FREIGHT, DEMURRAGE AND DEFENCE (FD&D) PROVIDES MEMBERS WITH INSURANCE FOR LEGAL FEES AND ASSOCIATED COSTS RELATING TO CLAIMS, DISPUTES AND OTHER MATTERS OF A SHIPPING NATURE WHICH ARE NOT ALREADY COVERED BY CLASS 3 (P&I) OR ANY OTHER FORM OF INSURANCE. FD&D IS A SEPARATE CLASS OF COVER (CLASS 6) AND HAS ITS OWN RULES CONTAINED IN A SEPARATE RULE BOOK.

Although the cover is referred to as FD&D, it is not restricted to claims for freight and demurrage, nor to defending claims brought against the Member (see Scope of cover below). FD&D includes cover for the costs incurred by Members in pursuing as well as defending claims. As FD&D disputes frequently relate to a ship’s earnings and cash flow, FD&D insurance is regarded by many Members as providing important support against risks arising in their day to day business operations.

**SCOPE OF COVER**

The types of claim and dispute covered under FD&D include:

- unpaid freight, hire and demurrage
- cancellation of charterparties
- detention, delay and loss of use of ship
- loss or damage to ship
- recovery of general average contributions
- breaches of charterparty, bill of lading, COA or other contracts of carriage
- claims in respect of the supply of fuel, materials or equipment to a ship
- negligent repairs, or conversion, of a ship
- amounts due from or to marine insurers
- claims in respect of salvage, towage or pilotage services
- newbuilding, sale and purchase and mortgage disputes
- disputes with port authorities, ship’s agents, customs authorities and terminal owners
- representation at official investigations, coroners’ inquests and other enquiries

**CLAIMS HANDLING**

Britannia has a team of experienced claims handlers dealing with FD&D issues, all of whom have legal qualifications. A crucial part of the service provided to FD&D Members is that the Club will give preliminary advice and assistance aimed at resolving the dispute before it escalates to the point that external lawyers need to be involved. If external legal assistance is required, appropriate lawyers will be instructed and their advice and cost carefully monitored by the Club. The Club’s FD&D claims handlers are also available to help Members at any stage of contractual negotiations and to deal with general enquiries of an FD&D nature.

**CASE STUDY (1)**

- A shift of liquid cargo occurs at sea causing damage to the ship’s shell plating and causing the ship to list dangerously. The ship has to deviate to a port of refuge.
- A dispute arises between the owner Member and charterers as to the safety of the cargo and who is liable for the costs incurred in connection with deviating to the port of refuge.
- The cargo has to be offloaded and while those costs are covered by the owner Member’s P&I cover, there is a delay in the cargo reaching its destination and the owner Member also seeks to recover those uninsured losses eg loss of hire from the charterer.
- The claims are ultimately resolved in London arbitration proceedings with the assistance of lawyers and experts appointed by the Managers on behalf of the owner Member, the costs of which are covered by FD&D.

**DEDUCTABLES & LIMITS**

The Association covers the first USD7,500 of all expenses incurred in any FD&D matter, after which the Member contributes one third of all additional expenses. The maximum recovery from the Association for any one claim is limited to USD10m, with a further sub-limit of USD2m for claims arising under a contract for the building, negligent repair, alteration, purchase, sale or mortgage of an entered ship. Most disputes are resolved within the USD7,500 threshold and, therefore, require no contribution from the Member.

The benefits of having FD&D cover to meet legal expenses have been shown many times over the years, e.g. during the financial crisis of 2008/09 and in dealing with the consequences of the bankruptcy of the OW Bunker group in 2014/15. Some typical examples of how FD&D cover can be useful to both owner and charterer Members can be found in these Case Studies.

**CASE STUDIES**

The case studies in this brochure are purely illustrative. For full details of the covers described please consult the managers.
The Member is comforted by the advice that

- English law and jurisdiction.

shipbuilding contracts which are subject to

The ships have been entered by the Member

• threaten delays to delivery of the ships.

- the quality of work being carried out which

FD&D covers the costs of making an

interpleader application to the New York

court to determine which of the bunker

bunkers that the owner ordered. The owner

trader is declared bankrupt.

After the bunkers have been supplied but

intermediary trader who in turn contracts

• An owner Member orders bunkers from an

 intermediary trader who in turn contracts

- with a bunker provider to supply bunkers to

the ship.

- The bunkers have been supplied but

before any payments have been made the

trader is declared bankrupt.

- The bunker supplier arrests the ship at New

York, claiming it is entitled to a lien for the

price of the bunkers. The trader’s liquidator

also claims it is entitled to be paid for the

bunkers that the owner ordered. The owner

is, therefore, faced with two competing claims

• FD&D covers the costs of making an

interpleader application to the New York

court to determine which of the bunker

supplier and the trader’s liquidator should

be paid.

CASE STUDY (3)

- A Member orders a series of ships to be

built. Disputes arise with the shipyard over

the quality of work being carried out which

threaten delays to delivery of the ships.

- The ships have been entered by the Member

in the Association for FD&D risks from the
dates when the relevant contracts were

signed. The Association is therefore able to

instruct lawyers in London to advise the

Member on its position under the

shipbuilding contracts which are subject to

English law and jurisdiction.

- The Member is comforted by the advice that

if they are forced to end the contracts for good

reason, and the yard fails to refund the

advance instalments of the contract price

pursuant to the refund guarantee provided

by the yard’s bank, the bank will refund

those instalments on the yard’s behalf.

- Armed with this advice, the Manager are

able to instruct local lawyers to commence

discussions with the yard. These discussions

eventually prove fruitful and the ships are

delivered to the required standard and with

only a minor negotiated delay.

- The Managers are also able to resolve a

dispute which arises between the Member

and the intended charterer of the new built

ships over the small delay that arose in delivery.

CASE STUDY (4)

- A time charterer Member orders the entered

ship to a port where the depth of water on

the approach to the port turns out to be

shallower than is required for a ship of that

draught. The ship temporarily goes aground

and sustains bottom damage.

- The owner alleges that the port was unsafe,

claiming the costs of repairing the damage
to the ship’s hull from the charterer Member.

- The repair costs are not recoverable under

the Member’s time charterer’s liability for
damage to hull insurance because they fall

within the deductible.

- Lawyers engaged under the Association’s

FD&D cover successfully argue in an

arbitration hearing that the port was not

unsafe at the material time because the

owner should have made his own enquiries
to satisfy himself that the depth of the water

was sufficient to allow his ship safely to

to enter the port at the relevant time.

CASE STUDY (5)

- A charterer Member redelivers the entered

ship to the owner at the end of a one year

time charter. The charterer Member makes

various deductions from the final hire

statement due to the fact that the ship’s

speed during the charter period was less

than the speed warranted by the owner in the

charterparty.

- The owner challenges these deductions,

alleging that the ship’s speed was only

reduced due to the effect of marine growth

resulting from the charterer Member’s

instructions to send the ship to a tropical port

where she was required to wait at anchorage

for a considerable period of time. The owner

also makes a claim for the costs of cleaning

the ship’s hull in order to remove the marine

growth.

- The Association’s FD&D cover supports the

charterer Member and a settlement is

reached between the charterer Member

and the owner in a mediation hearing which

the parties had agreed to as the dispute

was threatening their future business

relationship. Some of the charterer Member’s

deductions are accepted by the owner and

the charterer Member in turn agrees to make

a contribution to the cost of cleaning the

marine growth.

SOME BRIEF EXAMPLES

- An entered ship disposes of garbage to

a truck alongside when fire is seen coming

from the truck. Stevedores stop work and

charterers put the ship off hire for time lost.

The appointed surveyor determines that the

source of ignition has come from the

garbage truck and the off hire claim is

refuted on the basis of a lack of any fault of

the part of the ship.

- An owner Member obtains expert advice

from a master mariner under its FD&D

cover to support the master of an entered

ship who required a pilot to transit the

Magellan Strait. Charterers are persuaded

by this to withdraw their opposition to the

pilot and pay his costs.

- A crew member of an entered ship suffers

a serious assault while ashore and the

consequent police and judicial investigations

delay the ship. The owner Member is given

legal assistance to defend the charterer’s off

hire claim.

ADDITIONAL INSURANCES

Additional insurances outside the scope

of FD&D cover can be obtained on the Member’s

behalf from commercial market underwriters.

An example is maritime lien insurance which

can be purchased by a Member buying second

dhand ships. This insurance is to indemnify

the Member for financial losses incurred by

the Member arising directly from a maritime lien

claim being made against the ship as a result

of disputes and debts which originated prior

to the Member taking delivery of the ship and

which were beyond the Member’s control.

An example is claims made by bunker

suppliers against the previous owner for

unpaid amounts. This insurance can therefore

be particularly valuable if ships are being

purchased as a result of the insolvency of

the previous owner. A requirement of

this insurance is that the Member carries

out writ searches in a number of maritime

jurisdictions where claims are commonly

made. The Association can assist the Member

in identifying lawyers who may carry out such

writ searches on the Member’s behalf and at

the Member’s expense.