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# **Coronavirus: Key Legal Issues and Strategies for Vessel Owners and Operators**

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## Introduction

***“James Bond Has ‘No Time To Die’ During Coronavirus Outbreak; Cancels China Tour”***

*“He may have cheated death many times, but he’s not taking any chances”*

# Introduction

## Similarities to epidemics of Ebola and SARS

Does Covid-19 have greater scale and reach?

## Shipping Contracts less affected than Sale Contracts

- **Wuhan is inland:**
- **More likely that factories in the region will be shut down**
- **Ports are more likely to be operating, albeit with precautions**
- **Anecdotal evidence that Wuhan is the source of Apple Air pods which are presently unavailable in the US**
- **Sale Contracts are more likely to contain force majeure clauses**



# Economic impact on shipping?

- **Covid-19 set to knock out 1.7m teu of container business, according to research from Denmark-based Sea-Intelligence**
- **On an average of \$1,000 per teu in freight rates: \$1.7bn shortfall in revenues for carriers**
- **Equals 1% of the total global volume in 2019**

# Restrictions at Chinese ports (as at 24 February 2020)

## JINSHAN, CAOJING

- **Loading/Discharge Ops: Yes**
- **Import/Export Formality: Yes**
- **Crew Change: No**
- **Superintendent: No**
- **Provision: No**



# Restrictions in other countries

## Australia

- All crew restricted on-board
- Crew only able to disembark to conduct essential vessel functions
- Crew must wear personal protective equipment
- Restrictions to apply until 14 days after vessel or any person on board left mainland China





# Legal Issues

Effect of the coronavirus outbreak on shipping contracts



# Unsafe port

## Port must be prospectively safe at the time of nomination



- Threat of contagious disease could render port unsafe
- *Ciampa v British India Steam Navigation* [1915]
- Any risk to the crew could be avoided by taking reasonable precautions
- Therefore, ports not legally unsafe unless the nature of vessels or loading techniques render the precautions ineffective
- Also unlikely that calling at a Chinese port would later lead to detention; at worst “floating quarantine”



# Off-hire

**Vessel delayed in reaching/leaving a port will generally remain on hire, unless delay due to the condition of ship/crew**

## Off-hire:

- **Vessel under “floating quarantine”**
- **Crew member ill and vessel quarantines them/deviates for medical assistance**

## On hire:

- **Quarantine or infection is a consequence of Charterers' nomination of an at-risk port**



# Force majeure

## Sale contracts

### Considerations:

- **FM event must fall within the scope of the FM clause**
- **FM event must be unforeseeable**
- **Invoking party could have performed but for the event**
- **Failure could not be overcome through alternative means**
- **Invoking party must comply with notice requirements**

### Example clause

*“Neither the Vessel, her Master or Owners, nor the Charterers, Shippers or Receivers shall be responsible for loss of or damage to, or failure to supply, load, discharge or deliver the cargo resulting from: Act of God...floods...landslides...accidents at mine or production facility...or any other causes beyond the Owners’, Charterers’, Shippers’ or Receivers’ control; always provided that such events directly affect the performance of either party under this Charter Party...”*

# Force majeure (cont'd)

- Unlikely that the virus would prevent call at port
- More likely to impair cargo interests' ability to provide cargo
- Depends on type of commodity

## Shipping contracts: frustration?

- Contract physically or commercially impossible to fulfil or obligation to be performed is now radically different
- Mere hardship, inconvenience or material loss won't frustrate a contract.



# Laytime

## Laytime will not commence until NOR is tendered

- NOR requires the grant of free pratique (FP)
- NOR not validly tendered if there is reason for refusing FP (eg. Crew members infected)
- If NOR cannot be validly tendered, any delay rests with Owner



# Shipbuilding contracts

## Delays in building vessels; unlikely that contracts will be terminated

- **Shipyards may be able to rely on FM clauses; depends on wording**
  - If located in areas affected by the coronavirus
  - If not located in such areas but are affected nonetheless (eg. delays in receiving supplies)
- **China Council for the Promotion of International Trade is handing out FM certificates to help yards renegotiate newbuilding liabilities**



# Examples

## Master taken ill with flu type symptoms

- Urgent disinfection of ship before FP was granted

## Dry dock in Zhoushan, China

- Shipyard understaffed due to Covid-19 restrictions
- Vessel could not install scrubbers
- Force majeure?

## Early redelivery

- Force majeure?

# Coronavirus clause

**“If the Vessel is delayed...due to the coronavirus outbreak...”**

- Demurrage
- On hire
- Indemnity
- Damages





# Strategies

- **Investigate cause of delay**
- Do not accept coronavirus as an excuse at face value
- **Early redelivery**
- Get security and claim
- **FM clauses**
- Review contracts
- Give notice of triggering event promptly
- Take reasonable steps to mitigate
- Review contracts to allocate risk
- **Back to back contracts?**
- Long-term COA obligation v Short-term charter in on tonnage

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