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# Coronavirus: Legal Strategies for Association Meetings

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# Addressing the Meeting-Related Panic from a Legal Perspective

- Epidemics, pandemics, natural disasters, strikes, terrorism, global crises – what happens to my meeting, conference or other event?
- How can we proceed with our event if no one will show up?
- Planned meetings and events have long dealt with situations arising beyond the control of the event site (e.g., hotel, convention center) and the event sponsor.
- Keys areas of focus are the **meeting contracts** and **insurance**.

# Force Majeure Overview

- There is a difference between common law force majeure principles and force majeure provisions in meeting contracts, but it is the latter that controls if such a provision exists (and usually does); the latter will override the former.
- Force majeure: “overpowering or irresistible force.” It can mean acts of God or acts of third parties outside of the control of the parties to the contract. That being said, not all force majeure clauses are equal – far from it. The devil is in the details. While force majeure provisions are generally one of the least-negotiated provisions in hotel and convention center contracts, in situations like this, they are arguably the most important.
- Contractual force majeure clauses generally only excuse complete performance of contractual obligations if force majeure conditions exist, and generally only apply in situations where it is **impossible** – or sometimes, **commercially impracticable** – to perform under the agreement.

# Model Force Majeure Contract Provision

- **Force Majeure:** The performance of the Agreement by either party is subject to acts of God, war, government regulation, disaster, fire, medical epidemic, strikes, terrorism or threats of terrorism, civil disorder, curtailment of transportation facilities preventing or unreasonably delaying at least 25% of Event attendees and guests from participating at the Association's Event, or other similar cause, including emergency or non-emergency conditions, beyond the control of the parties making it inadvisable, illegal, impossible, or commercially impractical to hold the Event, for the Hotel to provide the meeting and sleeping rooms or related facilities and/or services for the Association's Event, or for either party to fully perform the terms of the Agreement. The Agreement may be terminated without penalty and with performance fully excused for any one or more of these reasons by written notice from one party to the other.

## Fear v. Law?

- A handful of cases of coronavirus are reported in a city where you are holding your conference. No state of emergency or pandemic/epidemic status has been declared by the CDC or the WHO. You want to cancel the conference and terminate the agreement under the force majeure clause.
- It's 2003 and the SARS epidemic hits Toronto where you are holding your conference in two weeks. Both the CDC and WHO have declared a state of emergency in Toronto. Many of your attendees have canceled their registrations. You want to cancel the conference and terminate the contract under the force majeure clause.

# Standards of Law in Force Majeure

- Impossibility
- Illegality
- Commercial Impracticability
- Frustration of Purpose

# Impossibility v. Impracticability v. Frustration of Purpose (Common Law v. Contract Provisions)

- Hotels, convention centers, and other event venues generally strongly favor language allowing termination without penalty *only* if it is *impossible* to host the event.
- Event planners should try to negotiate the inclusion of verbiage referencing *commercial impracticability* – meaning that some unforeseen event outside of the parties’ control that took place after the contract was signed has made it commercially impracticable for one of the parties to perform and fulfill its obligations under the agreement.
- *Frustration of purpose* means that an unforeseen event has undermined a party’s principal purpose of entering into the contract in the first place.

# A Strong Force Majeure Provision

- In negotiating your next event contract, be sure to include verbiage to help protect your association from the next unforeseen event.
- See the model force majeure provision above. The details matter.
- While not common, one possible approach is to modify the force majeure clause to provide for partial termination of performance, as well as total termination. For example, if 25% of your anticipated attendees cannot attend due to travel restrictions, you would not be responsible for 100% performance under the agreement, but only for 75% performance. This can be very helpful in mitigating attrition penalties under the agreement(s).



## A Strong Force Majeure Provision (cont.)

- Ideally, word the force majeure provision to include *commercial impracticability* and *inadvisability* – not just *impossibility*.
- In the agreements themselves, state the purpose of the meeting and other contingencies that can be detrimental to your event. This language can help support your *frustration of purpose* argument should something later occur.

# My Contract is Already Signed, Now What?

- Read your agreement's force majeure provision carefully. Everything depends on the factual circumstances (e.g., CDC and/or WHO declarations). If the force majeure provision provides for *commercial impracticability* or *inadvisability*, you may have more room to negotiate.
- Poll your registrants to get a sense of how many may cancel their attendance. Without attendees or critical third-party vendors, you may have grounds to claim *frustration of purpose*. Even if the agreement does not provide for it, in certain limited circumstances, you may be able to assert such a legal claim based on these common law principles.
- Consult with your attorney.

# What About Event Cancellation Insurance?

- Event cancellation insurance is very important but has its limitations.
- The four leading event cancellation insurance policies are Showstoppers (Aon), Expo-Plus (Mercer), HCC, and Beazley.
- As of mid-January 2020 (for all policies bound after that time), coronavirus is now expressly *excluded* from coverage under all four of the leading event cancellation insurance policies.
- Many events are now uninsured because they did not bind their coverage before the coronavirus exclusion was instituted around mid-January 2020, depending on the market. In other words, while they may have purchased an endorsement extending **Communicable Disease** coverage, it will contain an exception for all claims arising from coronavirus.

## What About Event Cancellation Insurance? (cont.)

- If your association has an event cancellation insurance policy that was bound pre-mid-January 2020 (with no coronavirus exclusion), it likely still has a provision that provides that there will be no coverage if the claim arises “directly or indirectly from *threat* or *fear* of communicable disease (whether actual or perceived).”
- However, the Communicable Disease exclusion generally only applies if the disease “has been declared as an epidemic or pandemic by the World Health Organization or by Federal or Local Government Agencies responsible for monitoring healthcare and disease.” In other words, if there has been no such declaration, then Communicable Diseases will not be excluded from coverage at all.
- If there is coverage, it will cover not only complete cancellation but also **Enforced Reduced Attendance** (the “enforced inability of Participants to attend the Event solely and directly as a result of the same specific cause, which is beyond their control and is not otherwise excluded”).

# Workers' Compensation Insurance

- Workers' compensation insurance generally *will* cover coronavirus-related claims generated from your association's employees.
- There are no exclusions in connection with any communicable disease.
- Unless another, unrelated exclusion applies.

# Questions?

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