

No. 6 - US Terrorism Insurance Legislation

November 2002

URGENT

THIS NOTICE REQUIRES YOUR IMMEDIATE ATTENTION

November 2002

Dear Sirs

US TERRORISM INSURANCE LEGISLATION

A new Terrorism Insurance Act is likely to come into effect as early as next week in the United States. It could have very serious consequences for P&I Clubs and their Members.

In particular, the Act compels the Club to provide you with insurance against a Terrorist attack up to the limits of your ordinary P&I cover. This is a risk that is un-reinsurable and, even with the Federal assistance offered, one that could bankrupt the Club. Clearly the premium for such a risk will inevitably be very high.

When the Act comes into effect, the Club will be obliged to offer you the cover at whatever premium it deems appropriate, though you are not, of course, obliged to accept it. **This premium will probably amount to several million dollars per vessel.** Accordingly, within the next week or two, you will receive a notice to pay an additional premium if you wish to take advantage of the additional cover provided under the Act. If you do not wish to pay this additional premium by the due date your ordinary P&I cover and the existing special War Risks P&I cover (which includes terrorism) will **continue as at present**. You will not then be liable for the additional premium.

You will find overleaf a brief explanation of the Act which explains in more detail the reasons why this step is having to be taken, but should Members wish for further information they should contact the Managers.

Yours faithfully

**The West of England Ship Owners
Insurance Services Limited**
(As Managers)

P E Spendlove
Managing Director

US TERRORISM RISK INSURANCE ACT 2002

The United States is introducing legislation the intention of which is to ensure that insurance companies extend to their clients cover for terrorist acts in the United States on the same basis as existed prior to the 11th September 2001. Under

this legislation the Federal Government will provide an indemnity of up to 90% of incurred losses.

Unfortunately, the way in which the legislation has been drafted requires insurers to reinstate the level of terrorist cover available prior to 11th September 2001 by providing that insurers must offer terrorist cover to the same extent and limit as is offered for non-terrorist risks. In the case of P&I Clubs cover is currently provided for war risks (including terrorism) up to a limit of \$200 million excess of the ship's proper value, which is covered as part of the hull and machinery policy. For non-war risks the limits are significantly higher. Each P&I Club is therefore faced with a situation whereby the legislation will require cover to be provided in respect of terrorism up to these higher limits albeit with some degree of indemnity from the US Government. This risk would not be poolable nor would it be covered by reinsurance.

The legislation has been agreed by both the House of Representatives and by the Senate and will come into immediate effect as soon as it has been signed by the President, probably on 28th November 2002. The legislation is mandatory in effect which means that each Club will be obliged from that date to provide cover in respect of terrorist risks up to the same limit as the general P&I cover.

The legislation was principally intended to aid property insurance in the United States and was not intended to have this extreme effect on the marine market which has always operated parallel cover in respect of war risks and non war risks. It is hoped therefore that when regulations are prepared to give detailed implementation to the statute it will be possible to provide for the special circumstances of the Clubs. In the meantime however we are advised by US lawyers that it will be necessary to use the provisions of the Act itself to avoid its most draconian effects for Clubs and their members.

The Act provides that exclusions can be reinstated either

- if the insurer has received a written statement from the insured that affirmatively authorizes such reinstatement, or
- if the insured fails to pay an increased payment charged by the insurer for providing such terrorism coverage

It is hoped that the Clubs' position can be clarified under the proposed regulations in advance of the next renewal. However, if this is not possible it is suggested that members will be able to provide affirmative authority to reinstate the terrorism exclusion as part of the renewal process. In the meantime it is suggested that for the balance of this policy year Clubs have no alternative but to charge an additional premium in respect of this period unless the member affirms in writing that he authorizes the exclusion to be reinstated. However, given that no pooling and no market protection will be available it can be confidently predicted that the premium charged will be very substantial indeed (*extending to millions of dollars per entered vessel*) since it will have to reflect each Club's exposure to the risk of terrorism up to a limit which is only attained for traditional P&I risks by sharing with other Clubs and buying substantial reinsurance. It is anticipated that in these circumstances most members will confirm that they are content with their existing war risks cover of \$200million excess of the vessel's proper value. Members may confirm this preference either in writing or by not paying the requested premium within the 30 day period allowed.

As soon as the Bill is signed into law, probably on 28th November, all Clubs will therefore issue a notice requiring all members to pay a substantial additional premium as a consequence of the US Terrorism Insurance legislation.