15 June 2005

TO ALL MEMBERS OF CLASS 3
PROTECTION AND INDEMNITY

The Britannia Steam Ship Insurance Association Limited

Managers
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Dear Sirs

International Convention for the Prevention of Pollution from Ships 73/78
MARPOL – Oily Water Separators

The MARPOL Regulations contain limits on the amount of oil which ships can legitimately discharge into the sea. Where discharge from bilge tanks is permitted it is a requirement that an Oil Discharge Monitoring and Control System together with Oil Filtering equipment (Oily Water Separator) be fitted so as to ensure that the oil content of any discharge does not exceed the maximum permitted under MARPOL (15ppm). Any residue or sludge should then either be incinerated or discharged into reception tanks in port. Owners are required to ensure compliance with these Regulations by inspection of log books, oil record books, incinerator logs and records of port discharges. There is an irreducible minimum of residue or sludge which a Superintendent should expect to see accounted for.

Port state authorities around the world are taking an increasingly hard line on ships which have or are suspected of having discharged oil at sea in breach of the MARPOL Regulations. The most active authorities are currently those in Germany, the USA and France and heavy fines can be imposed for breach of the Regulations.

It should be noted that Clubs in the International Group do not condone breaches of the MARPOL Regulations. Other than in cases of purely accidental discharge, P&I cover for fines resulting from breaches of MARPOL Regulations is only available on a discretionary basis. In such cases, the Members are required to satisfy the Directors that they took such steps as appear to the Directors to have been reasonable to avoid the offence. In any event, the Clubs do not cover any fines or other penalties imposed where the owner knew or ought to have known of the offence, and failed to take reasonable measures to prevent it.

This means that fines or penalties imposed under MARPOL, relating, inter alia, to the misuse of equipment referred to above, or resulting from a failure to comply with record-keeping obligations concerning the disposal and management of engine room and other waste, are not covered by the Clubs, unless the Directors in the exercise of their absolute discretion, agree reimbursement. Generally, the Club's Directors will only consider whether any reimbursement should be allowed after proceedings are finally concluded. Members' attention is drawn to Rule 19 (19) (E) Provisos (iv) and (v).

Whilst proceedings are under way, therefore, full counter security in the form of cash or bank guarantee will be required for any security given on behalf of the owner and, in addition, security will be required for any costs paid by the Club in defending such allegations. The Club can provide the names of law firms and other experts who may be able to advise and assist Members in the defence of such proceedings.

It is also the case that, in the USA, the United States Coast Guard (USCG) and the Department of Justice (DoJ) are extremely zealous in their investigation and prosecution of owners. In many cases, this prosecution may involve extensive use of certain legal powers given to them and there are particular areas in which the USCG and DoJ appear to take a very broad view of their powers.

The criminal investigation in the USA may be based on one or more of the following allegations:-

- violation of US pollution laws
- false records (official logs, oil record books …)
- false statements made to the USCG
- obstruction of justice (destruction of evidence)
- conspiracy

and may take one or more of the following forms:-

- document subpoena
- crew interview
- grand jury subpoena/appearance
- ship searches
- seizure of documents or equipment
- detention of the crew as material witnesses

These may lead to criminal or civil charges and fines.

These investigations can be extremely intimidating for the crew, and sometimes the mistake is made of trying to conceal innocent or minor regulatory breaches, inadvertently giving rise to more serious charges involving obstruction of justice. Very often there has been no breach of US pollution laws and DoJ prosecutions have been based on the production of false records.

The legislation most frequently used by the USCG and DoJ is:-

- The False Statement Act 18 USC 1001
- Conspiracy 18 USC 371
- Witness Tampering 18 USC 1505
- Obstruction of Justice 18 USC 1512
- Destruction of Evidence 18 USC 1519

Although these Acts provide for potentially large penalties, they do not provide for any arrangements concerning security. As a result, the authorities have recently turned to using the US version of MARPOL, the Act to Prevent Pollution from Ships 33 USC 1901 (APPS).

APPS only applies to acts committed within US jurisdictional waters (12 nautical miles) and provides that the US authorities may refer the matter to the flag state concerned or deal with it themselves. If dealt with by the US authorities under APPS, potential fines are a maximum of USD500,000 per charge or twice the gain obtained (or twice the loss caused) by the offender, whichever is the greater. As well as being the basis for the requirement of security, APPS also enables the U.S. authorities to offer very substantial rewards to those who report alleged violations; the so-called "whistleblower" legislation, which offers a very real temptation to crewmembers. Security may also be obtained under the provisions of the Clean Water Act, 33 USC 1321, but it also only applies to spills in US waters. US authorities may also invoke the Alternative Fines Act.

It should be noted that APPS will often not apply (because the offences are usually alleged to have occurred outside US jurisdiction) and that there is no provision in the other Acts for the provision of security. Under APPS, however, security does not have to include undertakings concerning the crew, acceptance of service of documents on behalf of owner, crew or ship by third parties or authentication of documents.

In other words, under APPS the USCG is only entitled to financial security and not to many of the other terms they frequently require before releasing ships from detention. There may however be pressing commercial reasons why Members may prefer to concede some of these points in order to obtain the earliest possible release of the ship.

So far as P&I cover is concerned, the position is therefore that, whilst proceedings are under way, Clubs are unable to provide security (except in exchange for counter security in the form of cash or by bank guarantee) for any such alleged offences and if the Club is asked to assist with the funding of costs incurred in defending criminal or civil proceedings, additional security will be required. Generally and with the exception of cases of purely accidental discharge, in relation to the offences discussed in this circular, cover will only be available as a result of an exercise of discretion by the Committee in favour of the Member at the conclusion of the case when all the facts are known.

Yours faithfully

Tindall Riley (Britannia) Limited
Managers

A similar circular will be sent by the other members of the International Group of P&I Clubs.

This Circular should not be placed in the Binder