

# Does COVID-19 trigger *force majeure*?

## Navigating the legal and business issues

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# Welcome



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# Housekeeping

- Webinar is being recorded
- If you have questions about the topics being discussed, you can type your question(s) in the question box, located on the right side of your screen
- Post-webinar survey – tell us what you think!

# What is *force majeure*?



## force ma·jeure

/,fôrs mä'ZHər/

*noun*

1. **LAW**  
unforeseeable circumstances that prevent someone from fulfilling a contract.
2. irresistible compulsion or greater force.

# Do Clients Typically Already Know a Lot About *Force Majeure* Issues?

- *Force majeure* and common law concepts of impossibility, impracticability and frustration of purpose
- *Force majeure* event as an argument to avoid contractual obligations.

# What Are the Most Significant Challenges Clients Are Facing Around Issues Involving *Force Majeure*?

- Specific provisions
- Tying the *force majeure* event to impossibility or impracticability
- Importance of case law in the relevant jurisdiction(s)
- Proving performance impossible or impracticable
- Providing prompt and appropriate notice, if required

# What Kinds of Cases Are You Seeing Crop Up In the Last Few Months?

- Commercial Real Estate
- University Sports
- Airlines
- Insurance
- Service Agreements
- etc

# What Are the Criteria for a *Force Majeure* Event?

- Language of the contract, applicable law(s), relevant facts.
- However, in general, you need:
  - An event outside the reasonable control of a party
  - Affecting ability of one or more of the parties to perform
  - Reasonable steps to avoid or mitigate the relevant event



# Polling Question

Have you been involved on either side of a *force majeure* argument in the last 6 months?

# What Guidance Can I Provide to My Company or Clients?

- Getting the most helpful and relevant information
- Developing a strategy for the specific business
- Careful drafting of *force majeure* provisions

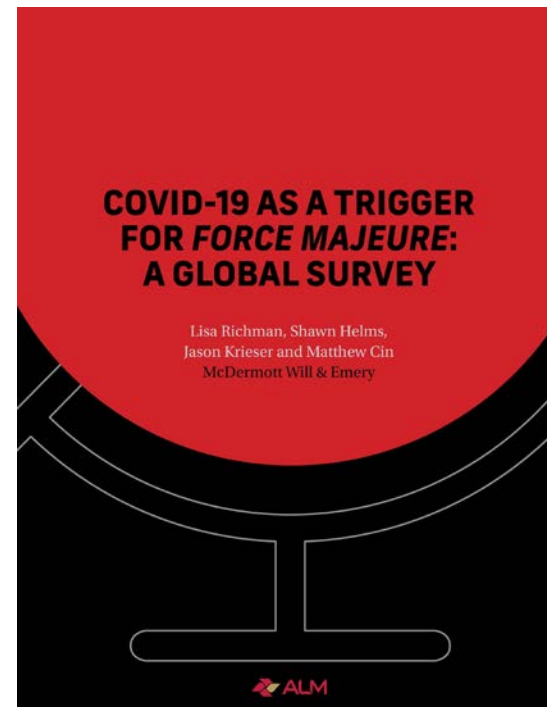
# What Do Insurance Companies Need to Know?

- Crafting exclusions
- Consider current and future clauses with respect to current and/or future pandemics

# What Drove You To Write This New Title?

## COVID-19 as a Trigger for *Force Majeure*: A Global Survey

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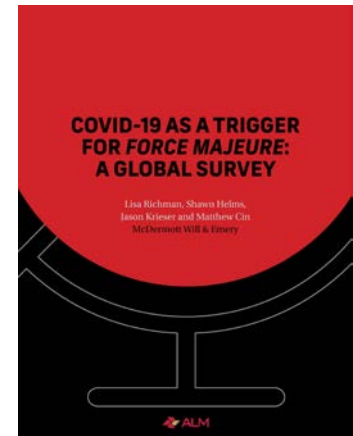
# Why Is This Publication Different Than Others Out There?

- FAQ eBook providing answers to key questions such as:
  - *How does COVID-19 affect contractual obligations, including insurance policies?*
  - *How are force majeure provisions treated in the jurisdictions in which a business operates?*
  - *What types of events typically qualify as force majeure in those jurisdictions? Under what circumstances will an event be considered a “qualifying event”?*
- The next update at the end of October includes case law and filings across the covered jurisdictions—information we’ll discuss is not easily available.



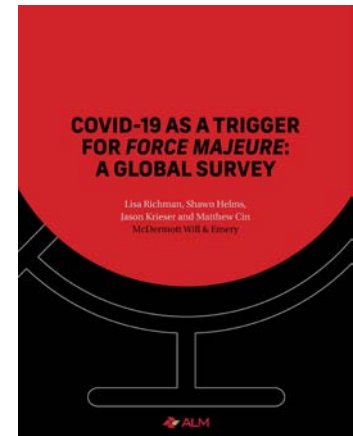
# How Did You Gather That Information? What Were the Challenges?

- The editorial team worked together with our firm's specialists located around the world to gather this information.
- The book addresses not only U.S. jurisdictions, but global.
- Challenges in gathering data in the U.S. and around the world.



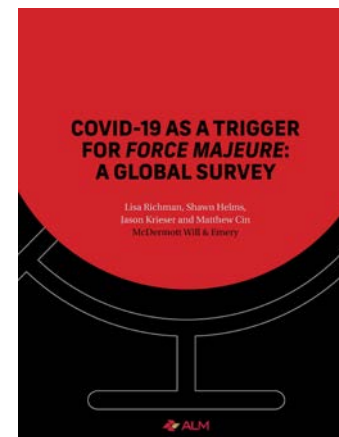
# What Jurisdictions Are Covered?

- The book addresses not only U.S. jurisdictions, but global.
- **U.S.** > California, District of Columbia, Delaware, Florida, Georgia, Illinois, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, Texas, Virginia, Washington
- **Global** > Belgium, Canada, People's Republic of China, France, Germany, India, Italy, Japan, Mexico, United Kingdom



# How Difficult Is It To Find New Filings And Case Law?

- Not a simple tag or a discrete practice area
- As a concept, exists as language within filings and cases
- Research is very labor-intensive



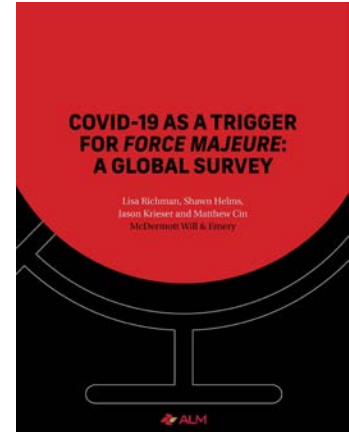


## Polling Question

Do you expect you may be involved on either side of a *force majeure* argument during the next 6-12 months?

# What Should Clients Know About Their Operations Outside of the U.S.?

- More difficult to collect / assess case law outside the U.S.
- Different statutory principles



# A Look Inside...



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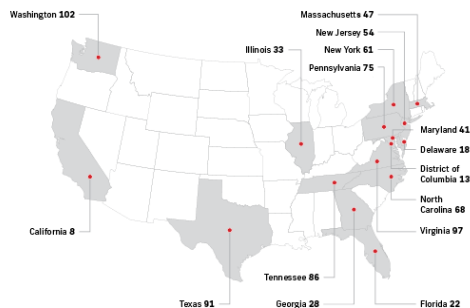
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## UNITED STATES CALIFORNIA

With assistance from:  
Thomas Ryan, David Lipkin, Jessica Thomas and Alice Du

### 1. How does COVID-19 affect contractual obligations?

On March 16, 2020, six of the Bay Area's most populous counties (San Francisco, Santa Clara, San Mateo, Marin, Contra Costa and Alameda) announced "shelter-in-place" orders for all residents — the strictest measure of its kind in the United States at the time — directing everyone to stay inside their homes and away from others as much as possible. At the same time, the mayor of Los Angeles ordered places of social gatherings to shut down. On March 19, 2020, Governor Gavin Newsom issued statewide orders permitting residents to leave their homes only for "essential activities," to work for an "essential business," carry out "minimum basic operations" for a business, perform an "essential governmental function," or for "essential travel." These orders greatly impeded many businesses' abilities to operate and perform in accordance with the terms of existing contracts. As a result, businesses may find that they will have to address delay of performance or terminate their own agreements, and/or address similar situations with vendors and suppliers who may need to do the same.

### 2. How are *force majeure* provisions interpreted in California? Is there a key case that should be considered?

In California, "*force majeure*" is not limited to "acts of God." *Pac. Vegetable Oil Corp. v. C. S. T., Ltd.*, 29 Cal.2d 228, 238 (Cal. 1946), 1946 Cal. LEXIS 294. Rather, it is a very fact-

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# Q&A

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# Thank you!

Thank you for attending! If you should happen to have any additional questions you couldn't think of today or that we didn't have time for, please feel free to contact any of us directly. **Recording and copy of the presentation will be sent to you afterwards via email.**

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