



JAPAN P&I CLUB
日本船主責任相互保險組合



FD&D COVER

Freight, Demurrage and Defence Cover

FD&D Cover: Importance of Risk Management in the Maritime Business

The maritime industry carries the potential for various legal disputes. It is not uncommon for disagreements to arise concerning freight, demurrage, contract interpretation, and other issues. To prepare for such situations, in addition to P&I insurance, we offer an FD&D Cover (Freight, Demurrage, and Defence Cover) to support our Members.

Purpose of FD&D Cover

While P&I insurance covers shipowners' liabilities for damages and losses, as well as legal costs for defending such liabilities, arising out of the operation of their entered ships, FD&D Cover provides specialized services to support the resolution of maritime disputes for both shipowners and charterers. At the discretion of the Association and subject to the Association's Rules, FD&D insurance covers costs incurred in the following situations:

- Legal advice from lawyers and experts
- Coverage of legal costs in court and arbitration proceedings
- Monitoring the progress of cases and providing appropriate advice and solutions

Benefits of FD&D Cover

FD&D Cover safeguards the interests of our Members in the following ways:

- Financial stability: Controls unexpected and high costs, ensuring financial stability.
- Business continuity: Minimises the adverse effects of protracted disputes on business activities, maintaining business continuity.
- Reasonable dispute resolution: Enables calm and reasonable resolution of disputes with the support of experts.
- Proactive advice: Provides advice to achieve favourable settlements for Members even in cases where no costs are incurred.

Types of disputes covered

Contrary to the impression given by the name “Freight, Demurrage and Defence”, the cover is not limited to the costs of defending or asserting claims for freight and demurrage. Subject to the discretion of the Association, the cover extends to defending or asserting numerous types of claims, some of which are mentioned below. Full details are set out in Rule 3 “Extent of Cover” of the Rules of the Special Cover for Freight, Demurrage and Defence in the Association’s Rulebook.

1. Claims for freight, hire, demurrage and dispatch money arising under a charter party
2. Claims for the breach of bills of lading and other contracts of carriage
3. Claims for the breach of any legal duty arising in connection with the carriage of goods
4. Claims in respect of the loss of, damage to or detention of a ship
5. Claims for general and/or particular average contributions or charges
6. Claims in respect of the supply of fuel, equipment or other necessities to an entered ship
7. Claims in respect of the building, purchase, sale or mortgage of an entered ship
8. Claims in respect of salvage or towage services
9. Claims from ship’s agents, brokers or others connected with the running, managing and operating of an entered ship
10. Claims in respect of loading, lightering, stowage, trimming or discharging of cargo
11. Claims by or against crews, stowaways and other persons on an entered ship
12. Claims by or against passengers, their representatives or dependants
13. Claims for amounts due on the ship, cargo or freight from or to underwriters and other persons and companies
14. Claims by or against revenue and customs authorities, harbour or other authorities.
15. Other Claims at the discretion of the Association

Terms and Conditions

1. FD&D Cover is generally contracted as a package with Owners' P&I or Charterers' P&I insurance.
2. The insurance period is from 21:00 JST (noon UTC) on 20 February to 21:00 JST (noon UTC) on the next 20 February. (For contracts starting mid-term, coverage is from the effective date of the insurance contract to 21:00 JST (noon UTC) on the next 20 February.)
3. A Member shall pay a Mutual Premium in US dollars.
4. A Member wishing to apply for FD&D Cover for their ships should complete and submit an application form to the Association.

Deductible

Unless otherwise agreed, with FD&D Cover the Member bears a deductible of one third of all costs recoverable in excess of USD1,000 any one claim. For example, if costs incurred are a lawyer's fee of USD10,000, the Deductible is USD3,000 $[(USD10,000 - USD1,000) \times 1/3]$.

Important Notes

1. We cover the costs of protecting Members' interests in disputes arising during the FD&D Cover period, based on the covered events stipulated in the cover. However, claims covered by Owners' or Charterers' P&I insurance are not covered by FD&D insurance.
2. FD&D Cover does not compensate for actual damages or losses incurred by Members in these disputes.
3. The Association has absolute discretion regarding the commencement of assistance, the content of assistance provided, the suspension of cases under assistance, and settlements.
4. The limit of FD&D Cover is USD10,000,000 per any one claim. However, for claims related to the construction, purchase, sale, mortgage, repair, or alteration of an entered ship, the limit is USD2,000,000.
5. Claims between joint contractors and claims covered by other insurance are excluded from coverage.

Disputes frequently referred to the Association as FD&D claims cases

Demurrage

Demurrage claims make up the majority of FD&D claims. Demurrage is an amount payable by the charterers to the owners in respect of delays to the ship as a result of her being retained beyond the agreed or reasonable time for loading or discharging. It will be necessary to examine how laytime is provided for in the voyage charter party. The arrival of the ship, notice of readiness, commencement and interruptions of laytime and the treatment of Saturdays, Sundays, holidays and bad weather may all give rise to disputes. Normally an attempt is made to resolve these disputes through amicable settlement between the parties concerned, by reference to the opinions of lawyers at the place of arbitration or related judicial precedents and theories. If this is unsuccessful, disputes may be referred to arbitration.

Cargo Delivery without production of the Bill of Lading

Cargo delivery without production of the original Bill of Lading but in exchange for a guarantee provided by the cargo receivers and/or the charterers is common but very risky. Occasionally instances are heard of where the lawful holders of the Bill of Lading appear seeking delivery of the cargo from the carrier after the cargo has been delivered to someone else without production of the Bill of Lading. In these situations, the carriers' options are limited. They may be able either to recover the cargo from the person who took delivery under the guarantee or to demand that the guarantor provides compensation for the bill of lading holders' loss. If they fail to recover the cargo or fail to force the guarantor to compensate the bill of lading holders, the carriers themselves have to compensate the bill of lading holders for their loss and then seek to recover the sum under the guarantee. In fact, it is always difficult to recover losses from guarantors. So, it is strongly recommended that if carriers are pressed to deliver cargo without production of the Bill of Lading, before agreeing to doing so, they should obtain a guarantee from a first class bank to ensure they can effect recovery should it become necessary.

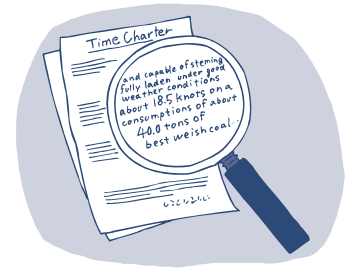


Speed Claim

A description in the charter party of the ship's speed and fuel consumption constitutes a warranty by the owners that the ship will be able to attain the stated speed at the specified rate of consumption under described weather conditions. The statement is a warranty even though it is not expressly described as such in the charter party. The speed description is usually modified by the word "about". This has frequently been held to give the owners an allowance of half a knot below the described speed.

There are two established methods of determining a speed claim.

1. Did the ship make the charter party warranty of speed on the days when good weather conditions prevailed?
2. Was the average speed that the ship made on the entire voyage, taking weather conditions into consideration as well as currents, reasonable in relation to the charter party description?



Most arbitrators are of the opinion that both criteria should normally be considered.

Safe Port

Charter parties usually oblige the charterers to order the ship to safe ports. Disputes sometimes arise between the charterers and the owners such as whether there was a breach of the charter party and whether the port designated by the charterers was safe. The following circumstances should be taken into consideration in deciding disputes relating to safe ports:

1. Tidal currents and weather
2. Topographical factors (e.g. shallow water, sand banks)
3. Conditions of the port around the time of the ship's entry (including port facilities, such as mooring, and political unrest)
4. Whether the charterers' orders and the ship's actions were appropriate
5. Whether the port was prospectively safe
6. Whether the damage incurred can be attributable to a breach of the charter

In a dispute as to whether a port was safe, the charterers' instructions around the time of the ship's entering the port, the records of relevant communications, the ship's documents such as the log book, charts and the information on the port and port facilities should be collected and the merits of the argument and reasonableness of the claim should be carefully studied.

■ Non Payment of Charter Hire

It is a fundamental principle that payment of hire should be made in advance. But occasionally charterers fail to pay by the due date. Should the charterers fail to pay the hire due on or before the appropriate date without justifiable reason, the owners may be entitled to withdraw the ship and terminate the charter. Deduction from the hire of any sum not permitted by the terms of the charter party may also entitle the owners to withdraw the ship from the charter. Withdrawal of the vessel, however, will not constitute a settlement of unpaid hire. Usually the owners will try to collect any unpaid sums through discussions. If the discussions fail, the owners may consider taking steps leading to arbitration.

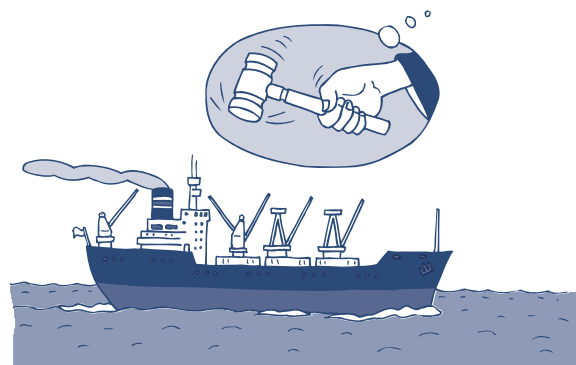
■ Inferior Fuel

Recently, many troubles arising from supply of inferior fuel are being reported. Typical claims arise from engine trouble and increased sludge. It is essential to collect samples of fuel supplied to protect the owners' interests from possible disputes. By analysing the samples, the owners can investigate the cause of troubles. If it is ascertained that the cause is the supply of inferior fuel, the owners will be able to consider making a recourse claim against the bunker suppliers or the charterers. (RBD NOTE: If time charterers have bought the fuel, the contract will be between charterers and bunker suppliers, so owners may have difficulty taking action against the suppliers. An action in contract is not likely to be possible, and an action in tort may be too difficult).

■ Maritime Lien

A lien is a right to receive payment from a debtor's property. Creditors holding liens may have rights in priority over other creditors. These rights are specified in law. Under English and American law, a maritime lien is enforceable by an action in rem. In cases where debts result from a financing deficit or the bankruptcy of a company engaged in ship's operations, disputes may arise with regard to the validity of maritime liens. As the position of maritime liens is regulated by the laws of the countries concerned and the flag state, it is necessary to deal with the disputes in the light of the legal precedents of those countries, after taking advice from lawyers.

In order to unify internationally the rules concerning maritime liens and mortgages, International Conventions for the Unification of Certain Rules relating to Maritime Liens and Mortgages were concluded in 1926 and 1967. As of February 2025, Japan has not ratified either of these Conventions.





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