



Force Majeure; It Depends

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In recent weeks we have seen unprecedented catastrophic hurricanes in the Gulf Coast and Southeast and horrific tornados in the Midwest. We have witnessed torn apart cities, permanently altered lives, and ruined businesses. As affected people try to put their lives back together to regain some sense of normalcy, businesses, including trade associations and professional societies, must attempt to assess their current situations in order to re-establish functional order. This means looking at the future with the intent of understanding what they can and must do.

Clearly, those associations and societies that have hotel and convention contracts in devastated cities, such as New Orleans, will not be able to hold their meetings in these locations. These types of devastating natural disasters can't be helped and associations and societies will not be bound by contemporaneous contractual obligations in those cities. New locations and dates will have to be secured. Most associations and societies should have adequate insurance coverage to help mitigate any loss.

Standard contractual "force majeure" language should be sufficient to protect associations and societies against incurring convention meeting related obligations in devastated cities. Even without the force majeure clause, courts would likely recognize long standing contractual doctrines such as "frustration of purpose" and "impossibility" to nullify these contractual obligations.

But what about conventions in cities that have been affected but where conventions still may be held? This is not so clear-cut. Of course, association and societies will have to review their convention contracts. If the city can hold the meetings, the association or society may be contractually bound (or at least it may have to pay a penalty). What if attendees can't travel because the city's airports are closed? It depends on how many can't travel. What if the attendees' departure airports are affected by a natural disaster and significant number of attendees can't get out of the city? It depends. What if the convention can be held but hotels are not functional? It depends on the contract. If the contract is not clear, or if the use of the convention center and hotels is not tied together, the association or society may have a problem.

It depends on how well the contract was negotiated. It depends on the situation. It depends on whether the convention can occur consistent with its intended purpose. It depends on how many people are going to be unable to attend. Because everyone is hungry not to lose current and future business, much depends on your relationships with your business partners/vendors. Each situation will be looked at on a case-by-case basis. One thing is for certain, the next convention center and hotel contract your association or society enters into should anticipate these issues. We have all been put on notice.