

THE ARREST

news

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COVID-19 SERIES



In this special issue of *The Arrest News* members analyze the recent outbreak of the Coronavirus, its effects on shipping, and likely scenarios for future disputes...

Covid-19 and Ship Arrest by Beth Bradley & Rosie Goncare, Hill Dickinson (UK)

As the disruption to international trade and shipping caused by the outbreak of Covid-19 continues, the financial pressure on ship owners is rising as is their potential exposure to ship arrest owing to the impact of delays and quarantine measures that may be imposed on a vessel.

Delays: Quarantine, deviation and other

The quarantine of the “DIAMOND PRINCESS” at anchorage off Yokahama, is an example of what could happen in circumstances where port authorities suspect that a vessel may be carrying crew or people infected by Covid-19.

The impact of a lengthy delay while port authorities investigate the health of those on board a vessel will have financial implications for the vessel, in terms of safety of both crew and cargo, interruption to contractual arrangements as well as liability for berth

and port dues during a protracted stay.

Crew claims

Shipowners, as employers have a duty of care towards crew, particularly to not expose them to risk of harm, as well as other employment obligations, such as prompt payment of wages and to cover repatriation costs and medical expenses.

In accepting orders to an area where there may be a risk of infection passing to the crew or where the crew may be exposed to protracted periods of confinement on board (owing both to delays at the port or any quarantine measures which the port may impose) an owner may not be discharging their duty of care. Moreover, a higher wage bills, medical costs and potentially greater repatriation costs will have to be met, otherwise there is a risk of arrest for failure to pay crew wages.

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Passenger claims

Recent media reports seem to suggest that there is an increased risk of respiratory and gastrointestinal diseases on ships. Some articles state that with coronavirus, which is believed to spread through droplets, such as from mucus or saliva, people could be infected without direct contact with a carrier.

Therefore, the cruise and passenger industries have to take extra measures to secure passenger and crew safety. Such means that ships must be fitted with on board medical facilities, with shipboard medical professionals available around the clock, which no doubt results in higher operating costs to the owners.

If a passenger contracts a serious health condition while on board the vessel, it is very likely that the passenger can make a personal injury or even a loss of life claim against the vessel's owner and therefore seek to arrest the vessel if compensation is refused or not paid.

Cargo claims

The shipowners may find themselves unable to deliver goods to destination. Commercial losses may also be incurred due to cancellations of the usual shipping routes, delays in discharge and transshipment costs. Significant delay increases owners' exposure to claims for loss in the financial value of the cargo and / or for cargo damage, particularly if the cargo is perishable (e.g. soya beans).

Delays due to quarantine or temporary cancellation of usual shipping routes mean that containers allocated for the Chinese markets are either stranded on board ships, off loaded in alternate locations or sitting in the various ports and terminals incurring port storage, demurrage and detention.

The carriage contracts will be governed by national legislation and by international carriage conventions such as the Hague, Hague-Visby or Hamburg Rules. While a carrier will have the ability to rely on the defences available in the Hague, Hague-Visby or Hamburg Rules in terms of cargo damage or loss claims, those defences may not protect an owner against the risk of vessel arrest by cargo interests.

Port dues

If the vessel is quarantined at a port, the berth the vessel occupies may be out of action for the duration of the quarantine with the inevitable loss of income to the port from other vessels and the port will claim berth and port dues for the duration from the quarantined vessel owner.

The sums incurred could be considerable and will need to be paid before the vessel can leave. Failure to pay may result in the port arresting the vessel.

Quarantined crew – will an arrest warrant be issued?

Where financial pressure arising from the disruption and delays caused by Covid-19 concerns, results in an owner being unable to meet crew wages, bunker costs, berth and port dues and other necessities or being exposed to cargo claims, the arrest jurisdiction is relatively straightforward and the risk of arrest is consequently high.

However, there may be question marks around whether a local court would permit an arrest in circumstances where the crew is infected; local communities living nearby may wish the vessel to leave as soon as possible and lobby for release. As such, it may be possible that arrests could be refused on the basis of public policy.

Complications for the arresting party?

In the UK, the Admiralty Marshal would be in charge of the vessel and her crew after the arrest and he has an obligation to ensure the welfare of the crew. However, the arresting party must give an undertaking to the Admiralty Court that it will cover all necessary expenses (that is if the sale proceeds of the vessel is not enough to cover the expenses of the Admiralty Marshal). Therefore, the arresting party must bear in mind that the expenses of the vessel may potentially be much greater than in the usual circumstances and can require treatment and repatriation of the old crew, bringing in new crewmembers, cleaning (sterilising) the vessel's accommodation and even the vessel as a whole. Subsequently, if the vessel is abandoned by her owners, it may not be easy to find a buyer of the vessel which was affected by the virus or the sale proceeds

would not be sufficient to cover the expenses of the judicial sale.

Given the delays and disruption owing to Covid-19 there is potential for ship arrests to increase in numbers, particularly for shipowners whose businesses are being adversely affected and who may struggle to honour their contractual obligations.

Update as of 12 March: If you have an arrest application you wish to make or defend, a colleague in our firm was today advised by Portuguese lawyers that: “Just came on the news that the management body of the judge’s issued a ruling yesterday evening declaring that only urgent matters where fundamental rights are at stake shall be dealt with by the courts” i.e. and not maritime claims.



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CORONAVIRUS — “COVID 19” [Infectious Diseases & Other Contractual Considerations] by Richard Faint, Charterwise Ltd (UK)

Like many other organisations Shiparrested.com has to take account of COVID-19 and the impact that it is having around the world. Remember that Shipping accounts for 90% of global trade and this virus is threatening to disrupt trade channels across the world.

The logistics chain that we all rely on for a steady supply of everything (food, fuel and medicines) is under severe strain. Members will, no-doubt, be involved when problems arise in this supply chain.

See the UNCTAD Technical Note “Global trade impact of the Coronavirus (COVID-19) Epidemic” at <https://unctad.org/en/PublicationsLibrary/ditcinf2020d1.pdf>. The China Manufacturing Purchasing Manager’s Index (PMI), a critical production index, fell by about 22 points in February.

On 4 March UN News carried the headline: “Coronavirus COVID-19 wipes \$50 billion off global exports in February alone, as IMF pledges support for vulnerable nations”

One positive point (possibly) is that the impact of this virus may well help to reduce the effort being put into current trade wars, but we shall see.

The virus continues to spread out around the world and, as of 4 March the Kaiser Family Foundation COVID-19 Tracker <https://www.kff.org/global-health-policy/fact-sheet/coronavirus-tracker/> shows a global count over 73 countries of 90,870 cases with total deaths being put at 3,112.

Clearly this is something that has to be taken seriously, as is shown by the recent announcement in Italy (107 deaths) that the government has ordered the closure of all schools and universities as it steps up its effort to contain the largest coronavirus outbreak in Europe. 11 towns in northern Italy are in “Lock Down”. Japan has shut all of its schools until April.

Iran has a cumulative total of 1,501 cases and 66 deaths and a great deal of difficulty in dealing with the situation.

This problem, first reported officially on 31 December 2019 started in Wuhan, China is certainly having an impact on world trade.

1. Overview

· The first place to look for information is the World Health Organization [“WHO”] website – <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports>

- The WHO website has a rolling update on the problem. It reports that, as of 24 February, Italy has reported a “rapid increase in cases” with some villages being placed under strict quarantine.
- On 24 February a WHO team of experts and experts from the European Centre for Disease Prevention and Control (ECDC) arrived in Italy. The focus is on limiting further human-to-human transmission
- The BBC and the Financial Times of London have reported that Italy now has 11 towns in “Lockdown” that is say that it now has 11 “closed-off towns”, in which more than 50,000 people are quarantined.
- WHO now states that there are more cases outside of China than within China.

2. How will this effect trade?

- I doubt whether anyone can put a proper figure on this yet, but everyone is aware of it.
- There is a lot of information/guidance out there and, given that we rely on Shipowners, a good source of advice is available from P&I Clubs.
- The following link is a guide published by the American Club “Infectious Diseases: Charter Party and Other Contractual Considerations”. https://www.american-club.com/files/files/MA_022120_Infectious_Diseases_Charterparty_and_Other_Contractual_Considerations.pdf
- It accepts that attempts to trade (to & from) affected places “might” lead to charter party & other contractual disputes (e.g. commodity sale contracts, charterers liability policies and cargo insurance policies to name just some)
- Each case will of course depend on its facts
- Impact on Container traffic/business could be substantial. The “Wall Street Journal” reported on 10 February that “Coronavirus Toll on Shipping Reaches US\$350 Million a Week”
- Falling volumes and cancelled sailings are hitting not just container shipping but also bulk shipping because of falling industrial demand.

- Sea-Intelligence ApS (based in Demark) research has advised Insurance Marine News that this problem was set to knock out some 1.7m teu of container business. Using an extremely approximate average of \$1,000 per teu in freight rates, Sea-Intelligence say that would translate into a \$1.7bn shortfall in revenues for carriers. It would also equal 1% of the total global volume in 2019. “Another way to look at this is to note that global container volumes grew 0.7% in 2019. The Coronavirus has thus more than erased the full global growth seen in 2019.”
- It would lead to a handling shortfall in terminals around the world of around 6m to 6.8m teu.
- BIMCO recently reported that “...we are seeing carriers trying to mitigate the low container volumes in Chinese ports by blanking sailings. If the situation continues, we could start to see global supply outages in retail stores. Manufacturing in Europe and North America could also start to decline, as some supply chains are reliant upon the Chinese semi-finished goods,”

3. Technical Issues

- Some Governments e.g. Australia and Singapore, have refused entry to ships coming from Chinese ports until the crew has been declared virus free. Quarantine anchorages will no doubt be full - years ago, before better communications, these would have been called “plague ships”.
- For Traders/Shipowners the question is who will pay the costs arising from such delays?
- Shipowners will be looking at whether they can refuse a nomination to proceed to a port in a known COVID-19 area (possibly one already in “Lock Down”).
- Normally, with a ship under Charter, a valid port nomination has to be complied with, BUT is an Owner obliged to comply if it puts his crew at risk?
- Is such a port a “safe port”? Safety of a nominated port is judged when the order is given - so a charter is not generally responsible where a port, apparently safe when nominated, later becomes unsafe.

· The classic definition of a safe port comes from an English legal case “The Eastern City” [1958] 2 Lloyd’s Rep 127, states (per Sellers LJ):- “A port will not be safe unless, in the relevant period of time, the particular ship can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship.”

· What about a FOB Shipper who has goods sitting in a silo/warehouse but the nominated vessel cannot enter? Alternatively, what about a FOB Buyer who cannot get his ship into load???

This is not the place to take the discussion further but Shipowners may well have the benefit of the Hague-Visby Rules Article IV(2) which reads:

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

- (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.
- (b) Fire, unless caused by the actual fault or privity of the carrier.
- (c) Perils, dangers and accidents of the sea or other navigable waters.
- (d) Act of God.
- (e) Act of war.
- (f) Act of public enemies.
- (g) Arrest or restraint of princes, rulers or people, or seizure under legal process.
- (h) Quarantine restrictions.
- (i) Act or omission of the shipper or owner of the goods, his agent or representative.
- (j) Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general.
- (k) Riots and civil commotions.
- (l) Saving or attempting to save life or property at sea.

- (m) Wastage in bulk of weight or any other loss or damage arising from inherent defect, quality or vice of the goods.
- (n) Insufficiency of packing.
- (o) Insufficiency or inadequacy of marks.
- (p) Latent defects not discoverable by due diligence.
- (q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

A last thought – what if “your” ship has entered port and has loaded and is then prevented from sailing by the authorities? Such a ship will be on-hire and will stay on-hire.

Commercially the question is “Will there be disputes/arrests arising from the COVID-19 outbreak?”

I leave you to answer this question.



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Excerpt from Panama Canal Updates 2020 by Joaquín de Obarrio, Patton, Moreno & Asvat (Panama) from *The Arrest News* Issue 28

“Coronavirus alert

All vessels approaching the Panama Canal for transit must disclose previous visits to countries with confirmed coronavirus cases. This protocol extends to

vessels engaged in port cargo operations within Panama Canal waters. Vessels having docked in ports of countries with coronavirus cases, within 30 days prior to arrival, and/or having identified any case suspect on board, must report it through the Panama Maritime Authority and the Panama Canal Authority so that appropriate preventive measures can be taken.

The Panama Canal maintains a permanent health protocol aimed at the prevention of contagious diseases. A vessel with any passengers or crew on board with suspicious symptoms, must notify it upon arrival. Before transit, all vessels are subject to sanitary inspection, and if a case is detected it is immediately referred to the national health authorities, which investigate and determine if the vessel can continue its transit. If required, the vessel may be held in quarantine as a precautionary measure.”



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Network News



Due to the recent outbreak of Covid-19 and subsequent travel restrictions and general preoccupation, our hosts at Al Tamimi in Jordan along with the Shiparrested.com network team have decided to postpone the Annual Members' Conference until further notice.