

**CIRCULATED TO ALL MEMBERS, BROKERS AND DIRECTORS
ATTENTION INSURANCE DEPARTMENT**

**9 FEBRUARY 2006
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**FD&D COVER FOR MOA RISKS, "WRIT SEARCH FACILITY" AND MARITIME LIEN INSURANCE FOR SECOND-HAND SHIPS
2006/2007 POLICY YEAR**

The purpose of this Circular is once again to draw Members' attention to the "Writ Search Facility" which the Managers of the Association have arranged on Members' behalf, as well as to advise Members of the availability of "Maritime Lien Insurance for Second-Hand Ships" for the 2006/2007 policy year.

The "Writ Search Facility" has been designed to reduce the risk of Members buying vessels which turn out to be subject to claims in a number of jurisdictions relating to the vessel's previous ownership. The "Maritime Lien Insurance for Second-Hand Ships" is intended to provide Members with some further protection against the financial losses which may flow from claims being made against second-hand vessels purchased by Members.

Before going on to explain in more detail how these products may benefit Members, it is perhaps helpful to recap on the types of claims that can be made against vessels relating to their previous ownership. Broadly speaking such claims fall into two categories:

1. Maritime Liens
2. Statutory Rights of Action in rem

1. MARITIME LIENS

A maritime lien is a claim which entitles the Claimant to arrest the ship in connection with which the claim arises, which right of arrest survives a sale other than a judicial sale, despite the fact that the buyer has bought the vessel in good faith and without notice of the claim. Under English law only a small number of claims have been granted "maritime lien" status, the most important of which are as follows:

1. Damage done by a vessel
2. Salvage
3. Wages of masters and seamen
4. Masters disbursements

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Unfortunately for the buyers of second-hand vessels, there are other jurisdictions which grant many other claims "maritime lien" status which greatly increases the risk that a vessel may be subjected to some such claim. For example, in the United States of America, the Federal Maritime Lien Act provides that any person furnishing "necessaries" in the United States to a vessel shall have a maritime lien on that vessel. "Necessaries" has been interpreted by the US Courts very widely to include repair services, supplies (including bunker supplies), towage, the use of dry-dock facilities, pilotage, stevedoring services and even P&I insurance premiums!

In addition to the categories of claims which, under English law, have been granted "maritime lien" status, the International Convention on Maritime Liens and Mortgages 1993 extends the categories of claims granted "maritime lien" status to include claims in respect of loss of life or personal injury occurring in direct connection with the operation of the vessel as well as claims for port, canal and other waterway dues and pilotage dues amongst others. This Convention has been ratified by a number of countries including China, Denmark, Finland, Germany, Guinea, Morocco, Norway, Paraguay, Sweden and Tunisia and came into force on 28 February 1995 in those countries.

As a matter of English law, the question of whether or not a claim against a vessel has "maritime lien" status will be determined according to the law of the forum. The law of the flag state of the vessel may however be applied in other countries.

2. STATUTORY RIGHTS OF ACTION IN REM

Even in England where the category of claims attracting "maritime lien" status is small, all maritime claims listed in the 1952 Arrest Convention may be enforced in rem by arresting the vessel. Such claims cause a particular problem for Members purchasing vessels because providing a writ has been issued prior to a change of ownership, the writ may be served and the vessel arrested perfectly validly even after a change of ownership. The same applies to a number of other jurisdictions such as Australia, Canada, Hong Kong, New Zealand, Singapore and arguably South Africa. The risk of a vessel being arrested pursuant to a writ issued in rem against the vessel prior to a sale can however be significantly diminished by carrying out a search of the Admiralty Registry in London as well as in these other important maritime jurisdictions.

In a recent case involving the Association and one of its Members, the Member purchased a vessel in relation to which a writ had been issued prior to the sale but not served until some time after the sale for a claim of approximately US\$250,000. As no "Writ Search" had been carried out at the Registry in Singapore where the writ had been issued, this was not discovered until the vessel was arrested.

3. "WRIT SEARCHES" (IN REM CLAIM FORM SEARCHES)

As explained above, in relation to statutory rights of action in rem it is possible in Australia, Canada, England, Hong Kong, New Zealand, Singapore and South Africa to check prior to purchasing a ship whether any writs have been issued which have yet to be served on the ship. In order to assist Members in identifying such claims, the Association has entered into arrangements with the following law firms whereby Members of the Association wanting to purchase FD&D cover for disputes arising under sale and purchase contracts will be entitled to have a search of the Admiralty Registry concerned carried out free of charge:-

Australia and New Zealand Norton White
Canada Borden Ladner Gervais
England, Hong Kong and Singapore Ince and Co
South Africa Garlickie and Bousfield

The Writ Searches will take place after an application for entry of a vessel in the FD&D Class of the Association has been accepted by the Managers, not more than one week prior to the intended delivery date of the vessel.

Ideally, Members wishing to gain maximum value from this "Writ Search Facility" will give the Association as much notice as possible prior to delivery of the vessel (possibly even prior to concluding the MOA) in order to enable a proper search of each Registry to be carried out. Should any writs be discovered, Members will then have a proper opportunity to negotiate with the sellers to ensure that these claims are adequately secured by the sellers to the satisfaction of the Claimants. Clearly, had a "Writ Search" been effected in the claim referred to in (2) above, then there can be little doubt but that the Members would not have been faced with the subsequent arrest of the vessel and the financial losses which flowed therefrom. As this "Writ Search" facility is being provided free of charge to Members buying MOA risks FD&D cover, the law firms listed above have kindly agreed to carry out a single search of each Registry, not more than one week prior to the intended delivery of the vessel. Whilst of course there is a risk that a writ may be issued in the Registry after the search has been carried out, Members will appreciate that it is impossible to eliminate all risks. Upon receipt of an application for entry of a vessel in the FD&D Class being accepted by the Members, the Managers of the Association will send Members a brief letter setting out the terms on which the "Writ Search" is being carried out as set out in the draft attached to this Circular.

The Managers of the Association hope that Members will take full advantage of this facility, thereby reducing the risk of suffering unforeseen financial losses as a result of claims being made against vessels purchased by them relating to vessels' prior ownership. Since this facility was introduced in 1999, a number of Members have been assisted in identifying claims which, when brought to the attention of the sellers concerned, were sorted out. As most vessels are owned by single purpose companies whose sole asset is the vessel, once she has been sold and the sale proceeds distributed, it is usually extremely difficult getting the sellers to honour their usual obligation under the MOA to indemnify the buyers in respect of such claims. It is no surprise therefore that some Members view the "Writ Search Facility" as an integral part of their management of uninsured risks when buying second-hand ships.

4. MARITIME LIEN INSURANCE FOR SECOND-HAND SHIPS

Unfortunately, however, there are many jurisdictions other than those referred to in paragraph 3 above which grant various categories of claims "maritime lien" status and where it is not possible to discover the existence of such claims before a vessel has been arrested. In order to assist Members in insuring against the risk of claims being made against a vessel relating to its previous ownership, the Managers of the Association have arranged a Lloyd's Insurance Open Policy to which declarations can be made. Members wanting to purchase FD&D cover for disputes arising under sale and purchase contracts are thereby enabled also to cover the risk of liabilities being incurred by them in relation to claims being made against vessels relating to their previous ownership. Such claims brought against Members' vessels will of course continue to be handled by the Association's FD&D Department in the usual manner. To the extent, however, that financial losses are incurred by Members arising directly from a "maritime lien" type claim being made, such losses will be covered by the Maritime Lien Insurance for Second-Hand Ships up to a limit of US\$1.0 million per vessel, subject to a deductible of US\$5,000 at a premium for the 2006/2007 policy year of US\$7,500 per vessel. Alternatively, Members wishing only to purchase cover up to a limit of US\$500,000 any one vessel can pay a reduced premium of US\$4,500 per vessel declared. As will be seen from the terms of the policy attached, the cover purchased will continue for 12 months from the date of the declaration.

The Managers of the Association hope that this Maritime Lien Insurance Policy for Second-Hand Ships will continue to provide Members with a useful additional cover to protect them against unforeseen financial losses.

Members wishing to discuss any aspect of this Circular are welcome to contact the Association's Underwriting or FD&D Departments.

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