



## STEAMSHIP MUTUAL

To the Members

January 2007

Dear Sirs,

### Tanker Charterparties - Oil Pollution Addendum

We refer to the Club's circular, reference B267 dated May 1997 which, following the termination of the TOVALOP Agreement, notified the Members of the consequent unacceptability of the TOVALOP charterparty clause with effect from 20<sup>th</sup> February 1997.

Under the old TOVALOP clause recommended by the Clubs, owners warranted that their vessels were participating tankers in TOVALOP and gave the Charterer the right in certain circumstances to take measures at the owner's expense in response to an oil spill from the tanker or threat thereof. The granting of this right was consistent with the whole voluntary compensation system set up by the TOVALOP and CRISTAL agreements. On the termination of the TOVALOP agreement it was no longer appropriate for the Charterer to have such an express right, since it was incompatible with a number of the provisions of the 1969 Civil Liability Convention (CLC), 1971 Fund Convention and the protocols thereto

It has come to our attention that some oil majors have recently attempted to reintroduce clauses based on the wording of the old TOVALOP charterparty clause. These clauses authorise the Charterer to take steps to prevent or minimise pollution from the tanker on behalf of the Owner and at the Owner's expense, and may expose the Owner to pay clean-up or threat removal expenses which may not be recoverable from the Club.

These clauses could effectively allow the Charterer to circumvent the provisions of the Convention on Civil Liability for Oil Pollution 1992 (CLC). Under CLC claimants, including the Charterer, have a right of recovery against the ship owner for pollution claims including the cost of preventative or clean-up measures, subject to certain constraints. If the total of acceptable claims exceeds the CLC limitation amount, the compensation received by claimants will be reduced proportionately, and in the meantime payment to claimants may be delayed whilst the total of acceptable claims is established. However, these clauses entitle the Charterer to obtain a full and immediate reimbursement of his expenses no matter what the total of all CLC claims may be.

Furthermore, the Owner's liability under CLC is always financially limited; no such proviso is included in these clauses and whilst some clauses state that their provisions are not in derogation of other rights the Charterer or Owner may otherwise have or acquire by law or any international convention, this is a somewhat opaque wording which may not be sufficient to limit the Owner's liability to the Charterer. The Rules of the Association provide that an Owner should not assume responsibility under contract for claims in respect of which, under applicable law, he would otherwise be entitled to limit liability. Should the Owner be liable under the oil majors' clause for expenditure greater than the CLC limitation amount, the excess amount may not be recoverable from the Club.

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The Club recommends that members do not accept these clauses. However, there is no objection to members allowing the Charterer to take preventive measures at his own expense, or to the Owner confirming that that he will remain a member of ITOPF. An alternative clause including these provisions is attached herewith. The clause also makes clear that if there is a requirement under applicable law for provision of a Certificate of Entry in a P&I Club, this is to be provided by the Owner, not the Charterer. The clause is approved by the International Group clubs and supported by BIMCO and Intertanko.

#### **Oil Pollution Clause**

1. Owners undertake
  - (a) that the Vessel will throughout the period of this charter be owned by a member of the International Tanker Owners Pollution Federation Limited, and
  - (b) that they will provide a Certificate of Entry in a P&I Club for production on board the vessel if required under applicable law or by the relevant authorities.
2. When there is an actual or threatened escape or discharge of Oil from the vessel which causes Pollution Damage or which creates a grave and imminent danger of such Damage, Charterers shall upon notice to the Owners or Master have the right (but not the obligation) if permitted under applicable law and by the relevant authorities, to
  - (a) place a representative on board the Vessel to observe the measures being taken to prevent or minimise Pollution Damage, and
  - (b) provide advice, equipment or manpower and undertake such other measures as are reasonably necessary to prevent or minimise such Pollution Damage, at Charterers' risk and expense and subject to the approval of the Owners (which shall not be unreasonably withheld).
3. Nothing in this clause shall prejudice Owners' or Charterers' rights to claim compensation under any applicable law.
4. For the purposes of this Clause, the meaning of the terms "Oil" and "Pollution Damage" shall be as defined in the International Convention on Civil Liability for Oil Pollution Damage (CLC) 1992, except where Pollution Damage takes place within the territory of a state which is party to CLC 1969, when the meaning shall be as defined in CLC 1969.

Yours faithfully,

THE STEAMSHIP MUTUAL UNDERWRITING  
ASSOCIATION LIMITED