

William Cecil in Maritime Journal: Force Majeure and the Coronavirus

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PRACTICES Shipping

Haynes Boone Partner William Cecil published an article in *Maritime Journal* about how the coronavirus outbreak has already caused a major downing of tools at Far East shipyards.

Here is an excerpt:

As has been reported, many Chinese shipyards are claiming force majeure due to the coronavirus. Force majeure clauses provide an important protection for shipyards, but rarely receive such extensive press coverage.

But what is force majeure and what is the effect of claiming it in a shipbuilding project?

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 force majeure will mean whatever it is defined as in the contract.

The purpose of a force majeure clause is generally to excuse a party from its obligation to perform the contract upon the occurrence specified events.

Under the usual provisions contained in shipbuilding contracts, which are often derived from the Shipbuilder's Association of Japan ("SAJ") form, if an event occurs which comes within the definition of force majeure set out in the contract, the shipyard is entitled to an extension of time to the contractual delivery date. If, however, the force majeure delay reaches a specified period (210 days in the SAJ Form), the buyer can normally cancel the contract or agree to a later delivery date. If the buyer chooses to cancel the contract, the buyer generally receives a refund of the instalments of the contract price paid at that date, but (under the SAJ Form) without interest.

The coronavirus outbreak is likely to come within the definition of force majeure in most shipbuilding contracts, at least while the shipyard is closed. But the consequences of coronavirus may extend long after the shipyard re-opens because of the impact on labour, subcontractors, suppliers and the availability of material. Whether these further delays come within the force majeure definition will depend upon the contractual wording.

The extent of the actual delay to shipbuilding projects, and the extent to which all that delay counts force majeure, remains to be seen. But given that a force majeure delay is likely at some point to entitle the buyer to cancel the contract, it may ultimately result in the cancellation of a substantial number of shipbuilding contracts. Whether buyers choose to exercise that right will depend on the state of the shipping market at that time.

William Cecil is Partner and head of the dispute resolution team in London at law firm Haynes Boone and co-author of the forthcoming fifth edition of The Law of Shipbuilding Contracts.

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