

## **IG/BIMCO Revised Himalaya Clause**

July 2009

Bimco and the International Group of P&I Clubs have recently worked together on updating the wording of the standard "Himalaya" clause for bills of lading, and have now released an agreed revised wording, (set out below), to be used as appropriate, as a recommended template for adoption by Members into their bills of lading.

The revised clause combines legal advice from both the UK and USA.

Its objective is to provide adequate protection for carriers and their agents, contractors and sub-contractors (servants) against claims brought directly by cargo interests (often in tort) against the carriers servants, in relation to their performance under a contract of carriage. The objective of the revised clause is to ensure that the carriers servants are either exempt from liability to the extent allowed by the relevant law, or if not so allowed, that they may take advantage of all of the defences which the carrier has under the bill of lading.

An important feature of the revised wording is the inclusion of a "circular indemnity" . Under the clause the shipper (merchant) undertakes that no claim shall be made against any servant of the carrier, but that if a claim is so made, the merchant undertakes to indemnify the carrier against the consequences.

The managers will be pleased to assist Members with any enquiries they may have relating to the incorporation of the revised Himalaya clause into their bill of lading terms.

The revised wording is as follows;

### **IG/BIMCO REVISED HIMALAYA CLAUSE**

#### **Himalaya Clause**

- (i) It is hereby expressly agreed that no servant, agent, direct or indirect sub contractor or other party employed by or on behalf of the carrier, or whose services or equipment have been used in order to perform this contract (such persons so employed, or whose services or equipment have been used, hereinafter termed "Servant") shall in any circumstances whatsoever be under any liability whatsoever to the shipper, consignee, receiver 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 its part while acting in the course of or in connection with the performance of this contract.
- (ii) 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.

- (iii) (a) 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
- (b) The Merchant undertakes that if any such claim or allegation should nevertheless be made, he will indemnify the carrier against all consequences thereof.
- (iv) For the purpose of sub-paragraphs (i)-(iv) 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 (i) above who are his Servant and all such persons shall to this extent be or be deemed to be parties to this contract.