

Helen Conybeare Williams in Hellenic Shipping News Charting Your Way in Uncertain Times: Force Majeure, Frustration and the Coronavirus Pandemic

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Almost overnight the global effort to fight the coronavirus has forced companies around the world and across all sectors to take drastic measures to shut their businesses, offices, premises, worksites and yards for an, as yet, indeterminate period of time.

Companies are facing many difficult questions about business continuity and their workforce in this fast-developing emergency, including their ability to perform existing contractual obligations under their commercial contracts.

A critical question will be whether businesses can call on contractual force majeure and other provisions to excuse performance and if not whether they can rely on the doctrine of frustration to discharge their contracts thus avoiding liability for damages. This article considers the position under English law.

Force majeure and other contractual provisions

Many parties to English law commercial contracts will have included a force majeure clause, which is an important protection if a party is affected by events outside its control that prevent or delay performance of a contract. The purpose of a force majeure clause is generally to excuse a party from its obligation to perform the contract for the duration of the force majeure event with the result that a party may avoid financial consequences for failure to perform.

Unlike many civil law systems, English law does not define force majeure, or impose it automatically on commercial contracts. To claim force majeure under an English law contract, the right to do so must be set out in the contract, and will mean whatever it is defined as in the contract. A clause may define events broadly as those beyond a party's control or limit these to a specific list of trigger events.

Therefore, whether a party can call on the force majeure clause will be both fact sensitive and highly dependant on the wording used in the relevant contract to define events giving rise to force majeure.

To read the full article, click on the PDF linked below:

[Conybeare-Williams-Force-Majeure-English-Law.PDF](#)

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