



STEAMSHIP MUTUAL

To the Members

February 2009

Dear Sirs,

CHARTERERS' TERMS OF ENTRY FOR 2009

The Managers are pleased to announce that a new set of terms applicable to charterers' entries in the Club have been developed and may be viewed on the Club's website: www.simsl.com. The intention is that these terms will apply to all chartered entries placed with the Club and which incept or renew on or after noon on 20th February 2009.

In developing these new terms, the Managers have attempted to ensure consistency with the principles of cover enshrined in the existing Class 1 P&I Rules of the Club. These self-contained terms have been specifically drafted for charterers' entries and consolidate in a separate cover the conditions upon which charterer members will be entered for class 1 P&I liabilities and, if such cover is requested, DTH and Time Charterers' Bunkers risks. The result is a set of dedicated terms which clearly set out the scope and extent of cover available to charterers. FD&D cover, when provided to charterers, will continue to be available upon the terms set out in the Association's Class II Rules, as at present.

The format, and to a substantial extent, the substance, of these Charterers' terms mirrors those of the Owners' cover under Class 1. The numbering is different because there are rules in the Owners' terms which have no application to a Charterer's entry. Thus the equivalent of Rule 25 in the Owners' Rules (setting out the liabilities which are covered by the Club), becomes Clause 21 in the Charterers' terms. The order of rules, however, is broadly the same.

For purposes of comparison, two appendices appear after the new terms on the Club's website:

Appendix 1, which lists those rules which are identical or substantially unchanged; and

Appendix 2, which lists those Rules in the Owners' P&I cover which are absent from the Charterers' terms, because they have no application to Charterers' cover, for example, the overspill claims provisions.

This Circular highlights a number of the more important areas in which the new terms applicable to Charterers' cover differ from the P&I Rules which apply to Owners' cover.

1. Clause 2 - Definitions

The definition of "*Owner*" includes any party in a charterparty chain above the Member.

2. Clause 3 - Scope of Cover

Clause **3 v** incorporates at sub-paragraphs **a** to **c** the three factors which govern the availability of cover and which have their origins in the Pooling Agreement. The first of these requirements is that a claim arises out of events occurring during the Vessel's period of entry. Cargo can arrive on the quay side prior to the vessel's delivery into charter or remain there, undelivered, after the vessel has sailed and the charter has terminated. In some circumstances a charterer could be held liable for cargo damage during either of these periods. The wording, therefore, provides an extension of cover subject to the requirements set out in Clause **3 v c** proviso **(i) (a)** and **(b)**. In essence, what will not be covered in such circumstances is prolonged storage.

B. 484

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3. **Clause 4 ii**
Makes provision for open covers.
4. **Clause 11 – Period of Cover**
Charterers' entries do not necessarily incept on the 20th February so this Clause makes provision for such entries either running for consecutive 12 monthly periods starting at the commencement date or running until the 20th February following, then for 12 monthly periods from that date, if that is what has been agreed.
5. **Clause 13 – Recovery**
This broadly mirrors the P&I Rule but Clause **13 v** limits the Club's liability to the amounts appearing in the Certificate of Entry, or if no such figure appears, to US\$10 million. This is a default limit applicable in the absence of other agreement.
6. **Clause 16 – War Risks**
Ordinarily, Charterers' entries are written on the basis that war risk cover is integral. The relevant provisions, therefore, have been drafted on the basis of positive cover, subject to the terms set out, rather than an exclusion of cover which is then written back in. However, the nature of the cover provided is broadly similar to that provided to Owners pursuant to the War Risk Extension Clause, save that this Clause **16** also provides for war risk damage to hull cover.
7. **Clause 17 – Equipment and Freight and Other Risks**
This has been re-drafted to provide that various liabilities (damage to the vessel, loss of freight, hire or demurrage) which are excluded under an Owners' entry, may be recovered when a Charterer has taken out DTH cover.
8. **Clause 20**
In addition to direct claims, claims against charterer Members may arise by way of indemnity, up or down a charterparty chain. The provisions in this clause apply the existing principles contained in the rules governing P&I entry, which determine when cover is available for liabilities arising under contracts and indemnities. This clause makes clear that charterparties on standard forms are acceptable. However, amendments and/or additional provisions which are particularly unusual or onerous, and which materially alter the usual allocation of liabilities to the detriment of charterers, will not be covered unless by agreement.
9. **Clause 21 – P&I Risks**
One of the primary differences in a Charterers' cover, when compared to an Owners' cover, lies in the availability of hull insurance. An Owner's P&I cover is written on the basis that he will, of course, have hull cover. A Charterer will not, and Charterers' P&I risks are generally written upon the basis that there will be no coverage for any risks in respect of the hull of the chartered vessel.

Thus in the case of **Collision liability**, which is covered under Clause **21 v**, liabilities, costs and expenses relating to loss of, or damage to, the entered vessel are excluded. These are covered under DTH cover, if taken out, on a 4/4ths basis. The collision liability section covers liabilities in respect of the other ship and its cargo on the same basis as for an Owner, plus loss and damage to cargo on the entered ship, provided that it is entered for cargo cover.

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10. Clause 22 – Damage to Hull

Many Charterers wish to be insured against liability for loss of or damage to the vessel(s) they employ, and thus require DTH cover, which is available under these terms, as it always has been, when requested by the Member as an additional cover. There is clearly no equivalent in the Owners' rules.

Section **i** of this Clause **22** covers not only the Charterer's liabilities for physical loss of or damage to the entered ship, its equipment etc., (but excluding that equipment on board owned by the Member), but also hire, demurrage and bunker consumption for which the charterer is liable whilst the vessel is incapable of use in consequence of the damage.

Liabilities for damage to the entered vessel incurred as a result of towage are also recoverable.

Section **iii** of Clause **22** provides cover for Time Charterers' bunkers, the amount recoverable in the case of partial loss or damage being the proportion of the declared value so lost or damaged.

11. Clause 24 - Classification and eligibility of ships for chartered entry

The survey rule has been modified to accommodate the position of Charterers and the degree of control they should retain over the quality and compliance of the vessels they charter.

Clause **24 i a** provides that on entry, the chartered ship must be classed by an approved classification society, and the registered owners and any disponent owner from whom the member has chartered the ship, shall be entered for full P&I cover with an approved insurer.

Clause **24 i b** requires certain minimum charterparty warranties, which are usually included in any event, regarding the ship and its registered owners, and their respective compliance with statutory requirements of the State of the Ship's flag and those of the ISM and ISPS Codes.

In the interests of ensuring that the standard of entered tonnage is maintained, the Managers may require a vessel to be submitted for survey, and may also require the Member to procure the repair of defects identified to the entered vessel, for example where a vessel's hatch covers are identified as being defective following a cargo damage survey.

Yours faithfully,

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