

## Report on Supply Chain Compliance Volume 3, Number 8. April 16, 2020

### Force majeure provisions in light of COVID-19

---

By Karen Kroll

With the COVID-19 pandemic prompting myriad business closures, many suppliers and their customers are reviewing the force majeure provisions within their supply chain contracts. Force majeure, which translates to “superior force,” recognizes that an event that’s outside anyone’s control and unavoidable—such as a natural disaster—can make it impossible for a party to fulfill its obligations under a contract. Perhaps not surprisingly, the clause is sometimes called an “act of God” provision.

According to a recent [article](#) in *The National Law Review*, written by attorneys with Greenberg Traurig LLP,<sup>[1]</sup> “a force majeure clause is a contract provision that excuses a party’s performance of its obligations under a contract when certain circumstances beyond their control arise, making performance inadvisable, commercially impracticable, illegal, or impossible.”

While not all contracts between suppliers and their customers include these provisions, they “are common enough to warrant the attention of every prudent supplier’s or customer’s lawyer,” said Peter Biagetti, attorney with Mintz in Boston, Massachusetts, USA.

### No single template

The analysis of force majeure provisions will be complicated by the fact that they tend to vary from one contract to another, said Christy Hull Eikhoff, attorney and co-chair of the Industrials & Manufacturing litigation team with Alston & Bird in Atlanta, Georgia, USA. “There are no typical grounds to invoke force majeure, as force majeure provisions—by their very nature—address atypical events and circumstances,” Biagetti said.

“The operation of the force majeure clause is going to depend on the actual language,” Eikhoff added. Some includes a “closed” list of triggers, such as hurricanes, tornadoes and other weather events, as well as civil unrest and riots. Some state an epidemic is one reason to invoke force majeure. These provisions will “go a long way to being applicable under current circumstances,” he noted.

Government orders or acts of authorities are sometimes listed as force majeure triggers, Eikhoff said. These also may be relevant with the coronavirus pandemic, given that government entities across the globe ordered some businesses to stop operations. Affected businesses may credibly argue this made it impossible for them to meet the obligations of their contracts.

Other force majeure provisions are open-ended. They may say something like, “acts of God and other events outside the control of the parties that affect their ability to perform.” The challenge? “When you go to case law, ‘act of God’ isn’t very well defined,” Eikhoff said.

This document is only available to subscribers. Please log in or purchase access.

[Purchase Login](#)

---

