

## OPA 90 - COFRS

December 1994

Dear Sirs

### OPA 90 - COFRS

Members will be aware that the implementation date for the new regulations relating to certificates of financial responsibility (COFR) under the United States Oil Pollution Act 1990 is the 28th December 1994. The Board of the West of England has maintained its view that the Club should not agree to submit to direct action by pollution claimants by becoming an OPA 90 guarantor.

Various independent schemes have come into being with the intention of providing certificates of financial responsibility for vessel owners wishing to trade to the United States. At its meeting in October, the Board instructed the Managers to assist those Members wishing to trade to the United States by taking steps to facilitate the provision of COFR by the independent schemes, provided that such steps were consistent with the Board's maintained position that the Club should not become an OPA 90 guarantor. Some of the independent COFR schemes require a notice of cancellation of cover from the Club in terms similar to that given by the Club to mortgagees. In addition, some of the schemes require the Member to obtain from his Club a confirmation of entry, an agreement that the Club will treat payment of a pollution claim by the guarantor as if it were payment by the Member, and confirmation that the provision of a COFR by the guarantor does not amount to double insurance.

Some concern has been expressed by the Club's legal advisers to the effect that the mere issuance of such undertakings and statements by the Club could create a possible risk that a U.S. Court may attempt to impose direct action liability upon the Club should the COFR provider ever fail to meet its obligations as an OPA 90 guarantor. This risk was considered by your Board on 6th December. Bearing in mind the very unlikely circumstances in which such a risk could arise, and bearing in mind some Members' urgent commercial need to continue trading to the USA, the Board authorised the Managers to issue limited undertakings along the lines described above in support of Members' applications to join one or other of the COFR schemes. In making this decision, your Board placed great reliance upon a number of statements made by the US Coast Guard, including the following sentences which are quoted from a letter written to the West of England by the US Coast Guard in the context of the Firstline (Stockton Re) scheme:-

Our approval of Stockton Re as an OPA 90/CERCLA guarantor was and remains in no way dependent or conditioned by the provision by a P&I Club of any evidence of the insurance given to its members. Stockton Re serves as a guarantor in its own right, and is backed by its reinsurance program.

A P&I Club member that arranges with Stockton Re to serve as the member's OPA 90/CERCLA guarantor does not thereby make its P&I Club a guarantor or transform a P&I Club contract into a straight liability policy. Accordingly, Stockton Re is the sole guarantor for that member.

Over the last few months there have been a very large number of rapid changes and developments in connection with the COFR schemes. Members who trade, or are likely to trade, to the USA have been receiving regular faxed updates from the Managers setting out the latest changes to the terms and conditions of the various schemes.

The outline details of the COFR schemes are as follows:-

## SHORELINE MUTUAL

Shoreline has been approved by the United States Coastguard as an insurance backed COFR provider for both dry cargo and tank vessels. Shoreline offers to provide a COFR up to \$300,000,000. In addition to providing a COFR, Shoreline offers an extra layer of \$300,000,000 of insurance cover which is designed to operate either in excess of a Members' \$500,000,000 limit of P&I club cover, or in excess of \$700,000,000 for those Owners who have purchased the currently available excess pollution cover of \$200,000,000.

Shoreline is a fully mutual club and its members are jointly and severally liable to make good any shortfall in funding which Shoreline Mutual might experience. Members should also be aware that under the rules of Shoreline Mutual, they may be obliged to indemnify Shoreline when a payment is made by Shoreline under the terms of the COFR guarantee and the Owner is in breach of the Shoreline rules.

Contact address:

Shoreline Mutual Management (Bermuda) Limited  
44 Church Street  
PO Box HM 2064  
Hamilton HM HX  
Bermuda  
Ph: (809) 295 5688  
Fx: (809) 292 1867

## OPACLUB

OPACLUB has been approved by the United States Coastguard as a provider of COFR, backed by a bond, for both tank and dry cargo vessels. At present, OPACLUB is offering to provide a COFR up to \$100,000,000. OPACLUB hopes shortly to be able to provide a COFR up to \$125,000,000 or more. Members should be aware that under the OPACLUB scheme each member must provide a letter of indemnity in favour of the bonding company, backed by a letter of credit in the amount of \$20 per gross ton for tankers, subject to a minimum of \$3.5 million and a maximum of \$20,000,000 per fleet. We understand that OPACLUB will seek to recover in full any payment made under the terms of the COFR guarantee from the member responsible for the spill. In the event of any shortfall in any recovery from the responsible member, the other members of OPACLUB are obliged to contribute rateably. OPACLUB has arranged a difference in defences cover to minimise this risk by providing the innocent members of OPACLUB with insurance coverage up to the amount of the relevant COFR guarantee; but this will not prevent the full operation of the indemnity against the responsible member who will not benefit from this cover.

Contact address:

Willis Faber & Dumas Limited  
Marine Division  
10 Trinity Square  
London EC3P 3AX

Ph: Nicholas Taylor 071 860 9703  
Richard Pilkington 071 860 9787  
Fx: 071 860 9742

Sedgwick Marine & Cargo Limited  
Sedgwick House  
Sedgwick Center  
London E18DX

Ph: Stephen Barton 071 377 3456

Fx: 071 377 3199

## **FIRSTLINE (Stockton Re)**

Firstline has been approved by the United States Coastguard as a provider of COFR up to \$300,000,000 for both tank and dry cargo vessels. Although Firstline, like other COFR providers, will act as a first dollar guarantee in respect of OPA 90 claims, under the terms of the indemnity agreement which must be signed by Owners when joining the Firstline scheme, Owners will be immediately liable to indemnify the guarantor in full for any payments made by the guarantor under the terms of the COFR guarantee.

Firstline does not offer any insurance at all to cover the liabilities incurred by subscribing Owners under this indemnity, but innocent participants in the Firstline scheme are not liable to contribute to any shortfall which the guarantor is unable to recover from the responsible party.

Contact address:

Johnson & Higgins (Bermuda) Limited  
Victoria Hall  
P.O. Box HM 68  
Hamilton HM AX  
Bermuda

Ph: (809) 292 1552

Fx: (809) 292 2091

Tx: 3585

## **COASTAL STATES INSURANCE**

We understand that Coastal States Insurance has set up a COFR facility for operators of chemical, LNG, LPG, acid, vegetable oil and CCP tankers. Coastal intends to provide COFR up to \$25,000,000. We have not yet received copies of Coastal's documentation and we are therefore unable to comment further on the scheme for the time being.

Contact address:

Coastal States Insurance Line  
Suite 255  
2605 Thomas Drive  
Panama City Beach  
FL 32408

Ph: (904) 233 9060

Fx: (904) 233 0087

## **GENERAL**

Any Member requiring further information in relation to any of the schemes should use the contact numbers set out above or else contact the Managers in London.

Owners of dry cargo vessels which do not currently have a valid COFR issued under the old regulations should be able to obtain one under the terms of the old regulations provided Owners submit completed applications to the USCG

immediately, and in any event not later than 27th December. This possibility may also be of interest to members acquiring new dry cargo ships prior to 27th December or where there has been a change of operator.

**Members are asked to note that circulars and updates sent by the Club should not be regarded as a recommendation of any scheme, nor as an endorsement of the terms, conditions, financial standing and credibility of any of the schemes. Members are also asked to note that, if they choose to join one of the schemes, they will incur certain risks and liabilities, including liabilities arising under indemnities which they will be required to give. Members are asked to note that liabilities arising under such indemnities will not necessarily be covered by the Club, and any member who is in any doubt about this is invited to consult with the Managers.**

Yours faithfully,

**THE WEST OF ENGLAND SHIP OWNERS  
INSURANCE SERVICES LIMITED**  
(As Managers)

**C A G Havers**  
Director