



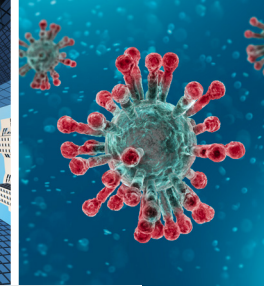
# Trust the Leaders 2.0

Volume 1

A PUBLICATION OF SMITH GAMBRELL & RUSSELL, LLP  SGRLAW.COM

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# Letter from the Editor



Ladies and Gentlemen,

Welcome to this first edition of *Trust the Leaders 2.0*. Many of you may be familiar with our magazine, *Trust the Leaders*, distributed in both print and digital format, in which we present in-depth treatment of

legal issues of significance to our clients. In fact, our current issue, entitled “Growing and Giving Back,” will be in your mailbox soon.

We have long considered supplementing TTL content with a purely digital version of the magazine through which we can reach our readers far more quickly than the lead time a print format requires.

The continued spread of Coronavirus disease (COVID-19) throughout the globe – at last count, 114 countries, 38 U.S. states and the District of Columbia – has captured the world’s attention. While we cannot predict with certainty what will happen with the virus, now is the time to be thinking about the impact that further spread of the virus may have on your business and your personal affairs. As this is a very fluid situation, now is the perfect time for the launch of *Trust the Leaders 2.0*, through which we can provide timely information to our readership.

In the pages that follow, the attorneys at Smith, Gambrell & Russell look at the current and potential future impact of COVID-19 in legal subject areas including employment, immigration, commercial and retail estate, contracts, public companies, estate planning, and bankruptcy. We plan to continue to provide future editions of *Trust the Leaders 2.0* as the situation with COVID-19, or other topics of interest, warrant.

We hope you find these materials informative.



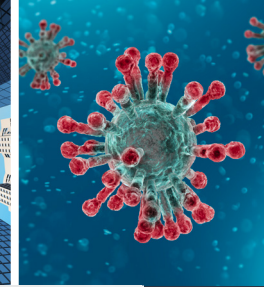
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# Employers' Guide to the Coronavirus Outbreak

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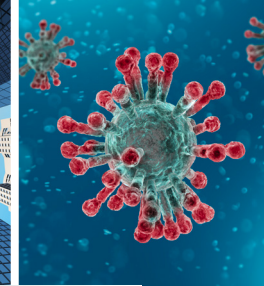
By:

Patrick Cain, Matthew Clarke, Yash Dave, Theodore Dokko,  
Daniel S. Goldstein, Patricia Hill and Ian Jones



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## Employers' Guide to the Coronavirus Outbreak

The coronavirus outbreak raises a host of issues for employers as they attempt to minimize disruption to their business and protect their employees' health. Although the Centers for Disease Control and Prevention (CDC) is encouraging people not to panic, now is the time for employers to remind their employees of basic contamination avoidance steps and to assess their policies and level of preparedness.



There are basic, everyday actions that employers should remind their employees to take to help minimize exposure:

- Wash your hands often with soap and water (the current guideline is 20 seconds).
- Cover your nose and mouth with a tissue when coughing or sneezing.
- Avoid touching your eyes, nose or mouth.
- Stay home when you are sick.

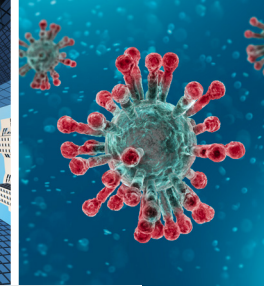
To reduce the impact of a pandemic on a Company's operations, employees, customers and the general public, employers should consider forming a pandemic team to establish an emergency communication plan and processes

for tracking and communicating business and employee status. The Company or pandemic team should:

- Request that employees report to their supervisors promptly if they are experiencing any coronavirus-like symptoms. Supervisors should be instructed to notify Human Resources upon such a report.
- Assess the Company's ability to permit employees to telecommute – in particular, for extended periods of time. Review the Company's leave and telecommuting policies and adjust them, if necessary, to enable employees to stay at home if they experience coronavirus-like symptoms.
- Implement increased prevention and transmission precautions by increasing cleaning protocols and disposal of trash, and reminding employees of the need to wash hands frequently.
- Consider suspending nonessential travel to China and other locations the CDC identifies as having high illness-transmission rates.
- Remind employees to consult CDC guidance and recommendations before any international travel.
- Consider implementing a temporary policy that requires employees returning from highly affected regions to stay home for a 14-day period. Of course, ensure that any such policy is implemented uniformly without regard for race,



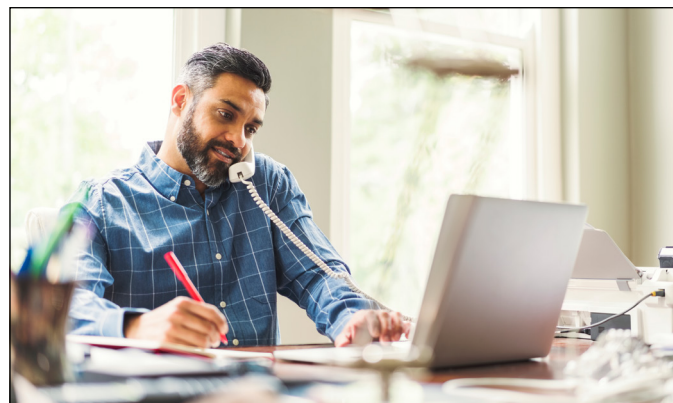
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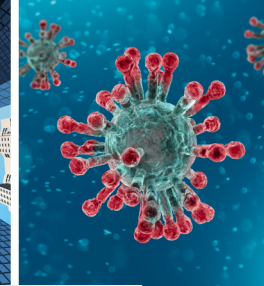
gender, national origin or other protected characteristics and consistent with applicable state laws, including laws regulating wages and leave entitlement.

- Determine methods for communicating effectively with employees.
- Prepare facility shutdown checklists.
- Create a business continuity plan applicable to a pandemic. Such a plan should address long-term absenteeism rates, whether pivotal business functions can be maintained with minimal staff, and what portion(s) of the business functions can be performed remotely.
- Educate management concerning employee communications, transmitting self-disclosed infection information from employees, sending employees home who want to stay at work, and communicating with employees too scared to report to work.
- Maintain the confidentiality of employee medical information. If an employee contracts the coronavirus, immediately notify all potentially impacted employees of their possible exposure but do not include identifying information about the potentially contagious employee. The federal Americans with Disabilities Act (ADA) and Health Insurance Portability and Accountability Act, and similar local laws, all need to be considered before disclosing confidential medical or other protected information.

- Do not make medical inquiries or require medical examinations of employees unless there is a reasonable belief that the employee's medical condition poses a "direct threat" to the workplace, as required by the ADA and similar state laws. The ADA defines a direct threat as "[a] significant risk of substantial harm to health or safety of self or others that cannot be eliminated or reduced by reasonable accommodation." 29 C.F.R. § 1630.2(r).
- If employers get to the point where they have additional employees working from home, or if employers should feel the need to shut down one or more offices for a period of time, employee wage payment issues are likely to arise. The Department of Labor has a helpful resource on pandemic flu and the Fair Labor Standards Act that addresses many of the wage-related issues that could arise. See [https://www.dol.gov/whd/healthcare/flu\\_FLSA.htm](https://www.dol.gov/whd/healthcare/flu_FLSA.htm)



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- As the situation develops, employers should appoint someone to stay current on all CDC and Occupational Safety and Health Administration (OSHA) guidance. On February 24, 2020, the CDC posted a page titled “Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19), February 2020.” <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html>. The CDC provides recommended strategies that employers should carefully review and apply. In addition, OSHA has a specific page dealing with the OSHA standards and directives for the outbreak. <https://www.osha.gov/SLTC/covid-19/standards.html>. OSHA recordkeeping requirements mandate that covered employers record certain work-related injuries and illnesses on their OSHA 300 log. While the regulations exempt the common cold and flu, COVID-19 is a recordable illness when a worker is infected on the job. Visit OSHA’s Injury and Illness Recordkeeping and Reporting Requirements page for more information. <https://www.osha.gov/recordkeeping/>.

*On March 6, 2020, the Employee Benefits and Executive Compensation Practice at SGR hosted a one-hour webinar on additional employment and benefits-related issues associated with the coronavirus. Click [here](#) to access.*

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For more information on implementing policies and procedures in your workforce to address potential health concerns, please contact your [Labor & Employment law counsel](#) at Smith, Gambrell, & Russell, LLP or contact any of the following:

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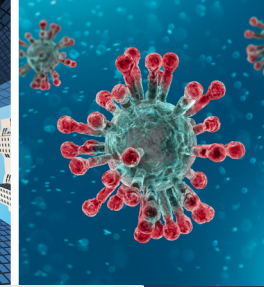
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# Coronavirus and Immigration: Considerations for Employers

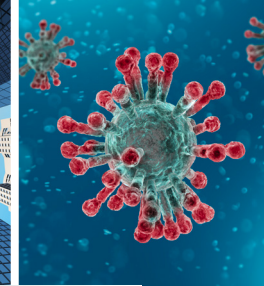
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By:  
Laleh Sharifi



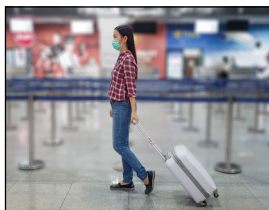
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## Coronavirus and Immigration: Considerations for Employers

Amid the global spread of the coronavirus (COVID-19), employers should be aware of its impact on those seeking entry into the United States and on other immigration-related matters.



### Presidential Proclamations

To minimize the risk of the spread of the coronavirus in the United States, President Trump signed a Presidential Proclamation yesterday, which suspends the entry of most foreign nationals who have been in certain European countries at any point during the 14 days prior to their scheduled arrival to the United States. These countries, known as the Schengen Area, include: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland. The UK, Ireland and other non-Schengen countries are unaffected. This does not apply to U.S. citizens, permanent residents and their immediate family members, and other individuals who are identified in the proclamation. The new rules go into effect on Friday, March 13, 2020, at midnight EDT (0400 GMT).

President Trump has also issued two proclamations that suspend entry of all foreign nationals who have been in China and Iran during the 14-day period preceding their entry into the United States.

Further, the federal government has issued mandatory quarantines for U.S. citizens who have visited Hubei province, where Wuhan is located, in the preceding 14 days. While U.S. citizens, permanent residents and their immediate family who have been in other parts of China and Iran can enter the United States, they will be subject to health monitoring and up to 14 days of self-quarantine.

The travel restrictions will remain in place until the president terminates them.

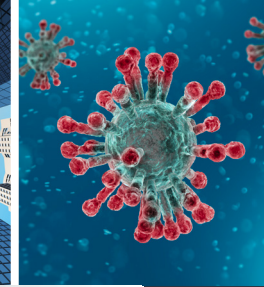
### Travel Advisories

The Department of State raised the worldwide travel advisory to Level 3 yesterday, urging U.S. citizens to reconsider travel abroad due to COVID-19. Many countries are now experiencing COVID-19 outbreaks and taking action that may restrict travel, including quarantines and border restrictions. Even countries with no reported cases may restrict travel without notice.

At present, the United States has also issued Level 3 travel advisories for China, Iran, Italy and South Korea, recommending travelers avoid all nonessential travel to these locations, with a lower travel advisory for Japan.



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## Considerations for Employers

The coronavirus outbreak is a fluid situation and employers should keep abreast of the travel advisories for all business travel and assignments abroad. Employers should take into account the likelihood that a global emergency may lead to further border restrictions, closure of offices and a reduced workforce. As such, establishing a proactive plan to cross-train employees on all essential functions will help minimize the negative impact of the outbreak on business operations.

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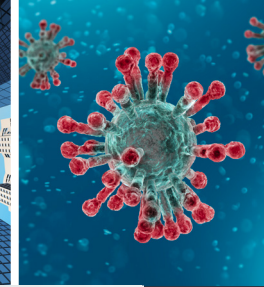
If you have any questions or would like additional information, please contact your [Immigration law counsel](#) at Smith, Gambrell & Russell, LLP or contact the following:

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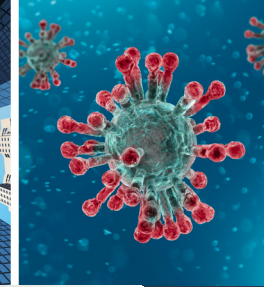
# Potential Coronavirus Concerns Regarding Commercial & Retail Real Estate

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By:  
Stephen O'Connell and Anne Pitter



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## Potential Coronavirus Concerns Regarding Commercial & Retail Real Estate

As worries about COVID-19 spread throughout the United States, the effects on the workplace are apparent, with many issues that touch on employment and benefits laws. Less apparent is how COVID-19 might affect real estate. To help



better prepare our clients who are owners, tenants, investors, buyers or sellers of commercial and retail properties, SGR would like to bring some of these potential issues to your attention. Some advance thinking and planning now may help avoid a crisis later.

- **Financing/Investors:** if you are raising money for a possible purchase or renovation of retail or commercial space, COVID-19 may be a risk factor that should be disclosed to potential investors, as shoppers and customers may stay home and businesses will suffer (also a factor in the revenue issues described below).
  - Investors who are not local, especially international ones, may also be adversely impacted by quarantine and travel restrictions and worries about their ability to return home if they typically perform any in-person due diligence, so completing any equity requirements

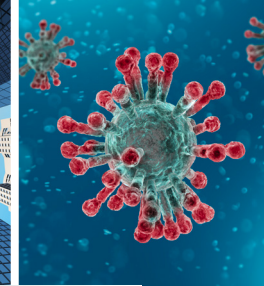
for a project may be difficult.

- If you have construction loans (mortgage and/or mezzanine), check your milestones, target dates, budgets and other terms in anticipation of quarantines and travel restrictions that could significantly slow down construction work.
- However, there may also be opportunities in traditional financing as long as institutional and private lenders continue to be willing to lend. Interest rates are again around all-time lows, with the Fed recently cutting rates to support the market. Conversely, bear in mind that if rent flow and property values change due to COVID-19-related risks, those increased risks may offset lower rates, and loans or investments for impacted properties may actually be subject to higher rates of interest or return rates.
- **Due Diligence Periods:** many aspects of the due diligence that is needed to evaluate potential purchases could be affected, even if you are currently in contract. Buyers should consider extending their due diligence periods to allow for delays in site visits, environmental testing, surveys and the like.
  - The perception of the effects of COVID-19 will be more severe on properties that have significant public spaces, like malls, movie theaters and performance spaces and properties in the hospitality space such as hotels, restaurants and amusement parks. Extra care should be given to verifying rent flow, attendance and other important factors - see the following discussion.



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- **Revenue & Closing Conditions:** Buyers should consider beefing up standard estoppel certificates from tenants and representations from sellers to take into account the possible impact of COVID-19 on businesses and rent flow. In addition to statements that rent is then current and that there are no defaults under a lease, consideration should be given to additional representations that tenants have not requested any rent relief, even if temporary. Attendance figures for retail establishments may also be relevant to track any falloff. All of this information should be brought current at closing.

- Also, take another look at the conditions under which a purchase/sale contract may be canceled. Would the COVID-19 effects on attendance and tenant sales/rent flow be a “material adverse change” or would any related change violate a covenant of closing?
- If there are material adverse changes in information like rent relief, lease defaults, attendance, etc., buyers will want the right to cancel, while sellers will want to limit those rights and perhaps set high thresholds of a percentage change that permits cancellation and/or perhaps allow for a time period to renegotiate the price rather than cancellation.

■ **Tenants & Landlords:**

- Check to see if you, whether a tenant or a landlord, have business interruption or rent insurance respectively and consult with your insurance agent as to whether the effects of COVID-19 fears and quarantine or travel restrictions on sales could provide

any relief.

- Landlords should review their own mortgage and loan agreements to see if the lender has to be notified of changes in lease terms or defaults by tenants and what items may require lender’s consent if a tenant is asking for relief for COVID-19-related issues.

- **Real Property Contracts Generally:** review your material contracts and agreements - note whether there are *force majeure* clauses, typically found in the miscellaneous section of a contract and overlooked until they may possibly be relevant. The impact of these clauses on buyer/seller rights, landlord/tenant rights, borrower/lender rights and even supplier/contractor rights is dependent on the exact language. Even if there is no *force majeure* provision, some states allow for a common law concept often referred to as “impossibility of performance.” (See Contracts article, p. 13.)

The above items are only a sample of the ways in which COVID-19 could affect real estate matters. Make sure you consult with the SGR Real Estate Group when these issues or any of the many other problems arise. We are here to help.

If you have any questions or would like additional information, please contact any of the following:

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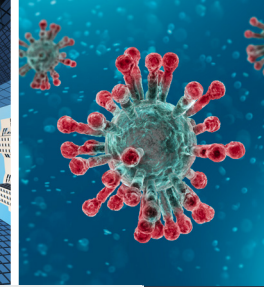
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# COVID-19 and Your Contracts: Does a Virus Excuse Performance?

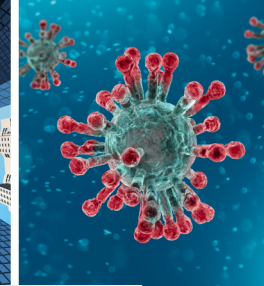
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By:  
Dana Richens and John McCarthy



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## COVID-19 and Your Contracts: Does a Virus Excuse Performance?

The spread of COVID-19 is causing disruption in the business world. Each day brings news of more precautionary measures by businesses everywhere. Companies are restricting domestic and/or international travel, calling on employees to work from home instead. High-profile, lucrative events in the worlds of business, sports, and culture are being postponed or canceled altogether.

The disruption will continue, and likely grow.

What will be the impact on your business? What if you have contracts with suppliers, who can no longer supply product in timely fashion, or with customers, who no longer have need of your product or services due to disruptions caused by spread of, or even mere concerns about, the virus? What are your legal rights? Can you enforce, or be excused from, your contracts?

### Force Majeure Clauses

As is often the case in contract disputes, the natural starting point is the contract itself. Many commercial contracts contain a *force majeure* clause. French for “superior force,” *force majeure* events are those events, as specified by contract, that excuse an impacted party’s performance under the contract. Put another way, *force majeure* is an affirmative defense to

a claim for breach of contract. Such a provision allows the contracting parties to allocate in advance the risk of events that are unforeseeable, or as to which there is a lack of parties’ control.



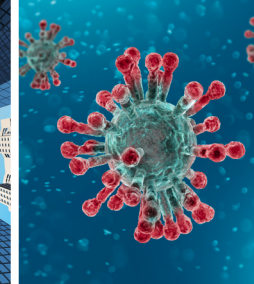
Will a *force majeure* clause excuse delay in performance, or non-performance, due to circumstances relating to COVID-19? In answering this question, the focus will be on the language of the clause itself. For example, does the clause specifically reference “disease,” or “quarantine,” or contain other language that could fairly be said to encompass circumstances associated with the spread of COVID-19? Does the clause reference “acts of God”? (Query whether the spread of a virus can fairly be considered an “act of God” in the same way as, for example, an earthquake or hurricane. Or, what if the circumstance at issue isn’t really the virus itself, but merely *concerns* about the spread of the virus?)

Does the clause have a catch-all provision? A catch-all provision would be something like “. . . or any other cause beyond the reasonable control of the party whose performance is affected,” found at the end of the enumeration of specific *force majeure* events. Catch-all provisions are generally subject to the doctrine of *ejusdem generis*. Latin for “of the same kind,” this doctrine means that where general words follow an enumeration of specific words or things, the general words are to be confined to things of the same kind or nature



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as the particular things mentioned. Thus, the interpretation of the catch-all provision will depend on the types of events captured in the specific enumeration of events that precedes it in the *force majeure* clause.

The language of the clause will also determine the legal repercussions of the occurrence of the event. For example, does it require performance, but at a different date? Does it excuse performance altogether? Does it require the impacted party to provide notice? Does it require the impacted party to take certain action to attempt to mitigate the impact of its inability to perform?

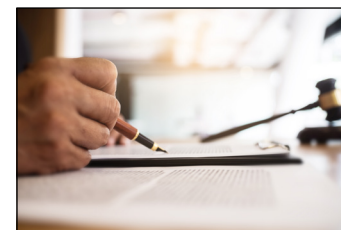
## “Hell or High Water” Clauses

Another type of contractual provision implicated by the COVID-19 outbreak is the waiver-of-defense provision, or so-called “hell or high water” clause. Here’s an example of the typical language of such a clause:

The Lessee’s obligation to pay Rent and to perform all of its other obligations under this Agreement on time is absolute and unconditional in all respects, regardless of the occurrence of any supervening events or circumstances (whether or not fundamental in the context of the arrangements contemplated by this Agreement). The Lessee must continue to perform all of its obligations under this Agreement in any event and notwithstanding any defense, set-off, counterclaim, recoupment or other

right of any kind or any other circumstance, except as otherwise expressly set forth in this Agreement.

Such a clause obligates a lessee to make rental payments to a finance lessor (or an assignee of a lessor) even if the leased equipment is damaged, defective or unfit – in other words, come hell or high water. Such clauses are common in equipment leases of all types, from copiers to aircraft, because they provide both parties to the contract with certainty about their contractual rights and obligations. Courts have generally upheld such clauses unless the lessee can show fraud on the part of, or imputed to, a finance lessor or an assignee. One New York federal court explained that “the viability of the market for commercial leases depends on the ironclad enforceability of hell or high water clauses.”



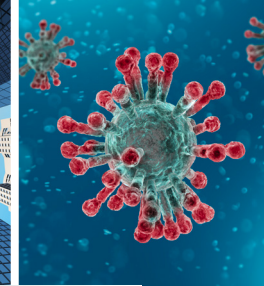
## Common Law

Even if your contract does not contain a clause of the types described above, there are common law principles that may come into play in ascertaining the enforceability of your contract in the face of a COVID-19 pandemic. “Common law” refers to law that is not the subject of a particular statute, but that has developed through judicial decisions creating binding precedent. Thus, it will also be necessary to ascertain the jurisdiction whose law will apply to the interpretation of the contract.



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Two common law principles come to mind in thinking about the potential contractual implications of COVID-19: impossibility, and frustration of purpose. As its name suggests, “impossibility” is a doctrine that relieves a party from performing under a contract when it is no longer possible for that party to perform. For example, in the case of Fowler v. Insurance Co. of North America, 155 Ga. App. 439 (1980), a contractor’s duty of performance under a contract to repair a home was excused when a fire completely destroyed the premises to be repaired. Similarly, frustration of purpose is a doctrine that excuses a party’s performance where the reason for the contract no longer exists. As recounted by the Supreme Court of Washington in a “frustration of purpose” case:

Perhaps the earliest case clearly recognizing frustration of purpose as a defense in a breach of contract action is *Krell v. Henry*, 2 K.B. 740 (C.A.1903). There, a lease was made to rent use of a window overlooking the route for the coronation parade of Albert Edward when he succeeded his mother, Queen Victoria. After the agreement, Edward became ill, the parade was canceled, and the purpose of renting the window was frustrated. The lessee refused to pay the agreed rent. The court held that his duty was discharged and that he was therefore not liable for breach. Both parties were capable of performing the terms of their contracts, and there was arguably still some market value in the vendor’s performance. But the lessee’s ultimate purpose was frustrated and he was released from his contract nonetheless.

The cancellation of various events due to concerns about the spread of COVID-19 naturally raises potential issues of frustration of purpose for parties who entered into a contract on the assumption that a particular event would take place.



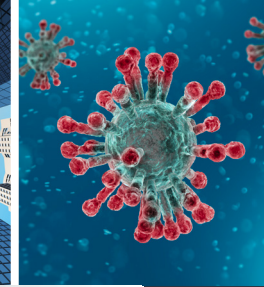
## UCC

Another source of guidance on the potential legal implications of COVID-19 disruptions on contract performance is the Uniform Commercial Code, or UCC. The UCC has been codified (with some variation) in all 50 U.S. states. As such, it is sometimes referred to as “the backbone of American commerce.”

Article 2 of the UCC governs the domestic sale of goods. Section 2-615, entitled “Excuse by Failure of Presupposed Conditions,” excuses a seller from timely delivery of goods contracted for where the seller’s performance has become “commercially impracticable” because of unforeseen supervening circumstances not within the contemplation of the parties at the time of contracting. See generally Official Comments, Uniform Commercial Code, Section 2-615. According to the Official Comments, “a rise or a collapse in the market in itself” is not a justification for excusing delivery, “for that is exactly the type of business risk which business contracts made at fixed prices are intended to cover.” But where there is, for example, “unforeseen shutdown of major sources of supply or the like, which either causes a marked



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increase in cost or altogether prevents the seller from securing supplies necessary to his performance,” that may be the kind of circumstance to which the provision will apply.

## CISG

Finally, the United Nations Convention on Contracts for the International Sale of Goods (CISG), also sometimes referred to as the “Vienna Convention,” is a 1980 convention that generally applies (unless the parties have expressly opted out) to contracts for the sale of goods between parties whose places of business are in different Contracting States. Eighty-four Contracting States, including the U.S., have adopted the CISG, some with additional declarations or interpretive comments.

Relevant to the current discussion is Article 79 of the CISG, which excuses a party for failing to perform a contractual obligation if “he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.” The language of Article 79 captures the same concepts of lack of foreseeability and lack of control inherent in the other treatments of legal excuse discussed above.

In short, whether disruption caused by the spread of COVID-19 will impact your rights and obligations under a contract is a function of several factors, including

- the language of the contract,
- the choice of law applicable to the contract,
- the nature of the contract,
- the parties to the contract, and other similar considerations.

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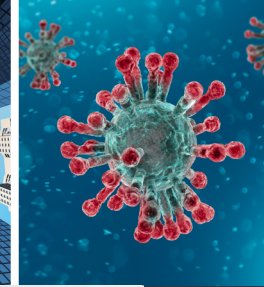
If you have any questions or would like additional information, please contact your [Litigation law counsel](#) at Smith, Gambrell, & Russell, LLP or contact either of the following:

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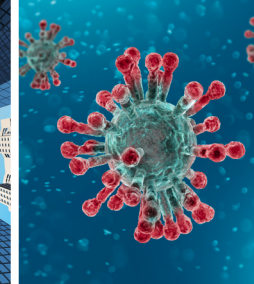
# Coronavirus and Public Companies: SEC Provides Relief to Reporting Companies While Urging Appropriate Disclosure

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By:  
Alon Harnoy



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## Coronavirus and Public Companies: SEC Provides Relief to Reporting Companies While Urging Appropriate Disclosure

Public companies have been hurt by the coronavirus (COVID-19), with the most indisputable evidence of this being the drop in the Dow Jones Industrial Average by more than 20% from its February 12, 2020 high, putting it into a bear market. While the U.S. Treasury, the Fed and central banks have recently taken steps to mitigate the effects of the novel coronavirus, the Securities and Exchange Commission (SEC) has also provided regulatory relief for certain publicly traded companies based on challenges from COVID-19.

On March 4, 2020, the SEC announced in a [press release](#) conditional regulatory relief to publicly traded companies impacted by COVID-19, granting them an extra 45 days to file certain Exchange Act reports with the SEC, including annual reports on Form 10-K and quarterly reports on Form 10-Q, and Current Reports on Form 8-K, that would otherwise have been due between March 1 and April 30, 2020. The relief was issued through an [SEC Order](#) exempting the requirement of such disclosure that would otherwise have been due during that time period where certain conditions are satisfied, including in particular the relevant issuer furnishing the SEC a Form 8-K (or Form 6-K for foreign private issuers) providing a brief description of the reasons why it could not file such report on a timely basis, and, if appropriate, a risk factor section

explaining, if material, the impact of COVID-19 on its business.

The March 4 press release further clarified the SEC's position that the granting of such conditional extensions of time for the filing of Exchange Act reports per the SEC Order will not impair the eligibility of issuers (who comply with the conditions in the SEC Order) to use Form S-3 or Form S-8 as a result of not having timely filed Exchange Act reports.



The SEC is seeking to balance competing concerns of easing the reporting burden for publicly traded companies facing challenges from the coronavirus, on the one hand, while reminding

companies to provide investors with insight regarding plans for addressing material risks to their businesses and keeping markets informed of material developments, on the other hand.

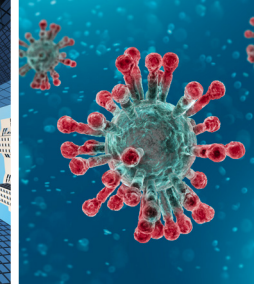
The SEC Order noted that “[d]isruptions to transportation, and limited access to facilities, support staff, and professional advisors as a result of COVID-19, could hamper the efforts of public companies and other persons with filing obligations to meet their filing deadlines,” while, at the same time, “investors have an interest in the timely availability of required information about these companies.”



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The SEC had addressed coronavirus in a published statement on [January 30, 2020](#), where SEC Chairman Jay Clayton asked SEC staff to provide guidance to issuers and other market participants regarding disclosures related to the effects of the coronavirus, noting the materiality of such information, and also in a published statement on [February 19, 2020](#), where the SEC urged issuers to assess their exposure to the coronavirus and work with their audit committees and auditors to ensure that their financial reporting and related processes are as robust as practicable.



In the March 4 press release, SEC Chairman Clayton reiterated these themes and reminded reporting companies “to provide investors with insight regarding their assessment of, and plans

for addressing, material risks to their business and operations resulting from the coronavirus to the fullest extent practicable to keep investors and markets informed of material development. ... I urge companies to work with their audit committees and auditors to ensure that their financial reporting, auditing and review processes are as robust as practicable in light of the circumstances in meeting the applicable requirements.”

Since the SEC’s published statement in January regarding coronavirus disclosures, we have seen many public companies specifically mentioning coronavirus or COVID-19 in newly

created risk factor sections. Also, many reporting companies are filing reports on Form 8-K that update previously issued revenue guidance based on the potential impact of the coronavirus on the issuer and its customers. It is too soon to tell how many public companies will avail themselves of this extra 45 days relief from Exchange Act filings, but nevertheless, the SEC recognizes the rapidly changing landscape here and notes in the Order that it “intends to monitor the current situation and may, if necessary, extend the time period during which this relief applies, with any additional conditions the Commission deems appropriate and/or issue other relief.”

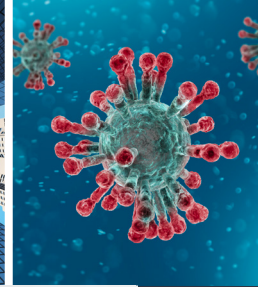
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# Hope for the Best, Prepare for the Worst: Personal Planning and the Coronavirus

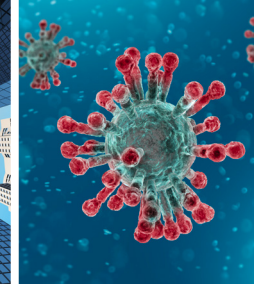
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By:  
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## Hope for the Best, Prepare for the Worst: Personal Planning and the Coronavirus

The growing uncertainty about the impact of the coronavirus has led to a lot of anxiety, and one of the key elements to battling anxiety is preparation. Trust and estate lawyers routinely encourage their clients to be prepared by having the proper estate planning documents in place. In general, everyone needs to have estate planning documents that reflect his or her current desires regarding the administration and distribution of his or her personal estate. Such estate planning documents should also include planning for possible incapacity. These documents generally include, at a minimum, a will, a power of attorney and health care documents, such as health care proxies and living wills.

The coronavirus crisis presents a good opportunity to review, and update if necessary, your estate planning documents. That will help ensure that your financial and health care matters are taken care of in the event you are quarantined or hospitalized. Some issues you might want to consider include:

### Will

While a will is not a document needed for disability planning purposes, it is a good idea to review it periodically. Check that

your dispositive provisions still reflect your wishes. Should some beneficiaries receive their shares in trust, or if you have provided for trusts, are they still needed? It is also a good idea to see whom you have named to serve as executor, and trustee if there are trusts, and made sure you are still comfortable with the fiduciaries you have chosen. You should also make sure you have either named successor fiduciaries or provided a mechanism for filling vacancies.

### Power of Attorney

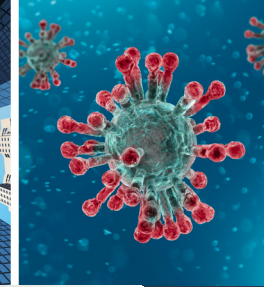
The purpose of a power of attorney (POA) is to name persons to make financial decisions on your behalf. The POA can either be currently effective, which means your agent can make decisions on your behalf immediately, or in some states, springing, which means that your agent can only make decisions on your behalf if you are incapacitated. This would be a good time to review whom you have chosen to make your decisions. If you have a springing power, you may want to consider a currently effective power in the event you need your agent to take care of certain matters if you are quarantined or hospitalized.

### Health Care Powers and Living Wills

The purpose of health care powers or proxies is to name someone to make health care decisions for you in the event you are unable to make your own decisions. Some states also provide for a separate living will to inform health care



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providers about your wishes for end-of-life care. Again, you may want to review those documents and make any changes you deem appropriate.

## HIPAA Authorization

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) provides certain rules and regulations to safeguard individuals' health information. If you become ill, you may want your health care professionals to be able to communicate with your health care agent about your medical condition. Some health care powers include a HIPAA authorization, but if yours does not, you may want to sign a separate written authorization.

## Beneficiary Designations

Finally, you may want to confirm and, if necessary, update your beneficiary designations for life insurance, individual retirement accounts and your workplace employee benefit plans. Ensuring that your life insurance and retirement benefits are paid to the correct beneficiaries can be critical.

If you have not designated beneficiaries, your death benefits will be paid according to the terms of the plan document. Your benefits may be paid to your estate or one or more of your relatives in a hierarchy determined by the plan, and these default beneficiary rules can change over time. An updated

and valid beneficiary designation is necessary to ensure that your death benefits are paid to the correct parties.

Also, even if you have made beneficiary designations in the past, it is important to verify that these designations still reflect your intent. For example, depending on the terms of your specific plan, if you make a beneficiary designation and then get divorced, your previous beneficiary designation could be modified, revoked entirely or left in place. Other life events can also affect your earlier designations or your plans for how best to manage these benefits in the event of your death.

You should also be sure to verify that you are following the plan's procedures for beneficiary designations. In some cases, if you are married, your spouse will be required to consent in writing to your designations of a beneficiary other than your spouse. You should always get confirmation from the plan about your beneficiary designation if only to ensure that you have completed the process correctly.

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If you have any questions or would like additional information, please contact your [Estate Planning law counsel](#) at Smith, Gambrell, & Russell, LLP or contact either of the following:

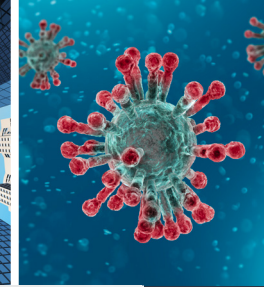
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# Previewing the Effects of Coronavirus on Bankruptcies and Restructurings

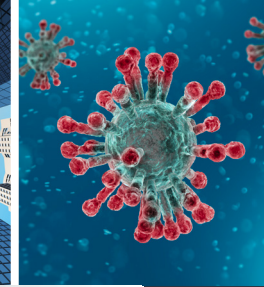
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By:  
Brian Hall



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## Previewing the Effects of Coronavirus on Bankruptcies and Restructurings

Although the full long-term effects of the novel coronavirus on the economy remain to be seen, there will certainly be an uptick in debt restructurings and bankruptcy filings. Specific industries and businesses are undoubtedly going to suffer even in the short term. Retailers that were already vulnerable face exposure to even more customers staying away from brick-and-mortar stores, but the added complications from supply issues related to Chinese-made goods may prove to be the proverbial last straw.

The global transportation industry has already seen the adverse financial effects of the outbreak. The International Air Transport Association has estimated that passenger airlines may suffer revenue losses of up to \$113 billion if the outbreak is prolonged. This estimate does not even include lost revenues from cargo operations. Falling oil prices are expected to offset a portion of these lost revenues, but it will be difficult for those airlines and related business that are already at risk to adequately cut capacity and costs.



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