**Continuing COVID-19 Legal Issues for Contractors**

Neal Eckel, Farhang & Medcoff

1. **Force Majeure**

* By now you have all heard about how force majeure clauses can protect you from claims due to project delays caused by COVID-19.
* While some contracts do not specifically spell out that a contractor is entitled to delays caused by epidemics, most courts would probably agree that COVID-related performance delay under existing contracts would be excused.
* However, for all future contracts you should make sure “epidemics” is spelled out as one of the excusable delays for performance; if it is not included now that we know about. COVID an argument could be made you did not intend to have that as an excusable delay
* The AIA docs do not list epidemics under the excusable list of delay.
* The ConsensusDocs do list epidemics as an excusable delay.

1. **Emergency Provisions in AIA**

A201-2017 Sec. 10.4:

“In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor’s discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.”

AIA at A201-2017 Sec. 10.2.1:

“The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to” employees, other persons, and the Work.

COVID-19 has been declared a national and state emergency.

1. **What Can You Do to Get in Front of Delay Issues**

* Schedule frequent project meetings to document progress
* Get all the parties involved in the meetings
* Document any potential delays immediately and make sure all parties are aware
* Update project schedules as needed
* Institute strict safety measures early to avoid any illness
* Document all safety measures