

**ATHENS 2002 PLR EXTENSION CLAUSE 2012**

**1. Cover**

1.1 This entry includes cover for all liabilities incurred by the member pursuant to Athens 2002 PLR for an incident occurring during the policy period but only in respect of claims arising out of those perils specified within the IMO Reservation and Guidelines for the Implementation of the Athens Convention adopted 19 October 2006, namely:

- war, civil war, revolution, rebellion, insurrection, or civil strife arising there from, or any hostile act by or against a belligerent power,
- capture, seizure, arrest, restraint or detainment, and the consequences thereof or any attempt thereat,
- derelict mines, torpedoes, bombs or other derelict weapons of war,
- act of any terrorist or any person acting maliciously or from a political motive and any action taken to prevent or counter any such risk,
- confiscation and expropriation

The indemnity provided for under this cover is payable if and to the extent that:

- Limits of Underlying War Covers arranged for the member are exceeded by other claims having been settled and having fully absorbed cover otherwise disposable for liabilities qualifying for settlement under Athens 2002 PLR;

or

- any claims by the member under Underlying War Covers are denied as a result of the assertion by the underwriters thereon of a policy defence or the breach of policy terms and/or conditions;

or

- the member is unable to recover claims from Underlying War Covers for any reason including cancellation thereof;

and/or

- the member is required to make advance payments to passengers within the time constraints imposed by Article 6 of the Passenger Liability Regulation.

1.2 The maximum indemnity payable hereunder each incident shall be the amount prescribed by Athens 2002 PLR as the limit of liability of the club or other person providing evidence of insurance.

1.3 The club shall not be obliged to indemnify the member, or pay any claims at the request of the member, until the proper legal assessment of liability under Athens 2002 PLR and/or the club at its discretion decides to make payments, interim or otherwise, in order to mitigate any potential liability having taken into consideration professional legal advice.

It is understood, within the IMO Guidelines for Implementation of Athens 2002, that the club may be obliged to withhold from settlements to passenger claimants certain amounts when, in the opinion of the member and the club, claims might be presented which in the aggregate exceed the relevant ship's overall limitation as defined in Athens 2002 PLR and ahead of a proportionate distribution of all claims against the member.

- 1.4 If and to the extent that the club pays any Athens 2002 PLR claim either direct to passengers or by way of indemnity to the member, they shall be entitled, on the terms set out in clause 5 below, to exercise by subrogation such rights of recovery from the Underlying War Covers as are available to the member.

#### **1A. Financial security**

- 1A.1 The club agrees to act as guarantors of the member's liabilities under Athens 2002 PLR and to provide evidence of war insurance attesting that this cover is in force, for the purpose of enabling the member obtain certification of insurance as required by Art. 4 bis of Athens 2002 PLR.
- 1A.2 The club will accordingly meet all liabilities incurred by them to passengers under Athens 2002 PLR in their capacity as guarantors arising from the provision of such evidence of war insurance.

Contained within the provisions of Athens 2002 PLR are exemptions from liability, amongst which the following are stated:-

- a) War Automatic Termination and Exclusions Clause
- b) 30 days' notice clause in cases not covered by War Automatic Termination and Exclusion Clause
- c) Institute Radioactive Contamination, Chemical, Biological, Biochemical and Electromagnetic Weapons Exclusion Clause CL370 10/11/03
- d) Institute Cyber Attack Exclusion Clause CL.380 10/11/03.

The full wordings of such exemptions are to be found within Appendix A of the Guidelines for the implementation of Athens 2002 PLR.

#### 1.A.3 In accordance with Athens 2002 PLR:-

- a) The club's liability shall be applicable only to passenger claims brought under Article 3, paragraphs 1 or 2 of Athens 2002 PLR, paragraph 1.2 of the Reservation, and paragraph 2.2 of the associated Guidelines
- b) In accordance with Article 4bis, paragraph 11 of Athens 2002 PLR, any sums provided by insurance maintained in accordance with paragraph 1 of the same article, shall be exclusively for the satisfaction of claims from passengers for death or for personal injury under Athens 2002 PLR and any payments made of such sums shall discharge any liability arising under Athens 2002 PLR to the extent of the amounts paid.
- c) The club's obligations in respect of each incident shall be reduced by any payments effected by the member and/or their Underlying War Cover insurers in their names or on their behalf and/or other parties defined in the Evidence of War

Insurance in respect of liabilities incurred and settled under the terms of Athens 2002 PLR.

- d) subject to any reduction in its obligations permitted under clause 1.A.3 c) above, the club's obligations in respect of each incident shall be satisfied in full once the total amounts paid to all claimants equals the limit applicable to each ship.

1.A.4 If and to the extent that the club, in its capacity as guarantor, incurs liability to passengers pursuant to Athens 2002 PLR, it shall be entitled, on the terms set out in clause 5 below, to exercise by subrogation such rights of recovery from the Underlying War Covers as are available to the member.

## 2. Duration

This cover is arranged in respect of losses arising out of an event occurring during the period from entry into force of Athens 2002 PLR (as defined below) to noon GMT 20 February 2013 or shorter periods as declared.

## 3. Limit

The maximum indemnity payable hereunder shall be the amount prescribed by Athens 2002 PLR as the limit of liability of the club providing evidence of insurance, namely the lower of:

**SDRs 250,000 per passenger registered as being on board the ship at the time of the occasion of the incident, the subject of the claim hereon**  
or  
**SDRs 340,000,000**

as required each incident

The club will also pay the legal costs incurred by the member or which the member may be compelled to pay in contesting liability or taking proceedings to limit liability in respect of any claim covered hereon, with the prior written consent of the club.

## 4. Definitions (for the purposes of this insurance)

4.1 "Athens 2002 PLR" means the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 (being the 1974 Athens Convention as amended by the Protocol of 2002 to the Convention and the 2006 Reservation, and subject to modifications made by the associated IMO Guidelines for Implementation of the Athens Convention), and/or Regulation (EC) No. 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents (also known as "Passenger Liability Regulation").

4.2 "Underlying War Covers" means the combination of War Risks insurances as summarised:

4.2.1 P & I War Risks Insurances provided as a separate limit to the member's Hull and Disbursements War Risks policies to at least the aggregate of the insured value of the Hull and insured amounts in respect of Disbursements of the member's ship or a

minimum of USD 100,000,000, whichever is the lower and on terms providing cover as per the Institute Protection and Indemnity War Strikes Clauses - Hulls Time CL.345 (20/7/87) and/or the Institute War and Strikes Clauses - Hulls Time CL.281 (1/11/95) and/or other equivalent War P & I clauses (to be approved by Slip Leader).

and

4.2.2 P & I War Risks (International Group P & I Clubs) as endorsed as an extension to the entry of the member's ship into an International Group P & I Club.  
Such entry means an unrestricted entry into a Protection and Indemnity Association which is a member of the International Group of P&I Clubs

- 4.3 "Evidence of War Insurance" means the documentary proof ("Certificates furnished as evidence of (War) insurance pursuant to Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002") attesting that insurance is in force in compliance with the stipulations of Athens 2002 PLR.
- 4.4 "Athens Certificates" means the "Certificate of Insurance or Other Financial Security in respect of Liability for the Death or Personal Injury to Passengers" issued in accordance with the Provisions of Athens 2002 PLR.
- 4.5 "Total Claims" means the aggregation of Athens 2002 PLR Claims, non- Athens 2002 PLR passenger claims and other claims including, but not limited to claims in respect of crew, wreck removal and pollution each incident.

## **5. Underlying War Cover and rights of subrogation**

- 5.1 The club's liability to the member under this cover shall be determined by the policy terms and conditions. Subject to those terms and conditions, the club is entitled to seek to recover from the Underlying War Covers any and all payments made pursuant to liabilities incurred by the member under Athens 2002 PLR.
- 5.2 No Evidence of War Insurance will be issued by the club unless the member arranges the insurances that comprise the Underlying War Covers, with War Risks Insurers approved by the club as described at 4.2.1 and 4.2.2 respectively.

The member is to provide corresponding confirmation of such cover prior to the annual inception of each policy and/or entry year, stating the schedule of insurers with whom they arrange such policies or entries and that these policies or entries will be maintained in force without intentional breach of cover for the duration of any Evidence of War Insurance on behalf of the relevant ships..

The club agrees that the conditions above shall be deemed to be satisfied in respect of the ships pending re-confirmation of the member's renewal of war policies, including if required, transfer between war insurers.

The member is obliged to take all reasonable steps to preserve such coverage including, but not limited to, the maintenance of cover in accordance with approved market practices in the event that any ship insured hereunder navigates in waters that are subject to the current JWC Hull War, Strikes, Terrorism and Related Perils Listed Areas (3 March 2011) (JWLA017) and any updated version thereof.

- 5.3 Any and all payments made by the club in its capacity as guarantor under the provisions of Athens 2002 PLR shall be deemed to be made as agent of, and for the account of, the member whether or not it is obliged or liable to the member under this cover.
- 5.4 Upon the payment of any sums hereunder whether by way of indemnity or pursuant to Athens 2002 PLR, the club shall be subrogated to all the rights and remedies of the member, who is under a duty to assist, and co-operate with the club in their efforts to effect recovery of any such payment.

In event that the club, having paid any such sums, prove unable to effect a recovery under the Underlying War Cover by reason of a policy defence or the breach of policy terms and/or conditions involving the actual fault or privity of the member, the club reserves the right to seek recovery of such sums from the member.

- 5.5 If it appears that estimated Total Claims are reasonably likely to exceed the cover available under the Underlying War Covers, the club will, upon request of the member agree to refrain from exercising rights of recovery pursuant to the preceding clause 5.4 from the Underlying War Cover insurers, unless and until and to the extent that the estimated Total Claims are found not to exceed the available cover provided by the Underlying War Covers.
- 5.6 If the insurers of the Underlying War Covers have paid Athens 2002 PLR claims (whether directly to claimants or by way of reimbursement of the member or the club) and Total Claims are subsequently found to exceed the limit of the member's Underlying War Covers, the club hereon will reimburse the insurers of the Underlying War Covers in respect of such Athens 2002 PLR payments if and to the extent that Total Claims exceed the limit of the Underlying War Covers (subject always to the limit of this cover as defined at clause 3).
- 5.7 The club is entitled to call for and to have received on their own behalf and on behalf of the member, confirmations of cover and undertakings from the insurers of the member's P & I War Risks Insurances (Hull) (as described at 4.2.1 above) that they will issue at least 30 days notice of their intention to cancel the insurance by reason of the failure to pay, when due and demanded, any premium sums due.
- 5.8 The club is entitled to maintain on file all information submitted in the Application Forms for Evidence of Insurance.
- 5.9 It is understood and agreed by the parties that the provisions of clause 5.6 above confer a benefit on the insurers of the Underlying War Covers which is intended to be enforceable by those insurers under the Contracts (Rights of Third Parties) Act 1999.

## **6. Notification of claim**

The member shall report in writing to the club any circumstances which may give rise to a claim under this insurance within 14 days of their becoming aware of the occurrence of an event that could give rise to a claim to Underlying War Covers and shall thereafter keep the club fully informed of all developments.

## 7. Claims Procedures

The club and the member agree:

- 7.1. to encourage the primary war risk underwriters to instruct the club to adjust claims on their behalf as well as on its own behalf
- 7.2 that in adjusting Athens 2002 PLR claims the member and its representatives shall seek to minimize the need for adjustment or reallocation of claims payments by way of subrogation under clause 5.4 above, reimbursement under 5.6 above or otherwise between the club and insurers on the Underlying War Covers.

## 8 Termination

In accordance with the conditions set out above under which they issue Evidence of War Insurance:

- 8.1 The club shall be entitled to request that the terms under which Evidence of War Insurance is provided be re-negotiated immediately and/or Notice will be tendered to the Authority to whom the Athens 2002 PLR Certificate is addressed within seven (7) days of the receipt of any Notices of Cancellation or advices of withdrawal of the member's Underlying War Covers to cancel any associated Evidence of War Insurance
- 8.2 The club shall be entitled to request that the terms under which Evidence of War Insurance is provided be re-negotiated immediately and/or tender Notice to the Authority to whom the Athens 2002 PLR Certificate is addressed within seven (7) days of learning of any cessation or breach of conditions of the member's Underlying War Covers to cancel any associated Evidence of War Insurance
- 8.3 The club shall be entitled to request that the terms under which Evidence of War Insurance is provided be re-negotiated immediately tender Notice to the Authority to whom the Athens 2002 PLR Certificate is addressed within seven (7) days of the discovery that any one of the following circumstances has occurred since the inception date of this Policy:
  - a) a State Insurance Department or similar regulatory authority has ordered an insurer involved as part or all of security of the "Underlying War Covers" to cease accepting business, or
  - b) an insurer involved as part or all of security of the "Underlying War Covers" to cease accepting business has become insolvent or has been placed into liquidation or receivership (whether voluntary or involuntary), or there has been instituted against it proceedings for the appointment of a receiver, liquidator, rehabilitator, conservator, or trustee in bankruptcy, or other agent known by whatever name, to take possession of its assets or control its operations, or
  - c) the AM Best rating of an insurer involved as part or all of security of the "Underlying War Covers" has been assigned or downgraded below A -, or
  - d) the Standard and Poor's rating of an insurer involved as part or all of security of the "Underlying War Covers" has been assigned or downgraded below BBB.