

Litigation Alert: COVID-19, Contracts and Force Majeure

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Businesses have begun to feel the impact of novel coronavirus (COVID-19) as it spreads across the United States. As these effects continue along the supply chain, contractual obligations must be examined. Top of mind is the rarely used "Force Majeure" provision. This term is often glanced over during day-to-day business transactions but in the present economy needs detailed scrutiny. Each contract and situation requires individual analysis, but various themes are common.

What is Force Majeure?

Originating in French civil law, the term refers to a "superior force" which renders performance of a contract impossible. Many contracts contain these provisions, which excuse the parties from their obligations if an extraordinary event truly out of either parties' control occurs. These are also known as "Act of God" provisions.

How may the provision apply today?

Since the novel coronavirus outbreak began in China in late 2019, supply chains and commercial activity throughout the world have been disrupted. On March 11, 2020, the World Health Organization (WHO) declared the coronavirus a pandemic. Various state and local health agencies have also declared states of emergency. As a result of these public health declarations, many individuals have restricted their travel and adjusted their day-to-day routine. To the extent these changes have impacted a parties' ability to meet their contractual obligations, a Force Majeure provision may excuse performance. For example, a company may be required to meet a minimum number of participants for a hotel block, but the participants will no longer attend due to virus-related travel restrictions. Depending on the contract's terms, the company may be excused from filling the hotel rooms.

What do I need to consider?

The specific provisions of each contract must be thoroughly reviewed. Although this viral outbreak may seem to fit the requirements of a Force Majeure, there may be additional terms the parties have agreed to which restrict the provision's application. Many contracts require notice to be provided within a specific



timeframe. Some agreements may have narrow definitions of a Force Majeure. For example, although the novel coronavirus may discourage people from travelling to an event, it may not truly make travel impossible. Additionally, a party's performance might not be excused entirely, but rather only for the duration of the outbreak, i.e., the conditions which have prevented performance. For those in the midst of contract negotiations, the specific definitions and terms of Force Majeure provisions must be carefully crafted.

For more information, contact Matthew Jacober, Patricia Lehtinen Silva, or a member of the Litigation & Dispute Resolution team at Lathrop GPM.

Up-to-date information on the coronavirus can be found at the Center for Disease Control and Prevention: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>