SEMAPHORE

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Cyclones May Prompt More Force Majeure Declarations

Following Cyclone Zelia's impact on Australia, Campbell Johnson Clark (CJC) director Allen Marks and associate David Fittis have assessed consequences for the shipping industry, with particular focus on the potential for force majeure declarations.

As international maritime lawyers, CJC routinely acts on both sides of force majeure disputes and has observed early trends in 2025 during which the Category 5 cyclone hit the Western Coast of Australia, causing Port Hedland to close for three days.

While affected ports since reopened, this was the latest in a wave of tropical cyclones to impact Australia in 2025. Dampier Port and Cape Lambert have also been forced to close this year.

Parties will likely be unable to fulfil their contractual obligations as a result of cyclones, or similar severe weather events, and most charterparties will incorporate a force majeure clause in anticipation. These clauses will state that a party shall not be considered in default or breach of its obligations under the charterparty as a result of certain specified events.

Consequently, when such severe conditions are experienced, force majeure declarations may naturally follow.

As a matter of English law, there is no general doctrine of force majeure and most such clauses are designed as exceptions clauses (to absolve a voyage charterer from paying demurrage). Most, if not all, force majeure clauses will account for weather phenomena such as storms.

Careful consideration must be given to the exact wording of the force majeure clause, on a case-by-case basis, by the party seeking to invoke it. The burden of proof lies with the party relying on the clause and they should always be alive to the fact that the clause might contain a "reasonable endeavours" provision which compels reasonable steps to be taken to minimise any impact of the event.

With reference to recent closures of Australian ports, a charterer under a voyage charter might seek to declare force majeure in respect of an inability to discharge cargo within the laytime, or an owner might be unable to deliver a vessel into service.

Likewise, sales contracts may be unable to be fulfilled if cargo was to be loaded or discharged at an affected Australian port. Undoubtedly, in the year to date, a raft of such declarations will have occurred.

Consideration must also be given to the timeframe within which the relying party must issue its declaration of force majeure. A specified number of days, or "as soon as possible", may be a stipulated contractual requirement to be permitted to rely on force majeure.

Careful consideration of factual evidence is imperative to build a picture of the causative factor at the material time. With the passage of time, the causative nature of a force majeure event may diminish – ie, congestion will occur and an owner might reasonably point to that being causative of delay rather than the initial force majeure event.

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CJC's summary of best practice and prudent first-instance steps when declaring force majeure, should the early 2025 trend continue and ports are affected, entails:

- collate and preserve all factual evidence for consideration
- if issuing a declaration of force majeure, first consider whether the event upon which reliance is placed is defined as a force majeure event in the clause and issue the declaration as soon as possible, always bearing in mind the timeframe stipulated within the contract
- if seeking to object to a force majeure declaration, consider the evidence and the causative event. Often, multiple events will occur at a port or on a voyage – when considering a force majeure declaration, always consider the facts. Although a force majeure event may have previously occurred, it may not always be the causative factor for a failure to perform contractual obligations

Messers Marks and Fittis can be contacted at CJC, please view its website.

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