

From Both Sides Now: Looking at Contracts Through a Post-Pandemic Lens

“Now, more than ever, clients and their advisors need to revisit contract forms on which they may have been relying for years. While many of us have lived through times that required certain adjustments in how we viewed contractual obligations – recessions, wars, oil embargoes, natural disasters, 9/11 – none of these events had the widespread and long-lasting impact that the current COVID-19 pandemic is having. None of these events shut down the U.S. economy and impacted global supply chains across every industry in the manner we are now experiencing,” warns Lori S. Smith in *Taking Care of Business’s Contracts*.

“With this in mind, there is a need to figure out what the ‘new normal’ will look like for contract negotiations in a post-pandemic world. Business professionals need to now anticipate more widespread disruption than we could have ever before imagined. It isn’t just *force majeure* clauses or material adverse effect provisions, as these will likely add pandemics and government shutdowns to their ever-growing list of contemplated risks, if they were not already expressly covered. And it is not clear, at least in the near-term, whether a resurgence or mutation of COVID-19 or the emergence of another virus can truly be seen as unforeseeable in a post-COVID world. The issues are much more fundamental to the approach that parties may take in negotiating contracts. Commercial contracts between purchasers, vendors, distributors, licensors and licensees will need to evaluate allocation of risk from both sides and come to a new happy medium that all can live with in an ever-evolving world. While parties should review their standard contracts in their entirety,” he provides some key provisions

to think about.

Read the article.