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FUELING DISPUTES: HOW THE 2026 IRAN CONFLICT IS RESHAPING CONSTRUCTION CONTRACTS

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The Conflict Abroad.

The ongoing 2026 conflict with Iran has triggered a sharp increase in the cost of goods and global energy prices. These increases have been driven largely by disruptions in the Strait of Hormuz - a critical transit route for a significant portion of the world's oil supply. As a result, gasoline prices have surged above $4 per gallon in some areas of the United States, and gas prices are expected to remain elevated throughout the year. This volatility is not just an economic concern for consumers; it carries significant practical, legal, and contractual implications for contractors.

The Impact on Contractors.

Shipping delays worldwide due to the closure of the Strait of Hormuz are having a significant impact on the construction industry. Fuel is a foundational input cost for contractors. Rising gas and diesel prices directly affect transportation, heavy equipment operation, and the cost of petroleum-based materials, such as asphalt and plastics. Diesel prices alone have jumped dramatically, increasing the cost of freight and job site operations. The geopolitical instability is also driving up prices for steel, aluminum, PVC, and other key construction inputs. In turn, contractors face cascading cost increases.

The Iran conflict has placed a strain on contractors' ability to plan, price, and execute projects. Regardless of the form and method of payment being used on a project, stipulated sum, cost plus, or design build, the impact of the Iran conflict is the type of unanticipated event that should remind contractors of the importance of the force majeure clause and why it is not just a boilerplate term to be glossed over when negotiating a contract. The impacts resulting from the Iran conflict are also a good reminder that there is no time like the present to review and update the price escalation clause in order to properly plan for and allocate economic risk on the project.

Smart Up-To-Date Force Majeure and Price Escalation Clauses Need To Work Together.

In plain terms, force majeure and price escalation clauses exist to define and allocate risk. If the force majeure and price escalation clauses are ignored, poorly thought out, or missing, contractors locked into pricing based on the circumstances that existed prior to the Iran conflict face the risk of evaporating profit margins and an increased project financial risk. If the force majeure and price escalation clauses are ignored, poorly thought out, or missing, contractors also substantially increase their risk of being involved in disputes and litigation, and the accompanying time, effort, and cost associated therewith.

While no contract provision is 100 percent bulletproof, there are a few key considerations to keep in mind. Oftentimes, the force majeure clause addresses performance delay and provides for an equitable adjustment of the contract time. Conversely, price escalation clauses generally address how unforeseen price increases beyond the contractor's control are handled. These two provisions are not mutually exclusive. They should work in tandem.

From the contractor's perspective, a strong force majeure clause should be as expansive as possible, clearly identifying events. It is important to think outside the box. As an example, prior to COVID, very few, if any, contractors included "pandemic" as a force majeure event. When COVID hit, disputes and litigation exploded over who bore the risk associated with COVID. The force majeure clause should also contain a catch-all provision, such as "and any other cause beyond the contractor's reasonable control."

Second, a force majeure clause should not only address the impact of unforeseen events on the schedule but also work in conjunction with the price escalation clause to fully allocate and address an unexpected cost increase resulting from an event beyond the contractor's control. The key to drafting a price escalation clause is to determine a "triggering event". Commonly, a fixed percentage increase above an agreed-upon amount, or an index-linked adjustment (e.g., ENR, PPI index), or a cost-verification based upon actual materials or labor cost increases. Regardless of the method used, it is imperative that the price escalation clause is clear and definitive, and that the contractor understands when and how the "triggering event" is triggered and how the increase in price will be determined.

Conclusion.

The Iran conflict underscores how fast geopolitical, weather, and other unforeseen events can rapidly reshape and impact the assumptions used at the time pricing for a project was undertaken and the contractor's ability to successfully perform the project without having to absorb unanticipated risk. Rising fuel costs arising from the Iran conflict are not just a project budgeting issue - they are a legal risk multiplier. Contractors can better navigate this tumultuous period of uncertainty, protect their project margins, and improve project risk allocation, by being proactive, thinking creatively and not ignoring the force majeure and price escalation clauses.

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