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Shapiro Sher was founded in 1972 with the mission of providing outstanding legal counsel for businesses of all sizes. Based in Baltimore, the firm is nationally recognized for its practices in business and insurance law, litigation, bankruptcy, and creditors' rights.

Shapiro Sher's Insurance Law practice group represents insurance companies, policyholders, risk-retention groups, and government agencies in complex insurance litigation matters, as well as transactional and administrative insurance matters, at the federal and state level.

Headed by **Alex J. Brown**, the practice group is experienced in all aspects of insurance law. Mr. Brown, a former Assistant Attorney General and Senior Counsel to the Maryland Insurance Administration, has won numerous multi-million-dollar verdicts in insurance-related matters. His experience in both the private and public sector has enabled him to defend many companies facing an array of charges under complex Maryland insurance statutes, as well as to advise government agencies, including the Maryland Insurance Administration.

Shapiro Sher's Insurance Law group is also experienced in representing businesses in achieving optimal claim payouts from insurance providers following events such as floods, fires, or weather-related crises, as well as situations involving the sudden revocation or suspension of a license.

For more information about the firm's Insurance Law group, visit our website at ShapiroSher.com

FORCE MAJEURE PROVISIONS AND THE PANDEMIC

By Alex J. Brown and Jessica L. Swadow

The COVID-19 pandemic is causing exceptional disruption to the operations of virtually every business. During these difficult times, companies need to be vigilant in assessing their contractual rights and obligations in the event that performance becomes impossible and/or impractical. Many contracts contain rarely invoked "force majeure" provisions which could provide protection for companies facing these uncertain times.

"Force majeure" is a French term literally translated as "a superior force." These contract clauses are utilized to excuse non-performance of contractual obligations due to what is commonly referred to as an "act of God."

The majority of "force majeure" events are typically related to weather and other natural disasters, such as hurricanes, earthquakes, etc. However, many such contractual provisions are broad enough to encompass other "acts of God," such as a pandemic and/or acts of government. Whether courts will consider the COVID-19 pandemic and subsequent acts of government sufficient to constitute an "act of God" will likely be determined in the coming months and years.

Importantly, determination of whether business disruption caused by the COVID-19 pandemic triggers a "force majeure" provision depends entirely upon the language of the specific contractual provision itself. Some such provisions require a specific triggering event while others may require the invoking party to provide notice of the disruption within a certain time period. Some "force majeure" provisions may even require mitigation efforts.

Most "force majeure" provisions require more than a showing of economic burden, but require the invoking party to establish that the "act of God" made performance impossible or extraordinarily more difficult. Taking voluntary precautionary efforts is not usually sufficient to trigger a "force majeure" clause.

Even if a contract does not contain an explicit "force majeure" provision, parties may be excused from performance by claiming impossibility or impracticability. However, for a party to invoke these excuses for non-performance, generally, the event must be unforeseeable and must, again, create an actual impossibility and/or impracticability, not just an increased economic burden. Accordingly, similar to invocation of a "force majeure"

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provision, determination of whether a contract is rendered impossible and/or impracticable will depend largely on the language of the contract and specific factual circumstances.

If your business has been affected by the COVID-19 pandemic and/or subsequent government action, a review of all applicable business contracts should be undertaken to determine if a “force majeure” or other impossibility/impracticability provision may be triggered. Failure to comply with the language of the contract, which may include notice and/or mitigation requirements, may render an otherwise useful contractual provision null and void.

For more information about this or other contractual or business issues, please do not hesitate to contact **Alex J. Brown** or **Jessica L. Swadow**.