WINSTON & STRAWN LLP

ARTICLE

A Question of Interpretation

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English law does not define the concept of Force Majeure and therefore, for COVID-19 to be considered a force majeure event, there will need to be a specific force majeure clause included in a contract.

In an article for leading maritime publication *Bunkerspot*, Winston & Strawn London Attorney James Turner outline the scope and application of force majeure clauses in shipping contracts.

He argues that the wording of the clause is vital. Specific mentions of a pandemic should be sufficient, whilst government-enforced lockdown also may constitute force majeure events if a detrimental impact on provision of obligations can be demonstrated.

As for contracts in the future, James expects specific COVID-19 clauses to appear in contracts to mitigate the future impact of the crisis.

If a contract does not include a force majeure clauses, under English law the concept is not implied and therefore cannot be invoked. In this instance, the English law doctrine of frustration of contracts could allow for contractual obligations to be discharged when an event renders them physically or commercially impossible, thought there is a very high threshold for establishing frustration.

Read the full article here.

View all of our COVID-19 perspectives here. Contact a member of our COVID-19 Legal Task Force here.

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