



## Force Majeure: Where many lose hope, we find solutions

In the maritime trade business, carriers tend to use the force majeure defense as a back door against cargo claims where prevailing circumstances imply -sometimes a forced-events beyond their reasonable control. Strikes, congestion and detention orders are normally used as bare excuses for claiming a force majeure defense.

Force majeure refers to a clause that is included in contracts to remove liability for natural and unavoidable catastrophes that interrupt the expected course of events and prevent participants from fulfilling obligations. In this case, a delay caused by an inspection by the local authorities for a case of drug traffic.

Many would have given up the case and the chances of recovery, however, it all depends on where you look. Starting to gather evidence, reviewing processes and responsibilities can help us find that detail that can change the odds.

Here we leave you a case that helps us not to lose hope in cases of force majeure.



## Type of client & cargo

Important ecuatorian food exporter. Shipment of bananas.



## The incident

Two ships sailed from Guayaquil, Ecuador with several shipments of bananas bound for several Eastern Ports in Asia. Sea passage included intermediate stops in Mexico.

While berthed at Ensenada Port, Mexico both ships were interdicted by the controlling authority and placed under arrest for alleged smuggling and drug trafficking. Despite the Owners' efforts, the release was only achieved two months after detention. As a result of this fact, part of the containers were diverted to the port of origin in Ecuador, due to the deterioration suffered by the merchandise (bananas), and the rest continued on their way to their destination.

## Claims handling and final outcome

As these are two ships with the same problem, the lack or neglect of security protocols on container stowage to avoid drugs can be indicated. The fact that the drug was thrown overboard means that the drug was already on board. It also means someone on board the ship colluded with drug traffickers to get their package offloaded. Having someone on board who is willing to commit a crime is basically the same as having a poorly crewed/equipped ship, which alone would mean the ship was unseaworthy.

The shipping company wanted to apply the force majeure clause that was rendered ineffective when we verified, through an investigation and the corresponding controls, that Owners have poorly managed and equipped their vessels (by not having a properly trained crew) nor have filled the ships with updated procedures to prevent on board smuggling and traffic.

With the scope of putting more pressure on the carrier's side, we suggested to our clients the possibility of lodging formal complaints in Ecuador. Whilst our clients did not have any realistic intention of accruing legal costs into the already long balance of losses, we proposed the possibility of covering legal costs through our Litigation Finance Partner, CEVERUM. The outcome was that after filing, the carrier's insurers agreed in settling all losses in relation to these 2 incidents in 40% of overall claimed losses.

If you have any casualty or any problem with your cargo, do not hesitate to contact us:

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