



JANUARY 5, 2011

CIRCULAR NO. 01/11

TO MEMBERS OF THE ASSOCIATION

Dear Member:

CHANGES TO THE RULES OF THE ASSOCIATION FOR THE 2011 POLICY YEAR

Please note that your Board of Directors has approved the following changes to the Club's Rules to take effect from February 20, 2011.

They derive from a continuing review of the language of the existing Rules and a desire to maintain good housekeeping in the interests of the clarity and efficacy of the terms on which Members are insured by the Club.

The changes are set out in the order in which current Rules appear in the Rule Book.

Class I: Protection and Indemnity Insurance

General Insurance Provisions (Rule 1.4)

An amended Rule 1.4.47 will be introduced, as follows:

Adjudication of Differences or Disputes

- 47 a If any difference or dispute shall arise between a Member and the Association and/or its agents (which shall include, without limitation, the Association's Manager and the Association's and the Manager's directors, officers and employees) concerning the construction of the Member's contract with the Association, or the insurance afforded by the Association under the contract, or any amount allegedly due from the Association to the Member, or any other difference or dispute, and the Member is dissatisfied with the Manager's final decision, the Member may submit a Notice of Appeal to the Association's Board of Directors asking it to adjudicate the difference or dispute. Such Notice of Appeal, if any, must be submitted by the Member through the Manager no later than sixty days after the Manager shall have provided its final decision to the Member regarding the difference or dispute.*
- b The procedures for adjudication by the Directors, which are incorporated into this Rule, are stated in Appendix A to these Class I Rules.*
- c No Member shall be entitled to maintain any action, suit or other legal proceedings against the Association and/or its agents upon any such difference or dispute unless and until the same has been appealed to the Association's Board of Directors and it shall have adjudicated the dispute and given its decision thereon. The Board of Directors' decision shall be*



made and published as soon as reasonably possible, but no more than six months after receipt of the last written submission permitted under Appendix A to these Class I Rules.

- d The decision of the Association's Board of Directors is intended to be final and binding. However, should the Member wish to appeal that decision, such appeal shall be brought only by suit against the Association in the United States District Court for the Southern District of New York and must be commenced no later than sixty days after the Board's decision has been provided to the Member.*

The relevant **Appendix A** is also attached hereto.

This amendment is to ensure that, to the maximum extent possible, the Club's adjudication procedures will satisfy a court's concerns regarding due process and thus minimize the Club's exposure to litigation with Members and the costs attendant thereon.

The following Sub-section 54 to Rule 1.4 will be formally incorporated in the 2011 Rule Book, having already been implemented by way of an earlier enabling Rule in Circular No. 20/10 of July 15, 2010.

Sanctions

- 54** *Whenever coverage extended by the Association would be in violation of any law applicable to the Association, including, but not limited to, the prohibitions and requirements of any economic, financial, or trade sanctions administered by any State or international or supranational organization, such coverage shall be null, void and of no effect. Any coverage hereunder provided by the Association shall not include or, as the case may be, shall by operation of law or pursuant to this sub-section, cease or shall have ceased to include, coverage for, or with respect to, any prohibited or unlawful entity, subject matter, vessel, or activity.*

In addition, a new Rule 1.4.55 will be added as follows:

- 55** *Without prejudice to the generality of the provisions contained in Rule 3, Section 1.5 of these Rules of Class I, in the event that the Association is unable to recover from any reinsurer (such term to include, but not be limited to, any association party to the Pooling Agreement, or any reinsurer subscribing to the Group Excess Loss Contract, or any other of the Association's reinsurers whatsoever) such reinsurer's contributions to any claim, loss or expense to which such reinsurance may pertain, and for which the Association would otherwise be liable to the Member under these Rules, by reason of the said reinsurer being prohibited from making such payment to the Association under any economic, financial, or trade sanctions administered by any State, or international or supranational organization having jurisdiction over the said reinsurer, the liability of the Association for such claim, loss or expense shall be limited to that sum which the Association is itself lawfully permitted to pay and shall not extend*

to any amount which it is unable to recover from any reinsurer for the reasons set out above.

The current Sub-section 54 will be renumbered Sub-section 56.

These additions are believed to speak much for themselves, and reflect matters to which Members' attention has already been brought during the year in the form of various Circulars. The changes have been made necessary by new legislation concerning Iran in particular enacted during 2010 in the United States and within the European Union.

Risks and Losses Excluded (Rule 3)

A new Sub-section 4 to Class I, Rule 3, Section 1 – Risks Excluded – will be added as follows:

Preclusion of/exclusion from cover of certain voyages involving Iran

4 *Notwithstanding anything to the contrary contained in these Rules or in the Association's Charter or By-Laws or in a Member's Certificate of Entry into the Association, and until and unless authorized by the Directors through any subsequent amendment of the Association's Rules, or as may be authorized in writing specifically by the Managers on a case-by-case basis, coverage hereunder shall not include or, as the case may be, shall terminate and cease to include, any voyage or service to or within Iran, including in Iranian territorial waters, of any vessel otherwise insured hereunder if such voyage and/or service is for or relates to the sale, exportation, provision, transportation or delivery to Iran*, directly or indirectly, of :*

*a. refined petroleum products (RPP)**;*

b. goods, services, technology, information or support:

*i. which could be used to enhance Iran's ability to import RPP;
or*

ii. intended for, or which could be used to facilitate, the maintenance or expansion of Iran's domestic production of refined petroleum products, including any item for use in, or which could be used in the construction, modernization, upgrade, or repair of petroleum refineries in Iran.

Any determination and decisions by the Managers with respect to the foregoing shall be conclusive and final.

** Iran means the territory of Iran, including its territorial waters; the Government of Iran; any entity (irrespective of where located) owned or controlled by the Government of Iran or from the territory of Iran (e.g., Iranian state enterprises such as IRISL); any agency or instrumentality of the Government of Iran; or any person (individual or entity) acting for or on behalf of any of the foregoing.*



**** Refined petroleum products mean diesel, gasoline, jet fuel (including naphtha-type and kerosene-type jet fuel), and aviation gasoline.**

This new Sub-section was originally incorporated in the Rules by way of Circular No. 20/10 of July 15, 2010 in consequence of the US CISADA legislation which came into force on July 1, 2010.

A further new Sub-section 5 to Class I, Rule 3, Section 1 – Risks Excluded – will also be added as follows:

Preclusion/exclusion of cover where reinsurers are subject to sanctions

- 5** ***Notwithstanding anything to the contrary contained in these Rules or in the Association's Charter or By-Laws or in a Member's Certificate of Entry into the Association, there shall be no cover for any liability, cost or expense to the extent that such liability, cost or expense is not recoverable from the Association's reinsurers (such term to include, but not be limited to, any association party to the Pooling Agreement, or any reinsurer subscribing to the Group Excess Loss Contract, or any other of the Association's reinsurers whatsoever) by reason of the fact that the provision of cover, the payment of any claim or the provision of any benefit in respect of such liability, cost and expense would expose the said reinsurer to any economic, financial or trade sanctions administered by any State, or international or supranational organization having jurisdiction over the said reinsurer.***

This new Sub-section reflects a new clause intended for incorporation in the International Group's Pooling Agreement and represents a general statement as to the exclusion of cover for claims irrecoverable from reinsurers by reason of their being prohibited from paying claims because of sanctions in the jurisdiction in which such a reinsurer is based.

The new Sub-section is intended to establish a general principle, reflecting International Group policy on the subject, and is to be read in conjunction with the terms of the new Rule 1.4.55. This is intended to apply where an intervening sanctions prohibition on a reinsurer makes it unable to pay the Club its proportion of a claim where such claim was initially recoverable in full from the Club.

Association Funding: Premiums and Calls (Rule 4)

A new Section 11 to Class I, Rule 4 will be added as follows:

Interest on premium and other sums due to the Association

- 11** ***Notwithstanding any provisions contained herein to the contrary, interest at the rate of 1% per month shall be payable on any premium or other sums due to the Association as from the due date of payment of such premium or other sums or from such later date as may be specified by the Managers.***

The current Section 11 to Rule 4 will be renumbered Section 12, and the subsequent sections' renumbering will follow accordingly.

In addition, in order to standardize the application of the Association's entitlement to charge interest on any premium or other sums due to the Association, Sub-section 48 (c) of Class I, Rule 1, Section 4 will also be amended to read as follows:

48 c The amounts due to the Association from a defaulting Member shall include, but not be limited to, unpaid premiums and assessments plus the Association's reasonable legal fees, collection expenses and other costs of recovering all amounts due from a Member or former Member plus interest at the rate specified in Rule 4, Section 11 of these Rules of Class I, or such higher or lower rate of interest as may be lawful in the jurisdiction in which the action is commenced.

In addition, the language of Rule 4, Section 1.5.ii will be amended to read as follows (removing the final half paragraph of the current wording):

ii. order an interim or final levy of supplementary premium to be made against Members insured on mutual premium terms, fix the due date or payment of such a levy, and otherwise provide for the collection thereof.

It is believed that the new wording contained in Section 11 to Class I, Rule 4, together with the amendments of other Rules consequent thereon, speak for themselves.

Cesser and Termination of Cover (Rule 5)

The current language of Class I, Rule 5 Section 1.1 will be amended to read as follows:

- 1 Unless otherwise agreed by the Managers in writing, any insurance in respect of a Member's interest in an insured vessel shall cease upon the happening of whichever shall be the earliest of the following events:***
- (a) the Member parting with or assigning his interest in the vessel whether by bill of sale or other formal document or in any other way whatsoever, the Association to allow a pro-rata daily return of premium for the unexpired term of the insurance with respect to said vessel;***
 - (b) the vessel becoming an actual total loss, or being accepted by the hull underwriters as an actual or constructive total loss, or where there is a compromise reached with hull underwriters that the vessel shall be considered to be an actual or constructive total loss;***
 - (c) a decision by the Managers that the vessel is to be considered or deemed to be an actual or constructive total loss;***
 - (d) in the case of an alleged constructive total loss of the vessel, the acceptance by hull underwriters of notice of abandonment, the tendering of which must be immediately notified to the Managers in writing;***



- (e) *the vessel being missing for ten days from the date it was last heard from, or from its being listed at Lloyd's as missing, whichever shall be the earlier;*
- (f) *a Member being in breach of any of the conditions set out in Rule 1.4.14 above and as provided for thereunder;*
- (g) *an insured vessel having failed to pass survey in accordance with the provisions of Rule 1.4.41 to 45 inclusive and as provided for thereunder.*

The current wording of the Club's Rule in regard to the cesser of cover in the event of an insured vessel's total loss is ambiguous as to circumstances where a vessel is demonstrably a total loss on any commercial analysis, but where cesser by way of technical total loss may not have been triggered, for example where hull underwriters have declined (as is habitually the case) to accept notice of abandonment.

In order to correct this anomaly – and the difficulties it can create for the Club in certain circumstances – an amendment to the wording of the current Rule is proposed, essentially permitting the Managers to trigger the cesser of cover by reference to commercial realities in appropriate cases.

Class II: Freight, Demurrage and Defense Insurance

The amendments set out above will also be formally incorporated into, and form an integral part of, the Rules of Class II to the extent that they are consistent with the subject and context of the said Rules of Class II.

Class III: Insurance For Charterers' Risks

The amendments set out above will also be formally incorporated into, and form an integral part of, the Rules of Class III to the extent that they are consistent with the subject and context of the said Rules of Class III.

There are a few very small typographical errors related to the renumbering of Rule sections and sub-sections in earlier years which will also be corrected in the forthcoming edition of the Rule Book for 2011.

It is hoped that the foregoing changes are clear, but if any Member requires any further explanation or comment, the Managers will be happy to respond.

Yours faithfully,


Joseph E.M. Hughes, Chairman & CEO
Shipowners Claims Bureau, Inc., Managers for
THE AMERICAN CLUB

APPENDIX A TO THE ASSOCIATION'S CLASS I RULES

PROCEDURES FOR BOARD ADJUDICATION OF DIFFERENCES OR DISPUTES

(CLASS I, RULE 1.4.47 REFERS)

Appendix A to the Association's Class I Rules

Procedures for Board Adjudication of Differences or Disputes

If a Member disagrees with the Manager's decision regarding any difference or dispute with the Association and/or its agents under or related to the Member's insurance contract or otherwise, the Member has the right to ask the Association's Board of Directors to adjudicate such difference or dispute, provided the Member submits to the Manager a written Notice of Appeal addressed to the Board of Directors no later than sixty days after the date the Manager has provided its final decision to the Member. (See Rule 1.4.47 a.)

The Member shall promptly prosecute its appeal in accordance with the following procedures and any orders of the Board of Directors. It is expected and required that the Member and Manager shall clearly and concisely state their respective positions and also fully comply with these procedures and all orders of the Board, including without limitation those regarding scheduling and production of documents relevant to the adjudication.

The Member, as the party seeking modification of the Manager's decision, has the burden of proving by a preponderance of credible evidence that it is entitled to such modification.

Adjudication Procedures

- 1. The Member's Notice of Appeal, which shall not exceed two pages, shall clearly and explicitly (a) identify each difference or dispute with the Manager's decision, (b) state the specific relief it seeks from the Board, and (c) state the reasons why the Board should grant such relief, including identifying each provision of the insurance contract the Member deems relevant to its appeal.***
- 2. The Association's Board of Directors meets four times each year, usually in the second week of March, June, September and November.***
- 3. After submitting its Notice of Appeal, the Member shall promptly ascertain the Board's meeting schedule from the Manager and, allowing time to comply with the submission schedule in paragraphs 4 – 7 below, request in writing that the Board adjudicate each difference or dispute during a specified scheduled meeting.***
- 4. The Member's and Manager's written submissions referred to herein shall be addressed to the Board of Directors and submitted through the Manager, as described below.***
- 5. At least eight weeks before the specified Board meeting, the Member or its authorized agent or attorney shall submit the Member's appeal in writing to the Manager by (a) stating in a letter or brief of no more than 20 pages, double spaced typed, all the Member's reasons why the Manager's decision regarding each difference or dispute should be modified by the Board and (b) submitting as lettered exhibits all evidentiary materials on which the Member relies for its position, including without limitation proof of the nature and amount of any loss, damage, or expense in dispute following the Manager's decision.***
- 6. At least four weeks before the Board meeting, the Manager shall submit to the Member or its authorized agent or attorney the Manager's written opposition to the Member's appeal (a) stating in a letter or brief of no more than 20 pages, double spaced typed, all the reasons why***

the Manager's decision should be affirmed and (b) submitting as numbered exhibits all evidentiary materials on which the Manager relies for its position.

7. At least two weeks before the Board meeting, the Member or its authorized agent may submit to the Manager a written reply to the Manager's opposition. Any reply shall be in the form of a letter or brief not exceeding 10 pages, double spaced typed and may include additional exhibits.

8. Upon receipt of the Member's reply, if any, the Manager shall promptly deliver the Member's and Manager's written submissions (including exhibits) to each Director, with notice of such delivery being sent to the Member or its agent or attorney.

9. Each Director shall review the Member's and Manager's written submissions.

10. For the purposes of adjudication, the Directors shall proceed in executive session. The Directors, having considered the submissions by the Member and the Manager and having conducted such discussions among themselves as they deem necessary, shall either (a) adjudicate the difference or dispute on the basis of the Member's and Manager's written submissions or (b) order the Member and/or the Manager to make further written submissions and/or provide relevant documents and/or information in writing to clarify any issues in dispute within times and page limits set by the Directors. Within times and page limits set by the Directors, the Member and Manager may reply to each other's additional written submissions. If necessary, the Directors may extend the schedule originally adopted pursuant to paragraphs 4 – 7, above, to allow additional time for these purposes. Failure to comply with any Directors' orders may be taken into account by the Directors in reaching their decision.

11. The written submissions including any exhibits shall constitute the record upon which the Directors' adjudicatory decision shall be based.

12. As soon as reasonably possible, and no later than six months after receipt of the last written submission, the Directors shall adjudicate the dispute and issue a written opinion stating the reasons for their decision. (See Rule 1.4.47 c.) The decision of a majority of Directors participating in the adjudication shall be the Board's final decision. In the event of a tie vote, the Chairman of the Board shall have a second vote or two votes, in total. Any dissents shall express the reasons therefor in writing, upon which the majority may comment. The Board's final decision and any dissents shall promptly be provided to the Member and the Manager.

Further Appeal

The decision of the Board of Directors is final and binding. (See Rule 1.4.47d.)

The Member's attention is invited to the following:

A. Under the contract of insurance, it is a condition precedent to commencing suit against the Association and/or its agents that the Member first appeal any difference or dispute between it and the Association and/or its agents to the Association's Board of Directors. (See Rule 1.4.47 c.)

B. Under the contract of insurance, a Member may appeal the Board's decision only by suit against the Association in the United States District Court for the Southern District of New York. (See Rule 1.4.47 d.)

C. Only New York law is applicable. (See Rule 1.4.49.)

D. Such suit, if any, must be filed within sixty days after the date the Board's decision is provided to the Member. (See Rule 1.4.47 d.)

E. As the Board decision is final, it may be modified by a court only upon a finding that the decision was arbitrary and capricious, that is, without reason, an issue on which the Member shall have the burden of proof.