

Who Pays When Contract Performance Is Excused Due to Covid-19?

“Business disruptions caused by Covid-19 are providing fertile ground for contractual disputes and negotiations over how losses should be allocated. Kasowitz Benson Torres attorneys say courts may be increasingly willing to adjust contract obligations to avoid inequitable results and they offer tips for contract language,” write Paul “Tad” M. O’Connor III and Jennifer McDougall in ***Bloomberg Law’s Corporate Governance***.

“Covid-19 has given new relevance to the common law breach of contract defenses of impracticability and impossibility of performance, as well as force majeure contract clauses, under which contract performance may be excused because of external events (like the Covid-19 pandemic) not the fault of the parties.”

“Where such a defense is successfully invoked, however, the consequences can potentially be inequitable—a party, for example, could face a loss of expenses it laid out before the occurrence of the event in anticipation of performance by the party whose performance is excused.”

“Courts have taken different approaches to avoid inequitable results.”

Read the article.