Club: UK P&I
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TO THE MEMBERS

Dear Sirs

WAR RISKS P&I COVER

We refer to Circular 2/03 dated February 2003, informing the Members of the basis on which special war risks P&I cover would be made available under the proviso to Rule 5E for the policy year commencing on 20th February 2003.

Due to changes in the available reinsurance the terms of the cover were changed for 2003/04. The reinsurance changes were notified to the International Group of P&I Clubs only shortly before the renewal and the International Group has been seeking to clarify two issues.

1. Chemical, Bio-Chemical, Electromagnetic Weapons and Computer Virus Exclusion Clause

This clause is new for 2003/04 and has been introduced as a result of the introduction of similar clauses in almost all reinsurance policies to avoid undue aggregation of risk.

The clause reads as follows:-

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.

Problems have arisen with the interpretation of this clause and it is potentially much too 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 have submitted a revised wording for the clause which incorporates these principles and it is hoped that the wording of the clause for the next year will be clearer.

2. The Excess Point

The wording of the excess point for the International Group's 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."

Once 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 have issued the following clarification with the approval of reinsuring underwriters:-

> "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 and terrorism 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 Association's cover given under Rule 5E (War Risks P&I) equal to at least the proper value of the entered ship, as defined in Rule 5D. Furthermore this cover is excess of any cover which the Member has actually taken out which covers the risk, unless the cover is a corporate general liability umbrella cover. A corporate general liability umbrella cover is difficult to define and it is important that any Member who considers that he has such a cover should inform the Managers so that the position can be clarified.

Members are recommended to seek similar clarifications to those set out above from the underwriters of their underlying War Risks cover.

Yours faithfully

THOMAS MILLER (BERMUDA) LTD.

A similar circular is being issued by other Members of the International Group of P&I Clubs