The latest Coronavirus to emerge is 2019-nCoV is setting the media ablaze due to its rapid spread through China and now to other countries, presumably being spread by visitors arriving from Wuhan. The virus is a Coronavirus and therefore similar to SARS and MERS, they all share their ancestry with the common cold and flu. Wuhan is a port city handling breakbulk, passengers and over 1.5 million boxes a year with close links to Shanghai and therefore there is a link to the shipping market.

At the time of writing (27/1/2020) the World Health Organisation have not declared an international public health emergency and have not recommended general bans on travel or trade although internally in China the movement of people in some cities is restricted.

Charterparty considerations

Some charterparties have contained express references to "fever and epidemics" as causes that would allow a shipowner to refuse to comply with any voyage orders that would involve calling at a place where such fever and/or epidemic is present; but, with advances in medicine over the last 50 years some C/Ps have seen the wording struck out as not being relevant.

The starting point is to establish whether the C/P contains any reference to clauses that could be helpful or detrimental to Charterers.

In the absence of any express reference the general position is that charterers will warrant that the vessel will only trade between good and safe ports. The Eastern City [1958] 2 Lloyd's Rep. 127 provides the following definition:

"....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."

Whilst primarily relating to the safety of the vessel itself, its important to note that it does not specifically exclude risks to crew, rendering a port unsafe. Therefore, it is likely that this clause will only be beneficial to the shipowner if there is evidence that the Wuhan Flu is present at the port. There is currently no authority on the issue of whether an infected port is unsafe and this is likely to be decided on an independent case by case basis.

If the port subsequently becomes unsafe while the vessel is en route, charterers come under a secondary obligation to cancel the original order and, if they wish to continue to trade the ship, issue new orders to another safe port. If the owners become aware of the changed circumstances then they are themselves entitled to stop obeying the original order, unless there is a specific clause in the charterparty preventing this. Given the nature of the outbreak there is a possibility that the virus could spread to a previously safe port prior to the vessel’s arrival and so this secondary obligation is something that should be at the forefront of charterers’ mind.

There has been widespread international media coverage so it may be possible for charterers to contend that any damage suffered by owners as a result of calling at a port that has been infected with the virus has been caused (at least in part) by the negligence of the master and crew. In practice this is a difficult
argument to run as it is problematic to contend both that the port was safe and also that is was so obviously unsafe that the master should have disobeyed charterers’ order to sail there.

Practical Considerations

The starting point is to establish whether there are any clauses in your C/P that are helpful to the current situation. If the C/P is silent then the following clauses may be useful and are likely to be much more balanced than the equivalent BIMCO Clauses which will be owner biased:

Voyage Charterparty

Contagious Disease Clause

Notwithstanding any other provision in this charter party the Charterers shall not be liable for any damage and/or delay due to voyage orders that result in the Vessel calling at a port where fever and/or epidemics and/or contagious disease are prevalent in the circumstances where such fever and/or epidemics are widely publicised. It will be the responsibility of the Master and/or crew to maintain an up to date knowledge of the spread of these fevers and/or epidemics and/or contagious disease and advise the Charterers of any issues with the voyage order as soon as possible once the voyage order has been made. Should any other provision in this charter party conflict with this clause then this clause shall be considered paramount and as such will override any contrary provision.

Time Charterparty

Contagious Disease Clause

Notwithstanding any other provision in this charter party the Charterers shall not be liable for any damage and/or delay due to voyage orders that result in the Vessel calling at a port where fever and/or epidemics and/or contagious disease are prevalent in the circumstances where such fever and/or epidemics are widely publicised. Should there be any delay and/or damage to the Vessel due to calling at a port where fever and/or epidemics and/or contagious disease are prevalent then the Vessel will be off-hire until the full working of the Vessel is restored to Charterers. It will be the responsibility of the Master and/or crew to maintain an up to date knowledge of the spread of these fevers and/or epidemics and/or contagious disease and advise the Charterers of any issues with the voyage order as soon as possible once the voyage order has been made. Should any other provision in this charter party conflict with this clause then this clause shall be considered paramount and as such will override any contrary provision.

Should Assureds have any queries in relation to this advice then they should contact the Claims department in London, Dubai or Shanghai.