



Deadfreight - The Basics



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The loading of cargo under a voyage charterparty can lead to a variety of issues. One such issue is when there is a failure to provide a full cargo; in this situation an entitlement to deadfreight might arise. This guide explores the basics of deadfreight and the issues that surround it.

What is deadfreight?

Charterers are under an absolute and non-delegable obligation to provide cargo for loading¹, subject to certain exceptions.

Deadfreight refers to the damages an owner may claim against a charterer under a voyage charterparty, if the charterer fails to load the full quantity of cargo that has been stipulated under the charterparty. It applies in charterparties where the freight payable is set based on the quantity of cargo loaded. As such, deadfreight will not accrue under a charter where lump-sum freight is payable.

How is deadfreight calculated?

Calculation of deadfreight is dependent on whether a charterparty makes an express provision for its calculation or not.

For instance, the ASBATANKVOY makes specific reference to the calculation of deadfreight, with Clause 3 stating that deadfreight shall be paid at the rate specified in Part 1 of the charterparty. This figure would be used in the calculation and would apply in full, without regard to any saving of expense in the agreed carriage.

By contrast, other forms such as GENCON do not contain a specific clause or box related to the applicable deadfreight rate. In this instance, deadfreight would be determined

by calculating the freight that would have been earned on the cargo that was not loaded, less any extra expenses incurred by the owners had this cargo been loaded and carried. Beside the above, deadfreight can only be claimed if the charterparty contains a definitive quantity of cargo or states that a full cargo can be loaded. An owner will not be able to claim deadfreight if the exact amount of cargo to be loaded cannot be ascertained and the shipper has delivered to the vessel all cargo that was available to them, in good faith.

The Club would remind Members that they should always carefully review the charterparty in question, to determine if a provision has been made for how deadfreight is calculated and if so, what the provision is.

Does demurrage affect an owner's deadfreight claim?

Laytime and demurrage are two of the most fundamental principles to voyage charterparties.

Laytime is the amount of time permissible for loading and discharging of cargo during a voyage charterparty. It extends beyond just placing cargo in the vessel, to cover the stowage, securing, and other cargo operations to ensure safety. The amount of laytime allowed under the contract will be agreed between the parties at the time of forming the contract.

Demurrage is a liability for liquidated damages for breach of contract arising from failure to discharge or load within the permitted laytime. In these instances, a deadfreight claim may lead to a benefit where there

¹Triton v. Vitol (The Nikmary) 2004 1 Lloyd's Rep. 55, esp. para. 11.

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would have been possible exposure for a demurrage claim.

Additional consequences may follow if a charterer has failed to load the agreed amount of cargo under a charterparty, such as a saving in voyage expenses or a reduction or increase in the demurrage rate.

In the case of *The Ionian Skipper*², charterers loaded less cargo than stipulated under the charterparty and owners subsequently pursued a claim for deadfreight for the difference, alongside a claim for demurrage.

It was held that where a charterparty has no express rate for deadfreight and laytime is linked to the amount of cargo that is loaded, owners must account for the increased demurrage and saving in despatch money caused by the reduction of laytime that was allowed to charterers, on the basis that less cargo was loaded.

Is an owner under a duty to mitigate their loss in respect of a deadfreight claim?

Owners are under the usual duty to mitigate their loss and therefore must take reasonable steps to obtain a replacement “top up” cargo. It has been held that this obligation permits owners to deviate for this particular purpose³, subject to their being no contrary terms in the charterparty. Consideration must be given whether such a deviation is possible under a bill of lading and the associated consequences therein.

In the event owners do find a replacement cargo, it has been established that they are not obliged to credit charterers for any freight they earn on the substitute cargo against their claim against charterers for failure to load the balance of cargo⁴.

Can a lien be exercised on deadfreight?

In order to rely on the ability to exercise a lien over deadfreight, owners must demonstrate that not only is there a lien clause in the underlying charterparty but also that the clause explicitly covers deadfreight claims. An example of this would be Clause 8 of GENCON 1994, which states: “*The Owners shall have a lien on the cargo...for freight, deadfreight...*”

In the absence of any specific wording mentioning deadfreight, terms such as “non-payment of freight” would rarely be interpreted as extending to include a claim for deadfreight or any other amounts due under a charterparty, other than freight. Equally, owners must check the position of the local law of the jurisdiction in which they wish to exercise the lien to ensure a lien for deadfreight is recognised there.

The legal framework for exercising a lien on cargo can be relatively complex, especially when the cargo is owned by a third party. Exercising a lien can be a powerful tool but comes with its own set of difficulties and complications. We strongly recommend Members seek legal advice when considering a self-help remedy such as a lien.

For more information on liens, please see Club’s previous [LCC guide on liens](#).

Conclusion

Deadfreight can be a valuable remedy for owners, but as discussed it can be complicated. The entitlement to and calculation of deadfreight can lead to disputes, therefore we recommend Members speak with the Club’s Legal Costs Cover claims team as soon as possible when issues do arise.

²Bedford S.S. Co. Ltd. v Navico A.C. (The Ionian Skipper) 1997 2 Lloyd’s Report Rep 273

³Wallens Rederij v. Muller [1927] 2 K.B. 99.

⁴Aitken Lilburn v. Ernsthausen [1894] 1 Q.B. 773.

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Our Members are reminded that if they are concerned about a legal issue arising out of the points discussed in this article, they may be entitled to some initial legal advice free of charge, from a select panel of external lawyers under the [Club's Legal Advice Benefit](#). If Members wish to take advantage of this benefit, please contact the Claims team to discuss.

If you have any further questions about LCC, please contact the LCC Managers.

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