Circular Ref: 2014/0046
Date: 2 December 2014

Himalaya Clause

A Himalaya clause is a contractual provision intended to confer a benefit on an entity that is not a party to that contract. This benefit, in a contract of carriage such as a bill of lading, is to exempt, as far as possible, the servants, agents and independent contractors employed by the contractual carrier from liability to other parties to the contract, such as shipper, consignee or holder of a bill of lading or extend the same protection from liability enjoyed by the carrier.

Himalaya clauses are by nature rather complex and it is impossible to produce a clause that operates successfully on every occasion and in every jurisdiction. The International Group of P&I Clubs (IG) and BIMCO have worked together and produced a clause which aims to be recognized and given effect to in most of the major jurisdictions, including US and UK. A revised Himalaya clause was drafted in 2010 after a review of the clause for use in bills of lading and other contracts.

Since the publication of the recommended revised wording in 2010, it has been reported that there have been cases in the US where claimants have filed suit against vessel managers in order to avoid the COGSA defences/limitations which protect shipowners. Besides, many jurisdictions tend to interpret the clause as currently drafted as extending to a manager employed by the owner. Therefore, on the basis of the advice received, and with the joint agreement of BIMCO, a further revised Himalaya Clause wording has been produced with the objection of making it clear that the protection afforded under the clause is extended to managers. The further revised clause can be found as attached. It is recommended to amend your contracts of carriage to incorporate this new clause.

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk

Andrew Liu & Co. Ltd