



DECEMBER 2, 2014

CIRCULAR NO. 35/14

TO MEMBERS OF THE ASSOCIATION

Dear Member:

**REVISED HIMALAYA CLAUSE FOR BILLS OF LADING AND OTHER CONTRACTS**

Your Managers refer to Club [Circular 26/10](#) of September 29, 2010 which informed Members of the joint review of the Himalaya clause for use in bills of lading and other contracts undertaken by the International Group of P&I Clubs (IG) and BIMCO, and of the revised BIMCO/IG Himalaya clause wording recommended for adoption following that review. The current Circular should be read in conjunction with that mentioned above, which set out the key features, and intended effects, of the 2010 revision of the original Himalaya clause.

Since publication of the revised wording in 2010, there have been cases in the United States where claimants have filed suit against ship managers in order to avoid the COGSA defenses/limitations which protect shipowners and which expressly extend to a “servant, agent, direct or indirect sub-contractor or any other party employed by or on behalf of the Carrier”. Because this Himalaya clause wording did not expressly include vessel managers, claimants have argued (and in some jurisdictions, successfully) that vessel managers fall outside the scope of the Himalaya clause’s protections.

US legal advice has in the interim been sought to revise existing Himalaya clause wordings, with a view to amending the current clause so as expressly to include vessel managers.

On the basis of the advice received, and with the joint agreement of BIMCO, a further revised Himalaya clause wording has been produced, seeking to make it clear that the protection afforded under the clause is extended to vessel managers. Members are recommended to amend their contracts of carriage to incorporate this new clause. The revised wording is set out in the appendix hereto.

The clause may also be downloaded from the BIMCO website at [www.bimco.org](http://www.bimco.org). It is also available as an additional clause to subscribers of BIMCO’s online charter party editing system, *idea*.

It should be noted that most other jurisdictions would be likely to interpret the clause as currently drafted as extending to a vessel manager employed by the owner.

Yours faithfully,

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

## ANNEX TO CIRCULAR NO. 35/14 OF DECEMBER 2, 2014

### International Group of P&I Clubs / BIMCO Revised Himalaya Clause (November 2014)

- (a) For the purposes of this contract, the term “Servant” shall include the owners, managers, and operators of vessels (other than the Carrier); underlying Carriers; stevedores and terminal operators; and any direct or indirect servant, agent, or subcontractor (including their own subcontractors), or any other party employed by or on behalf of the Carrier, or whose services or equipment have been used to perform this contract whether in direct contractual privity with the Carrier or not.
- (b) It is hereby expressly agreed that no Servant shall in any circumstances whatsoever be under any liability whatsoever to the shipper, consignee, receiver, holder, or other party to this contract (hereinafter termed “Merchant”) for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on the Servant’s part while acting in the course of or in connection with the performance of this contract.
- (c) Without prejudice to the generality of the foregoing provisions in this clause, every exemption, limitation, condition and liberty contained herein (other than Art III Rule 8 of the Hague/Hague-Visby Rules if incorporated herein) and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled hereunder including the right to enforce any jurisdiction or arbitration provision contained herein shall also be available and shall extend to every such Servant of the Carrier, who shall be entitled to enforce the same against the Merchant.
- (d) (i) The Merchant undertakes that no claim or allegation whether arising in contract, bailment, tort or otherwise shall be made against any Servant of the Carrier which imposes or attempts to impose upon any of them or any vessel owned or chartered by any of them any liability whatsoever in connection with this contract whether or not arising out of negligence on the part of such Servant. The Servant shall also be entitled to enforce the foregoing covenant against the Merchant; and
- (ii) The Merchant undertakes that if any such claim or allegation should nevertheless be made, he will indemnify the Carrier against all consequences thereof.
- (e) For the purpose of sub-paragraphs (a)-(e) of this clause the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons mentioned in sub-clause (a) above who are his Servant and all such persons shall to this extent be or be deemed to be parties to this contract.