



# Update

**To:** All Clients

**Date:** December, 22 1999

**From:** Neil Clemens, President

**Pages:** 3 in all

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## Cover for Response Costs

Recent requirements in the State of California whereby all ship operators are to appoint a Qualified Individual (QI) who is fully authorised to commit clean-up resources and costs on the owner's behalf, give rise to the possibility that a P&I insurer might decline to reimburse an owner for the full costs incurred by the QI on his behalf, if the P&I insurer takes the view that the expenditure was unreasonably or unnecessarily incurred. SIGCo has now decided to broaden its coverage by incorporating this risk up to \$250,000 per incident, provided that the owner is not in breach of his obligations to SIGCo under the Standard Terms and Conditions. The new cover is set out in the amended Clause 3 of SIGCo's Standard Terms and Conditions effective from 28 December 1999, a copy of which is attached.

Although, under the new amendment, SIGCo can pay a claim up to \$250,000 directly to the owner if his P&I insurer declines reimbursement, SIGCo's liability otherwise remains that of a guarantor under OPA 90 or CERCLA and it is important to note that SIGCo is not offering any cover in respect of state laws, whether relating to response arrangements, state COFRs or any other liabilities under state law. SIGCo's liability under the new amendment is confined to response costs which could be claimed under the federal COFR, either directly by the responder or by the owner by means of a credit against the federal COFR limit. In this way, SIGCo's exposure will continue to be limited to the relevant COFR limit for the ship concerned.

I believe that this latest initiative is a further demonstration of our commitment to add value to our members and reflects the desires of the ship-owner representatives of SIGCo's Board of Directors and Trustee Board for the company to seek ways in which we can respond to and serve our members' interests.

This circular, along with the changes to SIGCo's Terms and Conditions will also be posted on our web site at [www.cofr.com](http://www.cofr.com). Other information available in the web site was detailed in my circular dated 17 November.



**The Shipowners Insurance and Guaranty Company Ltd.**

P.O. Box HM 3398, Hamilton HM PX, Bermuda. Telephone: 1-441-298-0600; Fax: 1-441-298-0610

**3. INDEMNIFICATION**

**3.1** The Applicants shall on demand jointly and severally indemnify SIGCo and hold it harmless in respect of each of the items set forth in Clauses 3.1.2 (a) through (e) below **and any payments under Clause 3.1.2 (f) below reimbursed to the Applicants by SIGCo,** if at any time during the period of the Agreement any of the Applicants shall be in breach of the obligations set forth in the representations, warranties and undertakings in Clause 1.

**3.1.1** In the event there is no breach of the obligations set forth in the representations, warranties and undertakings in Clause 1, the Applicants shall on demand jointly and severally indemnify SIGCo and hold it harmless in respect of the items set forth in Clause 3.1.2 (a) through (e) below **and any payments under Clause 3.1.2 (f) below reimbursed to the Applicants by SIGCo.,** provided, however, that the indemnity required by this Clause 3.1.1 shall not apply to, and SIGCo undertakes to be responsible for:

- (i) any payments under Clause 3.1.2 (a) below;
- (ii) any Costs and Expenses under Clause 3.1.2 (c) below **and**
- (iii) **Response Costs incurred by the Applicant under Clause 3.1.2 (f) below,**  
**for which payments under (i) – (iii) above** any Applicant is not entitled to be indemnified pursuant to any insurance which the Applicant is required to obtain under Clause 1.2 other than by reason of the application of any deductible or excess to be borne by the Applicant under the terms and conditions of such insurance.

**3.1.2** Items referred to in Clause 3.1 and Clause 3.1.1:

- a Payments under the Guaranty – the amount, or the aggregate of all amounts, paid by SIGCo under the terms of the Guaranty;
- b Interest on Guaranty Payments – interest in respect of amounts paid under the Guaranty by SIGCo, as in 3.1.2 (a) above, calculated at an annual interest rate of LIBOR plus 200 basis points on such amounts from the date of payment by SIGCo to the date of reimbursement by the Applicants or the Club;
- c Costs & Expenses – all claims, demands, proceedings, liabilities, taxes, losses, costs, interest and expenses of every kind (including, but not limited to, taking or defending legal action, whether or not liability under the Guaranty was actually established on the part of SIGCo, and reasonable lawyer’s fees and expenses) (hereinafter together referred to as “Liability Items”) which may be made or brought against, or incurred by SIGCo in any country, in relation to:

**Response Cost Coverage:**  
**Amendments to SIGCo Standard Terms and Conditions, Effective 28<sup>th</sup> December, 1999**

Page 2 of 2

- (i) the issue and performance of the Guaranty; or
  - (ii) any action taken by any person against SIGCo under or in connection with the Guaranty; or
  - (iii) any other event, matter or question which occurs or arises at any time and which has any connection with, or any bearing on, the Guaranty or any transaction relating to the Guaranty, or any Vessel covered by the Guaranty, other than Liability Items which are shown to have been caused mainly and directly by the gross negligence or the dishonesty of SIGCo or its officers or employees;
- d Other Liabilities – any other liabilities arising out of or in connection with the occurrence or continuance of any breach of any provision or other default of any Applicant under or in connection with the Agreement, including the due payment of Premiums;
- e Interest for Late Payment – upon failure (for whatever reason) by the Applicants to pay any amount due under the Agreement within 10 days of the date of demand, interest shall be payable calculated at an annual interest rate of LIBOR plus 400 basis points on such amounts outstanding from the demand date until receipt by SIGCo of the amount outstanding.
- f Response Costs – payments not exceeding US\$250,000 in total made by the Applicants to contractors responding to an Incident (as defined under the Guaranty) or conducting removal and/or clean up operations following an Incident in compliance with the Applicants’ obligations under the laws of any state of the United States, provided always, and on condition that, such payments qualify to reduce SIGCo’s obligations under the Guaranty.**

And also:

- 3.4 Save for Response Costs incurred by the Applicants under Clause 3.1.2.(f) above for which SIGCo undertakes to be responsible under Clause 3.1.1 above,** neither the Applicants nor any owner, operator or charterer of the Vessels not being a party to the Agreement, shall, under any circumstances, be entitled to claim against SIGCo for any liabilities under any law, statute or regulation, whether of the United States or any other jurisdiction, including, but not limited to, OPA1990 and CERCLA and the regulations promulgated thereunder or under any law or regulation of any other country or legal subdivision thereof.