

No. 12 - EXCESS WAR RISK P&I COVER 2003

February 2003

Dear Sirs

EXCESS WAR RISK P&I COVER 2003

Since 1987 the Club has provided a special excess risk P&I cover for war and similar risks excluded under Rule 14 up to specific limits for those Members who have expressly requested it.

For 2002, principally at the request of the Group's reinsurers following the World Trade Center loss in September 2001, Rule 14 was amended so that acts of terrorism were explicitly excluded together with war and similar risks. As a result the Club's excess war risks P&I cover was also amended to expressly cover war and similar risks and acts of terrorism.

For 2003 the Club's excess war risk P&I cover has been amended again to take account of a number of other changes not least the enactment of the **Terrorism Risk Insurance Act of 2002 (TRIA)** in the United States which was the subject of Notices to Members earlier this year.

Under the Act the Club is required to make available cover for acts of terrorism as defined by the Act which occur either in the United States in respect of any vessel and world-wide in respect of vessels flying the US flag. As always, however, the provision of the cover by the Club is dependent on commercial reinsurance and in order to ensure that premium charged is as low as possible, it will now be provided to all Members. Members therefore need not make a specific request for cover for 2003 as has been necessary in the past.

The terms of the excess war risk P&I cover for 2003 are set out in a resolution passed by the Directors at their meeting on 5 February 2003. A copy is attached (**APPENDIX 1**). It explains the background and the way in which the cover is intended to operate more fully but the principal features of the cover are as follows:-

1. The cover is to pay claims only in excess of amounts recoverable under a Member's underlying war risks P&I policy including but not limited to Hull and Machinery and Crew, Marine or War Risks and any Protection and Indemnity Clauses attached thereto. The cover is also excess of war risk cover provided to charterers under Rule 3A. It is not intended as a substitute for traditional market war risks cover. Members are therefore expected to maintain their existing war risks cover including cover for P&I risks to the maximum extent available (up to a maximum of \$100 Million).
2. The cover is for P&I risks in accordance with the Club's Rules which are excluded by Rule 14.
3. The cover is subject to notice of cancellation and automatic termination provisions and excludes nuclear risks.
4. The cover is subject to a new and overriding Chemical, Bio-Chemical, Electromagnetic Weapons and Computer Virus exclusion.
5. The limit of cover is \$400 million each vessel any one accident, but shall not exceed in the aggregate \$400 million

in respect of all Members' entries whether Owner's or Charterer's and irrespective of whether or not such entries are entered with the West of England or any other International Group Club.

6. The premium payable for the cover shall be US\$0.0225 per gross ton entered for Owner's entries and \$0.0075 for Charterer's entries. It will be payable together with the rate per gross ton charged for the Group's excess of loss reinsurance premium as a fixed cost per gross ton. The estimated cost within these rates for the provision of cover in accordance with TRIA is US\$0.0025 per gross ton entered.
7. The cover permits worldwide trading but excludes risks in respect of vessels trading in breach of any Exclusion Notice issued by the Club or reinsuring underwriters.

As may be noted, the inclusion - required by the Club's reinsurers - of the new Chemical, Bio-Chemical, Electromagnetic Weapons and Computer Virus exclusion, as set out in paragraph (4), is a substantial restriction on the cover. The Club's reinsurers' intentions in requiring such exclusion are not wholly apparent. The Managers are hoping to obtain further clarification as a matter of urgency. Members should note that the same exclusion clause appears in all marine war risk policies, including any underlying "war risk" policy a Member already has in place.

Should any Member have any questions, they should not hesitate to contact the Managers. In the meantime, all terms of entry for 2003 shall include the following clause to replace the current P&I War Risk Clause:

EXCESS WAR RISKS P&I COVER

The Member is insured for excess P and I War and similar risks up to a limit of US \$400 million upon the terms of the Rule 14 Resolution of the Association's Board of 5 February 2003, as reflected in Notice to Members No. 12 2002/2003.

Yours faithfully

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

P E Spendlove
Managing Director

APPENDIX 1

EXCESS WAR RISKS P&I COVER 2003

RULE 14 DIRECTORS' RESOLUTION (5 FEBRUARY 2003)

WHEREAS, in accordance with Rule 14 of the Association's Rules coverage for certain war and similar risks, including acts of terrorism, is excluded under the general mutual indemnity undertaking, excess war risks P&I cover is nevertheless provided for these same certain risks under the proviso to Rule 14 and in accordance with each individual Member's terms of entry and as set forth in various Notices to Members issued from time to time.

WHEREAS, on 26 November 2002 the Terrorism Risk Insurance Act of 2002 (Public Law 107-267) (the Act or TRIA) was signed into law by U.S. President George W. Bush; and

WHEREAS, the Act provides for a three-year program of Federal quota share indemnification to participating insurers for insured losses resulting from certain acts of terrorism occurring through year-end 2005; and

WHEREAS, entities meeting the definition of insurer in the Act are required to participate in the program; and

WHEREAS, this Association comes within the definition of insurer because of its approval by the U.S. Maritime Administration (MARAD) to write P&I coverage on MARAD program vessels and meeting other relevant criteria; and

WHEREAS, the Act requires this Association to make available in all of its commercial property and casualty policies coverage for acts of terrorism as defined, and

WHEREAS, the term act of terrorism is defined as an act certified by the US Treasury Secretary after a finding that the act: (1) was committed on behalf of any foreign (i.e., non-US) person or interest; (2) was a violent act dangerous to human life, property, or infrastructure that resulted in damage within the United States or to a US air carrier or US-flag vessel wherever located; (3) is part of an effort to coerce the civilian population of the US or to influence the policy or affect the conduct of the US Government by coercion; and (4) resulted in damages exceeding \$5 million; and

WHEREAS, under the TRIA program the US Government will indemnify insurers for 90% of losses resulting from certified acts of terrorism in excess of an insurer deductible; and

WHEREAS, insurers are required to notify policyholders of the existence of the TRIA program and the premium to be charged for coverage for such acts of terrorism; and

WHEREAS, the Directors on behalf of the Association's membership have considered whether coverage for TRIA-defined acts of terrorism could be removed from the P&I war risks cover and made subject to the general mutual indemnity undertaking; and

WHEREAS, the Directors have concluded that acts of terrorism, as the other perils subject to the P&I war risks cover, remain unsuitable for a general mutual indemnity undertaking; and

WHEREAS, no Member responded affirmatively to the initial offer made by this Association to provide cover for TRIA-defined acts of terrorism on the basis of supplemental premium rates designed to fund the TRIA deductible and retention without mutual indemnity or the reinsurance available to the special cover; and

WHEREAS, the Directors have determined, based on new reinsurance arrangements, that the P&I war risks cover can be provided up to a limit of US \$400 million in the aggregate for the 2003 Policy Year at a cost to the Association of a reinsurance premium equivalent to US \$0.0225 per gross ton entered for Owner's entries and US \$0.0075 per gross ton entered for Charterer's entries and that the estimated portion of that cost for TRIA-defined coverage is US \$0.0025 per gross ton entered.

NOW THEREFORE BE IT RESOLVED, that in accordance with the proviso to Rule 14 of the Association's Rules, excess war risks P&I cover be provided to the Members of the Association for the year commencing at 12 noon GMT on 20th February, 2003 against risks, including TRIA-defined acts of terrorism, which are excluded from cover solely by virtue of the provisions of Rule 14, at an increased limit. Unless otherwise agreed in writing, such cover shall be subject to all other terms and conditions of a Member's entry in the Association and shall be provided upon and subject to the following terms and conditions.

1. The risks covered shall be those set out in Rule 2 of the Association's Rules in accordance with each individual Member's terms of entry as set out in the relevant Certificate of Entry and any Endorsement thereto.
2. This excess war risks P&I cover shall be subject to an excess of whichever shall be the greater of either:
 - a. the fully insured value of the entered ship as defined in Rule 12 (which, for the purpose of this excess war risks P&I cover only, shall be deemed not to exceed US \$100 million), or
 - b. amounts recoverable (but not exceeding US\$100 million) under a Member's existing war risks P&I policies

including but not limited to Hull and Machinery and Crew Marine or War Risk policies and any Protection and Indemnity inclusion clauses attached thereto (which, for the purpose of this excess war risks P&I cover only, shall be deemed both to exist and to have provided the Member with a full recovery).

3. The limit applying to this excess war risks P&I cover shall be US \$400 million each vessel, any one accident or such limit as may be applicable to the claim under the Member's individual terms and conditions of entry, whichever shall be the lesser. Such limit shall however not exceed in the aggregate \$400 million in respect of all Member's entries (whether Owner's or Charterer's) whether they be with the Association or the Association and any other Association which participates in the Pooling Agreement (as defined in Rule 60) and/or in the International Group of Protection and Indemnity Associations' General Excess Loss Reinsurance Contracts.
4. Where the Association reinsures in whole or in part any such risks, the Member shall be entitled to recover from the Association only the net amount recovered under any reinsurance together with that proportion (if any) of the cover retained by the Association.
5. All perils included in the excess war risks P&I cover shall be subject to the following Chemical, Bio-chemical, Electromagnetic Weapons and Computer Virus Clause:
**"CHEMICAL, BIO-CHEMICAL, ELECTROMAGNETIC WEAPONS AND COMPUTER VIRUS EXCLUSION
CLAUSE This clause shall be paramount and shall override anything contained in this excess insurance inconsistent therewith** 1. In no case shall this excess 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."
6. At any time or times before, or at the commencement of, or during the currency of any Policy Year of the Association, the Directors may in their discretion determine that any ports, places, countries, zones or areas (whether of land or sea) be excluded from the insurance provided by this excess war risks P&I cover. Save as otherwise provided by the Directors this excess war risks P&I cover shall cease in respect of such ports, places, countries, zones or areas at midnight on the seventh day following the issue to the Members of notice of such determination. Unless and to the extent that the Directors in their discretion otherwise decide there shall be no recovery from the Association under this excess war risks P&I cover in respect of any claim howsoever arising out of any event, accident or occurrence within the said area after such date.
7. Whether or not notice has been given under clause (5) above, this excess war risks P&I cover shall terminate automatically: (i) upon the outbreak of war (whether there be a declaration of war or not) between any of the following countries: United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China and this insurance excludes loss, damage, liability or expense arising from such outbreak of war; (ii) in respect of any vessel, in connection with which cover is granted hereunder, in the event of such vessel being requisitioned either for title or use and this insurance excludes loss, damage, liability or expense arising from such requisition.
8. Notwithstanding any other term or condition of this insurance, the Directors may in their discretion cancel this excess war risk P&I cover giving 7 days' notice to the Members (such cancellation becoming effective on the expiry of 7 days from midnight of the day on which notice of cancellation is issued by the Association) and the Directors may at any time after the issue of notice of such cancellation resolve to reinstate excess war risks P&I cover pursuant to the proviso to Rule 14 on such terms and conditions and subject to such limit as the Directors in their discretion may determine.