COMMENTARY ON EFFECT OF CHANGED CIRCUMSTANCES ON MINERAL AND PETROLEUM SALES CONTRACTS

By John Kelly*

Michael Wright's paper has identified the marketing and financing factors which have been the genesis of the long term sales contract, the various types of sales contracts which have emerged in the market place, the role which such contracts play in risk allocation and the contractual means by which such risks may be allocated and finally how, when the euphoria of initial negotiations has subsided, the Courts may be able to intervene to resolve the consequences of a change of circumstances which the parties had not contemplated or if they had did not resolve at the time of contract. The paper constitutes a most comprehensive review of the subject. Indeed in respect of Wright's discussion of the subject of frustration and the emergence of that doctrine, it is appropriate to recall the words of Lord Diplock *Port Line Ltd. v. Ben Line Steamers Ltd.*[1]:

> It would appear to be the fate of frustration cases when they reach the highest tribunals that either there should be agreement as to the principle but differences as to its application, or differences as to the principle but agreement as to its application.

The differences in principle to which Diplock J. was referring appear to have been largely resolved upon a wide judicial acceptance of the approach adopted by Lords Reid and Radcliffe in *Davis Contractors Ltd. v. Fareham Urban District Council*[2]. The relevant authorities were reviewed by Stephen J. in *Brisbane City Council v. Group Projects Pty. Ltd.*[3] in a discussion which was referred to and adopted by Mason J. and Aickin J. in *Codelfa Construction Pty. Ltd. v. State Rail Authority of New South Wales*[4]. Wright has conducted a detailed examination of the authorities and given a clear statement of the principles and in so doing has noted the completion of the transition from the implied theory as the basis of frustration to the change in obligation test expounded by Lords Reid and Radcliffe in *Davis Contractors.*

There are some areas mentioned by Wright in respect of which I would like to comment by way of elaboration.

IMPLIED TERM

Frustration operates to discharge the contract thereby relieving the parties to the contract from complying with future contractual obligations. As neither party is at fault when frustration applies, one might expect the law to apportion between the parties the losses caused by the discharge of the contract. However, as noted by Wright, where the contract is discharged

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1 [1958] 2 Q.B. 146, 162.
2 [1956] A.C. 696.
3 (1979) 54 A.L.J.R. 25, 28-29.
4 (1982) 56 A.L.J.R. 459, 465-475.

by frustration, any loss thereby incurred by a party to the contract must be borne solely by that party. In the context of a contract for the sale of coal or petroleum entered into to fulfil one or more of the roles referred to by Wright, the discharge of the contract by frustration is not the commercial result desired by the parties. Indeed, it would be the hope of the parties and in particular the seller to arrive at a result which would leave the contract in effect but modified so as to overcome the adverse consequences of the frustrating event. The seller wishes to have the market represented by the frustrated contract continue as a market for his production albeit on terms which will not be disadvantageous having regard to the consequences of the frustrating event.

It may be that the parties would wish the court to imply a term that would give the contract business efficacy in the changed circumstances. But in the words of Mason J. in *Codelfa*[5]:

> For obvious reasons the courts are slow to imply a term. In many cases, what the parties have actually agreed upon represents the totality of their willingness to agree; each may be prepared to take his chance in relation to an eventuality for which no provision is made. The more detailed and comprehensive the contract the less ground there is for supposing that the parties have failed to address their minds to the question at issue. And then there is the difficulty of identifying with any degree of certainty the term which the parties would have settled upon had they considered the question.

In *Codelfa*, part of the appellant's case was that a term had to be implied in the contract to give it business efficacy, to make it workable, *viz.* a term that on the issuing of an injunction restraining a nuisance caused by Codelfa working on the basis of three shifts *per* day, six days *per* week the Commissioner of Railways would grant Codelfa a reasonable extension of time for completion or a term that the works could be carried out working on that basis and no injunction could or would be granted in relation to nuisance from working on that basis. The High Court refused to imply such a term.

The evidence in *Codelfa* revealed that both parties had contemplated the possibility of an injunction issuing to prevent Codelfa carrying out the work by three shifts. However, no contractual provision was agreed upon to cover the contingency for the simple reason that both parties assumed, on the basis of legal advice, that no such injunction would be granted. It was a matter of common contemplation that the work would proceed in three eight hour shifts a day for six days a week. But this was not in itself sufficient to justify the implication of a term. The insurmountable problem for the court was to be able to say, in respect to the term which the appellant sought to imply, 'it goes without saying'. In the words of Mason J.[6]:

> This is not a case in which an obvious provision was overlooked by the parties and omitted from the contract. Rather it was a case in which the parties made a common assumption which masked the need to explore what provision should be made to cover the event which occurred. In ordinary circumstances negotiation about the matter might have yielded any one of a number of alternative provisions, each being regarded as a reasonable solution.

Indeed, in *Codelfa*, the High Court found it easier to conclude that the parties never agreed to be bound in the fundamentally different situation

5 *Ibid.* 461.
6 *Ibid.* 465.

which had unexpectedly emerged, in other words that the contract was frustrated, than to assert that the parties had impliedly agreed that the contract was to remain in force with a new provision, not adverted to by them, governing their rights and liabilities. It is submitted that in the future Courts may be more ready to find in similar circumstances that the contract has been frustrated than to imply a term which would resolve the difficulty and leave the contract in force.

I noted with interest Wright's reference to the decision of Lord Denning M.R. in *Staffordshire Health Authority v. South Staffordshire Waterworks Co.*[7]. In that case, a water company in 1929 entered into an agreement under seal with a hospital authority pursuant to which the hospital 'at all times hereafter' was to receive 5000 gallons of water per day free and all the additional water required at the rate of 2.9 pence (when converted to decimal currency) per 1000 gallons. By 1975, the normal rate charged by the water company was 45 p. The water company purported to terminate the agreement by six months' notice to the hospital authority.

The Court of Appeal held that the water company was entitled to terminate the agreement by reasonable notice but the reasoning applied by Lord Denning M.R. differed markedly from that applied by the other members of the Court of Appeal, Goff and Cumming-Bruce L.JJ. Lord Denning, upon his examination of the authorities detected 'a new principle emerging as to the effect of inflation and the fall in the value of money'.[8] Lord Denning, having referred to 'mountainous inflation and the pound dropping to cavernous depths', concluded that the situation had changed so radically during the 50 year life of the contract that the agreement could be determined by reasonable notice. Is this approach by Lord Denning the forerunner of a doctrine of economic frustration or changed circumstances hitherto unknown in English law? Wright suggests that this may be so.

It should be noted however that Goff and Cumming-Bruce L.JJ. arrived at the conclusion that the contract was determinable by reasonable notice by the application of more conventional principles of construction. Goff L.J. was content to observe that 'in some respects' his reasoning was not the same as that of Lord Denning. Cumming-Bruce L.J. was more pointed in his reference to the reasoning of Lord Denning. He stated[9]:

> With all respect to Lord Denning M.R., I do not found my decision on the existence of an implied term that the agreement should not continue to bind the parties on the emergence of circumstances which the parties did not then foresee. I find it unnecessary on the view which I have formed about the intention of the parties to be collected from the circumstances to consider that. I am not attracted against the history of fact in this case either by the argument founded on frustration or on an implied term akin to frustration, and I can find no authority which leads me to the view that the changing value of money has the effect in relation to domestic as compared to international contracts of giving rise to the operation of implied term that the contract should only persist while money maintained the value or more or less the value that it had at the date of the formation of the agreement.

It is submitted that it may be some time before there is a ready acceptance of the principle expounded by Lord Denning in the *Staffordshire* case. Moreover, the result for the parties of applying any such principle is not

7 [1978] 3 All E.R. 769.
8 *Ibid.* 776.
9 *Ibid.* 784.

clear from the judgment of Lord Denning. Having held that the water company could determine the agreement by reasonable notice, Lord Denning went on to say[10]:

> This does not mean, of course, that on the expiry of the notice the water company can cut off the supply to the hospital. It will be bound to continue it. All that will happen is that the parties will have to negotiate fresh terms of payment . . . . [I]t seems to me plain that the 1929 agreement should be updated so as to have regard to the effect of inflation. The hospital should be entitled to 5000 gallons a day free of charge and pay for the excess at a rate which is seventy per cent of the current market rate. I would commend this solution to these two public authorities in the hope that it will settle their difficulties without troubling the Courts further.

Indeed, none of the three members of the Court of Appeal was prepared to make a finding as to the appropriate rate of charge for the water. All indicated that this was a matter for negotiation between the parties but left it unclear as to the course which a Court would follow in the event that the parties were unable to reach agreement.

FORCE MAJEURE

Very often, the *force majeure* clause is but one of those provisions which appear towards the end of the contract and perhaps drafted without due regard to its importance. In drafting an acceptable *force majeure* clause, there are a number of matters which should be considered.

Purpose

The drafting of a *force majeure* clause should properly recognize the objects of such a clause. The principal purpose of the *force majeure* clause is to excuse the party relying upon the event of *force majeure* from performance. It excuses that party from the consequences of what would otherwise constitute a breach of the contract. Such performance may be excused partially or entirely, temporarily or permanently.

The operation of the *force majeure* clause to excuse performance may nevertheless result in economic hardship to either seller or buyer or both. However, it is not the purpose of the *force majeure* clause to provide any redress for such hardship, only to excuse performance itself. Indeed, problems arising from drastic changes in costs or market prices or other market conditions may be better dealt with in clauses specifically dealing with adjustment in such circumstances, the so-called hardship clause. Wright suggests that it is desirable for a *force majeure* clause to address the extent to which circumstances of economic hardship are to excuse performance. However, one may question either the ability or the willingness of the parties to identify all of the relevant economic circumstances and then to agree upon an allocation of the risks associated therewith.

Events of Force Majeure

The *force majeure* clause should indicate with precision the events of *force majeure* which will trigger the operation of the clause so as to terminate, suspend or modify the obligation to perform. It is common for the

10 *Ibid.* 777.

force majeure clause to list various events of *force majeure* and then to include a 'catch-all' provision in such terms as 'any cause beyond the reasonable control of the party claiming *force majeure*' with the intention of covering all events not specifically referred to.

In adopting such an approach, it is of course important to negate the *eiusdem generis* rule of construction. The draftsman should be mindful of the words of McCardie J. in *Lebeaupin v. Richard Crispin & Company*[11] when he said:

> I take it that a "force majeure" clause should be construed in each case with a close attention to the words which precede it or follow it, and with a due regard to the nature and general terms of the contract. The effect of the clause may vary with each instrument.

Pre-existing Cause

Will a *force majeure* clause excuse performance even though the circumstances relied upon were in existence prior to execution of the contract? In *Trade and Transport Inc. v. Iino Kaiun Kaisha Ltd. (The Angelia)*[12], Kerr J. held that a party would be debarred from relying on a cause which was already in existence at the time the contract was entered into as an accepted peril so as to excuse performance of a contractual obligation where: (a) the pre-existing cause was inevitably doomed to operate on the adventure; and (b) the existence of facts which show that the accepted cause is bound to operate is known to the parties at the time of the contract, or at least to the party who seeks to rely on the exception. Although the House of Lords in *Pioneer Shipping Ltd. v. BTP Tioxide Ltd. (The Nema)*[13] subsequently doubted the correctness of the result in *The Angelia,* their Lordships did so relying upon other grounds and not by doubting the correctness of the principle expounded by Kerr J.

If it is the common intention of the parties that they should be entitled to rely upon a pre-existing cause of *force majeure*, then the draftsman should take steps to ensure that the *force majeure* clause so entitles the parties.

Foreseeability

In construing *force majeure* provisions, the American Courts have held that general or catch-all language in a *force majeure* clause excuses only unforeseen events which prevent performance. An event relied upon to excuse performance cannot be an event which was or should have been foreseeable by a prudent party at the time the contract was entered into[14].

11 [1920] 2 K.B. 714, 720.
12 [1973] 2 All E.R. 144.
13 [1981] 2 All E.R. 1030.
14 *Eastern Airlines, Inc. v. McDonnell Douglas Corp.* 532 F. 2d. 957 (5th Cir. 1976). Williams G.P. 'Coping with Acts of God, Strikes, and Other Delights – the use of Force Majeure Provisions in Mining Contracts'. [1976] 22. *Rocky Mt. Min. Law Inst.* 433. Young M.O. 'Construction and Enforcement of Long-Term Coal Supply Agreements – Coping with Conditions arising from Foreseeable and Unforeseeable Events – Force Majeure and Gross Inequities Clauses'. [1981] *Rocky Mt. Min. Law Inst.* 127.

The draftsman may therefore wish to take the prudent step of providing that the *force majeure* clause may be relied upon by the party seeking to be excused notwithstanding that the event relied upon was foreseeable if not foreseen—if that be the intention of the parties.

Consequences of Force Majeure

The *force majeure* clause should deal clearly with the consequences of the occurrence of a *force majeure* event. In so doing, the clause should take proper account of:

(a) *force majeure* events which give rise to a right to terminate the agreement. Such a right would presumably be restricted to those causes which are permanent in nature and totally prevent performance. Such causes may indeed operate to discharge the contract by frustration but the *force majeure* clause may attempt to deal at some length with the consequences of termination in such circumstances;

(b) causes which are permanent but which only prevent part of the performance obligations under the contract. In such circumstances, the *force majeure* clause would presumably operate to excuse part performance for the remainder of the contract;

(c) the more usual events of *force majeure* which will operate to suspend performance partly or in total.

Beyond the Control of the Party Affected

The *force majeure* clause should address the principles to be applied in determining whether or not the cause is beyond the control of the party claiming to be excused. Must the event be one which is entirely insurmountable or is it sufficient that it should be extremely difficult or burdensome to overcome the event? It is submitted that a cause is beyond the control of such party if that party is unable to avoid or overcome such cause despite the exercise of due diligence or if such cause can only be overcome or avoided at an excessive and unreasonable cost, that is to say, if it is commercially impracticable. In any event, it is important to define the standard of performance required of a party in seeking to avoid or overcome the event of *force majeure*.

In practice the *force majeure* clause often imposes on the party affected an obligation to take reasonable alternative steps to overcome the effects of the event of *force majeure*. Of course, as noted by Wright, it is usual for the *force majeure* clause to provide that settlement of strikes and other industrial disputes is a matter entirely in the discretion of the party affected.

Substitute Supply

The *force majeure* clause should also address the subject of substitute performance. The seller in particular should be concerned to ensure that upon the occurrence of an event of *force majeure* he is not obliged to supply or procure supply from another source to fulfil his obligations under the contract.

If the contract identifies, as export coal contracts usually do, the

mine from which the coal is to be supplied, then a *force majeure* condition at the supplying mine should not require the seller to substitute coal from another mine. Indeed, the nominated mine may well be the only mine owned by the seller from which he can satisfy his obligation to supply.

Where no particular mine is designated as the source of supply or several mines are designated as the source of supply, then particular attention will need to be given in the *force majeure* clause to the consequences of an event of *force majeure* applying at one or more but not all of the relevant mines. It is suggested that the obligations of the seller should in such circumstances be reviewed by reference to the mine or mines from which coal is being supplied at the time the *force majeure* event occurs.

If the contract confers on the seller the right to supply from a source other than that specified in the contract, then the seller should be concerned to ensure that such a right is not construed as an obligation to do so upon the happening of an event of *force majeure* at the mine designated in the contract as the source of supply.

Allocation of Production

Section 2-615(b) of the Uniform Commercial Code of the United States provides for allocation of production where a *force majeure* event impairs a seller's capacity to perform. It provides:

> (b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

The common law confers on a seller no similar right or duty to allocate. It is no defence to an action for breach of contract that other commitments to supply third parties prevented the seller from fulfilling the obligation to supply under the contract in question[15].

If a court is to be allowed to take account of the seller's obligations under other contracts, then the *force majeure* clause must be appropriately drafted. In *Hong Guan & Co., Ltd. v. R. Jumabhoy & Sons Ltd.*[16], a contract for the supply of cloves was expressed to be 'subject to *force majeure* and shipment'. The Privy Council had no apparent difficulty in deciding that such words were not sufficient to enable the suppliers to excuse their failure to deliver by reference to their other commitments. In the words of Lord Morris of Borth-Y-Gest[17]:

> So far as the clause deals with force majeure, it appears to be designed to protect the respondents from liability in the event of their being prevented from performing the contract by circumstances beyond their control. It seems to their Lordships to be in consonance with this to construe the second branch of the condition as being designed to protect them from liability in the event of their being prevented from carrying out the contract through inability to procure the shipment. If the words were to be construed as covering a situation when shipment did not take place merely as the result of the arbitrary choice of the vendor, then there would be no contractual force in the document, which would merely give an option to the vendor.

15 *Hong Guan & Co. Ltd. v. R. Jumabhoy & Sons Ltd.* [1960] 2 All E.R. 100.
16 [1960] 2 All E.R. 100.
17 *Ibid.* 106.

However, the Privy Council did admit of the possibility of cases 'where words in a contract will in certain circumstances provide an excuse for a vendor who fails to deliver'[18].

Tennants (Lancashire), Ltd. v. C.S. Wilson & Co., Ltd.[19] is an example of such a case. In that case, the defendants, who had contracted to sell to the plaintiffs their requirements of magnesium chloride over the year 1914, to be delivered in monthly instalments, failed to deliver 240 tons. The greater part of the supply of magnesium chloride came from Germany. The outbreak of war in 1914 put an end to this source of supply and caused a substantial shortage in the supply with a consequent rise in price. The defendants would have been able to obtain at an increased price sufficient magnesium chloride to satisfy the plaintiffs' contract if they disregarded their other contracts and the normal requirements of their business but not enough to satisfy all their contracts. In an action for damages for breach of contract, the defendants pleaded that they were entitled to suspend delivery under a condition in the contract which provided that 'deliveries may be suspended pending any contingencies beyond the control of the sellers or buyers . . . causing a short supply of labour, fuel, raw material, or manufactured produce or otherwise preventing or hindering the manufacture or delivery of the article.' The House of Lords held that, apart from the question of price, the evidence showed a shortage in the supply of the article which hindered delivery by preventing the sellers from fulfilling their obligations to their customers in the ordinary course of their business and that the defendants were justified in suspending delivery to the plaintiffs. The Court considered that the language of the contract entitled the Court to look beyond the parties, the seller and buyer, and consider what were the seller's commitments to other people under contracts which existed between them. Lord Atkinson said[20]:

> The whole argument of the respondents has been directed to show that the appellants could have obtained the 240 tons necessary to fulfil their particular contract, and that the appellants were bound to supply them in preference to all others. The respondents were to get what they contracted for, and, if their contention be sound, the other customers to be left with a cause of action. But the delivery, which might be prevented or hindered, was not the mere delivery to one purchaser against many of the quantity purchased by him, but delivery under the normal engagements of the appellants' trade to the whole body of the customers to whom they were bound to deliver in the year 1914.

Similarly, in *Pool Shipping Co. Ltd. v. London Coal Co. of Gibraltar Ltd.*[21], there was a *force majeure* clause in wide terms under which the Court felt entitled to look beyond the buyer and seller and to consider the seller's commitments under contracts with other buyers.

It should be noted that in *Tennants'* case the House of Lords considered that a rise in price would not in itself constitute a hindrance to delivery within the meaning of the particular condition of the contract being considered by the Court in that case.

If the seller wishes to have the right to allocate production upon the

18 *Ibid.*
19 [1917] A.C. 495.
20 *Ibid.* 520.
21 [1939] 2 All E.R. 432.

happening of an event which precludes him from supplying all buyers, then such right should be expressly provided for in the contract. The basis of allocation may be that the seller would only be obliged to supply to the buyer, for the period of reduced production, a percentage of available production equal to the percentage of total production which the buyer would otherwise be entitled to receive during periods of full production. In any event, however, the basis of allocation, if any, would be a matter to be negotiated and agreed upon between the parties. If the seller wishes specifically to favour one customer over another in the event of a shortage of supplies, he must reserve the right to do so in the contract. In such event, the seller would also need to include an allocation or priority clause not only in the contract with the customer to be favoured but more particularly in all other contracts so that the 'not to be favoured' customers will have notice of and be bound by such system of priority in allocation.

Effective Cause

The occurrence which is relied upon to invoke the *force majeure* clause must be the effective cause of the inability or failure to perform and the burden of establishing this rests with the party wishing to invoke the clause. Sometimes, performance may be adversely affected by two or more causes of *force majeure* and it may be difficult to quantify the impact of each on that party's performance. The party's inability to perform is really attributable not to any one particular cause of *force majeure* but rather to the aggregate effect of two or more events or causes of *force majeure*. It may therefore be desirable for the *force majeure* clause to provide that in such circumstances the party invoking the *force majeure* clause may rely upon the aggregate effect of all such *force majeure* causes.

If, as hereinafter discussed, the party seeking to rely upon a claim of *force majeure* is required to give notice of the claim and the grounds for it within a specified time after the occurrence of the relevant event, then care should be taken not to omit any of the several grounds upon which *force majeure* is claimed. Furthermore, other grounds may arise during the event or events covered by the initial notice which may overlap or extend the effect of the events initially notified. In such a case, it is important to ensure proper notice is given in respect of any supervening event of *force majeure* occurring during a period of suspension arising out of the initial notice.

Notice

It is advisable to require that a party seeking relief under a *force majeure* provision give notice to the other party at the commencement and again at the end of a claimed event of *force majeure*. Such a notice provision may further provide that the claim of *force majeure* so notified will be deemed to be accepted by the other party unless objection is made within thirty days of receipt of such notice—of course, the party least likely to be affected by an event of *force majeure* may be disinclined to accept such a provision.

It is also suggested that the giving of prompt notice should not be a pre-condition to a valid claim of *force majeure*. That is to say, failure to

give notice should not invalidate a subsequent claim of *force majeure* although it may entitle the other party to recover any damages it sustains as a consequence of the failure to give such notice.

Supply of Quantities Excused

Provisions relating to the duty to supply or purchase quantities excused from delivery by *force majeure* should be included. There are a number of different ways in which this matter can be treated:

(a) Quantities excused by permanent *force majeure* affecting in part the obligation to supply should not be made up. Permanent total *force majeure* will in all likelihood result in termination of the contract in which case there should be no obligation to make up supply.

(b) In the case of a temporary *force majeure* resulting in a suspension of the obligation to supply, the seller may be required to make up a shortfall of delivery during a specified period after the period of suspension or, alternatively, to the extent that the seller is able to do so within its normal operating and delivery schedule.

(c) If the seller has claimed *force majeure* and the buyer has exercised a right under the contract to purchase material from other sources, or, regardless of the contract has found it necessary to purchase material elsewhere, then the contract might give to the buyer the right to exclude from the contract the quantities the supply of which was suspended by the event of *force majeure.*

(d) If the clause provides that any shortfall of supplies may or should be made up when the suspension due to *force majeure* is lifted, then consideration must be given to the question whether such shortfall quantities are to be supplied at the price ruling at the date of actual delivery or at the time when deliveries should have been made if it were not for the suspension of the obligation to supply. Obviously, if there is a price escalation mechanism in the contract, as there will almost invariably be, then the seller will be concerned to ensure that the escalated price is applied to the make-up volumes.

Buyers Force Majeure

A matter of some contention may be the extent to which, if any, a buyer should be protected by a *force majeure* provision. It will be the seller's concern to ensure that the buyer's obligations to present vessels (in the case of an f.o.b. contract) to take delivery and to pay are not affected by circumstances relating to the buyer's production facilties or the market which the buyer supplies. In particular, a *force majeure* clause should not operate to excuse the buyer from any payment obligation nor, from the seller's point of view, should any inability of the buyer to pay operate to excuse the buyer from the obligation to buy and pay.

In a paper entitled 'Force Majeure Clauses and International Sale of Goods—Comparative Guidelines for the Common Lawyer'[22], D. Green argues that in long-term contracts at least a buyer should be afforded *force majeure* protection. He advances at least three reasons for this:

22 (1980) *Australian Business Law Review* 369, 379.

1. It is an indication of the seller's good faith and is conducive to repeat business in the future.
2. The *force majeure* clause operates to protect the contract. If the buyer cannot rely upon *force majeure* and performance of the contract becomes extremely onerous or difficult due to circumstances which would otherwise be regarded as *force majeure* circumstances, then the buyer may be encouraged to either breach or in an extreme case repudiate the contract. Any action by the purchaser to recover damages would have an adverse effect on the future administration of the contract.
3. It may be arguable that a failure to extend *force majeure* protection to a buyer may amount to the clause being regarded as harsh and unconscionable.

CONCLUSION

Force majeure provisions vary from clauses containing but a few sentences to those containing several elaborate and detailed paragraphs. The clauses may vary considerably as to the circumstances covered and the extent of relief provided. Some of them may take account of some of the considerations referred to above. Like most contract provisions, the *force majeure* clause is limited only by the needs and foresight of the parties to the contract and the ingenuity of the draftsmen.