

## Gil Porter in Reorg News: Force Majeure Provides Questionable Relief for LNG Buyers as Covid-19 Pandemic

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**PRACTICES** Energy, Power and Natural Resources, Energy Roundup, Liquefied Natural Gas (LNG), Project Finance and Development

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*Reorg News* quoted Haynes Boone Partner [Gil Porter](#) in an article about how buyers of liquefied natural gas (LNG) are finding it difficult to prove that their inability to meet contract obligations is the result of a force majeure event.

The publication also included insights from the firm's [client alert](#) on force majeure under LNG contracts.

Here is an excerpt:

“If you review the force majeure clauses in most contracts, they are primarily designed to protect the seller from problems at the plant,” Gilbert Porter, a partner in the New York office of Haynes Boone, said.

### **Buyer Difficulties Due to Take-or-Pay Contracts**

Sources note that it is a heavy burden for buyers under take-or-pay contracts to demonstrate that governmental responses to the COVID-19 crisis have directly affected their ability to take an LNG commitment or pay for it.

The buyers' rights are typically limited to actions such as reducing the amount of LNG they are obligated to take. A Haynes Boone report released in April states that in many LNG SPAs, there are no termination rights available to buyers that declare force majeure for a prolonged period. However, the sellers have the right to terminate the purchase-and-sale agreement if they think the buyers are seeking to avail force majeure relief as an excuse for not performing.

While certain buyers that are unable unload their cargo at their intended destination(s) may be able to claim relief as a result of a supply glut, government shutdowns and/or quarantines, there exists uncertainty as to whether such events will be viewed as derailing the buyers' ability to accept delivery of the LNG and pay for it, unless “the contract can be interpreted as expressly contemplating relief for such circumstances,” Haynes Boone attorneys stated in the report.

The report notes that although certain contracts do permit such relief for nearer-term shipments with clearly delineated destinations, those provisions are frequently limited in their impact and tend to exist separately from force majeure provisions. The attorneys also acknowledge that LNG SPAs expressing contemplating payment of tolling fees and/or similar payments for failing to take the cargo may affect the buyers' ability to invoke a force majeure claim for being unable to accept the cargo delivery.

The difficulty facing LNG buyers is figuring out whether their force majeure declarations are driven by price declines between their time of purchase and the arrival of the tankers at the intended destinations and/or the absence of a need for regasified gas due to a situation of no-demand, lawyers said.

To read the full article, click [here](#). (Subscription required)