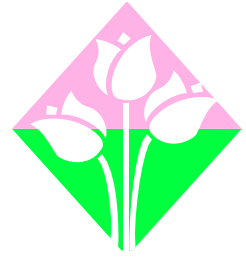




Happy Spring!

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“Tip of the Month”

Coronavirus as Force Majeure to Excuse Contract Performance

Force Majeure (“superior force”) or “Act of God” clauses can justify suspending performance of duties under a contract for causes outside the parties’ control such as strikes, inability to procure materials, power failure, government restrictions, riots, sabotage, terrorism, fire, flood, pestilence, and maybe the coronavirus.

A *force majeure* clause should excuse contract performance for a cause that could not be avoided by the exercise of due care. This is to allocate risk when performance is impossible.

The effectiveness of this excuse from contract performance can depend on the contract language, local law, and the causal connection between the terrible event and the inability to perform under the contract.

The March 11, 2020 World Health Organization declaration of coronavirus pandemic would likely support a finding of force majeure under broad contract language that might include epidemic and pandemic among the list of terrible events.

Courts usually require that the party claiming a force majeure defense show that the event was not foreseeable and directly caused the inability to meet contract obligations. The coronavirus pandemic is not a normal risk of doing business like some weather events such as Mississippi River knocking out a business in the flood zone.

A party should strictly comply with contract requirements, such as by giving prompt notice of the force majeure claim. Sometimes courts will deny the force majeure defense if notice of the claim was not timely given.

Now that lots of businesses are knocked out and losing revenue, people should look at their contracts to see if force majeure is a basis for suspending performance of duties under the contract. They might also check their insurance policies for business interruption coverage and make sure the insurance contract does not have a force majeure clause that would serve as a basis to deny that coverage.

All insurance claims should be made promptly to avoid denial for untimely claim. If you need help with contract issues, give our office a call at (603) 668-1971 or contact us by email at mailbox@biz-patlaw.com. Our attorneys are happy to help!

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