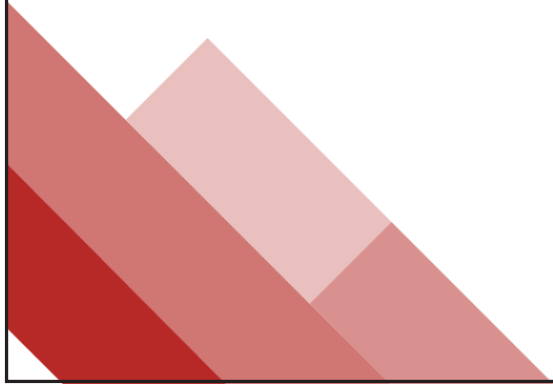


Force Majeure

During and After COVID-19

AUSTIN W. BRISTER

DERRICK PRICE



1

Force Majeure Basics

- Party asserting FM defense has the burden
- FM depends almost entirely upon express provision
- Common law sometimes serves as “gap filler”

2

Force Majeure

- **Fundamental issues:**

- Definition of “force majeure”
- Common limitations / additional requirements?
- What level of causation/degree of impact
- What protection is provided and for what duration?

Definition of *Force Majeure*

Scope of “Force Majeure”

- Most Clauses: laundry list + catch-all
- Examples of expressly enumerated items
 - “Acts of God” and natural disasters (e.g., fire, flood, hurricane, tornado, etc.);
 - human events (e.g., war, insurrection, riots, terrorist attacks, other civil disturbance, etc.);
 - governmental events (e.g., changes in laws or regulations, or governmental actions or restrictions that prevent performance);
 - commercial disturbances (e.g., labor disputes, shortages or interruptions of materials, transportation interruptions, etc.).

“Act of God” / “Natural Disaster”

- **“Act of God”**
 - Ft. Worth COA: “defies precise, legal definition”
 - Pattern Jury Charge, Workers’ comp: “caused directly and exclusively by the violence of nature, without human intervention”
- **“Natural Disaster”**
 - “Natural” – “brought about by nature as opposed to artificial means”
 - “disaster” – “a calamity, a catastrophic emergency”
- **What about COVID-19?**
 - Creation/Release – At least some allegations of human involvement
 - Spread - WHO says spread by human to human contact

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First appeared as part of the conference materials for the
47th Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session
"*Force Majeure* During and After the COVID Pandemic"