Q&A

Cyber risks and P&I insurance

What are “cyber risks”? 

- Cyber risks can be defined as the risk of loss or damage or disruption from failure of electronic systems and technological networks
- All businesses rely heavily upon computer systems to sustain their operations, but these systems are vulnerable
- Cyber risks comprise risks related to hacker attacks, virus transmission, cyber extortion, network downtime and data security breaches
- A maritime cyber risk can be defined according to the IMO Interim Guidelines on Cyber Risk Management as “the extent to which a technology asset is threatened by a potential circumstance or event, which may result in shipping-related operational, safety or security failures as a consequence of information or systems being corrupted, lost or compromised”

How can cyber risks occur in the shipping industry?

- Commercial ships are increasingly more dependent upon computers and computer software to operate and control various shipboard systems
- Safe ship operations are reliant on bridge systems such as ECDIS (Electronic Chart Display and Information System), AIS (Automatic Identification System) and GPS (Global Positioning System)
- Main and auxiliary propulsion systems rely increasingly on computers to operate efficiently
- Ship networks are connected to the internet
- As with computers ashore, shipboard systems are vulnerable to cyber-attacks
- Hackers can take advantage of vulnerabilities in a network to access servers; this can enable hackers to access, remove and manipulate sensitive data
- Even a simple mobile phone charging process using a USB port in the ECDIS system can cause a virus to render a system inoperable
- If ships’ systems are attacked, the effect could be extremely perilous
- A cyber-attack could catastrophically impact the safe navigation of a vessel, both in terms of its ability to avoid hazards and in terms of its stability and cargo operations
- A cyber-attack could lead to collision, personal injury, property damage, pollution or even to a shipwreck
• These possible scenarios could lead to liabilities of P&I Club Members

Are cyber risks excluded from P&I cover?

• No. As a general rule, P&I liabilities – which are set out in Rule 2 of the UK Club Rules – are not subject to any exclusion of cyber risks.

• Nor is the International Group Pooling Agreement subject to a cyber risk exclusion.

• Some maritime cyber risks, however, don’t come within the scope of P&I because they don’t arise from the operation of a ship. An example is the risk of monetary loss where a shipping company is blackmailed to pay a ransom for the restoration of IT data or restoration of IT systems that have been compromised by cyber-attack.

Are there any exceptions to the general rule?

• Yes – some P&I claims resulting from cyber risks may be excluded from cover by virtue of exclusions relating to paperless trading, or exclusions relating to P&I war risks.

• The Club provides an Excess War Risks P&I cover, which is subject to an exclusion of loss resulting from use or operation of a computer virus as a means for inflicting harm. Primary War Risks P&I cover, such as that provided by the UK War Risks Club, is subject to a similar specific exclusion.

Paperless trading – Electronic Bills of Lading

• Normal P&I cover is subject to an exclusion – set out in the ‘Addendum for Owners’ in the UK Club Rule Book – in respect of liabilities, losses, costs and expenses arising from the use of any electronic trading system, other than an electronic trading system approved by the Managers in writing, to the extent that such liabilities, losses, costs and expenses would not have arisen under a paper trading system.

• Electronic trading systems could be vulnerable to cyber-attacks.

• Although the exclusion does not expressly refer to cyber risks, any liabilities, losses, costs or expenses arising out of a cyber-attack (such as hacker attacks) affecting a non-approved electronic trading system would not be covered.

• This exclusion does not apply to approved systems for electronic trading, of which there are currently three: Bolero, ESS, and E-Title.

P&I War Risks (including terrorist risks)

• P&I cover is subject to an exclusion in respect of P&I liabilities, costs or expenses arising from war risks as defined in UK Club’s Rule 5E, including acts of terrorism. The exclusion applies irrespective of any contributory negligence on the part of the Owner or his servants or agents. A key part of the definition refers to P&I losses caused, or contributed to, by “War, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power, or any act of terrorism”.

• Depending on motive, a cyber-attack could constitute an “act of terrorism” or even in warlike circumstances a “hostile act by a belligerent power”.

• Terrorist acts are generally regarded as those aiming to kill, maim or destroy indiscriminately for a political, religious or ideological cause. The Club’s Directors have power under the Rules to determine whether a particular event constitutes an act of terrorism for the purpose of applying the exclusion.

• A cyber-attack on an individual ship is, however, likely to be regarded as a hostile act of a belligerent power only in the context of civil war or where a rebellion extends to the occupation of territory and organised political authority over military forces.

• A cyber-attack on an individual ship could arise for a variety of reasons that do not engage the war exclusion – including, for example, commercial sabotage, or the malicious act of an individual with a grudge against the owning company – and in any such cases a Member’s normal P&I cover will respond (subject to the remainder of the Rules).
What happens if the cyber-attack constitutes an excluded risk under standard P&I cover by operation of the Club's War risks exclusion?

- If a cyber-attack constitutes an act of war, or an act of terrorism, it is excluded from standard P&I cover

- In general, some cyber risks will be excluded from primary war risks insurance policies too, including, for example, the war risks insurance provided by the UK War Risks Club (which is an independent, Thomas Miller managed, mutual war risks association)

- The UK War Risks Club excludes cover for any losses, liabilities, costs or expenses directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer virus. Cyber risks caused by a “computer virus” are therefore excluded

- However, for 2018 the computer virus exclusion will only apply once claims within the scope of the clause exceed, for the UK War Risks Club, US$50 million in the aggregate in the 2018 Policy Year

Are cyber risks included in Excess War Risks P&I Cover?

- As an exception to the war risks exclusion, the UK Club provides US$500 million of Excess War Risks P&I Cover to its Members. This is not a primary war risk P&I cover, but responds to claims in excess either of the “proper value” of the entered ship as defined in Rule 5D (which, for those purposes is deemed not to exceed US$100 million), or the amount recoverable in respect of the claim under any other policy of insurance, whether of war risks or otherwise, whichever is greater

- Members will normally buy Primary War Risks P&I cover together with War Risks Hull cover from a specialist commercial or mutual war risks underwriter

- The UK Club’s Excess War Risks P&I Cover has a limit of US$500 million, each ship, any one accident or occurrence or series thereof arising from any one event

- The UK Club’s Excess War Risks P&I cover is subject to a combined Cyber Risk and Bio-Chem exclusion which bars recovery of “losses, liabilities, costs or expenses directly or indirectly caused by or contributed to by or arising from any chemical, biological, bio-chemical or electromagnetic weapon or the use or operation, as a means for inflicting harm, of any computer virus”

Taking the example of UK War Risks Club, what happens if a P&I cyber war risk claim exceeds US$50 million?

- As noted above the UK P&I Club’s Excess War Risks cover is subject to a cyber exclusion

- Thus, taking an example of a Member whose ship is insured by both UK War Risks Club and UK P&I Club, if a cyber risks claim comprises war and terror risks and exceeds US$50 million, the excess over US$50 million
Q&A cannot, unfortunately, be recovered from the UK P&I Club’s Excess War Risks P&I Cover. However, see next section

Is there any other insurance available from the UK P&I Club for P&I war risks claims arising from cyber risks?

• Yes. UK P&I provides a limited additional cover for P&I war risks claims arising from cyber risks where they constitute Bio-Chem claims

• A Bio-Chem claim is a claim for crew risks or a claim for legal costs, where recovery of such claims has been excluded from UK P&I’s War Risks Excess Cover or from any primary war risks cover by reason of a defined Bio-Chem Exclusion

• Crew risks comprise damages, compensation, costs or expenses in consequence of personal injury to or illness or death of any Seaman (including repatriation and substitute expense, shipwreck unemployment indemnity and diversion expenses) as set out in Rule 2, Sections 2, 3, 4, 5, 6, 7 of the Association’s Rules

• Legal costs comprise all legal costs and expenses as set out in Rule 2, Section 25(B) of the Association’s Rules

• A Bio-Chem Exclusion is an exclusion in a war risks policy of liabilities arising from any chemical, biological, biochemical, electromagnetic weapon or the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system

• The cover is pooled by the IG under a Supplemental Pooling Agreement and is limited to US$30 million in the aggregate any one event. If there is more than one entry in the Club and/or any other IG insurer in respect of the same ship, insured for cyber risks under the Bio-Chem covers, each such entry’s cyber risks claims are pro-rated accordingly

• P&I war risks claims resulting from cyber risks may be covered by primary war risks underwriters – for example the UK War Risks Club (where incurred by the member of that club), but in the case of that club subject to a limit of US$50 million in the aggregate across all such claims of all members arising in the 2018 policy year

• Additional cover is available from UK P&I for P&I war risks claims resulting from cyber risks where such claims are in respect of crew liabilities or legal costs falling within the scope of the Bio-Chem exclusion, subject to a limit of US$30m in the aggregate any one event.

Conclusion – taking an example of a ship insured by both UK P&I Club and UK War Risks Club:

• P&I claims arising from cyber risks are covered by UK P&I in the normal way, subject to any separate exclusion under the Rules such as those in respect of war risks or non-approved electronic trading systems

• The Directors can in their discretion exclude certain areas from the cover or cancel the cover subject to a 24 hours’ notice period

• Liabilities arising from explosives or the methods of the detonation or attachment thereof, the use of the entered ship or its cargo as a means for inflicting harm (unless such cargo is a chemical or bio-chemical weapon) and the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile, are excluded from the cover

Thomass Miller Specialty offers a “classic but bespoke” Cyber Risk Insurance product. It is a business interruption product i.e. insuring lost income (and digital information) from a malicious cyber event or IT system failure. Third party coverage relates to data and privacy liability in respect of both customers and employees. Customer care and crisis management support is also provided. For information on this product, Members may contact alan.dainty@thomasmiller.com

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