

WHAT IS THE Freight, Demurrage & Defence INSURANCE REALLY ABOUT?

■ ■ It may be common knowledge to most readers that the Club was originally founded as a hull insurer in 1872. About 40 years later, the first P&I risk was underwritten. Today, the Club covers about 1,300 vessels for Hull & Machinery (H&M) risks, and 700 vessels for Protection & Indemnity (P&I) risks. However, it may be news to some of you that the Club has 345 vessels entered for Freight, Demurrage & Defence insurance (FD&D) which is showing unparallel growth in light of this class of insurance was not introduced until 1984. The Club would like to take this opportunity to point out the benefits of this type of insurance, and also mention something about its characteristics which are quite different from traditional marine insurances such as P&I and H&M.

FD&D is a legal cost insurance that covers costs incurred in the handling of a wide range of disputes which arise from building, buying, selling, owning and the operation of a vessel. In addition, there is a great deal of added value to the insured since he will have access to immediate legal advice whenever the need arises. For instance, the Club's FD&D lawyers frequently advise on the proper structuring of charterparty clauses before they are inserted in order to minimise the risk for future unpleasant surprises and disputes.

The Club does not generally provide FD&D on a stand alone basis as it is primarily intended to supplement the coverage provided under the Club's other classes of insurance. This is in line with the Club's total service concept. One can think of a situation in which a time charterer supplies sub-standard bunkers that cause damages to the vessel's engines. These damages will be dealt with by the H&M insurer. However, there will most likely be other type of losses, such as time losses, that will fall outside H&M cover. The FD&D insurer will provide legal support to assist the member in dealing with these losses and, if appropriate, pursue the wrong-doer for an indemnity. Having only one Club involved in these types of situations will ensure efficient casualty management where all the insured's interests can be protected in the best possible way.

From a broader perspective, the FD&D insurance will assist the shipowner or operator in managing his risks. Whilst P&I and H&M facilitate the insured's trading activities by protecting his assets and indemnifying him against the liabilities he incurs operating his vessels, it is the FD&D insurance which protects, and hence by definition, defends the owners' income or the capital ventures he undertakes. Most shipowners or charterers contract their vessels by demise, time or voyage charters; all with the express purpose of earning income, capital and profit which serves to provide them with the financial lifeline required to operate the vessel. If there is an FD&D insurance in place, the insured can be sure he can budget properly, and assess his income, capital expenses for his operation and continue to trade his ships secure in the knowledge that if any

such legal disputes arise, which is a risk covered by FD&D, he then can rely upon the expertise of the FD&D team to provide assistance.

In contrast to the H&M and P&I insurance, in which the coverage is limited to the insured value and the insured's legal liability respectively, there is no fixed formula for calculating the Club's risk under a FD&D policy although the maximum limit for cover is USD 5 million. So, how is the risk managed from the Club's perspective? After all, the average FD&D premium is about USD 10,000 which is a fraction of what the legal costs can be for a complex dispute. One part of the answer is that the Club endeavours to do as much work as possible in-house in order to keep the costs down. Ultimately,

however, it is necessary for the Club, as any mutual FD&D insurer, to provide cover on a discretionary basis in order to ensure that the Club's and the members' funds are properly

used. For instance, it may be difficult to justify large scale support when the merits of the claim are weak or the size of the claim is small. Likewise, it will be unproductive to spend vast amounts pursuing a claim if the opponent does not have any assets against which a judgement or award can be enforced. That would simply be throwing good money after bad.

Further limitations of the FD&D coverage can be summarised as follows:

- The Club does not get involved in disputes concerning sums lower than USD 7,500 although it can provide service on an ad hoc basis for an additional fee.
- Legal costs for which the member seeks reimbursement under the FD&D policy must have been incurred with the Club's prior consent.
- There is no support if costs are recoverable under any other type of insurance.
- There is no support for recovering deductibles under other types of insurances with the exception for hull deductibles.
- The coverage is limited to USD 5 million for any one dispute.

One important feature with the Club's FD&D coverage is that it does not entail any deductible. This contrasts with the policy of other International Group clubs, several of which exercise a 25 per cent deductible on all costs.

No shipowner can be sure when a dispute will arise, how much will be in dispute or the amount of legal costs. In times of exceptionally strong markets this may not be a concern. However, a market turn will undoubtedly result in that some parties in the transport chain will have difficulties meeting their obligations. Should that happen, the shipowner with an FD&D insurance will not stand alone.

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