

# CIRCULAR

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**MARCH 18, 2004**

**CIRCULAR NO. 8/04**

**TO MEMBERS OF THE ASSOCIATION**

**Dear Member:**

## **BIO-CHEM EXCLUSION – NEW GROUP POOLING ARRANGEMENTS**

Members will be aware that most War Risk Hull and P&I policies issued since February 2003 include a Bio-Chem Exclusion and will continue to do so for the foreseeable future.

The 2004 Excess War Risks P&I cover provided by International Group Clubs for \$400 million in excess of an insured vessel's proper hull value also contains a Bio-Chem Exclusion Clause with the result that most, if not all, Members have no cover for War P&I risks which are caused, either directly or indirectly, from a chemical, biological, bio-chemical, or electro-magnetic weapon, or from the use of any computer or computer system as a means for inflicting harm.

All International Group Clubs (except for the moment the Japan Club) have now decided that they should provide limited cover for two risks through the Group's Pooling arrangements for which there would otherwise be no cover.

Accordingly, with effect from noon GMT March 15, 2004, the risks which will be covered through the Group's new pooling facility are in respect of a Member's liability:

1. For 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
2. For the legal costs and expenses incurred solely for the purpose of avoiding or minimizing any other P&I liability arising from a Bio-Chem event (other than under the "Omnibus Clause" – Rule 2, Section 19).

The detailed terms and conditions of the cover in respect of Bio-Chem claims are set out in the attached Bio-Chem clause which reflects a Supplemental Agreement to the 2004 Pooling Agreement whose principal provisions are that:

- cover, which will attach automatically for all Members, will be from the ground-up (in excess of a Member's usual deductible), but limited to \$20 million any one accident or occurrence (or series of occurrences arising from the same event) each vessel;
- individual Clubs will retain the first \$5 million of any one claim, with the \$15 million excess over \$5 million being pooled as if any other Pool claim;
- the limit of cover (\$20 million) will apply to all interests for each vessel in the aggregate regardless of the number of interests and regardless of whether or not they are entered in different P&I Clubs (e.g. owners, charterers and sub-charterers);
- to avoid the excessive aggregation of risk, cover will have a cancellation provision and areas of particular sensitivity may also be the subject of geographical exclusions (e.g. the Athens Olympics), both cancellation and geographical exclusions requiring the tendering of 24 hours' notice to Members;



- no premium will be charged for the cover, although premium may be charged for specific risks which may arise, and which may be the subject of a premium notice if cover is to be maintained or varied.

So far as the Japan Club is concerned, it is its intention to participate in these arrangements along with all other Group Clubs once it has had regulatory approval to do so (hopefully by June 2004).

The attached Bio-Chem Clause will be deemed to form part of all Certificates of Entry evidencing the insurance of vessels covered by the American Club as from noon GMT March 15, 2004 to noon GMT February 20, 2005 or such earlier date or time as might apply by operation of the specific terms of the said Bio-Chem clause or any amendments thereto.

As always, the Managers will be pleased to respond to any questions Members may have on this specific issue, or generally.

Yours faithfully,

A handwritten signature in black ink, which appears to read "Joseph E.M. Hughes". The signature is written in a cursive, flowing style.

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



## ATTACHMENT TO CIRCULAR NO. 8/04 OF MARCH 18, 2004

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### Bio-Chem 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)** 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),
  - (b)** for the legal costs and expenses incurred solely for the purpose of avoiding or minimizing any liability or risk insured by an Association (other than under the "Omnibus Clause" – Rule 2, Section 19),
- 1.2** where such liability would be recoverable under either
- (a)** cover provided by the Club for such liabilities, costs, losses and expenses as would be covered under the Rules but for the exclusion of War Risks in Rule 3, Section 1.1, or
  - (b)** any underlying war risk policies covering the same risks,
- 1.3** 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
- (a)** any chemical, biological, biochemical or electromagnetic weapon,
  - (b)** 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,
- 1.4** other than liabilities, costs, losses and expenses arising from
- (i)** explosives or the methods of the detonation or attachment thereof
  - (ii)** 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
  - (iii)** 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 Directors may in their 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 the ports, places, zones or areas or during such period as are specified below:



The area bounded by the NW entrance to the Corinthian Canal, encompassing all of the Corinthian Canal and Saronikos Kolpos and the region bounded by a circle drawn 33 nautical miles from position 37 deg 54'N 23 deg 51'E during the period from 0001 GMT August 1, 2003 to 2400 GMT October 15, 2004.

**2.2** At any time or times before, or at the commencement of, or during the policy year, the Club may by notice to the Member change, vary, extend, add to or otherwise alter the ports, places, countries, zones and periods specified in Clause 2.1 from a date and time specified by the Club 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 Club from a date and time specified by the Club, 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 liability of the Club under this extension of cover in respect of all claims shall be in the aggregate \$20 million each ship any one accident or occurrence or series thereof arising from any one event.

**4.2** In the event that there is more than one entry by any person for Bio-Chem cover as provided herein in respect of the same ship with the Club and/or any other insurer which participates in the Pooling Agreement or General Excess Loss Reinsurance Contract, 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 Club 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 Club and any such other insurer.

**5** Deductible

The deductible shall be the deductible applicable to the relevant cover set out in the Certificate of Entry.

**6** Law and Practice

This clause is subject to English law and practice.