



**BUILDING IN A PANDEMIC:**  
The Effects of Coronavirus on the  
Economy and Your Construction  
Business

Join Cotney Construction Law **Attorney Jennifer Knight Lang** to learn the latest on the known and anticipated economic impacts of the Coronavirus and to discuss key contract provisions that can protect your business.



# Introduction

- I. Economic Impact
- II. Key Contract Provisions
  - a. Force Majeure Clauses
  - b. Price Acceleration
  - c. No Damages for Delay



# Government Response

- On Friday, President Trump declared a national emergency as the number of coronavirus cases and deaths increased.
  - The previously limited travel ban to parts of Europe was expanded to include the UK and Ireland. Domestic travel restrictions are not currently in place, but are possible if the situation worsens.
  - Authorities have urged “social distancing” as much as possible. This has led to large-scale closures of schools, cancellation of events, and many people imposing voluntarily “self-quarantine.”
  - Businesses are encouraged to do their part to keep their employees, customers, and themselves healthy.
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# Supply Chain Impact

- Production slowdowns resulting from containment efforts have started to increase the price for copper, aluminum, and casework.
- Fortunately, steel fluctuations are expected to remain at a minimum, and gas prices to decline.
- While many supplier's bids stay locked in for 30 to 90 days which provides a buffer to the volatility of materials costs, if the outbreak persists, prices could continue to fluctuate, and material deliveries could be delayed.
- Some shocks will be felt immediately, but others may be felt months from now after the outbreak has been contained





# Labor Shortages

- Many employers in the US have already required employees to work from home if possible.
- Work from home can be impossible for a large contingent of construction industry employees.
- Deadlines for construction projects are notoriously optimistic, but if a shortage of manpower could keep you from hitting a deadline take a look at the Force Majeure or 'Acts of God' language in your contract.
- Certain HIPPA guidelines will be waived because of the pandemic, so you can take extra precautions to ensure the health and safety of your workforce: take temperatures before coming to work, etc.

# Other Challenges

- Capital Access to cover fluctuations
  - SBA's Economic Injury Disaster Loan program provides small businesses with working capital loans may provide economic support to help businesses overcome the temporary loss of revenue.
- Workforce capacity
- Enhanced workplace cleaning measures
- Changing market demands
- Contingency planning



# Preventative Measures

- Actively encourage sick employees to stay home; separate sick employees
  - Emphasize staying home when sick, respiratory etiquette and hand hygiene by all employees
  - Perform routine environmental cleaning
  - Advise employees before traveling to take certain steps
  - OSHA
    - Existing OSHA standards apply to protecting workers from coronavirus, including:
      - Personal Protective Equipment standards, 29 C.F.R. 1910 Subpart 1
      - General Duty Clause, 29 U.S.C. § 654(a)(1)
      - Bloodborne Pathogens standard, 29 C.F.R. 1910.1030
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# Key Contract Provisions

- Force Majeure Clause
  - Price Acceleration
  - No Damages for Delay
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# Force Majeure Clause

- “Acts of God” provision
- Allocates the risk of performance if performance is delayed indefinitely or stopped completely due to circumstances outside of a party’s control that makes performance impossible, inadvisable, commercially impractical, or illegal.
- Provides notice to the parties of the types of events that would cause a project to be suspended or that would excuse performance.



# Force Majeure Clause

- Temporarily suspend or terminate contract due to unexpected and unavoidable events
  - Force majeure event must be:
    - Beyond the control of the contracting parties
    - Cannot be anticipated, foreseeable, or expected
    - Unavoidable
  - Examples:
    - severe weather events: earthquakes, landslides, and wildfires
    - man-made events: riots, wars, terrorist attacks, explosions, labor strikes, scarcity of energy supplies
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*Contractor shall not be responsible for loss, damage or delay caused by circumstances beyond its reasonable control, including but not limited to acts of God, accidents, snow, fire, weather, vandalism, **pandemic**, regulation, strikes, jurisdictional disputes, failure or delay of transportation, shortage of or inability to obtain materials, equipment or labor. In the event of these occurrences, Contractor's time for performance under this proposal shall be extended for a time sufficient to permit completion of the work.*

*Contractor is not responsible for loss, damage or delay caused by reasons circumstances beyond its reasonable control, including but not limited to acts of God, weather, animals, insects, birds, accidents, fire, regulation, **public health** emergency, strikes, failure or delay of transportation, and shortage of or inability to obtain materials.*

*In the event of ... the completion of the work shall be delayed, and the Contractor and Customer shall sign a Change Order specifying the new timeline. If Customer declines to sign the Change Order, then this agreement may be terminated by the Contractor.*

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# Consider...

- What events are considered force majeure?
- Who is responsible for suspending performance?
- Who is allowed to invoke the clause?
- Which contractual obligations are covered by the clause?
- How is the inability to perform determined?
- What happens if the event continues for an extended time period?
- Does the contract provide for liquidated damages?

# Surety Bonds and Insurance Claims

- **Document, document, document.** Starting now, create a paper trail that illustrates your efforts to perform your work on time. If your schedule is impacted by another trade on site, take photographs showing how the job is not yet ready for your work and create detailed job logs reflecting the same. Keep copies of all notices and their transmissions and show compliance with the contract notice procedures.
  - If government "lockdowns" or your company's safety protocols cause labor shortages which effect your work, document the fact that you were understaffed on certain days.
  - While it is likely that projects will resume to normal, having records of how your work was affected will give your claims for extra time at the tail end of a project more force. Also, it gives GC's credibility if filing claims to a builder's risk insurance provider or a surety bonder.
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# Price Acceleration

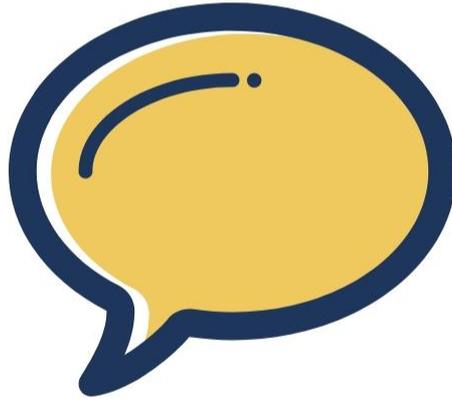
- Provides that the roofing contractor may adjust the contract price to reflect the revised actual cost of the labor and materials.
  - Typically requires the contractor to provide evidence supporting the claim for additional compensation through documentation of the cost increase.
- *If there is an increase in the actual cost of the labor or materials charged to the Contractor in excess of 5% subsequent to making this Agreement, the price set forth in this Agreement shall be increased without the need for a written change order or amendment to the contract to reflect the price increase and additional direct cost to the Contractor. Contractor will submit written documentation of the increased charges to the Prime Contractor/Owner upon request.*
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# No Damages for Delay

- Typically allows contractor additional time (not compensation) as a result of delays beyond their control.
- *“The Owner shall not be liable to the Contractor and/or any Subcontractor for claims or damages of any nature caused by or arising out of delays. The sole remedy against the Owner for delays shall be the allowance of additional time for completion of the Work, the amount of which shall be subject to the claims procedure set forth in the General Conditions.”*



# Questions?



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