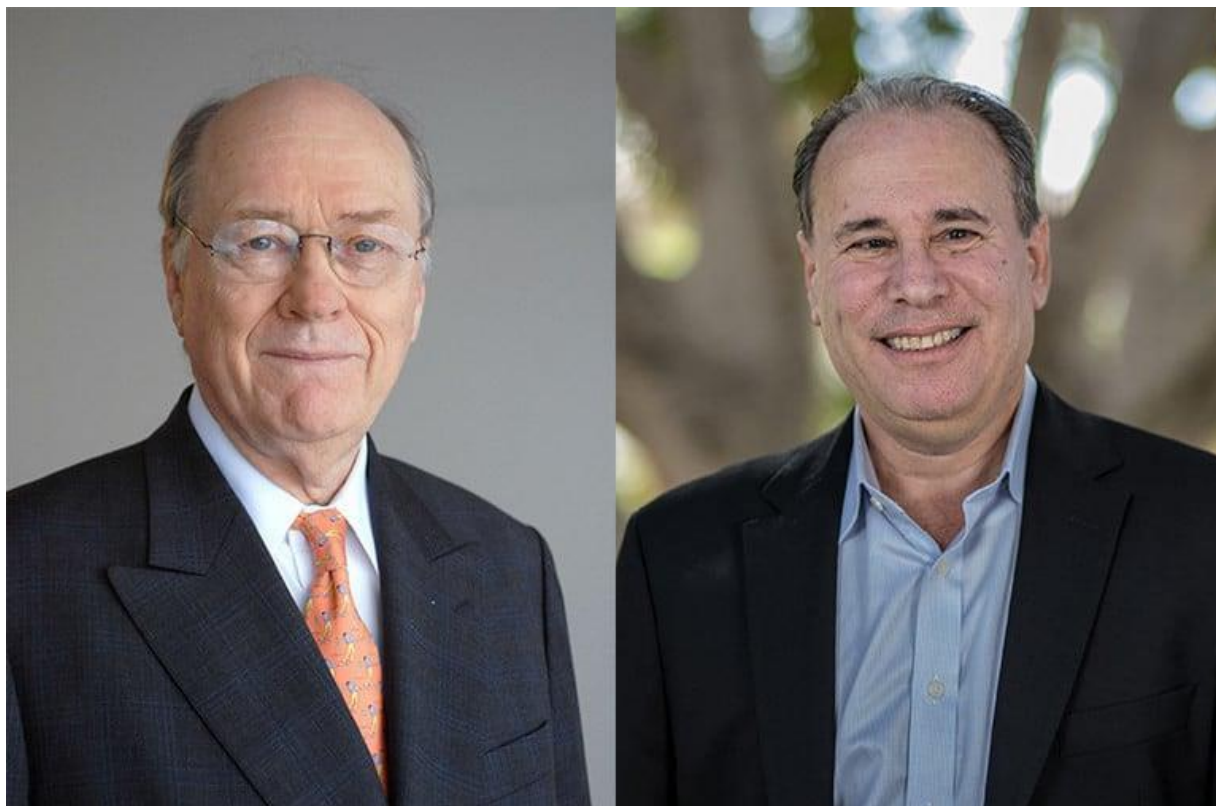


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Force Majeure and Beyond: Analyzing Commercial Disruption Arising from the Gulf Hostilities

In their International Litigation column, Lawrence Newman and David Zaslowky discuss how force majeure is an issue, but not the only issue, to be considered when analyzing claims arising from the commercial disruption arising from the Gulf hostilities.

By Lawrence W. Newman & David Zaslowky | July 27, 2026



The continuing hostilities in and around the Persian Gulf have exposed the vulnerability of global energy supply chains, particularly through potential disruption of the Strait of Hormuz and damage to key production and export facilities.

The effects of these events on the performance of contracts such as those involving crude oil, LNG and refined products may be the subject of disputes. The critical issues will be not only the nature and effect of such events but also how the consequences of them should be allocated between or among parties through contracted-for obligations or otherwise

Force majeure declarations such as those recently made in the LNG and crude oil markets underscore that the commercial consequences of Gulf disruptions are already materializing. While the details of individual disputes remain uncertain, there may well be disputes as to whether particular events have generated genuine situations of inability to comply with contractual obligations because of supply interruption and related contingencies.

By way of illustration, consider a hypothetical but realistic scenario arising from a temporary closure of the Strait of Hormuz. An LNG seller declared force majeure under a contract that expressly included in the force majeure clause “blockade or closure of shipping routes” and relieved the seller of any obligation to procure substitute cargoes. In that case, the seller would seemingly be excused from performance.

A second seller, facing the same disruption, operated under a contract that required reasonable efforts to obtain alternative supplies and did not expressly cover transit interruptions. That seller could be found not to be excused and therefore held liable for non-delivery. The differing outcomes would not turn on the nature of the disruption, but on the language of the respective force majeure clauses.

The instinctive reaction of most lawyers is to ask whether the events constitute force majeure. That question is understandable, but it is incomplete.

That distinction is fundamental. Unlike doctrines such as hardship, *imprévision* or commercial impracticability, force majeure is ordinarily not a creature of statute or civil code. It derives principally from the agreement of the parties. Consequently, two sellers confronted with the same interruption in Gulf supplies may reach entirely different legal results because they have negotiated different force majeure provisions.

That review should begin with several practical questions. Does the clause expressly include war, hostilities, governmental action, embargoes or blockades? Does it extend to destruction of production or liquefaction facilities? Does it address interruption of a specified source of supply? Does it excuse performance if an upstream supplier is itself prevented from performing? Does it require notice within a stated period? Does it require reasonable efforts to overcome the effects of the event? Does it obligate the seller to procure substitute supplies, or does it expressly relieve the seller of that obligation? Finally, does prolonged force majeure permit either party to terminate the agreement?

These are not academic questions. Contemporary energy contracts often address them expressly. Publicly available forms used in portions of the petroleum and LNG industries demonstrate that sophisticated parties increasingly allocate the risks of war, governmental restrictions, supply interruptions, damage to facilities, allocation of diminished production and substitute performance by detailed contractual language.

How the events in question fit within these contractually defined risks may be disputed, as may be whether the affected party has taken steps to mitigate the consequences of the harm done by the events.

For example, an upstream declaration of force majeure does not automatically determine the rights of downstream parties. A producer’s inability to load cargo because of damage to export facilities, or because transit through the Straits of Hormuz has become impossible, does not itself excuse every subsequent buyer or seller in the chain of distribution. Each contractual relationship must be examined independently.

At the same time, sophisticated contracts may themselves provide that specified upstream events, supplier failures, or interruptions affecting identified facilities constitute force majeure under the downstream agreement as well.

There may not be agreement between the parties as to the applicability of provisions of the parties’ contract to the factual issues or as to whether the initially affected party has complied with its contractual obligations, and one or more affected parties may turn to governing municipal law both as to

the applicable definition of force majeure and the duty of an affected party to mitigate damages, but also, in certain instances, as to whether codified hardship clauses might be applicable to the parties' relationship.

For agreements governed by New York law or that of other U.S. states, Uniform Commercial Code §2-615 deserves careful attention. It excuses delay or non-performance where performance has become commercially impracticable because of the occurrence of a contingency whose non-occurrence was a basic assumption of the contract, while also addressing allocation and notice obligations.

Whether §2-615 ultimately applies will depend not only upon the facts but also upon the extent to which the parties have modified or displaced its operation through negotiated force majeure provisions. Sophisticated energy agreements frequently do precisely that.

Different considerations may arise where the governing law is that of a civil-law jurisdiction. Many civil codes contain provisions defining force majeure and dealing with its effects.

In France, force majeure is defined in Article 1218 of the French Civil Code as including an event that was beyond the control of the party that can no longer perform its obligations and that was reasonably unforeseeable at the time of the conclusion of the contract, or unavoidable at the time of the performance of the contract such that performance was impossible. Notably, the above applies regardless of whether the underlying contract contains a specific force majeure clause.

Under German law, force majeure is not explicitly recognized in the German Civil Code. However, Section 275(1) recognizes the concept of impossibility, forgiving failure to perform if performance has become impossible for one of the contracting parties.

Also, many civil law countries have codified provisions permitting relief when extraordinary and unforeseen events render performance excessively onerous even though not literally impossible. France, Egypt, Italy and Germany each recognize variants of this concept, although the requirements and available remedies differ. In France, *imprévision* is recognized under Article 1195 of the Civil Code, contemplating renegotiation and possible judicial revision or termination of a contract when an unforeseeable change of circumstances makes performance excessively onerous.

Under Article 147(2) of the Egyptian Civil Code, courts may reduce parties' obligations where, under exceptional circumstances, performance is not impossible but oppressive and threatening the debtor with grave loss. In Italy, Article 1467 of the Civil Code recognizes *eccessiva onerosità sopravvenuta*, where extraordinary and unforeseeable events make a party's performance excessively onerous, that party may seek rescission, although the other party can avoid rescission by offering an equitable modification of the contract.

Under the German Civil Code there are two provisions that seemingly could apply. Under Section 275(2), a debtor has a right to refuse performance where there is an unanticipated disproportion between its performance expenditure and its creditor's interest in the performance. Alternatively, a party may seek a modification of a contract under Civil Code Section 313 which, however, requires establishing that unforeseen, drastic changes have occurred.

In appropriate circumstances, these doctrines may supplement contractual force majeure provisions or provide relief where the contract itself is silent. They should not, however, be viewed as automatic extensions of an upstream force majeure declaration. Like force majeure itself, hardship must ordinarily be established under the governing law applicable to the particular agreement.

Whatever doctrine ultimately governs, another issue is almost certain to arise: mitigation.

Commercial disputes following major supply disruptions frequently turn not only upon whether performance was excused, but also upon whether the parties acted reasonably once the disruption occurred.

Modern force majeure clauses often impose contractual obligations to take reasonable steps to overcome or reduce the effects of the event. Separate principles governing mitigation of damages may also require an injured party to act reasonably in reducing avoidable losses.

Those inquiries should not be confused. A contract may relieve a seller from purchasing replacement cargoes while simultaneously requiring reasonable efforts to resume performance. Similarly, a buyer whose supplier has failed may still be expected to take reasonable commercial steps to limit its damages.

Certain jurisdictions also include statutory mitigation obligations in the event of impossibility or undue hardship. For example, China requires notice and reasonable efforts to reduce losses for the affected party under Article 590 of the PRC Civil Code, while also requiring mitigation by the injured party under Article 591.

No article written while the present hostilities continue can predict the outcome of future arbitrations or litigation. Most of the relevant contracts remain confidential, and the factual circumstances surrounding individual force majeure declarations are not publicly known. That uncertainty counsels restraint rather than broad conclusions.

It does not, however, prevent identification of the proper analytical framework. Counsel confronted with a Gulf-related supply disruption should proceed in sequence.

First, determine precisely what event prevented or delayed performance.

Second, examine the force majeure clause and related contractual provisions governing notice, supplier failure, substitute performance, allocation and termination.

Third, identify the governing law and determine whether it recognizes doctrines such as commercial impracticability or hardship that may supplement the parties' agreement. Finally, evaluate what reasonable steps each party was required to take to reduce the consequences of the disruption.

The first question raised by the Gulf hostilities is whether force majeure has occurred. The more important question—and the one likely to determine the outcome of most disputes—is what the parties agreed would happen if it did.

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