

## **Force Majeure Under the NAESB**

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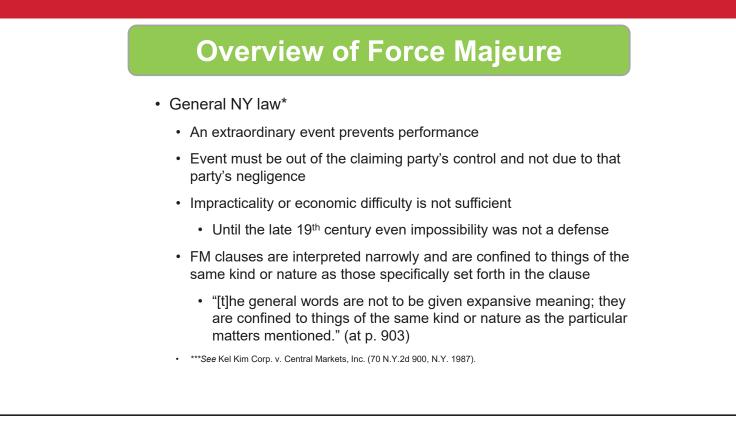
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# **Topics for Discussion**

- Overview of the concept of force majeure
- Analysis of the NAESB Force Majeure
  provision
- Relevant case law

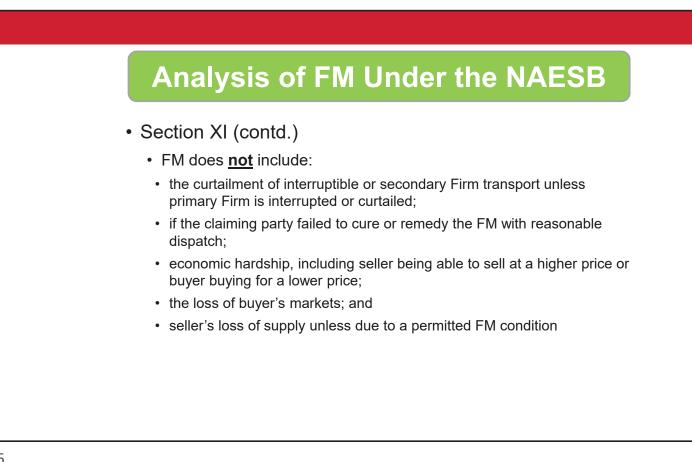
### **Overview of Force Majeure**

- Origin in US law Taylor v. Caldwell
  - · English law, contract to rent a music hall for 4 days in 1861
  - · Hall burned down before the event
  - · Court held that the lessor was excused
  - Holding was closer to an impossibility or frustration of purpose analysis, which are similar to FM but different



## Analysis of FM Under the NAESB

- Section XI
  - FM is "[a]ny cause not reasonably within the control of the party claiming suspension".
  - FM does not excuse obligations to make payments for invoiced amounts, liquidated damages, imbalance charges, and early termination payments
  - FM includes Acts of God (primarily weather); weather-related events affecting an entire region; interruption or curtailment of Firm transportation; acts of others including strikes, sabotage, wars and terrorism; and governmental actions



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