

QUARTERLY NEWSLETTER

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A Shipper's right to rely on Force Majeure

"Force majeure" occurs when a shipper is unable to supply a cargo to a customer due to some unforeseen event, such as a flood. The customer is then prevented from claiming financial loss due to non delivery. The issue is how does the customer verify whether or not the event actually affected delivery?

Some shippers will use a publicly known weather event as the reason for its failure to deliver a cargo when in fact there was a pre-existing reason for non-delivery.

A force majeure clause in a contract should be worded carefully to make it clear that the event must be unforeseeable, beyond the control of the person declaring a force majeure and be an event which has made performance of the contract impossible and not simply more onerous. A force majeure clause releasing the shipper from liability should include a statement that the ship owner must provide sufficient evidence of any force majeure event.

Unfortunately, provisions in Contract relied upon by major Australian shippers are normally worded broadly enough to allow the shipper to escape liability as soon as a publicly known weather event occurs.

It is therefore important that ship owners and charterers carefully review the terms of any charters or contracts to ensure that their shipper does not take advantage of a

weather condition which might not have been the reason for non-delivery.

The Necessary Procedures of Transporting Dangerous Goods by Air

The legislation regulating the transport of dangerous goods by air is the *Civil Aviation Act 1988* and Regulations made under this Act. Section 23 is about the consignment of dangerous goods on board aircraft and section 23A deals with the statements regarding the contents of cargo.

All parties in the supply chain should be aware of the legislation regulating the transport of dangerous goods by air, including:

- Accurately, identifying and describing any goods that are dangerous;
- Labeling goods as "dangerous";
- Packaging dangerous goods in the correct manner.

There should be uniformity in the identification and description of dangerous goods on all documentation including packing slips, invoices and customs records.

The Air Waybill in particular, should be verified to ensure it is free from any careless errors.

The penalties for non-compliance of the legislation are severe and include imprisonment.

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