

## No. 2 - Excess War Risks P&I Cover 2003/2004

March 2003

Dear Sirs

### EXCESS WAR RISKS P&I COVER 2003/2004

We refer to our Notice to Members No. 12 2002/2003 dated February 2003 in which we set out the terms of the Club's excess war risks P&I cover for 2003.

In that Notice, all Members were advised that the Managers were hoping to clarify the terms of the new Chemical, Bio-Chemical, Electromagnetic Weapons and Computer Virus Exclusion ("The Chemical etc., Exclusion Clause") which has been imposed by the Club's reinsurers.

A second issue in relation to the way in which the excess point operates has also been clarified.

#### 1. Chemical, bio-chemical, electromagnetic weapons and computer virus exclusion clause

The Club's reinsurers have advised that this Clause has been applied as a result of the introduction of similar clauses in almost all reinsurance policies to avoid undue aggregation of risk.

For ease of reference, the clause reads as follows:-

#### **CHEMICAL, BIO-CHEMICAL, ELECTROMAGNETIC WEAPONS AND COMPUTER VIRUS EXCLUSION CLAUSE**

**This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith**

- 1. In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from:**

**1.1 any chemical, bio-chemical or electromagnetic weapon;**

**1.2 the use or operation, as a means for inflicting harm, of any computer virus.**

Given that each case will have to be determined on its particular facts, problems have arisen as to how the wording is to be interpreted; it is potentially very wide. Following discussions between the International Group, its brokers and reinsuring underwriters, the brokers have issued the following statement with the approval of reinsuring underwriters:-

*"The Chemical etc., Exclusion Clause (MM Clause No. 2249(a)) was introduced to this placement for the first time at 20th February 2003.*

*It is our understanding that the phrase 'any chemical, bio-chemical ..... weapon' was intended by Underwriters to exclude neurological or viral agents such as sarin, mustard gas, anthrax, smallpox etc.*

*It is not intended to refer to explosives, or methods of their detonation or attachment. Nor does it refer to the use of a vessel or its cargo as a means of inflicting harm, unless such cargo is itself a chemical or biochemical weapon within the scope of the clause. We understand the phrase 'electromagnetic weapon' to refer to highly sophisticated devices designed to disable computer software, and not to methods of detonation or attachment of explosives.*

*The exclusion of 'the use or operation, as a means for inflicting harm, of any computer virus' is relevant in the context of this policy only if it is used as an act of war or terrorism."*

The International Group has submitted a revised wording for the Clause which incorporates these principles and it is hoped that the wording of any such Clause for the next policy year will be clearer.

## 2. The Excess Point

The wording of the excess point for each of the Club's excess war risks P&I reinsurance contracts has been changed for 2003/04 and now reads as follows:-

*"This policy to pay claims excess of amounts recoverable under vessels' or crew war risks P&I policies subject to a minimum excess of the proper value of the entered ship or USD100,000,000 whichever is the less (applicable to owners' entries and not to charterers' entries), and further subject to a minimum excess of USD50,000 any one event."*

Again the brokers and reinsuring underwriters are concerned that the intent of this Clause should be clearly understood and, following discussions with the International Group, the brokers, with the approval of reinsuring underwriters, have issued the following clarification:-

*"It is therefore our understanding that in respect of Owners' entries this policy will respond excess of underlying insurances with a limit of at least the proper value of a vessel.*

*In the event that a vessel is not so insured, this policy will respond as if an underlying policy with a limit up to the proper value were in place, except that for a vessel with a proper value of more than USD100m, the deemed underlying excess shall be USD100m.*

*Further we understand that this policy will be in excess of all other policies placed by owners for vessels' or crew war risks P&I. We do not believe that corporate general liability umbrellas placed on behalf of organisations of which shipping forms a part are underlying policies hereon (even if they might include some war risk and terror cover).*

*We believe reinsurers understand that Club boards may exercise their discretion as to what constitutes the proper value of an entered vessel, but the payment of claims under this policy remains subject to the criteria above and the Claims Co-operation Clause."*

Members should note that they are deemed to have underlying cover (with conditions equivalent to the Club's cover when provided in accordance with Rule 14) equal to at least the fully insured value of the entered vessel as defined in Rule 12. Furthermore, **the Club's excess war risk P&I cover is excess of any other war risk P&I cover which the Member has actually taken out**, unless some of the other cover is within a corporate general liability umbrella cover. Any Member who considers that he has such a cover should inform the Managers so that it can be determined whether or not such corporate general liability cover qualifies as an underlying policy.

For the avoidance of doubt, although this clarification from the market relates expressly to Owners' entries, for Members with Charterers' entries the Club's excess war risk P&I cover shall also be excess of underlying Charterers' war risk P&I cover which the Member has arranged.

**In order that the Club's excess war risks P&I cover is consistent with a Member's individual underlying war risk**

**P&I policy (or policies), we recommend that all Members ask their Brokers to seek the same clarifications from their underlying war risk P&I underwriters as are set out in this Notice both as to the Chemical etc., Exclusion Clause and the Excess Point.**

In the meantime, the Managers are in the process of placing further limited reinsurance on behalf of all West of England Members which will provide some protection (on an aggregate basis) for losses which will otherwise be excluded by the operation of the Chemical etc., Exclusion Clause. Once the details have been finalised a further Notice to Members describing this reinsurance will be issued.

Yours faithfully

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

**P E Spendlove**

Managing Director