**Knox McLaughlin Gornall & Sennett, P.C.**
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# COVID-19: Force Majeure Considerations

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## All businesses should assess how the COVID-19 pandemic affects their contractual obligations and whether force majeure provisions apply.

The "*force majeure*" clause is a contract provision that relieves a party or parties to a contract from performing their obligations upon a circumstance that is beyond their control.

Generally, such circumstances are natural disasters, wars and other extraordinary events that make performance of a party inadvisable, commercially impracticable, illegal, or impossible. Under common law, the *force majeure* clause is never implied and must be evidenced in a contract. In addition, the interpretation and applicability of *force majeure* clauses have been often narrowly interpreted by courts, which means parties are generally governed by only the words on the page.

Given the current state of emergency, businesses must identify if *force majeure* clauses are contained in existing contracts and determine whether they provide relief in response to the business disruptions resulting from the COVID-19 pandemic. As a result, businesses must pull all of their active agreements for review with legal counsel, which include, without limitation, the following:

- Supply Agreements
- Service Agreements
- Loan Documents
- Insurance Policies
- Construction Agreements
- Leases
- Government Contracts

The types of agreements above generally include performance deadlines, covenants and other obligations that may be breached due to disruptions caused by the COVID-19 pandemic.

**We are advising businesses to identify and monitor situations which may cause a breach to an agreement, keep detailed records of performance/compliance issues and understand the process to seek relief under existing *force majeure* clauses.**

Generally, *force majeure* clauses come with notice and mitigation requirements for a businesses to obtain relief, which require legal counsel to ensure compliance. ***Even to the extent you have an agreement which references force majeure, or in the event your agreement is silent, other provisions such as the UCC and other theories of law may also apply to grant you relief. It is critical to ensure, however, that these issues are properly addressed.***

The preparation and responsiveness of a business to any contractual issues created by the COVID-19 pandemic is imperative to prevent unwarranted legal disputes. Knox Law is prepared to help you navigate the uncharted paths created by the COVID-19 pandemic and is available for immediate assistance.

Please contact your Knox Law attorney to learn more. If you are not currently a client, please call 814-459-2800 to leave a message and someone will get back to you within 1-2 business days.

*More resources and information regarding COVID-19*

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