

CIRCULAR REF: 2012/008

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

**31 JANUARY 2012
SSR/MA**

MARITIME LIEN INSURANCE FOR CHARTERERS DEBTS

The purpose of this Circular is to draw Members' attention to the above insurance policy for which the Managers of the Association have once again secured the support of Lloyd's Underwriters for the 2012 policy year. In doing so, the Managers of the Association are acting purely as agents only and Members should understand that this is a Lloyd's Insurance Policy. The risks covered by this policy are the risks of claims being made against insured vessels as well as liabilities being incurred by Members in respect of insured vessels arising as a result of the insolvency of a charterer.

The Policy

The Policy is a Lloyd's Insurance Open Policy to which declarations can be made, but only in respect of owned vessels entered in the Association's FD&D Class. At present, third party claims made against vessels entered in the FD&D Class fall within the scope of the Association's FD&D cover such that Members are ordinarily afforded support from the FD&D Class to defend such claims and attempt to make recoveries in those cases where this is possible. If, however, Members are deemed to have acted recklessly when fixing to the particular charterers whose insolvency has given rise to the claims, then the support of the FD&D Class may not be granted. Even if FD&D Class support is granted, however, this will only provide insurance cover for the legal costs and not for the actual claims being made against the vessel. As far as the Managers of the Association are aware, insurance for such claims is not readily available elsewhere and this policy has been designed to provide cover for such claims as well as the liabilities which Members may have to incur in order to continue and complete a voyage already commenced prior to the insolvency of a charterer.

Scope of cover

The scope of this cover is to indemnify Members for financial losses incurred by them by way of "third party claims" arising directly from the insolvency of a charterer of the vessel. Third party claims are defined as:

1. Any claims being asserted against a declared vessel including, but not limited to statutory rights of action in rem, maritime liens and any other maritime claim which it is alleged by the claimant gives a right against a vessel; and

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2. Any liability to pay the cost of bunkers, port charges, stevedoring costs and any other costs necessary for the completion of a voyage which would properly be the responsibility of the vessel's charterer.

It will be seen from the above that the policy is designed to cover not only Members' liability to third parties in respect of charterers' unpaid debts, but also any liability which Members may have to incur in order to continue and complete a voyage already commenced prior to the insolvency of a charterer.

Whilst many such liabilities will arise under time charterparties, it is equally possible that such liabilities may be incurred under voyage charterparties, particularly those on FIOS terms (or similar).

NB: The policy does not cover any loss of earnings whether it be hire, freight, deadfreight, demurrage or indeed running expenses for the vessel etc.

The Period of the Policy

The period of the policy will ordinarily run from 20 February for 12 months unless a vessel is sold. Members purchasing a vessel during a policy year will naturally be entitled to buy this maritime lien insurance for charterers' debts as from the date of delivery of the vessel or, in the alternative, from the following 20 February. The policy is, however, subject to a minimum premium (as to which see below).

The Policy Terms

The premium per vessel declared to the policy will be US\$6,600 pro rata per annum subject to a minimum premium of US\$1,250. The limit of cover will be US\$1.0 million per claim and in the aggregate per vessel, per declaration, subject to an aggregate limit per Member of US\$3.0 million in respect of the insolvency of any one charterer. Claims will also be subject to a deductible of US\$20,000 per insolvency per vessel.

The terms of the policy are non negotiable and Members are not able to obtain a reduction in premium by opting to accept a lower limit of cover or a higher deductible.

Members should note that a commission will be payable to the Association to cover administration expenses.

Approval of Members by Underwriters

NB: As this is a Lloyd's Insurance Policy for which the Managers of the Association are acting purely as agents only, acceptance of any Member wanting to purchase this additional insurance is expressly subject to approval of the Lloyd's Underwriters concerned.

SUMMARY

The Managers of the Association hope that this maritime lien insurance for charterers' debts will continue to provide Members with a useful additional cover to protect them against unforeseen financial losses. The policy wording is attached to this Circular together with an explanatory set of "Frequently Asked Questions" below. In addition, these documents may be viewed and downloaded from the Association's website at <http://www.nepia.com/>. Any enquiries in relation to this policy should be directed to the Association's Underwriters in the first instance.

SS REBAIR

ASSOCIATE DIRECTOR - North Insurance Management Limited

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

MARITIME LIEN INSURANCE FOR CHARTERERS DEBTS

FREQUENTLY ASKED QUESTIONS

1. What is the risk that is covered by the Maritime Lien Insurance for Charterers debts?

Under this Policy, Members are insured against financial losses incurred by them by way of "*third party claims*" arising directly from the insolvency of a Charterer of the vessel. "*Third party claims*" is a term defined in the Policy to include two categories of liabilities which Members may suffer as a result of the insolvency of a Charterer;

- i) Any claims being asserted against a declared vessel including, but not limited to statutory rights of action *in rem*, maritime liens and any other maritime claim which it is alleged by the Claimant gives a right against a vessel; and
- ii) Any liability to pay the cost of bunkers, port charges, stevedoring costs and any other costs necessary for the completion of a voyage which would properly be the responsibility of the vessel's Charterer.

It will be seen from the above that the first category of liabilities covered by the Policy can be described as unpaid Charterers' debts which the bunker supplier, stevedore or other company seeking payment demands payment of by threatening to arrest the relevant vessel.

The second category of liabilities covered by the Policy can be described as the costs of completing a voyage already commenced prior to the insolvency of a Charterer providing such costs are Charterers' responsibility under the terms of the governing Charterparty.

2. Will this policy cover outstanding freight or hire if a charterer goes insolvent before completion of a voyage?

No. Although the Policy will cover the cost of bunkers, port charges, stevedoring costs and any other costs necessary for the completion of a voyage, there is an express exclusion for loss of earnings, whether it be hire, freight, deadfreight, demurrage or indeed running expenses of the vessel.

3. When will a Member be entitled to demand payment under this Policy?

It is a condition of the Policy that the Member concerned has either:

- i) Settled the claim with the third party with the approval of the underwriters; or
- ii) That the claim be the subject of a final Judgment of the relevant Tribunal or Court.

4. Will underwriters put up a guarantee if a vessel is arrested?

No. The Policy specifically warns Members that the underwriters will be under no obligation to put up security if an insured vessel is arrested.

5. If some of my vessels entered with the Association are not entered in the FD&D Class, but others are, can I still buy this insurance for all vessels entered with the North of England?

No. Members can only buy this insurance for vessels which are entered in the FD&D Class of the Association.

6. Am I free to pick and choose the periods for which I buy this insurance cover?

No. The period of the Policy will ordinarily run from 20 February for 12 months, unless a vessel is sold. Otherwise, you can buy this cover when you are purchasing a second-hand vessel or taking delivery of a new building from the date of delivery.

7. Can I buy this insurance for a vessel which is already on charter to a company I think is going bankrupt?

No. If a Member believes a Charterer is about to go bankrupt then this knowledge would have to be disclosed to the underwriters who would be most unlikely to accept to insure the vessel against these risks.

8. If I buy this cover, do I have to tell underwriters every time a Charterer pays hire late?

No. You only need to notify the Association either when you become aware of the insolvency (as defined in the policy) of a Charterer (either existing or previous) of an insured vessel or of a claim demand being made against a declared vessel arising directly from the insolvency of a Charterer.

9. Do I have to buy US\$1m worth of cover, or can I have a lower limit of cover and pay less premium?

The terms of the Policy are not negotiable - Members cannot buy a lower limit of cover for less premium.

RISK DETAILS

- TYPE:** Maritime Lien Charterers' Debts Insurance
- ASSURED:** Members as may be declared, of the FD&D Class of the North of England P&I Association Limited but only in respect of Members who currently purchase this insurance. Non-Renewal Members or Members who wish to purchase this insurance for the first time, are to be agreed and accepted by Underwriters hereon prior to attachment.
- VESSELS:** As declared by the Members of the North of England P&I Association Limited. Owned vessels only. Chartered vessels to be agreed by Underwriters hereon prior to attachment.
- PERIOD:** Open Cover to accept declarations attaching from noon on the 20th February 2012 GMT made by the North of England P&I Association Ltd and expiring on or before noon the 20th February 2013 GMT.
- INTEREST:** Third party claims – a third party claim is defined as:
(i) any claims being asserted against a declared vessel including, but not limited to statutory rights of action *in rem*, maritime liens and any other maritime claim which it is alleged by the Claimant gives a right against a vessel; and (ii) any liability to pay the cost of bunkers, port charges, stevedoring costs and any other costs necessary for the completion of a voyage which would properly be the responsibility of the vessels' charterer.
- TERRITORIAL LIMITS:** Worldwide
- LIMIT:** USD1,000,000 per claim and in the aggregate per vessel any one Assured, subject to an aggregate limit of USD3,000,000 any one Assured or group of Assureds within the same Fleet Entry in the North of England FD&D Class any one charterer insolvency.
- DEDUCTIBLE:** USD20,000 per insolvency per vessel per declaration.

CONDITIONS:

This insurance is to indemnify the Assured for financial losses incurred by the Assured by way of third party claims arising directly from the insolvency of the vessel's charterer of a declared vessel and which insolvency is beyond the Assured's control.

The North of England P&I Association Limited will handle all claims (and recoveries) hereunder as FD&D disputes within the scope of the Association's FD&D Class, keeping underwriters advised.

It is a condition precedent to underwriters' liability under this insurance that the settlement of a claim by the Assured with a third party shall be approved by underwriters or be the subject of a final judgement of the court or tribunal seized of the claim.

Excluding claims for legal costs incurred by the Assured falling within the scope of the Assured's defence entry with the North of England P&I Association Limited, but including claims for legal costs incurred by the Assured at underwriters' request and which would otherwise fall within the scope of the Assured's defence entry with the North of England P&I Association Limited, but for the exercise of discretion by the Directors of the Association against the Assured.

Excluding loss of hire, freight, deadfreight, demurrage or running expenses of the vessel or liabilities of the Assured for business interruption.

Underwriters will be under no obligation to post bail or security of any kind.

Excluding claims in respect of any third party claims known to the Assured on or before the date of entering into the policy.

Insolvency for the purpose of this policy shall be deemed to mean any of the following events:

1. The Charterer is declared bankrupt or is liquidated;
2. The Charterer has a provisional liquidator or receiver appointed;
3. The Charterer has filed a petition for reorganisation under Chapter 11 of the US Bankruptcy Code (or similar Court protection from creditors)
4. A "winding-up" order is made against the Charterer;
5. The Charterer makes any valid assignment, composition or arrangement with all creditors;
6. The holder of any debenture secured by a floating charge over the assets of the Charterer as taken possession of all, or a substantial proportion of the assets of the Charterer.

Sanction Limitation and Exclusion Clause

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

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SUE AND LABOUR:

Following notice of any actual or potential loss hereunder, it is the duty of the Assured(s) to notify the North of England P&I Association Limited immediately and to take all practical and remedial actions for the purpose of averting or minimising the claim hereunder, in respect of which underwriters hereunder will at their discretion reimburse the Assured(s) for all necessary costs and expenses in pursuance of its duty.

EXPRESS WARRANTIES:

Vessels to have purchased FD&D cover with the North of England P&I Association Limited and such cover to continue for the entire period of this insurance.

CHOICE OF LAW AND JURISDICTION:

This insurance shall be governed by and construed in accordance with the law of England & Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England & Wales.

PREMIUM:

USD6,600 per vessel declared per annum and pro-rata with all declarations to be made quarterly in arrears. No return of premium to be made in the event of any vessels entry with the North of England being cancelled or terminated. In any event any vessel declared will always be subject to a minimum premium of USD1,250.

This premium is only to apply in respect of members who currently purchase this insurance. Non-renewal members or members who wish to purchase this insurance for the first time, are to be agreed and accepted by Underwriters hereon prior to attachment.