



GARD AS

P.O. Box 789 Stoa
NO-4809 ARENDAL
NORWAY

Tel +47 37 01 91 00

Fax +47 37 02 48 10

companymail@gard.no
www.gard.no

Circular No. 3/2011

April 2011

To the Members

Dear Sirs,

Defence cover in respect of nuclear risks arising from Fukushima Nuclear Power Plant incident, Japan, March 2011

Executive Summary

The boards of Gard P. & I. (Bermuda) Limited and Assuranceforeningen Gard – gjensidig (“the Associations”) have decided to extend the Defence cover to include legal and other costs incurred in establishing or resisting claims as specified in Rules 65 and 66 of the Gard Rules for Ships 2011, which arise in connection with the Fukushima Nuclear Power Plant incident in Japan in March 2011. The “Defence Nuclear Extension Clause” set out in this Circular has been endorsed by the boards and will apply to all ships and other floating structures being entered for Defence risks in either of the Associations for the 2011 Policy Year.

Background and discussion

We refer to the earthquake and tsunami disaster in Japan in March 2011 and in particular the problems arising out of the subsequent incident at the Fukushima Nuclear Power Plant causing concern about actual and potential nuclear radiation. As a consequence, a number of actual and potential disputes affecting Defence entries in the Associations have arisen or may arise where we are, or may be expected to be, asked by Members to assist within the scope of the Defence cover.

Rule 73 in the Gard Rules for Ships represents a general exclusion of claims arising (whether directly or indirectly) from nuclear risks, which applies both to the P&I and Defence covers. Hence, under the Rules, there is no Defence cover for legal or other costs incurred to establish or resist claims arising out of nuclear risks.

The boards of the Associations have taken the view that the particular situation arisen in relation to the Fukushima Nuclear Power Plant incident justifies an exemption from the exclusion in Rule 73 in so far as concerns Defence cover for legal or other costs incurred to establish or resist claims arising out of that incident only, subject to a special limit of cover of USD 1 million per event.

In reaching this decision, the boards have considered that the nuclear risk exclusion contained in Rule 73 has been designed to apply in respect of the P&I cover in view of similar exclusion provisions in the Pooling Agreement and the market excess reinsurances for P&I risks. Such reinsurance issues do not arise in respect of the Defence cover provided by the Associations, which is not subject to any reinsurance and has a limit of USD 10 million per event.

The boards of the Associations have considered that the above provides the relevant Members with adequate financial protection in respect of Defence risks arising from the Fukushima Nuclear Power Plant incident, and will allow the manager of the Associations to be able to offer normal support and guidance in respect of such risks.

Defence Nuclear Extension Clause

In view of the decision and considerations of the boards of the Associations set out above, the following clause shall be deemed to be incorporated and in force for all Defence entries¹ in the Associations with effect from 00:00 hours GMT on Wednesday 14 April 2011:

“Defence Nuclear Extension Clause

The Defence cover shall be extended to include legal and other costs necessarily incurred in establishing or resisting claims as specified in Rules 65 and 66 of the Rules for P&I and Defence cover for ships and other floating structures (hereinafter called the “Rules”) arising out of nuclear risk as described in Rule 73 of the Rules provided always that;

- (i) this extension of the Defence cover shall be restricted to legal and other costs necessarily incurred in establishing or resisting claims as described in Rules 65 and 66 of the Rules arising in connection with the Fukushima Nuclear Power Plant incident in March 2011 only; and*
- (ii) the Association shall not be obliged to compensate under a Defence entry as extended pursuant to this Defence Nuclear Extension Clause legal and other costs falling within the scope of Rules 65 and 66 in excess of USD 1 million per event.*

¹ This includes owners’ and charterers’ Defence entries for ships and mobile offshore units.

Words and expressions used in this Defence Nuclear Extension Clause shall have the meaning given to said words and expressions in the Rules.”

Claims handling

The manager of the Associations will handle claims recoverable under the terms of each Defence entry pursuant to above clause in the similar manner and subject to the same considerations as any other Defence claim. Members are reminded about the scope of Defence cover as set out in Part IV of the Rules for Ships.

Members are encouraged to contact **Alice Amundsen, Vice President - Defence Claims** or **André Kroneberg, Senior Manager – Underwriting** in case of enquiries.

Yours faithfully

GARD AS



Claes Isacson
Chief Executive Officer