



**JANUARY 28, 2009**

**CIRCULAR NO. 04/09**

**TO MEMBERS OF THE ASSOCIATION**

**Dear Member:**

**WAR AND TERRORISM RISKS: COVER IN RESPECT OF BIOLOGICAL AND BIO-CHEMICAL WEAPONS – 2009 POLICY YEAR**

This Circular describes the arrangements which have been made to provide special cover for war and terrorism risks and cover in respect of biological and bio-chemical weapons for the 2009 policy year.

**War and Terrorism Risks**

For 2009, cover for war and terrorism risks will remain available from the Club in accordance with the relevant proviso to Rule 3.1.1 of the Rules of Class I.

This cover will apply in excess of an insured vessel's proper hull value and will be \$500 million for 2009, the same figure as obtains for the current policy year.

Addendum I to this Circular sets out the terms of this excess cover which will be applicable to all vessels insured on fully mutual conditions in accordance with the Rules of Class I into the cover of which these terms will be deemed to be incorporated.

**Cover in Respect of Biological and Bio-Chemical Weapons**

The International Group of P&I Clubs' pooling facility to provide cover for certain war and terrorism risks, which are otherwise excluded by reason of most War Risk Hull and P&I policies containing a bio-chemical exclusion, will continue for the forthcoming policy year.

The risks covered by virtue of the pooling facility are in respect of a Member's liability:

- a. to pay damages, compensation or expenses in consequence of the personal injury to, or illness or death of, any seaman (including diversion expenses, repatriation and substitute expenses and shipwreck unemployment indemnity); and
- b. for the legal costs and expenses incurred solely for the purpose of avoiding or minimizing any other P&I liability arising from a bio-chemical event (other than under Class 1, Rule 2, Section 20, being the "Omnibus Clause").

The limit of cover will be \$30 million (the same as for 2008) any one event for each vessel.

Addendum II to this Circular sets out the terms of this cover which will be applicable to all vessels insured on fully mutual conditions in accordance with the Rules of Class I, into the cover of which these terms will be deemed to be incorporated.



### **United States Terrorism Risk Insurance Act (TRIA)**

Both special covers as described above will include liabilities as defined by TRIA. For eligible vessels, cover for TRIA risks will be deemed to attract a premium of \$0.0025 per GT per annum and be included in a vessel's overall premium. It should be noted that under the terms of the extension of TRIA to year-end 2014, an industry-wide cap of \$100 billion will apply to all claims recoverable on the basis of TRIA provisions.

Should any Member have any questions as to the intention or extent of either special cover described above, the Managers will, as always, be pleased to respond.

Yours faithfully,

Joseph E. M. Hughes, Chairman & CEO  
Shipowners Claims Bureau, Inc., Managers for  
**THE AMERICAN CLUB**



**ADDENDUM I TO CIRCULAR NO. 04/09  
DATED JANUARY 28, 2009**

**WAR AND TERRORISM RISKS  
2009 POLICY YEAR  
EXCESS COVER**

It is hereby agreed in accordance with the provisions of Class I, Rule 3, Section 1.1 that cover is extended to include such liabilities, costs and expenses as would be covered under the Rules of the Association but for the exclusion of War and Terrorism Risks as set out in the said Rule. This extended Protection & Indemnity War Risks cover is subject to a limit in respect of such liabilities, costs and expenses of USD500,000,000 any one insured vessel any one event in excess of any amount recoverable under the insured vessel's Hull and Machinery and War Risks Policies.

This cover is to pay claims in excess of amounts recoverable under the insured vessel's or crew war risk P&I policies, subject to a minimum deductible of the proper value of the insured vessel or USD100,000,000 whichever is the less any one event. Provided that this condition shall not apply where the entry of the insured vessel is solely in the name of or on behalf of a charterer other than a charterer by demise or bareboat charterer and provided that the Board may authorize the payment, in whole or in part, of any claim or part of a claim which falls within such excess, if in its discretion and without having to give any reasons for its decision it decides that the Member should recover from the Association.

1. This cover for War Risks under Class I, Rule 3, Section 1.1 shall be subject to the following:

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

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith, and shall be interpreted in accordance with the Association's Circular No. 7/03 of April 1, 2003, a copy of which is attached for ready reference.

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

- a) any chemical, biological, bio-chemical or electromagnetic weapon;
  - b) the use or operation, as means for inflicting harm, of any computer virus.
2. At any time or times before, or at the commencement of, or during the currency of any Policy Year, the Association may in its discretion determine that any ports, places, countries, zones or areas (whether of land or sea) be excluded from the insurance provided by this cover for War and Terrorism Risks ("Prohibited Areas"). Save as otherwise provided by the Association this cover shall cease in respect of Prohibited Areas at midnight on the seventh day following the issue of notice of such determination in accordance with Class I, Rule 3, Section 1.1. Unless and to the extent that the Board in its discretion otherwise decides there shall be no recovery from the Association under this cover in respect of any claim howsoever arising out of any event, accident or occurrence within the Prohibited Areas after such date.

3. Notwithstanding the terms of clause 2 above or any other term or condition of this insurance, cover hereunder in respect of the risks of war, etc., shall TERMINATE AUTOMATICALLY upon the outbreak of war (whether there be a declaration of war or not) between any of the following:
- The United Kingdom, the United States of America, France, the Russian Federation, the People's Republic of China;
  - 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.

4. This cover excludes:

Liabilities, costs or expenses (irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Member or his servants or agents) when the loss or damage, injury, illness or death or other accident in respect of which such liability arises or cost or expense is incurred, was directly or indirectly caused by or arises from

- ionizing radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or
- the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof; or
- any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive matter;

other than liabilities, costs and expenses arising out of carriage of such material or matter as the Managers in their absolute discretion may approve.

5. Notwithstanding any other term or condition of this insurance, this cover for War and Terrorism Risks may be cancelled by the Association giving seven days' notice (such cancellation becoming effective on the expiry of seven days from midnight of the day on which notice of cancellation is issued by the Association) and the Association may at any time after the issue of such notice of cancellation resolve to reinstate this cover on such terms and conditions and subject to such limit as the Association in its discretion may determine.
6. This cover excludes any liabilities which the Member may incur under the Tanker Oil Pollution Indemnification Agreement 2006 (TOPIA 2006).
7. When either a demise, time, voyage, space or slot charterer and/or the owner of the insured vessel are separately insured for losses, liabilities, or the costs and expenses incidental thereto covered under Class I, Rule 3, Section 1.1 of the Association and/or the equivalent Rule of any other association which participates in the Pooling Agreement and General Excess Loss Reinsurance Contract, the aggregate of claims in respect of such losses, liabilities, or the costs and expenses incidental thereto covered under Class I, Rule 3, Section 1.1 of the Association and/or the equivalent Rule of such other association(s),



shall be limited to USD500,000,000 any one vessel any one incident or occurrence. If such claims exceed this limit, the liability of the Association in respect of each Certificate of Entry shall be limited to that proportion of the limit that claims recoverable from the Association and from such other association(s), if any.



APRIL 1, 2003

CIRCULAR NO. 7/03



## **TO MEMBERS OF THE ASSOCIATION**

Dear Member:

### **WAR AND TERRORIST RISKS**

Reference is made to Circulars 2/03 and 5/03 of January 30 and February 11, 2003 respectively. The purpose of this Circular is to revisit certain issues raised in the latter document in light of recent clarifications received from the International Group of P&I Clubs' reinsuring underwriters.

#### **Chemical, Bio-chemical, Electromagnetic Weapons and Computer Virus Exclusion Clause**

This clause is new for the 2003 policy year. It has been introduced as a result of the implementation of similar clauses in almost all reinsurance contracts to avoid undue aggregation of risk.

As earlier advised in Circular No. 5/03, 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*

*any chemical, bio-chemical or electromagnetic weapon.*

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

Problems have arisen with the interpretation of this clause. It is potentially much too wide. Following discussions between the International Group, its brokers and reinsurers, 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 February 20, 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 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 language of the clause for 2004 will be clearer.

### **Excess point**

The wording of the excess point for the International Group of P&I Clubs' reinsurance contracts has been changed for 2003 policy 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 \$100,000,000 whichever is the less (applicable to owners' entries and not to charterers' entries), and further subject to a minimum excess of \$50,000 any one event.*

Once again, the Group's brokers and reinsurers are concerned that the intent of this clause should be clearly understood and, following discussions with International Group representatives, 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 \$100 million, the deemed underlying excess shall be \$100 million.*

*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 organizations 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 Cooperation Clause.*

**Members are asked to note that they are deemed to have underlying cover with conditions equivalent to the Club's cover given under the proviso to Rule 3.1.1 of the Rules of Class I (War Risks P&I) equal to at least the proper value of the ship. Furthermore, this cover is excess of any cover which a Member has actually taken out which covers the risk, unless the cover is a corporate general liability umbrella cover. A corporate general liability cover is difficult to define and it is important that Members who consider they have such cover should inform the Managers so that the position can be clarified. Members are recommended to seek clarifications similar to those set out above from the underwriters of their underlying War Risks cover.**

*In all cases, and as usual, the Managers will be pleased to help in answering any specific inquiries in regard to the foregoing, or any other general questions which Members may have.*

Yours faithfully,  
Joseph E.M. Hughes, Chairman & CEO  
Shipowners Claims Bureau, Inc., Managers for  
**THE AMERICAN CLUB**



**ADDENDUM II TO CIRCULAR NO. 04/09  
DATED JANUARY 28, 2009**

**COVER IN RESPECT OF BIOLOGICAL AND BIO-CHEMICAL WEAPONS  
2009 POLICY YEAR**

It is hereby understood and agreed that, in accordance with the provisions of Class I, Rule 3, Section 1.1, as from noon GMT February 20, 2009 the following language will form part of the terms of entry for all vessels insured on fully mutual conditions in conformity with the Rules of Class I.

**1. Biological and Bio-Chemical Weapons Clause**

1.1 Subject to the terms and conditions and exclusions set out herein, cover is extended to include the liability of the Member:

- (a) in respect of seamen under Class I, Rule 2, Sections 1.B, 2 and 12; and
- (b) for legal costs and expenses under Class I, Rule 2, Section 17;

1.2 where such liability would be recoverable under the Rules:

- (a) save for the exclusion of war risks contained in Class I, Rule 3, Section 1.1; and
- (b) such liability could not be recovered under any other policy of insurance providing cover to replace that so excluded solely by reason of the operation of an exclusion of liabilities, costs, losses and expenses directly or indirectly caused by or contributed to by or arising from
  - (i) any chemical, biological, bio-chemical or electromagnetic weapon, or
  - (ii) the use or operation, as a means for inflicting harm, of any computer, computer system, computer software program, malicious code, computer virus or process or any other electronic system;

1.3 provided always that the extension of cover set out herein shall not apply to liabilities, costs, losses and expenses arising from:

- (a) explosives or the methods of detonation or attachment thereof;
- (b) the use of the insured vessel or its cargo as a means for inflicting harm, unless such cargo is a chemical or bio-chemical weapon;
- (c) the use of any computer, computer system or computer software program or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.



## **2. Excluded Areas**

- 2.1 Unless and to the extent the Board may in its discretion otherwise decide, there shall be no recovery in respect of any liabilities, costs, losses and expenses directly or indirectly caused by or contributed to by or arising out of any event, accident or occurrence within such ports, places, countries, zones or areas or during such period as may be specified by the Association.
- 2.2 At any time or times before, or at the commencement of, or during the Policy Year, the Association may by notice to the Member specify, change, vary, extend, add to or otherwise alter the ports, places, countries, zones and periods for which there shall be no recovery under the terms of Clause 2.1, from a date and time specified by the Association not being less than 24 hours from midnight on the day the notice is given to the Member.

## **3. Cancellation**

Cover hereunder may by notice to the Member be cancelled by the Association from a date and time specified by the Association, not being less than 24 hours from midnight on the day notice of cancellation is given to the Member.

## **4. Limit of Liability**

- 4.1 Subject to Clause 4.2 the limit of the liability of the Association under this extension of cover in respect of all claims shall be in the aggregate \$30 million each vessel any one event.
- 4.2 In the event that there is more than one entry by any person for cover in respect of biological and bio-chemical weapons as provided herein in respect of the same vessel with the Association and/or any other association which participates in the Pooling Agreement or General Excess Loss Reinsurance Contract of the International Group of P&I Clubs, the aggregate recovery in respect of all liabilities, costs, losses and expenses arising under such entries shall not exceed the amount stipulated in Clause 4.1 and the liability of the Association under each such entry shall be limited to such proportion of that amount as the claims arising under that entry bear to the aggregate of all such claims recoverable from the Association and any such other association.

## **5. Deductible**

The deductible shall be that applicable to the relevant cover set out in the insured vessel's Certificate of Entry.