



BRITANNIA FD&D

FREIGHT, DEMURRAGE AND DEFENCE

SCOPE OF COVER

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 P&I (CLASS 3) OR ANY OTHER FORM OF INSURANCE. FD&D IS A SEPARATE CLASS OF COVER (CLASS 6) AND HAS ITS OWN RULES.

Although the cover is referred to as FD&D, it is not restricted only to claims for freight and demurrage, nor to defending claims brought against the Member. FD&D covers the costs incurred by the Member in pursuing, as well as defending, claims.

As FD&D disputes frequently relate to a ship's earnings and can affect cash flow, FD&D insurance provides Members with significant support against risks arising in their day-to-day business operations.

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 of 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 other 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.



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DEDUCTIBLES

The Britannia Group covers two-thirds of all costs and expenses incurred in any FD&D dispute with the Member bearing only one-third.

This compares favourably with other FD&D insurers where the Member pays an initial contribution towards the costs and expenses and only then does the insurer begin to provide cover. In practice, most disputes are resolved by our in-house team without instructing external lawyers or incurring any costs at all.

CLAIMS HANDLING

The Britannia Group has a global team of experienced claims handlers dealing with FD&D disputes, most of whom are English lawyers or lawyers qualified in other jurisdictions.

The team brings together an exceptional wealth of expertise, providing appropriate and efficient legal support to Members, aimed at resolving disputes in a cost effective and commercial manner.

A crucial part of the service provided to Members is that the Britannia Group will, wherever possible, give advice and assistance aimed at resolving a dispute without immediately resorting to protracted and costly litigation. FD&D claims handlers are also happy to assist Members at any stage of their contractual negotiations and to deal with general enquiries of an FD&D nature. As the Britannia Group is not an authorised legal services provider, some matters will require the involvement of external lawyers, whose costs will be covered under FD&D as explained above. If external lawyers are instructed, their technical advice and proposed strategy, as well as their costs, will be carefully monitored by the relevant FD&D claims handler to ensure that the claim is handled in an efficient, realistic manner with the expenses being commensurate with the disputed amount.

CASE STUDIES

The benefits of having FD&D cover to meet legal expenses have been demonstrated many times over the years and particularly during times of volatility in the shipping market, such as: the financial crisis of 2008/09, dealing with the consequences of the bankruptcy of the OW Bunker group in 2014/15, the Ukraine/Russia conflict, Nigerian freight tax issues and, most recently, problems arising from the hostilities in the Red Sea. The impact of trade wars, as well as new environmental regulations such as FuelEU Maritime, may well cause further uncertainty in the shipping market and lead to disputes in the future.

Some typical examples of how FD&D cover can be useful to both owner and charterer Members are illustrated in the following case studies.

CASE STUDY 1

- A shift of liquified cargo occurs at sea, causing damage to the ship's shell plating resulting in the ship listing dangerously. The ship is forced to deviate to a port of refuge.
- A dispute arises between the owner Member and charterer as to the safety of the cargo and who is liable for the costs incurred in connection with the deviation.
- The cargo must be offloaded and, while those costs are covered by the Member's P&I cover, there is a delay in the cargo reaching its destination so the Member also seeks to recover its uninsured losses, for example, loss of hire from the charterer.
- The claim for the uninsured losses is ultimately resolved in London arbitration proceedings with the assistance of lawyers and experts appointed by Britannia on behalf of the Member, the costs of which are covered by FD&D insurance.

CASE STUDY 2

- A charterer 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 that it is entitled to exercise a lien on the ship for the price of the bunkers. The trader's liquidator also claims that it is entitled to be paid for the bunkers. Therefore, the charterer Member is faced with two competing claims and a dispute with the owners of the ship.
- FD&D covers the costs of making an interpleader application to the New York court to determine which, between the bunker supplier and the trader's liquidator, should be paid. It also covers the legal costs of the dispute with the owners under the charterparty terms.



CASE STUDY 3

- A Member orders a series of ships to be built, but disputes arise with the shipyard over the quality of the work, threatening delays to the delivery of the ships.
- The ships have been entered by the Member in Britannia for FD&D risks from the dates when the relevant contracts were signed. Britannia is therefore able to assist in instructing lawyers to advise the Member on its position under the shipbuilding contract.
- The Member is comforted by the advice that, if it is forced to end the contract 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, Britannia is able to instruct local lawyers to commence discussions with the yard. These discussions eventually resolve the disputes and the ships are delivered to the required standard with only a minor negotiated delay.
- FD&D cover also applies to the dispute which arises between the Member and the intended charterer of the newly-built ships over the delay in delivery.

CASE STUDY 4

- A time charterer Member orders the entered ship to a port where the water on the approach turns out to be shallower than is required for a ship of its 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 Member.
- The repair costs are not recoverable from another insurer under the Member's liability for damage to hull insurance because they fall within the deductible.
- Lawyers appointed under the Member's FD&D cover successfully argue, at an arbitration, that the port was not unsafe at the material time because the owner should have made its own enquiries to satisfy itself that the depth of the water was sufficient to allow its ship to safely enter the port, and the owner's claim is defeated.





CASE STUDY 5

- A charterer Member redelivers the entered ship to the owner at the end of a one year time charter. The Member makes various deductions from the final hire statement due to the fact that the ship's speed during the charter period was slower 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 Member's instructions to send the ship to a tropical port where it 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 dispute is harming the business relationship of the Member and the owner, and they agree to attend a mediation, the costs of which are covered under FD&D insurance. Some of the Member's deductions are accepted by the owner and the Member, in turn, agrees to make a contribution to the costs of cleaning the marine growth, leading to a settlement between the Member and the owner.
- An owner Member obtains an expert opinion from a master mariner under its FD&D cover to support the master of an entered ship who contracted a pilot to aid transit of the Magellan Strait. The charterer initially argues that the appointment of the pilot was not needed but is ultimately persuaded by this opinion and so agrees to pay the costs of the pilotage.
- A seafarer suffers a serious assault while ashore and the subsequent police and judicial investigations delay the ship. The owner Member is given legal assistance to defend the charterer's off hire claim.

FURTHER INFORMATION

Please contact britanniacommunications@tindallriley.com

FURTHER BRIEF EXAMPLES

- An entered ship is disposing garbage into a truck alongside, when fire is seen coming from the truck. The stevedores stop work and the charterer places the ship off hire for the time lost. Britannia appoints a surveyor under the Member's FD&D cover who determines that the source of the ignition has come from the garbage truck and the off hire claim is successfully refuted on that basis.