

To: THE MEMBER

Our Ref:

Your Ref:

Date:

Dear Sirs

#### FD&D COVER FOR MOA RISKS – WRIT SEARCH FACILITY

Pursuant to the Association's Circular dated 16 February 2009 and pursuant to the acceptance of your application for entry of the m/v [ ] in the FD&D Class of the Association from the date of the MOA, we confirm that [upon receipt of your notification to us of the estimated date of delivery] **(delete if not applicable)** we will forthwith request Ince & Co. London (together with their Hong Kong and Singapore offices and correspondents in Singapore), Garlicke & Bousfield, Durban (and their correspondents in Cape Town), Norton White in Australia (and their correspondents in New Zealand) and Borden Ladner Gervais (Canada) to effect *in rem* writ searches in relation to the above vessel on the terms set out in this letter. In the case of Ince's Singapore office, it will be necessary for them to use their locally qualified Singapore legal correspondents.

The responsibilities which the law firms mentioned above and the Association are willing to undertake are necessarily subject to certain practical constraints and we therefore draw your attention to the following limitation on the searches which will be carried out.

- (a) The search to be carried out by Messrs. Ince & Co's London office will be conducted only through the Admiralty Registry in London. It is theoretically possible for a prospective claimant to issue proceedings through a district registry. Such issue of proceedings will not be discovered by a search made through the Admiralty Registry in London.
- (b) The searches to be carried out by Garlicke & Bousfield, Durban and their legal correspondents in Cape Town will be conducted only by a perusal of the Admiralty Register Books of the Durban and Coast Local Division and the Cape of Good Hope Provincial Division of the High Court of South Africa. These two Divisions have jurisdiction over Durban, Richards Bay and Cape Town harbours, being the busiest harbours in South Africa. It is theoretically possible for a prospective claimant to issue proceedings through another division of the South African High Court. Such issue of proceedings will not be discovered by a search made through the Admiralty Register Books of the Durban and Coast Local Division and the Cape of Good Hope Provincial Division of the High Court of South Africa. Furthermore, it is common for the notation in the Register Books to record only abbreviated details of the parties and vessels for litigation. For that reason, it may be the vessel name does not appear in the Register, although a Writ has been issued in respect of her.

- (c) The searches to be carried out by Norton White in Australia will be carried out in the Federal Court of Australia (electronically), the Supreme Court of New South Wales, the Supreme Court of Victoria, the Supreme Court of the Northern Territory, the Supreme Court of Western Australia, the Supreme Court of Queensland, the Supreme Court of South Australia and the Supreme Court of the Australian Capital Territory. These are the main courts where actions are likely to have been commenced, but it is again possible that claims could have been issued in other courts.

As regards the searches to be carried out by Norton White's correspondents in New Zealand, these searches will be carried out electronically at the central registry and will cover the main registries where actions are likely to have been commenced (Auckland, Wellington, Christchurch, Tauranga and Dunedin) but again, it is possible that actions could have been commenced in different registries and so again, the searches are not exhaustive.

- (d) The searches to be carried out by Borden Ladner Gervais in Canada will be carried out in the Federal Court of Canada and the Supreme Court of British Columbia. As regards the latter jurisdiction, however, the writ search is limited to the British Columbia Supreme Court Registry offices of Vancouver and Prince Rupert and again, it is possible that proceedings could have been commenced elsewhere.
- (e) A number of the law firms, in accordance with their agreement with this Association, will conduct the searches for a period of three years prior to our request to them. It is theoretically possible (though in practice unlikely) that a writ or claim form may have been issued earlier than three years prior to the date of our request and could still be "alive" by virtue of repeated renewal, but we believe that it is reasonable to limit the search to a three year period.
- (f) The timing of the searches to be carried out by the law firms will be dictated by our information to them (based on what you have told us) as to the prospective timing of the closing. In view of the time differences and other logistics (including the need for Ince & Co. London to obtain formal permission from the Admiralty Registrar to make such a search), it is not practicable to carry out the searches immediately prior to closing. This creates the theoretical risk that a writ or claim form could be issued between the date of the search and the date of the closing.
- (g) Members should appreciate that if there are maritime liens in existence in any jurisdiction to which the vessel trades, these could be the subject of proceedings against the vessel, notwithstanding the change of ownership. In other words, the writ searches carried out do not give protection against maritime liens which have not yet become the subject of proceedings.
- (h) Finally, it is of course possible that claims may have been issued in jurisdictions other than those referred to above.

For the avoidance of doubt, none of the law firms nor the Association will have any responsibility beyond the limitations set out above.

In the event that you have also taken out maritime lien insurance through the Association, we would remind you that it is a condition of that insurance that the above writ searches be carried out within 7 days of delivery of the vessel. It is therefore of crucial importance that you keep us and our underwriting department apprised of the intended and actual delivery dates of the vessel.

If you have any questions which you would like us to raise with any of the lawyers, please let us know as soon as possible.

Yours faithfully

- North Insurance Management Limited  
As Managers on behalf of the North of England P&I Association Limited