

COVID-19 & Meeting Contracts

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“Someone Left the Cake Out in the Rain”

Effect on Meetings Scheduled in 2021

- Negotiating termination, cancellation, and rebooking
- Proceeding with in-person or hybrid meetings
 - Hotel preparedness
 - Attendee assumption of risk and waiver of claims
 - Contact tracing

“We Are Never Ever Getting Back Together”

Cancellation/Termination

- Timing
 - Has the force majeure event occurred?
 - Is there a notice provision?
 - Will the force majeure event resolve itself?
- Renegotiate attrition
- Issues surrounding rescheduling/rebooking the meeting

“Alphabet Soup”

- Termination vs. Cancellation
 - NOT the same
- Contracts typically have **both** a termination provision and a cancellation provision

Earth, Wind & Fire

What's a Force Majeure Clause?

- Risk allocation
- Excuses performance
- Unforeseeable at the time of contracting
- Outside of control of party invoking

“It’s Elementary”

Basic Elements of a Force Majeure Clause

- List of triggering events
- Catch-all phrase
 - “any act or occurrence beyond the parties control including, but not limited to...”
- Standard for termination
 - Impossible
 - Illegal
 - Commercially impracticable (frustration of purpose)
 - Inadvisable
- Operative provision
- Notification requirement

“Good Boy vs. Bad Boy” (Hotel vs. Planner)

- Hotel Perspective
 - Impossible for the hotel to provide its facilities or services
- Meeting Host
 - An act or event that occurs after the contract has been signed that materially affects the meeting and makes it substantially more difficult to stage the meeting as planned or attract the number of attendees as planned

“ABC”

Legal Standards for Termination

- Performance is impossible or illegal (objectively)
- Frustration of purpose
- Performance is “impracticable”
 - Substantially more burdensome than originally expected due to an extreme or unforeseeable event occurring that the parties could not have reasonable anticipated (could not have foreseen)

“I’ve Been Everywhere”

Tips & Tricks for Drafting

- Strictly construed
- Depend on the legal standards included in the provision
 - Don’t settle for illegal/impossible
 - Demand “impracticable” or “commercially impracticable”
- Remember – it’s about risk allocation
- Clauses should be broadly drafted
- Include other significant contingencies
- Specify the required impossibility standard to invoke the force majeure clause

“50 Ways to Leave Your Lover”

Force Majeure Events Include.....

- Facility was used within the past 60 days as an overflow health facility/homeless shelter
- Acts of G-d
- Terroristic acts or threats (domestic or foreign) affecting attendees or potential attendees travel to the meeting or presence at the meeting
- Hazardous weather (actual or forecasted)
- Government regulations, advisories, guidelines or quarantine restricting travel including stay at home orders
- Travel restrictions imposed by attendee’s employers
- Event preventing __% of attendees from traveling

“And the Beat Goes On”

- Strikes, labor disputes, picketing or work stoppages (actual or threatened) materially affecting the meeting
- War (declared or undeclared) or specific threat of war
- Government regulations by the US (or applicable foreign country) restricting travel including advisories, quarantines, or curfews or travel ban to a specific country or region(s) of a country
- Epidemic or disease in the city or region where the meeting is to be held or from where potential attendees would be traveling
- Any act or occurrence creating a significant risk to the health or safety of potential attendees

And on....

- Damage or harm to the city or region materially affecting basic governmental services or functions
- Damage to the reputation of the facility or the city or region materially affecting the meeting sponsor's ability to attract attendees
- Cancellation or restriction of commercial travel to or from the meeting location

“More Than Meets the Eye”

Non-Force Majeure Termination Triggers

- Change in hotel ownership or management
- Deterioration of facility where meeting is to be held
- Construction and/or renovation at the facility
- Loss of health permits at the facility
- Availability of convention center/headquarters hotel
 - Inability of the parties to negotiate a mutually acceptable agreement regarding use of the convention center
 - Inability or unwillingness of the convention center to provide actual use of its facility over the meeting dates

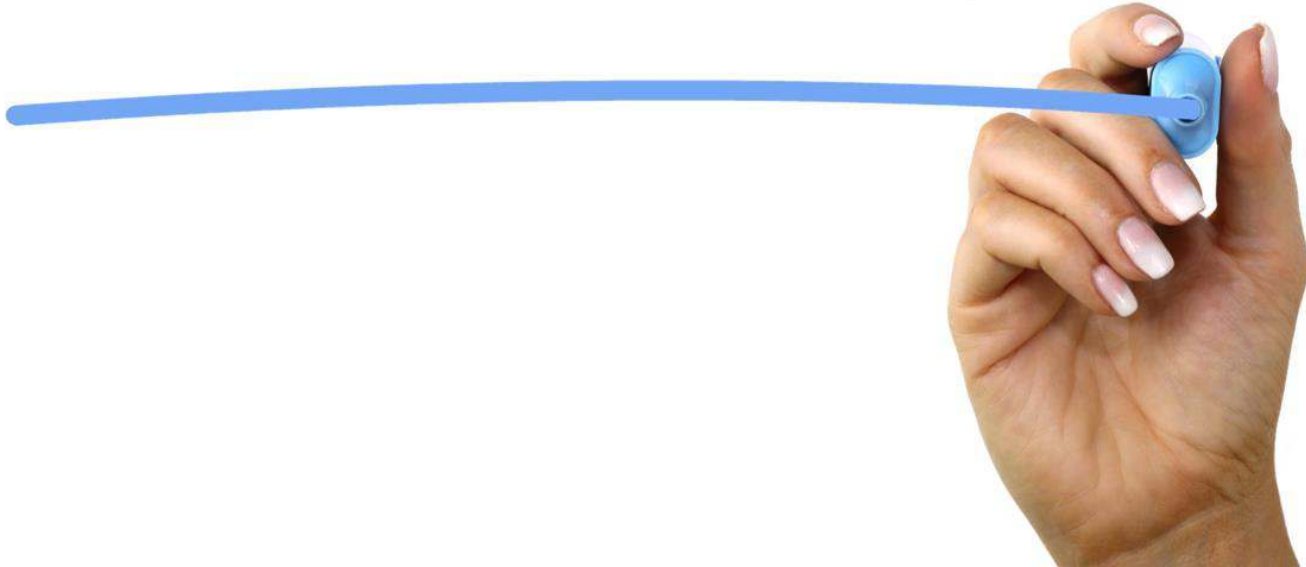
“I’ve Got You Covered”

- Event cancellation insurance
 - Unicorn?
- Still available & still worthwhile
 - No COVID-19 coverage under new policies
- Cost benefit analysis
- Buyer beware
 - Must carefully review coverage & exclusions
- Many successful 2020 claims

“Play It Again, Sam”

- To Cancel or Not to Cancel
 - Review the contract(s)
 - Research orders, restrictions
 - Review insurance coverage
 - Outreach to attendees, sponsors and other stakeholders
- Force Majeure Clauses
 - **Grounds for Termination:** the more specific and the more detailed the better
 - **Standard for Termination:** impossible or illegal, or commercially impractical
 - No **fees** or **penalties** assessed and deposits returned within set time period
 - **Liberal Notice** requirements (i.e., non-constraining)

QUESTIONS



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