

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 the 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 claims and disputes covered under FD&D include:

- unpaid freight, hire and demurrage
- cancellation of charterparties
- detention, delay and loss of use of a ship
- loss or damage to a ship
- recovery of general average contributions
- breach of a 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

### DEDUCTIBLES & 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 which will be capped at a maximum of USD150,000 per claim. 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. However, most disputes are resolved within the USD7,500 threshold and, therefore, require no contribution from the Member.

### 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 assist Members at any stage of contractual negotiations and to deal with general enquiries of an FD&D nature.

### CASE STUDIES

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 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, for example, 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.

THE CASE STUDIES IN THIS BROCHURE ARE PURELY ILLUSTRATIVE. FOR FULL DETAILS OF THE COVERS DESCRIBED PLEASE CONSULT THE MANAGERS.



### CASE STUDY (2)

- An owner Member orders bunkers from an intermediary trader who in turn contracts with a bunker provider to supply bunkers to the ship.
- After 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 Managers 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 newly 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 runs 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 to safely 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 hand 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