

Charterer Voyage Charter  
Form Gencon  
Type FD&D Claim / Cancellation

## Class I Defence (FD&D)

### Cancellation of a vessel under a voyage charter

**Synopsis:** *A premature cancellation can place a party in what is called in English law anticipatory breach allowing the other party to claim damages which otherwise would not have arisen. It is not uncommon for a charterer to be tempted to terminate a voyage charter when realising the contracted vessel is unlikely to meet her laycan. This example offers an insight of the type of legal advice that a charterer can expect from the Club and its solicitors under these circumstances which in this case allowed them to conclude a satisfactory settlement. The Club's defence department invested some 15 hours in the case whilst legal and correspondents' costs reached USD 42,000.*

An Assured charters a vessel on a voyage basis on an amended Gencon form. Clause 10 of the standard form provides that if the vessel is not ready to load by a certain date, agreed between the parties, then charterers have the option to cancel. Sometime before the cancelling date it becomes clear that it is impossible for the vessel to arrive at the load port in time. The Assured, who has obligations to fulfil under his sub-contracts, has to ship the cargo by a certain date and approaches the Club for advice as to whether he can cancel.

The Club advises that, under the particular terms of the charterparty, the earliest the Assured can cancel will be after receipt of a demand from owners asking the Assured to state whether he is going to exercise his option to cancel, as owners are specifically entitled to demand under the charterparty. If no demand is received then the Assured cannot lawfully cancel until the cancelling date has passed, though there would be nothing to stop the Assured from entering into an agreement with the owners that the charterparty should be cancelled before that date. There is no anticipatory right to cancel. In the end, the Assured is forced to charter in a substitute vessel which can lift the cargo in good time. Thus the Assured's contractual obligations towards his shippers are complied with and, no demand having been received by the owners, the Assured cancels the vessel once the cancelling date had passed.

As the substitute vessel is more expensive, there then arises a question as to whether the Assured is entitled to claim damages from the owners. The Club advises that failure to deliver the vessel by the cancelling date is not in itself a breach of charter giving rise to a claim in damages. Thus to succeed with such a claim the Assured would have to show that there was an independent breach by the owners, such as a deliberate misrepresentation of the vessel's position or no honest and reasonable belief by the owner that the vessel would be ready to load on or about the date specified. The Club instructs a local correspondent to investigate the cause of the vessel's delay and some evidence is obtained that the owner did not act honestly or reasonably. The Club appoints an arbitrator on behalf of the Assured and London solicitors are instructed. With sufficient pressure having been put on the owners, a reasonable settlement offer is received and settlement concluded. All advice

provided by the Club and outside costs falls within the scope of the Assured's Defence cover.