

# Aviation Insurance Clauses Group (AICG)

## AGENDA

9.45am, Thursday 25 January 2024

IUA Large Meeting Room / Microsoft Teams Meeting

**Chair:** Graham Spencer-Brown

**Members:**

**IUA:**

Tina Collier  
Julie Damant  
Tony Powles  
Nicolette Rodrigues  
Adam Tozzi  
Jette Varnals

**LMA:**

Jill Epps  
Dele Fajimolu  
Nick Medniuk  
Michelle Myler-Falla

**Other Representatives:**

Gary Hendries (Swiss Re)  
Nick Hughes (Appointed Expert)  
Roland Küsters (Munich Re) (Deputy Chair)  
Sophie Moysan (France Assureurs)  
Ruth Wahner (Hannover Re)

**Secretariat:** Tom Hughes (IUA), Christopher Jones (IUA)

1. **Apologies for absence**
2. **Membership (Sophie Moysan)**
3. **Minutes of previous meeting** (23 November 2023) *Paper attached*
4. **Matters arising**
  - 4.1 AICG Terms of Reference *Paper attached*
5. **Current consultation drafts - None**
6. **Potential new work items:**
  - 6.1 Model Drone Wording
  - 6.2 PFAS Exclusion Clause / Non-airline version of AVN46B *Paper attached*
7. **Any other business**

**Next Meeting Date: Thursday 22 February 2024, IUA Large Meeting Room / MS Teams**

Competition law reminder:

It is the clear and unequivocal policy of IUA to comply in all respects with all applicable competition or antitrust laws. Consequently, the Committee will not participate in any practice that would have the object or effect of restricting competition, nor will it provide a forum to promote anti-competitive conduct. In particular, any discussion or agreement on key commercial terms, such as commercial premiums, is likely in all instances to be unlawful and must be avoided. A competition law ['Do's and Dont's' Guide](#) is available and the IUA is happy to answer any questions on competition law that Committee members may have.

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|----------------------|--|
| <b>Meeting</b>       | <b>Aviation Insurance Clauses Group (AICG)</b>       |
| <b>Time and Date</b> | <b>9:45am, Thursday 23 November 2023</b>             |
| <b>Venue</b>         | <b>Microsoft Teams Conference Call / IUA Offices</b> |

**PRESENT:**

|                                 |                  |
|---------------------------------|------------------|
| Tina Collier                    | IUA              |
| Julie Damant                    | IUA              |
| Jill Epps                       | LMA              |
| Dele Fajimolu                   | LMA              |
| Gary Hendries                   | Swiss Re         |
| Nick Hughes                     | Appointed Expert |
| Tom Hughes (Secretariat)        | IUA              |
| Christopher Jones (Secretariat) | IUA              |
| Roland Küsters (Deputy Chair)   | Munich Re        |
| Sophie Moysan                   | FFA              |
| Michelle Myler-Falla            | LMA              |
| Nicolette Rodrigues             | IUA              |
| Graham Spencer-Brown            | Chair            |
| Jette Varnals                   | IUA              |
| Ruth Wahner                     | Hannover Re      |

**1. Apologies for absence**

- 1.1 Apologies had been received from Nick Medniuk and Tony Powles (IUA).

**2. Minutes of the previous meeting – 28 September 2023**

- 2.1 The minutes of the previous meeting were agreed to be a true and accurate representation.

**3. Matters arising**

- 3.1 The Secretariat had issued the AICG annual statement of activities to the European Commission (EC) detailing its 2023 work. A new representative for insurance at the EC had recently informed the Secretariat that the annual updates were no longer required. It had been explained by the EC that the creation of the AICG and the agreement to provide annual statements of activities had been part of an informal arrangement with the EC. The EC had therefore requested that the Secretariat remove a reference to the EC's monitoring of AICG on its website and an amendment would also be made to the AICG Terms of Reference. The Secretariat was also considering the role of the Aviation Liaison Forum (ALF), but there were no plans to amend the various protocols in place relating to crisis response. It was confirmed that the Secretariat would continue to draft an annual AICG summary of activities to be uploaded to the AICG website. The Secretariat would liaise with the Chair to finalise a response to the EC and to make the necessary amendments to the Terms of Reference and AICG website.

**4. Current consultation drafts - none**

- 4.1 There were no consultation drafts to consider.

**5. Potential new work items**

AVN46B – Emerging Contaminants e.g. PFAS

- 5.1 Members were aware that two specific PFAS clauses had been developed by the LMA, being

LMA5595 and LMA5596. It had been questioned whether a demand may arise for a model aviation PFAS clause, akin to the specific asbestos exclusion (2488AGM00003). This primarily arose out of potential contamination arising from the use of AFFF firefighting foams which were known to contain PFAS. PFAS exposure was understood to have the potential to result in longer tail health related issues and significant clean-up costs.

- 5.2 Related to PFAS developments, one member highlighted a recent incident in an aircraft hangar relating to a malfunctioning automated fire extinguisher system, which resulted in substantial PFAS contamination and damage to aircraft. It was added that a recent PFAS ruling from the Swedish Supreme Court related to towns of Kallinge and Ronneby had established that the mere presence of PFAS in the blood would be considered bodily injury.
- 5.3 Members noted the copy of AVN46B (1.10.96) which had been circulated with the agenda papers. Members discussed the interpretation of the writeback language included in AVN46B. In particular, the phrase 'causing abnormal aircraft operation'. It was questioned whether this phrase linked to both 'crash fire explosion or collision' and 'recorded in-flight emergency' or solely the latter. It was also suggested that the original publication of AVN46B may have included additional punctuation, but this punctuation was no longer included in the clause.
- 5.4 Members highlighted that AVN46B was widely used. It had been developed to apply to airline risks and so members questioned whether there would be value in a non-airline version being considered. It was also asked whether there would be value in a specific aviation PFAS exclusion clause being developed. Members agreed that both questions should be raised with the Associations via the Secretariat and advice provided to the AICG. It was considered important to ensure that introducing a specific clause to capture an exposure such as PFAS would not undermine the existing AVN46B language, which had been drafted to define contamination broadly. The Secretariat agreed to raise the two questions with the Associations and to notify members of the outcomes of discussions at the next meeting.

#### Amendment to 48B / AVN52E/G

- 5.5 Members noted the published Automatic Termination Provisions Amendment (LMA5623), which had been circulated with the agenda papers. The Secretariat outlined that LIIBA had also published a clause 'LIIBA AV003 Amendment to AVN52E/G Automatic Termination Provisions Endorsement'. IUA members had acknowledged that a range of amended LIIBA AV003 clauses had been seen in use in the market, as such IUA were considering the imminent publication of a codified IUA clause which sought to combine these various, often common amendments. Members would be notified of any developments.

## **6. Any Other Business**

### GPS Spoofing:

- 6.1 One member highlighted that examples of GPS spoofing had been identified in several different countries, including Turkey. In such instances there was a risk that the crew could fail to identify their location correctly which could give rise to several issues. For example, the aircraft could unintentionally enter airspace outside of its flight path or beyond its permissions. One member had been involved in discussions on the subject and discussed that GPS spoofing targeted navigation systems and could impact upon the ability to communicate with satellites. Some international aviation authorities had stated that if ground-based systems were operating as intended and crew were aware of the issue there was unlikely to be an incident. However, concerns remained about the potential for an aviation accident to occur.

Space TPL Clause:

- 6.2 It was stated that GPS spoofing raised concerns about the type of cyber exclusions in place on Space/TPL policies. It was discussed that the liability of a space operator might be triggered if GPS spoofing impacted the operation of an aircraft and resulted in a crash. One member raised that the SRC1 clause, an affirmation of cover with an exclusion for cyber-attacks, was being replaced by LIIBA AV001 (amended for space risks) by brokers. Members considered whether it would be appropriate for the AICG to publish space clauses and concluded that this would be within the remit of the Group.

***Next Meeting: The next meeting was scheduled for 25 January 2024.***

## Guidance note to the Updated PFAS Exclusion in LMA5595A.

### Previous exclusion (LMA5595):

1. This POLICY does not cover any claim for actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with any PFAS.
2. For the purposes of this Exclusion, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor, contain, test for or in any way respond to or assess the effect of any PFAS.
3. PFAS means any organic molecule, salt, free radical or ion, the composition of which includes at least one:
  - a. perfluorinated methyl group (-CF<sub>3</sub>); or
  - b. perfluorinated methylene group (-CF<sub>2</sub>-).

### Updated exclusion:

1. This POLICY does not cover any claim for actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with any PFAS, such as any perfluoroalkyl or polyfluoroalkyl substances for example.
2. For the purposes of this Exclusion, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor, contain, test for or in any way respond to or assess the effect of any PFAS, such as an perfluoroalkyl or polyfluoroalkyl substances for example.
3. PFAS means any organic molecule, salt, free radical or ion, the composition of which includes at least one:
  - a. perfluorinated methyl group (-CF<sub>3</sub>); or
  - b. perfluorinated methylene group (-CF<sub>2</sub>-).

### Rationale:

Paragraphs 1. and 2. of this exclusion have been altered slightly to include some familiar language: *perfluoroalkyl or polyfluoroalkyl substances*. This is to make it clear

that perfluoroalkyl and polyfluoroalkyl substances are to be excluded, along with all other members of the PFAS family.

The definition in 3. is unchanged. Included in its scope are all perfluoroalkyl and polyfluoroalkyl substances, and, all the hundreds of PFAS molecular species that are neither perfluoroalkyl nor polyfluoroalkyl substances. These additional species – such as many of the so-called ‘PFAS substitutes’ – present the same kinds of liability risk as do the well-known perfluoroalkyl and polyfluoroalkyl substances e.g. PFOS and PFOA. LMA5595A and LMA5596A therefore provide comprehensive PFAS exclusions.

10<sup>th</sup> October 2023

## Guidance note to the Updated PFAS Exclusion in LMA5596A.

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2. For the purposes of this Exclusion, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor, contain, test for or in any way respond to or assess the effect of any PFAS.
3. If UNDERWRITERS allege that this Exclusion applies to any claim under this POLICY the burden of proving the contrary shall be upon the INSURED.
4. PFAS means any organic molecule, salt, free radical or ion, the composition of which includes at least one:
  - a. perfluorinated methyl group (-CF<sub>3</sub>); or
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2. For the purposes of this Exclusion, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor, contain, test for or in any way respond to or assess the effect of any PFAS, such as an perfluoroalkyl or polyfluoroalkyl substances for example.
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**Rationale:**

Paragraphs 1. and 2. of this exclusion have been altered slightly to include some familiar language: *perfluoroalkyl or polyfluoroalkyl substances*. This is to make it clear that perfluoroalkyl and polyfluoroalkyl substances are to be excluded, along with all other members of the PFAS family.

The definition in 4. is unchanged. Included in its scope are all perfluoroalkyl and polyfluoroalkyl substances, and, all the hundreds of PFAS molecular species that are neither perfluoroalkyl nor polyfluoroalkyl substances. These additional species – such as many of the so-called ‘PFAS substitutes’ – present the same kinds of liability risk as do the well-known perfluoroalkyl and polyfluoroalkyl substances e.g. PFOS and PFOA. LMA5595A and LMA5596A therefore provide comprehensive PFAS exclusions.

10<sup>th</sup> October 2023

## **NOISE AND POLLUTION AND OTHER PERILS EXCLUSION CLAUSE**

1. This Policy does not cover claims directly or indirectly occasioned by, happening through or in consequence of:-
  - (a) noise (whether audible to the human ear or not), vibration, sonic boom and any phenomena associated therewith,
  - (b) pollution and contamination of any kind whatsoever,
  - (c) electrical and electromagnetic interference,
  - (d) interference with the use of property;unless caused by or resulting in a crash fire explosion or collision or a recorded in-flight emergency causing abnormal aircraft operation.
2. With respect to any provision in the Policy concerning any duty of Insurers to investigate or defend claims, such provision shall not apply and Insurers shall not be required to defend
  - (a) claims excluded by Paragraph 1 or
  - (b) a claim or claims covered by the Policy when combined with any claims excluded by Paragraph 1 (referred to below as "Combined Claims").
3. In respect of any Combined Claims, Insurers shall (subject to proof of loss and the limits of the Policy) reimburse the Insured for that portion of the following items which may be allocated to the claims covered by the Policy:
  - (i) damages awarded against the Insured and
  - (ii) defence fees and expenses incurred by the Insured.
4. Nothing herein shall override any radioactive contamination or other exclusion clause attached to or forming part of this Policy.

**AVN 46B 1.10.96**