EFFECTS OF CORONAVIRUS (COVID-19) OUTBREAK ON TRANSPORTATION CONTRACTS AND CARGO INSURANCES

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Tilegal www.tilegal.com

Nidakule Ataşehir
Kuzey Begonya
Sokak No: 3
Ataşehir, İstanbul, Türkiye

TİLEGAL

After being declared to be an epidemic by the World Health Organization, the Coronavirus (Covid-19) outbreak was globally treated as a pandemic and caused various travel bans and transportation restrictions that resulted in significant disruptions in manufacturing, logistics and international supply chains all over the world including Turkey.

Restrictions on transport routes, quarantine measures and workforce disruptions caused transporters to experience difficulties in complying with agreed transit deadlines which complicated the performance of transportation contracts in a duly manner. Discussions on deciding whether the virus outbreak constitutes a force majeure event, brought further discussions on whether the carrier shall be held liable for delays and cargo damages occurred during the term of this worldwide epidemic.

It is observed that many legal systems are qualifying the epidemic as a force majeure event. For instance; The China Council for the Promotion of International Trade ("CCPIT") began issuing force majeure certficates[1] in order to protect the merchants who are affected by the epidemic from possible sanctions.

However, whether the epidemic shall be accepted as a force majeure event will be discussed and determined based on the applicable law to the transportation contract. For instance if the transportation contract is governed by English Law, a frustration in performance, regardless of its extent or effect, shall not be interpreted as a force majeur event unless a force majeur provision is spacially regulated within the transportation contract. In order to qualify a situation as a force majeure event, the transportation contract should include a special “force majeure” provision which regards the incidents such as epidemics and quarantine explicitly as force majeur event. Otherwise, Covid-19 outbreak will not be accepted as force majeure event in the frame of transportation contracts governed by English Law. For this reason, whether the contract is governed by English Law will have a significant effect on determining the liabilities of the parties.

A- IS IT REASONABLE TO ASSUME THAT LEGAL PERIODS OF TIME SET OUT FOR DAMAGE NOTIFICATION AND COMMENCEMENT OF LEGAL ACTIONS (SUCH AS EXECUTION PROCEEDINGS, LITIGATION AND ARBITRATION) ARE “SUSPENDED” DUE TO *COVID- 19 PANDEMIC*?

It is known that the periods determined by Law for damage notification and commencing legal actions (i.e. commencing execution proceedings, litigation and arbitration) are kept very short when it comes to the disputes arising between the carrier and the cargo interest. In practice, it is observed that the failure in complying with these periods are resulting in significant loss of rights. Needless to say that courthouses restricted ability to render services during the term of epidemic causes difficulties for the subjects of transportation contacts and lawyers to take necessary actions. Not turning a blind eye to the foregoing, the legislator has passed the Law numbered 7226 dated 23 March 2020 befittingly.

[1] http://en.ccpit.org/info/info_40288117668b3d9b01711b60896d07e4.html

“Sub-paragraph a of the Provisional Article 1” of the Law regulates that;

> “ Due to the Covid-19 outbreak our country suffers, all periods of time concerning to the origination, the exercise or termination of a right including the periods set out for bringing a lawsuit, commencing an execution proceeding, making an application, complaint, objection, notice, **notification**, submission and time limitations, **lapse of times** and the compulsary administrative application deadlines and also the time periods designated by the judge and the time periods set out for arbitration and mediation proceedings are suspended from **13/3/2020 (including this date) until 30/04/2020 (including this date)** in order to prevent losses of right in judiciary area. “

Undoubtedly, Code’s explicit expression asserts that “time limitations” and “lapse of times” are suspended from 13/3/2020 until 30/04/2020.

TIME LIMITATIONS SET OUT FOR COMMENCING LEGAL PROCEEDINGS		
MODE OF TRANSPORT	**PERIODS**	**LEGAL GROUND**
INTERNATIONAL ROAD TRANSPORTATION	• The period of limitation for an action arising out of carriage under this Convention shall be **one (1) year.** Nevertheless, in the case of wilful misconduct, or such default as in accordance with the law of the court or tribunal seised of the case, is considered as equivalent to wilful misconduct, the period of limitation shall be **three (3) years.**	*CMR Art. 32*
DOMESTIC ROAD TRANSPORTATION	• For transportations subject to the provisions of this book, demand rights are prescribed within **ten (10) years**, in the event that the passenger is dead or incurs a loss to affect its physical integrity as a result of an accident and within **one (1) year** in other damages.	*TCC (Turkish Commercial Code) Art. 855*
AIR TRANSPORTATION	• The right to damages shall be extinguished if an action is not brought within a period **of two (2) years,** reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.	*Montreal Convention Art. 35*

MARINE TRANSPORTATION	• All kinds of demand rights for indemnity of the loss or damage of commodity or delay of its delivery are forfeited in the event legal ways are not referred to within **one (1) year**.	*TTK (Turkish Commercial Code) Art. 1188*

In this context; it can be said that the time limitations and the periods for lapse of time being referred to in the table above, are suspended for 49 days. In other words; 49 days are to be appended to the legal periods of time indicated in the Code/Conventions. Additionally, it should also be noted that, according to the same article of the omnibus law, an additional 15-days-period is to be appended to the expiration dates of the limitation periods, if they will expire in less than 15 days (all demands which will be barred or barred by statute by the date of 27.03.2020) by the time of the beginning of interruption (13.03.2020). In other words, time limitations set out for the parties who are obliged to commence legal proceedings within the aforementioned periods, are extended for a further 15 days.

As it is known, in transportation related matters it is crucial to fulfil the notification obligation in accordance with the regulation concerning to the related mode of transport for losses, damages or late delivery which may occur in the course of transportation. Failure of complying with the notification obligation shall lead to significant consequences in terms of burden of proof and even cause to losses of right. Time periods regulated to make these notifications are summarized as follows:

PERIODS SET OUT FOR NOTIFICATION OF A CLAIM		
MODE OF TRANSPORT	**PERIODS**	**LEGAL GROUND**
INTERNATIONAL ROAD TRANSPORTATION	• In respect of recognizable losses or damages on the commodity, ***at the latest at the time of delivery;*** • In other cases, ***within seven (7) days following the delivery*** of the commodity *in writing (excluding Sundays and public holidays);* • In respect of delay, ***within twenty one (21) days beginning from the time that the commodity is placed at the disposal of the consignee;***	*CMR Article 30*
	• In respect of recognizable losses or damages on the commodity, ***at the latest at the time of***	

DOMESTIC ROAD TRANSPORTATION	***delivery;*** • In other cases, ***within seven (7) days following the delivery*** of the commodity; • In respect of delay, ***within twenty one (21) days following the delivery;***	*TCC Article 889*
AIR TRANSPORTATION	• The person entitled for delivery shall ***immediately*** notify upon discovery of the damage; • In respect of checked baggages, ***at the latest within seven (7) days following the date of delivery***; • *In respect of cargoes;* ***at the latest, within fourteen (14) days following the date of delivery;*** • In respect of delay, within ***twenty one (21) days beginning from the date on which the baggage or cargo should have been placed at the disposal of consignee;***	*Montreal Convention Article 31*
MARINE TRANSPORTATION	• In respect of recognizable losses or damages ***at the latest at the time of delivery to the consignee in writing;*** • In other cases, ***within three consecutive days beginning from the date of delivery of the goods to the consignee;*** • In respect of delay, ***within sixty (60) consecutive days beginning from the date of delivery to the consignee***;	*TCC Article 1185*

At this point the question should be formulated as: Should the notification periods set out in relevant legislation continue to be respected in terms of damages and delays occurred during the term of epidemic?

Since the scope of the said provision also includes the *periods for notification,* it would not be wrong to assume that the notification periods are also suspended. However the objective of the said regulation is namely to avoid any losses of right considering that taking legal actions became de facto impossible due to the impact of the outbreak. Still, despite of the impact of the outbreak, if the transportation is somehow completed and the consignee

somehow managed to took the delivery of the cargo, postponement of consignee's notification obligation only due to the said provision would contradict with the abovementioned purpose *(ratio legis)* of the Law No 7226. Compliance with the notification periods should therefore be exclusively evaluated in each case. On the other hand, since the notification periods stipulated by the Law are mostly very tight, it is very likely that the periods will start and end within the period of suspension, which brings us inevitably to another question: Should the additional 15 days period, which is regulated in the provisional article, shall apply after the end of the notification period? There is no doubt that these questions are to be resolved primarily by the judiciary, meanwhile, it is advised that cargo interests should continue to comply with the periods specified in legislation as far as possible in order to prevent possible legal discussions in this regard from. Especially considering the indication effect of the notifications made for partial loss and damages, it can be assumed that in the concrete cases where the transportation operation is completed and the cargo is delivered, parties shall continue to comply with the notification periods.

B- EFFECTS OF COVID-19 EPIDEMIC ON ROAD AND AIR TRANSPORT

➢ SHOULD THE COVID-19 OUTBREAK BE CONSIDERED AS AN "*UNFORSEEN CIRCUMSTANCE*"?

Due to the COVID-19 outbreak, partial and absolute travel bans are imposed for high risk regions and custom operations have slowed down. According to the data of *China Road Transport Association,* road passenger transportation has decreased by %52.4 and road transportation has decreased by %24.8 in Poeople's Republic of China since the beginning of the outbreak[2].

Is it possible to hold the carrier liable for damages and delays occrued during the term of COVID-19 pandemic? Article 17/2 of the CMR Convention, which applies for International Road Transportation, stipulates that *the carrier shall be relieved of liability if the loss, damage or delay was caused through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent*. Turkish Commercial Code, which applies for domestic road transportation also contains a similar regulation: According to Article 876 of the TCC; *the carrier shall not be held liable for the loss, damages and delay caused by the reasons which could not prevented or of which consequences could not be predicted by the carrier, even though he exercised the utmost care and attention*. The above brings us to the conclusion that the carrier shall principally not be held liable for delays and damages caused by this epidemic, which was totally unpredictable to him.

Nevertheless, non-liability of the carrier should not be interpreted in a wide range; in other words, the COVID-19 outbreak should not constitute an *"unforeseen circumstance"* for any and all cargo damages and delays without an exception. The outbreak would relieve the carrier from liability; ***only if the carrier would not have been able to avoid or prevent the loss or damage even by exercising the utmost care, in other words, as long as the damage or delay is not somehow attributable to the carrier***. This is the consequence of

[2] https://www.iru.org/resources/newsroom/covid-19-chinas-response-keep-road-transport-moving

the nature of carrier's liability, which should be qualified as an *"increased negligence liability"* instead of an *"unlimited liability"*. To set an example, the carrier will not be held liable for delays caused by slowdowns and flaws in customs operations on the transportation route during the course of the international road transportion being carried out in a refrigerated vehicle. On the other hand, the carrier will continue to be liable for cargo damages caused by the failure in maintaining the cold chain during this delay, since carrier's obligation for taking necessary measures to prevent cargo damages, such as maintaining the refrigeration system running in order to prevent the cold chain from breaking, shall remain valid even during the delay or disruption of the transport for any reason whatsoever.

Air transportations requires a special assessment in this regard. Circumstances which relieves the carrier from liability in air transportation are exclusively listed under the Article 18 of the Montreal Convention. Article 18/d of the Convention states that, ***"an act of public authority carried out in connection with the entry, exit or transit of the cargo"*** shall constitute one of the exceptional grounds which relieves the carrier from liability. In such case, the carrier shall not be held liable for delays and cargo damages caused by the disruption of the transportation attrituble to administrative decisions i.e. on shutting down the airports or on taking quarantine measures on the transportation route. In order to eliminate the liability of the carrier, there should be a "CASUAL LINK" between the COVID-19 epidemic and the damage whereas the carrier should also not cause the damage with own fault. Once the casual link is legally established, the carrier/charterer will be able to relieve from its liability; otherwise the epidemic shall not constitute a ground for nonliability on its own.

- **IS IT REQUIRED TO TAKE INSTRUCTIONS FROM THE CARGO INTEREST ONCE THE PERFORMANCE OF TRANSPORTATION BECOMES SOMEHOW "IMPOSSIBLE" DUE TO THE OUTBREAK?**

According to the Art. 14 of CMR Convention, if performance of transportation becomes somehow impossible in compliance with the terms and conditions set out in the consignment note, the carrier will be obliged to ask for instructions from the cargo interest who is entitled to dispose of the goods. The Article 869 of the TCC also includes a similar regulation, which brings us to the conclusion that ***the carrier shall promptly notify the person with interest over the cargo concerning to the current situation and immediately ask for instruction if the transportation is hindered due to COVID-19 pandemic for any reason whatsoever.***

On the other hand if the carrier fails to receive any instructions from the cargo interest or if the carrier cannot be expected to take instructions under given circumstances, the carrier shall still be obliged to take any ***measures serving the best interest of the owner of the right of disposition over the cargo*** without delay. Within this scope, carrier is entitled to conclude safekeeping contracts to preserve the cargo, to unload the cargo, to transfer the cargo into another vehicle, to sell or even to destroy the cargo. The carrier shall not be held liable by the cargo interest for taking such measures and will be able to claim the expenses he made within this scope as long as the measures are to be considered in the best interest of the cargo interest.

Road transportations between Turkey, Iran and Iraq sets a good example of measures being taken during the term of pandemic. Due to the cross-border travel ban from Turkey to Iran because of the Coronavirus, trailers are being handed over by Turkish drivers to Iraqi drivers on the buffer zone in Turkey by means of a driver or a trailer change. A similar situation is also being observed for transportations performed between Turkey and Iraq. Although a driver change or an unusual transshipment should be considered as a violation of carrier's obligations under normal circumstances, the carrier shall not be held liable for the measures he took within the aforesaid frame.

C- WHAT ARE THE EFFECTS OF COVID-19 PANDEMIC ON CONTRACTS OF AFFREIGHTMENTS?

Article 1179 of the TCC regulates that the carrier shall not be held liable for the losses not caused by the intent or negligence of the carrier or of its men. Considering the sudden, unexpected and unpredictable nature of the Coronavirus epidemic, the existence of carrier's intent or negligence should not come into question. Moreover "orders of public authorities and quarantine restrictions" are considered among the circumstances where the carrier will benefit from the indication of faultlessness and appropriate casual link in accordance with the Article 1182/1b of the TCC. Within this frame, the carrier shall not be held liable for the cargo loss or damage according to the Articles 1179 and 1182/1-b of the TCC. Nevertheless in case the damage is somehow attributable to the fault of the carrier, the carrier will continue to be liable for the damages caused by its own fault.

There is no doubt that the Covid-19 pandemic has a significant effect over the charter parties as well as any other contracts. However any assesments in this regard will vary in accordance with the applicable law to the charter party. For instance, in English Law, existence of a force majeure event is acceptable only if it is explicitly defined under the related contract. Which means, charter party should include a special provision with regard to the force majeure events, where the epidemic is explicitly regarded as one of the force majeure events. In this respect, it is also known that BIMCO advises shipowner companies to revise their charter parties accordingly. Otherwise, the pandemic will not relieve parties from their obligations. For instance, in the standart text of Gencon 94, which is frequently being refferred to in charter parties, *"pandemic and quarantine"* events are not exclusively regulated. As a matter of the fact the standart text of Gencon 94 does not contain any incidents to be qualified as a force majeure event, apart from the General Strike, War Risks and General Ice clauses.

In terms of Turkish Law, in the absence of an explicit force majeure regulation, the Articles between 136 and 138 of TCO may still apply, as long as the conditions provided therein are fully met. If the performance of a charter party becomes completely impossible due to the pandemic, Art. 136 of TCO shall apply, whereas the Art. 137 of TCO will apply for partial impossibilities. If the performance of the Charter Party did not become partially or fully impossible but the performance of charter party is heaviliy frustrated due to the Covid 19 pandemic, the Art. 138 of TCO shall apply. You can reach detailed information about the effects of Covid-19 on contracts under the Turkish Law in our memorandum of "10 Q&A:

The Effects of COVID-19 on Contracts"[3] published by our office. In this respect, the effects of Covid -19 pandemic over the obligations of the parties in terms of charter parties being subject to Turkish Law, shall be assessed in light of the provisions of the TCO, the TCC and the contractual terms agreed between the parties separately case by case.

Is it possible to terminate a Contract of Affreightment on grounds of Covid-19 pandemic? Legal grounds entitling parties for termination are regulated under the Article 1218 of TCC. According to the Article 1218/1 of the TCC; in case the performance of the contract is hindered due to an action of public authotiries such as prohibition of exportation of the entire commodity from loading port or its importation to the destination port or transhipment, both parties will be entitled to terminate the contract without being obliged to make any compensation.Thus, it can be assumed that parties will be entitled to terminate the contract without being obliged to make any compensations if the import and export activities to China is banned by public authorities due to the pandemic or quarantine measures. Even if the pandemic is not being explicitly mentioned in the article, the prohibition of import, export or transit pass by a public authority due to Covid – 19 may set a good example for a public authority disposals over the import of a cargo being transported in a vessel from any country. Briefly, article's expression of *"such as"* indicates that the aim of legislator does not limit the incidents with the ones explicitly listed in the article, whereas similar incidents should also be included within the scope of the article. For instance, it is also possible to assess the shutdown of ports for cautionary purposes due to Covid-19 within the scope of the article since this can be considered as a similar situation to the "blockade of ports" explicitly stated in the article.

It should be indicated here that under normal circumstances, the termination would not be suitable for both parties once the vessel finally arrived at the port of discharge after loading. This is because that the carrier has completed the transportation of the cargo until the port of discharge and therefore became entitled for freight, where the charterer is waiting for the delivery of the cargo which have transported for commercial purposes to the port of discharge. However, the termination option by operating the Art.1218 of the TCC can be considered as a solution, only if the purpose of the contract is frustraded due to of Covid – 19 epidemic and the frustration cannot be resolved within a reasonable time. If the performance of the contract is somehow frustrated after the beginning of the voyage, it is necessary to wait for a 1 month period for dissapearence of the frustration in order to be able apply to the right of termination in accordance with the art 1218/2 of the TCC.

Even in case of termination of the contract of affreightment, the Captain will still be obliged to protect the benefits of the cargo interests as per Art. 1211 of the TCC. Under such circumstances the captain shall ask cargo interests for their instructions in order to prevent or minimize cargo related damages and take any necessary measures at his own discretion where he fails to take any instructions in order to protect the cargo. In the case of emergency, the captain is obliged to maintain the transportation of the goods to the port of destination or have the cargo stored in a safe place or have it sold at a reasonable price without even being obliged to take any instructions.

[3] TILEGAL's Memorandum "10 Q&A: The Effects of COVID-19 on Contracts"

- **HOW ARE THE CONTRACTS OF AFFREIGHTMENT AFFECTED BY DELAYS ARISING FROM COVID-19?**

According to art. 1222 of the TCC, the delay of the voyage before or after it started due to a natural event or an unexpected circumstance other than the ones envisaged does not change the rights and obligations of the parties; unless, the specific purpose of the contract has been removed due to this delay. Nevertheless, for the delays caused by unexpected circumstances and seen to take a long time according to the existing conditions; the charterer is entitled to discharge the goods loaded on the vessel by providing an adequate and a proper guarantee on the condition that the risk and charges belong to him and that the goods will be reloaded in due time. Also, in case that reloading is not realized, the charterer has to pay the full freight cost and compensate for the damages caused by the discharge. Briefly, the basic principle is that in case of unexpected situations such as an epidemic, there is no right of termination only due to delay. However, if the purpose of the contract is removed due to this delay and the contract becomes unbearable, then the possibility of termination may arise.

- **CAN THE CARRIER CLAIM FOR DEMURRAGE CHARGES IF THE VESSEL IS NOT LOADED/DISCHARGED ON TIME DUE TO COVID-19 OUTBREAK?**

Although the Covid-19 epidemic considerably slowed down the commercial life, sea voyages, loading and discharging operations must continue. In this case one of the problems encountered is whether the demurrage fee will arise due to the time elapsed if the port is not suitable for loading/discharging due to quarantine or epidemic disease.

As it is known, the vessel must give a duly Notice of Readiness (NOR) in order to commence free time and the loading / discharging must not be completed within the free time in order to request demurrage fee. So, in case the vessel is not accepted by the port due to the Covid-19 outbreak or in case of quarantine, does free time and demurrage apply? The vessel must be legally or actually ready and Free Pratique must be granted in terms of COVID 19 in order to commence these periods. For a valid NOR and for the Free Pratique which is not required for the continuance of such periods, it should be examined whether the parties made an arrangement in this context under the carriage contract.

In practice, printed charter parties prepared by different institutions are used and provisions of the same can be changed by the parties according to each concrete case by recaps. The relevant articles of the two uniform carriage contracts, which are of significance in terms of the effects of COVID19 on demurrage, will be referred as below;

i. As per Art. 6 and 110th line of Gencon 94, it is regulated that, the vessel can give a NOR regardless of whether “Free Pratique” is granted or not. In this case, since there is not any requirement of a Free Pratique to be obtained in order to commence free time, the vessel can give a NOR even in cases in which the berth is not suitable or there is an epidemic on the vessel and thus the free time shall commence and subsequently demurrage fees shall arise. Accordingly, an attention should be paid to carriage contracts referring to Gencon 94 and not containing a separate force majeure clause including epidemic diseases.

ii. As for BPVOY (BP Voyage Chaarterparty) that is mainly used in petrolium transportation, as per art. 6 and the lines 270-276 of the same, it is stipulated that a valid NOR will not be deemed to be given without Free Pratique. If the Free Pratique certificate is obtained 6 hours after the NOR is issued, then NOR will be valid. In the event that the Free Pratique Certificate is not obtained within 6 hours despite the issuance of the NOR, the captain has been given the opportunity to send a letter of protest, however NOR will not be valid until Free Pratique is granted. It should be noted here that, there is also a special quarantine clause between lines 972-977, and according to this clause, if the charterer has the knowledge of the quarantine measures taken at the port that the vessel will arrive prior to the departure of the vessel, the free time and demurrage will start to apply; however if this situation occurs after the departure, then the charterer cannot be held liable for the delay caused by quarantine measures.

In this context, the epidemic should be regulated separately under the force majeure section of charter party or recap and special regulations regarding epidemics should also be included in issues related to demurrage. For example, BIMCO has Infectious and Contagious Diseases Clause for Charter parties drawn up during the Ebola epidemic period and this clause is still valid.[44] Our assessments consist of a general approach and since each case will differ depending on the charter party and applicable law, we would like to emphasize that each case should be examined and evaluated separately.

➢ CAN THE CARRIER ALTER COURSE OR PORT DUE TO COVID-19?

The issue of whether the carrier can approach a different port or alter course due to Covid-19 varies according to applicable law. As per Turkish Law; the carrier is obliged to deliver goods at the port specified under contract of affreightment in accordance with art. 1178 of TCC. In case of alteration of the course, it is required to evaluate whether such alteration is reasonable.

As per Article 1113/1 of the TCC, in case of unexpected circumstances, the captain may continue to navigate on another course, interrupt the voyage or return to the port of departure according to requirements and mandatory instructions. In this case it can be concluded that if the Covid-19 outbreak can be considered as an “unexpected circumstance” specified in this article, the carrier may alter the course. However it should be kept in mind that this situation should be examined according to the conditions of each concrete event and evaluated separately.

Another justified situation for deviation from the course is the salvation under art. 1220 of the TCC. Article 1220 of the TCC also includes a category of "deviating from the course for another justified reason”, and Covid-19 outbreak can be counted within this scope. Additionally, the parties may authorize the carrier to deviate from the course with a provision

[4] https://www.bimco.org/contracts-and-clauses/bimco-clauses/current/infectious_or_contagious_diseases_clause_for_voyage_charter_parties_2015

under contract of affreightment or bill of lading, in which case the deviation will be considered justified. In this context, it is possible to regard the deviation as within the scope of salvage in case of illness of a seaman.

➢ CAN THE P&I CLUB BE INVOLVED DUE TO COVID-19 AS THE LIABILITY INSURER OF THE VESSEL?

While the Covid-19 outbreak continues to have influence over the whole world, sea transport proceeds. Therefore, it is clear that Covid-19 outbreak is closely monitored by P&I Clubs. In this context, the question of when P&I Club will be involved and what kind of costs will be covered arises. Firstly, shipowner should keep the vessel seaworthy, voyageworthy and cargoworthy, and should make all necessary arrangements for the Covid-19 outbreak before loading and during the voyage in accordance with the art. 932 of the TCC. For instance, the P&I Club mainly will not cover the damage in cases where the shipowner alter the route to a risky / quarantined port or causes the damage by failing to take precautions notified by his insurer.

Many P&I Clubs have published circulars as to the effects Covid-19 outbreak and the functioning of the Clubs's coverage for their members. In these texts, it is stated that the costs and liabilities incurred due to the illness or deaths of crew members caused by the Covid-19 outbreak during the working period will be covered and it will be treated in the same way as any other crew illness or cause of death.

In the event that the vessel is subject to quarantine due to the Covid-19 outbreak, it is also noted that the additional costs associated with Covid-19 outbreak will be covered provided that the net expenditures and operating costs, the cleaning costs of the vessel and other expenses should be arisen as a direct result of the epidemic on the insured vessel.

D- CAN DAMAGE CLAIMS ARISING DURING THE COVID-19 OUTBREAK BE EVALUATED AS WITHIN THE SCOPE OF CARGO INSURANCE COVERAGE

Although the principle of freedom of contract applies in our law, it is not possible to mention the existence of an absolute contractual freedom in terms of insurance contracts under Turkish Law. Namely, the insurance contracts must comply with the general conditions determined by Republic of Turkey Ministry of Treasury and Finance and mandatory provisions of the TCC. The remaining subjects are frequently referred to the Institute Cargo Clauses. They have the characteristics of "special conditions" and otherwise always can be consented upon in the policy. It is not possible to reach an absolute conclusion regarding whether the delay and damage claims arising during the Covid-19 outbreak remain within the scope of the insurance policy or not, without examining whether an additional guarantee is given by the policy or not. The content and scope of each insurance policy should be evaluated on a case by case basis.

The General Conditions of Cargo Insurance do not specifically mention the outbreak risk however delay in the shipping and transportation of the goods and quarantine claims are

considered out of warranty. In this case, although it is possible to evaluate commodity damage caused by the outbreak as in the scope of coverage, the damages arising from delay may be considered out of warranty. In terms of quarantine-related claims, the legal definition of the term "quarantine" becomes important[5].

In practice, the policies are frequently referred to the Institute Cargo Clauses (A), and according to Art.1 of these clauses "This insurance covers all risks of loss of or damage to the subject-matter insured except as excluded by the provisions of Clauses 4, 5, 6 and 7 below.". Shortly, according to Art.1, in a policy which is subject to Institute Cargo Clauses (A), the risk will be out of coverage only if it is exempted explicitly under the of Clauses 4, 5, 6 and 7.

Outbreak is not counted under exempted cases in The Institute Cargo Clauses (A), which provides coverage for all risks except for explicitly exempted cases. However, under the Art. 4.5. ***loss damage or expense caused by delay, even though the delay be caused by a risk insured against, is one of the exempted cases***. In this situation, while it is possible to evaluate the claims caused by outbreak within the scope of warranty as well as in the general conditions, there is a risk that damages may be considered out of warranty in cases the proximate cause of the damage is delay rather than outbreak.

According to Art.28 of General Conditions of Cargo Insurance, ***"Special Conditions prevail over General Conditions ".*** Therefore, The Institute Cargo Clauses (A) and the policy clauses should be carefully examined on a case-by-case basis.

However, concerning the relationship between the carrier and the charterer, it is crucial to state that; losses due to delay exempted from the coverage of cargo insurances, may cause the liability of the carrier providing that the conditions are met as clearly stated above without prejudice to our explanations on impossibility of performance. In such a case, if the charterer directly brings a claim to the carrier, then the "Carrier's Liability Insurance" can make the indemnification payment.

Provisional Article 1 of the Omnibus bill numbered 7226 regarding the suspension of time limitations, could be considered applicable also for notice periods which are especially important in terms of insurance law and also apply to the lawsuits arising from disputes regarding insurance contracts. Moreover, subrogated insurer according to art. 1472 of the TCC, will also benefit from the same additional periods in recourse actions.

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5 Regulation on Shore Health Surveillance defines quarantine as *"the restriction of activities and/or separation from others of suspect persons who are not ill or of suspect baggage, containers, conveyances or goods in such a manner as to prevent the possible spread of infection or contamination"*

World Health Organisation, defines quarantine as follows: *"quarantine" means the restriction of activities and/or separation from others of suspect persons who are not ill or of suspect baggage, containers, conveyances or goods in such a manner as to prevent the possible spread of infection or contamination"* (International Health Regulations (2005) Second Edition)

In conclusion; as per the first impressions regarding whether the cargoes transported by sea, road and air will be deemed to be in the scope of coverage; the epidemic will have a limited impact on the cargo insurances and it should be evaluated along with the other provisions under the policy. However, under a policy subject to ICC (A), it is possible to consider that some matters related to outbreak, of which delay is not a proximate cause could be considered as in the scope of coverage.

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