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THE HOWE & HUTTON REPORT - SPECIAL EDITION

COVID-19: Challenging Times Call for a Cautious Approach to Event Contract Issues

As the U.S. only begins to grapple with the problems caused by the novel coronavirus, it is important to keep perspective in knowing that, at some point (hopefully sooner than later), things will begin to normalize at some level, and businesses of all types will assess and reassess decisions they made both leading up to the outbreak and during its course. With that in mind, it is important to take care now to evaluate any legal exposure that your group may have with respect to meetings and events whether they are planned for next week or far into the future. Each contract needs to be evaluated separately according to its terms, but most are likely to have language that excuses performance if unforeseeable circumstances have a certain level of impact on a party's ability to perform. The precise language will vary considerably, but the strictest provisions tend to contain language that excuses performance where adherence to the contract's terms becomes "illegal or impossible." This may not be enough to avoid liability.

The events in the U.S. the last several weeks figure to provide an argument in support of cancellation for even the most restrictive of agreements. Thankfully, we have been working with many clients that have been met with a spirit of cooperation from hotels who have been most understanding as to the changed circumstances underlying the current and future reality of in person events. Refunds and agreements to reschedule appear to be the new norm, but care still needs to be taken to ensure that contracts thought to have been cancelled do not run the risk of being resurrected. The understandable spirit of cooperation and human tendency not to read the fine print may create unanticipated problems as business realities set in down the road. You need to be very careful as to what the contract provides as to future events as conditions may have changed regarding your program or the needs of the property.

While it's a good idea for all involved to have a written record of the resolution of a cancellation, special care needs to be taken to ensure that any purported settlement documentation serves its intended purpose and does not create any notice or payment obligations that were not previously agreed upon.

Let us know if we can be of assistance as you navigate these challenging times.

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