Freight, Demurrage and Defense

History, development and cover

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Introduction

To better understand Freight, Defense and Demurrage cover ("FD&D") and its import to the world of maritime arbitration, one must appreciate the fundamentals upon which FD&D rests, and this requires considering the 19th century setting in which FD&D came into existence and the factors motivating those who created FD&D. These fundamentals drove the development of FD&D through more than a hundred years leading to the current mature FD&D product which, not coincidentally, today provides significant funding of the process of maritime arbitration.

History

The history of almost any marine cover begins with marine insurance, i.e., insurance of the venture. Individuals provided such insurance at least as early as the 12th century. With the passage of time particulars of the cover evolved with, for example, the roots of "Lloyds" appearing in the 17th century (at Edward Lloyd's Coffee House where "underwriters" - the names/signatures under the policy wording - mixed with shipping people).
These insurance arrangements responded to the needs of shipowners and of merchants with risk in the ventures.

Lloyds evolved and, beginning in 1771, became what is in effect today's society of underwriters at Lloyds. In England other "coffee house underwriters" and two government sanctioned assurance corporations provided some competition to Lloyd's. As the marine insurance market developed, some shipowners encountered difficulties in finding underwriters willing to accept risks while others faced the failure of some underwriters to pay losses. At the same time shipowners distant from urban insurance marketplaces could find that arranging marine insurance required relying upon brokers charging high fees. Such obstacles caused groups of shipowners to form Hull Clubs, sharing marine insurance risks amongst themselves. Such mutual marine associations existed outside of England as well. These early hull clubs are testament to shipowners recognizing that by grouping together they could help themselves.

During the mid-19th century, changes and developments in the law exposed shipowners to liabilities outside of hull underwriters' typical terms (and of the cover provided by Hull Clubs modeled on the underwriters' cover). For example 1/4 of the value of collision damage to the owner's vessel was not covered nor were liabilities in excess of the value of the vessel for death, personal injury, dock damage, etc. In response to these and other "gaps" in cover, groups of shipowners created Protection Clubs. The Shipowners' Mutual Protection Society (today's Britannia Club), formed in 1850, was such a club; other protection clubs were offshoots of hull clubs, for instance the North of England Steamship Insurance Association (1856) brought about the North of England Iron Steamship Protecting Association in 1860.

In the latter half of the 19th century as trade and economies grew, legal developments triggered "unanticipated" shipowner liability for loss of increasingly valuable cargoes, a liability outside of hull and protection covers. Over time shipowners responded by having their Protection Clubs add cover for indemnity (for payment for cargo damage/loss and fines) or by forming entirely new clubs providing both protection and indemnity cover.

Freight, Demurrage and Defense - Roots

With the increase in trade came an increase in the number of ships and the number of merchants who shipped cargo under bills of lading or entered into charter arrangements with shipowners. Shipowners, a disparate group many of whom were "singletons" or very small operators, confronted an ever expanding array of contractual provisions. Because of imbalance which could, and did, occur in the relative bargaining power of shipowner *vs.* merchant, shipowners often found they had to accept unfavorable contract terms. Coextensive with the advent of steamships supplanting sailing ships, the balance of bargaining power between shipowner/merchant concerning bill of lading contract terms gradually came under the influence of legislation (for example the U.S. Harter Act of 1893, a contextual forerunner of the Hague Rules of 1924). But charter contract terms continued to be purely market driven with the result that shipowners, perhaps especially smaller owners, could find themselves accepting unfavorable terms (for example the 1880s and 1890s was a period of recession and volatility[1]).

Increasingly complicated contractual arrangements rather than simple goal oriented basic contracts must have vexed some shipowners. Their P&I Clubs were a natural place to go for information and assistance with "I've never seen this before" or "Are other shipowners agreeing to such requirements" questions. And the costs associated with contesting a charterer's claim - or pursuing a claim - were not welcomed by shipowners, especially given the large number of smaller operators.

The market responded or, better put, some shipowners themselves responded through their mutual P&I clubs in one of two ways: adding Freight, Demurrage & Defense as an additional cover (or class of cover) to their clubs' P&I cover or, under the umbrella of their P&I clubs, forming separate clubs (e.g., in 1888 the U.K Freight, Demurrage and Defence Association Ltd.). In the Scandinavian countries shipowners relied upon each other for guidance, and in Copenhagen in 1889 formed Nordisk Skibsrederforening (Nordic Shipowners Association). Johannes Jantzen - with Nordisk at its 1889 founding - wrote the following as the purposes of the Association (rough translation):

1) Work against unreasonable charter party clauses;
2) Work to introduce and establish standard forms of charter parties and bills of lading;
3) Inform members about port practices and local situations which may be detrimental to shipowners [for example, corruption];
4) Provide assistance to members in giving advice and guidance as well as in settlement of disputes;
5) Take over legal proceedings for Nordisk's account when it comes to matters of principle or more general importance;

6) Take care of interests of shipping towards government and authorities when mutual interests of shipowners are threatened or when reform or change are desirable;
7) Establish a liability insurance for shipowners;
8) Work with other associations that have the same purposes

These purposes well illustrate what was of concern to shipowners during the decades when shipowners first caused FD&D to come about. Nordisk moved to Oslo in 1891. Initially Nordisk charged the same membership fee to all association members. About ten years later Nordisk moved towards apportioning fees relative to shipowner fleet size and similar factors. Simultaneously Nordisk increasingly focused on the need of individual owners for assistance in settling disputes and for "someone" to take over handling of members' legal proceedings (bullets 4 and 5). Nordisk did not initiate liability insurance (bullet 7). Other stated purposes such as standardizing charter parties, limiting unreasonable clauses and lobbying government/authorities to further the interests of shipowners were, one could say, taken up by BIMCO which was established in 1905, the year in which Norway became independent of Sweden.

In the later years of the 19th century and early years of the 20th century assisting shipowners with contractual/charterparty disputes and handling their legal proceedings also became the focus of P&I clubs in England which either had added a FD&D cover or under their umbrella had started an FD&D club.

Development
Considering the year in which the P&I clubs of the International Group (www.igpandi.org) first offered FD&D cover (or a variant) is one way to appreciate the evolution of FD&D and, no doubt, the evolution in charter and contractual challenges and disputes with which shipowners were contending (the first column is the founding year of the P&I covering club while the second column is the year FD&D first was offered[2]):

American Club	1917	1996 (by amendments; 2004> by class)
Britannia	1850	1970
Gard	1907	1977
Japan P&I	1950	1983
London Club	1866	1952
North of England	1860	1970s (1967>?)
Shipowners'	1855	<1977 (no later than)
Skuld	1897	1982
Standard Club	1885	1883
Steamship	1909	1909
Swedish Club	1910	1984 (Hull 1872)
UK Club	1869	1888
West of England	1870	<1907 (much earlier than)

Years of founding of some "unaffiliated" FD&D clubs:
Danish Defense Club 1925 (amalgamated into Skuld 2010)

German Shipowners' Defence Association 1901
Nordisk Skibsrederforening 1889

The reader will note that the Scandinavian P&I clubs as a group appear to have added FD&D cover 70 or more years from their founding. This likely can be explained by reference to the 1889 formation of Nordisk and deference of the Scandinavian P&I clubs to their then largely Scandinavian membership, but as the Scandinavian P&I clubs expanded their membership to shipowners outside Scandinavia their new "international" membership well may have expressed the wish that their FD&D cover be provided by their P&I club.

One hundred years after 1850, the year the first P&I club came into existence (Britannia), of the now 13 International Group clubs only four offered FD&D cover (by the P&I Club or an affiliated FD&D club); fewer than 35 years later all offered FD&D or had an FD&D facility.

Changes in the offered cover occurred over those many decades. If one compares the cover described in the 1903 Standard Club FDD&D rules ("Freight, Dead freight, Demurrage and Defence Association," a separate mutual under the Standard Club) with that described in the 2017 Standard Club FD&D rules, the 2017 rules are much more efficient in describing the cover while largely carrying on the essential covers of the 1903 rules. But certain additions/deletions made between 1903 and 2017 standout.

Text concerning soft services and lobbying (e.g., advising as to rights/liabilities towards authorities and working to alter/prevent laws prejudicial to shipowners) drops out while specific monetary limitations and exclusions on cover appear. Cover for costs relating to ship "building, modification, purchase or sale" is specifically stated as being covered (with exclusions).

The more efficient wording of the 2017 rules and the additions/deletions made during 1903-2017 (see Appendix for detailed comparison) are in line with changes which the other clubs effected or included in later developed FD&D cover. Recall Nordisk's early shift placing more emphasis on assisting members with their disputes and handling their legal proceedings and less on more general "trade" concerns of shipowners and outward lobbying which became the province of, for example, BIMCO. Similarly in the U.K., large organizations such as the Chamber of Shipping (having roots going back to trade associations in the U.K. banding together in 1878) took up assisting shipowners with the development and improvement of laws, customs and contracts.[3]

Not quoted above but present in the Standard Club 1903 FDD&D rules and in the West of England 1907 FD&D rules - and no doubt included by other clubs offering FD&D at the time - were requirements:

> That Members . . . chartering their steamships . . . for the carriage of Coal, Patent Fuel or Coke - and/or Wood from the Baltic and White Sea - and/or Pitch Pine or other Wood from the United States Pitch Pine ports . . . shall contract upon the Charter forms approved by the Documentary Committee of the Chamber of Shipping and set forth in

> the Schedule of Charters hereunder written, and none other, and that any member chartering any steamship entered in this Association for the carriage of cargo in any of the above mentioned trades for which Charters are provided, as mentioned in the said Schedule, upon any other forms shall be liable and subject to the penalties imposed by Rule 4 of the Association.
> West of England Steam Ship Owners P&I Association, Limited, 1907 Class II FD&D rules, Bye Law, p. 20.

Rule 4 referenced in the above quote provides that if a member contracts in contravention of a Bye Law or does "give any back letter or undertaking or make any promise to nullify-vary or modify the [prescribed Charter Party] or engagement or any terms thereof" then the member will be "deprived or disallowed 10 percent" of any recovery from the Association to which the member may be entitled "in respect of every steamship affected by such Charter-Party;" a member, however, could avoid the 10 percent penalty by providing notice to the Association in advance of the non-conforming charter/terms and paying 20 pounds sterling for each ship so engaged for each voyage "during the continuance of such breach."

The "Schedule of Charters" referred to in the quoted Bye Law identify Chamber of Shipping approved charters for specific trades some of which are - in updated versions - in use today. Examples from the schedule are the Welsh Coal Charter (1896), Scotch Coal Charter (1896), Wood Charter (Scandinavia and Finland) (1899), Baltic Sleeper Charter (1905, for wood), British North America (Atlantic) Wood Charter (1902) and the Pitch Pine Charter (1906).

Beyond dictating forms of charter parties to be used for certain trades, early in the development of FD&D a club would dictate terms to be included in charters (and/or contracts of carriage). For example, the West of England (1907 FD&D rules) required that members chartering their steamships to carry livestock from any port in Argentina include stated clauses covering *force majeur*e, ventilation, quality of water and feed and detention or delay "caused by want of water in the docks or other cause beyond the control of the captain."

FD&D rules dictating particular charter forms or use of specific charter terms in specific trades fell by the way side as trade developed in the 20th century and shipowners - who controlled the clubs - likely found such dictates an impediment rather than a help. Today clubs suggest clauses that members should consider utilizing.

From the earliest days of FD&D, rules concerning discretion and the conduct of disputes were important to FD&D providers and are discussed below. Rules concerning pre-requisites to cover (for example, application, vessel in class, mortgagee guarantee) or events causing loss of cover / cessation of membership (for example, bankruptcy or liquidation - absent special arrangement - or failure to pay calls to the Association or making false statements to the Association, etc.) have always existed but are beyond the scope of this paper.

Shifts and volatility in bargaining power between shipowners and charterers/merchants seemingly were amongst the forces which drove creation of FD&D in the latter half of the 19th

century and caused changes in focus of the FD&D rules as the decades went by in the 20th century. Initially FD&D was a creature of self support amongst shipowners (and Captain shipowners) who, as trade increased in volume and distance, found themselves facing more disputes involving more money and charterers seeking to minimize their contractual risks at the expense of the shipowners. Over decades as shipowners became "more business and less salty" and as they formed trade associations to protect and further their interests and increasingly developed and utilized widely recognized standard form charter parties, the rules governing FD&D became more concise both in terms of what was covered and provisos as to cover.

Cover

FD&D covers legal costs and expenses incurred in furthering or resisting disputes typically falling outside of cover provided by other insurances, for example P&I and Hull & Machinery. As a named risk cover, if a risk is not named within the FD&D rules then no FD&D cover exists (P&I also is a named risk cover).

If a dispute which a member believes should be covered is not a named cover then the member may resort to what Clubs generally call an "Omnibus" rule. The member requests the board to make an exception to the rules, in effect asking fellow members to "put yourselves in my position - would you not expect the club's FD&D to cover?"

FD&D cover generally is based upon the "pay to be paid" principle - payment is made to a FD&D association member for legal costs and expenses which the member has paid which come within the cover. Practically speaking, however, FD&D clubs most often directly pay to lawyers (retained to represent the member) the legal costs and expenses arising out of legal proceedings the club "manages."

That FD&D cover is a "legal costs insurance" and not a "liability insurance" becomes crystal clear to members when property of an FD&D member is arrested/attached (e.g., owner's vessel/time charterer's bunkers) to secure a claim by a charterer for losses caused by owner's withdrawal of the vessel/by an owner for unpaid hire. P&I clubs' usual practice is to agree to post security (often a "Letter of Undertaking") in favor of a claimant (e.g., cargo damage claimant) for the amount claimed; but on the FD&D side a club will not do so unless, *perhaps*, the member provides the club with cash security or similar (e.g., bank guarantee from an agreed bank).

Although under FD&D cover members can seek to recover legal costs and expenses arising out of a wide variety of disputes, for example disputes concerning passengers (passage ticket contract), towage, agents, lightering, salvage, ship repair, necessaries (including fuel, lubricants etc.) (for additional examples see the Appendix), disputes arising out of charter parties are the most frequent. If the costs of an arbitrated charter dispute (fees/expenses of arbitrators and of adversary lawyers) fall upon a member with FD&D then FD&D will cover the member for those costs (and for lawyers, experts, *et al*, engaged for the member).

"Seek" in the first line of the above paragraph is the operative word. Under usual FD&D rules the member must abide certain requirements and the club must exercise its discretion in favor of cover before a member can rest assured its legal costs and expenses will be covered.

Putting aside for a moment "discretion," the typical FD&D rules of import to a charter party dispute include those dealing with notice, marshaling of facts and evidence, advice and selection and retention of lawyer/s and may include existence of other insurance. Because charter party disputes predominate within FD&D and the requirements of a member essentially are the same no matter the type of dispute falling within FD&D, this paper will use charter party disputes to explore FD&D rules.

Incumbent on a member is to promptly notify the club of a dispute occurring under a charterparty. Erring on the side of prompt notice is far preferred to delay. If expenses are incurred before notice is given ("We sent a crane specialist to the ship but forgot to let you know . . .;" "the lawyer we use ghost wrote all the emails"), the club can refuse to cover them.

A club can refuse to cover costs of surveyors, experts and lawyers appointed or retained without approval of the club. Given the volume of charter disputes with which FD&D clubs deal, clubs want to, indeed under their rules can and almost always will, dictate the selection of a lawyer - and similarly for experts. Clubs believe they know the correct "horses for courses."

FD&D rules provide that the club has the right to manage and control the handling of a charter party dispute including legal and arbitral proceedings where legal expenses and costs are covered. Their rules are clear (for example a portion of North of England FD&D rule 26: as to "actions, proceedings, defences, matters and things . . . undertaken" the club ". . . has an unfettered control over every matter that may be undertaken in this respect").

Lawyers (whose fees and expenses fall within a member's FD&D cover) generally report to the club (but can copy the member); in consultation with the member the club instructs the lawyer.

In line with the club's right to manage the handling of disputes, the club manages resolution of disputes (for example, Gard FD&D rule 69 (1): the club has the right "to require the Member to settle, compromise or otherwise dispose of the case or legal or other proceeding in such manner and upon such terms as the Association sees fit").

Likewise, a member typically can prejudice its cover for costs and expenses if without consent of the club it does "withdraw, discontinue, admit, settle or compromise . . . any claim, dispute or Proceedings which might give or has given rise to [FD&D cover]," and if it does so then the member "shall become liable to pay to the Association the whole of the Costs incurred by the Association or such proportion of the Costs as the Directors in their discretion shall decide." (U.K. FD&D Club rule 5 (4)).

Of overarching importance to FD&D members and FD&D providers is the club's right to exercise discretion as to whether the club will support its member involved in a charter (or other)

dispute by covering costs and expenses or will decline to cover. The factors a club may consider in exercising this discretion are recited in the rules of some of the clubs - examples are:

Merits of the claim or defense.
Disputed amount relative to costs which well may be incurred.
Likelihood of successful enforcement of an arbitral award or judgment.
Reasonableness of the member's actions (e.g. checking of finances of contract party).
Existence of alternative means to resolve the dispute.
Did member provide documents/information needed to properly evaluate the dispute?
Applicable law and jurisdiction.
Effect on the finances of the club.
Importance of the issue to the member, membership or shipping community

Because facts, evidence, witness testimony or statements, issues, legal opinion as to the merits, etc. can (and often do) develop, appear to change and become more (or less) important as a dispute "moves forward," clubs' exercise of discretion is a constant. The exercise of discretion, or the suggestion by a club that it may change its view on its exercise of discretion, can have a dramatic impact on members and the handling and resolution of a member's charter party dispute at any stage of an arbitral or other proceeding.

Clubs' exercise of discretion to support or decline to cover is, to a degree, subjective. This contrasts with monetary limitations on cover. These can be an outright maximum limit, a limit for certain types of dispute (purchase and sale of a ship), a limit per event or a deductible (for example, a fixed amount or a percentage of costs or a combination of the two - to encourage a member to use legal services more efficiently than it otherwise might). In contrast to limiting amounts, some clubs may provide for a set monetary cover amount they will support without exercise of discretion (with certain provisos, e.g., illegal conduct).

As noted at the outset of this section, FD&D will not cover costs covered by other insurances. If overlaps occur (for example, cargo damage is found delaying the vessel and time charterer deducts hire) then costs/expenses of lawyers, surveyors and experts can be apportioned between P&I and FD&D covers.

Overlaps of a different type can occur if a vessel changes clubs/FD&D provider and a dispute develops "now" from an event occurring while entry was with the earlier club. Clubs may establish guidelines to ensure clarity, for example a claim for breach of charter party may be deemed to have arisen the date the breach occurred. A special situation concerns contracts for new buildings as a shipowner may wish to have FD&D cover in place before taking delivery of the vessel to cover the possibility of disputes under the contract for construction - clubs make (and rules provide for) cover if early arrangements are made by the buyer of the newbuilding.

Although perhaps not specifically set out in the rules, FD&D clubs provide to their members advice concerning all manner of issues relating to charter parties both before, during and after negotiation of terms. Members generally find that by dint of their handling charter disputes day

in and day out, FD&D club personnel have a wealth of knowledge as to what will best serve their members in negotiating best terms achievable.

Conclusion

When steam was overtaking sail during the latter half of the 19th century FD&D began as a form of shipowner self-help in reaction to changes in the marine market place. Today FD&D is an evolved mature product but still with its roots in place. Though perhaps somewhat hidden, FD&D is of significant import to the world of maritime arbitration.

1. *Nordisk Through More than 150 Years, pp. 1,2. http://www.nordisk.no/wp-content/uploads/2017/02/WEB-2017-versjon-KOMPLETTPRINTNordiskHistory.pdf#content. Handbook of Maritime Economics and Business, edited by Costas Gramenos, pp. 241-243 (Lloyd's List, 2nd Edition, 2010).*

2. *For help received in determining certain of these dates, thanks are due to: M. Anber-Kontakis, C. Anderson, R. Banks, G. Berkeley, R. Bray, C. Brown, K. Eivindstad, D. Heaselden, M. Hope, J. Hughes, L. Johnson, c. Joy, L. Lambert, E. Lee, B. Nergaard, S. Purvis, F. Riley, M. Sæther, P. Spendlove and N. Tonge.*

3. *Rules of perhaps two clubs indicate effort will made to alter or improve laws etc. adverse to shipowners.*

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Appendix

Numbers in brackets after certain of the 1903 rules refer to 2017 rules mirroring or roughly aligning with 1903 rules.

1903 Standard Club FDD&D Rules

The matters against which Members shall be protected . . . are:

a. The enforcement of all proper claims for freight, dead freight, demurrage, general and particular average, and insurance moneys, which . . . a Member may be entitled to in respect of any ship which may, at the time of such claim becoming due, be entered in this Association . . . [3.1, 3.4, 3.5, 3.8]

b. The undertaking the defense of Members . . . in all actions, proceedings and arbitrations, brought against such Member; but this Association shall not protect a Member against claims covered by the ordinary Lloyd's, Insurance Company, or Mutual Marine Insurance Policies with collision clause attached, and Protecting, Thirds, and Freight Associations, and Indemnity Clubs. [S]hips entered in this Association shall be deemed to be insured in such Associations.
[3.1, 4]

c. The recovery of damages sustained . . . in the following matters, viz.: -Breach of Contract or Charter, Detention through Collision or any other cause, Negligent Repair, Outfit, Equipment, Stowing or Trimming, the supply of bad coals or other necessaries. [3.1, 3.2, 3.3, 3.4, 3.6]

d. Against improper action by or on the part of any Department of the State or any public body charged with or assuming the control of the Mercantile Marine, whether such improper action be in the nature of personal, civil, or criminal proceedings against the Member or his servants, or the detention or interference with any ship entered in this Association. [3.13]

e. By the enforcement on behalf of a Member of damages sustained by him consequent upon

2017 Standard Club FD&D Rules

Risks Covered
3. Costs in respect of claims, disputes or proceedings brought by or against a member relating to:

3.1 any charterparty, contract of affreightment, bill of lading or other contract

3.2 detention or loss of use of, or delay to, the ship

3.3 the provision of supplies

3.4 maintenance of or repair to the ship

3.5 loss of or damage to the ship

Exclusion to rules 3.4 and 3.5:
The club will only cover a member for costs in relation to a claim within any franchise or deductible under a hull policy if and to the extent that such franchise or deductible does not or is deemed not to exceed US$100,000 in respect of each incident.

3.6 cargo operations

3.7 charges, disbursements or accounts

3.8 amounts due from or to underwriters or broker

3.9 salvage, pilotage or towage services rendered by or to the ship

3.10 claims by or against any person

3.11 the mortgage of the ship

3.12 representation at official investigations or enquiries

3.13 claims by or against any customs, port, governmental or local authority

any improper action, as is mentioned in the preceding sub-section. [3.13]

f. Against any improper action, neglect, or default of any Harbour or Lighthouse authority, Dock, Railway, Canal Company, or other Corporation acting under statutory powers . . . and by the recovery of damages or compensation from any such authority, Company, or Corporation in respect of the aforesaid wrongful act, neglect, or default. [3.13]

g. The legal representation of a Member upon the Coroner's Inquests, Board of Trade Inquiries or other Formal Investigations into casualties in which any ship entered . . . may be involved. [3.12]

h. The protection and defence of Members from any wrongful action taken against them or their servants by or instigated by the crew of any steamship entered in the Association, and the prosecution of proceedings (civil or criminal) against any such crew in respect of any improper act, breach of duty, neglect or default on their part. [3.10]

i. The procuring and supplying information and advice as to all matters affecting Steamship Owners with respect to their rights and liabilities either towards the Government or any Department thereof, or any public body charged with control of the Mercantile Marine, and also by co-operation with any of the above public authorities in all matters affecting the interests of shipowners.

j. The procuring the alteration and improvement of existing laws, usages, and customs, at home or abroad, which are prejudicial to shipowners, and the delaying and preventing the enactment of such laws or the establishing of such usages and customs.

3.14 the building, modification, purchase or sale of the ship.

Exclusions to rule 3.14
(1) there is no cover for claims arising out of a contract for the building or modification of the ship or in respect of a contract for the purchase of the ship, for claims arising before delivery of the ship to the member, unless the entry is made effective from the date of the relevant contract, or on such terms as the managers may agree;
(2) where a limit has been stipulated in respect of claims, it applies in the aggregate to all claims in respect of all ships entered by the insured parties or associated or affiliated companies arising out of any one contract or series of related contracts unless otherwise agreed by the managers.

3.15 all other matters in respect of which a member should, in the opinion of the board, be supported by the club.

Excluded Risks
Risks covered by insurances:
4. The club will not cover a member in respect of any of the costs for which he would be covered, or could be covered subject to a discretion contained within the risk, if the ship were:
(1) fully entered in The Standard Club Europe Ltd. or other insurer affording equally wide cover;
(2) fully entered in the War Risks Class of The Standard Club Europe Ltd or other insurer affording equally wide cover.

B. **Scope of Cover, Recovery and Limits**

* * *

2.7 Unless and to the extent that the board otherwise determines, the costs for which the member is insured shall be limited to US$5 million any one claim, dispute or proceeding

k. The undertaking the prosecution of all claims for salvage services rendered by any ship entered in the Association to any other ship or vessel.
[3.9]

The Association shall not be liable to pay such Member the amount of any claim, the payment of which [the Association] may endeavour to enforce, or which it may endeavour to defend the Member against.
[italics in original]