

Force Majeure: “Are delay claims recoverable?”

- From a cargo owners’ perspective-

Mauro Arcucci & Iben Ramon – 19th of May - Nordic Marine Insurance Conference

Speakers



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- ▶ Effects on Maritime Industry.
- ▶ Delay Claims: Force majeure, exclusions, limitations and other hurdles.
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World Economic Situation

2020:

- ▶ Countries worldwide implementing contingency plans to slow down spread of Covid 19:
 - Restrictions on travel / transport of goods.
 - New health / sanitary regulations with immediate effect.
 - Port lock downs / restrictions on port access to vessels from certain destinations.
 - Crews on preventive quarantines.
- ▶ Volatility in most stock markets.
- ▶ World economy shrank by 4.3 per cent, over two and half times more than during the global financial crisis of 2009.

World Economic Situation

2021:

- ▶ Vaccine-powered recovery: countries moving back and forth, but Western world (slowly) reopens.
 - Asia.
 - Latin America.
 - Africa.
- ▶ Global growth is projected at 6 percent in 2021, moderating to 4.4 percent in 2022.
- ▶ Suez Canal blockage adds to pressure points in global trade.

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Effects on Maritime Industry

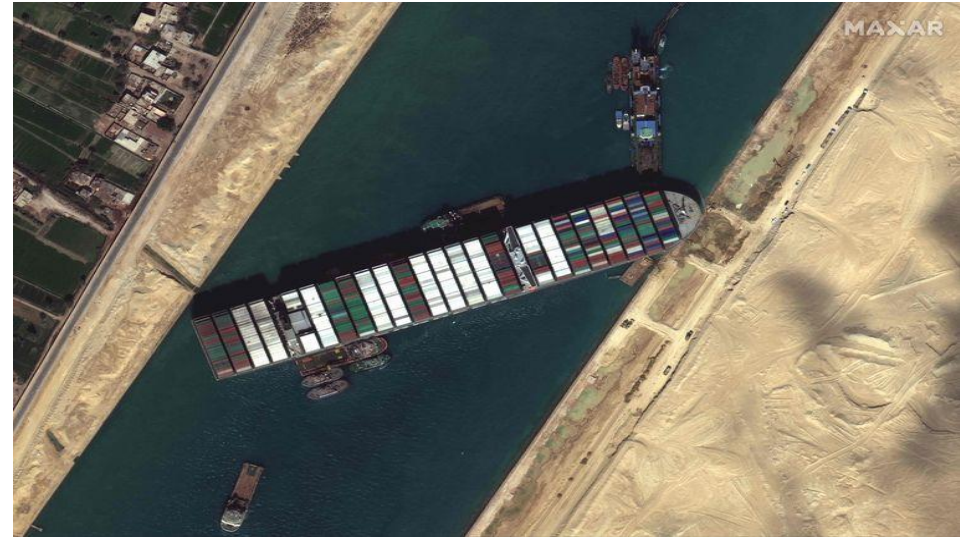
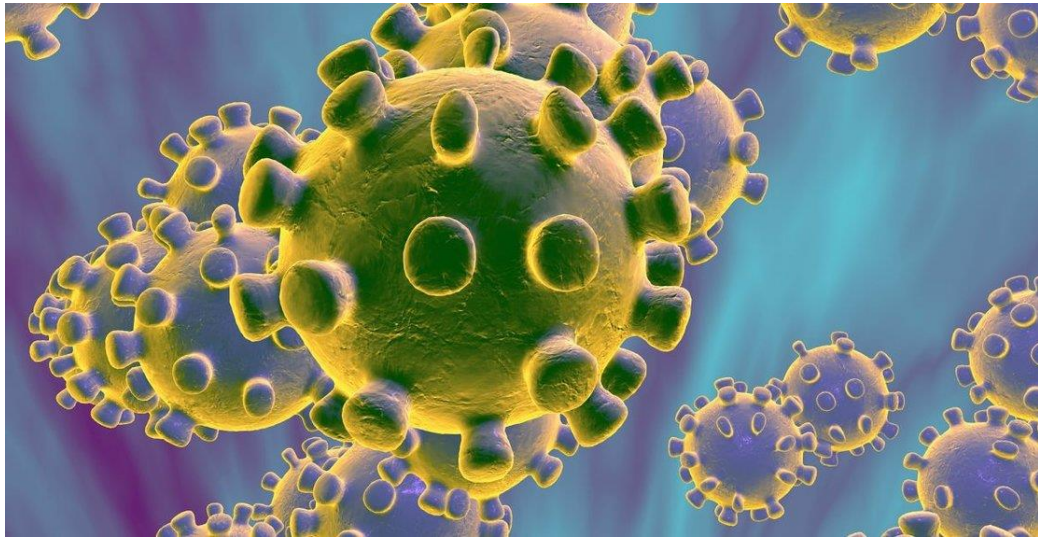
Disruption of supply chains worldwide until today

- ▶ Inactive fleet, vessels in quarantine.
- ▶ No boxes on the market (port congestions, port lockdowns, etc.).
- ▶ Movement of goods restricted.
- ▶ Sparking freight charges.
- ▶ Delays or no deliveries at all.
- ▶ New Terms & Conditions to be discussed on policies.
- ▶ Hardening of the insurance market.

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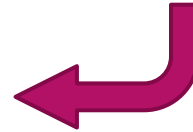
Delay Claims & Force Majeure Events



Exoneration: Force Majeure (?)

- ▶ Cyber Attacks/Covid 19/Ever Given

Force Majeure event?



- ▶ Carriers must take all possible measures to minimise the loss.

- Foreseeable event vs Force Majeure
- Actions taken before, during & after

Legal Framework

Delay

International Conventions

- Hague Visby Rules → Not expressly mentioned.
- Hamburg Rules / Local legislations → Foreseen.

Carrier's terms & conditions:

“not liable for (in)direct damages caused by delay”.

ETA.

Legal Framework

Cause of damage – Difference in burden of proof

CARRIER	CARGO INTERES
<ul style="list-style-type: none">▪ Focus on delay itself.	<ul style="list-style-type: none">▪ Cause of the delay?
<ul style="list-style-type: none">▪ ESTIMATED time of arrival (ETA).	<ul style="list-style-type: none">▪ MKT tool + Booking.
<ul style="list-style-type: none">▪ T&C of the B/L.	<ul style="list-style-type: none">▪ Adhesive contract.
<ul style="list-style-type: none">▪ Applicable Jurisdictions.	<ul style="list-style-type: none">▪ Applicable Jurisdictions.
<ul style="list-style-type: none">▪ Force Majeure?	<ul style="list-style-type: none">▪ Foreseeable?
<ul style="list-style-type: none">▪ Hague Visby Rules	<ul style="list-style-type: none">▪ Convenient Convention/Local Law

CASE STUDY

Delay due to COVID-19

Sea transport of blueberries from Peru to China, January 2020.

▶ **Analysis:**

- Several Reefer Containers with blueberries arrived damaged due to delay of 13 days (6 of voyage + 7 in delivery).
- Transshipment port added in Yokohama, Japan due to COVID breakdown.
- Container yard overcrowded, no reefer plugs, therefore reefers containers retained on board.

▶ **Strategy:**

- Present the claim amicably against the carrier who rejected in full based on T&C of the B/L.
- Total loss, thus purchase agreement not reached, title to sue at origin.
- Legal procedure started at Peru (and then put on hold) to reactivate out of Court discussions.

▶ **Result:** Amicable agreement.

Conclusions

- ▶ Recovery is the rule.
- ▶ Global approach.
- ▶ Force Majeure vs. Foreseeable Event (+minimisation of losses).
- ▶ How about unseaworthiness if breach of new sanitary regulations?

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Q&A



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Thank you!