

Impact of Covid-19 on Marine Contracts

Due to the global outbreak of Covid-19, many business people are curious and anxious about the legal consequences and commercial impact of such situation on their valid and ongoing contracts. The main question that may be faced would be determination and applications of “force majeure” and “frustration” clauses. Under this circumstances, clarity of the interpretation will beyond doubt be of the essence. This article is drafted to present you a brief insight for the marine-related contracts, so as to let you protect your legal rights through exception clauses in various forms of charter parties. While doing so, we have took the advices of Bimco as basis, in consideration of the fact that many marine-related governed by English Law and must be interpreted due to this applicable law.



In terms of force majeure clauses under English Law, it is know that the “Force Majeure” can be accepted on condition that it is expressly defined in the related contract. Thus, the owners must be strongly encouraged to recheck their contract of carriage and to immediately incorporate “BIMCO Infectious or Contagious Diseases Clause for Voyage Charter Parties 2015” and the “Infectious or Contagious Diseases Clause for Time Charter Parties 2015”. If not, the contractual liabilities shall not be terminated automatically although there are unforeseen incidents to prevent performing the contract itself. In other words, the “force majeure” can only be invoked by the affected party if this is expressly allowed to do so and the application is only limited to the extent explicitly defined in the contact.

As we look into the Turkish Law, we observe that it gives rise to abrogate fulfillment of performance under contract, only if it is proved that the performance was impossible. It must be noted that there is no definition of “Force Majeure” in any code and this term is defined based on other legal resources such as precedent law made by Court of Appeal,



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as well as the doctrine itself. Turkish Code of Obligation does not permit the release of obligation automatically without termination, unless otherwise agreed frankly in the contract, yet allows to revise the conditions accordingly to fit the new circumstances before the court. Thus, we once more underline that revising the contract terms is the key to prevent legal difficulties which may be encountered in this period.

Once for all, should we discuss this matter under P&I cover, under many P&I terms it is allowed to cover expenses incurred as a direct consequence of an outbreak of infectious disease on the vessel, including quarantine and disinfection expenses, however there shall be no recovery if at the time the ship was chartered to, or was under orders from the assured or her insurer to, proceed to a port it was known, or should in the insurer's view reasonably have been anticipated, that she would be quarantined. It is well-known that the due diligence of the owner who acts responsibly and in good faith will always be covered against related risks. However, in case where the course is set for risky/quarantined ports, the precautions are not taken by the owner and also notifications on time are not made, neither any competent law nor a P&I cover would be sufficient for protection.

We hope to see you sailing safely forever!