fault or negligence on behalf of the vessel. Therefore, there is no requirement from the Club that an Application to Stay On Board must be signed. However, it is strongly recommended since it ensures that the applicant takes out adequate personal insurance cover. The Club can supply a suitable text on request.

3.1.8.2.2 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 orders an injured or sick person requires urgent medical care ashore. The cover is limited to the additional costs of the diversion. Rule 11 Section 2 (j) excludes compensation for loss of time or hire.

3.1.9 Repatriation of crew after total loss, CTL or major casualties

Following the total loss or Constructive Total Loss, "CTL", of the entered ship or after a major casualty, the crew may have to be repatriated. The costs are covered under item (e) of this section. 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 tickets at reduced fare, if available.

The cover includes necessary maintenance and accommodation during the repatriation.

Crew members may be required to remain in attendance to supervise repairs or attend court hearings. Increased costs caused thereby are generally compensated under the Hull policy.

Costs of repatriating the crew after an 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 crew member is entitled by contract or law, a crew member 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 section.

A Member may limit its 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 "others", including but not limited 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 qualifying seafarer, known as a "Jones Act" seaman, a cause of action against the shipowner for injuries or death sustained in the course of their employment. A crew member will qualify as a "Jones Act" seaman if they spend 30 percent or more of their time in the service of a vessel on navigable waters. 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 awarding 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. Preservation of evidence and information at the time of an incident should therefore be given high priority. According to Rule 8 Section 1 the Member will be compensated by the Club for the defence costs and for the 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 crew members 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 of crew members, passengers and/ or longshoremen caused by a fire on board.

The United State Supreme Court has issued several recent opinions which address various issues pertaining to class actions and the legal landscape in this area of the law is expected to continue to evolve with the expectation that the courts will restrict these actions based on limitations of personal jurisdiction.

There have been relatively few U.S class actions involving shipping, although the cruise industry has been a target in at least one such action, and there was also an unsuccessful class action against several car carriers for alleged antitrust violations which was dismissed due to the pre-emptive effect of the U.S. Shipping Act 1984.

There may be similar types of consolidated actions under the procedural rules of jurisdictions other than the U.S. The Club and its lawyers will handle 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 interest to oppose or accept a motion for class action.

3.1.13 Repatriation under The Maritime Labour Convention 2006

The ILO Maritime Labour Convention ("MLC") entered into force on 20 August 2013 with amendments of 2014 in force on 18 January 2017. Appendix II Rule 2 Maritime Labour Convention (2006) Extension Clause refers to liabilities for repatriation of crew under the MLC that are not covered elsewhere under the Rules, namely in the event of (1) the shipowner not being able to fulfil their legal or contractual obligations by reason of insolvency or any other similar reason, (2) the seafarer not giving consent to go to a defined war zone or (3)

the seafarer's employment being terminated in accordance with an industrial award or collective agreement, or termination of employment for any other similar reason. Obligations met are not poolable but instead limited to the Club's retention in the Group pool. Payment is provided on the member's behalf and the Club is to be reimbursed in full for any claim paid. The pay-to-be-paid principle does not apply, nor do certain policy defences.

Section 2 Wages - crew

3.2.1 General comments 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 crew member or wages to his estate if he dies. The cover for such payments is defined in this section.

3.2.2 Crew contract must be approved

A crew contract often specifies the extent of the wages to be paid and the period during 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 help the Member avoid unusually burdensome terms but also in line with the concept of mutuality.

3.2.3 Extent of cover

The wages to be compensated under this section are those the Member is obliged to pay for under the terms of the contract of employment on account of illness, injury or death. When applying for compensation, the Member should present a log extract showing when and for what reason the crew member signed off. A copy of the monthly wages account should be submitted to prove the extent and nature of wages paid.

Overtime wages are not compensated whilst the arrival on board of a substitute is awaited for a crew member who has signed off for medical reasons. 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 crew member 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 is compensated. As appears from comments to Rule 2, a crew member cannot apply to the Club for the 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 crew member 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).

3.2.4 To whom should compensation for wages be paid?

When paying compensation for wages to the estate of a deceased crew member, 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 section, 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 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 crew member 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 at 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, which could increase a shipowner's exposure significantly.

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 crew member 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 neither covered under this clause nor under Rule 7 Section 6. Failure to arrange suitable wage payment routines within the Member's organisation may imply negligence at a management level and is excluded under Rule 11 Section 1.

3.2.8 Employment indemnity

Criminal activities are as a general rule not covered nor indeed insurable. There may, however, be circumstances where a crew member has been questioned, detained and arrested and subject to criminal prosecution for carrying out their lawful duties in full compliance with their employer's instructions and in the interest of good seamanship. Under such circumstances the Member in his capacity as employer should ensure that adequate legal representation is obtained to protect the interests of the crew member. Based on the merits of the individual case the Club may be sympathetic if a fine or prosecution is confirmed to be the direct result of the crew member carrying out lawful duties in full compliance with their company's instructions.

Section 3 Loss of or damage to effects – crew

3.3.1 General comments on cover for crew effects

This section relates 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 crew 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 section does not cover theft or robbery of a crew member's effects on board, nor water damage by a leakage in his cabin nor loss of luggage when a crew member travels to or from the ship.

3.3.2 Extent of cover

The cover is for the legal liability the Member may have towards the crew member under his contract of employment or applicable compulsory legislation. The obligation to compensate a crew member 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 the 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 crew members. 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 to meet the requisite criteria 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 section 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 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, death or repatriation under MLC, sometimes referred to as "The Seafarers' Bill of Rights", 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 the well-known cases heard jointly before the House of Lords in 1990 and, referred to as, *The Fanti and The Padre Island* [1990] 2 Lloyd's Rep 191. The conclusion was that the pay-to-be-paid Rule applies to prevent a third party claimant to whom the Member may be liable from being compensated by the Club when it "steps into the shoes" of an insolvent Member who has not paid (and cannot pay) the underlying claim. Pursuant to the 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 based 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 to a third party directly. 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 crew members 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 will only discharge or pay such claim on behalf of the Member if there is no enforceable right of recovery against any other party and the seaman or dependant 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.

3.4.4 Payments made under MLC (2006) Extension Clause

The MLC as amended establishes minimum standards for the working conditions of seafarers and requires the flag state to establish an inspection and certification system to ensure that those minimum standards are met. Compliance is regulated by Port State Control and the vessel must be issued with and carry a maritime certificate confirming that the regulated minimum standards are complied with. Furthermore, the MLC requires that financial security must be in place covering specific entitlements of seafarers. The 2014 amendments of the MLC which came into force on 18 January 2017 required members to display certificates of financial security on board covering:

(a) Liabilities in respect of outstanding wages and repatriation of a seafarer together with costs and expenses incidental thereto in accordance with Regulation 2.5, Standard A2.5 and Guideline B2.5 of MLC 2006

(b) Liabilities in respect of compensating a seafarer for death or long-term disability in accordance with Regulation 4.2, Standard A4.2 and Guideline B4.2 of MLC 2006.

The Boards of all Group clubs agreed to provide the certification required under the MLC as above. Payment will only be effected if and to the extent that the relevant liabilities, costs or expenses are not recoverable under any social insurance scheme or fund, separate insurance or any other similar arrangement for instance based on national legislation. Outstanding wages are further limited to four months.

The Member shall reimburse the Club in full in respect of any claim paid under paragraphs (a) and (b) save to the extent that such claim is in respect of liabilities, costs or expenses recoverable elsewhere under the P&I Rules. In relation to liabilities under MLC, the obligations of the Club continue throughout the entire policy period unless the Club has given notice of termination and the relevant notice period has expired, the vessel has been sold or payment cannot be made due to sanctions legislation. See also comments under 3.1.13.

Section 5 Passenger liabilities

3.5.1 General

The section 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 section.

3.5.2 "Passenger"

What constitutes a passenger? The definition is not entirely clear. In the Athens Convention of 2002 relating to the Carriage of Passengers and their Luggage by Sea (the Athens Convention), "passenger" means any person carried in a ship,

(a) under a contract of carriage, or

(b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods not governed by this Convention.

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. To the extent possible, such exclusions or limitations of liability conflicting with mandatory legislation should be avoided.

As regards crew relatives, see comments under 3.1.8.1.

If a person does not legally qualify as a passenger, the Member's liabilities in respect of illness, injury or death 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. Current passenger ticket terms should be updated and revised at regular intervals, or whenever required by new legal developments. As part of its loss prevention initiative, the Club can assist Members by recommending lawyers in various relevant jurisdictions to assist with the drafting of passenger ticket terms for any new passenger service.

The obligation to operate any 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 recommended 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 view 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 comments 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 on 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 for the claimant to prove that the loss suffered is a result of an illness, injury or death occurred during the carriage. The claimant must furthermore prove that the incident which caused the loss was due to the fault or neglect of the carrier except, under the Athens Convention, if the illness, injury or death was caused by a shipping incident defined as shipwreck, capsizing, 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 on 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 local person making a claim against a foreign company attracts the sympathy of judges and jurors; and 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 to report immediately any passenger incident or accident, however slight, to the ship's officers. They should make a thorough investigation and secure all evidence and testimony available. All crew members 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 likely to be made on hazardous conditions. All observations should be put on record.

Cameras and mobile phones are invariably available on board. 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, lighting and other elements of interest to determine the cause of and the liability for the accident. In the unlikely absence of such equipment or, as a complement, sketches should be drawn and locations measured.

To mount 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 and confidentiality. 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 crew members 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 crew member may have to appear in person as a witness. The Member will be compensated for the costs of bringing the witnesses required to the trial, including any costs of sending replacement staff to the ship during the absence of the witness. Compensation will include travel and hotel costs but wages are not compensated.

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. In 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 disembarkation. The time limit may be different in other jurisdictions. It is, needless to say, important to take note of the applicable time bar under the relevant jurisdiction.

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. Members may consult the Club for advice on passenger ticket conditions and layout. The Club will assist

by recommending a specialist lawyer in the relevant jurisdiction to assist. For further comments on time bar see under 4.1.10.

3.5.6 Personal care and attention

The liability consequences of a passenger accident can be considerably reduced if the person involved is properly looked after 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 well looked after following an incident. Special provisions 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 contact with the passenger after his or her return home and during any extended medical treatment. The nature and extent of such contact should be discussed with and decided by the Club correspondent. A well-maintained 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 an independent contractor

Ships carrying passengers to or from the U.S. and probably elsewhere 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 is a significant difference from a liability point of view if a doctor is a crew member or an independent contractor.

If the doctor is a crew member, 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 an incorrect examination or wrong diagnosis, wrong or unsuitable treatment or failure to administer proper medication. The liability consequences can be considerable. The Club recommends Members not to sign on the medical staff as crew members for the above stated reasons.

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 on 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 negligent medical treatment of an ill or injured person on board.

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.A., 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 relevant policy period. Upon request, the Club may assist Members in having a suitable indemnity drafted by recommending a suitable lawyer.

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 false 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 employees.

Claims may be filed for post-traumatic 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 section should he become liable and the claim is directly 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 section.

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 on a no cost and no 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 damage the Member's records less than protracted litigation even if a defence is eventually successful.

Experience shows that the best result is achieved without the intervention of lawyers on either side. This requires swift and fully transparent lines of communication between the ship, the Member, the Club and its correspondent to decide when, how and by whom a recently injured passenger should be approached. A quick offer of reasonable financial compensation might avoid the escalation of a claim.

Settlements should be affected against releases which make the compensation full and final.

For structured settlements see comments under 3.7.2.6.5.

3.5.11 The geographical extent of cover

3.5.11.1 General comments on the 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. Cover for the latter 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 the cover provided is 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 on the carrier for which he is covered under this section. Exactly where the mandatory liability ceases is difficult to say. Embarkation and disembarkation premises and routines may have an influence. Carriage as defined under the Athens Convention does not however include the period during which a passenger is in a marine terminal or station or on a quay or in or on any port installation. For such accidents the carrier should

exclude liability in the ticket conditions. That is one of the reasons why ticket conditions should be carefully drafted and, if so requested, in co-operation with a lawyer recommended 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 section 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 transport performed by a tender. This means a local transport vessel which does not belong to the entered ship but has been put at the disposal of the passenger by the carrier. The Member may consult the Club for assistance regarding the terms of contracts for tender services, to ensure that the Member is exposed to a minimum of liability and that any liability remaining is preferably covered by the liability insurance for the tender.

3.5.11.4 Transits to the port and other forms of access to the ship

In connection with the carriage of passengers on board the entered ship, the carrier may arrange travel for the passengers to and from a port by air or by other means of transportation. The carrier may also arrange any ship/shore sea transport for the passenger by tender, launch or other such craft.

According to the seventh paragraph of this section there is no cover for any liabilities arising out of carriage by air. A Member who agrees to arrange the 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 air crash. 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 affiliated travel. 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 can recommend a suitable lawyer to assist the Member upon request.

3.5.11.5 Excursions

In connection with the carriage of passengers on board the entered ship, the carrier may arrange travel for the passengers to and from a port by air or by other means of transportation. The carrier may also arrange any ship/shore sea transport for the passenger by tender, launch or other such craft.

According to the seventh paragraph of this section there is no cover for any liabilities arising out of carriage by air. A Member who agrees to arrange the 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 air crash. 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 affiliated travel. 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 can recommend a suitable lawyer to assist the Member upon request.

3.5.12 Liability to forward passengers

3.5.12.1 General comments on the liability to forward passengers

In 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 unable 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 already 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 of 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 section and is for the net costs required to fulfil those obligations. The cover is further restricted to liability for consequences which

the carrier is unable to exclude 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 benefit from the Club's assistance and 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 provided with spending money. 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 settlement of claims which may be filed for any physical, psychological and economic consequences of the accident. The Club will directly or through its correspondent in the relevant jurisdiction provide all necessary assistance and advice, including assistance in 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 whichever is the most suitable alternative available, taking into account 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 correspond to the costs for transporting the passenger to the port of destination or embarkation.

3.5.13 Passage performance guarantees

Members operating passenger services 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 provision of security for insured risks is at the Club's discretion. This is even more so, where, as here, the risks are 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.

The carrier is liable if the incident which caused the loss of or damage to cabin luggage on board the ship or in the course of embarkation or disembarkation was due to the fault or neglect of the carrier. The period of liability does not include the period during which the passenger is in a marine terminal or station or on a quay or on any other port installation. Where the Athens Convention does not apply, the carrier may have wider opportunities to contract out of 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 for 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 (a shipping incident), the carrier is presumed to have been at fault or negligent and must disprove that presumption to avoid liability.

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 to take precautionary action to protect passengers´ belongings (for instance, sealing or otherwise protecting the cabins to avoid pilferage of cabin luggage left behind). The Club's correspondent or lawyer will assist Members in arranging a suitable procedure locally.

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 section, 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 most other applicable legislation 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

Luggage, other 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, is the period from the time when it is taken over by the carrier, or his servant or agent on shore or on board until the time of its re-delivery by the carrier or his servant or agent.

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. However, the burden of proving that the incident which caused the loss occurred in the course of the carriage, and the extent of the loss, lies with the claimant.

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 could have been avoided had such exceptions been made.

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 bill of lading. 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 proved otherwise.

As is usual when it comes to liabilities with a reversed burden of proof, the carrier and his employees 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 reviewing suitable forms. The form should be countersigned by the passenger. Pre-existing damage should be noted.

In case of serious damage or when there is an element of personal injury

involved, the Club should be notified and the local Club correspondent called in to assist.

3.5.14.3.3 Liability when passenger drives his own car on board

Passenger cars are frequently embarked or disembarked by being driven by the passenger himself. Even if a high degree of care is required from a passenger while driving on board, the unfamiliar environment of a ship means the carrier will be required to take adequate safety precautions to avoid being held liable. The height of cargo doors and ramp openings should be properly marked in order to prevent damage e.g. 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 or on ramps. If the passenger car is damaged because of the passenger's own negligence the carrier should, in general, not be liable. However, where damage has occurred as a result of intervention by the crew directing the passenger in driving his car on board liability is likely to be imposed on the carrier.

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 made.

3.5.15 Delay of passengers and their luggage and cars

To the extent the carrier has a mandatory liability for delay to 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, liability for delay is restricted to losses caused directly by the delay. A passenger may for instance be 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 or time 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 1974 were increased. The Protocols required 10 ratifications or accessions before they could come into force. The limitation amounts of the Athens Convention 1974, the Protocol of 1990 and the Athens Convention 2002 are set out below under 3.5.16.1.3.

3.5.16.1 The Athens Convention 2002

The Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 is the consolidated text of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, and the Protocol of 2002 to the Convention. The Athens Convention 2002 came into force in April 2014 and introduced increased responsibilities and substantially higher limits of liability on behalf of shipowners and carriers.

3.5.16.1.1 Amendments of limits

The limits of liability have been increased significantly under the Athens Convention 2002, as can be seen in the chart below. As a result of the raised limits of liability, the Group Clubs have introduced a rule regarding limitation of the insurance relating to passengers in Appendix ll 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 seafarers, see comments under Rule 3 Section 4 and Rule 3 Section 6.

3.5.16.1.2 Strict liability

The Athens Convention 2002 introduced strict liability on behalf of the carrier for the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident. It follows from this that the carrier must take out insurance to cover its exposure to potential claims from passengers arising from the imposition of strict liability under the Convention.

For the 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 only if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect then lies with the claimant.

3.5.16.1.3 Compulsory insurance

As noted above the Athens Convention 2002 introduced compulsory insurance to cover passengers on ships. The Convention 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.

**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.*

The limitation of liability under the Athens Convention

	The Athens Convention 1974 SDR	The 1990 Protocol SDR	The Athens Convention 2002 SDR
Claims for loss of life or personal injury	46,666	175,000	250,000*
Claims for loss of or damage to cabin luggage	833	1,800	2,250
Claims for loss of or damage to vehicles including luggage in or on the vehicle	3,333	10,000	12,700
Claims for loss of or damage to other luggage or valuables deposited with the carrier	1,200	2,700	3,375

3.5.17 General advice on passenger liabilities and how they should be avoided

3.5.17.1 General comments on passenger liability avoidance

In most situations the burden of proof initially rests upon the claimant but it can easily be shifted to the carrier by findings of fact made by a judge or jury. Courts expect passengers to be generally unaware of the hazards on board a ship. 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

It may assist a carrier's defence to allegations of negligence if there is evidence that appropriate measures were taken to alert passengers on embarkation to the means of communication used on board and of the importance of the

passengers ensuring that they are aware of the latest information available, including muster points in an emergency and of the importance of immediately contacting a member of the crew in case of an accident or illness.

3.5.17.3 Avoidance of known passenger safety risks

Another aspect of reducing the risk of findings of negligence concerns proof that marine and weather forecasts and the safety precautions they necessitate were communicated to the passengers. Also if decks or other areas open to passengers are slippery or constitute a potential hazard, the issue of negligence will involve determining whether such matters were adequately and appropriately drawn to the attention of passengers in a timely manner by (for example) warning signs clearly displayed and measures taken to prevent entry to car decks during the course of the voyage.

Accident prone parts of the ship, including elevators, staircases, raised sills, carpets and doorstoppers, may give rise to allegations of negligence and it will assist the defence of such claims if the Member is able to produce evidence that such areas were checked regularly for passenger safety.

Certain types of entertainment and activities provided on passenger and cruise ships may present safety risks. The Member is covered for liabilities arising from such activities provided he has not voluntarily assumed responsibility and adequate precautionary measures have been taken.

A written waiver of liability to be signed by a passenger who wishes to engage in an activity such as scuba diving, may not be in violation of the shipowner's duty of safe carriage. Upon request the Club can assist in reviewing the wording of such a waiver agreement. Considerable care should be exercised to train the crew members 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 increase in passenger-carrying capacity in combination with the significantly increased levels of liability under the Athens Convention 2002 has made it necessary for the Clubs to limit the cover for passengers and seafarers. The cover for passengers and seafarers is limited to the Group excess of loss reinsurance. This Rule deals with the conditions for such a limit as set out in Appendix II, Rule 1.

3.6.2 Mutuality in relation to ship types

A passenger ship is only one of many ship types entered with the Club. Different types of ship expose the Member and Club to different types of liabilities. To confine the differences in cover it is considered fair that no one ship type should

expose the Member and the Club to greater liabilities than any other type of ship. In an effort to meet this mutual goal the Club applies additional premiums to different types of ship. To reduce the risk of a catastrophic claim following an accident with a passenger ship the cover for liability to passengers and seafarers 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, unless otherwise limited to a lesser sum, not exceed USD 3 billion in respect of liability to passengers and seafarers with a sub-limit of USD 2 billion in respect of liability to passengers.

If a claim were to exceed these amounts and be above the limit of the Group Pool's excess of loss contract, the excess or "overspill" would be pooled amongst the Group Clubs. The overall Group pool limit for such an overspill claim remains unchanged at 2.5 % of the property limitation funds under the 1976 Limitation Convention of all ships entered in all clubs participating in the Group Pool. Members remain ultimately liable to pay an overspill call up to a maximum of this limit for each entered ship in accordance with Rule 24.

A passenger is defined in Appendix II, Rule 1 as a person carried on board a ship under a contract of carriage or a passenger accompanying a vehicle or live animals covered by a contract for the carriage of goods. A seafarer shall mean any other person on board a ship who is not a passenger.

Section 7 Injury, illness and death - others

3.7.1 General

This section provides cover for a number of frequent and large liabilities in respect of injury or death to persons on board or in connection with the entered ship other than crew and passengers. It thus covers all categories of persons for whom the Member may be liable but excludes liabilities which are covered elsewhere in these Rules.

Liability in respect of crew members 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 connection with 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 lashing materials left on top of a container discharged from the ship, where the lashing materials belong 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 is dealt with in the comments under 7.1.14.

3.7.2 Longshoremen

3.7.2.1 General comments on longshoremen claims

The longshoremen liability situation in the U.S.A. is an important factor to be aware of 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 situation is confined to the U.S.A. Many of the features of longshoremen claims in the U.S.A. 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 employees to avoid or reduce such liabilities.

3.7.2.2 The Scindia Standards

3.7.2.2.1 General comments 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 remains good law. It concerned a longshoreman who was struck by cargo while in the ship's hold. The cargo fell from a pallet being held up by the ship's winch that was part of the ship's gear. 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 stevedore company and the longshoremen the duty to have the ship and its equipment in such condition that the stevedore may carry on its cargo operations with reasonable safety and if the shipowner fails at least to warn the stevedore of hidden danger which was known to the shipowner, or should have been known to him in the exercise of reasonable care, then he is liable if his negligence causes injury to the longshoreman. This general principle is qualified further in the judgment. Importantly, the Scindia duties are generally understood to be limited in scope. Further, the longshoreman carries the burden of proof to

demonstrate actual evidence of a breach to be permitted recovery against the shipowner.

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 stevedore 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 stevedore 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 in 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 stevedore company are the lighting conditions in the holds. The officers should ensure that all parts of the working area are adequately 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 stevedore company starts work. Deficiencies of fixed ladders should be remedied. Alternatively, any deficient fixed ladder should be made inaccessible to the 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 stevedore 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 stevedore company in the course of its cargo operations and which are unknown to the stevedore company and would not be obvious or anticipated if the stevedore 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 stevedore 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 stevedore company. It should not be extended to a duty continuously to supervise the activities of the stevedore company. Absent contractual provisions, positive law or custom to the contrary, the shipowner has no duty to supervise or inspect the cargo operations assigned to the stevedore company. Terms in stevedore 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 stevedore services which could qualify as supervision and render the ship liable beyond the Scindia standards.

3.7.2.2.4 The duty to intervene

However, under Scindia there is a duty to intervene when the stevedore's judgement is so obviously improvident that danger to the longshoremen arises from any malfunctioning 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 create a duty to conduct inspections to determine if any such hazardous conditions exist following turnover of the vessel to the stevedore.

The Scindia ruling states as a general matter that the shipowner is entitled to rely on the stevedore to avoid exposing a longshoreman to unreasonable hazards and owes no duty to the longshoreman to inspect or to supervise cargo operations.

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 stevedore 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 safety supervisor prior to commencement and 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 stevedore company to avoid any cargo shifting because a list is developed due to uneven loading or discharging of the cargo.

3.7.2.2.7 Contributory negligence

Observations and evidence of behaviour which indicate contributory negligence on the part of the injured longshoreman can constitute compelling arguments in favour of the Member. Even grossly negligent acts, however, 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. It is therefore recommended that the shipowner ensure the crew follow and document compliance with the vessel's safety management system, planned maintenance system, and otherwise create and maintain accurate records demonstrating compliance with the duty to maintain a reasonable safe place to work for 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 it a low hurdle to overcome. Therefore, it is important that the shipowner is proactive and collects his own evidence. At the same time, and in conjunction with the Club and the Club's lawyers, it is important to take into account the broad scope of discovery in U.S. litigation and take measures to try and ensure that evidence gathered for claim investigation and exposure analysis is shielded from disclosure to the degree possible by applicable work product and/or attorney-client privileges.

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. Details can be found in the Club's List of Correspondents on the website. 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 immediately 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 the matters which they witnessed and observed. 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 collected 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 removed by the stevedore 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 reoccurrence. 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. Documenting the light conditions at the location of an accident is also important.

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 stevedore company and its liability underwriter in cases where both the shipowner and the stevedore company were at fault. By an amendment of the Longshore and Harbor Workers' Compensation Act of 1972, the compensation benefits payable to an injured longshoreman by the stevedore company were increased. The stevedore company was in turn made

completely immune to claims from the shipowner, even to the extent that the shipowner was no longer able to recover the stevedore company's proportion in an accident with shared liability. Additionally, the stevedore company has a lien in respect of the compensation benefits it has paid out, over any amount recovered by the longshoreman from the shipowner. The stevedore company is entitled to full compensation as a result of the lien. Moreover, it has no obligation to contribute proportionately to the longshoreman's costs of making any recovery. Accordingly, in order to collect any additional compensation, the longshoreman needs either to recover damages over and above the amount of the stevedore company's lien or to have a firm commitment from the stevedore company and its liability underwriter that they will waive the lien. Either solution will affect the amount at which settlement of the claim against the ship can be concluded, thus making the stevedore company an interested party in those negotiations.

3.7.2.4.2 Effect of stevedore's lien

The stevedore company has the same interest as the injured longshoreman to collect evidence to be used against the shipowner. The stevedore foremen and other people acting on behalf of the stevedore company should, therefore, be regarded as potential claimants, the more so as the stevedore company has a right to bring suit against the shipowner to recover any compensation it pays out to the longshoreman. So, 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 removed by the stevedore company or longshoremen to be used against the shipowner.

There may also come a day when the stevedore company is brought into any settlement discussions. Usually, the Club correspondent tries to persuade the stevedore 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 stevedore company, the Club may seek the Member's co-operation in bringing commercial pressure to bear on the liability underwriter in order to reach a pragmatic solution. 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 comments on longshoreman litigation

The probability is high that a longshoreman injury or death claim will be litigated. Due to the potential size of these claims they 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, neither the longshoreman nor his lawyer is 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 comparatively 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 employees 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 crew to give testimony, either by way of deposition outside the trial or at the hearing of the case in court or both. Any witness will also be subject to cross examination by the claimant's lawyer. The Club will pay the additional costs related to the attendance of witnesses including reimbursement of the additional, reasonable costs of providing relief officers and/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 recorded, computer reconstructions of accidents can be made and models used to make the judges and jurors understand technically complicated events. It is also common for depositions to be taken via video link if and to the extent deemed appropriate, without compromising the quality of the witness's evidence.

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 either an interrogatory, questionnaire or request for admissions, can concern the vessel's 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 a fishing expedition for information to be used against the Member. Still, the Member's full co-operation is vital to provide the information requested unless advised otherwise by the Club's lawyer. 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 a 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 comments on settlements

In any personal injury case, even in litigation, settlement possibilities are always carefully considered. Elements which affect the decision as to whether to settle or not include (1) the expected effect of applicable law, (2) the strength and availability of witnesses and evidence, (3) the costs of proceeding to trial and any subsequent appeals as well as (4) any 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 ensuring the attendance of sufficient and convincing witnesses. The mere fact that the Club can demonstrate to the claimant that the Member is determined to produce witnesses to testify at the trial can have a positive effect on settlement possibilities. It sometimes 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 will not have been in vain. The fact that they were being flown in will have been a significant factor in attaining a favourable settlement.

3.7.2.6.3 Waiver of stevedore's lien

As previously mentioned, the stevedore company may be brought into the settlement discussions in order to waive, or partially reduce, the effect of its lien.

3.7.2.6.4 Releases

Eventually the settlement is affected 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 to raise new claims for compensation from the Member or from any affiliated party for the same accident or incident. 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 charterparty. As regards the Charterer's liabilities for longshoremen claims, see the 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 will provide for 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 more attractive solution for both parties.

A structured settlement normally means that the claimant receives continuous payments for life or up to a certain age 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, pay for projected expenses of daily care, 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 record. 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.A. and typically requires court approval. Similar arrangements can be made elsewhere.

3.7.2.7 Asbestosis and other vessel related long-term illnesses

Claims may be filed by or on behalf of longshoremen for long term injury or illness related to work on board vessels. 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 equipment used in the holds or cargo deck. Such exposure occurs over a long period of time and during service on board many ships.

Liability, if any, is covered under this section, 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 comments 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.

Up until 20 February 2016 a Charterer entered with the Club in his own right for Charterers' Liability was covered for his liabilities under Rule 9 of the Rules for P&I Insurance. Since 20 February 2016 a Charterer entered in his own right is instead covered for liabilities as per the Rules for Charterers' Insurance.

As regards claims handling, this means that a Charterer entered in his own right should, just as an owner entered with the Club, report any known accidents to the Club and its local correspondent and prepare his defence from the outset of a case, either against a claim from the injured longshoreman or from the shipowner under the charterparty.

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 charterparty clause 8 (see comments under Charterers' Liability 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. However, situations can and do arise where the Charterer is considered to have assumed such operational control so that liability would follow.

So far, it has not been possible to define, conclusively, the practical situations where sufficient operational control has been undertaken to engage a Charterer's liability. This will vary from case to case and from court to court, often 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 simply because he had a supercargo on board.

The New York Produce Exchange form charterparty clause 8 has been interpreted differently in other circuits than that in which Ove Skou v. Herbert was decided. Two other circuits have held that the clause operates 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 stevedore company, as the employer, is obliged by law to affect a no-fault accident and life insurance coverage for longshoremen

assigned to work on a ship. The ensuing insurance premium is then charged to the shipowner, operator or Charterer as an item on the invoice for the stevedoring services provided.

The Group clubs agreed previously to issue letters of indemnity or make other arrangements so that such separate insurance was unnecessary. This practice has, however, been discontinued. The concept of 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 such easily calculable running costs for certain destinations should burden the Club as a whole.

3.7.3 Visitors

3.7.3.1 General comments on liability for visitors

A ship is visited by many people. Whilst 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 due legitimately if the claimant can prove that the death or injury was caused in part or wholly by the negligence of the shipowner, his servant or agent. Such liability is covered under this section.

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

3.7.3.1.1 Application to Stay On Board

Although a Member's legal liability for the injury, illness or death of a visitor on board the entered ship is covered under this Rule, it is recommended that visitors are requested to sign and submit an Application to Stay On Board before coming on board. The purpose is to avoid illegitimate claims but also to ensure that the visitor has separate insurance cover for illness, accident, luggage and third party liability. This will protect the member's loss record from illegitimate and contrived claims, but it will not exclude legitimate claims for which there is cover under the P&I Insurance.

A copy of the Application to Stay On Board recommended to be used can be provided by the Club.

3.7.3.2 Professional visitors

One category of visitor is those who are regularly on board on account of their profession, such as repairmen, customs, police or Coast Guard officials as well as people selling or delivering supplies. This category should be fairly familiar with the risks inherent in being on board a vessel. 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 risks involved in being on board a ship. Safety precautions on board have to take that into account. The risks should be adequately pointed out in invitations and crew members or watchmen should be posted at critical locations such as the gangway or ladders to assist and warn visitors if needed. It is recommended that visitors, if appropriate, sign an Application to Stay On Board.

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 section.

Members are advised not to sign on repair teams as crew members. That risks increasing the Member's obligations beyond that which would otherwise apply under applicable law. On the contrary, the contract under which their services are hired should reflect that they are the employees of the contractor and that the contractor's insurance in respect of the repair team is endorsed to provide cover for the vessel's interests. It is important that the division of liabilities between the parties is clearly set out in such contracts to allow Members to identify any risks that may not be covered under their P&I Insurance. Members may present such contracts to the Club for review and assistance.

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. Generally, there is no cover under Rule 7 Section 6 for fines in respect of violation of such laws. Nor will a Member be compensated for the costs of repatriating a repair team if based on contract or imposed by a law of which the Member ought to have known.

3.7.5 Pilots

This section provides cover for a Member against liability based on negligence for the death of or injury to a pilot on board or providing services to the entered ship. Liability which follows from the contract for pilot services is covered only if the contract is customary and a prerequisite for obtaining the pilot services: see the 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. If killed or injured whilst on board they may claim against the shipowner for compensation. If a Member is held liable on account of negligence, cover is provided by this section.

3.7.7 Relatives of crew

As regards relatives of crew see the comments under 3.1.8.1.

3.7.8 Collision liability for death or personal injury

3.7.8.1 General comments 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 Rule 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 the death of or injury to crew members, passengers or other people on board either of the colliding ships. As loss of life or personal injury is excluded under any Hull policy, 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 relatives of the crew, see the 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 section.

The handling of the death or personal injury part of a collision case requires transparency and close 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 section for unrecoverable costs paid in respect of the death or personal injury of persons who were neither crew nor passengers on 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 crew member 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

In addition to the compensation for reasonable and additional costs incurred by the presence on board of stowaways, persons saved at sea or refugees, the Member also receives active assistance from the Club to disembark them.

3.8.2 Stowaways

3.8.2.1 Definition

Attempts have been made to solve some of the problems posed by stowaways through an international convention, the 1957 Brussels Convention Relating to Stowaways. The convention, however, has not yet been ratified by a sufficient number of states and has not, therefore, 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 ports 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 causes a number of problems such as: the cost of maintenance and repatriation; a potential liability for fines; possible danger to the ship and the people on board. The administrative hurdles that have to be overcome to get the stowaway off the ship may be considerable. Solving these problems requires close co-operation 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. Experience shows that there is often more than one stowaway 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 a passport, seafarer'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 ship agent 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.

3.8.2.3 Efforts to get a stowaway off the ship

Upon receipt of a notification, the Club will start the efforts to disembark the stowaway. This often requires difficult and time consuming consultations with the immigration authorities in the ports at which the ship is scheduled to call. It is not always a realistic assessment that such consultations will be successful in the ship's first port of call. The aim may have to be set at a port further along 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

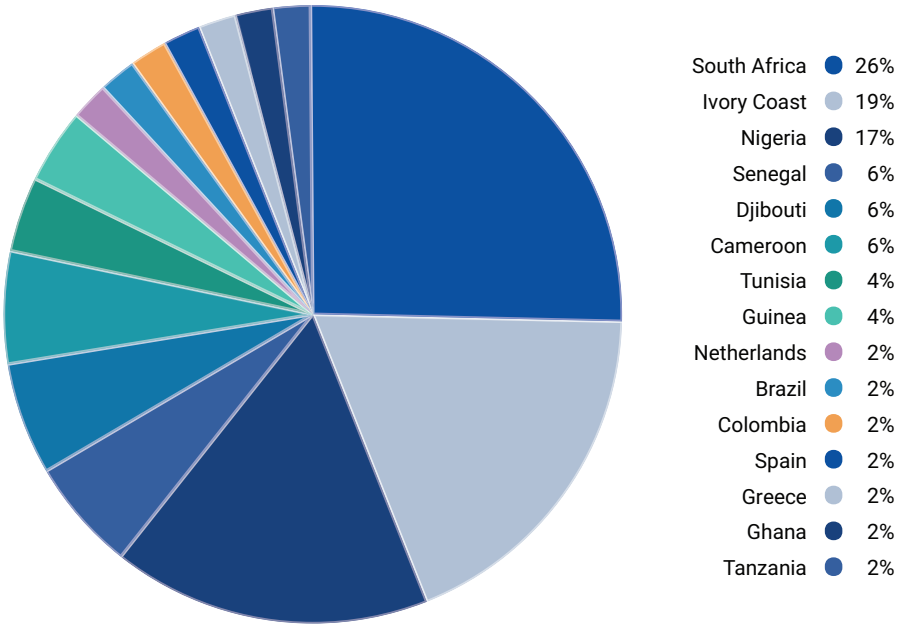
the authorities may be favourably disposed to let the stowaway off the ship for repatriation.

The Club's correspondent who conducts 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 identification documents. Such details are usually:

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 of the discovery of the stowaway, his identity etc.

Countries of embarkation

No of claims 2015-2019



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 regularly in the deck log for as long as the stowaway remains on board. Such entries are also essential to explain the stowaway's presence on board to authorities in any intermediate ports of call. A full log extract is required to substantiate a claim for compensation from the Club under this section.

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 may be covered under Rule 7 Section 6, 1. (b), the expense should be avoided so as to protect the Member's record.

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, its representatives and lawyers will endeavour to solve the problems as fast as possible. It may be necessary to alert the 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 crew members

Masters sometimes sign on a stowaway as a crew member in the hope of avoiding the costs for guards and watchmen, or that it might be easier to sign him off as a seafarer than to land him as a stowaway. The Club advises strongly against any such practice. Firstly, the ship may have fines imposed if the authorities discover the true status of the stowaway and find that they were deliberately misled by the ship. Secondly, by temporarily upgrading a stowaway to a crew member, the Member may assume much wider liabilities in case of injury, illness or death. Furthermore, such liabilities may not qualify for cover under Rule 3 Section 1, as the definition of a crew member under Rule 1 implies that there should be a contract approved by the Club for service and not for disguise.

The Club also strongly recommends against using stowaways for any kind of work on board as that may also have adverse and unwanted consequences.

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 section. 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 put in place, 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 crew members.

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 provided with 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 section.

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 as to whether to provide security.

3.8.2.8 Diversion to land stowaways

A Member may decide 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 where the stowaway is injured or falls ill while on board or where otherwise agreed by the Club. Diversion 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 strictly liable without limitation for a wide range of claims. 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. The approval of a Charterer may also have to be obtained to avoid the risk of being in breach of the charterparty terms.

3.8.2.9 Stowaways in containers

There have been an increasing number of cases during recent years of stowaways hiding in containers prior to loading. In such cases, the question arises as to who should be responsible ultimately for the costs and expenses of repatriating the stowaways: the Owners or the Charterers? The Owner is normally prevented from checking the contents of a container prior to loading. The Owner's responsibility is in respect of 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 was revised subsequently by BIMCO in 2009 and forms part of the NYPE 93 (clause 41) as well as the NYPE 2015 (clause 42).The Club strongly recommends Members also to incorporate the clause in all other time charterparties.

3.8.2.10 Crew complicity

Investigations may reveal that a stowaway was helped to hide on board by a crew member 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 section 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, its equipment or cargo carried on board. Damage to the ship or equipment belonging to the Member, or a third party, is excluded from cover. Damage caused to cargo carried on board and liability so imposed upon the Member is covered under Rule 4 Section 1.

3.8.2.12 Preventive measures

Unnecessary trouble, costs and delay can be avoided if stowaways are prevented from boarding the ship in the first place. Certain areas or ports are notorious for stowaways and require increased vigilance on board. Each economic 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 where the vessel may call.

Alertness of the ship's crew on deck and in holds may prevent people sneaking on board and hiding. Reliable guards should be posted at the gangway and on Ro/Ro 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 to be 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 can be discussed with the local Club correspondent, the ship agent 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 having stowaways on board. They should be encouraged to report anything that looks 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, rudder trunks, ventilation fan shafts, funnels and cargo tanks. Such areas should not be overlooked when the ship is searched.

The costs of carrying out such searches 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 whilst on board. For such persons there is unlikely to be any obligation on 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 to inform their ship agent in the next port of call urgently and to notify the Club in order for the Club correspondent to liaise with the ship agent 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 and following the Club's approval.

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

The difference between the cover under this section 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 section covers the Member's costs for having persons saved at sea, on board. Therefore, this section 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 that result, 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 incident, for the purpose of this section refugees are those who leave their country for political or economic reasons and end up in distress at sea. 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 sea lanes where refugees are frequently found, landing arrangements may be strained to the limit. For political reasons, the presence of refugees on board may cause severe problems for the Member in obtaining permission from the immigration authorities to allow them to 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 is outlined in various documents including global reports, global appeals and the 1951 Refugee Convention.

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 through its network of correspondents.

Section 9 Life salvage

3.9.1 General

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 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 the salvage of property, the obligation to compensate life salvors is covered under this section.

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 award 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 crew members. 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 come from the entered ship. "From" includes people in lifeboats, even after the total loss of the entered ship.

3.9.3 Charges by other ships for standby, 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 required to stand by 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 arise, however, 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 of the individual case warrant compensation to any extent for 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 incurred in the mutual interest of the ship together with the people and cargo on board.

On application, the Club may consider exercising its discretionary power 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 may be 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 section is not restricted to expenses incurred in relation to crew members. The word “persons” includes passengers, stowaways, refugees and relatives of crew members allowed to be on board the ship.

3.10.2 Detainees

Some persons including crew members 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 usually covered under this section if the guards are provided by a security firm either engaged or approved by the Club’s local correspondent. If the guards fail and people escape, 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).

There are circumstances where the above costs are not covered but regarded to be operational, for instance if national regulations are adopted in a jurisdiction following a specific event and the restrictions are known or reasonably ought to be known by the member.

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 this respect. This follows from Rule 10 Section 2. The costs for repatriation will be compensated by the Club by application of this section 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 the comments under 10.1.9.

3.10.3 Deserters

If a crew member 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. Crew members who do not show up in time for the ship's departure are regarded as deserters. Although the Club and its local correspondent has no means of tracing a deserter, the fact that a crew member 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 guard and for 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 crew member's native country.

A similar situation may arise when a crew member 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 crew member in fact 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 an escort to his destination. Escorts may also be required by airline security regulations. Charges and airfares incurred necessarily for escorts are compensated.

Travel expenses and other costs incurred necessarily to send a substitute to replace a deserter are compensated under this section. Such costs are considered necessary if the ship is not properly manned without the substitute and if the problem cannot be solved by upgrading crew members 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 section.

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 medical advice and recommendations to divert to the nearest suitable port in order to provide adequate care. Should the medical recommendations not be followed, the Member may be liable for the consequences of his failure to provide proper medical care.

3.11.2 Persons for whom diversion expenses are covered

The section uses the word “persons”, which indicates that the cover is in respect of the Member’s costs for diversion in relation to crew members and their relatives, passengers, stowaways, refugees or others on board the ship. There is also cover for costs and expenses incurred for saving persons at sea, whether successful or not.

3.11.3 Diversion must be justified

The purpose of this clause is to cover the Member for the additional costs of complying with any obligation to undertake a diversion which qualifies as a justified deviation. This must be distinguished from an unjustified deviation which is not supported by the 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 purposes other than to provide necessary medical care under this section, he should seek the Club’s advice and obtain its approval.

3.11.4 Duration of a diversion

The diversion starts when the ship changes course for the port at which the sick or injured person is landed. It ends when the ship is reasonably back on course to her intended destination in the equivalent position to where the deviation began. 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 is at his convenience. Therefore, any subsequent further diversion contemplated should be approved by the Club so as to be covered.

3.11.5 Extent of cover

The diversion costs which will be reimbursed are specified in the section. The enumeration is intended to be exhaustive and refers only to expenses representing the net loss to the Owner and not costs which are covered by the Charterer under the applicable charterparty. 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 the relative of a crew member, the Owner may make it a condition for the presence of the relative on board that the crew member takes out insurance cover for loss of hire. The Club can assist in providing such insurance. See comments under 3.1.8.2.2.

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. Credit should be given for any costs saved. This follows 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. The cost of additional fuel consumed as a result of any extra distance steamed is compensated but also extra fuel used as a result of any extra speed required.

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 may not be compensated correspondingly under her own 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 ship agents 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 the 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 notify the Club. The local Club correspondent can render the ship agent 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 crew members 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.

Rules for P&I Insurance 2021/2022

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 damage to cargo during through transports while the cargo is in the care of another carrier provided that the transport is performed under a through or transhipment bill of lading or other document of carriage approved by the Association providing for carriage partly to be performed by the entered ship. Damage caused by cargo is covered only if the claim is brought under the document of carriage.

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 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.

Commentary

Rule 4 Liabilities in respect of cargo

Section 1 Cargo liabilities

4.1.1 General

This section describes the cover for liabilities to cargo. 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.

Section 5 deals with paperless trading. Section 6 refers to extraordinary handling costs and expenses incurred by the Member himself. Section 7 deals with General Average and Section 8 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 referred to 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 the conventions

The carrier is not 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. 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 Club to determine whether the circumstances of a case are such that liability does or does not exist and then to settle or defend the claims accordingly.

The extent of the carrier's liability for cargo depends on the applicable law. Most countries base their domestic law on one of the international conventions on cargo liability. These conventions are the Hague Rules, the Hague-Visby Rules and the Hamburg Rules. The convention known as the Rotterdam Rules has not been ratified by anywhere close to the number of states required. Accordingly, it is not in 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 any of the conventions. Members trading to such countries can ask for the Club's advice as to how bills of lading and other contracts of carriage should be drafted in order to afford the Member protection against liabilities and to comply with 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 minimum standard imposed. As P&I Insurance is designed to cover those minimum 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 are mandatorily applicable or provided for in a contract approved by the Club.

4.1.2.2 The Hague Rules

4.1.2.2.1 General comments 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 were different from those of today. It should be noted that they do not apply only

to the carriage of general cargo although many of the leading legal cases date back to the age of break bulk shipments. 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. For other countries they can be made applicable by their incorporation into the contract of carriage. To ensure that no wider liability is accepted than that covered under these Rules, bills of lading 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. A Member should ensure that charterparties contain clauses according to which the party issuing the bills of lading (Owner or Charterer) undertakes to insert a Paramount clause in all bills of lading issued under the charterparty. It is also important, in order to preserve P&I cover, that any charterparty that is the contract of carriage is made subject to the Hague Rules or Hague-Visby Rules. This can only be achieved by express incorporation since the Hague Rules and Hague-Visby Rules do not, otherwise, apply to charterparties.

4.1.2.2.3 Carrier's and cargo owner's liabilities

The Hague Rules 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 exercise due diligence with regard to seaworthiness before and at the beginning of the voyage (see the comments under 4.1.5). Secondly, the carrier should keep and care for the cargo while it is in his custody (see the 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 the comments under 4.1.8).

4.1.2.2.4 Burden of proof

The allocation of liabilities between the parties depends on the cause of the loss. The cause thus has to be established as far possible through investigation. The division of liability requires rules as to the burden of proof (see the comments under 4.1.4). Both parties need to be active in securing proof to support their respective positions.

Under the Hague Rules the burden of proof in cargo claims often shifts between the cargo claimant and the carrier. Under English law (which governs most bills of lading) if cargo is discharged in a damaged condition the initial burden of proof rests with the carrier to establish that its damaged condition did not result from lack of care for or negligence in relation to the cargo while on board the vessel (i.e. that the carrier took all necessary measures by reference to industry standards to care for the cargo during the voyage). Subject to that, the claimant has to prove, not only the nature and extent of the loss or damage sustained, but also that it was caused by a specific act or omission of the carrier amounting to negligence in relation to the care of the cargo or else by the unseaworthiness of the vessel and that it occurred while the cargo was in the carrier's custody. If the cargo claimant can produce convincing evidence in these respects, the burden of proof shifts to the carrier. The carrier is considered liable to compensate the loss unless he is able to prove that the damage or loss was not caused through negligence on the part of the crew in relation to the care of the cargo or else (if proved to have been caused by unseaworthiness) it occurred despite the exercise of due diligence to make the vessel seaworthy and that the cause of the loss was a matter for which the carrier is exempted from liability by an explicit exception (see the comments under 4.1.8).

4.1.2.2.5 Time bar

To stand a reasonable chance of discharging his burden of proof, the carrier must be informed of any claim in a timely fashion. The Hague Rules contain provisions on the time bar of cargo claims (see the 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 unit of the goods (see the 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 the comments under 4.1.11.4), deck cargo (see the comments under 4.1.11.5), live animals (see the comments under 4.1.11.11) and valuable cargo (see the comments under 4.1.11.17).

4.1.2.3 The Hague-Visby Rules

To meet the needs of modern transports, additional rules were added in 1968 and these became known as the Hague-Visby Rules. They have been adopted by a number of countries and apply to transport from a port in a contracting state, or where the bill of lading has been issued in such a state or contains a Paramount clause making the Hague-Visby Rules applicable.

The Hague-Visby Rules are based 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 the comments under 4.1.9.3.3). Under the Hague-Visby Rules the particulars contained in a bill of lading constitute conclusive evidence as to the apparent condition of the goods at the time of shipment (see the comments under 4.3.3.2). The time for the carrier to file recovery claims was extended (see the comments under 4.1.10.13). Under the Hague-Visby Rules the carrier's servants are afforded protection in the sense that they are granted the same rights and immunities as the carrier himself if claims are filed directly against any of them. See the comments on the use of a Himalaya clause under 4.1.7.4.

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

4.1.2.4 The Hamburg Rules

The Hamburg Rules were adopted in 1978. They came into force in November 1992 (see the 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 for the carrier to satisfy than that under the Hague Rules and Hague-Visby Rules. The scope of the carrier's liability is thus increased in comparison.

The Hamburg Rules are based on the principle of presumed fault or neglect. They still permit, however, 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 the comments under 4.1.4 are equally relevant to claims subject to the Hamburg Rules.

4.1.2.5 The Rotterdam Rules

4.1.2.5.1 General comments on the Rotterdam Rules

The Rotterdam Rules were adopted in 2008. 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 been signed by 24 states but only ratified by 4 states. It will be some time before the convention comes into force, if ever.

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

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 fault of the carrier's servants is dealt with in the same way.

The carrier remains liable if cargo interests can show that the carrier's conduct contributed to the relevant loss, irrespective of whether the carrier can rely on any defence. 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, on which the carrier in previous conventions could rely. The carrier's duty to exercise due diligence to make the vessel seaworthy before and at the beginning of the voyage has been extended to include the voyage itself. By virtue of article 14 the carrier has an ongoing obligation to exercise due diligence in respect of the vessel's seaworthiness.

4.1.2.5.3 Time bar

The Rotterdam Rules provides for a 2 year time bar for cargo claims.

4.1.2.5.4 Limitation of liability

Compared with previous conventions, the limits of liability are 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 section is for liability which follows from mandatorily applicable law or from a contract of carriage based on the Hague or Hague-Visby Rules, as per Rule 10 Section 2 (a). A Member must further avail himself of all available defences and limit his liability in accordance with the fifth paragraph of Rule 2.

4.1.3.2 Consequential damage

The liability covered is primarily in respect of loss of or damage to the cargo concerned. Liability for consequential damage is covered as long as it is mandatory and caused by loss of 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 section. 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

The carrier's liability for the cargo was previously thought to be limited to the period from when the ship's tackle is hooked on at the port of loading until the cargo crosses the ship's rail at the port of destination: the "tackle-to-tackle" principle. It is no longer upheld by the courts. Instead there is something of a grey zone as to when the carrier's responsibility attaches before loading and, respectively, ceases after discharging.

4.1.3.3.1.2 The period before loading

Unless contracted otherwise, (see the comments on FIOS terms under 4.1.6.3) the carrier is liable for the loading operation. The condition of the cargo before loading begins is of importance.

For the period before loading it is important to find out when and how the goods arrived at the terminal or quay for loading on board the ship. 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, 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 assist 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 operation except where the carriage is undertaken on FIOS terms (see comments under 4.1.6.3). Courts are likely to extend the carrier's liability beyond the time of the discharging operation. When and where the liability ends will depend on the

circumstances in each case. For the defence of a cargo claim the carrier should provide information and evidence that certain measures had been undertaken by or on behalf of the carrier.

E.g. 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 upon discharging or delivery, see the comments under 4.1.4.3.2, 4.1.4.3.3, 4.1.11.10.1.3, 4.1.11.14.9 and 4.1.11.16.5.

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 stage relating to carriage of the cargo on the Member's vessel before loading and after discharge. For any such stage the cover is limited to 14 days before the commencement of the transport by the vessel and 14 days after its completion. Upon request the Club can extend cover 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 cargo

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 cargo 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 replaces 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. The owner of the cargo may not necessarily be the registered Owner of the entered vessel. The cover under this section is effective even if the Member and the owner of the cargo are separate legal entities as long as they belong to the same group of companies.

4.1.4 The burden of proof

4.1.4.1 General

Liability is a construct of law which is determined from known and proven facts. Even if the law differs from one country to another, there are basic rules as to who should prove the facts and against whom it should be inferred if the facts are not available. This is essentially what is meant by "burden of proof".

4.1.4.2 Burden of proof

The burden of proof is usually on the person who brings a claim in a dispute. It means that the party who has suffered a loss must prove that he has suffered a loss for which the party against whom he is pursuing the claim is liable. This kind of burden of proof applies for example in personal injury cases under Rule 3 and in third party liability cases under Rule 7.

Regardless of who bears the initial burden of proof, the defendant should still prepare his defence. It is generally considered that since the claimant has limited access to the vessel, it therefore has difficulties in getting hold of any evidence that is to be found on board or otherwise within the Member's organisation. This was the main reasoning behind the shifting of the burden of proof on to the carrier.

The Member has an obligation under Rule 10 Section 4 to co-operate in discharging the burden of proof. Information and evidence is required from both the ship and the Member's organization, as well as other available sources to enable the Club to rebut any proof or allegations made by the claimant in order to be placed in the best position to assist the Member to defend the claim.

4.1.4.3 Shifting of the burden of proof

The process requires the party on whom the initial burden of proof lies, to discharge it by the presentation of evidence, whereupon the burden then transfers to the other party to produce evidence in rebuttal.

4.1.4.3.1 General comments on the shifting of the 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 shift of burden of proof for cargo claims. The carrier's liability to pay a cargo claim depends on his ability to prove that the loss did not occur because of his fault or neglect or that it qualifies as one of the legally accepted exceptions from liability. This increases the carrier's obligation to produce evidence of the facts.

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. Deciding whether to accept or decline the invitation should be considered carefully as it may be possible to dismiss the claim from the outset if the cargo owner fails to establish that the cargo was discharged in a damaged condition. 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. There is a presumption that works in the carrier's favour under Article III rule 6 of the Hague and Hague-Visby Rules. The presumption is that, after three days, if there has been no written notice of loss or damage, the goods are presumed to have been delivered in the same condition as described in the bill of lading. This is another factor to be taken into account when deciding whether or not to attend a joint survey. Another factor to be considered is whether the goods have been subject to further transportation from the port or place of discharge.

4.1.4.3.3 Outturn reports and short landing 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 short landing certificates should generally be refused. Another adverse effect of short landing certificates can be seen from comments under 4.1.10.8.

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 cargo was discharged in a damaged condition, 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 cargo care (see the comments under 4.1.6), seaworthiness (see the comments under 4.1.5) and liability exceptions (see the comments under 4.1.8).

4.1.4.4 Strict liability

As mentioned above, liability is based on the concept of burden of proof. In addition, there is a further category known as "strict liability". It means that the Member is legally liable for damage regardless of fault or negligence. As an example, liability for pollution (for cover, see Rule 6) is strict for the registered Owner of the vessel. Proof is, however, still required to the same extent as in any other case to verify that the pollution came from the Member's vessel and the alleged extent of the loss. Such evidence may be used as mitigation in respect of the liability for the loss itself or for the consequences such as fines.

4.1.4.5 How to discharge the burden of proof

4.1.4.5.1 How to prove a case

What constitutes proof? Most jurisdictions do not require strict formalities to be observed with regards presenting evidence. There are still some jurisdictions and situations where proof has to be in a certain form.

Usually a court is prepared to consider any piece of information presented by a party as a proof of its position. The parties are free to collect and present all facts, information and evidence in their favour. The court merely has to be satisfied that the evidence presented relates to the subject matter of the claim.

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 plant and compartments, Pre Trip Inspection ("PTI") certificates of reefer containers are examples of important documentary evidence to prove that the carrier fulfilled his obligation to prevent loss or damage. The importance of proving that measures were taken to prevent drug smuggling is described in the comments to Rule 7 Section 6.

4.1.4.5.3 Logbooks and extracts

A central source of information and evidence is the log books which the ship is obliged to keep on board. Old log books must be stored for at least ten years at the Owner's premises.

Courts and tribunals generally attach evidential weight to matters recorded in log books because of the legal obligation to enter important events in them and also because the entries are made contemporaneously. Such contemporary evidence is considered to carry more weight than observations made later on. Unfortunately this may have the effect that contemporaneous comments entered in log books, for example as to the cause of an incident made at a time when the full facts had not been investigated, can potentially undermine the more considered and better informed result of close expert investigation carried out at a later stage. Caution should be exercised, therefore, not to base entries in the log books on unsupported theories and speculations.

Log extracts should be what they say – true word-by-word extracts of what was entered in the log book. 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 log book 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 still legible. 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.

What has been said above applies to the rough as well as the fair log books 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. They should, however, still avoid making comments on causation that are speculative although they can pose possible theories more freely than in a log book. Observations and clues as to the possible cause and extent of a loss and matters that require further investigation should be reported. Names of witnesses and of those who were on watch or at the scene of an accident should be stated as well as names of pilots, surveyors, stevedore foremen and other potential witnesses.

4.1.4.5.5 Physical evidence

Physical 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, tagged and properly stored. Where possible, evidence should be sealed and authenticated with 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 submitted in evidence in any related litigation. 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 sealed, 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 evidence 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. The Club should be contacted before any samples relevant to a claim or possible claim are disposed of.

4.1.4.5.7 Protests

If careless cargo handling is observed on board or ashore a written protest should be filed with the stevedore company. Local stevedore 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 the comments under 10.4.3.2.

4.1.4.5.8 Other documents

Other documents of importance as evidence in claims are general arrangement plans, stowage plans, mate's receipts, weather-routing printouts, 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 the comments under 4.1.6.5.

4.1.4.5.9 Witnesses

The personal testimony of officers or other crew members may play an important part in discharging the burden of proof. See the comments under 10.4.4.3.

4.1.5 The carrier's obligation to provide a seaworthy ship

4.1.5.1 General comments on the duty of seaworthiness

As previously mentioned, the carrier has two basic obligations in relation to cargo. Firstly, he should exercise due diligence with regard to the seaworthiness of the vessel before and at the beginning of each voyage. Secondly, he should care for the cargo while it is in his custody. If he can prove that he has met his obligations in these respects, he may avoid liability for cargo damage provided he can also prove that the damage was caused by one of the excepted perils listed in the Article IV rule 2 of the Hague or Hague-Visby Rules (if applicable)as discussed in 4.1.8.

The term "seaworthiness" includes every element in the ship which contributes to the safe performance of the contracted transport. It means more than simply "cargoworthiness".

Seaworthiness includes the technical maintenance of the ship, its proper manning with competent and capable crew, updated navigational aids, certificates, 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 to ensure that the ship and its cargo compartments are in such a condition that the cargo to be loaded is expected to be carried on 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 and ultrasonic 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 of the factors in respect of which the carrier is expected to exercise due diligence.

The word “exercise” implies positive action on the part of those on board, to meet the obligation that exists. “Before and at the beginning of each voyage” refers to the period from before the loading of the cargo and runs up to the sailing of the ship.

There are many factors influencing the degree of activity and positive action to be exercised. If the previous cargo was discharged with grabs, the hatch coamings may require close examination. If it was discharged with forklift 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

When performing his duty of examining the suitability of the vessel for carrying the cargo safely to its destination, the Master/Chief Officer must consider the characteristics and needs of that particular cargo. They are not supposed to have scientific qualifications to cover all cargoes, but should have qualified experience and knowledge of the cargoes normally carried on that type of ship. If in doubt they are expected to ask for advice or assistance from shippers or 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 that due diligence has been exercised. 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 cleanliness certificates or Lloyd’s certificates on the suitability of reefer holds and plant 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 every respect but only in respect of any aspects that caused or may have caused or contributed to the loss or damage claimed.

4.1.5.4 "To shipper's satisfaction"

Charterparties 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, might allow the carrier to invoke the exception granted by Article IV rule 2 (i) of the Hague or Hague-Visby Rules as 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 seaworthiness. These are considered operational running costs. See the comments under 4.6.2.1 and 11.2.2.2. At all times, the Member must be considered to have acted as a prudent uninsured.

4.1.5.6 Effect of owner's negligence with regard to seaworthiness

If a ship is found to be unseaworthy due to a failure by its Owner or somebody performing the Owner's functions (most typically someone in a managerial position) to exercise due diligence or acting in a negligent manner in relation to the vessel's seaworthiness prior to the commencement of the voyage, the carrier will be unable to rely upon the exceptions from liability under the Hague or Hague-Visby Rules (see the comments under 4.1.8). If it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause damage, or recklessly and with knowledge that damage would probably result, then the carrier will not be entitled to limit liability under the Hague-Visby Rules (Article IV rule 5 (e)). Such a situation may also involve Rule 11 Section 1 and leave the Member without insurance protection.

4.1.5.7 Effect of Owner's negligence with regard to global limitation

In some circumstances recklessness in relation to ensuring that a vessel is fit to put to sea can result in the right to limit globally being forfeited. For example, the 1996 Limitation Convention states that "a person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result". See the comments under 2.11.

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

4.1.6.1 General comments on the duty to care

In addition to 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. The word "properly" implies that the measures taken by the carrier should be reasonable and correspond with 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.

The U.S. court decision [Bache v. Silver Line, 110 F.2d 60 (2d Cir. 1940)] 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

Under a charterparty the stowage is often arranged by the Charterer. The apportionment of liability against the cargo owners follows the terms agreed in the charterparty if its terms are incorporated into the bill of lading contract. The interpretation of the FIOS terms (Free In and Out Stowed) could cause a dispute. Under English law it has been decided that although the Hague and the Hague-Visby Rules oblige the carrier carefully to load, stow and discharge, this obligation applies only to the extent that the carrier has contracted to perform such operations but they do not have the effect of prohibiting the carrier from excluding the loading, stowage and discharge of the cargo from the contract of carriage. If, however, the carrier has contracted to perform any part of the loading, stowage and discharge of the cargo, the Hague and the Hague-Visby Rules require the carrier to perform those aspects properly. It is therefore necessary to establish whether and to what extent the bill of lading contact of carriage includes loading, stowage and discharge. For example, when the FIOS terms apply in the charterparty and are incorporated into the bill of lading it has to be determined whether the parties have agreed that the Charterer should perform the stowage. There are a variety of terms which are covered by FIOS shipments such as where it is agreed that:

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 free of risk to the Owner.

If the word FIOS appears only in the freight box of the charterparty, alternative 1 probably applies. If the Owner wants the Charterer to assume responsibility for the stowage, the charterparty should contain a clause which clearly spells out alternative 3. Ideally, an Owner should try to avoid charter terms which saddle him with 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, the adverse consequence of which will be at the Owner's risk. The effect of FIOS alternative 3 is also achieved by fixtures on a New York Produce Exchange form (with no material amendments to clause 8).

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 being lost. Please refer to the comments to Rule 4 Section 8. Any such decisions and actions should be taken in close consultation with the Club.

4.1.6.5 How to prove compliance with the duty to care

Each case will be decided on the facts available. As the main source for such information is the ship, the burden of proof is on the carrier. Detailed information from those on board is vital 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:

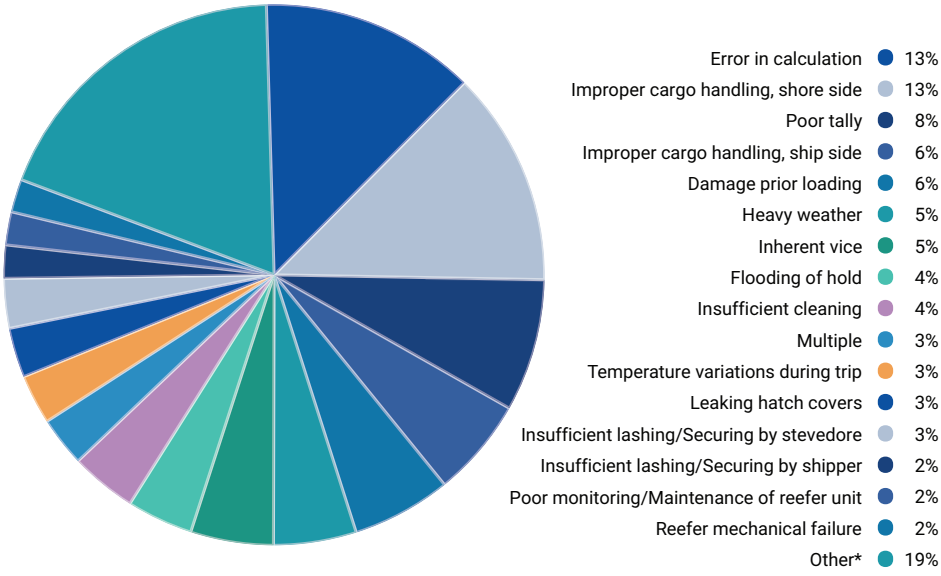
- bilge and ballast tank sounding book with pumping records
- ventilation records including dewpoint, relative humidity and temperature records
- hold and cargo stowage and lashing checking records with observations, action taken and results
- heavy weather records

- hatch cover maintenance and testing 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 by the P&I Insurance. 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 obligatory/mandatory standard of care are for the Member's own account.

Known causes of cargo claims
No of claim 2015-2019



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.

4.1.7 The carrier's liability for servants

4.1.7.1 General comments on liability for servants

It is a basic principle of P&I Insurance that cover is provided to the Member for liabilities imposed upon him because his servants were negligent. See the comments under 2.4.

4.1.7.2 Stevedore companies

Damage may be caused during handling operations performed by longshoremen. Under the Hague and Hague-Visby Rules the carrier remains responsible for such damage.

Stevedore companies do not operate under the same mandatory liability provisions as the carrier. They are generally allowed to draft the stevedoring contracts in such a way that they have no liability for damage caused by their negligence. If, however, 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 and thereby prejudice cover.

If longshoremen are seen to be causing 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 until better practice or more suitable equipment is used. It is important to evidence any such protective steps taken by the ship. Such evidence will be needed in defence of a claim from the cargo owner and to substantiate a recovery action against the stevedore company. It will probably not be possible to obtain a signed admission of liability but it may be possible to get the stevedore company foreman to sign for receipt.

The Member has an obligation under Rule 10 Section 4 to protect the Club's interests in pursuing a recovery action against the stevedore 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.

4.1.7.3 Terminals

Terminal operators also are often 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 the comments under 4.1.7.2).

4.1.7.4 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. Bill of lading forms should contain a Himalaya clause which extends the carrier's liability exclusions to include his servants. Such 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 not necessarily 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 prove that the loss or damage was caused by one of the following excepted perils according to Article IV rule 2.

4.1.8.1 Hague and Hague-Visby Rules Exception Article IV rule 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;

Generally, an employer is deemed to be vicariously liable for loss and damage caused to third parties by the negligent acts and omissions of its employees and others who carry out the employer's business operations (sometimes referred to as "servants and agents"). This exception allows the carrier to avoid such vicarious liability in certain circumstances. 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 for the adverse consequences of those mistakes. The explanation for the exception lies in the philosophy behind the Hague and Hague-Visby Rules. Some 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 on fresh water the hose was not connected to the forepeak tank but to the No. 1 lower hold or deep tank, where cargo became wetted. This is considered as an error in the management of the ship for which the carrier is not liable. The damage to the cargo is to be absorbed by the cargo owner and his underwriter.

4.1.8.2 Hague and Hague-Visby Rules Exception Article IV rule 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 occurs before the commencement of the voyage or was caused either by a breach of his basic obligation in relation to initial seaworthiness or care for the cargo. Fire requires ignition resulting in open flames or at least smouldering (smoke or steam emanating from heating cargo which has not ignited is not considered to come within the fire exception). The carrier is exempted from liability for the consequences of a fire including damage caused by smoke, smell, heat and water used to extinguish it. To enable the Club to assist the Member to defend 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, proof of ignition (such as photographs of the flaming/smouldering fire – photographs which only show smoke do not establish that there was ignition as, contrary to the popular

expression, there can be smoke without a fire) and of the measures taken to contain and extinguish it.

4.1.8.3 Hague and Hague-Visby Rules Exception Article IV rule 2 (c): *Perils, dangers and accidents of the sea or other navigable waters;*

From the practical viewpoint of assisting the Member to defend cargo claims, this is one of the crucial exceptions. It contains the basic principle behind the Hague and Hague-Visby 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 heavy weather such 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 to the position and routing of the ship. Other observations which indicate that the conditions were extreme and unexpected are invaluable. Intensity of depressions, cross seas, structural damage caused to the ship itself, speed reductions, course changes, and accidents to other ships in the area are some elements which might help the Club to convince the claimant that this liability exclusion is applicable.

Weather routing is a valuable tool to avoid or minimise the effect of bad weather in-transit. Should the vessel run into heavy weather despite weather routing, 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.

The heavy weather defence requires convincing proof that the loss or damage was caused by an extraordinary force which could not reasonably be guarded against. Any fact or piece of information will contribute to the defence. The main source and provider of these facts are the crew.

4.1.8.4 Hague and Hague-Visby Rules Exception Article IV rule 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 and Hague-Visby Rules Exception Article IV rule 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 and Hague-Visby Rules Exception Article IV rule 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 the 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 the comments under 11.5.4.3.

4.1.8.7 Hague and Hague-Visby Rules Exception Article IV rule 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 relates 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 (a).

4.1.8.8 Hague and Hague-Visby Rules Exception Article IV rule 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 and Hague-Visby Rules Exception Article IV rule 2 (i): *Act or omission of the shipper or owner of the goods, his agent or representative;*

The carrier is not liable to compensate for 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, the shipment and declaration of dangerous cargo. See the comments under 4.1.11.4 and 4.1.11.16. This exclusion underlines the necessity of all cargo losses being thoroughly investigated and the result presented to the Club.

4.1.8.10 Hague and Hague-Visby Rules Exception Article IV rule 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 as a result of 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 can 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 can 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 and Hague-Visby Rules Exception Article IV rule 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 and Hague-Visby Rules Exception Article IV rule 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 are significant. 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 the comments to Rule 3 Section 9 and Rule 7 Section 8.

4.1.8.13 Hague and Hague-Visby Rules Exception Article IV rule 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 III rule 3 of the Hague and Hague-Visby Rules, the carrier shall issue a bill of lading showing among other things the apparent order and condition of the cargo. The bill of lading is regarded as evidence that the description of the condition is accurate. The liability for the bill of lading 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 bill of lading, 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, and products may not have been sufficiently dried before being sealed in plastic wrapping for shipment. Similar problems for some cargoes which frequently result in claims are mentioned below (see the comments under 4.1.11.14 and 4.1.11.15).

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 burden of proof (see the 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 and that proper care was exercised in relation to their carriage (for example in respect of ventilation).

4.1.8.14 Hague and Hague-Visby Rules Exception IV 2. (n): *Insufficiency of packing;*

The obligation to issue a bill of lading 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, 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 bill of lading. Please refer to 4.1.11.13 and 4.1.11.15 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.

4.1.8.15 Hague and Hague-Visby Rules Exception Article IV rule 2 (o): *Insufficiency or inadequacy of marks;*

According to the Hague and Hague-Visby Rules Article III rule 3 the bill of lading 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 and Hague-Visby Rules Exception Article IV rule 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 on the carrier to show due diligence with regard to seaworthiness before and at the beginning of the voyage. See the comments under 4.1.5.2. If the carrier has shown such due 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 and Hague-Visby Rules Exception Article IV rule 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.

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

Package limitation and time bar - differences between the relevant conventions

	Hague Rules	Hague-Visby Rules	Hamburg Rules	(Rotterdam Rules)
Limitation	GBP 100 gold value per package or unit unless value declared and inserted in the B/L	SDR 2 per kilo or SDR 666.67 per package	SDR 2.5 per kilo or SDR 835 per package or shipping unit	(SDR 3 per kilo or SDR 875 per package)
Time bar	1 year	1 year	2 years	(2 years)

4.1.9.3 Package limitation

4.1.9.3.1 General comments 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, unit or weight of cargo lost or damaged. 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 can 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 higher amount. The value of SDR 1 follows the fluctuation of the basket of currencies on which it is based.

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 higher amount.

4.1.9.3.5 Package

The limitation amount is to be applied to each package or other unit of the goods lost or damaged.

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 bill of lading 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 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 bill of lading. The same thing goes for pallets. For the package limitation to count as one unit, the number of packages stated in the shipping document must be stipulated as "one" – even in cases where the package contains sub-packages. For instance, a large box containing 100 smaller boxes, is to be described as one package. When handling claims in the U.S.A., in particular, it is helpful if freight is charged at a flat rate per container or pallet. A bill of lading drafted along these lines could save considerable amounts in the settlement of a claim, to the benefit of the Member's record.

On the other hand, where the number of packages within the container is specified in the bill of lading, 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 the comments under 4.1.11.3.5 and 11.2.2.6.

For bulk cargoes, where there are no packages, under the Hague Rules, there is no alternative weight limitation applicable. In some jurisdictions under the Hague Rules, 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. Under the Hague-Visby and Hamburg Rules there is a per kilo alternative limitation.

4.1.9.3.6 Effect of an ad valorem bill of lading

There is no right to package limitation if the nature and value of the goods has been declared by the shipper and inserted in the bill of lading or other contract of carriage. This creates an ad valorem bill of lading and the carrier is liable then up to the declared value of the goods. In exchange for such an extended liability, the carrier charges a higher freight. 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 bill of lading or other document in which a value of more than USD 2,500 is declared. The extended liability under an ad valorem bill of lading is covered only if and to the extent that a special cover has been arranged through the Club. The special cover is limited and Members are recommended to contact the Club in connection with ad valorem bills of lading, see the comments under 4.1.11.17.4.

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 4.8.1.

4.1.10 Time bar on cargo claims

The legal rules on time bar 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 while it is 6 years in the UK and the USA. 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?

Commonly, 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 can 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 the burden of proof. That means he is considered liable unless and until he can prove how the loss occurred and that it falls under one of the Hague or Hague-Visby Rules exceptions. To meet 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, it is argued that claimants

must be forced to file claims within a time frame that allows meaningful investigations to be conducted.

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 whenever available.

4.1.10.5 When does the time bar take effect?

In order to establish the expiry date of the time limit, it is necessary to establish the day on which it starts. Time starts to count 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 running of time and, accordingly, for its termination.

4.1.10.6 How may the time limit be interrupted?

The time limit can be interrupted by issuing proceedings. 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.

Usually an extension of one to six months is agreed. The length will be decided on a case by case basis.

Internationally, other ways for claimants to interrupt the running of time may exist.

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 documents/information in support of a claim such as:

- identity of shipment and bill of lading
- amount of claim and loss specification
- identity of claimant. If the claimant is a cargo underwriter or an agent acting for a cargo underwriter, the documents should include a letter of

subrogation executed in the proper way and at the proper time and 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 file a claim in court in order to interrupt the running of time.

It is for the claimant to protect time. The carrier has no obligation to assist. Any time extension should be granted on the basis that the claim is not already time barred and, ideally, to a specifically identified claimant or claimants.

Additionally, it should be considered whether there is still enough time left for the claimant to file a claim in court. If the request for an extension is made on the last day, there may not be enough time and the request should be declined.

Where no extension of time is agreed, the claimant can only protect the time from expiring by validly commencing suit.

Waiving a time limit that has already expired should be avoided.

4.1.10.8 Can time be extended without a claim being filed or agreement?
In some jurisdictions there are some claims handling activities which could prejudice a time bar defence or interrupt the running of time.

Likewise, continued discussion or negotiations, without reference to the fact that time has expired, may be interpreted as an implied waiver. Time bar objections should be made at the earliest possible opportunity, which means at the first contact with the claimants after time has expired.

It has happened that shipowners have given a claimant misleading information or withheld documents to make it impossible for the claimant to file a claim in time. Such attempts, when revealed, have not been looked on favourably by the courts. However, the failure to answer a claimant's request for a time extension will not, in most cases, prejudice the Owners' position.

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.

4.1.10.10 In whose favour does the time limit operate?
Generally, the time bar 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 follows from the so-called Himalaya clause included

in most bill of lading forms and now a part of the Hague-Visby Rules. It should be noted that the time limit in the cargo conventions applies to cargo claims against the carrier and not to claims by the carrier. Such claims are subject to the time limit in the law governing the contract.

4.1.10.11 What should be done in a charter situation?

If the time limit has been extended without the approval of the counterparty to the charterparty, it does not necessarily mean that the matter has become time barred against him. In some jurisdictions, such as in Scandinavia, an additional time limit for such recovery claims is provided. Claims under charterparties are usually subject to the general time limits in the law that governs the contract and not those under the bill of lading.

It is still advisable to protect time as against the charterparty counterparty by asking the counterparty to approve the extension before it is granted to cargo interests. This is sometimes expressly required by the charterparty provisions.

An extension may, otherwise, be granted on the express condition that the claimant should obtain a similar extension from the charterparty counterparty.

Preserving time in a charterparty relationship requires close co-operation with the Club during the handling of the claim. Even at the negotiation stage of the fixture it can be important to ensure properly drafted provisions are included in the charterparty in order to save a lot of trouble, time and money. It can be helpful for such clauses to include the names of the respective P&I Clubs concerned especially when it is necessary to make urgent contact with the counterparty's P&I provider.

The question of time bar of recovery claims under a NYPE charterparty was decided in the "Strathnewton" case. Although the charterparty 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 NYPE Inter-Club Agreement. Following that decision, the NYPE Inter-Club Agreement was amended to the effect that any claim under the agreement must be notified to the other party in writing within two years of the date the goods were delivered or should have been delivered (unless the Hamburg Rules apply, in which case the time bar is three years). In the absence of such a notification, any recovery claim is time barred. Time can, of course, still be extended by agreement between the parties. It is important to note that any claim under the NYPE Inter-Club Agreement is still subject to the overall time bar of the charterparty. For example, if the charterparty is subject to English law, the six year contractual time bar will also apply. In this sense, two time bars exist. Firstly, the two year notification time bar and, secondly, the overall time bar in the charterparty (being six years under English law).

The New York Produce Exchange Inter-Club Agreement

The New York Produce Exchange Inter-Club Agreement ("ICA") was first formulated and entered into by the Group Clubs in 1970. It provides a relatively simple mechanism whereby liability for cargo claims arising under New York Produce Exchange Form (NYPE) or Asbatime charterparties and/or contracts of carriage authorised under such charterparties, can be swiftly and fairly apportioned between Owners and Charterers. The purpose behind the ICA was to avoid costly and protracted litigation.

The apportionment of claims arising out of e.g.:

Unseaworthiness	=	100% Owners
Loading, stowage, discharge	=	100% Charterer
Shortage, overcarriage	=	50/50 split

The ICA, since its inception, has been amended on three occasions: in 1984 to meet the shortcoming relating to the time limit for making claims; in 1996 to cater for the Hamburg Rules and to meet in particular the needs of the container trade; and in 2011 to provide, inter alia, for the provision of counter securities.

As described in the comments under 10.2.2, arbitration clauses in other charterparties such as the Centrocon arbitration clause, may render any recovery claim under the charterparty time barred long before the time for filing cargo claims has expired. It will make the agreed apportionment of liability in the charterparty 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.A. according to which claims for unauthorised deck shipments (see comments under 4.1.11.5.3) are still subject to the one-year time limit even though the carrier is usually deprived of all other limitations and exclusions of the Hague and Hague-Visby Rules 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 cargo claim was first settled or the party against whom that cargo 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

This is not a cargo handbook. The Chief Officer is expected to have some knowledge and experience and reasonable access to additional information.

The International Convention for the Safety of Life at Sea, 1974 (SOLAS Convention), as amended, deals with various aspects of maritime safety and contains, in chapter VI, the mandatory provisions governing the carriage of solid bulk cargoes. These provisions are extended in the International Maritime Solid Bulk Cargoes Code (IMSBC Code).

The aim is to facilitate the safe stowage and shipment of solid bulk cargoes by providing information on the dangers associated with the shipment of certain types of solid bulk cargoes and instructions on the procedures to be adopted when the shipment of solid bulk cargoes is contemplated.

The Club also produces cargo and case specific publications as part of its ongoing loss prevention initiatives.

The following comments are provided on some of the more problematic cargoes experienced by the Club.

4.1.11.2 Coal

Coal shipped from U.S. Gulf ports, particularly in the summer months, and also from other countries such as Colombia and China experienced serious heating issues on shipment and/or during the voyage. It has endangered the ship and necessitated discharge of the cargo at a port of refuge.

Coal shipped from anywhere in the world should be carried out in compliance with IMO's IMSBC code which 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 any bilge water. 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 comments on containers

Considerable volumes of cargo are shipped now in containers. It is important to highlight some aspects of the container concept which may affect the carrier's liability covered under these Rules.

In 2016 SOLAS was amended with a requirement of mandatory verification of the gross mass of packed containers. It introduced two new requirements:

1. the shipper is responsible for providing the verified weight by stating it in the shipping document and submitting it to the Master or his representative and to the terminal representative sufficiently in advance to be used in the preparation of the ship stowage plan; and
2. the verified gross mass is a condition for loading a packed container onto a ship.

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 yard. 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 locked and 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 bill of lading should be claused accordingly. If the irregularity may cause damage to the cargo during the transport, the carrier should take appropriate action, such as mending a hole in the container's roof. It may be necessary to invite the shippers to attend at the terminal, 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 monitored easily and have good lighting. 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 bill of lading regarding the nature, number and weight of the cargo. The extent of such a liability may vary from one country to another. A court's decision will probably be influenced by the carrier's opportunity to check the bill of lading 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 bill of lading particulars were verified as far as possible.

If a Received for Shipment bill of lading is issued, . the container should be weighed when received, preferably at the terminal gate. An On Board bill of lading 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 bill of lading particulars, he may rely on warning clauses in the bill of lading 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 bills of lading for container shipments.

4.1.11.3.6 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).

4.1.11.3.7 Other comments on containers

For containers stowed on deck, see the comments under 4.1.11.5.2.4. For reefer containers, see the comments under 4.1.11.14. For package limitation on containers, see the comments under 4.1.9.3.5.

4.1.11.3.8 Access to container ships voluntary agreement

4.1.11.3.8.1 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 on board 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 on board 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 is not allowed.

The Club can provide a copy of the Code of Practice.

4.1.11.4 Dangerous cargo

4.1.11.4.1 General comments on dangerous cargo

By definition the carriage of dangerous cargo significantly increases 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.

4.1.11.4.2 The carriage of explosives

The carriage of explosives is no longer excluded. However, in order not to jeopardize P&I cover, all IMDG cargo must be carried in compliance with the IMDG Code and any other applicable regulations for safe operation such as SOLAS, ISM etc.

4.1.11.4.3 Dangerous cargo in packages

Likewise the carriage of other dangerous cargo is approved on condition that the carriage, including packaging, handling, stowage, lashing and segregation, is carried out in compliance with the regulations contained in the IMDG code issued by the International Maritime Organisation ("IMO").

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 may 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.

4.1.11.4.4 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 appropriately marked. Cargo without, or in violation of, proper marking should not be accepted for shipment. A Member is 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).

4.1.11.4.5 Dangerous cargo manifests

Dangerous cargo should 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).

4.1.11.4.6 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 can assist Members in performing recovery actions against shippers.

4.1.11.4.7 Dangerous cargo in bulk

The IMDG code applies to dangerous cargo shipped in packages. Dangerous cargo may, however, be shipped in large quantities as bulk cargo.

The International Maritime Solid Bulk Cargoes Code ("IMSBC Code") became mandatory on 1 January 2011 when amendments to the International Convention for the Safety of Life at Sea (SOLAS) entered into force. The IMSBC Code supersedes an earlier "Code of Safe Practice for Solid Bulk Cargoes" (the BC Code). The IMSBC Code is mandatory for all vessels carrying solid bulk cargoes, regardless of the vessels gross tonnage or age.

It is a condition for cover that the carriage is performed in accordance with the requirements of the Code.

4.1.11.4.8 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 as a result of domestic legislation or regulations imposed by local authorities such as the U.S. Coast Guard. It is the Member's responsibility to find out about any such regulations applicable to a planned shipment.

It is a condition for cover under these Rules that such local regulations are adhered to.

4.1.11.4.9 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 developed.

4.1.11.4.10 Other comments on dangerous cargo

Carriage of radioactive products and nuclear substances is dealt with under Rule 11 Section 7.

Carriage of weapons of war is dealt with under Rule 11 Section 5 (c).

For comments on shipments of coal see under 4.1.11.2.

For comments on the carriage of direct reduced iron ("DRI") pellets see under 4.1.11.6.

4.1.11.4.11 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. Neither this convention nor its 2010 Protocol is 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 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).

4.1.11.5 Deck cargo

4.1.11.5.1 General comments on deck cargo

When the Hague Rules were drafted, a ship's deck was considered to expose cargoes stowed on it to additional risks. 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 from the 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 an on deck or optional bill of lading, and shipment on deck under an underdeck bill of lading.

4.1.11.5.2 Shipment on deck under an on deck or optional bill of lading

4.1.11.5.2.1 Liability may be contracted out of

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 I (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 or Hague-Visby Rules. Therefore, deck cargo is excluded from the mandatory liability system. The carrier is free to contract out of all liability or at least all liability relating to the specific on deck risks, for cargo so carried and stated in the bill of lading as so carried. A cargo owner who chooses on deck stowage, probably in exchange for lower freight, is expected to bear the ensuing risks and insure them separately.

There are two important requirements which must apply: first, the goods must be stowed on deck and secondly, the deck stowage must be clearly stated on the bill of lading or waybill.

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 to be 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 stated on bill of lading

The second requirement, viz. that the deck stowage must be declared on the bill of lading, is important. In trades other than where carriage on deck is customary (for example for shipments on Ro/Ro, heavy lift, containers and log carriers), if the on deck stowage is not brought to the cargo owner's attention by such a declaration on the bill of lading, he may be unaware of the additional risks and be deprived of the opportunity to buy extra insurance protection. Carriage on deck in such trades might also be regarded as a deviation from the contract of carriage, the effect of which would be to deprive the carrier of the ability to rely on exceptions and limitations. It is important, therefore, that any bill of lading or other document containing/evidencing the contract of carriage for such trades is claused to state on deck stowage and that the risk of such carriage is transferred to the cargo owner. As Article III of the Hague and the Hague-Visby Rules does not make it compulsory for the carrier to issue a bill of lading, it is important for the carrier to ensure that, even if the shipper does not require one to be issued, that, to protect his own interest, the carrier ensures that a bill of lading is issued for all deck cargo which declares the on deck stowage. Otherwise there is a risk that the carrier may be in breach of the fourth part of Rule 4 Section 1 and will find himself without cover under these Rules (the same might apply under Rule 10 Section 2 according to which cover is jeopardised if a Member has entered into a contract containing unusually burdensome terms or lacking the usual protective clauses, absent 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, it is recommended that the following clause be inserted on the face of the bill of lading:

"Carried on deck without liability for loss or damage howsoever caused".

Where an on deck bill of lading is issued for carriage of cargo to or from the U.S.A. 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 bill of lading 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 nevertheless very important that bills of lading issued for container vessels include 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 outside the mandatory liability regime, the carrier is free to contract on terms which exclude all risks and liability for deck cargo. However, the carrier may still be obliged properly to load, stow, care for and discharge deck cargo. Accordingly, the carrier should always take due and normal precautions concerning those aspects regarding the shipment of deck cargo. It should always be secured in an appropriate manner. It can be argued that for certain types of goods which should never be carried on deck at all (e.g. generators or sophisticated machinery or engines transported on flats or in open top containers) the carrier may still incur a liability for their *stowage* on deck, even if the bill of lading contract expressly excludes liability for their *carriage* on deck.

The containers should always be stowed in a safe manner. Open top or flat rack containers should not ordinarily be stowed in exposed positions but protected within the stow.

Even if it may be possible to contract out entirely of liability for declared deck cargo, in appropriate trades (such as for Ro/Ro, container, heavy lift and log carriers), Members may contract on terms which give the carrier liberty to carry

cargo on deck without declaring it to be on deck but for the standard of liability provided under the Hague-Visby Rules to apply to such carriage regardless of the absence of the on deck declaration (see comments under 4.1.2.2 and 4.1.2.3 respectively). By application of Rule 10 Section 2 (a) such liability for undeclared deck cargo to which the Hague-Visby Rules apply is covered.

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. The inadequate adaptation of a ship for the carriage of containers on deck will render her unseaworthy.

4.1.11.5.3 Shipment on deck under an underdeck bill of lading

If cargo is carried on deck under a bill of lading which does not a) explicitly state that the cargo is so carried or, which does not b) contain a valid liberty clause or, c) where carriage on deck is not customary, such carriage may in itself constitute a breach of contract or deviation (see comments under 4.8.4.1). If it constitutes deviation, the consequences can potentially deprive the carrier of the benefit of some or all of the Hague or Hague-Visby Rules liability exceptions and limitations and in those circumstances cover may be lost (or prejudiced) by reference to the fourth part of Rule 4 Section 1 on grounds that the liability results from an unauthorised on deck shipment.

It is possible for a Member to insure the risk of losing P&I Insurance due to undeclared carriage of cargo on deck by purchasing Deck Cargo Insurance for an additional premium. 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 ("DRI")

The problems associated with the safe carriage of this cargo were addressed by the requirements of the IMSBC Code. However, care needs to be taken both in respect of the moisture content and ventilation/inert blanket.

4.1.11.7 Bulk cargoes that may liquefy, including nickel ore

Where the moisture content is too high, certain bulk cargoes such as mineral concentrates respond to the vibrations inherent in sea carriage by behaving more like a liquid than a solid. This has resulted in the sudden loss of a number of vessels and their crews. The IMSBC Code addresses this but care still has to be taken. The Master must be satisfied that the transportable moisture limit has not been exceeded. It is important that Members follow the Mandatory Notification Requirement for shipments of nickel ore from Indonesia or the Philippines whereby Members must immediately notify the Club of any a) future fixtures for loading nickel, or b) if the ship is ordered to load nickel under a current charter. For more information please see the Club circular 2541/2012.

4.1.11.8 Grain

The following precautionary measures are recommended to be followed when shipping 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 shortage established without control or participation from the ship's side nor to authorise the ship agents 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".

4.1.11.9 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 7.6.5.5.

Contracts for the 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 the comments under 11.3.2.6.

4.1.11.10 Liquid bulk cargo

4.1.11.10.1 Shortage

4.1.11.10.1.1 General comments on shortage

Carriage of liquid bulk cargoes is plagued with serious claims for shortage. The context for shortage claims is the carrier's obligation for the particulars in the bill of lading 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 such high value cargoes, it is important 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.

4.1.11.10.1.2 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 Inspection 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 shore tank figures, stops during loading, shore lines used, etc., may be of assistance in the investigation of a 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 bill of lading, the Master should lodge a protest and contact the Owner and the nearest Club correspondent for assistance.

4.1.11.10.1.3 Discharging

If the cargo requires heating 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 remaining on board ("ROB").

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 bill of lading 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 charterparties often contain a cargo or freight retention clause which allows the Charterer to make a 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 the comments under 8.1.6.4.

A cargo retention clause favourable to the Owner's interests and recommended by the Club to be included in charterparties is as follows:

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 shore tanks the oil went and through what shore lines. 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 (Empty/Dry Tank 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 contacted.

Masters are advised not to sign statements of shortages established without control or participation from the ship's side nor to authorise the ship agent 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"*.

4.1.11.10.1.4 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 in-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 in-transit losses may no longer be accepted by the courts. The acceptable extent of in-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.

4.1.11.10.2 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 considered in relation to the cargo previously carried as well as that to be loaded. As appears from the 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 charterparty 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 carriage requirements of his own cargo.

A Tank Inspection 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 the comments 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 the comments under 4.1.4.5.6.

Plans of the ship's tank and piping system are necessary when investigating a contamination claim. The names and whereabouts of all persons involved in the cargo operations may also be of great help.

When a contamination has occurred, the carrier must 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 lines 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 the wrong ones.

4.1.11.10.3 Commingling and blending

Requests to commingle or blend liquid oil 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. It should be kept in mind that the Master and his crew have limited 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. Two very important factors when accepting to commingle or blend cargo are the clausing of bills of lading and sampling. Members should closely follow the Club's recommendations below in order not to prejudice cover.

4.1.11.10.3.1 Commingling

Cargo of the same specification loaded from different shippers, terminals or ports is considered to be commingling. Bills of lading must properly describe that the cargo has been loaded from different sources and commingled on board 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 start of loading. First foot samples should also be taken as well as on completion of loading of each grade and after commingling on board.

Commingling of cargo of the same specification from the same shipper and terminal but from different shore tanks is not considered a commingling but a normal loading operation.

4.1.11.10.3.2 Blending

Blending cargo involves the mixing of two or more grades of different specifications on board the ship for discharge as one homogenous cargo. Since it is very difficult, if not impossible, to scientifically blend cargo on board a ship, receivers may complain that the blend does not correspond to the cargo description in the bill of lading. Such claims may fall outside the Club cover unless the bills of lading have been properly claused to reflect in detail the loading procedures. The Master should ensure that the two grades loaded are individually described in the bills of lading including the name of the ports and the dates.

In addition, the Club recommends that Members obtain a Letter of Indemnity from shippers and/or Charterers. Sampling should be carried out as per 4.1.11.10.1.2

4.1.11.10.3.3 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.

4.1.11.11 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 meet his burden of proof.

4.1.11.12 Nuclear cargo

See the comments under Rule 11 Section 7.

4.1.11.13 Paper

4.1.11.13.1 General comments on the carriage of paper

Paper and other similar products in rolls are sensitive cargoes and can be damaged easily. The rolls have little, if any, packing that could 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). To a certain extent it has been agreed that the roll constitutes its own packing with cuts not deeper than ½ inch not being compensated by the carrier and cuts deeper than ½ inch being compensated at 60%.

4.1.11.14 Refrigerated cargo

4.1.11.14.1 General comments 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, may also be relevant to frozen cargo. What is said in respect of reefer compartments may also be relevant to reefer containers.

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, whether as food or medication, 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 P&I claims 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.

4.1.11.14.2 Pre-loading surveys of reefer plant

The carriage of reefer goods by traditional reefer ships has largely been overtaken by the use of reefer containers. However, some dedicated reefer ships remain. 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 evidenced. 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, however, 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.

4.1.11.14.3 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.

4.1.11.14.4 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.

Carrying instructions and temperatures to be maintained should not be inserted in the bill of lading. Similarly, the carrier should not agree that the bill of lading is claused so as to guarantee a product or hold temperature 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 bill of lading should be claused accordingly.

4.1.11.14.5 Pre-loading examination of cargo

The special nature of reefer cargoes increases the carrier's obligation to examine such non-containerised 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 the comments under 4.1.4.5) it is important that any pre-loading examinations are recorded for future reference. The bill of lading should be claused as per any such examination. 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 IV rule 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 the comments under 4.3.3) and that its consequences could not be avoided or mitigated by precautions during the transport.

4.1.11.14.6 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 the comments under 4.1.4.5.3. Data readings and recordings should be kept for future reference.

4.1.11.14.7 Automatic temperature readings

Reefer containers are equipped with an electronic data logger for automatic temperature readings. Extracts from the electronic readout constitute evidence as to the performance of the container and its reefer machinery.

The electronic logger should continuously record the temperature from the moment the container is turned on at the place of stuffing until the doors are opened for stripping.

4.1.11.14.8 Obligation to mitigate loss

Should the temperature readings or the regular daily inspections of the reefer cargo during transportation indicate that damage may occur, the carrier has an obligation to mitigate any loss occurring.

Ships carrying reefer containers should have sufficient know-how, 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 contemporaneously in the reefer and deck logs.

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 plant repairs or to discharge, tranship or even sell the cargo. If such decisions need to be taken the Club can assist with expert and legal advice.

Costs incurred in mitigating a loss may be recoverable under Rule 8 Section 2.

4.1.11.14.9 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 can appoint qualified and independent experts on any type of reefer cargo.

4.1.11.15 Steel

4.1.11.15.1 General comments on steel shipments

The shipment of steel cargoes by sea involves the risk of the steel becoming rusty during the period of shipment. Many factors may cause or contribute to the rusty condition of the steel upon discharge from the vessel 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 laws of chemistry – the combination of steel and moisture produces rust.

4.1.11.15.2 Clausing of bills of lading

Steel is often rusty when presented for shipment. The correct thing for the carrier to do is to clause the bill of lading in a manner which reasonably reflects its apparent order and condition on shipment, including rust. A conflict arises due to the fact that to draw down payment under the letter of credit which finances the purchase of the cargo, the sellers / shippers need to present to the financing bank a “clean” bill of lading which does not contain such remarks (however well-founded they may be). The carrier is in a dilemma because under Rule 4 Section 3 he is not covered for the consequences of issuing a clean bill

of lading for damaged cargo even if done in exchange for a letter of indemnity from cargo interests or Charterers.

It is generally accepted by the industry that bills of lading for steel shipments can be claused, whenever justified, 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 rust
- Partly rusty

When packed sheet steel is shipped the following two clauses may be used:

- Covers rusty/wet
- Packing rusty/wet

Under the terms of the letter of credit it is usually agreed that such remarks do not prevent the bill of lading from being treated as “clean”.

Qualifications such as “atmospherically” or “superficially” should not be used in the description of the rust or the rusty condition. Such qualifications are not strictly necessary to describe the appearance of the cargo. They are subjective, ambiguous and prone to dispute; all of which may be counterproductive to the carrier’s interests.

4.1.11.15.3 Clause in charterparty

It is important that remarks about the apparent condition of the steel cargo which are noted on the Mate’s Receipt (“M/R”) are replicated in the bills of lading. Bills of lading 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 charterparty for the Charterers to sign bills of lading should, therefore, be drafted in such a way that the bills are issued in conformity with the M/R or Tally Clerk’s Receipts and that the Charterers are to hold the Owner harmless if there is a breach of that obligation. See the comments under 4.3.3.3.

4.1.11.15.4 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 can 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 the comments under 8.1.6.2.

The Club is nevertheless prepared to survey and investigate any damage to steel cargoes which may arise during the voyage as with any other cargo damage claim. If there is a claim, the pre-loading survey report may usefully be deployed 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 then be reimbursed under Rule 8 Section 1.

4.1.11.15.5 Loading in rain or snow

Shippers/Charterers often insist that loading of steel products should continue even during periods of rain or snow. It is true that certain qualities of steel are less susceptible to damage from exposure to light rain or snow. Indeed, 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. If he considers it necessary and appropriate the Master may obtain the expert advice of a surveyor or guidance and assistance from the Club correspondent in such circumstances.

4.1.11.15.6 In-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 which makes the ship stiff. This puts the lashing and stowage of the cargo under severe strain in heavy weather. Considerable attention should be given to the condition of the hatches. Ultrasonic or hose testing should be arranged before loading is allowed to commence. Even small defects must be remedied. All 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 traces behind. A final washing should be carried out with fresh water. If this is not done, ship's sweat containing salt crystals, risks contaminating the steel. This 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 burden of proof on the carrier it can be difficult for the carrier to disprove such an 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.

Whether to ventilate holds containing steel during the voyage has to be carefully considered so as to avoid the formation of cargo and/or ship sweat. If the steel loaded is colder than the ambient temperature in those areas through which the ship will proceed during her voyage, ventilation should probably be avoided. The temperature of the steel is likely to be lower than the dewpoint of the external air so that cargo sweat will form. If, on the other hand, the steel is loaded in a warm climate, the holds should probably 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 down on to the steel. It is the dewpoint of the air inside the hold as compared with that of the ambient air outside that is the determining factor as to whether or not to ventilate. The ship must, therefore, be equipped to measure the dewpoint both

inside and outside the hold. Similarly, it is inadvisable to load steel in the same hold as moisture laden products such as logs or plywood.

4.1.11.16 Trailers

4.1.11.16.1 General comments on trailers

The Ro/Ro concept is widely accepted. A considerable part of the Ro/Ro cargo is carried on trailers.

Most trailers are consolidated by shippers or by freight forwarders who 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 weight, stability, friction, etc. Unfortunately, goods are often still stowed in trailers with insufficient or sometimes a complete lack of securing. Sometimes the goods are adequately stowed for the forces exerted during road transport but not for the additional forces encountered on a ship at sea. 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. Cargo shifting in one trailer may cause a chain reaction involving adjacent trailers. A piece of heavy equipment which becomes detached from one trailer can lead to the destruction to all cargo stowed in that area of the ship. The owners or underwriters of the cargo destroyed will file claims against the equally innocent carrier to recover their losses.

4.1.11.16.2 Education of shippers

Members operating a liner service based on a Ro/Ro trailer concept should prepare and distribute cargo-securing instructions and advice to shippers.

4.1.11.16.3 Pre-carriage inspections

As for the individual shipments, the carrier must perform as much checking of the unit as is both legally and technically capable of being carried out and be able to provide evidence of those checks 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 and if observations made which might suggest damage or shifting of the cargo or inadequate securing or stability, this should be investigated further and remedied.

The trailer should be 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 stowage plan is generally drawn up in the terminal. To the extent possible, trailers with dangerous, heavy or sensitive cargo should be given special attention and stowed accordingly.

Unusual performance of the trailer as it is towed on board, for instance when going up the ramp, would justify and necessitate a further check of the contents and its securing.

4.1.11.16.4 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 not only for the proper storage of the trailer in the terminal before loading and after discharge but also whilst on board.

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 additionally be supported by a trestle or a jack. However even if the trailer itself is properly secured to the deck the cargo concealed under the tarpaulin may still not be properly secured to the trailer.

4.1.11.16.5 Evidence of internal securing

If damage or shifting occurs, evidence as to the internal securing of the cargo in the trailer and its possible effect on the damage should be collected. The number, nature and application of internal lashings and securing must be recorded in detail. If no surveyor is available, this has to be done by the ship's officers. According to the Hague and Hague-Visby Rules Article IV rule 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. The Member has an obligation to support and secure any opportunity of a recourse action for the Club (see the comments to Rule 10 Section 4 and to Rule 14) and/or the ship's Hull underwriters) against shippers for losses sustained. According to Rule 14, after indemnifying the Member for the cargo claim liability (once paid) the Club is subrogated to the Member's rights to bring a recovery action against a negligent shipper.

4.1.11.17 Valuable cargo

4.1.11.17.1 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 bill of lading 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.

4.1.11.17.2 Valuables

The first category of valuable cargoes excluded under Rule 11 Section 2 (d) is for special shipments of extremely high value which are effectively 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 and Hague-Visby Rules allow the carrier to issue a contract of carriage containing wider exclusions from liability than those generally allowed. The contract of carriage must be adapted to the nature of the transport and preserve any legal rights the carrier may have to limit his liability. 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 fails to exclude or limit liability where permitted or contracts on unduly burdensome terms.

4.1.11.17.3 Other valuable cargoes

Other types of cargo may have considerable value without being of the special nature which, according to the Hague and Hague-Visby 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 package limitation which follow from the Hague, Hague-Visby or Hamburg Rules. See the 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 that limitation, the extended liability is covered only if and to the extent that it has been approved by the Club.

4.1.11.17.4 Ad valorem bills of lading

The method envisaged by Article IV of the Hague and Hague-Visby Rules to extend liability beyond the package limitation is to insert the declared value of the cargo in the bill of lading. By accepting a higher responsibility, the carrier can charge a higher freight based on the value of the cargo.

This type of bill of lading is referred to as an ad valorem bill. 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 prior approval of the Club and the charging of an additional premium.

It follows from decisions by U.S. courts that a bill of lading 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 bill of lading form should contain a suitable box for that purpose. In order to protect the carrier adequately, the limitation clause of the bill of lading, in such circumstances, 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 charterparty terms a Charterer is often authorised to issue bills of lading. An Owner can protect himself against any adverse consequences described above by drafting the relevant charterparty clause in such a way that the Charterers are not authorised to issue ad valorem bills of lading.

4.1.11.17.5 Bills of lading with an 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 bill of lading form. Even if the value has not been inserted for the purpose of assuming liabilities beyond the package limitation, this method of recording freight may potentially result in an allegation that the bill of lading is an ad valorem bill. Members are therefore recommended not to use this method to calculate freight. 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 any increased per package liability".*

It follows from governmental regulations in some countries that the value of the cargo as a matter of law or regulation must be mentioned in the bill of lading 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 bills of lading as ad valorem bills. 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 there are no alternatives to the cargo value being inserted in the bill of lading, it is recommended to insert a reservation,

e.g.: *"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 any increased per package liability."*

Another way of attempting to circumvent the carrier's entitlement to package liability occurs where there is a requirement for bills of lading to make reference to and include the serial number of the letter of credit, sales contract or pro-forma invoice: cargo underwriters have tried to overcome the package limitation by arguing that, by virtue of such additional information, the carrier must have acquired knowledge of the value of the cargo and that the bill of lading should, therefore, be regarded as ad valorem one. There have been local court decisions in jurisdictions outside England and Wales 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 included on the face of the bill of lading: *"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 ship agents, 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 bill of lading having been issued. One remedy is to treat each bill of lading containing unnecessary particulars as a genuine ad valorem bill of lading and charge increased freight accordingly. An important note is that if such ad valorem bills have been issued, the carrier is recommended to contact the Club since it might be necessary to take out additional insurance cover.

Whether the Member will be deprived of cover if the letter of credit number is inserted in the bill of lading will be decided in the light of the circumstances and the Club's discretion. The International Group Bill of Lading sub-committee has agreed on the following guideline: *"If a reference to a Letter of Credit amounts to contracting on terms less favourable than Hague/Hague Visby under the law applicable to the contract of carriage, then it seems that cover will be prejudiced. However, there would probably be a case for the Club exercising a favourable discretion in respect of the exclusion where it was reasonably uncertain as to which law was applicable to the contract of carriage or where the applicable law was uncertain as to whether reference to an LC amounted to contracting on terms less favourable than Hague/Hague Visby. Furthermore, Clubs would exercise a discretion favourably where it might be unreasonable for the Carrier to be expected to carry out a potentially lengthy investigation into the applicable law when a bill of lading is presented for the carrier or its agent to issue promptly."*

4.1.11.17.6 Extent of cover for valuable cargo

As regards cover under an ad valorem bill of lading see 4.1.9.3.6.

Valuable cargo carried under a normal bill of lading does not require any extra insurance unless the cargo is of the nature described in Rule 11 Section 2 (d) and for which the insurance cover has been described above.

Section 2 Cargo liabilities during through transportation and lighterage

4.2.1 General

Traditionally the cargo owner or his 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 involves 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 the 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 to the cargo owner for loss or damage which occurs when the cargo is in the custody of another of the carriers involved. It follows from the comments under 2.6 that the cover is strictly related to the operation of the entered ship. Liabilities arising during transport other than on the entered ship are not covered unless stated in these Rules or otherwise agreed. This provision 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 transport

Members carrying out through transport where the cargo is intended to be in the custody of another carrier and partly on board the entered ship ought to submit the terms and conditions of the through bill of lading to the Club. Furthermore, the Member must satisfy the Club that when the cargo is not in the custody of the entered ship, it 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 actual, physical carriers if the Member is

forced to pay in the first instance under a through bill of lading. See below: Rule 10 Section 2 (b).

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 or damage which occurs during a stage of a through or combined transport which is not performed by the carrier. However, even if the carrier makes such an exclusion, he may have to pay the claim if 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 bill of lading requires knowledge and experience of the applicable system imposing legal liability in respect of transport by sea, road, rail and air. It is recommended that Members contact the Club when damage or claims have been reported on cargo travelling under a through or combined transport bill of lading 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 is subrogated to the Member's right of recovery if it has agreed to compensate the Member for his loss. As described in the comments to Rule 14, the Member has an obligation to assist the Club in exercising any right of recovery.

A convention on International Multimodal Transport of Goods (1980 UN) was drafted but never entered into force. Similarly, the Rotterdam Rules were intended to be of multimodal effect but they too have failed to achieve acceptance.

Following a policy decision by the International Group (24 June 2008) the cover position in relation to through transports can be summarised as follows:

(a) Club cover and Pooling extend to contractual liabilities for loss and damage to cargo arising under an approved through transport contract of carriage complying with the Appendix V para 13 (b) Guidelines of the Pooling Agreement

(b) Club cover should extend to non-contractual liabilities (such as bailment) for loss or damage to cargo.

(c) Club cover should not extend to loss or damage caused by cargo (such as personal injury or damage to property) unless brought by the cargo owner by way of indemnity under the contract of carriage i.e. there should be no cover in respect of such claims if brought directly against the carrier as a claim in tort by someone who was not a party to the contract of carriage.

4.2.3 Transhipment under a direct bill of lading

The cover for transhipment liabilities under this section requires the issuance of a bill of lading that meets the requirements of Rule 10 Section 2(b). If transhipment of cargo travelling on a direct bill of lading(i.e. for carriage from load to discharge port on one vessel) is undertaken, the carrier may be held liable for deviation in certain jurisdictions (see the comments under 4.8.3.6). All bill of lading forms should, therefore, contain a suitable clause allowing the carrier to sub-contract all or part of the carriage of the cargo to a third party on a transhipment or feeder vessel. If such handling of the cargo is considered customary as, for instance, in the container trade, the court may find that the transhipment did not constitute a deviation or, at least, that it was not unreasonable.

4.2.4 Lighterage

The second part of this section 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 based on contractual agreement. There are two types of contract involved. Firstly, the lighterage must be in accordance with the contract of carriage for the cargo in question. If the bill of lading or charterparty 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 section. Secondly, there is probably a contract between the Member and the owner or provider of the lightering. 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 routinely carried out in the port in question. Lighterage outside a port or during tow from one port to another is not considered customary in the sense of this section. 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 the demand of the shipper issue a bill of lading showing amongst other things either the number of packages or the quantity or weight of the goods together with its apparent order and condition. The bill of lading is considered to be evidence of the receipt of the goods accurately described on its face. The carrier may be liable if the nature, quantity or condition of the cargo does not match the description in the bill of lading. The Hague and Hague-Visby Rules, however, also contain some important exclusions from this liability. For further details see the comments under 4.1.8.13-14.

The world trade of goods is based on the principle that the bill of lading particulars are an accurate description of the goods and the bill of lading is negotiable on the basis that the endorsee / lawful holder is entitled to delivery of those goods, as described, at the relevant discharge port. This principle is strictly enforced against carriers. Therefore, Members should take great care at the time of loading to ensure that the bill of lading issued truly reflects the apparent quantity and condition of the goods.

This section of Rule 4 defines the extent of cover against liability for bill of lading 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 bill of lading, waybill or other document containing or evidencing the contract of carriage with two important exceptions. Firstly, according to (a) there is no cover for an antedated or post-dated bill of lading. Secondly, under (b) cover is excluded when a bill of lading is issued which deliberately contains an incorrect description of the goods. This is particularly evident when a letter of indemnity has been issued in lieu of a clean bill of lading.

4.3.2 Antedated or postdated bills of lading

4.3.2.1 A bill of lading should be dated when loading is completed

The issuance of a bill of lading is confirmation that the goods are of the nature, quantity and condition as specified in the bill of lading and that these have been received by the carrier and loaded onto the ship (an “On Board” bill of lading). The date of the bill of lading should be the date when loading was completed.

An antedated bill of lading records the loading as has having been completed prior to the date the cargo was in fact loaded. A post-dated bill of lading bears a date subsequent to the actual loading.

A “Received for Shipment” bill of lading 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 bill of lading date and the liability risks which a wrongly dated bill of lading 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 when the loading was not completed until early April and where the market price quoted for April was lower than that for a March shipment. He will no doubt claim the difference in price from the carrier alleging that he was deliberately deceived by the issuance of a bill of lading which misrepresented the date of shipment. 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 other categories of loss and fines. Additionally, the usual limitations and exclusions of liability may 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 bill of lading 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 purchase the cargo. The liability consequences for the carrier who issued the inaccurate bill of lading can be severe.

A carrier can also be held liable for an inaccurate shipment date on a bill of lading issued by ship agents in the normal course of their duties on behalf of the carrier even when this occurred without the carrier's knowledge and consent.

4.3.2.3 No cover for antedating and postdating

The essence of item (a) of this section is that there is no cover under P&I Insurance for the consequences of an antedated or post-dated freight contract. The exclusion applies regardless of whether or not the Member knew that the bill of lading was antedated or post-dated.

4.3.3 Incorrect bill of lading particulars

4.3.3.1 General comments on incorrect bill of lading particulars

The second exclusion from cover under Rule 4 Section 3 is contained in item (b). It is in respect of liability for the description of the cargo in a bill of lading, its quantity and condition, which the Member or the Master of the entered ship knew to be incorrect.

4.3.3.2 The carrier's obligations with regard to bill of lading particulars

As mentioned earlier, the carrier shall upon demand of the shipper issue a bill of lading 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 bill of lading is considered as evidence that the description it contains is correct. Under the Hague-Visby Rules, a clean bill of lading is in fact conclusive evidence, which means that the carrier is estopped from bringing any evidence that the goods were damaged when received.

The bill of lading 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 bill of lading 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 on the carrier where such equipment was found to be missing at destination.

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 bill of lading. Packages should be tallied. The quantity of bulk cargo should be established by the reading of ullages or drafts. See the comments under 4.1.11.10.1-3. The external condition of the goods should be noted so far as is reasonable and samples taken, where necessary. It has been said elsewhere in these comments that the ship's officers 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 bills of lading

Any observations made which confirm or indicate that the cargo is incomplete or does not match the nature, quality or description, should be noted in the bill of lading. For practical examples in relation to certain types of goods, see the comments under 4.1.11.3.5, 4.1.11.5.2.3, 4.1.11.10.1.3, 4.1.11.14.5, 4.1.11.15.2 and 4.1.11.17.4. Such qualifications are usually made first in a Mate's Receipt or similar document. It is important that such qualifications as are made are copied into the bill of lading.

It is not always possible to achieve this where a vessel is on charter and the bills of lading are drawn up and issued by the Charterer. However, Members should avoid clauses which compel the Master to issue "clean" bills of lading

(i.e. issued without any remarks as to the quality or condition of the cargo inserted in the bill of lading) in exchange for an undertaking from the Charterer to indemnify the Member against cargo claims. Such clauses are regarded as contractual terms not approved by the Club according to Rule 10 Section 2. On the contrary, a charterparty should contain stipulations to the effect that Charterers are only authorised to issue bills of lading strictly in conformity with Mate's Receipts or Tally Clerk's Receipts and that Charterers shall hold the Owner harmless if there is any breach of those terms.

Any notation to be inserted in a bill of lading must clearly and unequivocally 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 merely state "some reels damaged". The Club's local correspondent is available to assist a Member and his Master to adequately clause a bill of lading.

4.3.3.4 Letters of indemnity

The reason why shippers want a clean bill of lading or at least try to dilute the force of the notation is that most trading of cargo is financed by a letter of credit. It is usually a requirement of the letter of credit that the bill of lading should be clean. The carrier can be caught in the middle and put under heavy pressure to either turn a blind eye to the cargo damage or to accept a letter of indemnity from the shippers and/or charterers, in exchange for issuing a clean bill of lading. 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 as soon as any such situation arises.

A Member who gives in to pressure exerted by shippers and agrees to issue a bill of lading 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. A claim is likely to be filed against him by the receiver on the strength of the clean bill of lading. There would be no point in revealing the existence of the letter of indemnity as this would make the carrier complicit in the fraud and unconditionally liable. At the same time, the carrier would be unable to discharge his burden of proof under the Hague or Hague-Visby Rules on the basis that the damage 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 under the terms of the letter of indemnity provided. In a number of countries, the carrier will have no legal means of enforcing the letter of indemnity since such a claim would necessarily be based on a fraudulent document.

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 indemnity/guarantee is drafted and in such a way that he is protected to the fullest extent possible. See the 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 bill of lading, he must meet the burden of proof as described under 4.1.4.

Evidence of shortage should be scrutinised carefully 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 ship agent on local conditions in general and at the time of 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 bill of lading under Section 3, the purpose of the transport would still not be fulfilled if he then released the cargo 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 the full value of the cargo and more. The cover, such as it is, for such liability is described in this section.

4.4.2 Delivery against original bill of lading

4.4.2.1 Requirements for delivery

The basic rule for delivery under a bill of lading or other similar negotiable document is that delivery should be made to the first party who turns up at the port of destination in possession of and presenting an original bill of lading, 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 bill of lading 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 bills of lading. 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 bill of lading. To gain some semblance of validity, 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 bill of lading is the equivalent of delivery of cargo without presentation of a bill of lading for which there is no cover under these Rules. See the comments under 4.4.5.

4.4.2.3 No more than one set of original bills of lading

The carrier should, under no circumstances, allow more than one set of original bills of lading for each consignment to be issued. There may be bona fide requests for the replacement of a set of bills of lading once issued. The new set should then replace the previous set through a direct exchange of new for old. When returned, the old set should be destroyed or otherwise invalidated. It is recommended that Members contact the Club for advice in such situations.

4.4.2.4 Original bill of lading travelling with the ship

The carrier is sometimes asked by shippers to carry one of the original bills of lading in the ship's mail to be delivered to the ship agents at 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 other parties 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 bills of lading in its possession. If the cargo has been released against an original bill of lading carried on 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. Accordingly, the Group Clubs warn against this practice. If Members still have to comply with such a request, the bill of lading issued should be clearly claused 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 anybody considering acquiring the remaining bills of lading or providing any credit for the sale. It is still recommended that Members request a letter of indemnity from receivers/Charterers and strictly follow all instructions given by the shippers and check who the proper receiver

is and ask why none of the remaining bills of lading has been presented. For liabilities arising from delivery against a bill of lading travelling with the ship, the Club will consider whether, under the circumstances of the case, it qualifies for cover under this section. 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 bills of lading is in respect of delivery at the port of destination mentioned in the bill of lading. To comply with a request from the cargo owner to take delivery at any other port, the carrier must insist on presentation and surrender of the full set of all the originals. Delivery at a port not specified in the bill of lading against less than a full set is the equivalent of wrongful delivery of the cargo at an uncontractual port (or delivery at a contractual port without presentation of an original bill of lading). Such liability is excluded from cover by application of item (a) of this section and also by Rule 11 Section 2 (i). See the comments under 11.2.2.8.

If, in a charter situation, there is a request for a change of the destination for the cargo which is not in conformity to the discharge port named in the bills of lading which have already been issued, an Owner Member should make it a condition, before agreeing, that a letter of indemnity is issued by Charterers in return for compliance with the request on terms which covers the Member for the risk of a misdelivery claim (i.e. a claim for delivering the cargo at an uncontractual port).

Although a Member's exposure to the risk of a misdelivery claim in those circumstances falls outside P&I Insurance, purely as a guide to assist the Member's negotiations with the Charterer (or other party requesting the uncontractual discharge) the Group of clubs has produced an LOI wording for discharge at a port other than stated in the original bill of lading (see 4.4.5.4). Provision exists for it also to be countersigned by a bank although it is rare for such a counter signature to be provided.

4.4.3 Blank bills of lading

Sometimes Masters are requested to sign blank bills of lading as part of an early departure procedure. Masters should refuse and immediately contact the Owner and the nearest Club correspondent for instructions and assistance.

4.4.4 False bills of lading

False bills of lading are used to commit maritime fraud. They can be either for a completely fictitious cargo or a consignment which already exists or existed and for which there is or was a genuine set of bills of lading in circulation.

The possibility of a successful defence against a claim from the holder of a bill of lading of the first type, is good in most jurisdictions. A deceived receiver will, however, have the sympathy of a local court, especially if the generation of the false bill of lading can be traced back to the carrier's organisation. Members should consider whether they need to tighten access to information, bill of lading forms, stamps, signatures etc. which could be used to generate a false bill of lading.

The problem is obviously much more serious if delivery of a consignment is made against a false bill of lading before the rightful holder of the genuine bill of lading has collected his goods. It is difficult to predict the outcome of legal proceedings regarding the carrier's liability. The carrier will most likely 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 generation 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.

Depending on the details of each case, the Club will consider whether liability under a false bill of lading 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 an original bill of lading

4.4.5.1 General comments

Carriers of goods by sea often meet the demand of speedy transport but it is difficult 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 laden vessel may arrive at the port of discharge before the documents which the receiver needs to present to the vessel to take delivery of the cargo.

In the above circumstances, the carrier may be requested to release the cargo without the production of an original bill of lading. Receivers may believe they are entitled to delivery of the cargo once it has arrived at the port of destination and that the presentation of an original bill of lading is a mere formality.

Receivers may refer to the "impossibility" of producing an original bill of lading. However, delay in the trade or banking system is no excuse. Today's communication systems make it possible to process and send documents all over the world within 24 hours.

Electronic bills of lading may eventually make this problem a thing of the past. For further comments, see 4.5.2.

4.4.5.2 No cover for delivery without production of an original bill of lading

In the absence of a valid contractual agreement under the terms of the charterparty or Contract of Affreightment to the contrary, the carrier is not obliged to comply with a request to release the cargo until an original bill of lading for the cargo in question has been presented. As stated in this section, there is no cover for a carrier who gives in to a persuasive receiver and discharges the cargo without production of an original bill of lading. Members should refuse any request to release cargo without presentation of an original bill of lading unless (as mentioned above) they have a contractual obligation to do so under the governing charterparty (but that obligation still does not change the fact that the resulting risk of liability for a misdelivery claim falls outside P&I Insurance).

There is no cover under this section even if cargo has been released through no fault of the Member by ship agents acting against or beyond instructions. The only remedy open to the Member is to attempt a recovery from the agents. The agents 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 be able to assist with any recovery action.

There is no cover even when the carrier is required to release the cargo and accept a bank guarantee where an original bill of lading 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 bill of lading. Members should investigate then whether it is possible to discharge the cargo to a customs bonded warehouse or similar where it could be stored, inaccessible to the receiver, until the bill of lading turns up. Such storage may be difficult to arrange for reefer or bulk cargoes. The Club's local correspondent may be able to assist the ship agents to find a solution in such circumstances.

4.4.5.4 Indemnities

If no other solution is available, the carrier may have to consider the possibility of accepting an indemnity in his favour. As the extent of liability risks are considerable and as those risks are excluded from cover, it is important that the indemnity is drafted and reinforced in such a way that the carrier is protected to the fullest extent.

On the understanding that the Member takes full responsibility for the decision to accept the indemnity, the Club is prepared to assist the Member in making suitable arrangements.

The Club should be consulted in good time and before discharge starts.

Although a Member's exposure to the risk of a misdelivery claim resulting from discharge of the cargo without production of an original bill of lading falls outside P&I Insurance, purely as a guide to assist the Member's negotiations with the Charterer (or other party making the request) the Group of clubs has produced an LOI wording for discharge of cargo without the production of an original bill of lading. Provision exists for it also to be countersigned by a bank although it is rare for such a counter signature to be provided.

It is up to the Member whether to accept a guarantee signed by the receiver or the Charterer only. If so, it has to be a receiver or a Charterer whose ability and willingness to honour his obligations is beyond doubt. It is always preferable to have the guarantee countersigned by a first class bank. However, the shipowners' hands may already be tied by provisions already contained in the governing charterparty.

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 Hague-Visby Rules limitations or exclusions of liability) and for indirect consequential damage (such as loss of profit). The carrier's exposure may very well 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 and Hague-Visby Rules (see the comments under 4.1.10) and provide him an additional month's time to file a recovery action under the guarantee. The Hague and Hague-Visby Rules time limit, however, may not be applicable to a claim for misdelivery. The most likely time limit to apply would be the 6-year limit under English or U.S. law, which would require the guarantee to be valid for at least that length of time and there should be provision for it to be extended beyond that period for at least the full duration of any legal proceedings brought against the Member for misdelivery of the cargo. Banks may not be willing to issue a guarantee without a specified duration/limit. 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 discharge pending the presentation of original bills of lading. 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 duty to protect both the Owner and the Charterer where an original bill of lading is unavailable, the Charterer is not entitled to declare the vessel off hire. The situation may be different if the Owner has agreed in the charterparty to release the cargo without presentation of original bills of lading in exchange for a guarantee or LOI. Owners are best advised not to accept clauses to that effect if they wish to avoid uninsured risks in relation to discharge of the cargo.

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 on a liner service. The release and delivery 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 the production of an original bill of lading, the rightful cargo owner may attempt to arrest the ship and file his claim against its Owner. Even if there is no contract between the Owner and the receiver that has been breached, in some jurisdictions the Owner may still be held liable. When negotiating a fixture for liner services where such liability could materialise, it is recommended to include a clause in the charterparty to the effect that the Charterer agrees to release cargo only against presentation of an original bill of lading and that he assumes full responsibility in relation to the Member (including posting of security in case the Member's property is attached) for any misdelivery claim resulting from breach of that obligation. Whether such a commitment in the charterparty should be reinforced by a guarantee or LOI issued by or on behalf of the Charterer, is a commercial decision for the Member in relation to the uninsured risk.

4.4.6 Misdelivery under non-negotiable freight documents

Whereas item (a) of this section deals with the situation of negotiable documents such as bills of lading, item (b) is in respect of non-negotiable documents such as non-negotiable or straight bills of lading 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 carried under a non-negotiable document is released to someone other than those two categories authorised to take delivery, such liability is excluded under item (b) of this section. 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 bill of lading, waybill or similar document, one step further and requires production of the non-negotiable document if that is an express condition of the document itself.

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. The most significant implication of the decision is that a non-negotiable bill of lading is a document of title and needs to be presented unless it is clear from the document itself that production is not required. In addition to England, France and Holland have similar interpretations of non-negotiable documents.

Failure to deliver cargo against presentation of a non-negotiable bill of lading, waybill or similar document when required will jeopardize Club cover.

Section 5 Paperless trading

4.5.1 General

This Rule was introduced after cooperation between the Group Clubs when reviewing the electronic trading systems proposed by Bolero and Electronic Shipping Solutions (ESS). These systems intend to establish a technological environment in which paper bills of lading and other trade documents may be replaced by secure electronic versions. 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 the Rule an electronic trading system replaces negotiable paper documents, which are documents of title, entitling the holder to receive cargo and to transfer the rights and obligations to a third party by electronic versions.

Seven electronic trading systems have been approved to date by the International Group of P&I Clubs. These are: essDOCS (previously Electronic Shipping Solutions), Bolero International Ltd (more specifically the Rulebook/ Operating procedures September 1999), e-title Solution, Global Share edoxOnline, WAVE BL, CargoX and TradeLens eBL.

Consequently, there are three systems for the purpose of P&I cover: paper, approved electronic systems and non-approved systems. Risks under a non-approved system are covered only if the same liability would have arisen had a paper bill been issued. However, risks under an approved system are covered even if the risk would not have arisen had a paper bill been issued. The position

can be illustrated by the following example: The member receives a claim under an electronic bill of lading in a jurisdiction which does not acknowledge that the Hague- Visby Rules have been incorporated into the bill, even though the system provides for the incorporation of those Rules. Investigations show that had a paper bill been issued the court would have acknowledged and applied the Hague-Visby Rules to the claim. If the member has used a non-approved system, there is no cover for the liabilities in excess of the Hague-Visby Rules. If the member has used an approved system, on the other hand, there is cover for all liabilities of the member following the court's decision, including liabilities in excess of the Hague-Visby Rules.

One further thing to note in respect of electronic bill of lading systems is that the normal cover areas etc. for P&I Insurance have not changed. There is still cover for P&I liabilities but risks arising as a result of using an electronic system, i.e. "cyber risks", are not covered and the member may need additional insurance for such risks.

Section 6 Extraordinary handling costs

4.6.1 General

The cover under this section 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 section 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. Wetted cement may turn into concrete in the hold and have to be removed with jackhammers. Asphalt, paraffin wax and high viscosity oil products may solidify after a breakdown in the heating coil system. 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.

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 will be decided on a case-by-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. The costs for the restowage of damaged or shifted cargo at an intermediate port are not ordinarily recoverable but may still be reimbursed under Rule 19, the Omnibus Rule.

Liability for and the costs of the restowage of cargo which has shifted because it was incorrectly stowed in the first place, are excluded under Rule 11 Section 2 (c). See the 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 any 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 section.

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 if the cargo is 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/consignee has failed to collect his cargo. When disposing of such cargo, it is important that all regulations are observed in relation to the receiver, customs and other parties involved. The Club and its local correspondent can assist the Member in this respect. It may be necessary to sell the goods at public auction. If any surplus is generated, it is to 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 destuffing the container into customs custody are either performed by and/or paid for by the carrier. The costs of destuffing are covered under this Rule. Fraudulent cargo may be exchanged for the intended product described in the bill of lading. 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 and destuffing such fraudulent cargoes are also covered under this Rule.

4.6.3 Extraordinary handling related to Hull damage

Item (b) of the section 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 expected to be stored for longer than 3 months, Members are requested to contact the Club to arrange additional 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 section 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 section 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, and 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 in the first place.

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 section, no compensation will be allowed. For example, 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

4.7.1.1 The York Antwerp Rules

The rules on general average introduced in 1890 are now contained in the York Antwerp Rules – the latest version being dated 2016.

Bills of lading 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 ("GA") 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 both 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 its Hull insurance) and, for cargo, by the cargo insurance.

The party entitled to collect freight at risk (i.e. freight payable at destination) is also liable to contribute in general average. That risk can be insured.

The owner of the bunkers and other equipment such as the containers on board are also liable to contribute in general average if they are saved.

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 usually the carrier who makes the sacrifice or incurs the extraordinary expense. The other interests saved owe him their respective contributions to be determined later by the general average adjusters.

As long as the cargo remains on the ship or under the carrier's control, he has a lien which can be exercised over 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 and 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 in line with the interests saved. This procedure generally takes time, especially when there are a large number of cargo owners to contribute on a general cargo or container ship.

When published, the general average adjustment contains a complete breakdown of each party's obligation to compensate or entitlement to be compensated. The cargo interests' obligations under the adjustment can be enforced against the general average bond and security which was posted prior to the release of the cargo.

4.7.2 Unrecoverable general average contributions

4.7.2.1 General comments on unrecoverable contributions

As indicated, the shipowner is mostly out of pocket in respect of general average expenditure whether in the form of sacrifices made or expenses incurred.

There may be several reasons for the inability to recover such contributions from cargo interests. This section 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 incident by its own fault, where such fault constitutes a breach of the contract of carriage, may not be entitled to contributions from the other parties. The fault must be an actionable breach of the party's contractual obligations. As appears from the 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 the fault or negligence of the crew. In most countries, the carrier retains his right to contributions in such a situation.

However, in cases where a contribution from cargo interests is unrecoverable because the general average incident was caused by fault on the part of the crew for which the carrier is liable under the contract of carriage or by the carrier's breach of its seaworthiness obligations, the Member's loss is covered under this clause unless the relevant fault or breach is of such a nature that it is excluded from cover under these Rules.

Members should always inform the P&I Club where GA is declared in case it is argued at a later stage that GA contributions from cargo are irrecoverable on the basis that the vessel was unseaworthy at the relevant time.

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. Under Rule 10 Section 2, there will be 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 remains so 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 section to provide the Member with a loan until the contributions have been collected. The section states that the cover is for those contributions which are unrecoverable for the reasons discussed above. 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 section.

For any compensation paid, the Club is subrogated to 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 to define exactly the moment when compensation is due. It will be judged on a case-by-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 been accepted that the contributions are indeed unrecoverable.

4.7.2.3 Effect of deviation

If a general average incident is caused by an unjustified deviation, the other parties may refuse to contribute. What constitutes an unjustified deviation appears from the 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 which are 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 comments 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 carriage is impossible. Such decisions are difficult to take and the liability consequences serious if the voyage is wrongfully abandoned. Therefore, Members should avail themselves of the Club's advice and recommendations in such situations.

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. The question of whether and when a contract is frustrated must be determined on the basis of the particular facts and the situation in each individual case as presented at the material time and without the exercise of hindsight. 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 treat the voyage as terminated on the grounds that it is incapable of further performance. The voyage ends at that point, wherever the ship and cargo may be located. The carrier retains the basic obligation to take reasonable steps 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 voyage up to the point when the cargo is released following termination and the Member 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 comments 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 not be possible to complete the voyage without extensive repairs. In order to affect 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 transport.

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 oncarrier 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 result in the exclusion of cover under Rule 10 Section 2.

4.7.2.4.3.2 Non-separation agreement

The York-Antwerp Rules 1994, (also 2004 and 2016), 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 charterparties.

4.7.2.4.4 Insurance of general average disbursements

When the contracted voyage is resumed, whether after transhipment or by the original vessel, the ship and the cargo may have claims for compensation in general average against 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 those respective interests.

If the cargo is damaged or lost, the carrier may be left without any or with insufficient security for cargo's proportion in the general average. A loss caused by a reduction of the contributory value of the cargo is neither covered under the Hull nor the P&I Insurance.

Similarly, the cargo owner's liability in general average might increase if the ship's contributory value is adversely affected by an event occurring after the general average incident.

4.7.2.4.5 Insurance of discharged cargo

The cover afforded to the Member by the 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 ultimate discharge port.

If the cargo is not promptly received by the receiver at the discharge port against an average bond or other security for its general average contribution, the carrier should insure the cargo against fire, theft or other damage. The insurance will, in effect, 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 either the Hull or P&I Insurance, a Member should check that insurance of the 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 both the ship and cargo involved in a general average incident 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 section 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, it lacks the requisite element of a sacrifice incurred in respect of a common danger and as such does not qualify as a general average expense.

Such expenses when incurred are treated as cargo's particular average and should be paid in full by the cargo interests or their underwriter. Should the cargo interests have valid grounds to refuse payment on the grounds that the particular average was caused by the carrier's breach of the contract of carriage, the Member's loss may be compensated under this section.

4.7.2.7 "Not legally recoverable"

4.7.2.7.1 General comments on unrecoverable contributions

As mentioned in the comments under 4.7.2.2.1, a Member is covered under this section for a loss sustained when a contribution is unrecoverable because general average was caused by actionable fault or breach for which the Member is liable.

There are other situations where a contribution is legally recoverable but a Member is unable to recover it. Those situations are not covered.

Members should always inform the P&I Club where GA is declared in case it is argued at a later stage that GA contributions from cargo are irrecoverable on the basis that the vessel was unseaworthy at the relevant time.

4.7.2.7.2 Insolvency of cargo owner

Cover under this section 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 clear, the Club will consider compensation. It follows from Rule 14 that, by compensating the Member, the Club is subrogated to the Member's rights against the cargo interests and can rely on the Member's co-operation in making any 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 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 will reduce the value of the contribution.

Although such losses have to be considered for compensation based on the circumstances of each case, they are, in principle, covered under this section 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 the 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 only 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 security. In such a case, there is no cover under these Rules if no contribution is subsequently paid by the cargo interests.

According to the first part of this section, a Member who fails 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 example, have been reason to believe that cargo thrown overboard was worthless and, therefore, did not constitute a sacrifice.

Ignorance, however, that general average requires the collection of average bonds or other security is no excuse.

The regulations contained in this section 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 the applicable parts of the 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 length 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 in this respect.

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 has Hull insurance for an amount which at any time is the market value without commitments. The implication of this regulation is commented on in 11.6.2.4.

Provided that this condition is met, there is cover under this section where the ship's contributory value is subsequently assessed at an amount in excess of the Hull insurance value.

4.7.4 Loss covered under other insurance

Among the exclusions which may apply to the cover under this section are those in Rule 11 Section 2 (l) 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 is generally not covered especially as such loss is probably compensated under the Hull policy (see the 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 section, 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 section 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?

In some jurisdictions it has been held that a consequence of an unjustified deviation is that the carrier loses the right to limit or exclude liability for cargo claims arising in respect of the deviation (see the comments under 2.11) including in particular loss of the right to rely on the immunity and liability exceptions afforded to the carrier by the Hague and Hague-Visby Rules (see the comments under 4.1.8). Those Rules, however, do not contain a definition of what amounts to a deviation. Instead, they describe some situations which do not constitute an unjustified deviation. Hague and Hague-Visby Rules Article IV rule 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 crew member or other persons lost overboard are also regarded as justified. The costs may be compensated under Rule 3 Section 1, 5 or 7 as appropriate or under Rule 8 Section 2.

It follows indirectly from Hague and Hague-Visby Rules Article IV rule 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 Rules Article IV rule 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 venture.

A departure from the contractually agreed venture 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, unexpected and unauthorised transhipments, use of substitute vessels or conveyances and storage in lighters or warehouses may all be regarded as unjustified deviations on the basis that they all potentially increase the risks anticipated.

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 for which the carrier is excepted from liability under the Hague and Hague-Visby Rules Article 4 rule 2 (a). See the comments under 4.1.8.1.

4.8.3.3 Deviation for accepted/justified 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 subsequently.

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 provided or as agreed by the cargo owner.

A departure from the proper route may constitute 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 the comments under 3.8.2.8) or to pick up crew members, the presence of whom is not required to render the ship seaworthy (see the comments under 3.11.3).

A scheduled liner service may allow the carrier greater freedom in respect of the ports to be called at as well as 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 usual route, mode of shipment and/or stowage location. Such clauses are called liberty clauses. The terms of a liberty clause should be expected to be applied restrictively when tested in court. They do not give the carrier the right to route the ship to suit 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, in turn, reduce or exclude any compensation from the Club.

4.8.3.6 Transhipment

A transhipment not anticipated by the contract of carriage may also be regarded as an unjustified deviation in certain jurisdictions. In the U.S.A a bill of lading clause granting the carrier the right to transhipat his convenience may not even 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 transport appears in Rule 4 Section 2. See the 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 carriage may be considered an unjustified deviation.

Rule 4 Section 2 describes the cover for liability in respect of lighterage. See the 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 be justified for safety reasons, the proximate cause of the deviation may still have arisen from the carrier's 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 the comments under 4.1.5). In that case, liability

for breach of the seaworthiness obligations (as distinct from liability for wrongful deviation) means that the carrier can still prevail upon the benefits of the exemption and limitation clauses (including time limits for suit) conferred by the Hague or Hague-Visby Rules.

However, a departure from the proper route to bunker, simply because bunker prices are favourable in that particular port, may well be considered an unjustified deviation (and unrelated to the carrier's seaworthiness obligations) undertaken solely for the commercial benefit of the carrier. That can in some jurisdictions result in the loss of the right to rely on the limits and exclusions contained in the Hague and Hague-Visby Rules unless the freight contract contains a P&I Bunkering Deviation Clause, which specifically permits such deviations.

In short, the position may be complicated and the answer as to whether or not a specific deviation is justified, is not straightforward.

4.8.3.9 War

A contract of carriage should contain a suitable war risks 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 that it may cause the Club to refuse compensation.

The purpose of a war risks clause is to ensure the carrier has 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 an unjustified 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 also be considered a deviation.

In many situations, the carrier would still be able to invoke the exclusions provided for by the Hague and Hague-Visby Rules as a defence. For example,

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 his obligation to stow the cargo properly under Hague Rule Article III rule 2, he would still be liable, but entitled to rely on traditional limitations of liability and time.

For delay to constitute a deviation, the duration of the delay must be considerable compared with the normal time to fulfil the contract of carriage. Even on a liner service in the absence of a specific time for delivery of the cargo there can be considerable delay before it constitutes a deviation (although the delay itself may constitute a breach of the obligation to proceed with due despatch).

For more comments on liability and on the cover for delay, 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 contemplated in the contract of carriage.

As regards cover for this risk, see the comments under 4.8.6.3.

4.8.4.4 Other non-geographical deviations

Other situations may arise where a departure from the venture as evidenced and contemplated by the contract of carriage is regarded as an unjustified deviation.

A court will probably try to establish in whose interest a deviation was undertaken. If the answer is that it was the carrier who profited from the deviation exposing the cargo to additional risks outside the bounds of what could reasonably be expected for carriage by sea, the situation might be considered to amount to an unjustified deviation in the absence of an appropriate contractual liberty.

4.8.5 Effect of an unjustified deviation

An unjustified deviation is in some jurisdictions regarded as a breach which takes the carrier outside the scope of the contract of carriage. If the cargo owner does not waive the breach, there is in some jurisdictions case law or legal doctrine under which the carrier will lose the exclusions and limitations of liability which would otherwise apply under the contract of carriage.

In such circumstances, the carrier may not be able to limit liability, either globally (see the comments under 2.11) or per package (see the comments under 4.1.9.3). In some jurisdictions the carrier may also be unable to claim the benefit of the one year time bar under the Hague or Hague-Visby Rules or any similar privilege.

In addition, the carrier would not, in those cases, be able to rely on any of the excepted perils listed in the Hague and Hague-Visby Rules Article IV rule 2 (a) - (q). See the comments under 4.1.8. The effect is that the carrier is subject to strict liability for the loss (see comments under 4.1.4.4). In the U.S.A. it is sometimes said that the carrier effectively then becomes the insurer of the goods.

It is also possible that a deviation may result in the carrier being held liable for indirect consequential damages such as loss of production and markets. See the comments under 2.7.

4.8.6 Extent of insurance cover

4.8.6.1 Cover excluded

The first part of the section 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 section for the consequences of unjustified deviations also applies to unrecoverable general average contributions. See the comments under 4.7.2.3.

As previously mentioned, a deviation in the sense of this section means an unjustified deviation. A justified deviation may, however, still result in 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 section, 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 and extent of the potential deviation under applicable national law. The result may be that the scope and extent of the deviation is not considered to be of sufficient magnitude to violate the concept of mutuality. If so, it may be agreed that cover continues unprejudiced, subject in some cases to an additional premium and special regulations or restrictions the Club may care to impose under Rule 10 Section 3 as a condition for cover. The key guiding principle, for cover to continue, is that the commercial benefit for the Member undertaking the deviation must be proportionate and relative to the commercial disadvantage or risk to the other parties to the venture. Each situation will be assessed on its own merits. By way of illustration, the following are examples, as set out in the

Group Pooling Agreement, of situations where there appear to be mitigating factors which might be expected to be treated as falling within the usual scope of Club P&I Insurance:

(a) A Member operating a liner service between Europe and the USA with advertised ports of call as New York, Philadelphia and New Orleans, where the bills of lading contain a typical liberty clause found in liner services, discharges cargo to be contractually delivered at Philadelphia at another customary port or place and forwards it to Philadelphia by any other customary means.

(b) Minor departures from the geographical route of the vessel's contracted voyage(s) relating to bunkering in whole or in part for the voyage to be performed.

(c) Minor departures from the geographical route of the vessel's contracted voyage(s) such as those relating to crew changes, taking on spares, stores or supplies, minor repairs, minor surveys, bunkering, taking on or disembarking supernumeraries or other personnel for operational reasons, landing of stowaways, ballast water exchange or slowing down for any of these reasons provided that approval in any such case will not be inconsistent with the key guiding principle described above.

(d) A vessel calls at the nearest available port or place or other customary port or place on the vessel's contracted voyage to carry out repairs necessary for the safe completion of a cargo voyage whether or not the repairs arise in respect of a general average event.

(e) The vessel calls at any port or place off the customary route or departs from the customary route to save life or property or to protect the environment or to land persons saved at sea or to embark or disembark security personnel or otherwise avoid or reduce the risk of piracy on the contracted voyage.

(f) A vessel slow/economically steams if the contract of carriage incorporates an appropriate liberty clause or it is customary to do so at the time the voyage is undertaken and in the particular trade or on the particular voyage route or if there is congestion at the contracted destination provided that approval in any such case will not be inconsistent with the key guiding principle described above.

(g) The situation appears to be covered by an appropriately drafted liberty clause contained in or incorporated into the bill of lading or applicable contract of carriage.

(h) The situation appears to be within a custom of the trade.

For unmitigated types of deviation outside the scope and intention of the key guiding principle 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. The following are examples, again taken from the Group Pooling Agreement, of situations that might be expected to be treated as falling outside the usual scope of Club P&I Insurance:

(a) A vessel calls at a port or place for the purposes of major repairs, dry docking, or major surveys which are not necessary for the contracted voyage.

(b) A vessel slow/economically steams or stops short of the contracted place of discharge in order to exercise a lien on cargo and the contract of carriage does not contain an express liberty clause permitting it to do so.

(c) Subject to (f) above a vessel on a voyage charter slow/economically steams in order to conserve fuel and the contract of carriage does not contain an express liberty clause permitting it to do so.

(d) A vessel departs either geographically or otherwise from the contracted voyage or through or combined transport such that approval in any such case would be inconsistent with the key guiding principal described above.

(e) At the time the decision is made to depart geographically or otherwise from the contractual voyage there exists an unreasonable increase in the risk of loss of or damage to the cargo as a result of such departure: for instance if the cargo is perishable.

(f) A liner owner has a direct service from Hong Kong to Europe; he gives a bill of lading for cargo from Korea intending to tranship onto his own liner at Hong Kong but gives no indication on the face of the bill, which names his Hong Kong liner as the carrying ship, that in fact the cargo will be carried from Korea to Hong Kong by feeder service.

(g) A liner owner loads cargo despite a prior decision that after loading he will enter dry-dock to carry out repairs or survey work.

For a number of specified types of deviation, the Club has arranged Deviation Insurance cover available to Members. See the comments under 4.8.6.3.

An application for cover under that Deviation Insurance should be made preferably before the deviation is undertaken. That will enable the Club to assist the Member in reducing the liability exposure of any deviation planned.

If the Member is not aware of the deviation until after it has already been made, an application for cover should be made immediately upon receiving information that it has occurred.

Members are advised to contact the Club for advice 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 Specific deviation insurance

The Rule is strict in excluding cover for liability arising out of unjustified deviation. The Club can provide specific deviation insurance for Club Members. Members should apply for cover under the Deviation Insurance prior to a deviation being undertaken, see the comments under 4.8.6.2.

The Deviation Insurance provides cover for isolated situations, for urgent deviations which arise. No systematic, intentional and/or regular breaches of contract may be covered.

There is no cover under these Rules for any overspill beyond the terms of the Deviation Insurance.

Compensation is not paid for the loss of hire due to the vessel being placed off-hire for time lost due to a deviation.

The cover for deviation risks is sometimes referred to as SOL (Ship Owner's Liability) cover.

4.8.7 How to avoid the risks associated with deviation

4.8.7.1 Increased awareness regarding cargo operations

As described under 4.8.5, an unjustified deviation has the potential to make the carrier liable for the direct and indirect consequences of the deviation without exceptions and exclusions. Such serious risks should be avoided or minimised.

Often, deviations are the result of operational decisions taken by the Member or his servants. Movements of cargo are often redirected with the aim of cutting costs without the significance of the deviation being appreciated. Members ought to be aware of the exposure to increased liabilities connected with deviations.

Cargo planning staff should be made aware of the risks assumed when deviating from the carriage contracted for and have sufficient knowledge of specific local legal peculiarities involved such as the danger of transhipment of cargo in the U.S.A. and the approach taken by the Belgian courts to the carriage of containers on deck when this has not been declared expressly on the bill of lading.

4.8.7.2 Suitable freight contracts

Deviation risk avoidance starts with the 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 contain suitable protective and liberty clauses.

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 geographical deviations.

4.8.7.4 Information needed in defence against deviation claims

In cases of geographical deviation, the Club needs documentation reflecting the contents of the contract of carriage agreed between the parties. It should be remembered that the bill of lading and charterparty may only constitute evidence of the agreed terms. Other supporting evidence might be 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 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 began and ended.

Such information is required if the Member wishes to recover his loss from the Owner of the ship which was assisted and which necessitated the diversion. See the comments under Rule 3 Section 9, in particular 3.9.3.

As regards claims for deviation caused by delay, a successful defence depends on the reason for the delay, which must be substantiated by documentation, log extracts etc.

Defence against claims for unauthorised deviation resulting from on deck carriage requires proof as to what was agreed at the time of booking. Reports and log extracts should be produced to evidence whether or not the loss claimed was the result of carriage on deck.

Rules for P&I Insurance 2021/2022

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.

Commentary

Rule 5 Liabilities in respect of delay

5.1 General

Neither the Hague nor the Hague-Visby Rules contain provisions holding the carrier liable for delay. However the carrier's liability for delay is mentioned in both the Hamburg Rules and the Rotterdam Rules.

It should be noted that the Hamburg Rules contain a special limitation of liability for delay, namely, 2.5 times the freight paid for the goods delayed.

Additionally, under 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 one for non-delivery/shortage.

Given that the most common convention, the Hague-Visby Rules, does not contain any regulations regarding the carrier's liability for delay to cargo, clauses excluding such liability are routinely found in bills of lading and are, for the most part, effective.

Liability concerning delay could however be mandatory according to local law or the Hamburg Rules. In jurisdictions where liability concerning delay is mandatory for sea transport, a clause excluding liability for delay in the bill of lading will probably be held invalid and set aside. Instead, the carrier needs protection from such liability by way of insurance. This is provided by this section.

The cover under this section is for "liability pursuant to mandatory law". An increasing number of transports have to meet a certain delivery date. Shippers may 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. As a breach of a contract, the carrier might be liable also to compensate the receiver for consequential damages 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 section 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 the comments under 3.5.15.

See also the comments under 11.2.2.7 regarding exclusion of cover under Rule 11 Section 2 (h) for delay caused by the late arrival of the ship at the port or place of loading.

5.2 What constitutes a delay?

It is easy to define a delay when the carrier has agreed to deliver the cargo by a certain date. However, the liabilities for such delay are excluded from cover under this section.

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 trans-ocean voyages, covering greater distances. Liner service of general cargo under a timetable will permit 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 clear case law on the point makes it difficult to define by what percentage of the expected transportation time, a delay would be treated as unacceptable and expose the carrier to liability. Some guidance as to what might be considered an unacceptable delay can be found in 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 an unreasonable delay.

5.3 For what consequences of delay is the carrier liable?

In cases where liability for delay is mandatory, it follows from the general principles of the burden of proof that it is on the claimant to prove in what respect and to what extent he has suffered a loss as a consequence of the 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 show, in addition, that it was caused directly 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 a 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 as direct consequences of the delay.

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 the comments to Rule 4 Section 1 and Rule 10 Section 4.

5.4 Measures to prevent delay

To avoid delay, a carrier may take special precautions to bring the goods to their destination in time. The goods may be on-carried by another ship or by train or truck. It happens that urgently required goods might even be air freighted. 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. In line with this, a Member will not be compensated if the preventive costs were incurred to meet a specific, contractual delivery date. (Such is considered to be an operational matter.)

Cargo is sometimes discharged by mistake in a port other than that mentioned in the bill of lading. To avoid a shortage claim or one for delay, the carrier may forward those goods to their correct destination. The increased costs may be compensated under Rule 8 Section 2. For goods discharged intentionally at a port other than that stipulated in the bill of lading, compensation is excluded under Rule 11 Section 2 (i). Liability arising out of the failure to arrive or the later arrival of the vessel at the port or place of loading, as well as the failure to load a particular cargo are excluded under Rule 11 Section 2 (h).

5.5 Recourse against those who caused the delay

If the carrier is held to be responsible under the bill of lading to a receiver for delay under any applicable mandatory law, he may still have a right of recourse against a third party whose negligence breach or fault caused the delay. The stevedore company at the port of loading may stow a container 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, upon payment to the Member, the Club is subrogated to the Member's rights against the third party in accordance with Rule 14. The Member has an obligation to assist the Club in pursuing any such recovery. See the comments under 14.2.

Rules for P&I Insurance 2021/2022

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 or 2016.

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.

Commentary

Rule 6 Liabilities in respect of pollution

Section 1 Pollution liabilities

6.1.1 General

For a long time, pollution liabilities were a marginal risk for shipowners and of little concern to the P&I Clubs. The situation changed virtually overnight. The rapid escalation of pollution liabilities is marked with milestones bearing 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 the comments under 6.1.2.

In accordance with Section 1 of this Rule, the cover 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, or any substance that is released in an unauthorised manner. The pollution may originate from the vessel's bunkers, supplies or cargo. Since pollution by oil and similar substances is the overriding international concern, the comments will be confined mainly to that. Indeed, Section 2 of this Rule deals exclusively with oil pollution. Most of the comments in respect of oil pollution and its avoidance set out here can be applied to other kinds of pollution.

The interest of the public and media in pollution has increased with a greater awareness of environmental issues. There is a widespread misapprehension that the taxpayers or the population in the coastline communities always have to pay the clean-up costs. Even among those who take part in the public environment debate, few seem to appreciate that insurance exists specifically aimed 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 meant that the party who suffered damage from pollution had to prove that the shipowner was negligent. 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 began 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, causing significant pollution in both the UK and France.

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) for an international solution. 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. The CLC and the Fund Convention apply to tankers carrying cargoes of persistent oil, i.e. heavier oils that are likely to persist in the wider environment once spilled.

After the occurrence of subsequent major oil spills, such as the AMOCO CADIZ off Ushant in North West France in 1978, voices were raised calling for an increase in the compensation available to pollution victims under the CLC and the Fund Convention. Further work at the IMO led to the 1992 Protocols to these conventions entering into force in 1996. These Protocols increased the amount and the scope of available compensation, for example, applying to certain tankers when in ballast. In 2000 the limitations for both the CLC and the Fund Conventions were further increased. 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 the Fund Convention.

Some countries, notably Brazil, remain a signatory only to the '69 CLC and have not ratified the '92 CLC Protocol, meaning more limited compensation is available.

In order to address the threat of bunker spills from other vessels, including tankers without persistent oil on board, the IMO established the 2001

International Convention on Civil Liability for Bunker Oil Pollution Damage (the "Bunker Convention"). The Bunker Convention entered into force in 2008, see the comments under 6.1.3.1.7.5.

Many coastal states have also adopted domestic legislation that imposes liabilities on 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 in 1989 caused the adoption of federal legislation in the U.S.A., the Oil Pollution Act of 1990 ("OPA 90"). This legislation is commented on under 6.1.4.2.

As the pollution liabilities increased, cover under the Hull insurance was restricted. As explained in the comments under 11.6.2.2, this meant that the liabilities were transferred to P&I Insurance. The only pollution risk left to be covered under The Nordic Marine Insurance Plan is expenses incurred to prevent pollution damage from a ship in drydock for survey or repairs of average damage together with the costs of cleaning the drydock internally after such a pollution (Commentary to Clause 12-1 of the Nordic Marine Insurance Plan of 2013 Version 2019).

6.1.3 International Conventions

6.1.3.1 The Civil Liability Convention (CLC)

6.1.3.1.1 Application

6.1.3.1.1.1 Persistent oil from tankers

The '92 CLC only applies only to tankers carrying cargoes of persistent oil, or with traces of persistent oil cargo on-board, in a country that has signed the convention. Persistent oil cargoes include crude oil, fuel oil, heavy diesel oil, lubricating oil, whale oil, asphalt and the like.

The '92 CLC applies also to any spill of bunker oil from such a tanker, provided that the tanker has a persistent oil cargo on-board or traces of such a cargo. As such, the CLC may apply to certain tankers even in ballast condition.

For tankers carrying cargoes of non-persistent oil, for example gasoline, compensation will available under the 2010 Protocol to the HNS Convention when this comes into force. In the meantime, liability and compensation will be covered by domestic legislation.

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, or threatens such territorial waters, 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 clean-up, termed "preventive measures" under the convention, and further loss or damage caused by such preventive measures, for example damage to roads caused by increased vehicle movements.

The CLC applies also when no spill has occurred, providing there is a grave and imminent threat of a spill as a result of an incident.

The convention does not fully explain the words "pollution damage" but this applies usually to damage caused by the oil to property, fisheries, tourism and to the environment. Further interpretation is provided in the IOPC Fund Claims Manual and associated guidelines with the ultimate interpretation to be determined by any national courts involved.

The most obvious impact occurs when coastal resources, boats, mooring lines, piers, jetties, oyster beds or seaweed farms have been smeared with oil. The cleaning of such areas or articles constitutes preventive measures and is covered by the CLC. This includes the hire of personnel and suitable equipment, such as oil booms, skimmers, tractors, trucks, steam-producing or spraying devices and the consumption of rags, brushes, dispersants, sorbents and other articles used for cleaning.

Large spills may require ships or helicopters for co-ordination and surveillance and to assist with the response. Costs such as these also qualify as preventive measures under the CLC.

Compensation for consequential loss and pure economic loss are also covered under the CLC. Consequential loss is a financial loss that is a result of damage to property, for example a fisherman losing income as a result of his nets becoming soiled. Pure economic loss is a financial loss without such damage, for example a fisherman is prevented from leaving port because of oil in the waters outside the port.

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 the comments under 4.1.11.10.2), for cargo shortage under Rule 4 Section 3 (see the comments under 4.3.3) and for bunker damage and shortage under Rule 7 Section 1 (see the comments under

7.1.13.1). Fines are covered under Rule 7 Section 6 (see the comments under 7.6.2.3).

6.1.3.1.3 Type of liability

The CLC imposes strict liability (see the comments under 4.1.4.4) for loss and 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 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 pollution caused by acts of war. For comments on war and war risks, see the comments 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 pollution damage. See the 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 caused wholly by the intentional acts of a third party, such as terrorism or an act of sabotage perpetrated by a crew member.

6.1.3.1.3.4 Governmental negligence in the 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, failing to repair or adjust a lighthouse or to replace 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 the other party involved. See the comments under 7.2.3.

When pollution damage is caused or contributed to by a malicious act, omission or negligence on the part of the person who suffers 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 140000 GT
- SDR 89.77 million for a ship over 140000 GT or more

The right to limit 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 the comments under 2.11.2-3 and 11.1.1-5.

For small tankers of 29,548 GT or less, involved in an incident in a State that is also a signatory to the '92 Fund Convention, the Small Tankers Oil Pollution Indemnification Agreement ("STOPIA") will increase liability to 20 million SDR. STOPIA is a voluntary agreement between the P&I Clubs and the IOPC Fund (see the comments under 6.1.3.2) to voluntarily increase the limitation amount.

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 persistent hydrocarbon mineral 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 comment 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.

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 U.K. 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

To obtain a CLC certificate, Members should first make an application to the Club for a Blue Card, evidencing the ship's insurance. When applying for a Blue Card, the following information needs to be provided:

- the name of the ship
- the Owner's name and address
- port of registry
- call sign or IMO number

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. The member then presents that to the ship's flag state. The ship's flag state issues the certificate and sends it to the registered Owner.

6.1.3.1.7.5 The Bunker Convention – Certification requirements

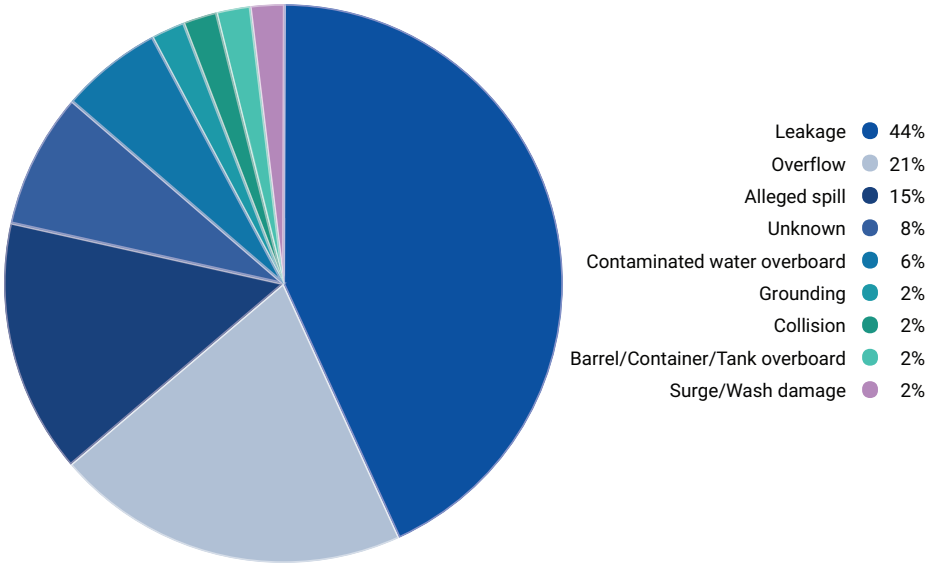
The International Convention on Civil Liability for Bunker Oil Pollution 2001 (the "Bunker Convention") entered into force on 21 November 2008, see the comments under 6.1.3.3.

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 ships entered with the Club, the Club issues a Bunker Blue Card addressed to the flag state but sent to the Member. With that the Member will apply for a Bunker Certificate from the flag state.

Immediate causes of pollution

No of claim 2015-2019



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 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 Secretariat 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 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 1992 Fund Convention and Supplementary Fund Protocol

The 1992 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 1992 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 of contributing oil, cover is raised to SDR 300.74 million.

The Supplementary Fund is a further layer in addition to the CLC and Fund Convention and will increase the total available compensation to SDR 750 million in States that are signatory to the Supplementary Fund Protocol.

Under the Tanker Oil Pollution Indemnification Agreement, ("TOPIA") the Owner of a tanker involved in an incident in a signatory State to the Supplementary Fund is liable for 50% of the compensation paid under the Supplementary Fund Protocol.

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 applicable national or international regimes, such as 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 cannot be higher than the national liability limitation regime.

The 2001 Bunker Convention applies to spills of bunker oil, i.e. hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of any type of ship. The Bunker Convention covers pollution damage similar to that described for the '92 CLC.

6.1.3.3.2 Limitation under the LLMC

The limitation amounts under the 1996 LLMC Protocol that entered into force in 2004 and was amended in 2012 and in force since 8 June 2015 are as follows.

The limit of liability for property claims for ships not exceeding 2,000 GT is SDR 1.51 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 604
- For each ton from 30,001 to 70,000 tons, SDR 453
- For each ton in excess of 70,000 tons, SDR 302

6.1.3.4 The 1989 Salvage Convention

As regards cover for special compensation to salvors for services rendered to avoid pollution liabilities, see the 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 many 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

ITOPF was established in 1968, initially to administer TOVALOP. TOVALOP, a voluntary oil spill compensation scheme funded by the world's tanker owners, was terminated on 20 February 1997. ITOPF is now focused on providing technical advice on all aspects of pollution response and remains an important source of pollution know-how and on-site expertise for spills of oil, chemicals and other substances in the marine environment.

ITOPF is funded by dues from shipowners, paid according to the type and size of the entered ship. The Swedish Clubs pays these dues on behalf of Members. ITOPF staff are available on a permanent basis to respond to a pollution incident involving a Swedish Club Member's ship.

The Club usually avails itself of ITOPF's services when there has been a spill from an entered ship. ITOPF will work closely with government agencies, contractors etc. to promote an effective and efficient clean-up response. The Club's staff, including local representatives, surveyors and lawyers co¬operate closely at the site of the accident with ITOPF's experts. ITOPF is involved also in assessing the reasonableness of clean-up costs and the merit of claims for damage to economic resources, such as property or businesses, according to criteria established internationally and set out in the IOPC Funds' Claims Manual.

ITOPF can assist Members in preparing contingency plans (see the comments under 6.1.5) and in undertaking training, exercises and other advisory assignments.

6.1.4 Domestic legislation

6.1.4.1 General

In addition to the Conventions, a number of states have their own domestic legislation. One of the most significant is that of the U.S.A. described below.

6.1.4.2 The U.S.A.

6.1.4.2.1 General

The liability situation in the U.S.A. reflects the traditional dualism with federal law applicable to the whole of the U.S.A., together with a variety of state legislation with only local application.

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 principal Federal law in the U.S.A. governing civil liability for pollution clean-up costs and damages is the Oil Pollution Act of 1990 ("OPA 90"). In addition,

civil penalties for oil pollution incidents may be imposed under the Federal Water Pollution Control Act.

6.1.4.2.2.2 To whom does OPA 90 apply?

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 ship.

6.1.4.2.2.3 Nature of liability

Under OPA 90, the responsible parties are jointly, severally and strictly liable for the response costs and damages resulting from the discharge of oil or the imminent threat of a discharge of oil from their vessel. With regard to strict liability, see the comments under 4.1.4.4. A responsible party is, however, exonerated from liability if he can prove that the damage was caused solely by

- an act of God
- an act of war
- an act or omission of a third party
- a combination of the above-listed causes

6.1.4.2.2.4 What is the liability for?

Under 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 (extending seaward to the outer limits of the U.S. exclusive economic zone) or adjacent shorelines.
- all resulting response costs and damage where there is a discharge of oil from the vessel.

Liability for damages includes:

- injury to, destruction of, or 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 definition of "natural resources" is broadly defined to include land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States any State or local government or Indian tribe, or any foreign government.

6.1.4.2.2.5 Limitation of liability

Under OPA 90, the responsible party can limit its liability:

- for single hull tank vessels of less than or equal to 3,000 GT, USD 3,500 per gross ton or USD 7,048,800 , 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 GT with a double hull to USD 2,200 per gross ton or USD 4,699,200 , whichever is the greater
- for tank vessels over 3,000 GT with a single hull to USD 3,500 per ton or USD 25,845,600 , whichever is the greater (this includes tank vessels fitted with double sides only or double bottom only)
- for tank vessels over 3,000 GT with a double hull to USD 2,200 per ton or USD 18,796,800, whichever is the greater
- for other vessels up to USD 1,100 per gross ton or USD 939,800 whichever is the greater.

Note: these limits are subject to periodic review.

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 as required by law;
- failure to provide reasonable cooperation and assistance in responding to the incident, as requested by a responsible official
- failure or refusal without cause to comply with an administrative order regarding the response to the incident, issued under the Federal Water Pollution Control Act or Intervention on the High Seas Act.

Elements of a nature that risk breaking limitation will probably be found in most pollution situations. As a result, liability under OPA 90 can be considered as effectively 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 300GT (except a non-self-propelled vessel not carrying oil as cargo or fuel) to establish and maintain financial responsibility sufficient to meet the limit of liability under OPA 90 and CERCLA (for hazardous substances). The Club will assist the Member with its application for a COFR.

6.1.4.2.3 State law

Several states in the U.S.A. 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 or the shipowning associations.

6.1.4.2.4 Cover under these Rules

The Member is covered for liabilities, costs or expenses under any applicable legislation, which are incurred as a result of the 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 the comments under 6.1.2.

The cover under this Rule is related primarily to accidental pollution but may apply also to certain rare instances where oil has been discharged intentionally. The effect of intentional pollution is covered only when made reasonably in compliance with Rule 8 Section 2, to prevent or limit liabilities covered under these Rules. Jettisoning oil to save life, the ship and/or cargo or to prevent an even larger pollution may qualify for compensation, whereas the intentional discharge 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 clean-up, removal or destruction.

The cover is also for measures taken to prevent or limit the consequences of a threatened pollution. Such cover follows also from Rule 7 Section 4 and Rule 8 Section 2.

As mentioned in the 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 section.

The cover for pollution is subject to a limit as described in the 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. In such circumstances the Member may also be unable to limit under the CLC Convention (see the comments under 6.1.3.1.5) and OPA 90 (see the comments under 6.1.4.2.2.5).

Fines for pollution by oil or other substances are covered under Rule 7 Section 6 (c). According to item (v) of the last part of that section, a Member will not be compensated for fines imposed because the ship lacks valid or prescribed certificates to provide evidence of financial responsibility. See the comments under 7.6.5.5.

The deductible for oil spills also applies to related fines as appears from the comments under 22.5.2.

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 the comments under 35.2.1). As the Member's cover for pollution risks is limited, as described in the 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 further affects the solvency of the mortgagor. Moreover, 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 400GT and tankers over 150GT 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 150GT carrying noxious liquid substances.

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 adopted state law containing local requirements on contingency plans and their implementation. Various states have looked to 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 400MT 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 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 absence, who is authorised to take decisions that are binding and urgent actions on the Member's behalf in a pollution situation.

6.1.6 Charterparty clauses

A variety of charterparty clauses exist 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.

If Members have any queries regarding proposed charterparty clauses on pollution liabilities and obligations, the Club may be contacted for approval in accordance with Rule 10 Section 2.

6.1.7 Oil pollution and 1994 and 2016 York Antwerp Rules

According to Rule C in the 1994 and 2016 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 the cost of measures taken to prevent or minimise damage to the environment which are allowable in General Average under Rule XI (d).

Some 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.

6.1.8 MARPOL ANNEX VI Prevention of Air Pollution from Ships

6.1.8.1 General

1 January 2020 the amendments to 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 in general 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, regardless of whether they belong to the ship or the terminal, should be tested regularly and have prescribed and valid certificates. Pressure should not be allowed to exceed those prescribed limits.

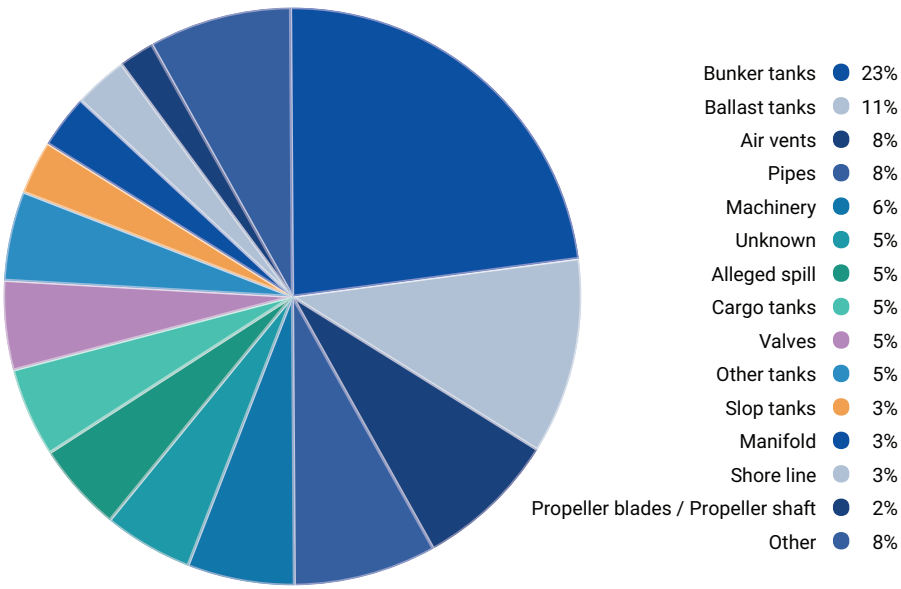
The ship should be moored in such a way that hoses may not be caught between the ship and the quay or other parts of the mooring installation. Mooring line slack caused by tide or increased draft during loading should be taken up mechanically or by constant attention by the ship's crew or linesmen to prevent hoses or lines from being ruptured in case the ship is exposed to interaction from a passing ship (see the comments under 7.1.4).

Topping off 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. Extra care is required to avoid exceeding the maximum tank capacity, especially if thermal expansion of the cargo is expected during transit.

During bunkering, loading and discharge the scupper holes should be plugged and there should be an adequate supply of rags and absorbent material available, as well as empty drums and shovels.

Source of pollution

No of claim 2015-2019



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.

The contingency plan should contain all the information necessary to enable those on board to establish rapid contact with all parties assigned to assist in reducing the actual and legal consequences of a pollution.

Of all the parties to be contacted after a pollution incident 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. The Club's correspondent should, therefore, be called in at the earliest possible moment and should be given full support in his attempts to assist the Club and the Member.

6.1.9.3 Information needed in defence of pollution claims

Even if pollution liability under the existing conventions and most domestic legislations is strict, which means that the shipowner is liable, regardless of the cause (see the 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 but to domestic legislation based on, or derived from, that convention. The burden then may be on the claimant to prove that the shipowner caused the pollution through negligence (see comments under 4.1.4.2).

In order to secure 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. Too often the quantity spilled is grossly underestimated. Underestimation of the pollution tends to delay and hamper the pollution response. It may even constitute a violation of applicable regulations and result in fines being imposed on the ship in addition to the expenses which may already be significant.

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 connection between the ship and the shore should be closely analysed and documented. The shore lines, valves, couplings, pumps and tanks used should be identified and accurately documented.

Pollution observed around or near the ship is sufficient to justify an investigation, even if it seems clear to those on board that the pollutant could not have come from the entered ship. In such a situation, samples of the pollutant should be taken (see the comments under 4.1.4.5.6). The direction and strength of the wind, the state of the tide and any prevailing current should be established and recorded, together with the location of nearby ships, installations and 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, prejudice 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 legislation became a very powerful weapon for the U.S. authorities in cleaning up existing hazardous waste dumps, landfills and disposal facilities where 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.

U.S. courts can levy punitive damages corresponding to up to three times the total cost of the clean-up if a person liable for a release or a threatened release of a hazardous substance fails without sufficient cause to comply with administrative orders to clean up or otherwise remediate the effects of such a release.

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 the liabilities arising out of the escape of waste from landfill sites where the waste originated from a 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 may be exercised more favourably in cases where the ship was the sole responsible party under the Act rather than one of many ships 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 section 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 the comments under Part One B.3) all Group Clubs apply identical limitations and conditions of cover.

6.2.2 Monetary limitation of cover

Liability for oil pollution is strict under the CLC Convention and under most domestic legislation (see the comments under 6.1.3.1.3 and 6.1.4). It is sometimes unlimited (see the 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 cover for oil pollution under these Rules.

The amount to which the cover is limited is not stated in this section, 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 forthcoming policy year are reported annually in a circular issued at the beginning of each year.

For the policy year 2021/2022 the limitation of cover for oil pollution is USD 1 billion per vessel and event. See the comments under 6.2.4. The limitation of cover is not confined to tankers but applies to ships of all kinds.

6.2.3 U.S.A. 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.A. 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.A.

Additional regulations may be issued by the Club under the provisions of this Rule and Rule 10 Section 3.

6.2.4 Limitation per event

As mentioned in the comments under 6.2.2, the limitation of cover applies per event. For the definition of "event", see the comments under 2.8. Item (a) of this section contains a further qualification of an event.

The section 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 section 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. That apportionment will reflect each Member's validated claim for compensation as against the overall amount claimed.

It also follows from item (a) that the limitation of cover applies to the aggregate of claims for compensation. This 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. This is the case even if several Rules apply to the consequences of the pollution e.g. 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 section 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. For the limitation of cover to apply the ships involved must either be entered in the Club for oil pollution risks or covered for those risks by any other Club participating in the Pooling Agreement (see the comments under Part One B.4) and the Group excess reinsurance policies.

The limitation of cover applicable to compensation to the Member is the proportion of validated claims for compensation made on the Club in relation to the overall amount of claims filed in connection with that event.

The reason for this requirement is that the reinsurance contract of the Group Clubs contains a similar limitation of cover per event.

Rules for P&I Insurance 2021/2022

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, unless otherwise agreed in writing, 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 relate 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-c 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 over-delivery of cargo, or failure to comply with regulations concerning the declaration of goods, or documentation of cargo (other than fines or penalties arising from the smuggling of goods or cargo or any attempt thereat), 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,

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 oil water separator or similar pollution prevention device has been bypassed or rendered inoperable.

Section 7 Quarantine expenses

Additional costs or expenses for quarantine, disinfection, fuel, insurance, wages, stores, provisions and port charges, in excess of those which would have been incurred but for the quarantine, necessarily and solely incurred by the Member in connection with quarantine and disinfection of the entered ship as a direct consequence of an outbreak of infectious disease onboard the entered ship and as a consequence of a quarantine and/or disinfection order. There shall be no recovery from the Association for the ship's running expenses during the delay or indirect consequences thereof.

There shall be no recovery from the Association, where, at the time the entered ship has been ordered to a port, the Member knew or it was reasonable to anticipate, that it would be quarantined.

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,

(c) liability arising from towage during a voyage with the purpose of saving life or property in distress,

(d) 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.

Section 10 Consortium claims

The Association's liability for consortium claims shall be limited to such sums and be subject to such terms and conditions as set out in Appendix II, Rule 3.

Commentary

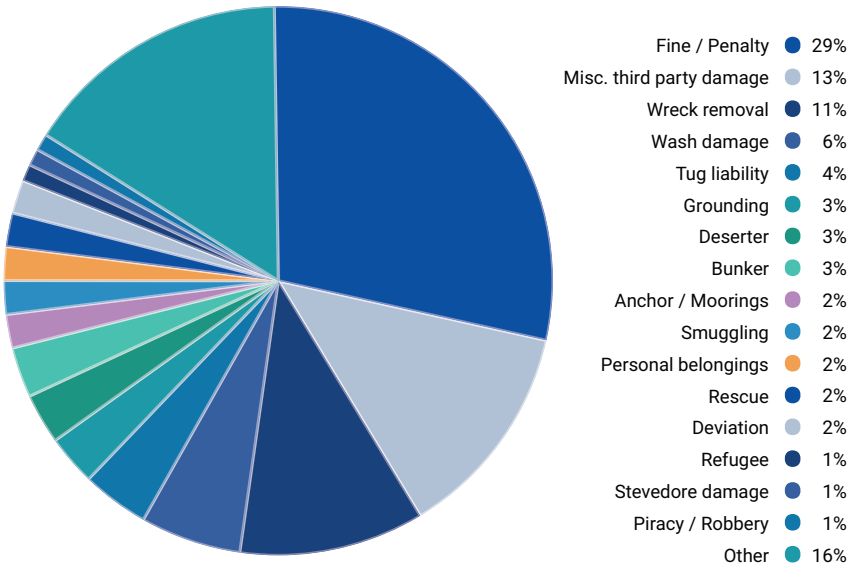
Rule 7 Other liabilities

Section 1 Liabilities for other property

7.1.1 General

This is the general third party liability section. The extent of cover is described in broad, general terms since it is mainly dependent on the risks excluded under the Hull policy and those risks not covered elsewhere under any other P&I Rule.

Most common types of "Other P&I"
No of claims 2015-2019



7.1.2 Hull liability exclusions

This section is not exhaustive when it comes to cover for risks excluded under the Hull insurance conditions. Some of the main exclusions under Hull insurance 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.

Depending on the Hull insurance conditions agreed, the exclusions could refer to liability for collision with objects other than ships, such as quays, piers, buoys, dolphins, etc. (FFO – Fixed and Floating Objects) or to part of the collision liability not covered under the Hull insurance conditions, e.g. 1/4 collision liability under the Running Down Clause (RDC).

This clause is geared to cover the remaining, unspecified and traditional limitations of cover for third party liability under the Hull policy.

7.1.3 Non-contact damage by manoeuvring

Without having been in direct contact with another ship, the entered ship may cause that other ship to run aground or collide with a third ship or cause damage to the quay at which it is moored. 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 commonly not covered under the Hull policy. Cover usually remains with the Hull insurance if the manoeuvre leading to the accident was deliberately made to avoid a collision covered under the Hull policy. For the other alternatives not covered by the Hull insurance, cover is instead provided under this clause.

For further clarification the Club should be immediately informed when indirectly caused damage of this nature has occurred.

7.1.4 Interaction or "wash damage"

7.1.4.1 General views on interaction

Another example of liability excluded under most Hull policies is what is commonly referred to as "wash damage". Fields of pressure and suction of various strengths and intensities are built up when a ship proceeds through the water. This phenomenon is 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 vessels interact with each other producing 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 result solely due to the presence of the ships. Shallow and confined waters magnify the effect so that a ship may deviate from her intended course with unforeseen 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 usually 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 break, but serious damage can also be caused to the ship, her gangway and/or to loading/discharging equipment such as conveyor belts, cranes, hoses or loading/discharging arms as well as any shore installations, such as bollards or even the entire pier with anything on it. The damages caused will be claimed against the passing ship.

The cover under this Rule would also include the Member's legal liability in respect of economic loss resulting from covered loss/damage to property of third parties.

7.1.4.4 Burden of proof

7.1.4.4.1 General comments 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, though, courts have a tendency to assume negligence based on the damage sustained. This means that they may accept such a low standard of evidence produced by the claimant that liability becomes almost strict. (See the comments under 4.1.4.4.) In certain ports and jurisdictions, liability is indeed strict as a result of mandatory port conditions, which apply to traffic in waters where the accident occurred.

There may 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 timely secured and made available to the Club. When proceeding in narrow waters where such damage is more 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 the people on the bridge should be noted. Strength and direction of wind, tide and current should be recorded and the voyage data recorder (VDR) should be working properly. Preferably, all observations of ships passed, their location and the number and state of their moorings should be recorded in the deck log as well as the name of ships met or overtaken be noted, including position and time. AIS data greatly reduces the burden of collecting such evidence.

In a wash damage case, the claimant has 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 the first element, 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. The burden is on 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 at the necessary steering speed. Therefore, the claimant needs to prove the second element, i.e. 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 the limit may still be considered excessive if the fairway was shallow and narrow and the ship could have travelled safely at a slower speed.

7.1.4.4.4 Contribution

When it comes to the third element of 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, if possible. 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 way for the defence in case a 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 section is in respect of the liability of the passing ship for damage caused to third parties. No compensation is allowed under this section, or anywhere else under these Rules, for damage caused to the entered ship, her moorings, gangways or other belongings, by wash from another ship. See the comments under 7.1.15.

7.1.5 Propeller water

A further liability related to that of interaction is when damage is caused by the water moved by the propeller of the entered ship. As there is no direct contact, liability is commonly excluded by the Hull insurance and, instead, covered under this section. 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 along with warehouses and cranes. The 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.

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 usually not of a nature to allow compensation under the Hull policy.

Although an anchor is an integral part of the ship, liability resulting from the use of anchors is most often excluded from Hull cover unless the anchor is dropped in emergency situations in order to avert a peril insured under the Hull cover or in a General Average situation. In such cases, the damage caused by the anchor manoeuvre may be allowed as an intentional sacrifice. If a damage not covered under the Hull policy is avoided, the consequences of the use of anchors will still come under the P&I policy. See the comments under 7.3.2.

For the purposes of P&I Insurance, liability should relate to the use of the anchor. The anchor is not in use when it is in its fixed position in the hawse pipe. If it is lowered and hanging free in preparation for or after anchoring, it is considered to be in use. P&I exposure starts when the anchor leaves its position in the hawse pipe 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 commonly excluded from the Hull cover and falls within the category of cover under this clause. Mooring lines often cause damage to bollards but may 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 the 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. “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 allision/collision damage caused by ship’s movement when the device is completely in its resting position is covered under the Hull policy.

A ship’s ramp used for cargo operations is considered a loading/discharging device. When used for this purpose, any liability arising from contact of the ramp with shore installations and/or FFO in general will fall under this section.

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 (except when the gangway is not in use but safely stowed and the part of the vessel being in contact in an allision/collision); the liability for damage caused by movement of the gangway, for example when lowered or raised, is covered under this section whether or not the gangway belongs to the Member.

7.1.10 Discharge of water, smoke etc.

The discharge overboard of cooling water from a ship may cause damage by short circuiting electrical installations on shore or filling barges moored alongside the ship. Liability for such damage is covered under this section. 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 such as soot or 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 section.

7.1.11 General unspecified third party liability

This section is intended to absorb various situations of unspecified third party liability for loss of or damage to property, such as, for example, a valuable computer brought on board by people performing repairs and/or maintenance or by a pilot 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 section.

7.1.12 Third Party Liability damage caused by cargo

The Hull conditions exclude liability damage to third parties caused by cargo. The most frequent example of such damage is when cargo is dropped from the sling onto trucks, railway cars or barges at the ship's side. These are third party risks covered by this section.

During land transport to/from the carrying vessel, 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. P&I Insurance is intended to cover legal third party liability related to ocean carriage; liabilities arising during other modes of transportation are not covered by P&I.

If the accident is reasonably related to loading, shifting, discharging or other similar cargo operations on the quay or in the terminal area, liability may be sufficiently related to ocean carriage to be covered under P&I.

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 charterparty. If there is such liability and if the charterparty was on customary or approved terms, the Owner's liability to compensate the Charterer is covered under this section. Note: liability for bunkers belonging to a Charterer is expressly removed 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 section.

7.1.13.2 Member's bunkers

Loss of or damage to the shipowner's own bunkers is commonly covered under the ship's Hull insurance.

7.1.14 Damage caused by ship's vehicles

Liability for damage caused by trucks or other vehicles permanently stationed on board the entered ship for cargo handling 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. This is not a general traffic liability insurance. If the trucks are operated in a larger area or operated on public roads outside the terminal area, a separate liability cover is required.

Liability for personal injury or death caused by such a ship's vehicle follows the same principle. Liability is covered under Rule 3 Sections 1, 5 or 7, respectively.

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.

7.1.15 Borrowed property

P&I Insurance is, by definition, insurance against third party liability risks. Therefore, the cover under this section is limited to liability for property which is not owned by the Member. In its second part, the section 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.

There is no cover for property owned by a co-assured Charterer nor is there 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 Joint Members and co-assureds under Rule 30 and affiliated companies under Rule 32 unless specifically stated or agreed.

Section 2 Collision with other ships

7.2.1 Adaption of P&I to Hull cover for liability risks

Whilst the main function of the Hull insurance is compensation for loss of or damage to the insured ship – in that sense the Hull insurance is a property insurance – important elements of insurance against liability and salvage risks have been added. The extent of liability cover under the Hull insurance is defined in the applicable Hull conditions, for the remaining liability risks cover may be sought under the P&I Insurance.

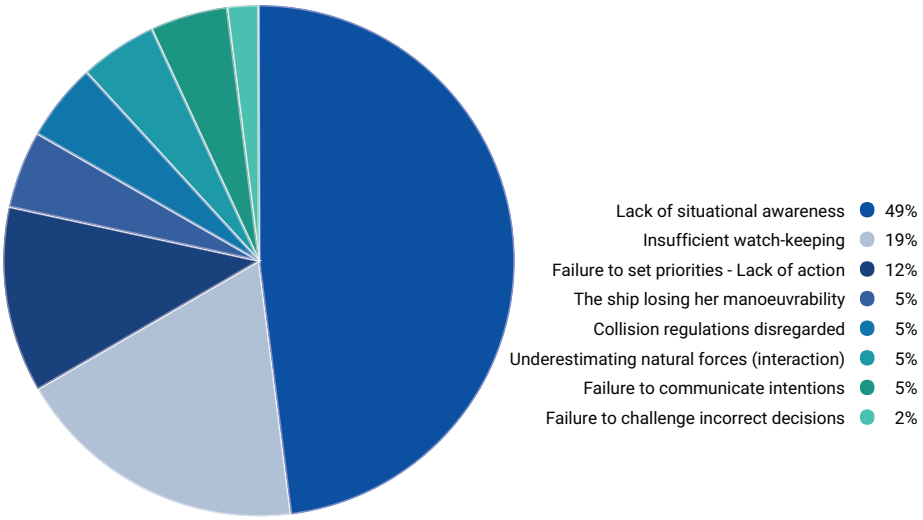
The collision liability left to be covered under the P&I policy depends on the exclusions under the Hull cover. Whilst some exclusions are covered under other Rules such as Rule 3 (Liabilities in respect of persons) and Rule 6 (Liabilities in respect of pollution), this section of Rule 7 provides protection against some other important exclusions under the Hull insurance viz. limitation in a Hull cover to the collision liability as well as 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 comments on 1/4 RDC

Traditionally, Hull insurance covers only 3/4 of the collision liability, the "uninsured deductible" of the remaining 1/4 collision liability rests with the P&I Clubs; the 1/4 RDC (Running Down Clause) is, accordingly, one of the traditional P&I risks. Nowadays, Hull insurance often covers 4/4 of the collision liability.

Contributing factors to collision
No of claims 2015-2019



7.2.2.2 When 4/4 RDC covered under hull policy

When Hull insurance provides cover for full collision liability or 4/4 RDC, no cover for 1/4 RDC is required under the P&I policy.

7.2.2.3 Cover of 1/4 RDC makes P&I the leading underwriter in collision cases

Should 1/4 RDC cover rest with the P&I Club, traditionally P&I takes the claims lead, including negotiation and settlement, on behalf of all the underwriters concerned. This is because the hull cover is usually split between various insurers who will cover less than 25% individually.

7.2.3 Collision liability apportionment – single or cross?

7.2.3.1 General comments 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 entire liability is paid by the one vessel or its Underwriters (depending who carries the collision liability). In the second case each ship bears its own loss.

In the majority of collision cases, fault is found on the part of both ships leading to a shared blame based on the degree of fault. The division of liability is often reached through an amicable settlement between the parties; should the negotiations fail, the case will need 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

In the single liability system the agreed liability apportionment is applied to the aggregate amount of the losses sustained by the two ships. Depending on the quantified losses and the proportion of blame one ship will receive compensation from the other ship, respectively its underwriters. Usually, the losses suffered by one ship consist of both insured and uninsured losses (for example hull damage, loss of time, deductibles etc.). The disadvantage of a single liability settlement is the distribution amongst the various parties often concerned for one ship, which would then often be based on an assumed cross liability settlement.

7.2.3.3 Cross liability

In the cross liability system the liability is apportioned not on the aggregate of the two ship's 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, P&I's proportion to the collision, insured loss of time or an uninsured loss sustained by the shipowner.

Which system is to be preferred or offers more equality depends on various factors, such as stipulations in the Hull insurance conditions or if global limitation is involved, and will have to be decided for each individual claim. This Section of Rule 7 allows for compensation for collision liabilities not covered under the Hull insurance of the entered ship irrespective of the way of liability apportionment.

7.2.4 Excess collision liability

7.2.4.1 Cover when collision liability exceeds Hull insurance value

The Hull cover is limited to a certain value agreed between the Member and the Hull underwriter at the commencement of each policy period. This value might be adjusted during the policy period to reflect significant changes in the market. If the entered ship becomes a total loss, the sum insured under the Hull insurance will be consumed by the total loss compensation to the Member. For third party liability damages covered under the Hull insurance, the Hull policy commonly provides a separate limit up to the insured value. Should these legal liabilities exceed the Hull insured value agreed, cover for the balance is provided by the P&I Insurance under this section as excess collision liability.

The Hull damage part and the collision liability part of the Hull cover are separate and not cumulative, i.e. the "unused" part of one limit cannot be transferred to the other.

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. Members are advised to report any change of the Hull value to their P&I Club to allow for a proper risk assessment.

7.2.5 Collision liabilities for wreck removal of another ship

The last paragraph of this Rule stipulates that the limitations of cover under (a) and (b) do not apply to wreck removal and any related liabilities of the ship the Member is in collision with, so long as cover is not provided by Hull insurance.

If a 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.

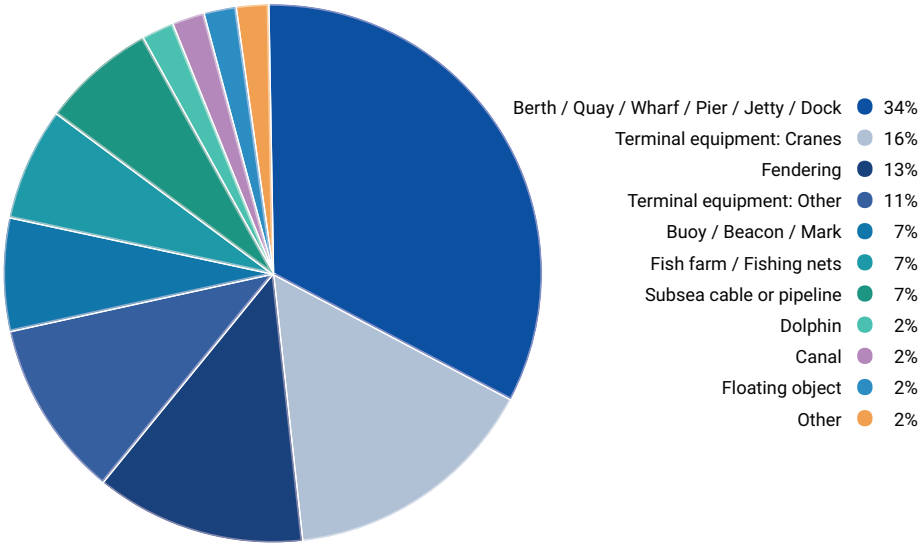
7.2.6 Liability for collision compensation under U.S. law in respect of cargo carried on the entered ship

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 and Hague-Visby Rules exception Article IV rule 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 and Hague-Visby Rules liability exclusion becomes effective even in a collision situation.

The U.S.A. 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 and Hague-Visby Rules 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. The Member will instead be covered under this section.

To avoid this circumvention of the Hague and Hague-Visby Rules liability exception, the Both-to-Blame Collision Clause was introduced. In short, the clause provides that the cargo owner will 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.A., it is considered to be a standard condition in the sense of Rule 10 Section 2 which should be included in all bills of lading and charterparties.

Damaged objects
No of claims 2015-2019



Section 3 Damage to fixed and floating objects

7.3.1 General

As described in the comments to Sections 1 and 2 of this Rule, liability cover under the Hull policy has important exclusions which require cover under the P&I policy, to provide the shipowner with full insurance protection.

7.3.2 Cover for FFO when excluded under Hull policy

This section provides the necessary cover for a Member's ship insured on Hull conditions excluding cover for damage to Fixed and Floating Objects ("FFO").

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 as well as 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 their 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 concerns for the environment have caused claims to be filed for damage caused to coral reefs following a grounding. Any such collision/allision liability would qualify as FFO. Liability for damage to objects of this nature is covered under this section to the extent that no cover is provided under the Hull policy.

The liability for FFO is different from collisions with ships in that collisions are normally determined in accordance with international conventions. For FFO on the other hand no such international conventions exist and the liability is to be determined by local law and jurisdiction if no contract in place with e.g. a terminal.

7.3.4 Excess FFO collision liability

The second part of this section refers to the situation where FFO is covered under the Hull policy but where the Hull value agreed is insufficient to cover the liability caused. The same cover applies as under Rule 7 Section 2. See the comments under 7.2.4.

Section 4 Special compensation to salvors

7.4.1 General

7.4.1.1 General comments 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 known as the "Lloyd's Open Form" ("LOF") in its latest form. That contract is considered approved and does not need to be submitted to the Club.

7.4.1.3 Lloyd's Open Form

The main principle of remuneration under LOF is "no cure, no pay". The salvor assumes the economic risk of the salvage operation. If the salvor fails, no compensation from the property interests is payable; for a successful salvage the salvor is entitled to a salvage award from the salved property interests.

Assessment of the salvage award is usually subject to negotiation. Should amicable negotiations fail, the award is decided through arbitration in London before an arbitrator instructed by the Council of Lloyd's.

Several factors will be taken into account when assessing an award. They are:

(a) the salved value of the vessel and other property such as the cargo, containers, bunkers and freight at risk.

(b) the skill and effort of the salvors in preventing or minimising damage to the environment;

(c) the measure of success obtained by the salvor;

(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 salvor's equipment and the value thereof.

7.4.1.4 Insurance cover of the salvage award

The salvage award is commonly apportioned by an average adjuster on the values salved. The ship's proportion of salvage is covered under the Hull insurance. Contributions for the salvage of the cargo are paid by the cargo interests, respectively their underwriters. For the other interests salved, such as bunkers and freight at risk, the respective parties concerned are liable to contribute to the salvage award.

7.4.1.5 Refusal of cargo to pay contribution

Where cargo interests have been forced to pay a salvage contribution under a guarantee, they may seek to recover that contribution from the shipowner on the grounds that the casualty resulting in the salvage was caused by the unseaworthiness of the ship in breach of the Member's obligations under the contract of carriage. In certain jurisdictions, the shipowner can be forced also to pay cargo's contribution in salvage. The cover for such a loss is described in Rule 4 Section 6. See the comments under 4.6.2.2.

7.4.1.6 Life salvage

For salvage of human lives, see the comments under 3.9.2.

7.4.1.7 Salvage ships

For cover of salvage ships, see the comments under 11.3.2.1.

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 salvor to become involved in a salvage where the prospects for success were remote, and the potential risks of damage to the environment were large.

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 representing 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 threaten to cause environmental damage, the salvor may be awarded special compensation. This is not limited to the 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 since pollution liabilities fall only on the ship. See the 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, the salvor is entitled to an increment over and above his expenses of 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 the salvor would not, otherwise, be entitled to an award for the unsuccessful salvage under the "no cure, no pay" principle.

A condition for the increased award is that the operation must have 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 aiming to protect the environment. Nor will costs for post salvage clean-up be included in any special compensation to be paid.

7.4.2.4 Cover for the obligation to pay special compensation

The obligation for a Member to pay special compensation is covered under this section.

This requires the Club to scrutinise closely 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, 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 as 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 in line with the collision liability.

In a situation where the total amount of the special compensation as assessed in accordance with either Article 14 of the Salvage Convention or SCOPIC (see the comments under 7.4.2.6) is greater than the salvage award paid by the insurers of the salved property, P&I will cover the difference.

It follows from item (b) of this section that the costs to be compensated are those which are not payable by the parties interested in the salved property.

7.4.2.5 Security

When the entered ship is being salvaged and the salvor has a claim against the Owner pursuant to Article 13 or Article 14 of the Salvage Convention, the salvor has the right to request satisfactory security from the person liable for the payment under Article 21. From the salvor's point of view and depending on the likely salved value of the property, security is usually seen essential to cover the cost of work and efforts likely to be undertaken since there may be little or no value left in the wreck against which the salvor can exercise his lien.

The request for security is subject to Rule 12 – 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 proved to be cumbersome and uncertain, the International Group of P&I Clubs together with the International Salvage Union, produced

an alternative provision, namely "SCOPIC", to be used for assessing special compensation.

The SCOPIC clause can be contractually agreed as a substitute for Article 14 in LOF Salvage Contracts and can be invoked by the salvor at any time during the salvage operation. In assessing compensation and remuneration of costs incurred by the salvor, SCOPIC refers to a set of pre-determined tariff rates.

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% applies.
- 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 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.

One further point to bear in mind is that if a traditional "no cure, no pay" award would exceed the amount payable under SCOPIC, then the "no cure, no pay" award will be discounted by 25% of the difference as if SCOPIC had been invoked on day one of the salvage service.

If a salvage takes place on an unamended Lloyd's Open Form (LOF), the SCOPIC costs are covered under Rule 7 Section 4. The SCOPIC security of $3 million to be provided to the salvor is discretionary on the Club and subject to Rule 12.

Section 5 Obstruction to navigation and wreck liabilities

7.5.1 General

Liabilities covered in the first part of the section arise whilst the ship is still a ship. The remaining part of the section refers to liabilities arising when it has ceased to be a ship and become a wreck.

7.5.2 Obstruction

7.5.2.1 What constitutes an obstruction?

The first part of the section refers to liabilities arising when the entered ship causes 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 the 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 must be approved by the Club in accordance with Rule 10 Section 2 unless they are customary in the trade concerned. In the absence of any such local rules, liability is probably 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, it has to be determined which of the consequences of an obstruction are 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.

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 when a ship has been blown to pieces by an explosion or broken up because of grounding, the exact hour the ship becomes a wreck is sometimes 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, what remains, whether a ship or a wreck, belongs 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 or a Constructive Total Loss ("CTL"). 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.

7.5.3.2.2 Hull underwriter's option to acquire title to the wreck

When total loss compensation is due, the Hull underwriter can opt to acquire title to the wreck in the hope that a salvage will produce a surplus to reduce the loss. If the Hull underwriter exercises the option to acquire the wreck, the Hull underwriter assumes the ensuing liabilities. This means that the P&I Insurance is no longer concerned as there are no liabilities left in connection with the wreck for the Member to insure.

In most cases though, the Hull underwriter abstains from taking title to the wreck, which then continues to be the liability of the Member and accordingly covered under this Rule.

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 the 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 that occurred 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 will try to salvage it himself.

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 at that stage 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 section 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 comments 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 section.

7.5.4.2 Obligation to remove wreck

7.5.4.2.1 The obligation is often strict

An obligation to remove the wreck, its cargo or equipment is often strict (see the 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 judgment or a governmental submission. It is important to check that the order is legally founded and the matter is indeed subject to the jurisdiction of the issuing authority. The wreck may in fact be positioned in international waters outside the national jurisdiction. The Member should immediately inform the Club of any such request received, 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 oneself but the Member must pay the costs 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 concerned.

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 the decision will be taken at a management level, the decision may affect the right, otherwise available, of the Member to apply global limitation. See the comments under 2.11 and 11.1.3. The options and the effect of any decision taken have to be analysed and considered carefully.

An argument in favour of the Club arranging the removal of the wreck, is where it can be done more cost efficiently than by a public authority.

In some cases, wreck removal operations are, however, left to the authorities concerned. The costs will then be claimed against the Owner of the wreck. The Club will supervise the actions taken and the 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 itself a wreck. Lost anchors may constitute a hazard in a shallow waterway or in an anchorage area. Containers or other large items 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.

The Club is asked sometimes for a lost anchor to be returned to the member after it has been retrieved. If a member wishes to have the anchor back, it is important that the member notifies the Club since the value of the anchor should be credited to the Club. It is necessary then to value the anchor - the evaluation being based ordinarily on the market-value of the anchor at the time of the evaluation.

7.5.4.2.4 Global limitation

Wreck removal costs are in some jurisdictions subject to global limitation, which puts a limit on the payment to be made on the part of the Member. See the 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 in the same or associated ownership within the jurisdiction.

The request for security is subject to Rule 12 and accordingly it is within the Club's discretion whether or not 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 possible 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 deal with 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. Normally, such contracts are entered into in close cooperation with the Club and often this involves an Invitation to Tender ("ITT") to suitable international contractors for evaluation of the best overall solution. Frequently, the contracts will be based on recognised BIMCO standard contracts such as Wreckhire, Wreckstage or Wreckfixed in their latest versions.

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 can 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 that has 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 ship(s) 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 must be either by way of governmental order or with the Club's prior approval, in order 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 once they have been notified, 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 the Owner fails, he may become liable for any adverse consequences/damages caused.

As any such failure may have been made on a management level, it may also affect the Owner's right to limit 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.

7.5.6 Wreck Removal Convention

In 2015 the Nairobi International Convention on the Removal of Wrecks, 2007 entered into force in signatory States.

The purpose of the convention is to establish sound uniform rules and a legal basis for the prompt and effective removal of shipwrecks, that may be hazardous to navigation or to the environment, located in the exclusive economic zone (EEZ), and also to the territorial seas of those signatory states that have opted for the Convention to apply there.

The Convention provides for strict liability, compensation and a compulsory insurance regime. It makes the registered Owner of a ship liable for locating, marking and removing a wreck deemed to be a hazard in a State's EEZ or territorial waters (in the state's option). It also covers any prevention, mitigation or elimination of hazards created by any object lost at sea from a ship (e.g. lost containers).

The Convention defines "wreck", following upon a maritime casualty, as:

(a) a sunken or stranded ship; or

(b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or

(c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or

(d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.

Articles in the Convention cover:

- reporting and locating ships and wrecks,
- criteria for determining the hazard posed by wrecks,
- measures to facilitate the removal of wrecks, including rights and obligations to remove hazardous ships and wrecks – which sets out when the shipowner is responsible for removing the wreck and when a State may intervene,
- liability of the Owner for the costs of locating, marking and removing ships and wrecks,
- settlement of disputes.

Owners of ships of 300 GT and over, registered in a State party or entering or leaving a port in the territory of a State party, will need insurance cover arrangements which meet the requirements of the Convention and a certificate from a State party attesting that such insurance is in force. Such certificate must be carried on board at all times.

The Club will issue the required Wreck Removal Convention "Blue Cards", to enable Members to obtain Certificates from States parties.

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 penalties imposed to punish offences committed against the law and regulations that have been adopted for the common good. As a result, there is normally no insurance protection available since providing cover against fines would contradict the very purpose of them. The shipping industry has, however, seen a tendency for countries to use fines indiscriminately as a source of additional public revenue. The fines may then be imposed for trivial violations of obscure administrative regulations and applied arbitrarily and outside the due process of law. Additionally, the shipowner may become the innocent target of sanctions against his ship which has been used, without his knowledge, and often by persons unknown, as a vehicle for illegal activities. The fines may be of an amount that bears no reasonable relation either to the offence committed or to the involvement of the shipowner. The fines may even be for the full value of or result in the confiscation of the ship. In such a situation Rule 7 Section 9 applies.

In such situations there may, therefore, be a justified need for insurance protection against fines in shipping. The purpose of the cover is to allow an innocent shipowner to continue trading his ship where he becomes the victim of exorbitant fines for breaches of legislation he could not reasonably know about or for actions he could not control or foresee the extent of cover under P&I Insurance is defined in this section. 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 charges. Accordingly, you have to look more at the nature and purpose of the sanction than its legal label. So, one of the sanctions for oil pollution in Sweden is called a charge (vattenföroreningsavgift) and as a result, it may be 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 non-payment of which the ship can be arrested. Fines arising out of the personal misconduct of the Member may amount to intent or gross negligence and, as such, be 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 directly. The proviso is that the Member has either a legal or contractual obligation to reimburse the crew member against personal fines arising out of an act or omission committed within the scope of his employment or that it was otherwise reasonable for the Member to reimburse him. A further requirement for recovery under this Rule is that the Club approves the reimbursement. This underlines the need for close contact between the Member and the Club from the outset of any such case.

When the fine is imposed for smuggling of goods or cargo or any attempt thereat, the availability of cover is subject to the Club's absolute discretion. It is important for the Member to immediately notify the Club.

Cover is not provided for actions against the ship for violations or infringements that took place when the ship was owned by a shipowner other than the Member.

Finally, for a fine to be covered, it should be imposed on the Member by a court, tribunal or a legally empowered authority such as a customs authority or coast guard. In most countries there is a possibility to appeal a fine to a higher court or authority. Whether however a Member should pay the amount fined directly or lodge an appeal, requires a number of factors to be taken into account. The circumstances leading to the fine, the applicable law, and the costs involved in defending the matter as well as the jurisdiction in question (in terms of whether one can expect an objective decision. Discussion with the Association on the above issues is necessary for a decision to be made.

7.6.2 Fines covered

7.6.2.1 Short or over-delivery of cargo - Rule 7 Section 6 1. (a)

7.6.2.1.1 Evidence required to oppose fines for short or overlanded cargo

This is a classic situation for fines against shipowners. The terms "goods" and "cargo "as used in this section are both meant to refer to cargo. The pretext for such fines is that customs authorities assume that the shipowner has caused any goods, which he cannot account for properly, to have entered the

country illegally. 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 goods were never shipped, were wrongly discharged in another port or were 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 illegally. For bulk cargoes it is important to check that ullage tables are correct and that draft readings are recorded properly.

Customs officers in some countries may be poorly paid and may be allowed to retain a certain percentage of fines collected as part of their salary or as a reward. This does not help the situation.

7.6.2.1.2 Late filing of cargo related fines

Fines may be imposed years after the completion of the voyage. It may be within the authorities' discretion to decide when a voyage should be considered as having been completed and the fines are to be due for assessment and payment. This could be ten years or more after discharge, which makes it difficult or impossible for an Owner to trace the documents needed to prepare a proper defence. In some countries, customs files may be destroyed, say, 5 years after the vessel's arrival whereas the time for filing claims for fines may not expire until years later. It has happened, in such circumstances, that customs will have kept the documents, which support their claims for fines but 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 lost cargo and liability to pay fines imposed in respect of such lost cargo, 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 related fines. In a shortage case, an Owner may be able to limit his liability for the cargo claim by application of package limitation whereas the fine for the same shortage may amount to several times the value of the missing goods.

7.6.2.1.4 Deficiency of documents

Documentary deficiencies can also result in fines. Failure to present an accurate cargo declaration or the improper manifesting of dangerous cargo frequently results in fines. Delay by the carrier in presenting the cargo manifest can also give rise to a fine. 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 charterparty, the burden of ultimate liability should be passed to the party whose negligence caused the fine to be imposed.

Fines are not recoverable under this section where the cause of the fine is excluded elsewhere in these Rules. So, for example, a fine imposed for a wrongly dated bill of lading 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 had expired. See the comments under 7.6.5.5.

7.6.2.2 The exception of fines or penalties arising from the smuggling of goods or cargo or any attempt thereat - Rule 7 Section 6 1. (a)

7.6.2.2.1 General comments

Smuggling of goods or cargo or any attempt thereat is a frequent cause of fines being imposed. This exception means that cover is always subject to the Club's absolute discretion. It is aimed at what is commonly understood to be smuggling, performed by crew members or third parties. It might also be applicable to a failure to declare ship stores or used lube oil in the engine room.

If a crew member is fined for smuggling the fine will not be covered in any event but if a fine imposed consequently on the Member it might be covered provided the Member itself is not involved. Where the Member is involved, cover is excluded in any event under Rule 11 Section 1 and Rule 11 Section 2 (k).

The discretionary cover for the consequences of smuggling is mirrored in Rule 7 Section 9. According to that provision, 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 the comments under 7.9.4.

7.6.2.2.2 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 on the ship or in its cargo. An example would be drugs hidden in a container. 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.

7.6.2.2.2.1 The U.S. Anti-Drug Abuse Act 1986

7.6.2.2.2.1.1 Assessment of fine

According to the U.S. Anti-Drug Abuse Act 1986 (the "Act") a tariff has been fixed on a per weight basis as a fine for each kind of drug found on board a ship or in its cargo. The tariff multiplied by the weight of the quantity found on board constitutes the fine against the ship. Cases have been reported where the U.S. Customs Service has, on this basis, filed claims under the act for amounts of nearly USD 500 million.

This fine can be enforced as a lien against the ship and result in the seizure of the vessel. A fine can be mitigated only if the Owner can prove his innocence. Such burden of proof is difficult to satisfy. The Owner or operator, Master, pilot and other employees responsible for maintaining and ensuring the accuracy of the cargo manifest must show that "the highest degree of care and diligence" was exercised.

7.6.2.2.2.1.2 Sea Carrier Security Criteria

It is difficult to define what "the highest degree of care and diligence" means in practice. In 2006, the U.S. Customs and Border Protection ("CBP") issued a document entitled Sea Carrier Minimum Security Criteria in which it describes the routines and procedures which the CBP expects an Owner and officers to implement. 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 information can be obtained from the CBP's website.

It is important that the Sea Carrier Minimum Security Criteria is available on board all ships calling at U.S. ports whether only occasionally or regularly, that it is studied closely by those on board and that its terms are implemented.

7.6.2.2.2.1.3 Upgrading of all routines

Detailed plans must be made by the Owner to exercise necessary control of the ship, crew and cargo. The plans must also be enforced in practice. This requires the education of all staff ranging from the 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, stevedore 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 the credentials and records of officers and crew hired as well as the background and status of shippers, the security in terminals, including the checking of containers and their seals, the gangway and ramp security and even the waterborne activities around the vessel.

7.6.2.2.2.1.4 Upgrading must be possible to prove

It is not enough to take all these steps. An Owner must be able to prove afterwards what precautions he took. If drugs are found on a ship in a U.S. port, the Owner will have to satisfy the CBP that full and adequate steps were taken to comply with the Act. Each step taken from the broad planning at management level to the practical enforcement of protective actions, such as welding shut a bolted plate in the engine room behind which drugs might have been hidden, must be possible to prove. Everything must be properly documented and the documents kept up-to-date and easily available for presentation to the authorities.

7.6.2.2.2.1.5 Effect of failure to upgrade

The amount of the fine will relate directly to the performance of the Owner. A Member who fails to take adequate action may further jeopardise his cover under these Rules since such decisions or the lack of them will be considered to be attributed to the managerial 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 can satisfy 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 is not obliged to give a reason for its decision.

7.6.2.2.2.1.6 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 allow 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 form coming on board. In addition, membership in C-TPAT provides a reduced number of CBP inspections (since C-TPAT members are considered to be a low risk), priority in the processing of CBP inspections, services of a Supply Chain Security Specialist and eligibility in the CBP Importer Self-Assessment program.

7.6.2.2.2.1.7 No cover for time lost

The discretionary cover under this section 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.

7.6.2.2.2.1.8 Posting of security

If the Club in its discretion under Rule 12 agrees, in principle, to put up security to release a ship arrested by customs, the posting of such security may take longer than usual as it will be necessary to await the outcome of the 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 7.6.2.2.2.1.5. Then the Club is unable to provide security.

7.6.2.2.2.1.9 Charterparty clauses regarding drug smuggling

Various charterparty clauses have been drafted to allocate liability for drug smuggling fines as between the Owner and the Charterer.

7.6.2.2.3 Spirits, cigarettes, firearms

Smuggling or illegal possession of spirits and cigarettes also 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 at. They should be strictly adhered to.

7.6.2.2.4 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 section was applied when a cruise ship was fined because a passenger took her dog on an urgent yet unlawful walk to a lamp post on shore.

7.6.2.2.5 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.

7.6.2.3 Violation of immigration regulations - Rule 7 Section 6 1. (b)

This covers fines imposed against the ship in connection with detainees, deserters, stowaways or other situations where immigration regulations have been violated. An example would be a fine imposed personally on a crew member that stays in a country for a period of time longer than the time

stipulated in his visa. See the further comments regarding detainees under 3.10.2, deserters under 3.10.3 and stowaways under 3.8.2.

7.6.2.4 Pollution - Rule 7 Section 6 1. (c)

Pollution fines are one of the risks increasing in number and extent. Most countries have enacted legislation under which an Owner can be fined heavily in connection with oil, chemical or other pollution. For cover to be provided, the escape or discharge of oil or other substance must be accidental. Tank overflow as a result of crew negligence is an example of liability covered under this section. Discharge of steam, smoke, fumes, sewage, garbage or water used to clean a hold or the deck, may have the same consequences. The unauthorised use of detergent from ships to clean pollution on a do-it-yourself basis can also result in fines as high as those for the pollution itself. For cover to respond, it is necessary that the act itself is 'accidental'. Fines for discharging ballast water and burning bunkers with excessive sulphur content are examples of pollution fines which are not covered since the 'act' of ballast water exchange or burning of bunkers is intentional.

Fines of this kind are often formally imposed on the Master or chief engineer. The defence of such claims is generally undertaken by the Club, provided the Master acted reasonably and within the scope of his employment. When a Master or chief engineer deliberately discharges oil into the sea after tank washing and is personally fined, the insurance does not pick up such fines. However, in such circumstances there is still cover for the Member in respect of the clean-up costs of such a spill. However, if the discharge was on the Member's instruction, there is clearly no cover for either the fines or the clean-up. The issuance of orders deliberately to cause pollution in order to save time and costs, would involve the general exclusion from cover under Rule 11 Section 1.

This section provides cover also for fines due to an accidental escape of oil from a source other than the insured ship as a result of an incident involving the insured ship. Pollution coming from the shoreside, for example a terminal's loading arm, as a consequence of contact with a vessel is an example of such a situation. Fines due to escape of oil as a result of a collision or grounding are also considered to be covered under this section.

To prepare the Member's defence against fines for oil pollution, precautions have to be taken immediately as described in the comments in respect of Rule 6 Section 1. It is important to immediately contact the local Club correspondent for assistance and advice.

7.6.3 Club's discretionary right to cover other fines - Rule 7 Section 6 2. (a)

Pursuant to Rule 7 Section 6 sub-paragraph 2, the Club may, in its absolute discretion, decide to cover fines, other than those mentioned in sub-paragraph 1, provided the fine is not mentioned in sub-paragraph 3 which specifies fines that are always excluded. Such other fines may be recoverable provided the Member has satisfied the Club that he took such steps as appeared to be reasonable in order to avoid the event giving rise to such fines.

It is stressed that any amount claimed in respect of such fines shall only be covered where the Club in its sole discretion so decides. Such decision will be taken after careful review and consideration of the circumstances of each case and creates no precedent. It follows that similar events will not necessarily be assessed in the same way. The Club is under no obligation to give reasons for its decision.

7.6.4 Fines not covered - Rule 7 Section 6 3.

7.6.4.1 No cover for overloading (i)

The first exception (i) is for fines in respect of overloading of the ship. Overloading is a serious violation of the safety of the ship, its crew and cargo. No attempt to earn additional freight by such a violation can be condoned.

Overloading means bringing a ship below her marks. It does not matter whether this was caused by excessive intake of cargo, ballast water, bunkers or fresh water.

This exception includes fines for the local overloading of decks or hatches. Rule 11 Section 2 (c) contains further exclusions in respect of overloading. See the comments under 11.2.2.3.

7.6.4.2 No cover for excessive number of passengers (ii)

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.

7.6.4.3 No cover for illegal fishing (iii)

Fines for illegal fishing are excluded from cover under exception (iii). The exception applies to fines for fishing in prohibited zones, use of prohibited equipment or the catching of prohibited species.

7.6.4.4 No cover for substandard lifesaving and navigational equipment (iv)

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 exception (iv) will 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.

This exception ties in with the general exception of liability under Rule 11 Section 1 (but each claim will be decided on its merits).

7.6.4.5 No cover for lack of valid or prescribed certificates (v)

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 provision 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 these conditions, the Club may reject any claim or reduce any sum payable under these Rules. See the comments under 10.1.6.

The requirements regarding certificates are followed up by exception (v) of this section 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 7.6.5.4 above, Club money should not be spent compensating those who disregard such regulations.

The exception applies to fines for lack of prescribed certificates and also to fines where there is a certificate which for any reason is not valid.

For the section 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 the issuance of certificates, to keep them accessible for presentation and to take action in time to renew them before they expire.

7.6.4.6 Infringement of MARPOL regulations (vi)

Exception (vi) deals with fines imposed by Port State Control for MARPOL violations where the 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 U.S.A. take a very hard line in respect of breaches of the MARPOL Regulations.

The U.S. Coast Guard ("USCG") has 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 may have been used to bypass the oily water separator and pump 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 that the oily water separator has been bypassed 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 on board. Incorrect entries in the oil record book are considered by USCG to be a false statement and an obstruction of justice which is subject to criminal proceedings against the relevant crew members.

Sanctions imposed by the U.S. authorities are penalties, fines or imprisonment. Fines have been imposed on a massive scale. A reward of 50% of the fine imposed is offered as an incentive to those who report an alleged violation (so-called "whistle-blowers"). In one case the 12 whistle-blowers each received USD437,500. During the lengthy investigation of an offence by the U.S. Department of Justice crew members charged usually remain in custody. If sentenced, imprisonment of up to ten years may follow.

Fines or penalties imposed for breaches of MARPOL regulations are not covered by the Club other than in the case of purely accidental discharge and, even then, never where the oily water separator or similar device has been bypassed or rendered inoperable. As a result, whilst investigations are still underway the Club can only provide security in exchange for counter security in the form of cash or bank guarantee from the Member. If the Club is asked to fund costs in defending criminal or civil proceedings, additional security will also be required.

As part of their Safety Management System, Members are recommended strongly to carry out periodic reviews on board their ships to check that waste oil treatment equipment and ship's records such as the oil record book comply with MARPOL regulations and to avoid being targeted by USCG.

7.6.5 Punitive damages

On the subject of exclusion of cover for fines, in cases of Member's intent or gross negligence under Rule 11 Section 1, the question arises as to the extent of cover, if any, under these Rules for punitive damages.

Punitive damages are akin to a penalty in excess of and unrelated to the actual extent of a loss caused to third parties. They can be 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 unless subsequently ratified by his employer.

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 unlikely that punitive damages would ever be covered.

Section 7 Quarantine expenses

7.7.1 Costs covered

Compensation under this section requires a quarantine and/or disinfection order made as a consequence of an infectious disease on board the entered ship.

The expenses to be reimbursed are those directly and solely 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. Costs for medical treatment and related expenses are, however, covered under Rule 3.

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 section that there is no cover for the ship's operating expenses during the delay such as port charges, crew wages, use of bunkers and consumption of fresh water.

The section 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 required for cover. It is insufficient that authorities order the quarantine or disinfection after the ship has visited a port where there was an outbreak of the disease.

There shall be no recovery from the Association, when, at the time the entered ship was ordered to a port, the Member knew or it was reasonable to anticipate, that it would be quarantined.

7.7.4 Hague and Hague-Visby Rules 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 the comments under 4.1.8.8.

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.A. and Canada in respect of 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 section 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.

Traditionally, international towage contracts include, in the period of towage, the time from when a tug leaves its station to perform the agreed towage services to the time when 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 that sense of the word, there is no towage until an adequate tow line has been reasonably connected and the tug has started to pull.

If in the course of towage the towing vessel makes direct contact with the ship or object to be towed and inflicts physical damage to the vessel the collision liability cover under the Hull policy will be engaged.

In case of collision liability arising during towage, P&I cover is usually available for that proportion of the collision liability that is not covered by the prevailing Hull policy.

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. Both subsections (b) and (d) of this provision make it a condition that the towage contract has been approved by the Club in advance for its liability to be covered under these Rules. This also follows 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 Dutch and Scandinavian Towage Conditions and the BIMCO TOWCON and TOWHIRE contracts are approved provided that no significant amendments 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 can 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

Various, standard towage conditions go a long way to 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.

The BIMCO 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 wide ranging liability for what may happen during the towage as defined in the contract. Depending on the terms of the towage contract, the tow may be responsible for damage unrelated to the actual towage. For example, a tug may collide with a lock gate or cause wash damage to other ships on its way to or from the ship to be towed and the provisions of the towage contract may attribute the responsibility for these matters to the tow resulting in the tow having to pay the losses 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. The terms of the towage contract can impose on the owner of the tow responsibility for loss of life, 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 the aft tug under water or capsizing it by the tow line, if the engine of the towed ship is put full ahead by mistake, would 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 the Hull insurance. 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 Insurance to cover.

7.8.3.5 Extent of cover

This section 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 such 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 provision is intended for situations where a ship which is not a tug performs towage services.

The provision starts with the declaration that liability arising from towage undertaken during a voyage for the purpose of saving human life and ships in distress is covered. For salvage of human life see Rule 3 Section 9.

No other towage is covered unless the Club has agreed, in advance, not only to the towage operation 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 recognised in traditional towage 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. Guidelines are to be found in Appendix V clause 16 of the Pooling Agreement.

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 can materialise in the kind of service operated. The insurance conditions should be agreed at the time of entry. The same applies to other specialised ships where towage might be one of their purposes, such as salvage ships and supply vessels Liabilities, costs and expenses are 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 the 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 BIMCO TOWCON and TOWHIRE contracts 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.

Section 9 Confiscation of ship

7.9.1 General

General insurance protection for an Owner against loss of the entered ship is provided by either the Hull insurance or by the War Risk insurance. The P&I policy is not affected. It acts as a shield against claims for third party liabilities and does not cover - with some exceptions - property belonging to the Member. This is confirmed by Rule 11 Section 2 (l).

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 most cases, such losses concern the Hull underwriters or War Risk insurers. See the comments under 11.5.4.

Under special circumstances, described in this section, 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, whether it will be met 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 where, as here, the provision 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 the comments under 19.2. Since this provision 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 (a), the cover will be for the value of the ship, if that is the amount of the fine. This provision 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 regulation. 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. This is the case in Colombia, Venezuela, and the U.S.A.

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. Such a 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 has taken all steps which in the Club's opinion were reasonable to prevent the violation of the customs law or regulation on which the order of confiscation is based. Elements which may be considered by the Club appear from the 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 after the event, 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.

Rules for P&I Insurance 2021/2022

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.

Commentary

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 for 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 covered for the costs of defending or protecting him from such claims and to avoid or minimise such liabilities. 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. 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.

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 the Club correspondents all over the world. These representatives have been selected to provide the best service available in their respective regions. Unless agreed otherwise, the attendance fees charged by these representatives for handling matters covered under the Member's P&I Insurance are paid by the Club. The costs will, however, be reflected on the Member's record.

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 handling 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.

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 relate 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 bill of lading 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 primary obligation to describe the cargo in the bill of lading. The costs of such surveys are regarded as operational expenses and are not subject to compensation. Regarding pre-shipment surveys of steel cargo, see the comments under 4.1.11.15.4.

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 (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 section that compensation is provided for costs of the nature described incurred on 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 section does not mean that all costs are subject to compensation simply because they were incurred on 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 to take proper action in each case to avoid or reduce covered liability. Under this section, 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 the 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 the 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 section 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 has 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 with the intention 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 has been ordered to attend a passenger ship after an engine room fire at sea; once 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.

Compensation under this clause is for costs which would substitute a liability risk covered under the Rules. The substitute costs incurred are subject to the same deductible, limitations and exclusions of cover as the substituted risk.

8.2.2.2 Cover for preventive costs under other Rules

The general principle expressed in this provision 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 discharged 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 to the Member and caused by a covered event are to be compensated. For an example, see the 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.

Rule 9 Charterers' Liability Insurance and Consortium Claims (superseded)

Previously this Rule provided for Charterers' Liability Insurance. This is now covered separately under the "Rules for Charterers' Liability Insurance". Consortium claims were also previously dealt with under this Rule. These are now dealt with in Appendix II Rule 3 of Owners' P&I Rules and repeated in Rule 13 of the "Rules for Charterers' Liability Insurance". The comments relating to Charterers' liability are now at the end of the book following Rule 36.

CHAPTER III CONDITIONS FOR COVER

Rules for P&I Insurance 2021/2022

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.

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.

Section 5 Survey

The Association must at any time be allowed admittance to the ship to conduct any surveys and investigations which the Association considers necessary.

Section 6 Disclosure and alteration of risk

The Member shall make full disclosure to the Association before the contract of insurance is concluded of every circumstance which would influence the Association in deciding whether and on what terms and conditions to provide cover.

The Member shall promptly disclose to the Association every change in circumstance, occurring after the conclusion of the contract of insurance, which may alter the insured risk. Where there is an alteration of risk intentionally caused or agreed to by the Member, the Association may reassess the terms and conditions of the cover provided.

Where the Member commits any breach of these obligations, the Association may reject any claim against the Association if the Association would not have concluded the contract of insurance at all or on the same terms and/or conditions had the Association known about the circumstance, or reduce any sum payable to the extent the circumstance has had relevance for the claim.

Commentary

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 the world fleet on a competitive market. Those with the strictest requirements and the tightest control may not attract the most registrations.

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.

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 not be approved, 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 its 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 the comments under 10.3.5.

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 amount to 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 provision or Rule 11 Section 1. According to Rule 7 Section 6 3. (v) there is no cover for fines imposed upon a Member because of lack of valid or prescribed certificates. See the comments under 7.6.5.5.

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. A release by class usually requires the authority and approval of 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 section

If a Member is in breach of any of his obligations under a-d of this section, 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 reached in 1982, the 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 to maintain ISM certificates, the Club may refuse to compensate liabilities, costs or expenses caused by such failure.

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 into 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 to 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 the carriage of goods

This includes all kinds of contracts for the carriage of goods such as long term contracts of carriage, time and voyage charterparties, bills of lading and waybills. 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.

Where the Member is unable to negotiate better and less onerous terms, the Club will have to decide if the cover can be extended to embrace the risk according to the third part of the provision. If the risk has to be insured separately, the Club can 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 the 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 and Hague-Visby 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 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 and Hague-Visby Rules. The Hamburg Rules establish an entirely new system of

rights and liabilities and they generally impose greater liabilities for carriers compared to the Hague and Hague-Visby Rules. To the extent the Hamburg Rules are compulsorily applicable the liabilities thereunder are covered by the P&I Insurance. However, members are recommended to always avoid assuming liabilities in excess of the Hague and Hague-Visby Rules. To the extent a Member voluntarily agrees to incorporate the Hamburg Rules into a contract for the carriage of goods with the consequence that it will entail liabilities for the Member in excess of the Hague and Hague-Visby Rules, then the excess liability will fall outside P&I Insurance.

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 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 a more onerous liability regime. The inclusion of or reference to the Centrocon arbitration clause could reduce the time limit to file claims under a charterparty to three months and eliminate what otherwise would have been a clear recovery claim against the other party under the charterparty. These are examples of terms which could be considered unusually burdensome and could jeopardise the cover under these Rules.

This provision also applies to situations where greater liabilities have been incurred simply 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 leg of the through transport. Most through transport or combined transport bills of lading have been drafted in such a way that the carrier's liability is duly protected.

According to the third part of the provision 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 transport operations such as project shipments.

10.2.4 Crew agreements and contracts of service and employment

Crew members 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 often refers to or incorporates a specific collective agreement. Otherwise, regulations in accordance with the law of the flag state of the vessel will supplement the individual employment contract.

Examples of commonly used collective agreements are the Philippine Overseas Employment Administration Standard Employment Contract ("POEA") and the International Transport Workers' Federation("ITF") Agreement.

A number of liabilities and obligations commonly stipulated in crew contracts are not accepted by the Club. Below are some examples:

Some collective agreements provide that the shipowner shall pay dentists' fees for routine check-ups. Similar provisions exist with regard to routine health checks. Such costs are regarded to be operational and 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 crew member'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 crew member and his relatives give up their rights to claim damages as well as the compensation payable under the contract. The law governing the contract may prohibit such a provision, but the contract should be worded in such a way that any amount to which the crew member is entitled under the contract will be off set from any claim in damages of the crew member or his dependants.

Members are recommended not to take out personal life insurance or accident insurance in favour of the crew member. The existence of such life insurance may not reduce any claim the crew member may have in damages. The contract should make it clear that the crew member is entitled to contractual benefits and not to insurance benefits.

In certain crew contracts the employer undertakes to provide benefits to a crew member during vacation or similar periods. Under Rule 3 Section 1 (a)

a Member is only covered for liabilities arising while the crew member is on board, or proceeding to or from the entered ship, unless otherwise agreed. Any such contractual undertaking should be covered by the Member by a separate accident insurance.

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 reviewed 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 comments on other contracts

In the operation of his ship a Member has to enter into numerous contracts for a wide variety of services. In general, a Member should not assume liabilities under a contract for which the Member would not otherwise be liable or in respect of which the Member would otherwise be entitled to exclude or limit liability under applicable law. As a result, liabilities, costs and expenses that would not have arisen but for a term in a contract or indemnity entered into by the Member are generally excluded from P&I Insurance.

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. If so, additional insurance cover should 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. Members need to use best endeavours to ensure that the conditions do not;

- impose on the Member liability for loss or damage resulting from acts or omissions for which he would not otherwise be liable e.g. negligence of third parties for whom he is not legally responsible, or
- contain any waiver or exclusion of rights to limit or exclude liability or to rely on defences available under applicable law, nor
- contain a "knock-for-knock" agreement which does not contain any waiver of rights of limitation otherwise available under applicable law.

In relation to the "best endeavours" requirement, what will constitute such endeavours will depend upon the facts of each case though clearly this will involve at a minimum some proactive engagement on behalf of the Member in seeking to negotiate the terms of the contract where these offend the general principles outlined above.

For LNG Terminal Conditions of Use (CoU), specific requirements must be met for the indemnities to be within the scope of P&I Insurance cover. Members are encouraged, therefore, to send a copy of the CoU to the Club for review prior to entering into the CoU with the terminal.

10.2.6.4 Stevedore services

Stevedore 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 stevedore 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. See the 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. Such contracts may affect cover under both the Hull and P&I policies. As regards the cover for liabilities in respect of death of or injury to a pilot, see the comments under 3.7.5.

10.2.6.6 Helicopter services

Helicopter services are sometimes used to transfer pilots, crew members, spare parts and supplies to or from ships. The performance at sea of such services involves additional risks for both people and property.

The Member's liability risks involved are covered under these Rules where based on the 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.

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.

10.2.6.7 Towage services

As mentioned in comments under 7.8.3.1, towage should be undertaken on the basis of the U.K., Netherlands or Scandinavian standard towage conditions, or on the TOWCON and TOWHIRE contracts, or on the current Lloyd's standard form of salvage agreement. 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

Salvage should be carried out, where appropriate, on the basis of the latest version of Lloyd's Standard Form of Salvage Agreement. See the comments under 7.4.1.2.

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 provision 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.

Terms may be considered to be unusually burdensome either because they voluntarily assume wide liabilities or lack the usual protective clauses or liability exceptions. Examples of such situations appear throughout the comments in these Rules and Exceptions.

The meaning of "unusually burdensome" should be viewed in relation to the normal and customary standard terms for the services offered or received as well as the possibilities for the Member to avoid entering into such onerous contracts or to contract on better terms.

10.2.8 Separate cover of contractual risks

A contract which is found to be unduly burdensome constitutes a serious uninsured risk for the Member.

According to the third part of the provision, the Club may agree, on 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 impose special conditions.

Additional cover may be required for types of contract other than those mentioned under items (a) and (b). The Club can assist Members 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

The right to issue regulations, afforded to the Club by this provision, should be seen as an adjunct to the Club's loss prevention role. Experience gained in 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 from the ongoing discussions and exchange of information between the Group Clubs, needs to be shared by all Members as part of the concept of mutuality.

10.3.2 Circulars

Regulations to Members are generally contained in circulars issued by the Club.

The majority of circulars issued contain general information which the Club considers important for Members. Such circulars may not qualify as regulations in the sense of this clause.

However, 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 some circulars which contain regulations, compliance with which is clearly a condition for cover under the Rules.

The validity/lifetime of a circular and the regulations it contains may vary considerably. 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 drawn especially to the specific circular issued annually in December, following the Board meeting at which the conditions for the policy year to follow are decided. The circular specifies the general conditions for Owners' and Charterers' P&I Insurance. All circulars issued since 2002 can be found on the Club website.

10.3.3 Other regulations

Regulations can be given individually. To have the effect described in the second part of the provision, the regulations can be in writing and also issued electronically by way of email or posted on the Club website.

10.3.4 General regulations

General regulations can be directed to all Members and 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 provision also 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 the 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 (a condition survey).

The result of such a survey may cause the Club to issue new particular regulations under this provision 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 through the appointment of 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 wet damage to cargo carried 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 prerequisite for cover under these Rules that Members comply with all mandatory obligations. The costs of doing so 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 provision allows the Club 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 provision is provided in Rule 26 (c). It gives the Club the right to terminate the period of insurance on 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 provision is self-evident: - 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. As mentioned under 2.3. the overarching principle is that the Member is expected to act as a "prudent uninsured", meaning that the presence of insurance should be no reason not to act prudently at all times in order primarily to avoid and secondarily to minimise costs, liabilities and expenses which may be covered by the insurance.

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 that which 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 incur greater liabilities than the pollution itself.

10.4.2 Member's obligation to notify promptly

It follows from the provision that the Member should notify the Club promptly of any incident likely to be covered under these Rules. This can be done in a number of ways none of which takes precedence. The Master, who is usually closest to the scene of the accident, may inform the 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. If the matter is reported to the ship's local agents, they should be instructed to liaise urgently with the Club correspondent concerned.

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 comments on formal enquiries and legal proceedings

According to this part of the provision the Member has an obligation to notify the Club promptly 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 notified in time to make all necessary preparatory investigations and inquiries so as to be able to attend and protect the Member's interests.

10.4.3.2 Sea protests

It is often asked whether a Master should make 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, the courts apply the principle of the free evaluation of proof. This means that the evidence presented does not need to be in any special form such as a sea protest. A bad weather defence under the Hague or Hague-Visby Rules (see the 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 meeting the burden of proof. The filing of a sea protest does not of itself have the effect of relieving the ship of liability nor does it have an enhanced status as evidence of the facts which it states. Those facts are

rebuttable and subject to scrutiny. 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. The effect and status of a sea protest is thus limited. Still, courts in some countries, such as Brazil, only accept evidence of liability exceptions if submitted in the form of or substantiated by a formal sea protest. If in doubt, the Club correspondent should be contacted and will advise the Master of the appropriate process.

10.4.3.3 Service of writs

If legal proceedings have been instituted against a Member, a claim form or 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 be forwarded immediately 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 consequences for the Member's position in the proceedings. It may result in a judgment by default being entered which might then be difficult or impossible to reverse. There is no compensation for judgments by default.

10.4.3.4 Service of notification to appoint arbitrator

A similar situation, which may also have serious consequences for a Member, is when a notification of appointment of an arbitrator under a charterparty or other contract has been received. Unless an arbitrator is nominated in a timely manner on the Member's behalf, the opponent's arbitrator may, in default, act as a sole arbitrator. Depending on the circumstances this might not be in the Member's best 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 the 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 once it is aware that a claim has been filed against it. The investigations necessary to prepare the Member's defence must start as soon as possible and while the evidence is still available (see the comments under 4.1.4.5). The Member's position against other parties may also have to be protected, for instance by commencing a recovery against shippers or Charterers or, at least, preventing such actions from becoming time-barred. The case has to be registered by the Club and the exposure evaluated and added to the Member's record 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.

Each new claim reported is given a file reference number by the Club which serves as an identification and ought to be quoted in all correspondence as the case reference. The unique number is based on the year of the claim and four numbers, for example 20201234. This number is used when the claim is stored electronically.

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 a number of Rules, the only way to avoid or reduce liabilities is for the Member to meet a specific burden of proof. The source for such evidence is the Member and his employees both on board and/or ashore. Without their full support and co-operation, the Club can be hampered in the assistance it can give to protect and defend 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.

It follows from the opening sentence of this provision that the Member must take reasonable steps throughout the handling of the case to minimise liabilities and costs.

10.4.4.4 Witnesses

In court or arbitration proceedings and during other stages of the handling of a case, it is often necessary to produce officers, members of the crew or other employees as witnesses to assist the Member's legal team and (in some cases) to testify in court or arbitration proceedings. 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 Shipboard investigations

According to the third paragraph of the provision the Member must allow the Club access to the ship at any time to conduct any investigations 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 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 who are fishing for evidence. It is recommended that officers are diligent in ascertaining precisely which party or parties an individual represents when seeking access to the vessel, the crew and the ship's papers. Information should only be volunteered to the person who can identify himself as acting for The Swedish Club (and not just any P&I Club) or whose identity has been cleared by the Club, the Member or his local agents.

10.4.4.6 Member should not admit liability

As appears from the fourth paragraph of the provision, the Member should not admit liability or settle any claim without the Club's approval. The Club will investigate, evaluate and negotiate any claim. This may be prejudiced if a Member makes admissions regarding the facts and law.

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, seek urgent assistance from the Club, either directly through its local correspondent or through the intermediary of the Member or the local ship agent. 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*"

10.4.4.7 Authority for Member to settle claims

Despite what is said above, the Club may be prepared, in certain circumstances, 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 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.

10.4.4.8 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 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 may affect his commercial reputation in the freight market. The Club cannot 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 may present a less costly alternative to litigating the matter with an uncertain result. The settlement might be recommended by the Club because, in its view, it represents a sensible commercial resolution to the dispute when all legal arguments have been fully explored and appear unlikely to prevail, whereas the Member may still want to leave the matter for the court or tribunal to determine in the hope of obtaining a more favourable but unlikely outcome. 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 putting up the recommended amount and letting the Member carry on the handling of the case but 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.

Section 5 Survey

10.5.1 Survey of the entered vessel

The Club may at any time survey the ship by the Club's staff, appointed or class surveyors. The surveyors should be allowed access to the ship directly. 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 provision, but experience shows 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.

Section 6 Disclosure and alteration of risk

10.6.1 The Club requires full information about the risk

This provision codifies the provisions under Swedish Insurance law that require the insured to make full disclosure, before the contract is concluded, of all circumstances which be of relevance in assessing the risk, and, after the contract has been entered into, inform the Club of any changes which might alter the assessment of that risk. Failure to observe these obligations may result in the Club rejecting or reducing payment of a claim. The Club may further decide whether or not to accept the altered risk against changes in the applicable terms or conditions such as charging additional premium or imposing special conditions. The threshold is generally high and it must be a question of omitting to inform the Club of a clearly relevant circumstance, such as the vessel commencing transit of the Northern Sea Route, i.e. something which materially changes the risk.

CHAPTER IV EXCLUSIONS FROM COVER

Rules for P&I Insurance 2021/2022

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) liabilities, costs and expenses arising out of salvage or wreck removal operations conducted by the entered ship except for the purpose of saving or attempting to save life at sea,

(f) vacant,

(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 Exclusions for certain operations

The cover afforded by the Association shall exclude liabilities, costs or expenses arising out of

(a) salvage operations, including wreck removal, performed by the Member unless incurred for the purpose of saving or attempting to save life at sea or incurred by a professional salvor and the Association has agreed in advance to afford cover for such operation,

(b) drilling or production operations in connection with oil or gas exploration or production,

(c) specialist operations, meaning blasting, pile-driving, well-intervention, cable or pipelaying, construction, installation or maintenance work, core sampling, depositing of soil, power generation and decommissioning to the extent the liabilities, costs and expenses arise as a consequence of

  (i) claims which are brought by a party for whose benefit the work has been performed, or by a third party in respect of the specialist nature of the operation; or

  (ii) the failure to perform such specialist operations by the Member or the fitness for purpose or quality of the Member's work, products or services; or

  (iii) any loss of or damage to the contract work save for loss of life, injury or illness of crew and another personnel onboard the entered ship, the wreck removal of the entered ship, and oil pollution from the entered ship, or the threat thereof, to the extent such liability is covered by these Rules,

(d) disposal operations unless carried out as an incidental part of other commercial activities not being a specialist operation mentioned above,

(e) the operation by the Member of submarines, mini-submarines and diving bells and activities of professional or commercial divers where the Member is responsible for such activities save for

(i) activities arising out of salvage operations

(ii) incidental diving operations carried out in relation to the inspection, repair or maintenance of the entered ship; and

(iii) recreational diving activities

(f) loss of or damage to or wreck removal of cargo carried on a semi-submersible heavy lift ship or any other ship designed exclusively for the carriage of heavy lift cargo, save to the extent that such cargo is being carried under the terms of a contract on Heavycon terms or any other terms approved by the Association,

(g) in respect of non-marine personnel employed otherwise than by the Member where the ship operates as an accommodation unit unless there has been a contractual allocation of risk between the Member and the employer of the personnel and the contract includes a knock for knock agreement which has been approved by the Association,

(h) hotel and restaurant guests, other visitors, and catering crew where the ship is moored, otherwise than on a temporary basis, and is open to the public as a hotel, restaurant, bar, and/or other place of entertainment.

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, United States of America or another significant state power,

(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, United States of America or another significant state power 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, United States of America or another significant state power. 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.

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 - barratry 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 either 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,

(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, or any amendments thereof, 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.

Commentary

Rule 11 Exclusions

Section 1 Member's intent or gross negligence

11.1.1 General

This is a provision of critical 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. For there to be mutual trust, which is the necessary basis for the sharing among the community of Members, of each other's risks, there must be a common conviction that all Members are committed to exercising 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. It is sufficient, for example, that the Member may have ordered the entered ship, for example, to carry out a certain transport even though he was aware of cracks having appeared 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 generally requires a high degree of negligence. In practice it borders on intention. Gross negligence can be defined as "a conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party, who may typically recover exemplary damages". Hence, gross negligence seems to encompass an element of "recklessness". It is probably parallel to the provisions of the 1976 Limitation Convention (see the comments under 2.11.3) which state 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 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 the 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 yet the negligence shown is still not serious enough for the liability to be excluded from cover under this provision. 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 judgment is one amongst several elements 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 provision. It makes no difference if the Member either did 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 Bareboat 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 employees would have the fatal consequences under this provision.

Acts of or omissions by top management, such as members of the Board, the managing director and the deputy 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, also be regarded as one and the same as the Member.

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 is necessary to analyse whether the act or omission was undertaken in his capacity as Master or as Owner.

Section 2 General exclusions

11.2.1 General

This provision 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 of the same category as 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. In other words, the Member always has a duty to act as a "prudent uninsured": see the comments under 2.3 and 10.4.1.1. Insurance cover should be restricted to those "abnormal" situations described in 4.1.6.6. and 8.2.2.1.

11.2.2.2 Seaworthiness and cargo worthiness

One of the carrier's prime obligations is to make the ship seaworthy before and at the beginning of each voyage. See the comments under 4.1.5. Costs to meet that 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 are 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 6.

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 6 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.

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 of the crew under Rule 3 Section 3 and passenger luggage under Rule 3 Section 5. See the 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 Salvage and wreck removal

This exclusion means that liabilities incurred during specialist operations such as salvage and wreck removal are excluded from cover unless for the purpose of saving or attempting to save life at sea.

11.2.2.6 Containers

This exclusion flows from the principle that 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 property insurance for such articles or by ensuring such insurance is 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 (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 and, otherwise, under Rule 7 Section 1.

11.2.2.7 Failure to arrive, late arrival and failure to load

As described in the comments under 5.1., the carrier is not liable for delay under the Hague-Visby Rules but he may be liable under local law. Liability pursuant to mandatory local law will be covered under Rule 5. As mentioned in Rule 11 Section 2 (h), there is, however, no cover in respect of delay of the goods, or damage to the same, if this is caused by the carrier's failure to arrive, late arrival of the entered ship at the port or place of loading or failure to load any particular cargo in the entered ship, even if such liability is mandatory pursuant to local regulations.

The exclusion of cover under item (h) of this provision refers to delay in those instances where the goods are not yet in the carrier's charge. At that stage no bill of lading has been issued either "on board" or "for shipment". Still, there may be a charterparty or a booking note which obliges the vessel to arrive and be ready to load the cargo at or within a certain time. It is best to try to contract on terms which exempt the carrier from liability for late arrival to pick up a cargo (as such liability is not usually mandatory). If, however, the carrier has fixed his vessel to ship cargo by a specified date and fails to arrive at the port of loading in time, that failure constitutes a breach of contract and may result in the carrier being held liable for damages in respect of losses suffered by the shippers or Charterers due to the late arrival (or non-arrival) of the vessel (for example, additional warehousing costs or market losses). Such breach of contract risks are, however, not covered under these Rules unless otherwise stated or agreed.

Item (h) of this provision also excludes cover for the failure to load any particular cargo. The exclusion does not apply to those situations where cargo is left behind at the port of loading by negligence, for instance by stevedore companies, terminal operators or other servants of the carrier.

11.2.2.8 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. Intentionally discharging

the cargo elsewhere is a breach of contract, the consequences of which are excluded from cover under item (i) of this provision.

Still, it happens that the carrier may be 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 bills of lading before releasing the cargo. If the ship is on charter, an Owner Member should request a letter of indemnity to be issued by the Charterer and, preferably, although unlikely, reinforced by the countersignature of a bank. Upon request, the Club can provide forms of indemnity suitable for that purpose. See the 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 the comments under 4.8.3.

11.2.2.9 Loss of time and freight

As 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 charterparty 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 to 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 can assist Members, if so requested, to cover loss of charter hire, freight and other earnings, by way of additional insurances.

The cover under a Loss of 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 expressed in days. 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.

11.2.2.10 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 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 United Nations.

For the purpose of these Rules, an unlawful trade is a trade which is unlawful to operate by law. Breach of applicable sanctions or prohibitions by any state or organisation is most likely to be regarded as an unlawful trade. It is the Member's obligation to ensure that its trade is lawful. The word "applicable" should be interpreted widely. For instance, according to certain legislation of the European Union certain extra-territorial sanctions (so-called secondary sanctions) imposed by the U.S. are not applicable within European Union. However, breach of these secondary sanctions will nevertheless have very severe consequences. Apart from fines and other penalties a breach may result in the company being shut out from the U.S.A.'s financial system, which, in practice, means the world's global financial system. This means that even if (according one legal system) in theory a secondary sanction imposed by the U.S.A. is not applicable, the sanction may well be applicable in practice. Hence, these secondary sanctions imposed by the U.S.A. have world-wide application for the purpose of the P&I Rules. The Club keeps updated information about relevant sanction legislation on its website but it should be reiterated that the Member has a non-delegable duty to ensure that his trade is lawful. If in doubt, external legal advice should always be obtained. The Club can recommend suitable lawyers to this end.

An example of imprudent, unsafe, unduly hazardous or improper trade might be the loading of cargo without following guidelines issued by IMO or any other relevant authority or industry group.

The exclusion applies whether the Member knew of the operation or not. The Member himself, in communication with his employees both on board and ashore, is expected to be sufficiently 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 provision, a further and even more serious effect is that the period of insurance will cease automatically and with no prior notice through the application of Rule 27 (e).

11.2.2.11 Loss of or damage to the entered ship

Even if it is sufficiently clear that 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 the Hull insurance.

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 the 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 the comments under 7.1.13.1.

11.2.2.12 Loss due to insolvency

P&I Insurance does not provide cover against insolvency 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 the comments under 4.7.2.7.3.

Section 3 Exclusions for certain operations

11.3.1 General

The concept of mutuality on 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 support 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. The cover is, accordingly, restricted to "normal" shipping risks not being of a specialist nature.

Even for those traditional risks, the Club may not always be able to offer full and unlimited cover (see the comments under 2.11.7) depending on the reinsurance facilities available. The terms of cover will need to be discussed and defined between the Club and the Member at the time of entry.

In principle, professional liability risks for special operations are excluded under this provision. This is the case where a Member contracts to perform such operations, and 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 fulfil such a contract.

The wording of the clause also excludes liability to third parties for damage caused by specialised operations. If a dredger snaps an underwater cable with its buckets during dredging, the ensuing liability to third parties may not be covered even if there would be cover for identical damage or loss inflicted to the cable by the dredger's 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/operations 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

11.3.2.1 Salvage operations

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 unless the purpose is to save life at sea, or unless the Member is a professional salvor and the Association has agreed to provide cover on specially agreed terms.

As regards cover where a salvage ship performs towage, see the 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.

11.3.2.2 Drilling or production operations

Ships involved in the offshore oil and gas drilling market are normally entered only if and to the extent that they have features similar to traditional ships such as supply ships. Liabilities, costs and expenses arising out of drilling or production operations in connection with oil or gas exploration or production are therefore excluded from cover. An entered vessel is deemed to be carrying out a production operation if it is a storage tanker or other vessel engaged in the storage of oil and either the oil is transferred directly from a production well to the storage vessel or the storage vessel has oil and gas separation equipment on board and gas is being separated from oil whilst on board the storage vessel (other than by natural venting). The exclusion applies furthermore from the time that a connection, whether directly or indirectly, has been established between the entered ship and the well, pursuant to a contract under which the entered ship is employed, until such time as the entered ship is finally disconnected from the well in accordance with that contract.

11.3.2.3 Specialist operations

This paragraph mirrors the exclusion for "specialist operations" as defined by Appendix V paragraph 18 of the International Group Pooling Agreement. The list of operations is not exhaustive although to the extent that another operation is added to the list of exclusions in the Pooling Agreement the exclusion will not apply to risks already accepted but only to new risks. Members are however expected to exercise caution and ought to contact the Association if in doubt as to whether an operation may fall into the category of excluded operations. It is of great importance that the Club is given full information as to the nature and intended operation of each new ship entered.

11.3.2.4 Disposal operations

Waste incineration or disposal operations are excluded unless part of other commercial activities not being an excluded specialist operation. This includes the burning of chemicals or other toxic products at sea, the dumping or disposal 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, and carriage of such substances.

11.3.2.5 Operation of submarines etc.

The operation of submarines, mini-submarines or diving bells is an excluded risk, in line with activities by professional and commercial divers, with the exception from the situations mentioned in the Rule. This exclusion may be relevant, inter alia, for cruise ships which may offer various subsea activities to its passengers.

11.3.2.6 Semi-submersible heavy lift ship

For semi-submersible heavy lift vessels or other vessels designed for carrying heavy lift cargo, liability due to loss, damage, wreck removal or destruction of cargo carried is excluded under the Rules unless the contract of carriage has been approved by the Club in advance. The use of an unamended BIMCO Heavycon Charterparty, which provides that Charterers are liable for cargo damage and wreck removal, together with a cargo receipt, is acceptable. Note, however, that the exclusion does not apply to entered ships being carried by/on heavy lift vessels.

11.3.2.7 Supply vessels

Cover for supply vessels is provided for statutory or Common Law liability (in tort). Contractual liability is covered provided the contract has been submitted to and approved by the Club. To be approved, the contract should be on knock-for-knock terms whereby the respective parties are 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.

The BIMCO SUPPLYTIME charterparty is, likewise, approved provided there is no major amendment 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 the comments under 7.8.4.2 and 11.3.2.8.

11.3.2.8 Tugs

Primarily, tugs are subject to the conditions described in the second part of Rule 7 Section 8. See the comments under 7.8.4.2.

Item (b) of that provision 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. Lloyd's Standard Form of Salvage Agreement known as Lloyd's Open Form (LOF). See the comments under 7.4.1.2.
2. A reasonable towage contract based on the knock-for-knock principle, such as BIMCO Towcon or Towhire. See comments under 7.8.3.2.
3. Any standard form of towage contract, such as The United Kingdom Standard Towage Conditions (1986), the Dutch or Scandinavian Towage Conditions.

It is a condition for cover under 1 and 3 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 2 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.

11.3.2.9 Fishing vessels

The Club can provide cover on limited terms for fishing vessels. The terms are agreed 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, cover is provided subject to applicable national legislation.

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 the comments under 7.6.4.3. Legal obligations in respect of wreck removal are covered.

11.3.2.10 Accommodation unit

In this exclusion, a distinction is drawn between non-marine 'personnel' and 'marine crew'. Marine crew is crew working in the engine room and on the deck in order to operate the ship. Marine crew remain covered in the ordinary way, as do other personnel employed by the Member. Cover for onboard personnel, other than marine crew, must be assessed based on whether they are employed for the operation of the ship because the ship is being used as an accommodation unit. For example, if a ship operates as a cruise ferry, there would be additional staff on board to cater for the needs of the passengers who would be personnel employed for the operation of the ship. The Member's liability to that personnel employed by a third party would remain covered in the ordinary way. However, if that same ferry were instead to operate as an accommodation unit then the non-marine personnel onboard would be employed because the ship is being used as an accommodation unit. In the latter example, absent an approved allocation of risk, there would be no cover for the Member's liabilities to the third party personnel onboard the accommodation unit.

Where the entered ship operates as an accommodation unit, liabilities for non-marine personnel not employed by the Member are excluded from cover unless the contract includes a knock for knock agreement. The exclusion is thus engaged in respect of personnel (other than marine crew) employed by a third party who are onboard the ship when it operates as an accommodation vessel, unless there is a contractual allocation of risk which has been approved by the Association. It is a requirement for cover that the contract, and the knock for knock agreement within it, have been approved by the Association.

The exclusion applies whether or not the ship is classed as an accommodation unit as it is the activity or service being performed that matters. An accommodation vessel under this rule is simply one which is performing that role. Further, in such circumstances, it is liabilities in respect of (non-marine) personnel on board, employed by a third party, which are excluded. It follows from the exclusion that liabilities other than in respect of that personnel, would not be excluded but insured in the ordinary way.

The exclusion is for instances where there has not been a contractual allocation of risk between the Member and the employer of the personnel, which has been approved by the Association. No allocation of risk is required for the non-marine personnel or crew employed by the Member. The expression "contractual allocation of risk" is understood to mean and the expectation would be that this would be an allocation of risk in the nature of a knock-for-knock agreement. Thus, what is required is an arrangement under which the third party employer of the non-marine personnel accepts the risk of all people claims for its personnel, irrespective of the fault of the Member.

11.3.2.11 Ship operating as a hotel, restaurant, bar and/or other place of entertainment

Where the ship is moored (otherwise than on a temporary basis) hotel and restaurant guests, other visitors and catering crew of the insured ship are excluded from cover. When the assessment is made it is important to look at what role the insured ship is actually performing and not look at whether she, for example, puts to sea once a year to maintain her functionality.

The exclusion applies regardless of whether there is a knock for knock agreement in place. This is because the risks involved with operating a hotel, restaurant, bar or other place of entertainment are not of a marine nature and should be insured elsewhere than under the ship's P&I insurance.

Section 4 Sanctions

11.4.1 General

Since 2010 there has been a considerable increase in the number of international sanctions imposed by, amongst others, the United Nation, the European Union, the U.K. and the U.S.A. These sanctions, such as those imposed against Iran, influence international trade and in particular the maritime industry and can prevent Members' access to insurance cover. Trade to and from countries which are subject to such sanctions exposes the Member to substantial risks. Not only can cover be prejudiced under Rule 11 Section 4 but the trade may also be deemed illegal under Rule 27(e) with the consequence that P&I cover ceases altogether. Members are obliged to satisfy themselves that their trading activities are not in breach of any applicable sanctions or prohibitions. See the comments under 11.2.2.10.

11.4.2 Payment of claims

Under (a) of this Rule cover is excluded for 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 make payments to those 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, under (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 Group 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 provision 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 with the Club is dealt with under 11.5.8 below.

Item (a) of this provision 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 provision 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 provision, 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 provision 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 monitor closely 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.

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 IV rule 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 on payment of 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 26 (c).

11.5.3.1 Terrorism

Piracy is by definition committed for private motives. If the use of violence is motivated to achieve political aims, it is widely regarded as terrorism. Such acts are not subject to item (b) of this provision 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 Hull War Risks cover which includes terrorist acts.

If there is a dispute with a Member as to whether or not a terrorist act has taken place 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.

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 or by any attempt at capture, seizure, arrest or detainment of the entered ship.

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 under 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.

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 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 IV rule 1 (g) contain an exclusion of liability in relation to cargo, for loss or damage caused by arrest or seizure. See the comments under 4.1.8.7.

11.5.4.2 Barratry

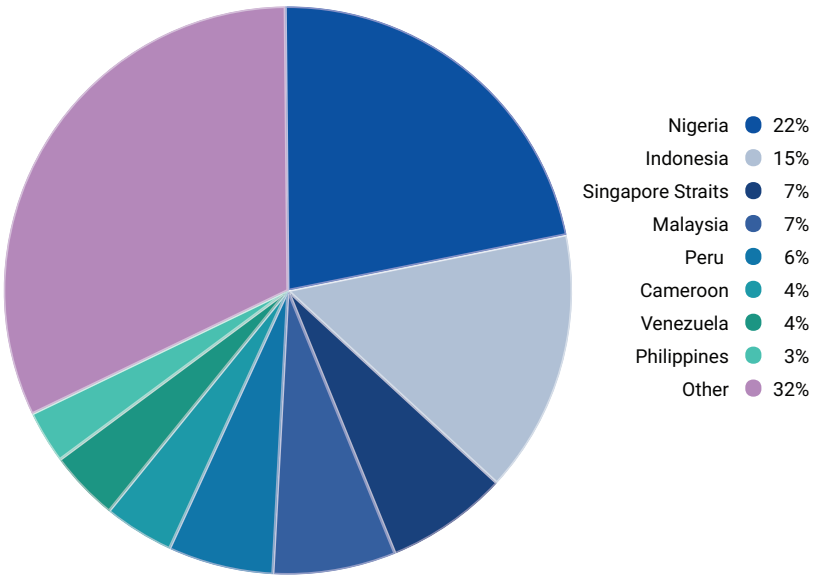
There are two exceptions from the exclusion.

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 contrary to the interests 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.

Location of reported attacks 2019 (total of 162)

Source: Piracy and Armed Robbery against ships, 2019, ICC International Maritime Bureau



11.5.4.3 Piracy

Piracy is excepted from the exclusion of war risks under item (b) of this Rule and is thus covered by P&I Insurance. However as piracy is also covered by the War Risk policy the P&I Insurance is subsidiary to that cover (see the comments under 11.6) unless piracy is excluded from the War Risks Policy by the incorporation of the Institute War and Strikes Clause (in which case piracy will be covered by P&I Insurance), subject to whether the pirates are using weapons of war as described under (c) of this Rule (in which case it will fall back on war risks cover).

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."

The IMB plays a central role in providing information to the shipping industry about pirate attacks. The Club urges Members to report all actual, attempted and suspected piracy and armed robbery incidents to IMB's Piracy Reporting Centre. That will help ensure adequate resources are allocated by the authorities to tackle piracy.

The location of piracy attacks varies over with time. In 2010, the vast majority of the attacks took place in the Gulf of Aden and off the coast of Somalia. Following international intervention (see below) and also the use of armed guards, such attacks in the Gulf of Aden have dropped significantly. At the time of writing this text, the majority of attacks are instead taking place in the Gulf of Guinea. Reports of attacks in waters between the Ivory Coast and the Democratic Republic of Congo more than doubled in 2018. Worldwide, the IMB Piracy Reporting Centre recorded 201 incidents of maritime piracy and armed robbery in 2018, up from 180 in 2017.

The Gulf of Aden is in 2019 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 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 recommended to ensure that the latest version of the Best Management Practice to deter piracy is fully implemented. The International Maritime Bureau website contains weekly piracy reports.

The use of armed guards to defend the ship and ship's crew is a controversial issue. There are many risks inherent in the use of arms on board ships. P&I Insurance does not restrict or prohibit in itself the deployment of armed guards on board but proper care and diligence should be exercised. In this respect Members are recommended to read the Club's guidelines regarding armed guards on the Club's website.

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 Insurance. A claim from a Member will have to be considered by application of the discretion of the Board under the Omnibus provision, Rule 19. Many shipowners take out Marine Kidnap for Ransom and Hijacking insurance which covers the actual payment of the ransom.

A ransom payment made to obtain the release of a hijacked ship is, however, generally accepted as a General Average expense for which shipowners are entitled to recover contributions. Contributors in GA include all those with a financial interest in the venture, 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 IV rule 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 Strait, 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.

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 are 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. This 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.

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 carriage 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 requirement that the purpose for using weapons to sink the ship must be to avoid covered liabilities, the action must have been carried out on the order of governmental or other competent authorities, or to have been approved by the Club. According to Rule 1, approval is given in writing.

This part of the provision 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 provision 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 so 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 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 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.

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 on 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, within the ambit of the P&I Rules, for those liabilities, costs or expenses which are not and cannot be covered under any other kind of insurance. Another important purpose is to avoid double insurance and make sure liabilities are referred to the proper class of insurance, bearing in mind that P&I according to this Rule is a secondary class of insurance.

Most additional kinds of insurance of a nature described by this provision can be covered either by the Club or with the assistance of the Club. 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 2, 3 and 5 from which it 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 provision. To the extent any existing Hull cover provides less protection, the Member will be exposed to uninsured risks.

11.6.2.2 Flexibility

It may be thought that the demand for a 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 provision implies an obligation for the Member to have and to 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 immediately referred to the Club for approval. Failure to do so may leave a Member exposed to uninsured risks.

The Club's P&I Rules are based on the terms of Hull insurance of the Nordic Plan. This does not mean that the Nordic Plan are the only conditions on which the Club can affect Hull insurance, or that the Nordic Plan are the only Hull conditions approved as a basis for P&I Insurance with the Club. As a Hull underwriter, the Club insures ships on various foreign conditions such as English (Institute Time Clauses - Hulls), U.S.A., German conditions etc. 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 provision 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 the 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. 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 this provision.

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 dependent 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 the comments under 7.2.4) and with fixed and floating objects (FFO) under Rule 7 Section 3 (see the comments under 7.3.4) requires a Hull insurance value as described in this provision as does the cover for the ship's proportion in General Average, special charges and salvage under Rule 4 Section 7 (see the 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 such risks beyond the extent of 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, crew members, longshoremen or other categories of people on board or in relation to the entered ship. See the comments under 3.1.1.6. According to the second part of this provision, 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 crew members to pay funeral costs. See the 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 insurances are:

- War risk insurance — see the comments under 11.5.7
- Loss of Hire insurance — see the comments under 11.2.2.10
- Strike insurance — see the comments under 4.1.8.10
- Deviation insurance — see the comments under 4.8.6.3
- Deck cargo insurance — see the comments under 4.1.11.5.3

According to the second part of this provision, 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 Insurance 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 provision, 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 nor 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 the comments under 2.12.

Section 7 Nuclear risks

11.7.1 General

The insurance industry appreciates the potential aggregate of liabilities that may 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. Nuclear risks are therefore excluded in essentially the same way in most marine insurance and reinsurance contracts.

11.7.2 Exclusion of paramount importance

The last paragraph of the provision 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 provision.

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 type of ship. The policy issued for a nuclear- powered ship will usually reflect the limited extent of the cover. If not, the cover is still subject to the liability exclusions of this provision due to its paramount nature.

11.7.4 Collision

Items (a) – (b) of the provision 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 I.

11.7.6 Nuclear cargo

11.7.6.1 Nuclear cargo exclusions

The effect of this provision 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 or any subsequent amendments. The reason why reference is made to U.K. legislation is that it 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.

As a result of the above the Group Clubs have agreed that whenever a request is made by a Member or a Charterer regarding the carriage of nuclear cargo the Member shall refer the specification of such nuclear cargo to the Club who in turn will refer it to a specialist who will check that the cargo in question qualifies as "excepted matter" in accordance with the Act of 1965. Currently requests are sent to Jim Stewart: Jim@class7.info or jim.stewart@w4c.ltd.

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.

CHAPTER V OTHER PROVISIONS

Rules for P&I Insurance 2021/2022

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 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 US 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 Tanker Oil Pollution Indemnification Agreement (TOPIA), 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, or

(e) a certificate issued by the Association pursuant to Article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007, or

(f) a certificate in compliance with Regulation 2.5.2, Standard A2.5.2 and Regulation 4.2, Standard A4.2.1(b) of the Maritime Labour Convention 2006, as amended (MLC 2006) or domestic legislation by a state party implementing MLC 2006.

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.

Commentary

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 to 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 the 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 security who is generally the party who suffered the loss or his underwriter. Where the Club agrees to post security it will require the Member to pay the applicable deductible when the security is posted.

All Group Clubs state in their Rules that the provision 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 of arrest of the ship. It follows that the arrest is often made early in the lifetime of a claim before the ship has been able 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.

The Club cannot exercise its discretion to put up security until it has been reasonably satisfied 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 any security once it has been provided. 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 had 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 unanswered 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.

12.3 Types of security

12.3.1 Club Letters of Guarantee

The traditional form of security provided by P&I Clubs and widely accepted is a Club Letter of Undertaking ("LoU"), otherwise referred to as a Club Letter of Guarantee ("LoG"). It is drafted as a promise to the named beneficiary, that the Club will pay, up to a specified amount of money, the amount for which the Member is found to be legally liable either by way of amicable settlement or by final judgment of a competent court. The amount specified should include any interest accrued as well as any recoverable costs. 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 LoU 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 also the correspondent bank where the guarantee is to be issued. It can take days before all such formalities are completed. Further delay can be caused by time differences,

local holidays etc. Additionally, a bank guarantee costs money, as commission is charged by the banks – usually on a quarterly basis.

12.3.3 Surety bonds

In the U.S.A. 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.A.

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 required by settlement or by court judgment has a tendency to coincide with the amount deposited. Cash deposits often are no different to an agreement to make payment in full, from the moment that 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 to 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 provision. 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 judgment. Before the discretionary decision is taken, the Club will fully evaluate the situation, explore the possibilities of alternative security and counter security and satisfy itself 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, 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 or before the full quantity of cargo has been discharged and with no known damage or loss. The stated purpose of the guarantee is to cover such claims as may arise. These are anticipatory guarantees. The Group has decided that Clubs should generally not provide such guarantees save for

the issuance of certificates under certain legislation (see the comments under 2.9.2).

12.3.7 Limitation funds

As appears from the comments under 2.11, an Owner may be allowed to limit his liability under applicable law and convention. Where the loss or damage caused may exceed the limitation amount, 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 liabilities 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 well also 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 the comments under 12.5 this principle is not without exceptions.

12.4.2 Property other than the 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 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 the information to hand, whether to exercise its discretion under this Rule and provide security.

12.4.3 Arrest of persons

The Club does not put up bail or security to release crew members 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 to take the action necessary 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 time charterparties the bunkers on board are often the Charterer's property and can be the object of a separate arrest action. 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 charterparty conditions seems to be the Charterer's ultimate liability. In such a situation, the Charterer's P&I club usually provides a counter guarantee for the liabilities of its Member under the charterparty. The Inter-Club New York Produce Exchange Agreement 1996 (as amended September 2011) provides for a mechanism for the exchange of counter securities.

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 to 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's discretion in respect of further security.

12.9 Member's obligations

If the Club agrees 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 the Rules, its exceptions or 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 in the form of either a bank guarantee or a cash deposit.

Before the provision of security can be considered, the Member should have neither outstanding premiums nor other sums due to the Club.

As such security will bind the Club to pay any settlement amount to the claimant and since, according to Rule 2, the deductible is not included in the cover, the Club will ask the Member to pay the deductible to the Club before the 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 under certain legislation 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 legislation are listed under 2.9.2. Regarding CLC certificates, see 6.1.3.1.7,

an undertaking to the 1992 IOPC Fund in respect of STOPIA, see 6.1.3.2.3, certificates under the Bunker Convention, see 6.1.3.1.7.5 and certificates under the Wreck removal convention see 7.5.6. Notably, payments under MLC certificates should be reimbursed by the Member according to the Maritime Labour Convention (2006) Extension Clause in Appendix II.

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.

Rules for P&I Insurance 2021/2022

Rule 13 Set-off
The Association shall be entitled to set off any amount due from the Member under these Rules or under any other policy against any amount due to the Member from the Association.

Commentary

Rule 13 Set-off

13.1 General

Premiums are due for payment on demand which means on the date stated in the premium invoice. Payment of premiums is sometimes delayed. The concept of mutuality requires all Members to fulfil their obligations in a timely fashion. It is unacceptable that Members who are compensated promptly are allowed to delay payment of premiums. This is especially disturbing if compensation is requested for cover where no premium has actually been received.

13.2 Only the Club has the right to set-off

As a remedy for those situations, this Rule provides the Club an opportunity to offset unpaid premiums against compensation. The right is unilateral. 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 running accounts should not become standard practice.

13.3 Amounts due from the Member

According to this Rule, the Club is entitled to offset unpaid premiums or other debts in relation to any policy a Member has with the Club against compensation. It is the Club's policy to provide Members with all the types of insurance necessary 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 insurances.

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 any refund of a surplus under Rule 36.

Rules for P&I Insurance 2021/2022

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.

Commentary

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 is subrogated to the Member's rights of recovery against any third parties. It could be the Member's right to proceed against a Charterer under a charterparty, against a shipper under a bill of lading, against the Owner of another ship involved in a collision or against a stevedore company under a stevedoring contract. The Member should assist the Club in any way possible to exercise any 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 provision 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 the 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 investigation proves that the liability is not of a nature covered under these Rules, or subject to one of its exclusions or limitations. See the comments under 12.2.

This part of the Rule applies also in cases where a Member fails to meet his obligations to help the Club exercise any 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.

Rules for P&I Insurance 2021/2022

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.

Commentary

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 generally 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 promptly 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 month 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 ship agents, the six month period starts when the matter is first reported to the Member.

15.3 Three year 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 done within a period of three years after claims or expenses recoverable under these Rules have been paid by the Member, his right to compensation is extinguished.

15.4 Ten year 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 judgment, award or adjustment has become legally binding. This does not mean that a judgment 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 discharge. The Club will exercise its discretion 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 his claim cannot be invoked against the Club in any way, not even as set-off against unpaid premiums.

Rules for P&I Insurance 2021/2022

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.

Commentary

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. This follows from Rule 2 which provides that it is ultimately the Member's responsibility to show that a claim falls within the ambit of the Rules.

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 made 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 remitted generally within one month of receipt by the Club of the supporting documents and any additional information required. 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.

Payment does not prevent the Member from being entitled to further compensation should additional liabilities, costs or expenses covered under these Rules arise subsequently in connection with the same incident.

Rules for P&I Insurance 2021/2022

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.

Commentary

Rule 17 Forbearance

17.1 No prejudice to the present case

As appears from the 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 to 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.

Rules for P&I Insurance 2021/2022

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.

Commentary

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 may apply.

This Rule provides two different ways to deal with such disputes. The first and more 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 resolved 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 joint members and co-assureds according to Rule 30 and those who may have become subrogated to a Member's rights against the Club. See for instance the comments on direct action under 2.9.

Notably, legal disputes between the Club and its Members are a very rare occurrence.

18.2 Disputes solved by average adjuster

A Swedish 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.

The adjuster's 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 to the Supreme Court. If no appeal is filed, the decision is legally binding in the same way as a court judgment.

This way of solving a dispute is quick professional and impartial.

18.3 Disputes resolved 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 by an oral 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 adopt an arbitration procedure that suits their needs.

18.4 Member's legal representation

There are several large law firms in Sweden with expertise within maritime and insurance law. A Member will have no difficulty in obtaining independent, legal representation to resolve a dispute.

Rules for P&I Insurance 2021/2022

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.

Commentary

Rule 19 Omnibus clause

19.1 General

The opening part of the 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 in full 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 liability being considered has not arisen from but rather from outside the contract of insurance and as the Board's decision is completely discretionary, it is final and not subject to 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 2021/2022 USD 10 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. It creates no precedent for further claims of a similar nature neither for that Member nor other Members.

Rules for P&I Insurance 2021/2022

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.

Commentary

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. A Ship Manager Evaluation (SME) is always performed on the Member's technical manager organisation, either at the DOC Manager's office or as a desktop exercise based on in house knowledge and/or public information.

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 stating the terms agreed which is 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 on 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 specifically agreed upon between the Member and the Club. It is important that the specifications are checked by the Member when the documentation is received in order to avoid any disputes concerning the agreed extent of cover once 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 either an addendum or a new CoE being issued. Regarding restrictions of Certificates – see the comments under 20.7.

Members are advised to contact the Club if the 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 nor has ceased in accordance with Rule 27, it runs from policy year to policy year. (Other periods of insurance may, in certain specific instances, be agreed upon between the Member and the Club in writing.)

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 new documentation as described under 20.3 above.

20.4.3 Termination of the period of insurance

See the 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 is historical. 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 advised, therefore, in any 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 any commitment in the charterparty 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 a confirmation or certificate showing that a ship is entered for P&I risks. 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 such certificates should be restricted. Firstly, it creates 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 certificates and confirmations of entry.

Requests are, therefore, usually met only to the extent that Clubs issue certificates ("blue cards") to confirm the existence of insurance cover for various liabilities under the following international conventions;

- International Convention on Civil Liability for Oil Pollution Damage ("CLC")
- International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 ("the Bunkers Convention")
- Nairobi International Convention on the Removal of Wrecks, 2007 ("WRC")
- Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 ("PLR")

See the comments under 6.1.3.1.7, 6.1.4.2.2.6 and 6.1.4.2.3, 7.5.6 and 3.5.16 respectively.

Furthermore, clubs also issue certificates to confirm the existence of insurance cover for liabilities under the Maritime Labour Convention 2006 ("MLC"). It should however be noted that whilst some of the liabilities arising under the

certificates would be covered by standard P&I cover – i.e. compensation for death or long-term disability in accordance with Regulation 4.2., Standard A4.2. and Guideline B4.2, - the liabilities for outstanding wages and repatriation of seafarers, together with incidental costs and expenses, in accordance with MLC Regulation 2.5, Standard A2.5.2 and Guideline B2.5 fall outside cover. Should the Club be required to meet those liabilities in the first instance under its certificate, Members will be obliged to reimburse the Club.

See the comments under 3.4.3

The Club will, upon request from the Member, issue certificates to institutes offering Certificates of Financial Responsibility (COFR) for Owners trading to the U.S.A. Such certificates and other relevant documents have been approved by the Group of P&I Clubs.

Any other requests for a certificate or confirmation of entry will be subject to a restrictive policy and any certificate or confirmation issued will only be addressed to the Member.

There are charterparty clauses by which an Owner is obliged to produce a certificate from his Club that all calls are fully paid and will continue to be paid throughout the duration of the voyage or charter period in question. Such certificates are generally not issued by the Club. The Club will 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.

Rules for P&I Insurance 2021/2022

Rule 21 Insurance premium tax

The Member shall be liable to pay any tax or other fiscal demand relating to premiums or other sums due under the insurance policy. In the event that the Association has become liable for any such tax or fiscal demand, the Member shall reimburse the Association on demand.

Commentary

Rule 21 Insurance premium tax

21.1 General

Some countries levy a tax on insurance premiums. This is often connected with an obligation for the insurer to declare premiums to the relevant tax authority. The clause makes it clear that it is the Member who is liable to pay any such tax. It may however not always be possible for the Club to avoid tax liability in the first instance, depending on the legislation in the particular country. Sometimes there is a joint liability for the insurer and the insured to pay premium tax and the tax authorities may find it easier to pursue an insurance company for a debt rather than a shipping company. If so, the Club may be forced to pay the tax on behalf of the Member in the first instance and in such cases this Rule will enable the Club to recover the amount so paid from the Member. It is the Member's duty always to pay insurance premium tax in the first instance. If the Club for some reason cannot avoid the tax liability the Member is obliged to indemnify the Club.

Rules for P&I Insurance 2021/2022

Rule 22 Premiums and deductibles

Premiums 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 due date. Thereafter the premium shall be paid as stated in the second paragraph.

Deductibles for the policy year to come are decided annually by the Association. There shall be one deductible per event unless different types of liabilities are involved in which case each type of liability shall carry one deductible.

Commentary

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 newly 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 record may also 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

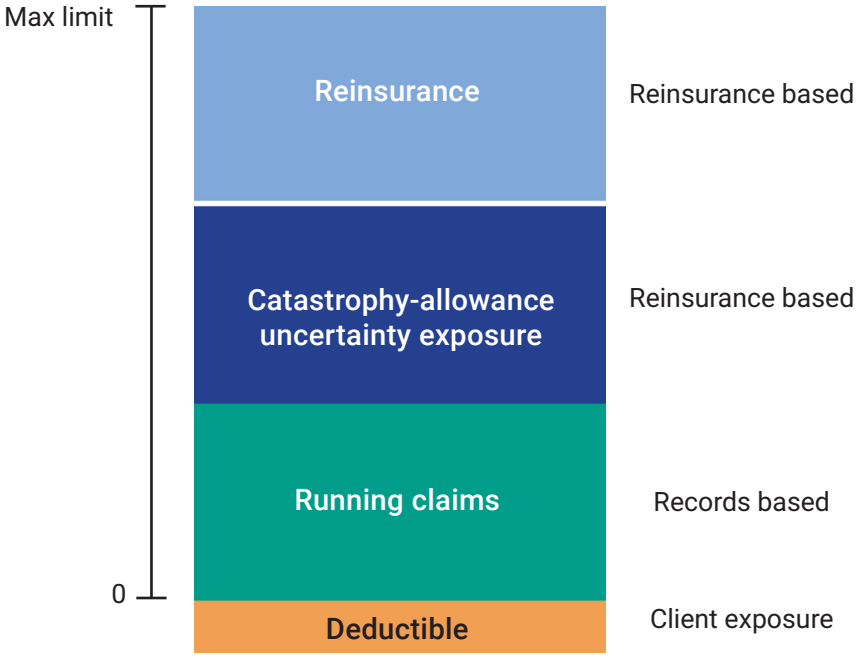
At renewal discussions, which take place before the policy year has started, it is impossible to quantify with any degree of certainty what final impact the many decisive factors mentioned under 22.1 will have on the actual premium level. P&I Insurance is, therefore, quoted on an estimated total call (ETC) basis. 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 to meet expected commitments.

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.

Premium structure



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 by 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.

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, and regulates the situation where a fleet is divided between two or more Clubs. the new Club, to which the vessel is entered, is obliged to follow the terms of entry which would have been offered by the old Club ("the holding Club") and may not ameliorate terms or apply a lower rate.

The same principle applies in respect of vessels that are transferred from a holding Club to a new Club.

After twelve months, the new Club and the Member are free to make any justified amendments to the terms of entry.

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 provides additional information of the cost for services of the 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 always straight forward.

At the time of renewal, experience has been gained and records are beginning to be built up. Then it is easier to determine any adjustment of the premium level to achieve the goal of a realistic estimated total 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 Gross Tons ("GT")

When premiums are based on 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. Return on investments from premiums paid is an essential part of the Club's income and an important tool to help 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 invoice 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 invoice. 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 the comments under 26.5.

22.3.5.6 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.

22.3.5.7 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 quarter.

22.3.5.8 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 record. The record depends 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 from 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 to be 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 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.

All open file estimates are reviewed at least four times a year.

22.4.2 Adequate reserves require notification of claims to Club

If 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 on 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 the time bars under Rule 15 is that the claim for compensation becomes extinguished. See the comments under 15.6.

The reason why failure to report or the late reporting of claims is subject to such severe sanction 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 recommended to discuss outstanding claims and reserves with the Club's claims handlers well in advance of each 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 the 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.

As an example, a Certificate of Entry may state that a double cargo deductible will apply where, in the Association's view, the cargo claim results from a lack of proper maintenance.

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 might 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.

As appears from the first part the Rule, the deductibles are decided annually. This means that the Club and the Member every year are free to decide on what deductibles are appropriate.

22.5.2 One event can generate several deductibles

No risk is compensated without deductible unless otherwise stated or agreed. The issue whether one or several deductibles should be applied, varies depending on the type of event.

Regarding 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 defined by either the obligations in respect of all crew members who sign off on account of injury or illness in a certain port provided that the cause of the disembarkation is the same, or the obligations in respect of the injury, illness or death of an individual crew member, regardless of where he left the ship. This is an important distinction since there may be one illness case and one injury not related but referring to the same port of disembarkation of two crew members. In that event two cases will be registered with one deductible applicable to each case.

For liabilities connected to loss of life, personal injury or illness under Rule 3 Sections 5 and 7 i.e. liabilities in relation to passengers and "others", the deductible is applied per event considering the cause of the injury, illness or loss of life.

The cargo deductible is set per voyage. A voyage starts when loading commences in the first load port and ends when the last consignment has been discharged in the last discharge port. This means that all cargo claims paid on one voyage should be added together and the same file should also include any cargo related fines. The Member will thereafter be compensated for the total amount less the applicable deductible. When applied to oil spills under Rule 6, the deductible applies also to fines related to pollution under Rule 7 Section 6.

One event can also give rise to several liabilities covered under separate rules. An explosion on board may cause personal injury and loss of life to crew, longshoremen and passengers, loss of or damage to cargo, oil pollution, wreck removal and fines. Each liability will be subject to an agreed separate deductible. Unless otherwise agreed, the individual deductible of each risk involved should be applied to the compensation as and when paid to the Member.

22.5.3 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 record. See the comments under 22.4.1.

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.

22.5.4 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.

Rules for P&I Insurance 2021/2022

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.

Commentary

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 supports the idea that the advance call should be reasonably sufficient to meet the Club's obligations. If an additional call is forecast, 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 be 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 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 provision, additional calls are due for payment on demand. This means that they should be paid on the date stated in the invoice and in accordance with the payment instructions contained in the invoice.

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 the comments under 22.3.5.8

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 promptly, the Club has a right - in accordance with Rule 26 - to serve either a written reminder, whereupon the Club shall be relieved of liability after seven days, or to terminate the period of insurance on three days' written notice. See the 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 and is calculated according to guidelines in the International Group Agreement. 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. In the alternative, he can arrange a bank guarantee for the corresponding amount with the guarantee remaining open until the final policy year is closed.

A Member who has paid a release call is not entitled to a surplus under Rule 36.

Rules for P&I Insurance 2021/2022

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.

Commentary

Rule 24 Overspill calls

24.1 General

Rule 24 limits the amount recoverable from the Club in relation to a claim (other than a claim arising with respect to oil pollution which is limited under Rule 6 and a claim for passengers and seafarers which is limited under Appendix II Rule 1) 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 Club 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 10 million for the policy year 2021/2022). 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 2021/2022, the layer is from USD 100 million to USD 3.1 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 Club 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 Club 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 could 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 Club in order to enable the Club 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 Club on any one vessel to pay the Club's share of any one Overspill Claim will not in the aggregate exceed a specified percentage (2.5% for the 2021 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 Club. This limit is the aggregate of:

- the amount the Club 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 Club 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 Club is limited accordingly to 2.5% of the aggregate of the limitation funds of all vessels entered with parties to the Pooling Agreement. For the 2021 policy year, this equals a sum of about USD 6,3 billion. The likelihood that a claim would reach this limit is remote. The cover limit for oil pollution is USD 1 billion, for passenger liabilities, USD 2 billion, and passenger and crew liabilities combined, USD 3 billion.

This amount may be reduced:

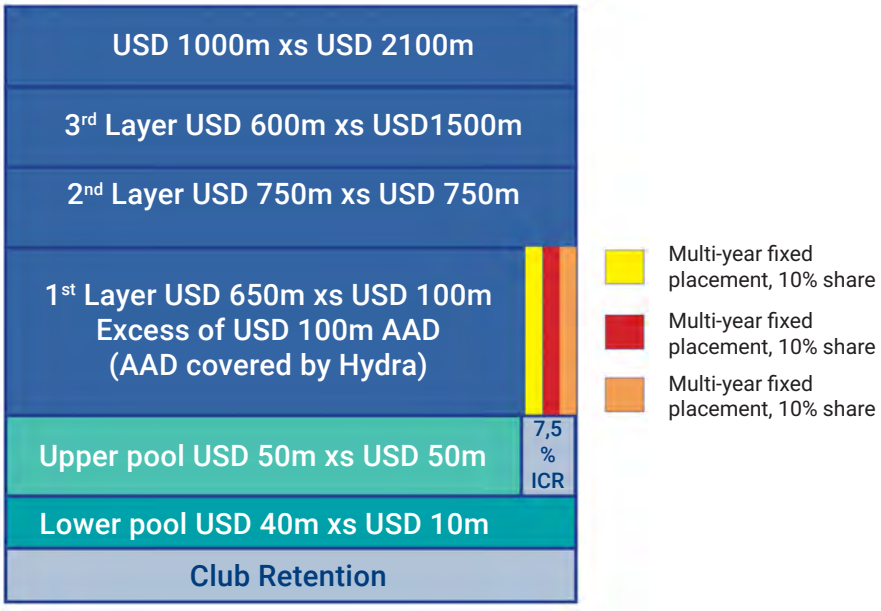
- to the extent that the Club is not able to make a recovery from another party to the Pooling Agreement;
- to the extent that Overspill Calls levied on the Members are not economically recoverable;
- to the extent that the Club incurs costs in seeking to recover Overspill Calls from its Members.

The Club 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 Club may require a Member to put up security for an Overspill Call in the circumstances described in Appendix I Rule 7.

Graphic illustration of the International Group Clubs' Pooling and Reinsurance Structure 2021/2022



Rules for P&I Insurance 2021/2022

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.

Commentary

Rule 25 Right of lien for amounts due to the Club

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.

The 1999 Arrest Convention recognises a long list of claims which gives rise to a right of arrest. Unlike the previous arrest convention of 1952 in the 1999 convention there is a lien for insurance premiums which provides yet another tool for the Club to obtain payment from a defaulting Member.

Rules for P&I Insurance 2021/2022

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,

(f) on such notice as the Association may decide, where, in the opinion of the Association, the Member has exposed or may expose the Association to the risk of being or becoming subject to a sanction, prohibition or other adverse action under United Nations Resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America or other significant state power.

Commentary

Rule 26 Termination

26.1 General

26.1.1 General comments 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 arise. Cover can only be reinstated if the parties agree on a new period of insurance and a new 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 any 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 promptly.

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 Club makes use of its right to terminate the insurance due to non-payment of premium, the Club 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 to which Rule 11 Section 1 applies. See the 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 the comments under 26.3.1-2), an additional premium (see the comments under 23.7) or an overspill call (see the comments under Rule 24) is not paid promptly.

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 might 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 the 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 Club 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 the comments under 11.5.8.

26.9 Termination in respect of sanctions

Item (f) of the fourth part of this Rule gives the Club the right to terminate the period of insurance on such notice as the Club may decide, where the Club considers a breach of sanctions has or may take place. In order to protect the Club, it is likely that the notice will be of the shortest possible period if not of immediate effect.

Rules for P&I Insurance 2021/2022

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).

Commentary

Rule 27 Cesser

27.1 General

27.1.1 General comments on cesser

There are situations which effect the basis for the insurance to such an extent that the cover should cease automatically and with 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 the 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, 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 on 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.

A constructive total loss ("CTL") 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. 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. Ongoing liabilities, for example, for wreck removal and pollution, remain covered since the event giving rise to them occurred before the insurance ceased. (See the comments under 7.5.3.2.3.)

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 judgment 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 a change of ownership or otherwise without the Club's approval, the insurance ceases by application of item (c).

The Club should be informed in good time of any change contemplated of the 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 and for such a 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 Club. This is as important to the Club as a change in Owner since the manager is responsible usually 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. Accordingly, 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 the comments under 11.2.2.10.

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. Notably, a breach of sanction legislation may qualify as unlawful trade and, as a result, trigger immediate cessation of

the P&I Insurance. For information about sanctions, see the comments under 11.2.2.10.

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 shall be entered with a classification society approved by the Club. The cesser comes into effect automatically 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 then be issued accordingly.

Rules for P&I Insurance 2021/2022

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.

Commentary

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 the comments under 23.9.

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.

Rules for P&I Insurance 2021/2022

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.

Commentary

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 trade operated and cargoes. As records build up, the impact of the operational performance on the premium is increased. If and to the extent that those operational risks are reduced when the ship is 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, and any days of shifting lay-up site within the port or local area, are not counted.

If the ship is moved to a different port or area, a new time period starts.

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 charterparties.

The port must be safe in accordance with the standards applied by the Hull underwriter of the entered ship. This must be decided on a case by case

basis, 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 in respect to the method of mooring, shore communications, equipment, manning, etc.

29.5 Manning

The number of crew members on board while the ship is laid up must meet applicable requirements or regulations issued by the 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 six 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 must be received within six months after the expiry of each of the two policy years in question.

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 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.

Rules for P&I Insurance 2021/2022

Rule 30 Joint members, co-assureds, affiliated charterers and contractors

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 or any other insured party shall be deemed to be communicated to all. Failure by any one of the Joint Members or any other insured party to disclose material information shall be deemed to be the failure of all.

Act or omission of any one of the Joint Members or any other insured party 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.

Any liability of the parties insured to one another shall neither be excluded nor discharged by reason of a common insurance. Payment by the Association to one of the parties insured in respect of any liabilities, losses, costs or expenses shall operate only as satisfaction, but neither exclusion nor discharge, of the liability of that party to the other parties insured.

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 co-assured is found liable to pay for loss or damage which is properly the responsibility of the Member and 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 or to any other insured party in respect of that loss or damage.

Any communication by the Association to any one of the co-assureds or any other insured party shall be deemed to be communicated to all. Failure by any one of the co-assureds or any other insured party to disclose material information shall be deemed to be the failure of all.

Act or omission of any one of the co-assureds or any other insured party 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.

Any liability of the parties insured to one another shall neither be excluded nor discharged by reason of a common insurance. Payment by the Association to one of the parties insured in respect of any liabilities, losses, costs or expenses shall operate only as satisfaction, but neither exclusion nor discharge, of the liability of that party to the other parties insured.

Affiliated charterers

The Association may allow affiliated charterers of the entered ship to be covered by the Member's insurance 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.

Any communication by the Association to any one of the affiliated charterers or any other insured party shall be deemed to be communicated to all. Failure by any one of the affiliated charterers or any other insured party to disclose material information shall be deemed to be the failure of all.

Act or omission of any one of the affiliated charterers or any other insured party 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 affiliated charterers is limited to USD 350 Million in the aggregate.

Any liability of the parties insured to one another shall neither be excluded nor discharged by reason of a common insurance. Payment by the Association to one of the parties insured in respect of any liabilities, losses, costs or expenses shall operate only as satisfaction, but neither exclusion nor discharge, of the liability of that party to the other parties insured.

Contractors

The Association may allow any party who has entered into a contract with a Member for the provision of services to or by the entered ship (contractor), and any subcontractor of the contractor, to be covered by the Member's insurance provided that the contract includes a knock for knock agreement and has been approved by the Association.

The liability of the Association to contractors is limited to liabilities, costs and expenses which are borne by the Member under the terms of the contract and would, if borne by the Member, have been recoverable by the Member from the Association.

Any communication by the Association to any one of the contractors or any other insured party shall be deemed to be communicated to all. Failure by any one of the contractors or any other insured party to disclose material information shall be deemed to be the failure of all.

Act or omission of any one of the contractors or any other insured party 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 contractors shall not exceed the limitation under the fifth paragraph of Rule 2 had the registered Owner of the entered ship been the sole Member.

Any liability of the parties insured to one another shall neither be excluded nor discharged by reason of a common insurance. Payment by the Association to one of the parties insured in respect of any liabilities, losses, costs or expenses shall operate only as satisfaction, but neither exclusion nor discharge, of the liability of that party to the other parties insured.

Commentary

Rule 30 Joint members, co-assureds, affiliated charterers and contractors

30.1 General

As described in the comments to Rule 2, the cover under this Rule 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 the comments under 2.9.1 and 2.10) also ensures that no party, 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 whereas the Member might be entitled to 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 either Joint Members, co-assureds, affiliated Charterers or contractors

30.2 Joint members

30.2.1 What constitutes a Joint Member?

For a party to be accepted as a Joint Member the Member needs to apply to the Club to enter the candidate as a Joint Member on 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.

30.2.2.1 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.

30.2.2.2 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.

To be a Joint Member the entity in question must have been named as such in the policy. It is further a requirement that the Joint Member is jointly and severally liable with the Member for all sums due to the Association.

Those in control of the operation, management or manning of the entered ship, as customarily exercised by an Owner, may be accepted as a Joint Member. A manager can be a Joint Member provided the manager is acting as agent on behalf of the Member and is exercising effective control over the vessel. If the manager ceases to exercise effective control, the manager will cease to be a Joint Member. It can be difficult to know where to draw this line; for example, where the vessel is in layup with the Member's crew still on board, the layup manager should be encouraged to purchase his own insurance.

The holding company or the beneficial owner of the Assured Member insured under the same entry or the holding company or beneficial owner of a Joint Member, who is a person interested in the operation, management or manning of the entered ship, can be a Joint Member. By way of example, a Bareboat Charterer could be eligible for acceptance as a Joint Member.

In case a manager has dual functions under the management agreement, in other words, acts both as manager and as a Charterer of the entered vessel, then the company can be a Joint Member for the liabilities incurred as a manager only. For liabilities incurred in his capacity as a Charterer, the company needs its own additional Charterers' insurance.

A bank controlled Special Purpose Vehicle ("SPV") demise chartering a vessel under a tax lease structure to the Member, and the Member being the Owner, can be a Joint Member.

30.2.2.3 General comments 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 as a whole. To the extent that 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.

In return for the extended cover, a Joint Member has obligations in relation to the Club as described below.

30.2.2.4 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 a Joint Member is 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 is also jointly and severally liable for deductibles or the Club's outlays for lawyers and experts on the Member's behalf.

30.2.2.5 Payments from the Club

The Club may discharge its obligations under these Rules by payment to the Member or any Joint Member. Payment to one Joint Member is equal to a payment to the Member and to all Joint Members.

30.2.2.6 Communications from the Club

Any communications from the Club to a Joint Member are considered to have been communicated to all parties insured under the same policy.

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.

30.2.2.7 Failure to disclose material information

If a Joint Member fails to disclose material information, it is deemed a failure of all insured parties under the same policy. Such disclosure could, by way of example, be the reporting of cargoes, trades or contracts which require the Club's prior approval to be covered.

30.2.2.8 Conduct of a Joint Member

The same standard of conduct is required of a Joint Member as stated in these Rules of 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 parties insured under the same policy.

Should this occur, the rights of all the parties insured under the same policy under these Rules are affected accordingly.

30.2.2.9 Limitation of liability

As appears from the 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 same principle applies also to Joint Members, however, with an important exception.

There are jurisdictions where the right of limitation is more or less exclusively reserved to shipowners and where parties who may qualify as Joint Members under these Rules are not entitled to limitation at all. In such jurisdictions the Joint Member is a likely target for a legal action to provide the claimant access 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.

30.3 Co-assureds

30.3.1 What constitutes a co-assured?

To become a co-assured requires an application from the Member to the Club, in whose discretion it is to allow the candidate to become a co-assured. The co-assured will be named as a co-assured in the policy of insurance under the below special conditions. See also the comments under 20.3.

30.3.2 Who can be a co-assured?

To be a co-assured the entity in question must have been named as such in the policy. Upon application from a Member, the Club may allow any person who acts as the Member's servants and performs 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 instead be entered as co-assureds if that form of association with the Member's cover is considered more suitable. See the 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.

Needless to say, cargo interests or other parties to whom the Member has contractual obligations should not be included as co-assureds under the Member's policy.

30.3.3 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 accordingly.

The main principle contained in the Rule is that a co-assured has so-called "misdirected arrow" cover only. This follows from the basic principle in Rule 2 of these Rules. It means that the Club's liability under the Rules in relation to a co-assured is limited to liabilities, costs or expenses that properly are the responsibility of the Member but for some reason the claim is directed against the co-assured. For instance, if a co-assured manager incurs a liability for a cargo claim which, under the management agreement (and legal principles) is the responsibility of the Member, the co-assured is covered for the liability, but not otherwise. As a result, cover for a co-assured is quite limited. The cover afforded to a co-assured is under no circumstances greater than that of the Member.

By way of example, in jurisdictions where the right of limitation is more or less exclusively reserved to shipowners and where a party who may qualify as a co-assured under these Rules is not entitled to the same limitation as the Member, then the cover is still restricted to the amount to which the Member can limit his liability. This is an important distinction between a co-assured and a Joint Member. A gap in the insurance cover may thus be the effect of entering an entity that ought to be a Joint Member, as a co-assured.

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 any refund of a surplus under Rule 36.

30.3.3.1 Payments from the Club

The Club may discharge its obligations under these Rules by payment to the co-assured or to any other of the parties insured on the same policy in respect of that loss or damage.

30.3.3.2 Communications from the Club

Any communications from the Club to a co-assured are considered to have been communicated to all other parties insured under the same policy.

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.

30.3.3.3 Failure to disclose material information

If a co-assured fails to disclose material information, it is deemed a failure of the co-assured and of all other parties insured under the same policy. Such disclosure could, by way of example, be the reporting of cargoes, trades or contracts which require the Club's prior approval to be covered.

30.3.3.4 Conduct of a co-assured

The same standard of conduct is required of a co-assured as stated in these Rules of 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 insured parties.

Should this occur, the rights of the co-assured and of all other insured parties on the same policy under these Rules are affected accordingly.

30.4 Affiliated charterers

30.4.1 What constitutes an affiliated Charterer?

To be entered as an affiliated Charterer on a Member's policy the Member must apply to the Association, in whose discretion it is to name the entity as an affiliated Charterer. The affiliated Charterer will, if accepted by the Association, be named as such in the policy of insurance under the below special conditions. See also the comments under 20.3.

30.4.2. Who can be an affiliated Charterer?

It is an absolute requirement that the affiliated Charterer is affiliated to or associated with the Member. Affiliated to or associated with requires that one of the following scenarios applies:

(i) both the Member and the affiliated Charterer have the same parent; or

(ii) either the Member or the affiliated Charterer is the parent of the other.

A parent is a company which owns at least 50 % of the shares in and voting rights of the other entity or owns a minority of the shares in the other entity but has the ability to procure that the other entity is managed and operated in accordance with its wishes (i.e. has a controlling interest).

Other Charterers are not accepted as co-assureds and should cover their liabilities under the charterparty by separate Charterers' P&I Insurance, but for the following exceptions: the association may agree to enter participants in a joint venture or a consortium under a space charter or a slot charter as co-assureds.

30.4.3 Relations between the Club and an affiliated Charterer

As affiliated Charterers are not mentioned in the definition of a Member in Rule 1, an affiliated Charterer is not a Member. The rights and obligations of an affiliated Charterer are restricted accordingly. With that said, by being entered as an affiliated Charterer, cover will be available to that charterer for the risks, liabilities, costs and expenses in respect of which the Member has cover. The cover afforded to the affiliated Charterer is, however, limited to the aggregate of USD 350 million per any one event.

Not being a Member, an affiliated Charterer has no right to a laid-up return under Rule 29 or to any refund of a surplus under Rule 36.

30.4.3.1 Payments from the Club

The Club may discharge its obligations under these Rules by payment to the affiliated Charterer or to any other insured party in respect of that loss or damage.

30.4.3.2 Communications from the Club

Any communications from the Club to an affiliated Charterer are considered to have been communicated to all other insured parties under the same policy.

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.

30.4.3.3 Failure to disclose material information

If an affiliated Charterer fails to disclose material information, it is deemed a failure of the affiliated Charterer and of any other insured party. Such disclosure could, by way of example, be the reporting of cargoes, trades or contracts which require the Club's prior approval, to be covered.

30.4.3.4 Conduct of an affiliated Charterer

The same standard of conduct is required of an affiliated Charterer as stated in these Rules of 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 insured parties.

Should this occur, the rights of the affiliated Charterer and of any other insured party on the same entry under these Rules are affected accordingly.

30.5 Contractors

30.5.1 What constitutes a contractor?

To be entered as a contractor on a Member's policy the Member must apply to the Club, in whose discretion it is to name the entity as a contractor in the policy. The contractor will be named as such in the policy of insurance under the below special conditions. See also the comments under 20.3.

30.5.2. Who can be a contractor?

Any person who has entered into a contract with the Member for the provision of services to or by the entered ship, and any subcontractor of the contractor, provided that:

(i) the contractor is named in the policy;

(ii) the contract has been approved by the Association; and

(iii) the contract includes a knock-for-knock agreement;

can be accepted by the Association to be named as a contractor on the Member's policy.

It is important to note that the knock-for-knock agreement entered into between the Member and the contractor must in all material ways be unamended in order for the contractor to be eligible to be named as a contractor on the Member's policy. Likewise, the Member's own cover may also be affected if he has entered into a knock-for-knock Agreement that has been materially amended. This follows from the requirement for Members to contract on standard terms of contract as per Rule 10 section 2.

It is an express requirement for cover that the contract not only contains a materially unamended knock-for-knock agreement but also that the contract has been approved by the Association in which the ship is entered.

30.5.3 Relations between the Club and a contractor

As contractors are not mentioned in the definition of a Member in Rule 1, a contractor is not a Member. The rights and obligations of a contractor are restricted accordingly.

Not being a Member, a contractor has no right to a laid-up return under Rule 29 or to any refund of a surplus under Rule 36.

The contractor shall only be covered for liabilities, costs and expenses which are to be borne by the Member under the terms of the contract and would, if borne by the Member, be recoverable by the Member from the Association.

30.5.3.1 Payments from the Club

The Club may discharge its obligations under these Rules by payment to the contractor or to any other party insured on the same policy in respect of that loss or damage.

30.5.3.2 Communications from the Club

Any communications from the Club to a contractor are considered to have been communicated to all other insured parties under the same policy.

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.

30.5.3.3 Failure to disclose material information

If a contractor fails to disclose material information, it is deemed a failure of the contractor of all other parties insured on the same policy. Such disclosure could, by way of example, be the reporting of cargoes, trades or contracts which require the Club's prior approval to be covered.

30.5.3.4 Conduct of a contractor

The same standard of conduct is required of a contractor as stated in these Rules as of 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 insured parties.

Should this occur, the rights of the contractor and of any other party insured on the same policy under these Rules are affected accordingly.

Rules for P&I Insurance 2021/2022

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.

Commentary

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 any 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.

Rules for P&I Insurance 2021/2022

Rule 32 Affiliated companies

The Association may agree to extend the cover afforded by the Association to affiliated companies of the Member which are not named in the Certificate of Entry on such terms as may be agreed.

The liability of the Association to affiliated companies shall be limited to liabilities, costs or expenses which the affiliated company is found liable to pay for loss or damage which is properly the responsibility of the Member and 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 affiliated companies or any other insured party in respect of that loss or damage.

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.
Any liability of the parties insured to one another shall neither be excluded nor discharged by reason of a common insurance. Payment by the Association to one of the parties insured in respect of any liabilities, losses, costs or expenses shall operate only as satisfaction, but neither exclusion nor discharge, of the liability of that party to the other parties insured.

Commentary

Rule 32 Affiliated companies

32.1 General

For a variety of reasons, a claimant may choose to target a party other than the insured Member. See the comments under 30.1. A Member may wish, accordingly, to protect certain corporations closely related to it, so-called affiliated companies, to be covered by the same insurance as Joint Members, co-assureds, affiliated Charterers or contractors under Rule 30.

The definition of an affiliated company is either that the companies have the same parent, or one of the companies is the parent of the other. A parent company is a company which owns at least 50% of the shares in and voting rights of another or owns a minority of the shares in the other but has the ability to procure that it is managed and operated in accordance with its wishes pursuant to Appendix I category 4 (D) of Pooling Agreement.

32.2 What constitutes an affiliated company?

Pursuant to the Pooling Agreement Appendix I Category (D) the Club can agree to extend cover to companies affiliated to the Member, so-called "affiliated "companies". An affiliated company is not named in the Member's policy. 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. It is important to note that the affiliated company must be affiliated to the Member. It will thus not suffice for the affiliated company to be affiliated with any other party named on the policy.

32.2.1 Extent of cover

An affiliated company is not named in the policy of insurance. The cover that can be afforded to an affiliated company is the same as for co-assureds, meaning so-called "misdirected arrow" cover" and shall not exceed the limitation under the fifth paragraph of Rule 2 had the registered Owner of the entered ship been the sole Member. See the comments under 30.3.3.

It is important to note that whether or not cover is to be extended to an affiliated company, is at the Association's discretion. The intention with the possibility for the Association to extend cover to a company affiliated to the Member is to provide cover under circumstances where an affiliated company within the Member's group is targeted for a liability, cost or expense that should rightfully rest with the Member. A claimant may, by way of example, target an affiliated company in a favourable jurisdiction rather than go against the Member directly. Under such circumstances, the Association may agree to extend cover to the affiliated company, as the Association finds appropriate.

This Rule is thus designed to address after the event requests to extend cover to an affiliated company. If the Member has affiliated companies that are e.g. interested in the operation, management or manning of the entered ship then those ought to be named on the policy from the outset, under one of the categories of assureds available under Rule 30 instead.

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.

32.3 Payments from the Club

The Club may, if it so decides, following a request by the Member, discharge its obligations under these Rules by payment to the affiliated company or to any party insured on the same policy in respect of that loss or damage.

Rules for P&I Insurance 2021/2022

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.

Commentary

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, CRISTAL, 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 was important to preserve this technical expertise and it was decided that ITOPF should continue to serve the industry as an independent organisation. This means that shipowners and their P&I Clubs continue to benefit greatly from ITOPF's services.

33.2 Tankers and non-tankers

All tanker Members of the Club are automatically members of ITOPF. The Club even pays the entry fees.

As a result of an increased number of oil spills from non-tankers (mainly bunker spills), ITOPF decided to include non-tanker operators as associate members. The Club pays the fees for non-tankers to be associate members and they, therefore, also have full access to ITOPF's spill response services.

Rules for P&I Insurance 2021/2022

Rule 34 TOPIA and STOPIA

A Member insured in respect of a ship which is a "Relevant Ship" as defined in the Tanker Oil Pollution Indemnification Agreement (TOPIA) or Small Tanker Oil Pollution Indemnification Agreement (STOPIA) as amended, shall, by virtue of entry with the Association, and unless the Association otherwise agrees in writing, become a party to TOPIA or, if applicable, STOPIA, for the period of entry of that ship in the Association. In the event that the Member exercises his rights under TOPIA or, if applicable, 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 TOPIA or, if applicable, STOPIA.

Commentary

Rule 34 TOPIA and 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 the 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 of the Group of P&I Clubs and/or reinsured through the pooling arrangements of the 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 is 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 defined above) shall by virtue of its 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.

The Tanker Oil Pollution Indemnification Agreement (TOPIA) is similar to STOPIA but with two main 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.

Rules for P&I Insurance 2021/2022

Rule 35 Mortgaged ships

Where the entered ship is mortgaged to a third party, the Association may allow that third party mortgagee to be covered by the Member's insurance as a Joint Member or Co-assured as per Rule 30. Where the cover afforded by the Association is extended to the mortgagee in this way, that extension does not provide the mortgagee with 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.

Commentary

Rule 35 Mortgaged ships

35.1 General

New buildings and the purchase of ships are unlikely to be self-financed. Money is lent by banks or other financial institutions against the mortgage of the ship. As the ship constitutes security for the loan, the lender of the 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.

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 full P&I Insurance. According to the International Convention on Maritime Liens and Mortgages and similar domestic legislation, a number of important liabilities are protected by maritime liens which have a higher ranking priority than the mortgage on the 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 Member can elect for the Mortgagee either to be covered as a Joint Member or as a Co-assured with the respective rights and liabilities that come with each. The cover afforded by the Club will not provide the Mortgagee with better rights than the Member.

The cover for the Mortgagee is subject to the same exclusions and limitations as apply to the Member's cover. The Mortgagee's position as a Joint member or a Co-assured 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 Interest insurance

It is possible to establish a separate, independent right for a Mortgagee through Mortgagee's Interest Insurance. Upon request, such a cover can be provided by the Club.

This renders the insured Mortgagee unaffected by any acts or omissions of the Member, which deprives him either partly or fully of cover under these Rules.

Mortgagee's Interest Insurance is used to protect a mortgagee's interests under the Hull, War and P&I policies.

35.3 Effect of pay-to-be-paid principle

As ought to be apparent from 35.1 above, it is in the Mortgagee's interest that claims which rank higher in priority than the ship's mortgage are eliminated by payment under the P&I Insurance. It follows from Rule 2 (see the 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 exercise its discretion not to insist on 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 might be the exclusion of certain vital risks such as crew or cargo liabilities – the reason for this will be clear from 35.1. A large increase in the amount of deductibles (uninsured according to Rule 2), or the introduction of a limitation of cover to a certain amount, would also amount to 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 at which the notices of termination become effective are specified in Rule 26 and also apply to the Mortgagee. For the Club not to follow through with the effects of the notice of termination, the Mortgagee may have to pay any premiums or other sums due or provide security acceptable to the Club by the date stipulated by the Club.

Rules for P&I Insurance 2021/2022

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.

Commentary

Rule 36 Surplus

36.1 General

As explained in the 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 unpaid premiums or other amounts due from the Member against the refund of any surplus.

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 the 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 the comments under 23.8.

CHARTERERS' LIABILITY

Charterers' Liability
Previously Rule 9 provided for Charterers' Liability Insurance. This is now covered separately under the "Rules for Charterers' Liability Insurance".

Consortium claims were also previously dealt with under Rule 9. These are now dealt with in Appendix II Rule 3 of Owners' P&I Rules and repeated in Rule 13 of the "Rules for Charterers' Liability Insurance".

The comments relating to Charterers' liability as a co-assured on an Owners' P&I entry are set out below.

Commentary

1. General

Historically, the P&I Clubs were formed by shipowners to meet their needs of insurance protection against third party liabilities. This need has not diminished over the years but 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 which operated with owned tonnage have disappeared and been substituted by charter-operated services. The overall international liability increase has also affected Charterers. Charterers are obliged to accept exposure to substantial liability under most charterparties.

2. Different types of charterparty

2.1 Demise or bareboat charter

Demise or bareboat 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 be entered as a Joint Member or co-assured on the Owner's P&I policy or insure his risks separately under the Charterer's Insurance. See the comments under 30.2.2.9 and 30.3.3.

2.2 Time charter

Time charter is for hire of the ship is for a certain, specified period of time. There are a number of standard charterparty forms for a time charter.

Frequently used charterparty 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 the NYPE Interclub Agreement in the handling and apportionment of cargo claims such as those for unseaworthiness, condensation, bad stowage and short delivery.

A time Charterer requires a separate cover 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 the comments under 30.2.2.9 and 30.3.3.

All claims incurred in respect of an affiliated Charterer co-assured under an Owner's P&I entry are limited to USD 350 million per event.

2.3 Voyage charter

Voyage charter of the ship is for one or more specified voyages. There are several standard charterparty forms for a voyage charter. A Voyage Charterer requires a separate cover.

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 charterparties are often drawn up by the parties to cover their specific requirements.

Members should ensure that liabilities and claims handling are duly co-ordinated between the parties and their respective Clubs. It is important to ensure that bills of lading 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 the comments under 30.3.3). To be more fully protected, the participants may require cover in their own right for Charterer's risks.

2.5 Slot charter

A slot charter is a charterparty 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 for his responsibilities as carrier.

Slot charter agreements are used in the container trade between parties of a joint container operation. Members should ensure that liabilities and claims handling are duly co-ordinated between the parties and their respective Clubs. It is also important to ensure that bills of lading issued for such service are suitable.

Where a slot charter agreement is part of a joint venture or part of the operation of a consortium, the Club may agree to enter the participants as co-assureds (see the comments under 30.3.3). To be more fully protected, the participants may require cover in their own right for Charterer's risks.

2.6 Other charter agreements

There are various contracts or agreements similar to or with the same effect as charterparties such as contracts of affreightment and freight agreements for project shipments. Any contractual liabilities should be minimised and care should be taken to ensure that those remaining are covered.

3. Extent of cover

3.1 Piggyback clauses

Charterparties often contain clauses that purport to allow the Charterer to piggyback on the Owner's P&I Insurance. For example: "Charterers to have the benefit of Owner's P&I Insurance as far as the Club Rules permit." The fact is that Owners' P&I 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) of no adverse effect to the Owner. The clause may, however, give the Charterer the false impression that he is in fact covered. That might mean he does not see the need to have his own separate P&I cover of his liabilities under the charterparty. The Owner will then have to deal with an uninsured Charterer, which is not in his best interest either. Preferably, piggyback clauses should not be accepted.

4. Effect of charterparty conditions

The liabilities that are undertaken by a Charterer derive from the charterparty in each case. The charterparty in turn is the product of negotiations at the time of fixing and, therefore, influenced by the negotiating power of the parties and by the general freight market.

Liability arising from charter agreements on unusually burdensome terms not approved by the Club may not be covered. If during fixture negotiations an unusual pro forma is offered, or unusual clauses, the effect of which the Member does not understand, they should be referred to the Club for approval and advice.

5. Does a Charterer require 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 charterparty 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 a charter chain will succeed in avoiding all liability.

In a back-to-back situation, a Charterer may find that the party to whom liability should have been passed on has gone bankrupt or is otherwise unavailable. In many jurisdictions, a claimant has the option to choose whom to attack. All Charterers ought to have their own cover.

Owner Members are also advised to ensure that Charterers of their ships have adequate 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 charterparty 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 charterparty. In an urgent situation it may be of considerable importance to effect contact between the two P&I Clubs concerned. Valuable time may be lost, otherwise, chasing this information.

A charterparty generally places some share of the cargo liability on the Charterer. Therefore, it is important that he has full cargo liability protection. This can be achieved either as a Joint Member or co-assured on an Owner's P&I entry or directly by way of Charterers' Liability Insurance.

There is an increasing tendency in the U.S.A. to make Charterers responsible for longshoremen injuries, on the grounds that they are often employed by the Charterers. Insurance protection against liabilities in respect of persons is therefore important, as these claims can involve large sums of money (see Owner's P&I Rule 3 or Charterers' Liability Insurance Rule 3).

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 under Owner's P&I entry Rule 7 Section 8 or Charterers' Liability Insurance Rule 12 is then important. Charterers are not immune either to fines and require protection under Owner's P&I entry Rule 7 Section 6 or Charterers' Liability Insurance Rule 10.

6. 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 then be handled and settled within the organisation to the satisfaction of both Members.

In case of a compromise settlement, payment on behalf of each Member is subject to his own policy deductible.

7. Exclusions and limitations of liability

7.1 Same exclusions and limitations as owner

A Charterer co-assured under an Owners' P&I entry has no greater cover than the Owner. All exclusions and limitations applicable to an Owners' P&I entry also apply to a co-assured Charterer.

7.2 Global limitation

An Owner may have a legal right according to applicable domestic law, based on international conventions on global limitation, to limit his liability (see the comments under 2.11). If a Charterer is unable to limit his liability in the same way, the cover provided is restricted to the amount to which he would have been able to limit his liability, had he been the Owner of the ship.

7.3 Charterers' Liability to Hull

It is an important principle of P&I Insurance that it does not provide cover for loss of or damage to the entered ship. That principle is reflected in Rule 11 Section 2 (I), applicable to cover for Owner's risks.

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 charterparty conditions, the Owner cannot expect his ship to be in pristine condition at the time of the off-hire survey.

Under the separate Charterers' Liability Insurance, damage to the entered ship, wreck removal and obstruction are covered. That cover includes damage caused by stevedores and damage to the machinery as a consequence of burning unsuitable fuel provided by Charterers. It also includes contributions in general average in respect of Charterer's bunkers and freight at risk.

8. Consortium claims

8.1 Consortium agreement

An agreement between the Member and operators of other consortium ships, not being ships entered in the Club, for reciprocal sharing of cargo space on both the entered ship and other consortium ships, is a consortium agreement. The consortium agreement must be submitted to the Club for approval, see also the comments under 2.5 of this chapter and 10.2.6.

8.2 Consortium ship

A consortium ship is a vessel, feeder vessel or space thereon, not being the insured vessel, employed to carry cargo under a Consortium Agreement.

8.3 Consortium claim

A consortium claim is a claim arising under an Owner's P&I entry but out of the carriage of cargo on a consortium ship. For the purpose of cover the Owner member is treated as having effected a Charterers' entry in the Club for the consortium ship.

Appendix II Rule 3 deals with consortium claims and clarifies the limit of liability that applies to the cover available.

8.4 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.

The same limit also applies for all claims incurred in respect of an affiliated Charterer co-assured under an Owner's P&I entry.

9. Laid-up returns

The section makes it clear that a co-assured Charterer is not entitled to laid-up returns as provided in Owners P&I Insurance Rule 29.

10. Surplus

A co-assured Charterer is not entitled to a surplus under Owners P&I Insurance Rule 36.

11. Separate cover for Charterer's risks

The Club can provide a Charterer with separate Charterer's Liability Insurance cover. The cover is not based on mutual terms and is subject to its own rules contained in the Rules for Charterers' Liability Insurance.

PART THREE APPENDICES

The Appendices form part of the Rule for P&I Insurance 2021/2022

- For comments to Rules in Appendix I, please see Commentary Rule 24.
- For comments to Rules in Appendix II, please see Commentary Rule 3 Section 6 and Commentary Charterers' Liability, 8 Consortium Claims.

APPENDIX I

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 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) (but applying 334 Units of Account to each ton up to 500 tons) 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 limitof 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, Co-ordinated) 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 or 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 whensoever 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.

APPENDIX II

Appendix II, Rule 1 Passengers and seamen

Passengers and seamen

1.1 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.

1.2 Where liabilities to Passengers include liabilities arising under a certificate issued by the Association in compliance with either Article IV bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by sea, 1974 and the Protocol thereto of 2002 or Regulation (EC) No. 392/2009 of the European Parliament and all liabilities to Passengers exceed or may exceed in the aggregate the limit of cover

(a) the Association may in its absolute discretion, until the Certified Liabilities, or such part of the Certified Liabilities as the Association may decide, have been discharged, defer payment of a claim in respect of other liabilities to Passengers or any part of thereof; and

(b) if and to the extent any Certified Liabilities discharged by the Association exceed the said limit any payment by the Association in respect thereof shall be by way of loan the Member shall indemnify the Association in respect of such payment.

Appendix II, Rule 2 Maritime Labour Convention (2006) Extension Clause

Maritime Labour Convention (2006) Extension Clause
Subject only to the other provisions of this Rule, the Association shall discharge and pay on the Member's behalf under the 2006 Maritime Labour Convention, as amended (MLC 2006) or domestic legislation by a State Party implementing MLC 2006:

(a) Liabilities in respect of outstanding wages and repatriation of a seafarer together with costs and expenses incidental thereto in accordance with Regulation 2.5, Standard A2.5 and Guideline B2.5 of MLC 2006; and

(b) Liabilities in respect of compensating a seafarer for death or long-term disability in accordance with Regulation 4.2, Standard A4.2 and Guideline B4.2 of MLC 2006.

The Member shall reimburse the Association in full any claim paid under paragraphs (a) and (b) save to the extent that such claim is in respect of liabilities, costs or expenses recoverable elsewhere under these Rules.

There shall be no payment under paragraph (a) or paragraph (b) if and to the extent that the liability, cost or expense is recoverable under any social security scheme or fund, separate insurance or any other similar arrangement.

The Association shall not discharge or pay any liabilities, costs or expenses under paragraph (a) or paragraph (b), irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Member or the Member's servants or agents, where such liabilities, costs or expenses were directly or indirectly caused by or contributed to or arise from:

(c) Any chemical, biological, bio-chemical or electromagnetic weapon.

(d) The use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, computer virus or process or any other electronic system.

(e) The obligations of the Association under this Rule may be cancelled in respect of War Risks by the Association on 30 days' notice to the Member (such cancellation becoming effective on the expiry of 30 days from midnight of the day on which notice of cancellation is issued).

(f) Whether or not such notice of cancellation has been given the obligations of the Association under this Rule shall terminate automatically in respect of the War Risks:

(i) upon the outbreak of war (whether there be a declaration of war or not) between any of the following:

United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;

(ii) In respect of any ship, in connection with which cover is granted hereunder, in the event of such ship being requisitioned either for title or use.

(g) The obligations of the Association under this Rule excludes loss, damage, liability or expense arising from:

(i) The outbreak of war (whether there be a declaration of war or not) between any of the following:

United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China,

(ii) Requisition for title or use.

This Rule is subject to Rule 11 Sections 4 and 7, and Rule 18.

The Association's obligations under this Rule shall cease 30 days after notice of termination in accordance with either Regulation 2.5, Standard A2.5.2.11 or Regulation 4.2, Standard A4.2.12.

For the purpose of this Rule:

"Member" means any insured party who is liable for the payment of calls, contributions, premium or other sums due under the terms of entry.

"Seafarer" shall have the same meaning as in MLC 2006.

"War Risks" means the risks set out in Rule 11:5.

Appendix II, Rule 3 Consortium claims

Consortium claims

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 ships.

Consortium ship: 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 ship; and

(c) the Member and the operator of the consortium ship 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 ship pursuant to that consortium agreement.

Unless otherwise agreed the Association is not liable for consortium claims.

A consortium agreement must be submitted and approved by the Association.

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.

The aggregate of all claims recoverable from the Association or and/or all other associations participating in the Pooling Agreement from any one consortium ship shall not exceed USD 350 million any one event

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