

Meeting	Aviation Insurance Clauses Group (AICG)
Time and Date	9:45am, Thursday 28 March 2024
Venue	Microsoft Teams Conference Call / IUA Offices

PRESENT:

Aurélie Andre	France Assureurs
Dele Fajimolu	LMA
Gary Hendries	Swiss Re
Tom Hughes (Secretariat)	IUA
Christopher Jones (Secretariat)	IUA
Roland Küsters	Munich Re
Nick Medniuk	LMA
Michelle Myler-Falla	LMA
Nicolette Rodrigues	IUA
Graham Spencer-Brown	Chair
Adam Tozzi	IUA
Jette Varnals	IUA

1. Apologies for absence

- 1.1 Apologies had been received from Jill Epps (LMA) and Julie Damant (IUA).

2. Minutes of the previous meeting – 22 February 2024

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

3. Matters arising

- 3.1 There were no specific items raised for discussion.

4. Current work items:

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

- 4.1 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 referenced 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. Members suggested that receiving a copy of the LMA advice gained in publishing LMA3201 would be of value.
- 4.2 Members suggested that AVN111 Sanctions and Embargo Clause, being the preeminent aviation sanctions clause, should be considered for inclusion. It was highlighted that the approach within AVN111 was to suspend cover. This was supported by the decision in Mamancochet v Aegis featuring and upholding the impact of a similar clause. AVN111 also benefitted from a provision stating “the Insurer will take all reasonable measures to obtain the necessary authorisation to make such payment”. Members commented that this provision had been effectively applied in the past.
- 4.3 It was questioned whether the impact of the French Court decision in *AIG v. Lafarge* addressing LMA3100 were relevant in the context of AVN1E, being a UK consumer focused wording. It was acknowledged that the wording could ultimately be applied to a French insured’s policy or be relevant in the context of a French loss.

- 4.4 One member reported that within France Assureurs there was a specific group addressing specialty (non-aviation) legal issues. This group was considering the implications of the French Court decision in *AIG v. Lafarge* in detail and any outcomes would be reported to members. A key point under consideration was whether the principles of the case would apply to all classes of insurance.
- 4.5 It was suggested that the topic be raised for further discussion at the next AICG meeting.

Model Drone Wording

- 4.6 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. The Working Group had convened to develop a first draft and had utilised AVN1D as a base wording. It was suggested that a second version of the wording, applicable to consumer risks, should be considered following the first version being drafted. Members would be notified when a first draft could be circulated for views.
- 4.7 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 had developed a list of wordings which potentially required consideration in light of the Consumer Duty, namely:
- AVN126 Aviation Premises, Hangarkeepers and Products Liability Policy
 - AVN145 General Aviation Insurance Policy
 - AVN1E Private Owners Aircraft Insurance Policy
- 4.8 It was acknowledged that some aviation risks, being 'large risks', would likely be out of scope of the Consumer Duty. However, it was uncertain how far the exemption would apply.
- 4.9 One member raised the increasing focus on Electric Vertical Take-Off and Landing (EVTOL) aircraft. It was highlighted that the Law Commission of England and Wales were undertaking a project on behalf of the Civil Aviation Authority (CAA) and Department for Transport (DfT) addressing advanced air mobility (AAM), which included EVTOL aircraft. Whilst the aircraft would likely be insured on a GA / rotorcraft basis, it was suggested that there would be value in considering the value in an EVTOL wording being developed, akin to the ongoing AICG work to develop a model drone wording. The aircraft were likely to be manned when first released, moving towards more autonomous flight in future.

PFAS Exclusion Clause

- 4.10 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.
- 4.11 The PFAS Working Group had convened to discuss the options in detail, but was yet to reach a position to recommend to AICG. The following key points of discussion arose:

- 4.12 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.
- 4.13 Some members expressed there may be value in a broader approach being taken, rather than focusing solely on PFAS. One example was to utilise a publicly available list of contaminants of concern. Consideration would be necessary from a contract certainty perspective, given the list was live and subject to change. Members highlighted that AVN46B existed to capture a broad range of contaminants. Therefore, a more focussed approach addressing individual pollutants/contaminants of specific concern (such as PFAS), at the request of market practitioners, may be more suitable.
- 4.14 It was stated that the long tail health implications of exposure to a pollutant or contaminant had not typically been addressed within aviation policies. Instead, the focus had been on clean up following an accident.
- 4.15 Further consideration would be necessary as to how any PFAS clause may apply in respect of crew/passengers/staff exposure to products containing PFAS, for example on board an aircraft.
- 4.16 Members reiterated that it was preferable that the longstanding AVN46B clause remain unamended. It was added that consideration should be given to the impact of any new clause on the existing AVN46B. This could be reviewed with legal advice.

5. Potential new work items:

- 5.1 There were no specific items raised for discussion.

6. Any Other Business

- 6.1 There were no further items raised for discussion.

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