

TIME IS MONEY

Keeping Ahead of Demurrage By David Pasco

The subject of demurrage is multifaceted, confusing, and can represent a real threat to your bottom line.

The purpose of demurrage charges is not to penalize, but rather to keep commerce moving. The penal aspect of demurrage is exhibited in the increase of per diem charges once free time has expired. Charges escalate at an increasingly larger scale as cargo sits at a port, rail terminal or other staging point.

Demurrage charges vary by carrier and location, and there appears to be a direct correlation between congested ports and demurrage rates. Case in point, demurrage charges for cargo sitting at the Vietnamese Port of Da Nang are far less than charges incurred at the Chinese port of Ningbo.

Demurrage charges are applied for the storage of cargoes while in a carrier's care, custody, and control at a port, a rail terminal, container port, container yard, or feeder terminal. Charges begin after the "free time" designated by the carrier has run out.

Responsible parties should be aware of these charges, as they differ by carrier and port and at times by commodity. The entities potentially liable for demurrage charges are defined within the terms of the master bill of lading, or MBL. It's important to note that the MBL is a contract that means all parties to the contract are bound to its terms.

Below is sample wording from an MBL outlining who could be deemed liable to the carrier for payment of charges to the carrier:

"Merchant means shipper, consignee, receiver, holder of this bill of lading, owner of the cargo, or person entitled to the possession of the cargo and the servants or agents of any of these, All of whom shall be jointly and severally liable to the carrier for the payment of all charges, and for the performance of the obligations of any of them under this bill of lading."

Events that can delay the delivery of

cargo to its final inland destination and result in demurrage include cargo abandonment by the consignee, a construction site not being ready to accept cargo, strikes and weather.

Consider for example the following scenario: ABC Forwarding acting as a non-vessel-operating common carrier, or NVOCC, arranges transport of mining equipment from the U.S. to Peru. Upon arrival, it is determined that the worksite is not ready to receive delivery of the equipment. Free time has run out and the cargo will start accruing demurrage charges that must be paid before the cargo moves from the port. ABC Forwarding is listed as the shipper on the MBL. As such, the steamship line, in an attempt to collect on their debt, files a claim against all parties including the named shipper for the demurrage charges.

In this example, the cargo was delivered to the port of discharge, but the forwarder-NVOCC was still not finished with the shipment as they had a fiduciary obligation to fulfill.

To minimize the potential financial risk of demurrage, forwarders and NVOCCs should consider the following risk management strategies:

- Terms and conditions of service should be posted on the company website and referenced in/on email salutations, quote sheets and credit applications. Shippers need to be made aware that they too are party to the MBL.
- Know the number of free days available from the carrier. Many carriers have online calculators to assist with the computation.
- When possible, negotiate with carriers for additional free time on the front



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side of the transaction.

- Train employees to be diligent in tracking freight and to expedite responses to the carrier on any communication regarding demurrage. Staff members handling communications with the carrier or port operator should be experienced in this process to achieve a favorable outcome.

- Make all parties aware of the timetable for free days and clearly designate the party responsible for demurrage charges.

- Verify if the carrier has issued any notice of a port disturbance, such as strikes or riots.

- Seek to add insurance coverage for demurrage that may be available under a cargo legal liability policy. Policies vary so be sure to understand the scope of coverage. Also remember that all insurance policies have a requirement that the assured take any and all reasonable steps to minimize a claim.

Shippers should also take a proactive approach to reduce their financial exposure from the consequences of demurrage. It's important to note that Incoterms – international commercial terms used by the International Chamber of Commerce – do not offer reprieve from the obligation to pay demurrage charges as these terms do not apply to service contracts. Take action quickly if such an event occurs and work to move the cargo as soon as possible.

A proactive approach to addressing demurrage can help to alleviate the financial burden such an occurrence may render upon shippers and transportation intermediaries. Establishing a clear understanding of who is responsible for demurrage charges and the free time allotted by carriers and immediately responding to the situation – both of which are prudent best practices to follow. In this case, the phrase "Time is Money" actually applies. **BB**

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