

Meeting	Aviation Insurance Clauses Group (AICG)
Time and Date	9:45am, Thursday 22 February 2024
Venue	Microsoft Teams Conference Call / IUA Offices

PRESENT:

Aurélie Andre	France Assureurs
Tina Collier	IUA
Jill Epps	LMA
Dele Fajimolu	LMA
Nick Hughes	Appointed Expert
Tom Hughes (Secretariat)	IUA
Christopher Jones (Secretariat)	IUA
Nick Medniuk	LMA
Michelle Myler-Falla	LMA
Nicolette Rodrigues	IUA
Graham Spencer-Brown	Chair
Adam Tozzi	IUA
Jette Varnals (from 10.30am)	IUA

1. Apologies for absence

- 1.1 Apologies had been received from Tony Powles (IUA), Ruth Wahner (Hannover Re), Gary Hendries (Swiss Re) and Roland Küsters (Munich Re)

2. Membership (Aurélie Andre)

- 2.1 It was stated that Aurélie Andre (France Assureurs) had been confirmed as an AICG member. Members welcomed Aurélie to the AICG.

3. Minutes of the previous meeting – 25 January 2024

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

4. Matters arising

- 4.1 There were no specific items raised for discussion.

5. Current consultation drafts None

Model Drone Wording

- 5.1 Members noted the Memo from the Secretariat attached to the agenda setting out the details of the request received by AICG for a drone wording and outlining recent Working Group activities. It was reminded that the IUA's Aviation Technical Committee had issued a request to AICG to consider the development of a template wording for drones. It had been suggested that drafting a specific model drone wording may provide value for market participants. Members acknowledged that there would likely be a growing demand for specific drone wordings in the UK, particularly with newly announced rules for operating beyond visual line of site ("BVLOS").
- 5.2 A Drone Wording Working Group had convened since the last meeting. The Working Group were utilising AVN1D as a starting point and seeking to adapt the wording for use in respect of drone risks. They were referring to several example wordings from different insurers to develop a suitable model wording. It had been suggested that there could be benefit in a second wording adapted for consumer risks, akin to AVN1E, following the completion of the first draft. The Secretariat would reconvene the

Working Group and a first draft wording would be issued to members upon finalisation.

- 5.3 Members discussed the impact of the FCA's Consumer Duty in the UK which introduced a number of rules developing and amplifying conduct standards for dealing with consumers. One member was considering the impact of the Consumer Duty on a range of wordings and agreed to send on a list of potentially impacted AVN clauses and wordings to the Secretariat. It was highlighted that the key updates made to AVN1D when developing the consumer version (AVN1D), could be referred to were variants to any other AVN wordings required. It was highlighted that the key updates made to AVN1D when developing the consumer version (AVN1E), could be a helpful reference point were variants to any other AVN wordings required.

PFAS Exclusion Clause

- 5.4 Members noted the Memo from the Secretariat attached to the agenda setting out the details of the request for a PFAS wording and outlining recent Working Group activities. Specifically, three key drafting options had been set out for consideration by members, namely:
- Option 1: A specific total PFAS exclusion clause
 - Option 2: An endorsement to operate alongside AVN46B offering the option to sub-limit PFAS exposure
 - Option 3: A bio-accumulation clause seeking to exclude losses caused by the gradual build-up of pollutants, such as PFAS, over-time.

The following key points of discussion arose:

- 5.5 It was clarified that within Option 2, the specific sub-limit would apply only in respect of coverage afforded by the write back within AVN46B, rather than in respect of PFAS claims more broadly.
- 5.6 Given that AICG had received a request for a specific PFAS exclusion, it was suggested that Option 1 should be taken forward by the Working Group. It was noted that Option 2 or 3 could also be made available, so long as it was clear that they could not be utilised in addition to Option 1 within a policy.
- 5.7 Members suggested that further information would be necessary relating to how Option 3 would operate. It was commented that ANV46B operated to exclude losses that did not arise out of a specific accident, as such there was crossover with the proposed Option 3 which would exclude gradual pollution build up. One specific challenge was understood to be stipulating at what threshold PFAS would be considered to have accumulated.
- 5.8 The recent U.S. District Court for the Western District of Michigan case against the Gerald R. Ford International Airport Authority (GFIAA) was highlighted. This case involved consistent use of firefighting foams during training exercises over an extended period. One of the key defences was understood to be that specific requirements were imposed upon airports by the FAA relating to training.
- 5.9 It was acknowledged that during training exercises it may be possible for airports to collect PFAS run-off following the use of AFFF firefighting foams. However, this would not be the case in the event of an accident which could occur without notice at any number of locations at an airport.
- 5.10 One member questioned how historic claims against airports would be viewed if they related to use before it was known that PFAS was a potentially harmful pollutant. It was pointed out that there may be overlap with the progression of understanding around asbestos risks.
- 5.11 There had been some questions relating to the interpretation of the writeback to AVN46B. Members

suggested that the common understanding was that each one of 'crash', 'fire', 'explosion', 'collision' or 'a recorded in-flight emergency causing abnormal aircraft operation' operated independently.

- 5.12 Members highlighted that it was preferable that the longstanding AVN46B clause remain unamended. It was suggested that the Working Group take forward Option 2 and either or both of Options 1 and 3 subject to further discussions. It was suggested that there may be value in specific legal advice being sought on the impact of developing specific PFAS clauses on the interpretation of the existing AVN46B clause.

6. Potential new work items:

LMA updates to sanctions clauses in existing wordings e.g. AVN1E

- 6.1 It was understood that the LMA had recently published a new Consumer Sanctions Suspension Clause (LMA3201). The LMA were seeking to adopt the updated language in a range of LMA wordings and had highlighted that AVN1E utilised a brief sanctions suspension clause (LMA5213). As highlighted in the tracked change version of AVN1E circulated with the agenda, the LMA had suggested including LMA3201 in the wording. LMA were understood to be withdrawing LMA5213.
- 6.2 As background, following the French Court decision in *AIG v. Lafarge* addressing LMA3100, the LMA had published LMA 3100A, LMA3200 and most recently LMA3201. It was stated that the clauses published were not designed to amend the coverage position of the original LMA3100, rather to better clarify the intended suspensory effect of the clause. The Secretariat agreed to circulate a summary of the *AIG v Lafarge* case and several key questions for members to review, as follows:
- Should AICG take the LMA proposal to amend AVN1E forward for market consultation?
 - Would it be preferable to leave the wording as is and draft a specific endorsement to add to AVN1E as required?
 - Given that this is designed to be used on UK consumer / SME policies, should we take no action and allow parties to amend the wording on an ad-hoc basis?
 - Linked to the previous questions, should AICG investigate further whether the current sanctions clause in AVN1E remains fit for purpose?
- 6.3 One member pointed out that France Assureurs were drafting an updated sanctions clause for use on a cross-class basis. A first draft had been circulated to broking representatives and some feedback had been provided. A number of issues had arisen, stemming from the desire to develop a list of sanctioned countries, for example how sanctioned subsidiaries of parent companies should be addressed. It had also been acknowledged that sanctions could both enter into force or be withdrawn during a policy period.

7. Any Other Business

- 7.1 There were no further items raised for discussion.

Next Meeting: The next meeting was scheduled for 28 March 2024.