

**CIRCULAR REF: 2018/028**

**CIRCULATED TO ALL MEMBERS, BROKERS AND DIRECTORS  
ATTENTION INSURANCE DEPT**

**10 OCTOBER 2018  
AD**

## **CONTINUING WARRANTY OF SEAWORTHINESS**

We are aware that, from time to time, Members are offered contractual terms with counterparties that require shipowners to provide a continuing warranty of seaworthiness for the entire duration of the voyage. Should this situation arise, we would urge Members to exercise caution before entering into such contract terms since such a warranty could prejudice their P&I cover.

Under Rule 19(17) Proviso (A), cover for cargo risks is conditional upon the Member not contracting on terms less favourable than the Hague Visby Rules (HVR). Article III paragraph 1 of the HVR provides that the carrier must, before and at the beginning of the voyage, exercise due diligence to:

- make the ship seaworthy;
- properly man, equip and supply the ship; and
- make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

Under the HVR, “exercising due diligence” means taking all reasonable precautions to see that the vessel is fit for the voyage contemplated. The carrier is not obliged to give an absolute guarantee of seaworthiness and the ship need only be seaworthy at the commencement of the voyage.

If a cargo owner can show that their loss was caused by a failure of the carrier to exercise due diligence to make the vessel seaworthy before and at the commencement of the voyage, the resulting loss will fall under Club cover. If, however, the loss was shown to have been caused by some event which affected the vessel’s seaworthiness only during the voyage then, assuming the due diligence test in Article III paragraph 1 is passed, the carrier would not be liable to the cargo interests under Article III paragraph 1 of the HVR.

A continuing warranty of seaworthiness throughout the voyage alters that position and would make the carrier potentially liable for any and all events affecting the vessel’s seaworthiness during the entire voyage. This would represent terms less favourable than the HVR and so place any resulting claims outside Club cover.

Members are therefore advised to give serious consideration to the potential ramifications on cover of contracting on terms that give a continuing warranty of seaworthiness and speak to their usual contacts at the Club for guidance before fixing on this basis.

## **CIRCULAR**

THE NORTH OF ENGLAND P&I ASSOCIATION LIMITED 100 The Quayside, Newcastle upon Tyne, UK, NE1 3DU  
Telephone: +44 (0) 191 2325221 Fax: +44 (0) 191 2610540 [www.nepia.com](http://www.nepia.com)

The North of England Protecting and Indemnity Association Limited. Registered in England No. 505456. Registered office address above.

Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority.

Hong Kong: Room 3011 COSCO Tower, 183 Queen’s Road, Central, Hong Kong Telephone: +852 25446813 Fax: +852 25424424.

Greece: 5-7 Aghiou Nikolaou, GR 185 37 Piraeus, Greece Telephone: +30 210 4283038 Fax: +30 210 4280920.

Singapore: 80 Anson Road, #26-04 Fuji Xerox Towers, Singapore 079907 Telephone: +65 64110160 Fax: +65 62240160.

Tokyo: Shinkyobashi Building, 6th Floor, 2-8-8 Kyobashi, Chuo-ku, Tokyo, Japan, 104 – 0031 Telephone: +81 (3) 5159 5373 Fax: +81 (3) 5250 0003.

North of England Marine Consultants (Shanghai) Ltd Co.: Room 11D, Phase B, Shinmay Union Building, 506 Shangcheng Road, Pudong, 200120, Shanghai, China Telephone: +86 21 6087 5988 Fax: +86 21 6087 6198.

All Clubs in the International Group have issued a similarly worded circular.

ADRIAN DURKIN  
DIRECTOR (CLAIMS)  
The North of England P&I Association Limited