

CAPITAL WIRELINES

Lloyd's asks for IADC support on amendments to US terrorism bill

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Homeland Security (Washington)—The US Congress has been deliberating the “Terrorism Risk Insurance Act of 2002” (S.2600) to provide the insurance industry additional security in the wake of the September 11 attacks in the US. The US industry is very concerned about its capacity for coverage, and so Congress has been developing legislation to preserve that capacity, and to maintain its access to the global reinsurance market. **Lloyd's of London** has asked IADC for its support of key amendments to S.2600 necessary to provide adequate coverage for US OCS oil and gas facilities. The amendments are also supported by the American Petroleum Institute.

The problem centers on ambiguities which exist under the proposed legislation that could leave critical energy production facilities and maritime operations in US waters unprotected by the intended insurance program.

Both the definition of “act of terrorism” and “insured losses” in S.2600 refer, with certain exceptions, to acts and harm occurring “within the United States.” How this latter phrase will apply to activities conducted in the jurisdictional waters of the US, if at all, is subject to doubt. Such activities include energy production on the United States OCS, which is estimated to be 28% of US domestic oil and 26% of natural gas production.

Congress specifically foresaw the possibility of terrorist acts against shipping in the US territorial sea (the twelve-mile limit) and against OCS facilities when it passed the Violent Crime Control and Law Enforcement Act of 1994, and made such acts a federal crime, confirming US territorial jurisdiction over such criminal activities. Lloyd's argues that S.2600 should be clarified by incorporating by reference the jurisdictional lines set forth in the 1994 law. Doing so would ensure that all shipping within twelve nautical miles of the US coast, and all oil and gas activities on the US OCS, fall within the geographic scope of the bill. Also, S.2600 should be modified to ensure that the insurers affirmatively accepted by the federal agencies to cover activities in these jurisdictional waters also participate in the terrorism insurance program, specifically the Departments of Interior, Labor and Transportation. S.2600 currently provides that a participating insurer must be (1) licensed in at least one State or (2) a non-US insurer listed as surplus-lines eligible. However, insurance for most maritime activities and OCS E&P is expressly exempt from State insurance regulation. Yet, the acceptability of the insurers of these activities is subject to active oversight by federal agencies regulating the underlying activity, and the insurer eligibility rules or practices vary with each federal agency.

An example is the role played by insurers, including mutual associations, that insure workers' compensation benefits under the Longshoremen and Harbor Workers' Compensation Act and its extensions. Under this Act, the US Department of Labor certifies insurers who provide workers' compensation coverage for claims arising in navigable waters, shore-side areas, the OCS, and other areas which may lie beyond individual States' regulatory authority.

Rising insurance costs for the drilling industry will be the subject of a panel discussion during IADC's Annual Meeting in San Antonio on Thursday, 26 Sept, day two of the three-day event. ■