

Insights: Alerts

Impact of the COVID-19 Pandemic on Force Majeure Defenses Under Colorado Law

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Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic continues to develop. Please monitor our main [COVID-19 Task Force page](#) and/or your email for updates.

We previously wrote about the contract defenses that business may rely on when an epidemic or government orders impairs contractual performance ([here](#) and [here](#)) and recently analyzed the *force majeure* defense under [Georgia](#), [North Carolina](#), and [Texas](#) law.

Here are some considerations when evaluating Colorado *force majeure* defenses:

- *Force majeure* is a contract defense available to a party when the contract includes a clause excusing the non-performance of one or both parties to the contract because of a *force majeure* event. Similar common law defenses of commercial impracticability or frustration of purpose may be asserted even where a contract does not include a *force majeure* clause. This Legal Alert does not address the common law defenses as applied under Colorado law.
- *Force majeure* clauses excuse performance made impossible by “an event that can be neither anticipated nor controlled,” including “both acts of nature (e.g., floods and hurricanes) and acts of people (e.g., riots, strikes, and wars).” *Church Commc’n Network, Inc. v. Echostar Satellite L.L.C.*, No. 04-cv-02206-EWN-PAC, 2006 WL 8454330, at *15 (D. Colo. Mar. 17, 2006) (citation omitted).
- Even where a *force majeure* clause is silent as to the types of events that would excuse performance, Colorado courts “generally interpret the words in a *force majeure* provision to relate to specific events like acts of god, terrorist attacks, inclement weather, union strikes, riots, and wars.” *Id.* (construing a *force majeure* clause under Colorado law and determining that an adverse arbitration ruling “does not fit squarely within the generally accepted meaning of *force majeure*”).
- There is little authority in Colorado interpreting valid *force majeure* provisions. Although the lack of authority can mean parties have few restrictions on what can be excused under a *force majeure* clause, it also means the Colorado courts have wide latitude to consider persuasive authority from other state and federal courts. For information on other states’ views on *force majeure* clauses, review our other Legal Alerts linked above or reach out to your local Kilpatrick Townsend attorneys.

Our [COVID-19 Task Force](#) stands ready to help you navigate the unique business challenges posed by the pandemic and shelter-in-place orders. If you are interested in discussing a specific area of interest for your business, we recommend you reach out to your primary Kilpatrick Townsend point of contact. General questions may also be submitted via email to #COVID19TSTaskForce@kilpatricktownsend.com.

Related People



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