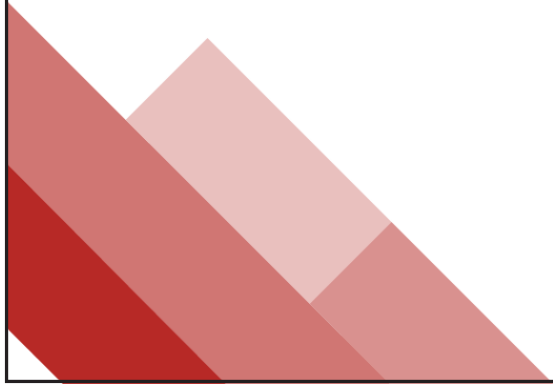


# *Force Majeure*

## During and After COVID-19

AUSTIN W. BRISTER

DERRICK PRICE



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## Force Majeure Basics

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

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# 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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