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Coronavirus Legal Issues Update

As world health organizations and governments work to understand and control the coronavirus (COVID-19), businesses should be alert to how the virus may impact their operations. Reportedly, the outbreak has already significantly impacted the supply chains that form the basis for international trade and commerce. There is a multitude of developing problems, including complications in transactions and contracts. We are still early in the development of these legal issues, many of which will remain undecided until the result of significant litigation. While the full extent of the impact of the coronavirus is not yet known, we offer the following considerations to address various legal challenges arising from contractual obligations.

Examples

The global effects of the coronavirus have already begun to cause significant complications for many companies' commercial agreements. The following examples illustrate a few of the challenges described above:

1. Event Contracts

Conferences and performances are being cancelled frequently causing financial and legal concerns. For example, artists who travel and perform internationally are required to cancel their trips to a host country resulting in the cancellation of the scheduled show. Alternatively, the venue may be required to shut down because of a governmental edict or the venue's own decision as a result of the prevalence of COVID-19 in that community and therefore have to notify the artists that the event is cancelled. In either situation a loss of income is suffered by the artists, the venue, the promotional and ancillary sales teams (i.e. t-shirt or CD sales), etc.

2. Manufacturing Contracts

In the manufacturing arena a critical component of a product produced in the U.S. for delivery to a customer in accordance with contractual obligations is manufactured by a subcontractor in Asia. However, that component cannot be produced because of mandatory shutdowns in that country, and the subcontractor's inability to produce its component now means that its customer, a U.S. supplier of the completed product may not be able to fulfill its orders to its customers resulting in both a loss of income for a claimed breach of contract by its customers.

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Implications for Commercial Agreements

The above examples of business interruption result in contractual issues for all parties involved. In the examples used, the production and delivery failures are the result of the COVID-19 disease epidemic or pandemic. Some companies are asserting that a *force majeure* event has been triggered under their customer contracts that would excuse their delays in performance. Reliance on the terms “epidemic” or “pandemic” to trigger the *force majeure* defense is relatively new and untested in the courts, meaning that it is difficult to forecast the outcome in each situation. However, it is highly likely that the result will depend on the nature of the business and the contract’s specific provisions. As a result, companies facing such concerns should review their affected contracts and identify pertinent provisions, particularly *force majeure* or “material adverse event” clauses. Meanwhile, companies that are negotiating future agreements should consider whether new language should be added to their documents providing more protection for problems caused by epidemic/pandemic problems by specifically referencing those terms.

Insurance Issues

Related to damage claims resulting from the inability to complete contractual obligations because of the epidemic is the question of whether insurance will cover those losses. Some companies that have business interruption insurance are making claims under those policies. As of now the response from the insurance industry to these claims is still being considered and likely will depend on the language of the specific policies involved. Similar to the commercial contract issues referred to earlier in this Alert, the final outcome is likely to depend on whether the policy language is broad enough to encompass the concepts of epidemic and/or pandemic. Similar questions are arising as to travel insurance claims. Therefore, clients are advised to think more broadly about these issues going forward and seek appropriate advice to support their insurance needs and claims.

DISCLAIMER: This Alert is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client.