

No. 8 - General Average/Charter Party Clauses

December 1998

GENERAL AVERAGE/CHARTER PARTY CLAUSES

We refer to Notice No.1 of 1997/98 advising Members that some tanker charterers were attempting to introduce new clauses which had the effect of restricting Owners' rights to include certain types of pollution costs in General Average in circumstances where those costs would otherwise have been recoverable in accordance with the York Antwerp Rules 1994.

Prior to 1994, the York Antwerp Rules (YAR) allowed the recovery of pollution expenses and liabilities in General Average in a wide range of circumstances. For example, clean up expenses and the cost of third party pollution damage claims arising out of jettisoning oil to re-float a vessel were usually allowable within General Average.

As a result of increasing reluctance on the part of property underwriters to accept pollution expenses in General Average there was considerable pressure to exclude all pollution costs from General Average when the York Antwerp Rules were revised in 1994. YAR 1994 represents a hard fought compromise between shipowner and property interests. Whilst the cost of pollution clean up and third party pollution liabilities following a discharge is now generally excluded from General Average under Rule C of YAR 1994, the cost of preventive measures incurred prior to a spill is usually allowable. However, YAR 1994 also provides that the cost of preventing or minimising environmental damage is recoverable in General Average under Rule (XI)(d) if incurred, inter alia, as a condition of entry into or departure from a port of refuge, regardless of whether or not a spill has actually occurred.

Although this erosion of shipowners' entitlement to recover pollution costs in General Average was regrettable, it was considered a justifiable price to pay for the continued existence of YAR as an internationally accepted General Average regime which has served the industry well over the years. For these reasons, our earlier Notice to Members recommended that any further attempts by Charterers to erode the YAR 94 position by contract should be firmly resisted.

Since the above circular was published, a number of Charterers have abandoned such clauses and have accepted that pollution costs may be included in General Average to the extent permitted by YAR 1994.

Moreover, all Clubs have agreed that, in view of the participation of the International Group in the discussions which led to the YAR 94 compromise, any attempt to erode this internationally recognised regime should be actively opposed. The additional risks arising from the use of such clauses will therefore be excluded from the Pooling Agreement with effect from 20 February 1999.

The Association's Rules have already been amended in order to exclude such risks from the normal scope of Club cover.

Members who are asked to accept any charterparty clause which attempts to modify the YAR 94 position on pollution costs should contact the Managers for further advice.

Yours faithfully

American Steamship Owners Mutual Protection & Indemnity Association, Inc.
Assuranceforeningen Gard (Gjensidig)

Assuranceforeningen Skuld (Gjensidig)
The Britannia Steam Ship Insurance Association Ltd.
The Japan Ship Owners' Mutual Protection & Indemnity Association
Liverpool and London Steamship Protection & Indemnity Association Ltd.
The London Steam-Ship Owners' Mutual Insurance Association Ltd.
The North of England Protecting & Indemnity Association Ltd.
The Shipowners' Mutual Protection and Indemnity Association (Luxembourg)
Skuld Mutual Protection and Indemnity Association (Bermuda) Ltd.
The Standard Steamship Owners' Protection & Indemnity Association Ltd.
The Standard Steamship Owners' Protection & Indemnity Association (Bermuda) Ltd.
The Standard Steamship Owners' Protection & Indemnity Association (Europe) Ltd.
The Steamship Mutual Underwriting Association Ltd.
The Steamship Mutual Underwriting Association (Bermuda) Ltd.
The Steamship Mutual Underwriting Association (Europe) Ltd.
Sveriges Angfartygs Assurans Forening (The Swedish Club)
The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd.
The West of England Ship Owners Mutual Insurance Association (Luxembourg)