

Aviation Insurance Clauses Group (AICG)

AGENDA

9.45am, Thursday 22 February 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:

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

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

1. **Apologies for absence**
2. **Membership (Aurélie Andre)**
3. **Minutes of previous meeting** (25 January 2024) *Paper attached*
4. **Matters arising**
5. **Current consultation drafts** *Paper attached*
 - 5.1 Drone Wording
 - 5.2 PFAS Exclusion Clause
6. **Potential new work items:**
 - 6.1 LMA updates to sanctions clauses in existing wordings e.g. AVN1E *Paper attached*
7. **Any other business**

Next Meeting Date: Thursday 28 March 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.

Meeting	Aviation Insurance Clauses Group (AICG)
Time and Date	9:45am, Thursday 25 January 2024
Venue	Microsoft Teams Conference Call / IUA Offices

PRESENT:

Julie Damant	IUA
Jill Epps	LMA
Dele Fajimolu	LMA
Gary Hendries	Swiss Re
Tom Hughes (Secretariat)	IUA
Christopher Jones (Secretariat)	IUA
Sophie Moysan	FFA
Michelle Myler-Falla	LMA
Nicolette Rodrigues	IUA
Graham Spencer-Brown	Chair
Adam Tozzi	IUA
Jette Varnals	IUA
Ruth Wahner	Hannover Re

1. Apologies for absence

- 1.1 Apologies had been received from Nick Hughes (Appointed Expert) and Tony Powles (IUA).

2. Membership (Sophie Moysan)

- 2.1 Members were notified that Sophie Moysan would be retiring from her role and therefore would no longer participate in the AICG. Sophie was thanked for her extensive contributions to the work of the AICG throughout her time on the Group. It was understood that the French insurance association (France Assureurs) would be agreeing a replacement representative to join the AICG on 29 January 2024.

3. Minutes of the previous meeting – 23 November 2024

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

4. Matters arising

AICG Terms of Reference

- 4.1 Following the discussion at the last meeting, the Secretariat had circulated a proposed updated AICG Terms of Reference. Legal advice had been sought by the Secretariat from the IUA's legal counsel to consider whether references to European competition law remained appropriate post-Brexit. Members provided no objections to the updated Terms of Reference which would now be considered agreed.

5. Current consultation drafts - None

- 5.1 There were no current consultation drafts.

6. Potential new work items

Model Drone Wording

- 6.1 The Secretariat outlined that the IUA's Aviation Technical Committee had issued a request to AICG to consider the development of a template wording for drones. Examples had been seen where amended

versions of AVN1C had been utilised to insure drones. As such, it was suggested that developing a specific model drone wording may provide value for market participants. Members discussed that there would be some important distinctions from traditional aircraft to address during the drafting process, centring on the fact that the aircraft were unmanned and operated from the ground. Some members were aware of existing drone wordings and agreed to share those with the Secretariat. Jill Epps, Michelle Myler-Falla and Julie Damant agreed to participate in a Working Group to consider and draft a wording.

PFAS Exclusion Clause / Non-airline version of AVN46B

- 6.2 Members acknowledged the circulated copy of AVN46B. The Secretariat outlined that the IUA's Aviation Technical Committee had requested the AICG consider drafting a model PFAS exclusion clause. This would operate in a similar manner to the specific asbestos exclusion (2488AGM00003). Alongside this drafting exercise, it was requested that AICG consider the impact of a new pollution exclusion on the interpretation of the existing AVN46B clause. It was noted that Nick Hughes (Appointed Expert) could be approached to provide a view on this question. It was suggested that the new clause would not necessarily overlap with or replicate AVN46B, giving that the clause would operate as a total exclusion, whilst AVN46B wrote back cover 'caused by or resulting in a crash fire explosion or collision or a recorded in-flight emergency causing abnormal aircraft operation'.
- 6.3 Concerns around PFAS arose primarily out of potential contamination arising from the use of AFFF firefighting foams, which were known to contain PFAS. Two key issues identified by the ATC relating to PFAS exposure were the substantial clean-up costs and risks of long-tail liability claims related to health issues. One member highlighted that the role of AICG in developing a specific exclusion clause would allow insurers to address potential PFAS risks going forward. However, there may still be existing liabilities arising out of the historic use of PFAS.
- 6.4 Members agreed that a Working Group should be convened to draft the proposed clause and Adam Tozzi, Julie Damant and Jette Varnals volunteered to participate. The Chair would also participate in the Working Group.

7. Any Other Business

French Supreme Court Case – Choice of Law

- 7.1 One member discussed that the French Supreme Court had decided that the provisions of the French Insurance Code, which govern the validity of exclusion clauses, were mandatory provisions which applied regardless of the law applicable to the insurance contract. The case in question involved the application of exclusion clauses on a contract governed by a Dutch insurer. This was considered particularly pertinent in light of an earlier French ruling (AIG v Lafarge S.A.) addressing the application of exclusion clauses. That case decided that LMA3100 was overly broad, and should be drafted in a more precise manner and in line with other requirements in France in respect of exclusion clauses. As an example, terms that would be considered overly ambiguous included 'in connection with' and 'arising out of'.
- 7.2 The AICG had not yet undertaken any work following these cases, for example to review existing AVN exclusion clauses. The Secretariat agreed to circulate a case summary to members following the meeting.

Membership

- 7.3 The Secretariat highlighted that there remained three places of the allocated six AICG seats afforded to LMA available. Any interested participants should contact the LMA or Secretariat.

Next Meeting: The next meeting was scheduled for 22 February 2024.

MEMO

To: AICG members

From: Secretariat

Date: 16 February 2024

The AICG received two formal requests at the January 2024 meeting, as follows:

1. Drone Wording

It was requested that the AICG consider developing a model AVN drone insurance wording.

2. PFAS Exclusion Clause

It was requested that the AICG consider developing a model AVN PFAS exclusion. During the process the AICG should review the impact of a new pollution / contamination clause on the existing AVN46B wording.

The following updates from the initial scoping meetings of the two working groups formed should be noted:

AICG Drone Wording Working Group

The AICG Drone Wording Working Group reviewed several existing drone policy wordings used by market participants. It agreed that a suitable approach would be to utilise AVN1D as a base to develop a model AVN drone wording. The approach would involve making amendments to several aspects of AVN1D and including various common terms, definitions, coverages and exclusions specific to drone insurance from existing example wordings.

The Working Group will reconvene on the 27th of February to continue the drafting process.

AICG PFAS/AVN46B Working Group

The AICG PFAS/AVN46B Working Group discussed in detail how PFAS would be addressed under the existing AVN46B (see Annex 1 below), the risks posed by PFAS, the need for a specific PFAS clause and the impact of such a clause on the existing AVN46B.

The Working Group concluded that three options existed for AICG to address PFAS exposure, namely in drafting:

1. A specific total PFAS exclusion clause
2. An endorsement to operate alongside AVN46B offering the option to sub-limit PFAS exposure
3. A bio-accumulation clause seeking to exclude losses caused by the gradual build-up of pollutants, such as PFAS, over-time.

These options should be discussed by AICG during its meeting scheduled for 22nd of February.

The Working Group has compiled several PFAS loss scenarios to assist the understanding of the risks posed by PFAS. As follows:

1. Use of fire-fighting foams at aircraft crash leading to contamination of nearby farmland which is subsequently declared environmentally unfit for agriculture, and contamination of local groundwater
2. Use of fire-fighting foams for aircraft / runway foaming over many years at an airport (e.g.: fire training exercises) contaminating nearby land and groundwater
3. Leaking from storage tank of fire-fighting foams for aircraft / runway foaming at airport contaminates land and groundwater over a period of time
4. Collision (e.g.: involving a ground handling vehicle) causing leakage of storage tank at an airport causing contamination to land and groundwater
5. Cabin crew / fire fighters exposed to high levels of PFAS and experience health effects manifesting years later (*employee writeback for 46B, no course of employment exclusion / EL not applicable*)
6. Insured produces product containing PFAS e.g. carpets for installation in cabin leading to adverse health effects of employees and end users years later (*products writeback to 46B*)
7. Insured uses PFAS in production process but not intended part of the product design leading to adverse health effects of employees and end users years later (*products writeback to 46B*)

The Working Group also explored a range of key matters relating to the scenarios and the proposed options for AICG's drafting work, summarised as follows:

- The impact of the existing AVN46B on PFAS risks may vary depending on the interpretation of the writeback, being: 'unless caused by or resulting in a crash fire explosion or collision or a recorded in-flight emergency causing abnormal aircraft operation'.
- AVN46B has been used broadly and consistently by the market for many years. It is not the intention of the Working Group to amend AVN46B.
- The impact of amendments to AVN46B by market participants in order that it 'conform with other statutory requirements' should be considered in the context of PFAS, given they can have the effect of significantly broadening coverage under the clause.
- The interpretation of AVN46B in the context of intentional fires or explosions as part of training exercises, rather than following an aircraft accident, should be considered.
- Legal advice may be necessary to understand the impact of introducing a new specific PFAS clause on the interpretation of the existing AVN46B.
- The case of *Mondelez v Zurich* concerning the application of historic 'hostile or warlike action' language to evolving war risks should be considered in the context of emerging pollution risks.
- During the drafting process, there may be value in the Working Group considering AVN96 (Annex 2 below), NMA1685 (Annex 3 below), 2488AGM00003 (Annex 4 below), LMA5595a and LMA5596a (Annex 5 below)

The Working Group will reconvene on the 5th of March to continue its discussions.

Annex 1: AVN46B

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

Annex 2: AVN96

ASBESTOS EXCLUSION CLAUSE

This Policy does not cover any claims of any kind whatsoever directly or indirectly relating to, arising out of or in consequence of:

1. the actual, alleged or threatened presence of or exposure to asbestos in any form whatsoever, or
2. any obligation, request, demand, order, or statutory or regulatory requirement that any Insured or others test for, monitor, clean up, remove, contain, treat, neutralize, protect against, indemnify for any costs or damages relating to or in any other way respond to the actual, alleged or threatened presence of asbestos in any form whatsoever.

Notwithstanding any other provisions of this Policy, Insurers will have no duty to investigate, defend or pay defence costs in respect of any claim excluded in whole or in part under paragraphs 1 or 2 hereof.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

AVN 96 17.3.04

Annex 3: NMA1685

INDUSTRIES, SEEPAGE, POLLUTION AND CONTAMINATION CLAUSE NO. 3

This Insurance does not cover any liability for:

1. Personal Injury or Bodily Injury or loss of, damage to, or loss of use of property directly or indirectly caused by seepage, pollution or contamination, provided always that this paragraph 1. shall not apply to liability for Personal Injury or Bodily Injury or loss of or physical damage to or destruction of tangible property, or loss of use of such property damaged or destroyed, where such seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the period of this Insurance.
2. The cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances unless the seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the period of this Insurance.
3. Fines, penalties, punitive or exemplary damages.

This Clause shall not extend this Insurance to cover any liability which would not have been covered under this Insurance had this Clause not been attached.

22/1/70
NMA1685

Annex 4: 2488AGM00003

ASBESTOS EXCLUSION CLAUSE

This Policy does not cover any claims of any kind whatsoever directly or indirectly relating to, arising out of or in consequence of:

- (1) the actual, alleged or threatened presence of asbestos in any form whatsoever, or any material or product containing, or alleged to contain, asbestos; or
- (2) any obligation, request, demand, order, or statutory or regulatory requirement that any Insured or others test for, monitor, clean up, remove, contain, treat, neutralize, protect against or in any other way respond to the actual, alleged or threatened presence of asbestos or any material or product containing, or alleged to contain, asbestos.

However, this exclusion shall not apply to any claim caused by or resulting in a crash fire explosion or collision or a recorded in-flight emergency causing abnormal aircraft operation.

Notwithstanding any other provisions of this Policy, Insurers will have no duty to investigate, defend or pay defence costs in respect of any claim excluded in whole or in part under paragraphs (1) or (2) hereof.

All other terms and conditions of the policy remain unchanged.

2488AGM00003

Annex 5: LMA5595a and LMA5596a

PERFLUORINATED COMPOUNDS, PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES (PFAS) EXCLUSION NO. 1

(For use on liability insurance policies)

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 any 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 (-CF₃); or
 - b. perfluorinated methylene group (-CF₂-).

LMA5595A
10th October 2023

**PERFLUORINATED COMPOUNDS, PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES (PFAS)
EXCLUSION NO. 2**

(For use on liability insurance policies)

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 any perfluoroalkyl or polyfluoroalkyl substances for example.
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 (-CF₃); or
 - b. perfluorinated methylene group (-CF₂-).

LMA5596A
10th October 2023

ENDS

PRIVATE OWNERS AIRCRAFT INSURANCE POLICY

Headings are inserted for the purpose of convenient reference only and are not to be deemed part of this Policy. Otherwise, wherever words or phrases appear in bold in this Policy they will have the meanings shown in the Definitions.

INTRODUCTION

To the extent that this Policy is a consumer insurance contract within the meaning of the Consumer Insurance (Disclosure and Representations) Act 2012, (meaning a contract of insurance between an individual who enters into the contract wholly or mainly for purposes unrelated to the individual's trade, business or profession ('**the Insured**') and a person who carries on the business of insurance ('**the Insurer**')) the provisions of this Policy shall, as between **the Insured** and **the Insurers**, be read subject to the provisions of the said Act.

Please keep this Policy in a safe place – **you** may need to refer to it if **you** have to make a claim.

The Introduction section of this Policy and all other Sections of this Policy are a single document and are to be read as one contract and sets out the terms and conditions of the insurance between **you** and **the Insurers**.

The Insurers will, in consideration of the payment of the premium, insure **you**, subject to the terms and conditions of this Policy, against the events set out in the operative Sections occurring during the **Period of Insurance** or any subsequent period for which **the Insurers** agree to accept payment of premium.

Please read this Policy carefully and make sure that it meets **your** requirements. It is important that:

- **You** check that the Sections of coverage **you** have requested are included;
- **You** comply with **your** duties under each Section and under this Policy as a whole.

You should regularly review **your** cover to ensure that it is adequate and continues to meet **your** requirements.

If any corrections are necessary **you** should contact **your broker** through whom this Policy was arranged or **the Insurers** directly if there is no broker used. If **you** have any questions relating to this Policy or **you** do not understand any of the terminology used please refer to **your broker** or to **the Insurers** directly, as applicable, for an explanation of how this will affect the coverage **you** have purchased.

Details of **the Insurers**:

{insert full name and full address of the Insurers with contact details}

Details of **the Broker**:

{insert full name and full address of the Broker with contact details}

This Policy is arranged in different Sections as follows:

Policy Schedule	This details the information that you have provided and the Sections of this Policy that apply to you including the Limits of liability for each Section of cover you have purchased.
Definitions	This defines the meaning of certain words and phrases used in this Policy.
Section 1	Physical Loss of or Damage to Aircraft . This covers you for physical loss of or damage to your Aircraft . It includes the Conditions of cover and Exclusions relating to circumstances where the Insurers will not pay a claim.
Section 2	Legal Liability to Third Parties (Other than Passengers). This covers you for your legal liability to third parties arising from your use of the Aircraft . It includes the Conditions of cover and Exclusions relating to circumstances where the Insurers will not pay a claim.
Section 3	Legal Liability to Passengers This covers you for your legal liability to passengers (including passenger baggage and personal effects) arising from your use of the Aircraft . It includes the Conditions of cover and Exclusions relating to circumstances where the Insurers will not pay a claim.
Defence and Settlement Payments	This describes when the Insurers will defend you in any legal proceedings and how costs will be paid relating to any liability claims under Sections 2 and 3 of this Policy).
General Exclusions	There are a number of General Exclusions relating to circumstances where the Insurers will not pay a claim. These apply to all Sections of this Policy.
General Conditions	There are a number of General Conditions which you must observe and comply with. If you breach any of these General Conditions this may render your claim null and void or reduce the amount payable or the Insurers may treat this insurance as though it never existed. These apply to all Sections of this Policy.

In addition to the above the following two clauses also apply to **ALL** Sections of this Policy:

<p>CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 CLARIFICATION CLAUSE</p> <p>A person who is not a party to this Policy has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Policy but this does not affect any right or remedy of a third party which exists or is available apart from that Act.</p>
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SANCTIONS SUSPENSION CLAUSE

You agree that any cover, the payment of any claim and any benefit provided under your Policy will be suspended, to the extent that providing any cover, the payment of any claim or the provision of any benefit would expose us to any sanction, prohibition or restriction under any:

- a. United Nations' resolution(s); or
- b. trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

The suspension will continue until we are no longer exposed to any sanction, prohibition or restriction.

~~The Insurers will not provide any benefit under this Policy to the extent that providing cover, payment of any claim or the provision of any benefit would breach any sanction, prohibition or restriction imposed by law or regulation.~~

INFORMATION YOU HAVE GIVEN TO THE INSURERS

In deciding to accept this Policy and in setting the terms and premium, **the Insurers** have relied on the information **you** have given to **them** via **your broker** or to **them** directly. **You** must take care when answering any questions **they** ask by ensuring that all information provided is accurate and complete.

If **the Insurers** establish that **you** deliberately or recklessly provided **them** or **your broker** with false or misleading information **they** may treat this Policy as if it never existed and decline all claims. Please see Condition 10 in 'General Conditions Applicable to All Sections'

If **the Insurers** establish that **you** were careless in providing the information that **they** have relied upon in accepting this insurance and setting its terms and premium **they** may:

- treat this Policy as if it had never existed and refuse to pay all claims and return the premium paid. **The Insurers** will only do this if **they** provided **you** with insurance cover which **they** would not otherwise have offered;
- amend the terms of this Policy. **The Insurers** may apply these amended terms as if they were already in place if a claim has been adversely impacted by **your** carelessness;
- charge **you** more for **your** insurance or reduce the amount **the Insurers** would pay on a claim in the proportion that the premium **you** have paid bears to the premium **they** would have charged **you**; or
- cancel this Policy in accordance with the Right to Cancel condition noted below.

Your broker or **the Insurers** will write to **you** if:

- **the Insurers** intend to treat this Policy as if it never existed; or
- **the Insurers** need to amend the terms of this Policy; or
- **the Insurers** require **you** to pay more for **your** insurance.