

Circular No. 2/2011

March 2011

To the Members

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Dear Sirs,

Charterparty Clauses - Indemnity for Insured Risks

A number of the International Group Clubs have recently been made aware of a clause that some charterers have been seeking to incorporate into their charterparties, in particular in the container trades. For the reasons set out below the clause has the potential to prejudice an Owner's P&I cover and should not be agreed without considering the full implications of doing so.

There are different versions of the clause but the most common form is:

"Notwithstanding anything stipulated in this contract to the contrary, Owners are responsible for and shall keep Charterers free from all insured risks as covered by P&I."

These or similar words are designed to impose responsibility upon the owner for all P&I liabilities that would otherwise be liabilities falling on a charterer, even if the latter is wholly at fault, in effect requiring the owner to be the charterer's P&I insurer. The clause also bars recourse claims by the owner against the charterer, when the latter is or would normally be responsible for liabilities or losses incurred by an owner arising from an accident or casualty.

Members are advised to refuse this and similar clauses. Under an Owner's P&I entry liabilities incurred under a blanket indemnity and waiver of recourse of this kind are excluded. There is thus a considerable risk, if an owner agrees this or a similar form of clause, that he will be exposed to significant uninsured liability.

The Club Managers will be happy to advise further, and it is recommended that any member asked to agree this clause or a similar form of clause, should contact the Club before doing so.

All Clubs in the International Group have issued a similar Circular.

Any questions with regard to the above may be addressed to Helenka Leary or Mark Russell in Gard (UK) (Tel: + 44 20 7444 7200).

Yours faithfully
GARD AS



Claes Isacson
Chief Executive Officer