



# CONTRACT RIGHTS AND INSURANCE CLAIMS UNDER COVID-19

*YPO - CHICAGOLAND CHAPTER*

A LIVE WEBINAR  
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## **PRESENTED BY**

Aaron Hammer, Moderator  
Sean Auton, Bill Katris, and  
Matthew Barrett, Panelists



# KEY TAKEAWAYS FOR CONTRACT RIGHTS:

- Look to the terms of your contracts to determine whether a *force majeure* provision applies.
- Know your remedies – i.e., suspension or termination.
- Check the notice requirements carefully.
- Statutes that apply to contracts for the sale of goods may provide relief to the seller who cannot perform.
- Common law doctrines and defenses are a last resort.
- Government intervention and court closures may make modification of terms more practical than enforcement.

# KEY TAKEAWAYS FOR COVID-19 RELATED INSURANCE CLAIMS:

- Laws relating to insurance are potentially changing due to COVID-19.
- Each Insurance Policy is Different - Read Yours!
- Be sure to look at your Property Insurance, Business Interruption, Extra Expense, Civil Authority and Crisis Management Coverages.
- Brokers may differ on advice but do not wait - **Make the Claim!**
- Track all COVID-19 caused expenses and/or losses NOW!
- Consider WFH impact on Cyber Liability and Cyber Crime Coverages.
- Watch out for Insurance Renewal & Expiration Issues.



# **CONTRACT RIGHTS UNDER COVID-19 AND RELATED ISSUES**

# I CAN'T PERFORM UNDER MY CONTRACT OR LEASES – WHAT REMEDIES DO I HAVE?

- Four main sources that may excuse performance:
  - Contractual Provisions (*force majeure* clauses)
  - Statutory Authority (primarily for the sale of goods)
  - Common Law Doctrines (i.e., judicial precedent or case law)
  - Government Intervention (may indirectly impact performance obligations)

## **WHAT IS A “*FORCE MAJEURE*” EVENT AND CAN IT SUSPEND OR EXCUSE PERFORMANCE?**

- Purely a contractual right
- Whether an event is considered a *force majeure* event depends on the language of the contract.
- Typically includes Acts of God (natural) and man-made obstacles to performance (wars, labor strikes, etc.)
  - Nota bene – Illinois courts have found the phrase “Acts of God” refers to natural disasters but does not include man-made impediments to performance whereas the phrase “*force majeure*” refers to both categories.

## HOW DO I DECLARE A *FORCE MAJEURE*?

- Follow your terms
- Common contractual requirements:
  - Contract provisions may require notice to be made **in writing** and **within a specific time period** from the beginning of the interrupting event.
  - The *force majeure* provision may require a description of the event preventing performance and why performance cannot be made.

## **IF MY CONTRACT HAS A *FORCE MAJEURE* PROVISION, WHAT REMEDY DOES THAT PROVIDE ME OR MY COUNTERPARTY?**

- Typically *force majeure* provisions suspend performance obligations for the duration of the event:

“FORCE MAJEURE. In the event that a party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws, regulations, orders or decrees, riots, insurrection, war, acts of God, inclement weather, intergalactic warfare, or other reason beyond such party’s control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Such event shall be referred to herein as a ‘Force Majeure Event.’”



# MISINFORMATION

- Governmental declarations that COVID-19 is a “*force majeure*” event
- From a reputable global law firm’s website:
  - “On the other hand, under Illinois law, there is an implied duty on the claiming party to make an effort to attempt to resolve the event causing delay or inability to perform under the contract before invoking a *force majeure* clause. This duty is “related to the duty of good faith [and] is read into all express contracts unless waived.”[15]
  - [15] *Commonwealth Edison Co. v. Allied-General Nuclear Services*, 731 F. Supp. 850 (N.D. Ill. 1990)
  - This is a federal court decision applying New York law.
  - The contract at issue had a “due diligence” provision that modified the *force majeure* provision.
  - In short, there is **no** requirement under Illinois law that a party make an effort to resolve a disruptive event before invoking the provision (unless the contract provides for that requirement).

## DO ANY STATUTES IMPACT CONTRACTUAL PERFORMANCE?

- Uniform Commercial Code (“UCC”) Article 2 Section 2-615.
- Applies only to contracts for the sale of **goods**
- *Force majeure* provision available to the **seller** only
- Invoking it allows the buyer to terminate the remaining portion of the contract or modify the contract to account for modified performance

# REQUIREMENTS FOR UCC 2-615

- Must be a contract for the sale of goods
- An event that the parties did not contemplate has occurred OR governmental regulation (whether or not it later becomes invalid) has been imposed that makes the seller's agreed-upon delivery of goods **impracticable**
- If the event causes a reduction in the seller's capacity, the seller may allocate production among its customers in any manner which is fair
- Must give the buyer notice of:
  - Non-delivery or delay
  - When allocation among customers is required, the buyer's portion that can still be delivered
- Applies even when the parties' contract does not have a *force majeure* provision to fill a gap
  - BUT the parties can opt out of this statutory provision by the terms of their contract

# CISG ARTICLE 79

- United Nations Convention on Contracts for the International Sale of Goods (“CISG”)
- Ratified by 93 countries (including U.S.)
  - Significant Absentees = United Kingdom, India, South Africa, and Nigeria
- Similar concept and requirements as UCC 2-615
- Applies to international sales of goods between U.S. parties and foreign parties whose country has also ratified CISG
- Contracting parties can opt out of CISG or certain provisions.

# COMMON LAW DOCTRINES AVAILABLE THAT EXCUSE CONTRACTUAL PERFORMANCE?

- Doctrine of Impossibility
  - Requires performance to have been rendered objectively impossible
  - Parties must have known at the time of the contract that it could not be performed unless some condition or state of things continued to exist.
  - Results in rescission of the contract (places the parties back in their original positions)
  - Examples:
    - Contract to paint a house where the house is later destroyed by a fire
    - Personal service contract where performance is prevented by death or injury
    - Performance is made illegal under changes to the law
- Commercial Frustration
  - Requires performance having been rendered moot due to unforeseen circumstances
  - The frustrating event at issue must not have been reasonably foreseeable at the time of contracting, and the value of the performance must have been totally or near totally destroyed by the frustrating cause.

# HISTORICALLY UNSUCCESSFUL DEFENSES

- The financial crisis of 2008 did not excuse a party's obligation to secure financing.
  - *YPI 180 N. LaSalle Owner, LLC v. 180 N. LaSalle II, LLC*, 403 Ill. App. 3d 1 (1st Dist. 2010)
- Changed interest rates and the lack of a “stable economic environment” did not excuse performance.
  - *Farm Credit Bank v. Dorr*, 250 Ill. App. 3d 1 (5th Dist. 1993)
- Changed prices and market fluctuations did not excuse a party's performance.
  - *N. Ill. Gas Co. v. Energy Cooperative, Inc.*, 122 Ill. App. 3d 940 (3rd Dist. 1984)
- Changes to the law that did not render the contract void did not excuse a party's performance.
  - *Ill.-Am. Water Co. v. City of Peoria*, 332 Ill. App. 3d 1098 (3rd Dist. 2002)
- Insolvency of one of the parties to the agreement did not render the performance impossible.
  - *Felbinger & Co. v. Traiforos*, 76 Ill. App. 3d 725 (1st Dist. 1979)


# GOVERNMENT INTERVENTION

- C.A.R.E.S. Act:
  - Provides some relief for borrowers with federally-backed mortgage loans
- Illinois state-wide moratorium on enforcing **residential evictions** through the end of the state of disaster declaration
- Cook County's Moratorium on Foreclosure Proceedings
  - Effective through May 18<sup>th</sup>
  - Applies to **both residential and commercial foreclosures**
  - Does not appear to prevent filing of new cases
- Sheriff of Cook County has stopped enforcing residential eviction orders through May 18<sup>th</sup>
- Wisconsin state-wide moratorium on commencing/enforcing mortgage foreclosures and evictions through May 26<sup>th</sup>
- Indiana state-wide moratorium on initiating residential foreclosures and evictions through the duration of the state of emergency

## HOW WILL FEDERAL LEGISLATION IMPACT THIS ANALYSIS?

- C.A.R.E.S. Act relief for **federally-backed** mortgage loans:
  - **Residential** mortgage loans
    - May request forbearance (i.e., suspension of payments) for up to 12 months (in two 180-day periods)
    - Must attest to COVID-19 hardship to qualify
    - Does **not** need to be owner-occupied residence
  - **Multi-family** (5 or more dwelling units) mortgage loans:
    - May request a forbearance for up to 90 days (in 30-day increments)
    - Must make a showing of a COVID-19 hardship to qualify
    - During the forbearance period may not evict tenants for late rent or charge late fees
  - 120-day moratorium on **residential evictions** for properties with federally-backed mortgages
  - 60-day moratorium on **mortgage foreclosures** for federally-backed mortgages





# **COVID-19 INSURANCE CLAIMS AND RELATED ISSUES**

# THRESHOLD COVID-19 INSURANCE CONCEPTS YOU NEED TO UNDERSTAND FOR YOUR BUSINESS

- **Every business's insurance policy is different.** The specific policy language is what matters and not what you generally hear in the media or online.
- **Do not rely on the internet for your coverage determination!** Insurance companies seemingly using SEO to flood the internet & news media with legal positions that may not be not 100% accurate and/or may not be applicable given your policy and your state.
  - (e.g., Insurers arguing no **direct physical loss or damage to property**, asserting you must have “**physical loss**”, it's not that simple, there are two potential readings for that language, each state court's interpretation of that language is what matters)
- **Laws impacting insurance are being changed** in federal, state and local governments. Policy interpretations are being challenged in the courts.

## COVID-19 INSURANCE CONCEPTS YOU NEED TO UNDERSTAND FOR YOUR BUSINESS (CONTINUED)

- **New laws have passed** and numerous **others being discussed** or proposed to deal with **COVID-19 issues**.
  - At the **Federal level**, there are currently over 50 bills being discussed in response.
    - See tracking resource: <https://coronavirus.skoposlabs.com/>
  - At the **State level**:
    - Over 30 states have already passed unique laws to respond to the crisis. (See, [https://ballotpedia.org/State laws in response to the coronavirus \(COVID-19\) pandemic, 2020](https://ballotpedia.org/State_laws_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020))
    - Almost all states have additional laws that are pending in their legislatures due to the crisis. (See, <https://www.ncsl.org/research/health/state-action-on-coronavirus-covid-19.aspx>)
    - **Ohio, Massachusetts, and New Jersey threatening new bills to make business interruption coverage mandatory for COVID-19 claims**. (See, <https://www.insurancejournal.com/news/east/2020/03/31/562855.htm>)
    - **Potential Laws being discussed to nullify virus exclusions or give businesses with 150 employees or less mandatory coverage**
- **Insurance regulators** in each state are rolling out guidance and modifications to existing insurance plans.
  - States are issuing COVID-19 bulletin advisories as well as statutory or regulatory amendments concerning applicable insurance in sectors **beyond just health insurance**. (See, [https://content.naic.org/naic coronavirus info.htm](https://content.naic.org/naic_coronavirus_info.htm))

## COVID-19 INSURANCE CONCEPTS YOU NEED TO UNDERSTAND FOR YOUR BUSINESS (CONTINUED)

Insurance companies may try to argue that *insurance policies are contracts and “we did not agree” to insuring businesses with these new laws...*

- ... but this argument should not go very far for most policies since they contain “**conformity to statute**” provisions that state if a provision of a policy is inconsistent with state law, then the policy is amended to conform to state law.
- Type of provision found in many policies:
  - **Conformity to State Law. When a policy provision is in conflict with the applicable state law of the State in which this policy is issued, the law of the state will apply.**

## COVID-19 INSURANCE CONCEPTS YOU NEED TO UNDERSTAND FOR YOUR BUSINESS (CONTINUED)

The Battle in the Courts has already begun...

- In addition to new laws coming out or potential amendments, the interpretation of policy (i.e., contract) language used in potentially applicable insurance policies is already being litigated across the country:
  - **In the Midwest: *Big Onion Tavern Group, LLC v. Society Insurance, Inc.***, No. 1:20-cv-02005 (N.D. Ill. Mar. 27, 2020). Lawsuit brought by a group of restaurant and theater owners in Chicago and its surrounding suburbs against their insurer after their request for business interruption coverage was rejected following Governor Pritzker's COVID-19 shutdown order.
  - **In the South: *Oceana Grill v. Certain Underwriters at Lloyd's, London***, No. 20-02558 (La. Civ. Dist. Ct. Mar. 16, 2020). New Orleans restaurant alleges COVID-19 damaged property, which involves an all risk property policy with unspecified syndicates at Lloyd's of London, the policy covers civil authority-ordered shutdowns, and notably, it does not have an exclusion for viruses or pandemics.
  - **In the West: *French Laundry Partners, LP v. Hartford Fire Insurance Co.*** (Cal. Super. Ct. Mar. 25, 2020). One of the most notable California restaurants filed a declaratory judgment action for coverage due to losses caused by Napa County's "stay at home" order to fight the spread of COVID-19.

## COVID-19 INSURANCE CONCEPTS YOU NEED TO UNDERSTAND FOR YOUR BUSINESS (CONTINUED)

- All insurance brokers are not created equal.
  - Despite all the uncertainty on how the legislatures and courts will respond, there are ***certain brokers cautioning customers not to make claims*** (....ugh!)
  - Other brokers encouraging all and even remote claims (Yes!)
  - Remember, most brokers are not attorneys, lawmakers or judges (*or fortune tellers*)
  - Err on the side of caution – ***Make the Claim.***

## **MY BUSINESS OR PART OF MY FACILITIES HAVE BEEN SHUT DOWN BY GOVERNMENT ORDER – WHAT INSURANCE POTENTIALLY CAN PROVIDE ME COVERAGE FOR MY LOSSES?**

If you do not have specialized coverages, look to your property insurance policy. The following are the various types of insuring agreements that may be at issue for you:

- **All Risk Coverage** – is this the Insurance Unicorn?!? (property insurance covering loss arising from any fortuitous cause except those that are specifically excluded)
- **Named Peril Coverage** (in contrast to “All Risk”; only provides coverage for causes specifically listed in policy)
- **Business Interruption** (typically in your property coverage policy to protect your business when it's directly impacted by a hazard or peril that causes you to cease operations and suffer a loss – depending on policy, such insurance can cover lost revenue, employee wages, rent/lease payments, relocation costs, loan payments, taxes, fixed costs, etc.)
- **Civil Authority** (coverage reimburses lost profits and other economic losses when a government entity has issued a legal order resulting in denial of access to the policyholder’s insured premises)
- **Builder’s Risk** (type of property policy intended to cover buildings under construction, as well as the materials, supplies and equipment, and business interruption-related costs related to the cause of loss)
- **Ordinary Payroll** (coverage if a policyholder wishes to retain key hourly employees who are completely idled after an incident and unnecessary to continuing operations)
- **Extended Period of Indemnity** (adds coverage under a business interruption policy for loss of income suffered during a specified period of time [e.g., 30, 60, 90 days] after the damaged property has been repaired)

## **MY BUSINESS OR PART OF MY FACILITIES HAVE BEEN SHUT DOWN BY GOVERNMENT ORDER – WHAT INSURANCE POTENTIALLY CAN PROVIDE ME COVERAGE FOR MY LOSSES? (CONTINUED)**

- **Contingent Business Interruption** (generally provides coverage for a loss of income related to a problem associated with a supplier)
- **Contingent Extra Expense** (reimburses lost profits and expenses resulting from an interruption of business at the premises of a customer or supplier)
- **Ingress/Egress** (pays for the loss of income triggered by physical loss or damage caused by a covered peril to third-party property that prevents or hinders ingress to or egress from the insured's business)
- **Extra Expense** (coverage that pays for a company's non-ordinary expenses after a disruptive incident)
- **Pollution/Contamination/Environmental** (coverage for first-party cleanup costs arising from the presence of a pollutant/sometimes includes business interruption coverage and also may cover decontamination communicable disease cleanup, crisis management, and emergency vacating expenses)
- **Crisis Management** (insurance designed to respond to the immediate effects of a widespread disaster or other public emergency that forces your company to close ... *these policies typically provide a modest sum of money to address unexpected increased costs and liquidity problems associated with a crisis closure ... some of these policies require 24-hour notice!*)
  - *Note: Be sure to check your Umbrella Policy for this type of Coverage!*
- **Event Cancellation Insurance** (typically specialized coverage; responds to losses arising from disruption or cancellation of events due to circumstances beyond the insured's control)
- **TAKE AWAY - BE SURE TO READ YOUR POLICIES TO SEE IF ANY OF THESE COVERAGES ARE INCLUDED**



## **WHAT “OTHER” (I.E., NON-BUSINESS INTERRUPTION, ETC.) INSURANCE POLICIES DO I HAVE THAT MAY BE TRIGGERED BY COVID-19?**

- Depends on your business’s industry, however the following may all be indirectly impacted:
  - Directors & Officers (“D&O”)
  - Errors & Omissions (“E&O”) / Professional Liability
  - Commercial General Liability / Umbrella
  - Pollution (Third-Party Claims)
  - Employee Benefits Liability
  - Workers Compensation
  - Cyber Liability

## **I AM INCURRING EXTENSIVE EXPENSES FROM HAVING MY EMPLOYEES WORK FROM HOME – IS THERE ANY WAY TO RECOUP SUCH EXPENSES WITH AN INSURANCE CLAIM?**

- It depends on the coverage you have but regardless, ***track those expenses from the start, not only for claim purposes, but also tax purposes.***
- A coverage that sometimes triggered is known as “**Extra Expense.**” Extra Expense insurance is coverage that ***pays for a company's non-ordinary expenses after a disruptive incident.***
  - For these types of claims, it is ***vital to identify, compile and maintain*** your extra expenses and the supporting documentation.
    - This includes identifying additional personnel expenses, such as:
      - Overtime of non-salaried employees
      - Moving expenses for relocating equipment for employees now working from home
      - Laptops for employees? More servers?
      - Security for monitoring vacated office
      - Track internal time spent of employees working on disaster/HR time, etc.
    - Consider setting up accounting systems to track additional costs incurred as a result of the incident.
  - Important: some policies ***require pre-approval*** from the insurance carrier in order to agree to reimbursement of expenses.

## AM I ADEQUATELY PROTECTING AGAINST ANY “REMOTE” WORKING LOSSES OR CYBER INCIDENTS?

- Verify that your Workers Compensation policies apply to employees working from home.
- Concerns due to employees working remotely
  - Some **employees using personal equipment or old devices** that have less protection: **use only company-approved** and vetted devices and applications to collaborate and complete your work.
    - Prime Example: Everyone is online and it seems Everyone is on Zoom, we love it but it is not secure with its basic initial settings!
      - **Zoombombing!** See, FBI-issued warning:
        - [https://www.fbi.gov/contact-us/field-offices/boston/news/press-releases/fbi-warns-of-teleconferencing-and-online-classroom-hijacking-during-covid-19-pandemic?mod=article\\_inline](https://www.fbi.gov/contact-us/field-offices/boston/news/press-releases/fbi-warns-of-teleconferencing-and-online-classroom-hijacking-during-covid-19-pandemic?mod=article_inline)
  - **Employees should use a separate home network so that your company devices are not running on the same wi-fi instance as other household or family personal devices.**
  - Remind employees to **limit access to their work devices**. Only the approved user should use employer-issued work computers – not family and friends.
  - Have **employees update software**. Before connecting to the company network, have your employees ensure their devices are running the most current versions of software. Updates often include important changes that improve security.

## AM I ADEQUATELY PROTECTING AGAINST ANY “REMOTE” WORKING LOSSES OR CYBER INCIDENTS? (CONTINUED)

- **Cyber events have already increased by more than 600% during the crisis.**
  - **Spear-phishing**: fake emails from a purported trusted sender seeking the disclosure of confidential information
  - **Malware**: used to access business networks in order to gain access to legitimate email threads about billing and invoices. Malware later leads to the spoofing of email accounts and theft of funds.
  - **Spoofing of email accounts and websites**: when a criminal sends an email that is a slight variation of a legitimate address (john.doe@xyzcompany.com vs. john.doe@xyzzcompany.com) that fool victims into thinking fake accounts are authentic.
- While looking for COVID-19 coverage, we are seeing a **gross underfunding of cyber and computer crime coverage** - make sure you have procured the proper amount & type of cybercrime insurance.
- **Lots of noise right now but have your:**
  - HR departments should remind **all employees of best practices** and being alert - ***Employee Handbooks still apply to WFH!***
  - IT department re-examine and verify your email, firewalls, and other IT systems
  - Accounting department continue to alert all employees in the payment process chain that payments must be verified with unique measures (i.e., ANY REQUESTS from clients, vendors or business partners to change payment methods must be verbally confirmed from known parties)

## WHAT MUST I DO NOW TO MINIMIZE RISK AGAINST POTENTIAL EMPLOYEE CLAIMS SHOULD SOMEBODY BECOME ILL FROM COVID-19?

- Have **proper reporting policies** in place (e.g., [sick@abcbiz.com](mailto:sick@abcbiz.com) or [travel@abcbiz.com](mailto:travel@abcbiz.com))
- **Be aware** of the Americans with Disabilities Act (“ADA”), the Age Discrimination in Employment Act (“ADEA”) and the Health Insurance Portability and Accountability Act (“HIPAA”) related concerns
  - **ADA/ADEA** - It is important for employers to treat employees equally and apply policies non-discriminately, both during the pandemic and when the crisis is over and the workplace returns to normal. (e.g., *potential Age discrimination claims for sending non-sick/non-exposed older employees home*)
  - **HIPAA** - If employers obtain any **confidential medical information**, they will need to **keep it confidential and only share with necessary individuals**.
- Ensure you have **informed employees** of their paid leave rights under **the Families First Coronavirus Response Act (the “Act”)** as well as recently enacted state and local laws expanding paid sick leave.
- **Since requirements at the federal, state and local level are constantly changing, employers should have an appropriate person monitor these developments and should update communications regularly.**
  - The CDC is changing its recommendations in various locations frequently. For example, in some areas, the CDC has recommended daily health screenings. Be sure to check the CDC’s website before taking any such action.
- **Employers can and should continue to tell employees that if they have a cough, fever, or difficulty breathing, they should stay at home and not risk exposing others to illness.** Also check local ordinances.
  - For example, in Chicago, employees are required by public health order to remain home if they display any symptoms of COVID-19.
    - Employers who use staffing through agencies should advise their vendors that their employees who are ill or have these symptoms should not come to the office either.
  - In some states, wage and hour laws may be implicated where employees who report to work are sent home.
- If the above is not followed, **your Employment Practices Liability and Employment Benefits insurance coverage may be triggered!**

## MY BUSINESS'S INSURANCE RENEWAL IS COMING UP

### – WHAT DO I NEED TO BE AWARE OF?

- Every business should be concerned about any **new Virus, Pandemic & COVID-19 Exclusions at the time of their policy renewal.**
- Many businesses have **liability policies that limit coverage to “claims made”** during the policy period.
  - These are found in policies covering Professional or Malpractice Liability, D&O, E&O, Fiduciary Liability, and Employment Practices Liability as well as many forms of General Liability coverage.
  - **IMPORTANT:** If you currently have no COVID-19 claims and have a **“claims made” policy that is renewing/expiring**, you should consider utilizing the **“notice of circumstance”** provision found in most “claims made” policies.
    - Under this provision, a policyholder can provide notice to its current policy of an anticipated potential claim and if such a claim later arises it will be treated as having been “made” when the “notice of circumstance” was provided, making coverage under that policy available even for a lawsuit filed after the policy expires. Although each policy varies, such notice can potentially preserve coverage under an existing policy for lawsuits that may arise in the future but are traceable to the circumstances for which notice was given.
- **Thinking about changing your carrier? Be aware of the potential impact in different coverages. Each policy (especially among carriers) is different!**
- **Advice: Lean on your Broker!**
  - Also think about impact to **Life Insurance Renewals** (some carriers now **delaying renewals or new coverage for over a year**, wanting to know about international travel, insisting on medical examinations, full production of records)

## SHOULD I START TRACKING EXPENSES AND POTENTIAL DAMAGES FROM COVID-19? IF SO, WHAT SHOULD I DO?

- **YES!**

- **Retaining documentation is paramount – by not tracking from now you may be waiving your rights.**
- One of the most recently used **way of insurers to deny claim** is to argue that the **insured did not adequately track expenses properly from the start of the claim**

- **“Tracking” suggestions for a Business Interruption claim:**

- Track & identify lost profits and sales during the period of loss
- Keep track of industry data, market demand, and trends
- Identify direct and indirect cost savings
- Identify key supplier and key customer loss
- Preserve historical operational financial records in order to prepare financial projections
- Depending on the complexity of your claims, **you may want/need a third-party claim consultant**, who can:
  - Assist with and prepare a **business interruption valuation report**
  - Calculate **business interruption damages solely attributable to COVID-19**
  - Present and support claim
- *Note: the fees for a claim consultant could be covered under such a policy.*

- **Note: Think about making a partial claim submission** as some policies provide for same and some insurers may react quickly.

## WHAT OTHER RESOURCES MAY PROVIDE RELIEF FOR MY LOSSES?

- Review **your contracts with your business partners** for additional relief.
  - Are you an “**Additional Insured**” on any other policies?
  - Which contracts do you have that have **indemnification provisions/force majeure** (discussed above)
- **The Relief Acts:** The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, and there is more help coming from federal, state, and local authorities as well as PRIVATE RELIEF PROGRAMS
  - Different levels of government providing relief to different industries
  - Follow your industry news to look for those opportunities.
  - There are resources attempting to track all **federal, state, and major local** as well as **private relief programs**:
    - **Forbes** - <https://www.forbes.com/sites/briannegarrett/2020/03/20/small-business-relief-tracker-funding-grants-and-resources-for-business-owners-grappling-with-coronavirus/#507cabaedd4c>
    - **Inc.** - <https://www.inc.com/kevin-j-ryan/small-business-loan-new-guidance-from-treasury-department.html>
- **This is just the beginning.** In the interim, customize your own relief – unprecedented times.
  - **Go directly to your business partners.**
  - **Speak with your trusted advisors (accountants, attorneys, financial advisors, etc.).**
  - **Engage early and often!**



## **AARON L. HAMMER**

Chair, Bankruptcy Group

D 312.242.3293

[ahammer@hmblaw.com](mailto:ahammer@hmblaw.com)

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**Aaron is a partner at HMB and leads the firm's Bankruptcy, Reorganization and Creditors' Rights practice. He devotes his practice to solving his client's most challenging insolvency and creditors' rights issues.**



## **SEAN D. AUTON**

Partner, Business & Finance

D 312.606.3226

[sauton@hmblaw.com](mailto:sauton@hmblaw.com)

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**Sean is a partner in HMB's Business and Finance Group and focuses his practice on general counsel and transaction matters. He predominantly serves high-growth companies, ranging from start-ups to more established entities.**



## **BILL KATRIS**

Partner, Litigation

D 312.606.3221

[bkatris@hmblaw.com](mailto:bkatris@hmblaw.com)

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**Bill is a leader in HMB's Technology practice and a partner in the firm's Litigation Group. He focuses his practice on complex commercial litigation, insurance disputes, counseling on data privacy, cyber-security and related intellectual property issues, business divorces and litigation avoidance counseling.**



## **MATTHEW R. BARRETT**

Associate, Litigation

D 312.242.3292

[mbarrett@hmblaw.com](mailto:mbarrett@hmblaw.com)

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**Matt is a member of HMB's Litigation Group and focuses his practice on dispute resolution and complex commercial litigation.**

