

**THIRD PARTY ACTION  
UNDER ITALIAN LAW AND  
CLUB'S LETTERS OF  
UNDERTAKING**

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# Action against the P & I Club

- Claimants have no direct action against Club in respect of Members' liability
- Claimants may sue the Club only when a Letter of Undertaking has been issued

# P&I Club Letter of Undertaking

- Various standard forms used by Clubs:

A) In consideration of your consenting to release from arrest and/or refraining from taking action resulting in the arrest of the above-mentioned ship or any other ship or property in the same ownership, associated ownership or management as the above-mentioned ship for the purpose of founding jurisdiction and/or obtaining security in respect of the above mentioned claim against the owners of the above-mentioned ship, we hereby undertake to pay such sums as may be adjudged by a competent court, by final judgment, not subject to appeal, or other competent tribunal or as may be agreed to be recoverable from the owners of the above-mentioned ship in respect of the said claim, provided that the total of our liability hereunder shall not exceed the sum of inclusive of interest and costs.

This undertaking shall be governed by and construed in accordance with English law.

B) In consideration of your releasing from arrest and/or refraining from arresting or re-arresting and/or interfering in any other way with the use or trading of the above ship or any other ship or property or asset in the same or associated ownership or management, we hereby agree to pay to you such sum or sums as may be adjudged without the right of appeal by a competent court or arbitration tribunal or agreed between the parties with our consent to be due to you from the owners of the above ship in respect of the above matter, provided always that our total liability hereunder shall not exceed the sum of ( ) inclusive of interest and costs. This undertaking is given without prejudice to any rights or defences of the owners of the above ship, including their right to limit liability.

This undertaking shall be governed by English law and any dispute arising hereunder shall be subject to the jurisdiction of the High Court of Justice in London.

C) IN CONSIDERATION of and upon condition that you release and/or refrain from arresting or otherwise detaining the above vessel or any other vessel or property in the same or associated Ownership or Management to secure the above claim and that you refrain from commencing and/or prosecuting legal or arbitration proceedings (otherwise than before the court or tribunal referred to below) against the Owners of the above vessel, their servant or agents...WE HEREBY undertake to pay you any sum inclusive of interest and costs not exceeding....which may either be agreed between the parties to be due to you in respect of the above claim or which may be adjudged to be due to you in respect of the above claim from the Owners of the above vessel by a final decision of a Court of competent jurisdiction.

D) IN CONSIDERATION of and upon condition that you release and/or refrain from arresting or otherwise detaining the above vessel or any other vessel or property in the same or associated Ownership or Management to secure the above claim and that you refrain from commencing and/or prosecuting legal or arbitration proceedings (otherwise than before the court or tribunal referred to below) against the Owners of the above vessel, their servant or agents WE HEREBY undertake to pay you any sum inclusive of interest and costs not exceeding .....which may either be agreed between the parties to be due to you in respect of the above claim or which may be adjudged to be due to you in respect of the above claim from the Owners of the above vessel by a final and unappealable decision of a competent court or tribunal.

This letter of undertaking shall be governed by and construed in accordance with English law and any disputes arising hereunder shall be subject to the exclusive jurisdiction of the High Court of Justice in London.

# P&I Club's Letter of Undertaking

The Letter of Undertaking:

- Is a promise to pay subject to the Court judgment to be rendered?
- Is a guarantee as governed by Italian Civil Code provisions?

# LoU = Promise to pay

- No joint liability
- Claimants are not entitled to sue the Club before a judgement in their favour against the Members is rendered
- Jurisdiction under EC Council Regulation 44/2001 the Club could be sued: art. 5.1 before the Court of the place of performance of the obligation (if claim is for a liquidated sum of money, the place of performance of the obligation is the domicile of the claimant)

# LoU = Guarantee

- Joint liability of Members and Club
- Claimants are entitled to sue the Club jointly with Members without waiting for a judgement against Members
- Unless express wording, the amount indicated in the letter is for capital and Club can be forced to pay also interest and devaluation on the amount indicated

## ■ Jurisdiction under EC Council Regulation 44/2001

Club could be sued:

- art. 5.1 before the Court of the place of performance of the obligation
- art. 6.1 before the Court of the main proceedings in the presence of different defendants, *“provided that claims are so closely connected that it is expedient to hear and determine them together”*
- art. 10 liability insurance: before the Court of the place where the harmful event occurred
- art.11 liability insurance: if the law of the Court permits it, the insurer may be joined in proceedings brought against the insured

# Other actions against Club

- The Club could be sued by its Member and joined into proceedings
  - Jurisdiction:
    - art. 6.2 : as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seized of the original proceedings
    - art. 10 liability insurance: place where the harmful event occurred
    - art.11 liability insurance: if the law of the court permits it, the insurer may be joined in proceedings brought against the insured

- The Guarantee is issued by an Italian bank upon instructions by the Club

The Club could be sued by the Italian bank to join proceedings brought by Claimants against the bank

- Jurisdiction: as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seized of the original proceedings under article 6.2 EC regulation 44/2001. Italian Courts held that art. 6.2 does not apply to redress claim by the Italian bank against Club