

Notices to Members

No. 5 - Recommended Clauses - Himalaya Clause

July 2004

Dear Sirs

RECOMMENDED CLAUSES **HIMALAYA CLAUSE**

On 19 May the Board passed a bye-law to include a "Himalaya" clause among clauses recommended by the Association in accordance with Rule 2 Section 16. The bye-law becomes effective on 1 August 2004.

The clause, shown below, is intended to extend to servants, agents and sub-contractors of the carrier the exemptions from and limitations of liability which are normally available by law to the carrier under contracts of carriage for goods or passengers. Most operators in liner or passenger business already use the clause. The purpose of the bye-law is to encourage wider use of the clause in all trades by direct incorporation into contracts of carriage and/or by inclusion in charter parties of a requirement that bills of lading, waybills and other contracts of carriage issued under such charter parties shall include the "Himalaya" clause.

The Board may reject or reduce a claim on the Association arising out of a contract of carriage which is inconsistent with a recommended clause, if it considers it was unreasonable to have entered into the particular contract.

"HIMALAYA CLAUSE

Exemptions and immunities of all servants and agents of the carrier.

It is hereby expressly agreed that no servant or agent of the carrier (including every independent contractor from time to time employed by the carrier) shall in any circumstances whatsoever be under any liability whatsoever to the shipper, consignee or owner of the goods or to any holder of this bill of lading for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment and, but without prejudice to the generality of the foregoing provisions in this clause, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the carrier or to which the carrier is entitled hereunder shall also be available and shall extend to protect every such servant or agent of the carrier acting as aforesaid and for the purpose of all the foregoing provisions of this clause the carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be his servants or agents from time to time (including independent contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to the contract in or evidenced by this bill of lading."

Members requiring advice about the use of the "Himalaya" clause should contact the Managers.

Yours faithfully

The West of England Ship Owners
Insurance Services Limited
(As Managers)

R J B Searle
Director