



# COVID-19 CONTRACTING LESSONS

KATHERINE RAZDOLSKY ROTHSTEIN | KYLE TRAVER | KAROLINA POWALKA



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# CONTACT INFORMATION

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**Katherine Razdolsky Rothstein**

office: 248-743-6010

email: [krothstein@bodmanlaw.com](mailto:krothstein@bodmanlaw.com)



**Kyle W. Traver**

office: 248-743-6042

email: [ktraver@bodmanlaw.com](mailto:ktraver@bodmanlaw.com)



**Karolina M. Powalka**

office: 248-743-6049

email: [kpowalka@bodmanlaw.com](mailto:kpowalka@bodmanlaw.com)



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# OVERVIEW

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- Part 1: COVID-19 Pandemic Contractual Issues
- Part 2: Lessons Learned



# **PART ONE: COVID-19 PANDEMIC CONTRACTUAL ISSUES**



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# SUPPLIER RELATED COVID-19 IMPACTS

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- Unable to perform as anticipated
  - Delays in implementations and projects
  - Disruptions in supplier's own supply chain
  - Personnel disruption
- Governmental restrictions
  - Stay-at-home orders
  - Travel restrictions
- Financial instability



# CUSTOMER RELATED COVID-19 IMPACTS

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- Unable to meet minimum requirements
- No use or need for product or services
- Unable to pay



# EFFECTS OF COVID-19 IMPACTS

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- Notice of force majeure
- Invoking a business continuity plan
- Unilateral service changes
- Requests for changes and amendments
- Supplier SLA failures





# DECLARING FORCE MAJEURE

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- What is a force majeure?
- Triggers
  - Pandemic
  - Government orders
- Other related remedies
  - Commercial impracticability (UCC)
  - Frustration of purposes
  - Impossibility
- Benefits and drawbacks to force majeure
- Impact of payment obligations



# CHANGES AND AMENDMENTS TO AGREEMENTS

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- To comply with applicable law
- To account for restrictions on access to facilities
- To satisfy company initiative to cut expenses
- To relax service levels and credits



# CONSIDERATIONS IN AGREEING TO COVID-19 RELATED AMENDMENTS

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- Duration
- Scope
- Cost
- Operational impacts
- Risk shifting impacts
- Can the change be rejected?



## **PART TWO: LESSONS LEARNED**

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# KEY CONTRACT PROVISIONS

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- Business continuity obligations
- Force majeure
- Termination
- Right to procure from alternate sources



# KEY CONTRACT PROVISIONS

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- Audit rights and ongoing monitoring / oversight
- Source code escrow
- Step-in rights
- Transition services
- Notice of significant and material adverse events



# QUESTIONS?

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*Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.*

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