

1984 年協會間紐約商品交易協議

(1984 年 5 月修訂)

INTER-CLUB NEW YORK PRODUCE EXCHANGE AGREEMENT

(As amended May, 1984)

1984 Inter-Club NYPE Agreement

PREAMBLE:

Memorandum of Agreement (hereinafter referred to as “the Agreement”) as to the apportionment of liability of cargo claims arising under the New York Produce Exchange Charter between

Assuranceforeningen Gard,
Assuranceforeningen Skuld,
The Britannia Steam Ship Insurance Association Limited,

The Liverpool and London Steamship Protection and Indemnity Association Limited,
The London Steam-Ship Owner’s Mutual Insurance Association Limited,
Newcastle Protection and Indemnity Association,
The North of England Protecting & Indemnity Association Limited,

The Standard Steamship Owners’ Protection and Indemnity Association Limited,
The Standard Steamship Owners’ Protection and Indemnity Association (Bermuda) Limited,

The Steamship Mutual Underwriting Association Limited,
The Sunderland Steamship Protecting & Indemnity Association,

Sveriges Angfartygs Assurans Forening,
The United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited and
The West of England Ship Owners Mutual Protection and Indemnity Association (Luxembourg)

(hereinafter together referred to as “the parties”)

前言：

就有關紐約商品交易傭船契約所生貨物求償之責任區分，下列各締約會員間簽訂協議備忘錄（以下稱為『本協議』）：

Assuranceforeningen Gard,
Assuranceforeningen Skuld,
The Britannia Steam Ship Insurance Association Limited,

The Liverpool and London Steamship Protection and Indemnity Association Limited,
The London Steam-Ship Owner’s Mutual Insurance Association Limited,
Newcastle Protection and Indemnity Association,
The North of England Protecting & Indemnity Association Limited,

The Standard Steamship Owners’ Protection and Indemnity Association Limited,
The Standard Steamship Owners’ Protection and Indemnity Association (Bermuda) Limited,
The Steamship Mutual Underwriting Association Limited,

The Sunderland Steamship Protecting & Indemnity Association,

Sveriges Angfartygs Assurans Forening,
The United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited and
The West of England Ship Owners Mutual Protection and Indemnity Association (Luxembourg)

(以上稱為協議人)

(1) APPLICATION AND INTERPRETATION OF THE AGREEMENT.

Subject to the under-mentioned conditions the formula as set forth in Clause 2 shall apply in respect of Charters on the New York Produce Exchange form entered into after the 1st June 1984.

(1) 本協議之適用及解釋

於適用下列條款情況下，第 2 條所規定之定則適用於依 1984 年 6 月 1 日後所生效之紐約商品交易所格式所簽發之有關租傭船契約。

- (i) It shall be a condition precedent to settlement under the Agreement that the cargo claim, including any legal costs incurred thereon, shall have been properly settled or compromised and the cargo carried under a bill or bills of lading incorporating the Hague or Hague-Visby Rules or containing terms no less favourable. Ex gratia settlements made for business or other reasons where there is no legal liability to pay the claim shall be borne in full by the party by whom the payment is made and for the purpose of this Agreement no regard shall be had to such payments.
- (ii) (a) For the Agreement to apply, the cargo responsibility clauses in the New York Produce Exchange Charter must not be materially amended. A material amendment is one which makes the liability for cargo claims, as between Owners and Charterers, clear. In particular the addition of the words "and discharge" in Clause 8 shall not be deemed to be a material amendment.
- (b) However the addition of the words "and responsibility" with reference to the words "under the supervision" in Clause 8 together with the addition of the words "cargo claims" in the second sentence of Clause 26 shall render the Agreement inoperative. The addition of these two amendments, or the addition only of the words "cargo claims" in Clause 26, without any other material provision in the Charter shall mean that Owners shall bear all cargo claims subject to Charterers' contribution under the Berth Standard of Average Clause/Charterers' Contribution Clause (1971), if applicable.
- (c) If the only material amendment is the addition of the words "and responsibility" with reference to the words "under the supervision" in Clause 8, it is agreed by the parties hereto that it shall mean that the apportionment of cargo claims as set out in Clause 2 shall be varied in the following manner: –
- Claims for loss of or damage to cargo due to unseaworthiness and claims for condensation damage resulting solely from improper ventilation
100% Owners
- Claims for damage (including slackage/ullage) due to bad stowage or handling, and claims for condensation damage resulting otherwise than from improper ventilation
50% Owners
50% Charterers
- Except as provided in the second paragraph of Clause (2), short delivery claims (including pilferage and claims for overcarriage)
50% Owners
50% Charterers
- (iii) The Agreement shall apply regardless of the place of Arbitration or the legal forum and whether or not the Charter contains a Clause Paramount incorporating therein the Hague or Hague-Visby Rules and/or the Berth Standard of Average Clause (otherwise known as the General
- (i) 貨物求償，包括因此所發生之任何法律成本，應已適當地解決或和解且於某載貨證券下運載貨物應併入海牙規則或海牙威士比規則或包含此規則更為有利之條款為依本協議解決之先決條件。為商業或其他理由所為之通融性解決而對此並無應賠付該求償之法律責任者，應全部由作出付款之人承擔，且為本協議之目的，是不管這類賠款。
- (ii) (a) 為本協議之適用，於紐約商品交易所租傭船契約內之貨物責任條款不得有任何實質性地修改。任何實質性地修改應使船舶所有人及租傭船人間之有關貨物求償責任劃分清楚。特別是於條款八增加『及卸載』之字句不應被視為實質性地修改。
- (b) 無論增加『及責任』之字句與否，關於第 8 條之『於監督下』字句及於第 26 條第二句加上『貨物求償』之字句將使本協議無效。此二修改之增加，或僅於第 26 條增加『貨物求償』之字句，於本租傭船契約下無任何其他重要條款應意指船舶所有人應依據靠泊標準海損條款/租傭船人分擔條款 (1971) (於適用時) 下之租傭船人分擔以負擔所有貨物求償。
- (c) 如唯一實質性修改為增加『及責任』之字句並參考第 8 條『於監督下』字句，契約當事人於此同意本協議第 2 條有關貨物求償之分擔已應依下列方式改變之：
- 因不適航所致對貨物滅失或毀損之求償及完全因不當通風所貨物凝結之求償，
100% 船舶所有人
- 因不良堆載或搬移...所致損害 (包括鬆塌及損耗) 之求償及非因不當通風所貨物凝結求償，
50% 船舶所有人
50% 傭船人
- 除第 2 條第 2 項規定外...交貨短少求償 (包括盜竊) 及溢載之求償，
50% 船舶所有人
50% 傭船人
- (iii) 本協議適用無關仲裁地點或法定管轄地及本租傭船契約是否規定某併入海牙或海牙威士比規則及靠泊標準海損條款 (另稱為一般標準求償條款) / 租傭船人分擔條款 (1971) 之派拉蒙條

Standard of Claim Clause)/Charterers' Contribution Clause (1971).

- (iv) Any claims pursued under this Agreement by or on behalf of either Charterers or Owners should be notified to the other party in writing as soon as possible but in any event within two years from the date of discharge or the date when the goods should have been discharged, failing which any recovery shall be deemed to be waived and time barred. Such notification should record bill of lading details and the nature and amount of the claim.
- (v) Where the Charter contains the Berth Standard of Average Clause/Charterers' Contribution Clause (1971), such clause is to be applied after liability has been apportioned in accordance with Clause (2) or Clause (1)(ii)(c) as the case may be and Charterers' contribution under such clause shall be per cargo voyage and not per bill of lading or parcel of cargo notwithstanding anything to the contrary contained therein.
- (vi) Where Sub-Charterers are involved the Agreement, unless the parties hereto otherwise agree in any specific Case, shall be applied in stages starting with the party who first settles the cargo claims. For example in the case of a single sub-charter, if the cargo claims are settled by the Sub-Charterers, the said claims shall first be apportioned between the Sub-Charterers and the Charterers in accordance with the Agreement, the Charterers being treated for the purpose as if they were the "Owners", the balance falling to Charterers' account thereafter being apportioned between the Charterers and Owners in accordance with the Agreement.
- (vii) The Agreement is not binding on Members but in all cases the parties will recommend without qualification its acceptance to Members.

(2) APPORTIONMENT OF CARGO CLAIMS.

In all cases where the Agreement applies cargo claims shall be apportioned as hereunder: –

Claims for loss of or damage to cargo due to unseaworthiness –
100% Owners

Claims for damage (including slackage/ullage) due to bad stowage or handling –
100% Charterers

Except as provided in the succeeding paragraphs of this clause, short delivery claims (including pilferage), claims for overcarriage, and claims for condensation damage –
50% Owners
50% Charterers

As regards short delivery and overcarriage claims, where there is clear and irrefutable evidence that the shortage or overcarriage,

款。

- (iv) 由或代表租僱船人或船舶所有人於本協議下所提出之任何求償，應儘速以書面通知他方，然於任何情況下該通知未於貨物卸載日或應卸載日二年內提出者，任何追償請求應被視為放棄及時效屆滿完成。該通知應記載載貨證券內容及該求償之本質及數額。
- (v) 於租僱船契約包括靠泊標準海損條款/租僱船人分擔條款(1971)，該條款應於依第 2 或第 1 條(ii)項(c)款為責任區分後始適用之，且不論有無任何相反規定，租僱船人依該條款之責任，依每一貨物航程而非依每一載貨證券或依每件貨物。
- (vi) 當次租僱船人涉入本協議，除相關當事人對於任何特定事件有另行同意外，由首先解決該貨物求償之當事人間先開始適用。例如，如有一單一次僱船人，而該次租僱船人已解決求償時，該求償應先由次租僱船人與租僱船人間依本協議區分之，為此區分目的，租僱船人被假定為『船舶所有人』，租僱船人所應負擔之餘額再依本協議於租僱船人及船舶所有人間區分之。
- (vii) 本協議並不拘束會員，於所有事件，締約會員應無限制條件地建議其會員接受之。

(2) 貨物求償之責任區分

於本協議適用貨物求償之所有事件應依照下列規定區分之：

因不適航所致對貨物損失或損害之求償，
100% 船舶所有人

因堆載不良或搬移不當....所致損害(包括鬆塌及損耗)之求償，
100% 僱船人

本條款前述規定除外....交貨短少求償(包括盜竊)及溢載之求償，以及凝結損害之求償，
50% 船舶所有人
50% 僱船人

關於交貨短少及溢載求償，當其有清楚且不可辯駁之證據顯示該短少及溢載係由於

as the case may be, was due to act, neglect or default on the part of Owners' or Charterers' servants or agents, then the party whose servants or agents were at fault shall bear the claim in full. Thus if there is corroborated eyewitness evidence that the shortage was due to pilferage by a stevedore, the claim will fall 100% to the account of Charterers, but if by a crewmember, then 100% to Owners, subject in the latter case to Charterers' contribution under the Berth Standard of Average Clause/Charterers' Contribution Clause (1971),

Claims for condensation damage shall be apportioned as provided in the first paragraph of this clause, except where there is clear evidence that the damage was due solely to bad stowage in which event such claims shall fall 100% to Charterers' account but where there is clear evidence that the damage resulted solely from improper ventilation, such claims shall be borne 100% by Owners.

(3) EXTENSION OF AGREEMENT

It shall be open to the parties to apply in whole or in part the Agreement if they so desire notwithstanding that it is not strictly applicable by reason of any of the matters set forth in Clause 1.

(4) DURATION.

The Agreement shall continue in force until varied or terminated. Any variation to be effective must be approved in writing by all the parties but it is open to any Association to withdraw from the Agreement on giving to all the other parties not less than three months' written notice thereat, such withdrawal to take effect at the expiration of that period. After the expiry of such notice the Agreement shall nevertheless continue as between all the parties, other than the party giving such notice who shall remain bound by and be entitled to the benefit of this Agreement in respect of all cargo claims arising out of charters commenced prior to the expiration of such notice.

For example if the Standard Association gave written notice of withdrawal from the Agreement on the 1st of January 1985, it would be bound to apply the Agreement in respect of cargo claims arising out of charters commenced at any time on or before the 31st March 1985.

船舶所有人或租傭船人之受雇人或代理人方面之作為、過失或疏忽所致時，該犯錯之受雇人或代理人之本人應負擔全部求償。因此如有確切的目擊證據顯示該短少為碼頭工人盜竊所致者，租傭船人應負擔100%之求償，但如為船員所致時，則為船舶所有人負擔100%，然應依照稍後於靠泊標準海損條款/租傭船人分擔條款(1971)條款下之租傭船人分擔。

凝結損害求償應依本條第1項規定區分之，除其有明確之證據顯示該損害完全由於不良堆載所致者外，而此租傭船人應負100%之求償，然如有明確證據顯示損害係完全因不當通風所致，則應由船舶所有人負擔100%。

(3) 本協議之延長

於會員有如是需要時，本協議開放給締約會員全部或一部適用，而不論因本協議條款一所宣布之任何事件並無絕對適用。

(4) 期間

本協議一直到修正或終止前續行有效。任何有效修正應經所有締約會員書面同意，然本協議開放給任何協會，以提出不少於三個月之書面通知給所有其他締約會員下撤回該協議，該撤回於該期限屆滿之日生效。於該通知期滿後，除提出該通知之締約會員外，本協議仍於所有會員間持續有效，而該締約會員仍應負擔並有權享有該通知期滿前所開始之租傭船契約所生之所有貨物求償之有關本協議之利益。

例如標準協會於1985年1月1日提出撤回本協議之書面通知，對於1985年3月31日以前所開始之租傭船契約所生之貨物求償仍應適用本協議。