Laytime and Force Majeure

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A recent London arbitration decision has examined the interplay between laytime and a force majeure clause. The issues addressed highlight how difficult it is to effectively use a force majeure clause. In the case, the Charterers had chartered a ship on the Synacomex 2000 Form to carry a cargo of corn.

After loading, the Owners' claimed demurrage in the sum of USD108, 536.32, after giving credit for periods of weekend holiday, shifting and the initial draft survey. The Charterers' argued that there were additional periods when laytime should not run because they claimed events fell into the force majeure clause. On their calculations, the demurrage started at a later date, than the one used by the Owners.

Clause 8 of the charterparty provided that "any delays caused by ice, floods, quarantine or by cases of force majeure shall not count as laytime unless the vessel is already on demurrage."

The Charterers' relied upon a couple of events. The first event they claimed fell into the clause, was the period of delay in the cargo reaching the vessel, which resulted in the loading having to be suspended. The cargo had to be transported to the port by barges, which travelled in a convoy by river. The Charterers' claimed that as there had been unusually low water levels in the river at the time, the barges had been unable to get to the port, thereby interrupting the cargo supply chain. The Charterers' claimed that event was a force majeure event, as it was a hindrance to the navigation on the river.

The arbitration tribunal were not convinced. Their view was that clause 8 dealt with the time allowed for cargo operations, rather than the time taken by Charterers and other parties to get the cargo to the ship/port. It also concluded that the word "flooding" in the force majeure clause did not entitle the Charterers to use the converse of that word i.e. a shortage of water, to bring themselves into the clause.

The issue was further complicated by the fact that the Charterers' had failed to prove that the water levels were unusual for the time of year and that the delays were unavoidable. Steps could have been taken to put less cargo on the barges, in order to enable them to transport the cargo with a shallower draft.

For further information, please contact our marine solicitors by emailing linda.jacques@la-law.com or calling

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