

Rule 2 Section 11. Pollution.

Subject to the provisions of Rule 15 the liabilities, loss, damage, costs and expenses set out in paragraphs (A) to (E) below when and to the extent that they arise out of or are incurred in consequence of the discharge or escape from the insured vessel of oil or any hazardous substance, or the threat of such discharge or escape:-

- (A) Liability for loss, damage, contamination, costs and expenses.
- (B) Any loss, damage or expense which the Member incurs, or for which he is liable, as a party to any agreement in respect of pollution approved by the Committee, including the costs and expenses incurred by the Member in performing his obligations under such agreements.
- (C) The costs of any measures reasonably taken for the purpose of avoiding or minimising pollution or any resulting loss or damage together with any liability for loss of or damage to property caused by measures so taken.
- (D) The costs of any measures reasonably taken to prevent an imminent danger of the discharge or escape from the insured vessel of oil or any hazardous substance.
- (E) The costs or liabilities incurred as a result of compliance with any order or direction given by any government or authority for the purpose of preventing or reducing pollution or the risk of pollution, provided always that such costs or liabilities are not recoverable under the Hull Policies of the insured vessel.

PROVIDED THAT:-

- (a) If the discharge or escape from the insured vessel causes loss, damage or contamination to property belonging wholly or in part to the Member, he shall have the same rights of recovery from the Association as if such property belonged wholly to different owners.
- (b) Without prejudice to Rule 18 (Double Insurance) in the event that a Member is insured by any other Association or insurer against any or all the liabilities, loss, damage, contamination, costs and expenses set out in this Section or any other Section of this Rule 2, the Association shall not indemnify such Member to any extent whatever against any such liabilities, loss, damage, costs and expenses (or similar risks) up to the limits of such other insurance.

In the event that the limits of such other insurances are less than the Association's limits under the Association's Rules and Bye-Laws, the Association's limit of cover shall be restricted to the amount by which such liabilities, loss, damage, costs and expenses (or similar risks) exceed the limits of such other insurance and then only up to the Association's said limits and no pro-rating, allocation or replacement of cover shall be provided.

Furthermore, there shall be no recovery from the Association in respect of liabilities insured under any other insurance, nor shall the Association provide pro-rated or allocated cover, on the basis of double insurance or otherwise, nor will the Association's cover replace any other insurance where (for whatever reason) that other insurance does not or is not able to respond to a claim thereunder.

- (c) Where any liability for loss, damage, contamination, costs and expenses arises under the terms of any contract or indemnity and would not have arisen but for those terms, that liability is only covered if and to the extent that those terms have previously been approved in writing by the Managers.

(d) A Member insured in respect of a vessel which is a relevant ship as defined in the Small Tanker Owners Pollution Indemnity Agreement (STOPIA) shall, unless the Association otherwise agrees in writing, be a party to STOPIA for the period of entry of that vessel in the Association. Unless the Managers have agreed in writing or unless the Committee otherwise determines there is no cover under this Rule 2 Section 11 in respect of such vessel so long as that Member is not a party to STOPIA.

RULE 28. BAIL.

In no circumstances shall the Association be obliged to provide bail or other security to obtain the release of, or to prevent the arrest or attachment of an insured vessel or any other vessel, property or assets (including freight or monies due) in the same or associated ownership or management as the insured vessel, or to obtain the release of or prevent the arrest of any seaman of such vessels. The Association may agree to provide such bail or security in a particular case on such terms as it may consider necessary; if it does so agree, then subject to any variation of any of (a) to (e) below by specific agreement between the Association and the Member ~~to any special agreement between the Association and the Member~~:-

- (a) the Association shall be entitled to recover from the Member the expenses incurred in connection with providing such bail or security, except insofar as such expenses, if incurred by the Member, would be recoverable from the Association under Section 24 of Rule 2 (sue and labour);
- (b) the Association shall be entitled to a commission from the Member of 1% per annum on the amount of the bail or security provided, or such other sum as may be considered appropriate by the Managers;
- (c) the Member shall upon the Association agreeing to provide the bail or security, give to the Association an undertaking in the form set out in the Second Schedule (form B3);
- (d) the Member shall on such date or dates as the Association determines pay the Association the amount of any deductible which the Association determines may apply to any liability, loss, cost or expense in respect of which the bail or other security has been provided and in respect of which the Member may be insured;
- ~~(e)~~ whether or not the Member has given such undertaking, if the Association does provide bail or security then the provision of such bail or security shall be upon the terms as between the Association and the Member that the terms and conditions contained in that form of undertaking shall be binding on the Member as if such undertaking had been duly given by him to the Association.

The Association shall in no circumstances provide cash deposits.

RULE 47B. RELEASES.

- (1) Without prejudice to Rule 47A (Overspill Claims and Calls) and for the purposes of this Rule 47B only, Calls means Calls other than Overspill Calls.

If a Member ceases to be insured in respect of an insured vessel for any reason whatsoever, the Managers may at any time after termination of insurance of that vessel calculate and notify such Member of the estimated amount of his liability for further Calls which the Association may levy in respect of such vessel, according to the Release formula determined from time to time by the Committee, together with the amount of all other sums due by such Member to the Association.

- (2) In determining the Release formula to be used for estimating the amount of liability of Members for further Calls the Committee may take into account any contingencies and other special considerations which it may determine are relevant for this purpose (including but not limited to matters such as inflation and currency fluctuations).
- (3) The amounts calculated and notified by the Managers under paragraph (1) of this Rule shall be a Release and shall be payable by such Member ~~immediately or in such instalments and~~ on such date or dates as the Managers may require, in either case without deduction.
- (4) When a Member has paid his Release in full in accordance with paragraph (3) of this Rule he shall be under no further liability for any further Calls which the Association may levy after the date of such notification and shall have no right to share in any return of an excess or any part thereof which the Committee may thereafter determine in accordance with Rule 52(4).

- (5) The Managers may, at any time prior to payment of a Release in full in accordance with paragraph (3) of this Rule, recalculate such Release in accordance with the Release formula referred to in paragraph (1) of this Rule and notify the relevant Member thereof, whereupon such Member shall become liable to pay such recalculated Release in accordance with this paragraph (5), credit being given against such recalculated Release for any part or instalments of a Release paid to the Association in respect of such vessel.
- (6) Until a Member has paid his Release in full in accordance with paragraph (3) of this Rule, he shall remain liable to pay all Calls levied in respect of such vessel after the date of such notification, credit being given against such further Calls for any part or instalments of a Release paid to the Association in respect of such vessel.
- (7) A Member who may be entitled under the terms of the International Group Agreement 1999 or other similar agreement to make a request to the Association to pay such further Calls instead of a Release, shall:
 - (a) make such request in writing no later than seven days after the Managers have notified such Release to such Member,
 - (b) within 14 days of the Managers' request to do so, provide to the Association as security for such further Calls a bank guarantee on terms and from a bank acceptable to the Managers in the amount of such Release together with such Member's written undertaking on terms acceptable to the Managers to increase, within 14 days of a request by the Managers to do so, the amount of such bank guarantee to cover any increase in the Association's or the Managers' estimate of such further Calls.
- (8) Until a Member has both made a request as required by sub-paragraph 7(a) and provided a bank guarantee and undertaking as required by sub-paragraph 7(b), he shall remain liable to pay any Release or revised Release notified under paragraphs (1) and (5) of this Rule, and the Managers may recalculate such Release in accordance with the Release formula referred to in paragraph (1) and notify such Member thereof, whereupon he shall become liable to pay such recalculated Release in accordance with this paragraph (8), credit being given for any instalments of a Release received by the Association in respect of such vessel.
- (9) A Member shall have no right to dispute any Release save that, after payment thereof in full to the Association or after payment of all instalments required by the Managers, the Member shall be entitled to claim repayment thereof in whole or in part using the procedure set out in Rule 59.

The Second Schedule

COUNTER SECURITY TERMS (FORM B3)

NOTE: This undertaking should bear the date on which application for bail or security was made to the Association.

To: The West of England Ship Owners Mutual
Insurance Association (Luxembourg)

Dear Sirs

Vessel:

Voyage:

Date:

Casualty*/Incident*:

Bills of Lading*:

Nature of Claim:

We hereby request you (either personally or through your agents) to provide bail or other security for the above claim in the sum of _____ which bail or security is now being requested and/or is now required in order to avoid the arrest or detention of MV _____ or in order to secure her release from arrest.

In consideration of your providing such bail or security (hereinafter called "the bail or security") we hereby agree as follows:-

1. To pay immediately upon any liability being incurred by you or your agents under or in connection with the bail or security a sufficient sum to discharge such liability in full and generally to take all such measures as may be necessary to ensure that such liability is discharged in full without delay as soon as it may be incurred and that neither you nor your agents shall be required to make any payment whatsoever to discharge such liability save out of the funds (hereinafter called "the funds") which we shall have provided.

Provided that, subject to having first complied with the previous paragraph in all respects, we reserve our right to claim repayment of any sums we may pay hereunder which we believe are recoverable in accordance with your Rules and

2. To indemnify you and hold you harmless in respect of any loss or damage whatsoever which may result from your giving the bail or security and to reimburse to you at any time upon your demand any sum or sums of money which you may be called upon to pay under or in connection with the bail or security.
3. To pay on demand all your costs, expenses, charges and commission (as specified in your Rules) in connection with the provision of the bail or security.
4. To reimburse you immediately upon your written demand in respect of any claim(s) or judgements which you may pay under the bail or security together with all costs and expenses whatsoever that you have incurred in handling, processing or defending such claim or judgement. You may at your absolute discretion and without our agreement or authority: (a) defend, negotiate, settle, pay or otherwise dispose of any and all such claims, and (b) appeal or comply with any and all such judgements.

5. Without prejudice to the foregoing, in the event that, in breach of our obligation under Clause 1 above, we fail to provide the funds and you are obliged nevertheless to incur or, notwithstanding that you have no such obligation, you elect to incur any such liability, loss, damage, costs, expenses, charges or commission, then
 - (a) you shall be entitled to demand from us immediate payment of the amount of any such liability, loss, damage, costs, expenses, charges or commission;
 - (b) in the event that, in breach of our obligations hereunder, such payment is not immediately made, we will pay to you interest thereon or on any part thereof for the time being outstanding at the rate of 2 per cent per annum above the offered rate between prime banks in the London Inter Bank Euro-dollar Market for 3 month deposits (the rate being determined monthly on the first day of the appropriate month) until such payment is made.
6. That in relation to our obligations as to payment and indemnity to the Association hereunder all or any sums due from us to the Association shall be paid by us in full, without discount set-off or counter claim of any kind whatsoever.
7. That in addition to this letter of undertaking we shall upon your first demand provide you with such additional counter security as you may from time to time require. Should we fail to provide such additional counter security to you on such demand, we shall immediately pay to you the amount for which we hereby request you to provide the bail or security.
8. That, by providing any of the bail or security, you shall incur no obligation whatsoever to provide any further bail or security in connection with the above claim and that you may at any time in your absolute discretion cause the above bail or security to be cancelled or released.
9. That this agreement shall be governed by English law and the Association's Rules and that, without prejudice to your rights to institute proceedings in any other jurisdiction, the High Court of Justice in London shall have jurisdiction to hear and determine any action brought by you in connection herewith.

Yours faithfully

**Delete whichever is inapplicable.*