

As COVID-19 Surges, So Too Should the Use of Well-Crafted Contractual Arbitration Clauses

“Virtually every aspect of our lives has been disrupted in one way or another as a result of the COVID-19 pandemic and the ensuing economic collapse,” write Timothy P. Van Dyck and Andrew C. Bartholomew in Bowditch Attorneys’ *Publications*. “While certain of these disruptions have been difficult to predict, at least one has not: a huge uptick in commercial disputes. Simply by way of illustration, disputes implicating force majeure clauses (where, for example, a party’s performance of its obligations has been frustrated by an interruption in the supply chain or an inability to access the labor market) have already begun to materialize. And just this week, a major restaurant chain sued its insurer for rejecting its damages claim stemming from the pandemic, alleging that its “all risks” policy covers financial losses after Massachusetts and other states ordered restaurants to close except for takeout service.”

“With most courts closed to the public and facing a backlog of cases when they eventually reopen (where criminal matters will undoubtedly take priority), many parties who find themselves immersed in these disputes will likely seek out alternative dispute resolution and, in particular, the use of arbitration. In the post-pandemic world, parties need to be prepared to avail themselves of the benefits of arbitration by crafting thoughtful, tailored arbitration clauses to ensure that their disputes are resolved cost-effectively, fairly, and with as little business disruption as possible.”

Read the article.