



O'Donnell, Weiss & Mattei, P.C.



OWM Law Special Newsletter March 2020

•FEATURE ARTICLE:

– *COVID-19 and Contract Performance / Business Interruption*

•OWM FIRM NEWS

•PCTV – Current Episode - March 2020

– *What Am I Supposed To Do With a Title Report That I Received From My Title Company a Few Weeks Before My Real Estate Closing?*

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COVID-19 and Contract Performance / Business Interruption

You may have heard of *force majeure*, a common clause in contracts that excuses a failure to perform when the contract cannot be performed due to extraordinary events or circumstances beyond the control of the parties. Most instances where *force majeure* apply are less than clear and complicated; for that reason, an attorney should be involved at the earliest possible time to review the issues.

A party seeking shelter in a *force majeure* clause should know that in every contract, there is implied a promise of good faith and fair dealing, and thus, the norm is that performance of a contract is expected, *i.e.*, promises are to be kept. Should a party believe the facts and circumstances of a particular situation might excuse their performance, the party should look closely at the language of their contract with their legal counsel. For instance, and of particular importance given recent world-wide events, does the contract include an “epidemic” or “pandemic” as an occurrence that would fall under *force majeure*?

A key factor when analyzing the applicability of *force majeure* is whether performance is still possible. If performance is still possible, but it will be more difficult or expensive to perform, then *force majeure* clauses should not apply. The general rule is that increased costs alone will not excuse performance.

Understandably, parties may wish to limit their losses through contractual means such as a claim under business interruption insurance. Readers should know that this type of insurance generally applies to direct interruptions to operations caused by property damage such as fire. Additionally, many policies exclude virus or pandemic-related losses.

As always, the [business attorneys of OWM Law](#) are prepared to assist with analyzing or responding to a claim of *force majeure* or with determining whether a business interruption claim should be made with your insurer.

If you would like to discuss the above in more detail, please call us at 610-323-2800 or send an email to jkoury@owmlaw.com.

Firm News

Read our article in 422 Business Advisor this month and learn a little more about OWM Law:

http://www.422business.com/sites/default/files/Rt422BA_Mar2020_Pottstown.pdf?fbclid=IwAR2XyhGwR5lY3m6kHGkUehC2qSt_HfM6yjZI_FSnh_jzYHs3OXf93NeliVg

Check out the whole edition and get updated on TriCounty Chamber news and see what's happening in Pottstown! http://www.422bizmag.com/publications/2020-03/?fbclid=IwAR0t10wz2Ef0RHNmaFYhZOKc8CyQYOnsQuamW6vVRTU_v6hFd_GKflTvpvo



Watch OWM's Legal Talk on PCTV or on our website [here](#).

Read Legal Ease every first and third Sunday in the [Pottstown Mercury](#).



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