
**CORONAVIRUS UPDATE - NOTE ON SAFE
PORT OBLIGATIONS**

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1. As the pandemic spreads, the likelihood is that an increasing number of vessels will face quarantine and control measures at ports affected by the coronavirus. We are aware that some port authorities – for example, in parts of China and in Australia – are already imposing those measures, resulting in delays, or even in vessels not being permitted to berth at all.
2. It follows that disputes are very likely to arise in relation to charterers’ obligations to nominate safe ports.
3. Are charterers that nominate coronavirus-affected ports likely to be held in breach of their safe port obligations? Are owners entitled to refuse to proceed to ports affected by the coronavirus, or will such refusal amount to a repudiatory breach of the charter or bill of lading contract?
4. As readers will be aware, the classic definition of a ‘safe port’ is that of Sellers LJ in **Leeds Shipping Co Ltd v Société Française Bunge (The Eastern City)** [1958] 2 Lloyd’s Rep 127:

“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.”

5. **The Eastern City** was approved by the Supreme Court in **Gard Marine & Energy Ltd v China National Chartering Co Ltd (The Ocean Victory)** [2017] UKSC 35, where Lord Clarke said at [24] that:

“given all of the characteristics, features, systems and states of affairs which are normal at the port at the particular time when the vessel should arrive, the question is whether the port is prospectively safe for the particular ship. If the answer, is ‘yes, unless there is an abnormal occurrence’, the promise is fulfilled.”

6. There does not appear to be any case law which squarely addresses the question of whether a pandemic renders a port unsafe.
7. However, some textbook authority tentatively suggests that ports affected by diseases such as coronavirus may be rendered unsafe. **Voyage Charters**, Cooke et al, 4th Ed., (2014) notes at §5.66 that “...if a port or place is the subject of a fever epidemic which would result, were the vessel to call there, in her being blacklisted, detained or impounded at a subsequent port, then that port would be unsafe for it would render the vessel unseaworthy and would pose a physical threat”. Similarly, Chris Ward in an article in **Lloyds Maritime and Commercial Law Quarterly** entitled “*Unsafe berths and implied terms reborn*” (17 Aug 2010) suggests that “*Unsafety may arise from outbreak of disease, which can cause the ship to be blacklisted, rendering her unseaworthy and susceptible to detention.*”.
8. Arguments that coronavirus-affected ports are unsafe could proceed on two bases.
9. First, in **Ciampa v British India Steam Navigation Co Ltd** [1915] 2 KB 774, a vessel had called at port in Mombasa where there had been a plague outbreak, before sailing to Marseilles. The vessel was then detained in Marseilles so that she could be fumigated. At 780, Rowlatt J held that because it was inevitable that the vessel would need to be fumigated in Marseilles, she was unseaworthy. The editors of **Voyage Charters** suggest that the reasoning in **Ciampa** could apply to the issue of port safety. If a vessel is detained as a result of having previously berthed at a disease-affected port, the disease-affected port can be said to pose a physical threat to the vessel, and may therefore be unsafe.
10. As matters stand, some governments have imposed blanket quarantines on vessels that have called at Chinese, Italian and Iranian ports. In those circumstances, there is a plausible argument that nomination of a coronavirus-affected port could result in the vessel being quarantined, and unable to leave the port.
11. However, the potential difficulty with that argument is that the risk will probably need to be of the vessel being detained, or quarantined for an inordinate period. The risk of delay can render a port unsafe, but that will only be so if the delay involved is inordinate, and is sufficient to frustrate the adventure: **Unitramp v Garnac Grain (The Hermine)** [1979] 1 Lloyd’s Rep 212 (CA). At present most ports appear to be imposing only a 14-day quarantine period. For that reason, **Carver on**

Charterparties, 1st Ed., (2017), notes at §4-039 that the required duration of quarantines incidental to visiting an affected port will likely be inadequate to render a port unsafe. That said, if quarantine periods increase as the virus spreads and/or one is considering a time charter of short duration, the position may be different.

12. Second, the unsafety of a coronavirus-affected port could also arise out of the risk of infection to the crew. Risks to a vessel's crew can render a port unsafe even where there is no risk of damage to the ship herself. As such, where charterers nominate a port that is particularly badly affected by the coronavirus, there is a possibility that the crew would be at risk of infection by virtue of goods and persons from the affected port coming on board.
13. However, **Carver on Charterparties** notes at §4-037 that "*contagious disease can in principle render a port unsafe but is unlikely to do so in fact*", because public health measures could be implemented to control access to the vessel and avoid physical contact between the crew and shore-based personnel. No doubt ports in the developed world are taking measures to minimise the risk of transmission, and where such measures are being implemented such that the risk of transmission is low, it may be difficult to argue that the port is unsafe because of the risk to the crew of infection. However, the level of precautions taken in other parts of the world may well be less comprehensive and effective and this may well create more room for argument on the point.
14. If owners were ultimately able to show that a pandemic is in principle capable of rendering a port unsafe because of the risk that a vessel is unable to leave or because of the risk to the crew, the question will then be whether charterers can show that the pandemic is an abnormal occurrence, such that they have in any event fulfilled their safe port promise. The prospects of arguing that the virus constitutes an abnormal occurrence are, probably, diminishing over time. Now that the pandemic has taken hold, and that more and more ports around the world are potentially affected and imposing resultant quarantine measures, the fact of the pandemic may well now be considered a normal state of affairs at those ports; at least pro tem. In those circumstances, charterers may now face more of a struggle to contend that the fact of the port being affected by the coronavirus constitutes an abnormal occurrence.

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