

No. 13 - ITC Hulls 1/11/95

January 1996

Dear Sirs

ITC Hulls 1/11/95

Members may be aware that despite objections by the International Group of P&I Clubs, the York-Antwerp Rules were amended as from 31 December 1994 so that except as provided in Rule XI(d) any losses, damages or expenses incurred in respect of damage to the environment or in consequence of the escape or release of pollutant substances from the property involved in a common Maritime adventure, hereafter called environmental damage costs are excluded from general average.

Rule XI(d) of the York-Antwerp Rules 1994 provides that:-

- d. *The cost of measures undertaken to prevent or minimise damage to the environment shall be allowed in general average when incurred in any or all of the following circumstances:*
- i. *as part of an operation performed for the common safety which had it been undertaken by a party outside the common maritime adventure, would have entitled such party to a salvage award;*
 - ii. *as a condition of entry into or departure from any port or place in the circumstances prescribed in Rule X(a);*
 - iii. *as a condition of remaining at any port or place in the circumstances prescribed in Rule XI (b), provided that when there is an actual escape or release of pollutant substances the cost of any additional measures required on that account to prevent or minimise pollution or environmental damage shall not be allowed as general average;*
 - iv. *necessarily in connection with the discharge storing or reloading of cargo whenever the cost of those operations is admissible as general average.*

This amends the position under the York-Antwerp Rules 1950 and the York-Antwerp Rules 1974 whereby both environmental damage costs, if the consequence of a general average act, and costs of the kind now covered by Rule XI(d) would be admissible in general average.

Accordingly, if a shipowner is operating under the York-Antwerp Rules 1994, such environmental damage costs as are excluded from general average will fall within P&I cover subject to the club rules and terms of entry.

However, the Institute Time Clauses - (Hulls) have been amended, without any consultation with the International Group of P&I Clubs, and this further complicates matters. Clause 10.5 of ITC - (Hulls) 1/11/95 restricts the cover available under ITC - (Hulls) 1/10/83 by providing that:-

10.5 No claim under this Clause 10 shall in any case be allowed for or in respect of

10.5.2 expenses or liabilities incurred in respect of damage to the environment, or the threat of such damage, or as a consequence of the escape or release of pollutant substances from the vessel, or the threat of such escape or release.

This means that, if a shipowner has a vessel insured under ITC - (Hulls) 1/11/95 and is contracting on terms which provide that any adjustment shall be in accordance with the York-Antwerp Rules 1994, then, in the event of a casualty, the environmental damage costs would be unrecoverable from the hull policy but would fall within the P&I cover, but the ship's proportion of Rule XI(d) costs would have to be tested against Clause 10.5 of the ITC and to the extent excluded from the hull cover by this clause would not be recoverable from any source.

Additional cover is available from the hull market in the form of a buy-back provision known as The Institute General Average - Pollution Expenditure Clause Hulls, which provides as follows:-

In consideration of an additional premium to be agreed, where the contract of affreightment provides for adjustment according to the York-Antwerp Rules 1994, this insurance is extended to cover vessel's proportion of general average expenditure, reduced in respect of any under-insurance, which is allowable under Rule XI(d) of the York-Antwerp Rules 1994 and which would be recoverable under Clause 10 of the Institute Time Clauses - Hulls 1/11/95, but for Clause 10.5.2 therein.

This clause is subject to English law and practice.

It should be noted that this additional cover responds to Rule XI(d) costs only when the vessel's contract of affreightment provides for adjustment under the York-Antwerp Rules 1994.

However, if a vessel insured under ITC - (Hulls) 1/11/95, is trading under a contract of affreightment which provides for adjustment under the York-Antwerp Rules 1950 or the York-Antwerp Rules 1974, any environmental damage costs or Rule XI(d) costs would be excluded from hull cover, even if the buy-back cover had been purchased.

It is recommended that Members insuring their vessels under ITC - Hulls 1/11/95 and wishing to maintain the same level of cover as was available under previous hull policies should ensure that their hull cover includes the cover available under the Institute General Average - Pollution Expenditure Clause Hulls, but amended to delete the restriction to the York-Antwerp Rules 1994 and thus the buy back clause should read:-

In consideration of an additional premium to be agreed, this insurance is extended to cover vessel's proportion of general average expenditure, reduced in respect of any under insurance, which is allowable under Rule XI(d) of the York-Antwerp Rules 1994 and which would be recoverable under Clause 10 of the Institute Time Clauses - (Hulls) 1/11/95, but for Clause 10.5.2 therein.

If this amendment to the buy-back clause cannot be obtained, members should ensure that their contracts of affreightment provide for general average to be adjusted under the York-Antwerp Rules 1994.

If members can satisfy neither of the recommendations set out above but are insured for hull risks under ITC Hulls 1.11.95 with the buy back, and their contracts of carriage incorporate York-Antwerp Rules 1950 or York-Antwerp Rules 1974 instead of York-Antwerp Rules 1994, then their ships will be insured on terms less wide than ITC Hulls 1/10/83. Rule 12 of the Association's rules excludes any risks which would be covered under the terms of hull policies not less wide than the ITC (Hulls) 1/10/83. In that case a member may not be able to recover rule XI(d) costs either from the club or from hull underwriters.

Members who anticipate either that they may face such a gap in their cover or who require further clarification are invited to contact the Managers.

Yours faithfully

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

C.A.G. Havers
Director