Force Majeure and Coronavirus

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Force majeure law in the context of pandemics has never been fully explored in the context of construction contracts and disputes. In the wake of coronavirus and its impact on our economy, it is difficult to predict how a finder of fact would resolve claims for construction delays and disruption arising from manpower shortages, material delivery delays and escalating price increases caused by or resulting from the virus. In many instances, the resulting impact may be considered to be beyond the contractor’s reasonable control. Certainly the Owner of a construction project may elect to suspend operations to protect its residents and occupants of existing facilities.

At this point, local governments, health organizations, and private employers have imposed restrictions on travel or assembling in groups. In many instances, quarantines have been imposed on individuals having exposure risks to themselves and others. Consequently, the construction industry could realize impacts on productivity, costs, and ability to meet completion deadlines. Participants to the construction industry may resort to force majeure law or relevant contract provisions to gain guidance in evaluating potential claims and damages. It is therefore important to review “force majeure” clauses in contracts. Significant attention should be given to those clauses that cite to governmental actions, national emergencies, references to epidemics, pandemic or quarantines. Many clauses drafted prior to this virus may have referenced “acts of God”, “unforeseen events”, “natural disasters” or “causes beyond the contemplation of the parties”. In those instances, certainly arguments can be advanced to categorize the virus as a force majeure event.

At Becker, we are equipped to guide you through these construction dilemmas. Our group of board certified construction lawyers are on call to provide assistance.