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Insights

Hurricane Idalia: Take a Hard Look at the Force Majeure Clauses and Your Business Risks

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With Hurricane Idalia about to cross Florida, people are naturally focused on preparations and the potential adverse impacts that it will have. For businesses, that should include analysis of contractual obligations that could be affected by a natural disaster like a hurricane. This is normally covered by "force majeure" clauses in business and real estate contracts.

A "force majeure" clause (French for "superior force") is a contractual provision that relieves parties from performing their obligations when certain circumstances beyond their control arise, making performance impossible, commercially impracticable, illegal or inadvisable. The wording of such clauses varies, but generally speaking they provide for delays in performance on account of Acts of God, natural disasters, strikes, labor and material shortages, war, acts of terrorism and other major unanticipated events.

Governor DeSantis and President Biden declared a State of Emergency in Florida on Monday, so it can certainly be asserted that grounds already exist for the invocation of force majeure clauses based on the approach of Hurricane Idalia.

The force majeure clause of a contract must be examined to determine what events it contemplates, but it is safe to say that the arrival of a major hurricane should be one of them. How will it impact the deadlines that the parties have established to perform their obligations? Consider issues presented by evacuation, closure of businesses (such as consultants, contractors, suppliers, law firms, title companies, banks, delivery services, and courthouses), damage to businesses caused by the hurricane, power outages, flooding and recovery/rebuilding activities, as well as shortages of laborers and materials that frequently follow hurricanes.

It is probably a good idea to examine what deadlines are coming up under your contracts that require the performance of obligations in the next few weeks, and plan for how you might best address them based on the wording of any applicable force majeure clauses and the needs of your

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business. Consider also what deadlines need to be met by the other parties to those contracts, and how their failure to meet them will affect you and your business.