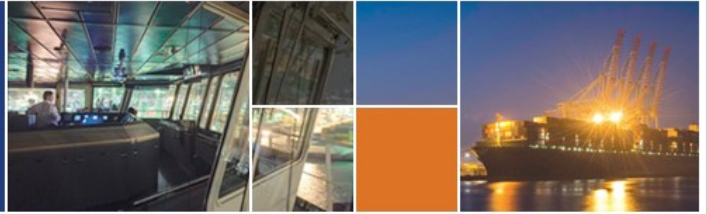




STEAMSHIP MUTUAL

Comprehensive Cover. Exceptional Service.



Coronavirus / Wuhan virus

January 2020

The newly identified Coronavirus, sometimes referred to as the "Wuhan" virus after the name of the Chinese city in which the first cases were identified, has made world headlines for the past week or so. Whilst the threat level from this virus is not yet of the same magnitude as the SARS virus in 2003, and the Ebola outbreak of 2014, at the time of writing it is suspected to have caused the death of nine people and over 400 have been diagnosed with the illness. Cases have been confirmed in Beijing, Shanghai and Guangdong province, and internationally in South Korea, Thailand, Japan and the United States, all of whom had recently visited Wuhan. Expert opinion is that the virus is contagious between humans, and the World Health Organisation has arranged for a meeting to be convened in Geneva to determine whether to declare the outbreak an international public health emergency, a categorisation reserved for the most serious epidemics.



If the prevalence of the virus increases, the shipping industry can expect to see the same sorts of issues arising as with prior severe disease outbreaks. Apart from the obvious danger to crew members of contracting the illness at a port in an infected area, port authorities may institute reporting and quarantine measures to guard against the spread of the disease from vessels that have previously called at infected ports, and in the most severe cases of outbreak ports may be closed altogether. Issues arising in terms of charterparties (eg. unsafe ports, off-hire, force majeure) were previously discussed in Steamship Mutual articles published during the SARS and Ebola outbreaks (links below) and given the current situation we believe members will find it useful to review some of those issues:

<https://www.steamshipmutual.com/publications/Articles/shippingissuesebola0814.htm>

<https://www.steamshipmutual.com/publications/Articles/Ebolacharterparties1114.htm>

In any individual case the positions of the parties will of course be governed by the specific contractual terms agreed. That said, perhaps the two most obvious questions that might arise are examined briefly below.

Refusing Orders to Call at Ports

There is probably no legal barrier to the notion of a contagious disease making a port unsafe, however this will depend on an analysis of relevant facts at the time (eg. statistical and medical evidence) and the circumstances would likely have to be extreme for a tribunal to make such a finding. Even at the height of the Ebola outbreak many ports in infected areas remained open and, while exercising the proper precautions, vessels continued to make calls without crew members becoming infected. At this point in time there would appear to be no reason to consider any port unsafe because of the Wuhan virus, and the scale of any epidemic would have to escalate substantially before owners could consider legitimately refusing to call at scheduled / ordered ports on account of the safety of the crew.

A risk of quarantine might lead to a reluctance by owners to call at ordered or contractually agreed ports in two situations: (A) Where a call at an ordered / agreed infected port A might lead to quarantine elsewhere; and (B) Where the ordered / agreed port A has itself instituted quarantine measures on particular vessels. Once again, the circumstances would probably have to be extreme for a refusal to call at a port in these instances to be lawful. Inordinate delay amounting to a frustrating event would appear to be the relevant test, and since delays in terms of weeks or even months, rather than days, would usually be required to qualify as frustrating in law, this scenario seems unlikely. Furthermore, in relation to situation (A), the risk of quarantine would have to be widespread to be frustrating, and not limited to a few selected ports.

Off-Hire

The commonly used wording found in clause 15 of the NYPE 46 form states that the vessel will be off-hire by reason of "deficiency of men", fire, breakdowns or damage to the vessel, drydocking or "any other cause preventing the full working of the vessel". In an English High Court case (*The Laconian Confidence* [1997] 1 LLR 139) it was held that legal or administrative restraints on a vessel could qualify as an "other cause" if they related to the efficiency or condition of the vessel or crew, amongst other things. Accordingly, a vessel which has been delayed due to quarantine restrictions could well be off-hire, and almost certainly would be if the word "whatsoever" was added to clause 15.

Having said that, if the quarantine can be categorised as an inevitable result of following the charterers' orders then the delay could be considered a natural consequence of the way in which the charterers have chosen to employ the vessel, and so the vessel should remain on hire (*The Rijn* [1981] 2 LLR 267). This would still be the case even if "whatsoever" has been added to clause 15. In practice, therefore, vessels are only likely to be off-hire if the order which eventually resulted in the quarantine was given by a previous charterer, in which case the owners' loss of hire might be recoverable from them as damages or under an implied indemnity.

Conclusion

Any disputes and difficulties under already existing charterparties will need to be resolved according to their terms, which are unlikely to have dealt with a serious epidemic unless they contain clauses carried over from the Ebola outbreak. While it is still "early days" in terms of the Wuhan virus, if the outbreak does become more widespread owners and charterers entering into new fixtures would be well advised to consider incorporating specific clauses along similar lines.

Information about the virus is also published on the WHO website and further details can be checked on this link: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>

This article is not intended to be a comprehensive statement of the law, and what is appropriate advice could change frequently as the general

situation develops, and according to individual circumstances. If members have any doubts or enquiries they are encouraged to contact the Club.

The Club's Covid-19 webpage is updated regularly and contains various links including links to WHO page; IMO Coronavirus page; Wilhelmsen global port restriction map; GAC port updates and our own updates about various ports and jurisdictions with information received from Correspondents. It is worth checking our Covid-19 webpage

regularly: <https://www.steamshipmutual.com/publications/Articles/coronavirus012020.htm>



Article by Rohan Bray
CEO Hong Kong Branch