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COVID-19 HITS THE CONSTRUCTION INDUSTRY

Coronavirus Resources

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For Construction Contracts, is Force Majeure an Available Excuse of Performance?

Much like the global impact from Covid-19 not all occurrences can be foreseen. This is why many contracts contain a provision known as a force majeure clause. Force majeure clauses are especially important in times like these – when businesses are shutting down, the government is ordering the labor force to stay home, and supply chains are interrupted or non-existent.

The question many in the construction industry and beyond are asking is whether the Covid-19 pandemic excuses performance under a contract. As usual when it comes to the law, it depends.

BACKGROUND OF COVID-19 AND THE “PANDEMIC”

For most people, Covid-19 causes mild to moderate respiratory illness, and they will recover without requiring special treatment. Older people and those with underlying medical problems like cardiovascular disease, diabetes, chronic respiratory disease, and cancer are more likely to develop serious illness.

On Jan. 30, 2020, the World Health Organization (WHO) designated the Covid-19 outbreak a Public Health Emergency of International Concern. Thereafter, due to significant spread of Covid-19, the WHO designated it as a pandemic on March 11, 2020. On March 13, President Donald Trump declared a state of emergency. Many states had previously declared states of emergency, including California and New York, and subsequently, governors of other states have been issuing executive orders requiring residents to stay home, subject to certain limited exceptions for essential workers. Suffice to say that Covid-19 has had a significant and immeasurable impact on the global economy and the ability of parties to perform under contract.

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