

## **AMERICAN INSTITUTE EXCESS WATERCRAFT POLLUTION ENDORSEMENT (NOVEMBER 15, 2012)**

For many years marine underwriters providing excess insurance protection on a bumpershoot or follow form basis have been concerned about the accurate description of underlying vessel pollution coverages and the scope of excess coverage that underwriters were willing to provide.

Marine excess underwriters have generally not been prepared to provide excess limits over certain primary coverages. These are:

1. Fines and penalties.
2. Punitive and exemplary damages.
3. Loss and costs related to criminal prosecutions.
4. Costs of public relations other than those pre-approved advertising costs mandated in OPA 90 or similar federal and state statutes.

In regard to the accurate description of underlying limits, vessel pollution policies have evolved in recent years so that most policies today typically provide a single limit “per occurrence per vessel”. This has gone a long way to eliminate the concern of accurately describing the primary limit. The Liability Committee did not feel any further action was necessary on this point, other than to alert the membership of the need to confirm with the broker that the primary limit is accurately stated in the Schedule of Underlying Insurances, and to further confirm this applies “per occurrence per vessel.”

Underwriters did want to make clear that the excess coverages are follow form only in regard to vessel pollution, except as modified. The first part of the endorsement sets this out.

Secondly, the underwriters on the committee came to the full consensus that it was not their intent to provide excess capacity in regard to the four coverage areas outlined above. The four numbered exclusions address these coverages.

It is to be noted that the endorsement does not contain impairment wordings that would address the possibility of a primary coverage excluded in the excess contributing to the exhaustion of the underlying limit. While the excluded coverages are often provided to a separate and distinct sub-limited basis, this is not always the case. Thus, the excess underwriter may be indirectly impacted by the excluded covers drawing down primary limits available to pay the loss. The committee weighed this in the draft deliberations and decided that it would make the endorsement more acceptable in the market not to include impairment wordings.

In drafting this endorsement committee members met with specialty primary vessel pollution underwriters and reviewed current primary policy forms. Endorsement drafts were then shared with the full committee and discussed in meetings to confirm those areas for which underwriters did not want to provide excess capacity.

The endorsement drafting sub-committee consisted of Elizabeth Nittolo and Michael Csorba of IMU and John Weber of Zurich. We are also grateful for the advice and counsel provided by committee members Richard Hobbie and Andrew Garger of WQIS.

John Weber

AIMU Liabilities Committee Chairman