

## AMERICAN INSITUTE POLLUTION CLAUSE (P & I) AND BUY-BACK A

### OVERVIEW

For several years the AIMU has considered a redraft of the Pollution Exclusion Clause (P & I) and Buy Back Endorsement A, to update the form and make it more consistent with modern usage. The form was created nearly 35 years ago and has never been changed. In 2010 the committee made the redrafting a priority and formed a working group to accomplish the task. This memorandum describes the background and thought process of that effort.

During this redrafting AIMU committee members met with brokers to enlist their views. We also consulted with watercraft pollution insurance experts on the committee to be sure that the amended clause did not create any known gaps with current specialty marine pollution covers with which the endorsement dovetails.

The committee was somewhat hampered in this process as none of the original drafters of the 1976 form were still available for advice and consultation. In addition, no background material from the original endorsement drafting still existed in the AIMU archives. Nevertheless, the working group believes that the intent of the original form is clear if given a careful and common sense reading.

### DESCRIPTION OF POLLUTION

The original description of pollution created in 1976 essentially described petroleum and related chemical products, despite the concluding phrase, "**...and all other substances of any kind or nature whatsoever.**" The 2010 redraft expands the description of pollutants considerably to coincide with the current conception of what constitutes pollution. Brokers and other industry experts reviewed this description of pollutants as it went through drafting stages. As a result of this input, the committee made various changes that deleted or amended wordings deemed vague or objectionable.

One key change is the conclusion of the descriptive paragraph: "**All other substances**" in the original was replaced with "**other similar substances**" in the 2010 clause. This change was made as experts noted that the all-inclusive nature of the original conclusion could potentially render the intent of the pollution wordings less clear.

## BUY-BACK CLAUSES

The committee kept the general form and design of the buy-back endorsement for consistency. Changes to and retentions of original wordings are described as follows:

- Buy-back coverage for "**loss of life of, or bodily injury to, or illness of, any person**" is retained unamended from the original 1976 clause.
- Wherever "**cargo or property**" appears in the buy-back paragraphs 2 -4, we substituted the word "**cargo**" only. We simply could not conclude that it was the intent of the original drafters to include "property" in its broadly defined sense. Instead, we believe "property" was meant to describe cargoes not specifically moving under a Bill of Lading or similar instrument. We took into consideration that the specialty watercraft pollution coverages exclude only cargo and not property otherwise, and therefore no known coverage gap is created while the scope of coverage is made clearer.
- We eliminated the wordings in the third paragraph related to "contact" with pollutants as described. We found the trigger of coverage potentially unclear while the description of pollutants is redundant and in potential conflict with the endorsement's opening paragraph.
- We retained buy-back coverage for the contamination of cargoes resulting from pumping and transfer as described in the original.

In summation, the amended Pollution Exclusion Clause (P & I) and Buy Back Endorsement A continues to provide coverage for bodily injury arising from a pollution event, along with loss of or damage to cargoes, whether on an insured vessel, on another vessel, and while cargoes are ashore or due to contamination from pumping. The original coverage is retained while the wording has been modernized and made more clear and concise.

### CORRECTION OF TYPOGRAPHICAL ERROR

In September 2011 it came to the attention of the committee that there was an error in paragraph 3 of the Buy Back; the words "on board any other vessel or" were inadvertently omitted. This error was corrected at that time.

John Weber  
AIMU Liabilities Committee Chairman