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Force Majeure Clauses in Natural Gas Contracts: Fifth Circuit Provides Guidance

The U.S. Court of Appeals for the Fifth Circuit issued a decision on July 16, 2024, in *Mieco LLC v. Pioneer Natural Resources USA Inc.*, addressing the interpretation of force majeure clauses under New York law. The case, which arose from Pioneer Natural Resources' inability to deliver contracted natural gas during Winter Storm Uri in 2021, provides critical guidance for parties negotiating and enforcing energy contracts.

The dispute arose when Pioneer invoked a force majeure clause to excuse its failure to deliver contracted amounts of natural gas to Mieco LLC. The storm significantly disrupted gas production in the Permian Basin, forcing Pioneer to halt deliveries and leaving Mieco to purchase replacement gas on the spot market at a cost of approximately $9 million. Mieco then sued Pioneer for breach of contract, challenging the force majeure claim and alleging that Pioneer failed to meet its contractual obligations.

Force Majeure and "Prevention"

The force majeure clause defined qualifying events as those that "prevent" performance and cannot be overcome through due diligence. Mieco argued that "prevent" required literal impossibility, but the Fifth Circuit rejected this argument, interpreting "prevent" to include events that hinder or impede performance. The Court specifically held that "the contract term 'prevent' does not mean that an event must render performance literally impossible to trigger force majeure." Further, the Court noted: "[t]o limit 'prevent' to impossibility would render much of the contract language, including due diligence obligations, meaningless."

Due Diligence: a Key Dispute

The force majeure clause required both parties to "make reasonable efforts to avoid the adverse impacts" of a force majeure event and to "resolve the event or occurrence" to resume performance. Mieco argued that Pioneer failed to meet this obligation by not sourcing alternative gas or taking sufficient action to mitigate the storm's effects. The Fifth Circuit found factual disputes on this issue, so the Court held that a dispute over whether Pioneer exercised sufficient due diligence could not be resolved on summary judgment.

The underlying case is currently being reset for trial between January 27, 2025, and March 21, 2025, wherein the trial court will consider the due diligence issue together with the "sole and exclusive remedy" provision of the contract.

Spot Market Gas Excluded

The Fifth Circuit also addressed Mieco's claim that Pioneer should have purchased replacement gas on the spot market to fulfill its obligations. It concluded that the contract's reference to "seller's gas supply" only included gas Pioneer produced in the Permian Basin, not gas available for purchase. The Court acknowledged that Pioneer was a natural gas producer, not a middleman who buys from one party and to resell it to another. The Court held that the contract's reference to "seller's gas supply" only included gas Pioneer produced from its production sources, namely the Permian Basin. Requiring Pioneer to source gas from the spot market, the Court reasoned, would conflict with the contract's language and effectively eliminate force majeure protections.

Practical Implications

- **Tailored Clauses:** Force majeure provisions must be carefully drafted to address specific risks and obligations, particularly regarding mitigation and alternative performance.
- **Documented Efforts:** Sellers invoking force majeure should maintain comprehensive records demonstrating their due diligence to avoid disputes over compliance.

- **Clear Definitions:** Defining terms like “supply” and “prevention” in unambiguous language can help avoid costly litigation.

As climate events and market volatility increase, the Fifth Circuit’s decision underscores the importance of drafting contracts that balance flexibility with accountability.

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