

NEWSLETTER NO. 14 / 20

14th July 2020

P&I cover and Cyber risks

Maritime cyber security experts reported recently that there has been a 400% spike in shipping-targeted hacks since February 2020 with the COVID-19 pandemic leaving the sector vulnerable. Reports in recent months are that cyber-attacks were made against MSC over the Easter weekend, while Australia Toll Group has suffered two hacking incidents this year.

Under the basic P&I cover with an International Group P&I Club, Owners are covered for P&I risks caused or contributed to by a cyber risk (subject to the war risks exclusion, as mentioned below). However, they should, at all times, ensure that cover is not prejudiced by acting in an “*imprudent, unsafe, unduly hazardous or improper*” way.

Class certification and Safety Management Systems

The International Maritime Organisation (IMO) is due to implement Resolution MSC 428/98 Cyber Risk Management in Safety Management Systems which mandates that “*cyber risks are appropriately addressed in safety management systems no later than the first annual verification of the Document of Compliance after 1 January 2021*”. Owners have always been required to ensure that the vessel is classed by an approved Classification Society and that all statutory certificates are issued by the vessel’s Flag State. However, after the implementation of Resolution MSC 428/98 in 2021, an owner’s failure to maintain a certified cyber risk management system may prejudice P&I Club cover.

War & terrorism

P&I cover in respect of Cyber Risks can be excluded by virtue of the War Risks exclusion if the liabilities incurred are found to be caused by “*any hostile act by or against a belligerent power or any act of terrorism*”. The application of this exclusion will depend on each individual case. However, when looking for a definition of an act of terrorism, insurers tend to look to the UK Terrorism Act 2000 which defines

terrorism as an act or threat *“made for the purpose of advancing a political, religious, racial or ideological cause ... [including acts] designed to seriously interfere with or seriously disrupt an electronic system.”*

P&I Clubs are not primary underwriters of War Risks insurance. Instead, War P&I cover is provided as an ancillary cover to an owner’s Hull & Machinery War cover, typically up to the value of the vessel itself. The P&I Clubs provide a further USD 500 million cover in excess of this. Therefore, liabilities arising from a cyber-attack against a vessel could be excluded under basic P&I cover provided by the P&I Clubs but be included under Hull & Machinery War cover subject to any exclusions therein.

However, even War Risks insurance includes an exclusion for losses caused by *“the use or operation as a means of inflicting harm of any computer virus”*. This is a typical cyber exclusion referred to as clause CL380. Unless this exclusion is bought back by the owner, it could give rise to a situation where an owner remains without cover for the P&I risks when the cyber-attack is due to a War Risks or an act of terrorism. The use of the CL380 buy-back is fading with the implementation of LMA5402 (Marine Cyber Exclusion) and LMA5403 (Marine Cyber Endorsement), and specialized Cyber Risks products that have been and continue to be developed for both ship-side and shore-side operations. Both of these clauses are included as appendices to this newsletter.

Irrespective of this and whether or not there is a CL380 exclusion, the International Group P&I Clubs provide a Supplemental Cover 2004 (Biochemical Risks). This cover provides an aggregate limit of USD 30 million for each ship any one occurrence or series arising from one event in respect of:

- i. damages, compensation or expenses in consequence of personal injury to or illness or death of any seamen; and / or,
- ii. for legal costs and expenses incurred solely for the purpose of avoiding or minimizing any other P&I liability arising from a Bio-Chem Risk, including *“the use or operation, as a means for inflicting harm, of any computer virus”*.

There are however further exclusions in respect of:

- 1.4 (2) - the use of the ship or its cargo as a means of causing harm; and / or,
- 1.4 (3) - the use of any computer, computer system etc. in the launch and or guidance and/or firing mechanism of any weapon or missile.

We understand that Cyber Risks are fast-developing and cyber-attacks, by their very nature, may have a severe impact on an owner's or operator's activity with consequent losses of time and revenues. Examples range from a vessel being delayed as a result of malware infecting on board computers, to a shut-down of terminals for days following a coordinated attack by computer hackers. In order to assist our clients and their growing concerns for this increasing risk, we have identified a range of Cyber Risks insurance products which are best suited to the shipping industry. Please don't hesitate to get in touch with our various offices should you wish to discuss further.

P.L. Ferrari & Co. Srl

Clause LMA5402 – Marine Cyber Exclusion

This clause shall be paramount and shall override anything in this insurance inconsistent therewith.

1. In no case shall this insurance cover any loss, damage, liability or expense directly or indirectly caused by, contributed to by or arising from:
 - 1.1. the failure, error or malfunction of any computer, computer system, computer software programme, code, or process or any other electronic system, or
 - 1.2. 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.

LMA5402 - 11 November 2019

Clause LMA5403 – Marine Cyber Endorsement

1. Subject only to paragraph 3 below, in no case shall this insurance cover loss, damage, liability or expense 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, computer system, computer software programme, malicious code, computer virus, computer process or any other electronic system.
2. Subject to the conditions, limitations and exclusions of the policy to which this clause attaches, the indemnity otherwise recoverable hereunder shall not be prejudiced by the use or operation of any computer, computer system, computer software programme, computer process or any other electronic system, if such use or operation is not as a means for inflicting harm.
3. Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, paragraph 1 shall not operate to exclude losses (which would otherwise be covered) arising from 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.

LMA5403 - 11 November 2019