

Nutshell on Deadfreight

A charterer's obligation to provide cargo is absolute and non-delegable. A claim for deadfreight arises when a charterer fails in this obligation to provide sufficient cargo to load a vessel to the contractual stipulated quantity. This nutshell seeks to explore the subject of deadfreight and to provide members with a brief guide on deadfreight claims.

What is deadfreight?

Deadfreight is the name for damages to which an owner is entitled to claim against a charterer if the charterer fails to load the full quantity of cargo as stipulated under the charter. A claim for deadfreight is only available in voyage charter parties where freight is earned based on the quantity of cargo carried.

What is the rate of deadfreight?

In some charter parties (for example ASBATANKVOY and ASBAGASVOY), the rate for deadfreight is expressly provided for. Under such circumstances, the claim for deadfreight is liquidated and payable in full at the said rate without regard to any saving of expense by the owners in the voyage.

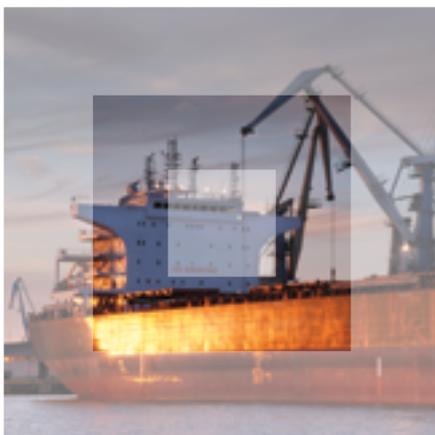
stipulated quantity of cargo to be loaded. For example, if the charter states "50,000 MT – 55,000 MT to be loaded at charterer's option", the charterer is only obliged to load 50,000 MT so the owner's claim amount will be calculated on this smaller quantity and therefore lower, accordingly.

Would the calculation of deadfreight be affected by demurrage?

In a charter where the laytime is proportional to the amount of cargo loaded and where there is no express deadfreight rate, owners' deadfreight claim would need to take into account the credit for the increase demurrage earned due to the shorter laytime (*The Ionian Skipper* [1977] 2 Lloyd's Rep 273)

Some other standard forms of voyage charters (GENCON 1994) do not have a clause specifying the deadfreight rate. If so, the owner's deadfreight claim would be unliquidated in nature and such damages are usually calculated by reference to the freight which would have been earned on the short-loaded cargo less the expenses which would have been incurred by the owners in carrying that cargo.

If the quantity of the cargo is stated in the contract as a range at the charterers' option instead of a fixed quantity, the minimum quantity of the range would be the contractual



Are the owners obliged to mitigate their losses in a deadfreight claim?

Owners are obliged to take reasonable steps to obtain a fill-up cargo if the additional freight earned exceeds the expense of loading, carrying and discharging the fill-up cargo. In fact, owners are entitled to deviate to a reasonable extent, in order to fulfil their obligation to mitigate their losses. Subject to any contrary terms in the charter, such a right to a reasonable deviation is an implied term. For example, in **Wallem Rederi A/S v WM H Muller & Co** [1927] 2 KB 99, the vessel was chartered to load at Surabaya and to discharge at Madras, Alexandria and Bristol. The vessel was short-loaded and the owners loaded further cargo at Alexandria to be discharged at Avonmouth. The charterers attempted to argue that the owners were not entitled to a claim in deadfreight because they had illegally deviated and had breached their obligation of completing the voyage with reasonable despatch. The owners were found to have acted reasonably on an implied term to deviate in order to mitigate their losses.

It is important to note that the replacement cargo was to be discharged at Avonmouth which is technically a port in Bristol. The application of the case may therefore be limited to situations where the replacement cargo was due to be discharged in the original discharge port of the voyage and not in a discharge port which was not contemplated by the parties or the voyage. Further, if the ship were to deviate to a discharge port which was not contemplated by the parties or the voyage, there would be issues

of Club cover arising out of such a deviation. It is also important to note that a permitted deviation under a charterparty may not necessarily equate to a permitted deviation under the contract of carriage (as evidenced by a bill of lading) because the terms of the contract of carriage may differ from those under the charter.

Can owners still claim for deadfreight if a partially loaded vessel was ordered to leave?

This depends on whether the order to sail is one which the charterers can be held responsible for. If the order to sail is given by the charterers, the owners will be entitled to a deadfreight claim. On the other hand, if the order is given by the port authority or terminal to which the charterer has no control over such a decision, then there is no breach on the charterers' part (**The Johnny K** [2006] 1 Lloyd's Rep 666).

Can owners exercise a lien for deadfreight?

Owners must show that the lien clause in the charterparty covers deadfreight claims. In the absence of any specific wording, a lien for non-payment of freight will not cover a claim for deadfreight as the two are two different types of claims. (See Defence Guides - Liens on cargo in a nutshell)

Can owners claim deadfreight over and above demurrage?

For some time, it was questionable whether deadfreight was claimable over and above demurrage because of the decision in **Reidar v Arcos** [1926] KB 352. In that case, which



concerns deadfreight and demurrage claims, it was found that there was only one breach by the charterer, namely the failure to complete loading within the laytime. There was no breach of the obligation to load a full and complete cargo.

However, in recent times, **The Eternal Bliss** [2022] 1 Lloyd's Rep 12 clarified that it was incorrect for **Reidar v Arcos** to find that there was no breach of the obligation to load a full and complete cargo in a case concerning deadfreight and demurrage. It was further established that if an owner seeks to recover damages in addition to demurrage arising from delay, it had to prove a breach of a separate obligation. Hence, an owner is entitled to deadfreight so long as he can prove that there was a separate breach to load a full and complete cargo as per the contractual stipulation.

This article was written by Eugene Cheng in the Club's Singapore office with additional input from Hill Dickinson (Singapore).