

Nota Bene Episode 76: The Impact of COVID-19 on Force Majeure Clauses in Business Contracts with Whitney Roy

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The world's commerce has come to a screeching halt in response to the COVID-19 pandemic. As a result, many businesses are finding it difficult or maybe even impossible to perform their obligations under their business contracts. In this episode, we're framing the various contractual performance issues that are currently implicated as the pandemic continues to impact contractual obligations.

Joining Michael Cohen for this conversation is Whitney Roy. Whitney is a litigation partner in Sheppard Mullin's Los Angeles office. Whitney was recognized by *Law360* as a "Female Powerbroker" and by the *Daily Journal* as one of the Top 100 Women Lawyers in California in 2014. Whitney has experience in all aspects of California and federal civil procedure through trial. She also defends her clients on appeal when necessary.

What We Discussed in This Episode:

- What are the various ways contracts are impacted by the coronavirus pandemic?
- What is force majeure and how does it show up in contracts?
- Is the current pandemic sufficient to implicate the force majeure clause?
- For contracts that include force majeure clauses, what is the next step in figuring out what a party's duties are under the contract?
- If it's impossible, impractical, or illegal to perform one's duties under a contract, can a party simply walk away from their obligations?
- What can you do to salvage a potentially damaged contractual relationship?
- If for whatever reason, a party is unable to perform their duties under a contract, what steps must be taken by the party that won't be able to perform?

- When is notice of nonperformance necessary?
- Why is it important for parties to maintain records and documents of all transactions and communications regarding business and contracts?
- Are force majeure provisions the same in every state?
- What happens with contracts that don't include force majeure clauses?
- What is frustration of purpose and under what circumstances can it be invoked as a defense?

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