



# P&I 特別回報

第 14-011 号  
2014 年 11 月 20 日

日本船主責任相互保険組合

外航組合員各位

## 改定ヒマラヤ条項について

2011 年 1 月 17 日付特別回報第 10-023 号にて、国際 P&I グループ(IG)と BIMCO は共同でヒマラヤ条項の見直しを行い、当該見直しに基づき 2010 年に改定 BIMCO/IG 推奨ヒマラヤ条項を作成したことをご案内しました。ヒマラヤ条項の特徴や当時の改定の際に目指した効果については当該特別回報でご説明しておりますので、本特別回報とあわせてご一読下さい。

2010 年の改定ヒマラヤ条項発行以降、米国でクレームントが船主による COGSA(Carriage of Goods by Sea Act、国際海上物品運送法)に基づく責任制限や免責等のディフェンスを避けるべく船舶管理会社を訴えるケースが発生しています。当該状況を受けて IG では現行のヒマラヤ条項の改定に関し米国弁護士の助言を取り付け、“servant, agent, direct or indirect sub-contractor or any other party employed by or on behalf of the Carrier”となっている現在の文言の中に“managers”を加えることにしました。

多くの国では現行のヒマラヤ条項でも船主が起用する船舶管理会社も含まれると解釈されるはずと考えています。しかしながら、ヒマラヤ条項に基づく保護は船舶管理会社にも適用されることを明確にするため、米国弁護士の見解に基づき BIMCO と共同で更なるヒマラヤ条項の改定を作成しました。今般の改定ヒマラヤ条項は添付をご参照下さい。当該新改定ヒマラヤ条項を撰取するよう運送契約の改定をお勧め致します。

新改定ヒマラヤ条項は BIMCO のウェブサイト([www.bimco.org](http://www.bimco.org))からもダウンロードすることができます。また、BIMCO のオンライン用船契約書編集システム“idea”の利用者の場合は追加条項として利用することも可能です。

国際 P&I グループの全てのクラブが同様の内容の回報を発行しています。

以上

**International Group of P&I Clubs / BIMCO Revised Himalaya Clause (November 2014)**

- (a) For the purposes of this contract, the term "Servant" shall include the owners, managers, and operators of vessels (other than the Carrier); underlying carriers; stevedores and terminal operators; and any direct or indirect servant, agent, or subcontractor (including their own subcontractors), or any other party employed by or on behalf of the Carrier, or whose services or equipment have been used to perform this contract whether in direct contractual privity with the Carrier or not.
- (b) It is hereby expressly agreed that no Servant shall in any circumstances whatsoever be under any liability whatsoever to the shipper, consignee, receiver, holder, 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 the Servant's part while acting in the course of or in connection with the performance of this contract.
- (c) 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.
- (d) (i) 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  
  
(ii) The Merchant undertakes that if any such claim or allegation should nevertheless be made, he will indemnify the carrier against all consequences thereof.
- (e) For the purpose of sub-paragraphs (a)-(e) 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 (a) above who are his Servant and all such persons shall to this extent be or be deemed to be parties to this contract.