WATT TIEDER
WATT, TIEDER, HOFFAR & FITZGERALD, L.L.P.

Texas – Force Majeure Law

Under Texas law, "when the parties have themselves defined the contours of force majeure in their agreement, those contours dictate the application, effect, and scope of force majeure." *Sun Operating Ltd. P'ship v. Holt*, 984 S.W.2d 277, 283 (Tex. App. 1998). Texas courts addressing extreme weather events have held that in the absence of an applicable force majeure clause, an "Act of God is not a legal excuse for failure to perform." *Metrocon Const. Co. v. Gregory Const. Co.*, 663 S.W.2d 460, 462 (Tex. App. 1983), *writ refused NRE* (Feb. 29, 1984).

However, Texas court have excused contract obligation performance in the general contexts accepted in the Restatement (Second) of Contract, including: "(1) the death or incapacity of a person necessary for performance, (2) the destruction or deterioration of a thing necessary for performance, and (3) *prevention by governmental regulation*." *Tractebel Energy Mktg., Inc. v. E.I. Du Pont De Nemours & Co.*, 118 S.W.3d 60, 65 (Tex. App.), opinion supplemented on overruling of reh'g, 118 S.W.3d 929 (Tex. App. 2003) (emphasis added).

Texas courts do not draw any functional distinction between the doctrines of impossibility, commercial impracticability, and frustration of purposes. Irrespective of the terms used, Texas courts generally in practice follow Section 261 of the Restatement (Second) of Contract, which provides: "Where, after a contract is made, a party's performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary." *Tractebel Energy Mktg.*, 118 S.W.3d at 64.