

Supply Chain Woes: Effectively Using Your Contract's Terms and the UCC to Navigate Through Them

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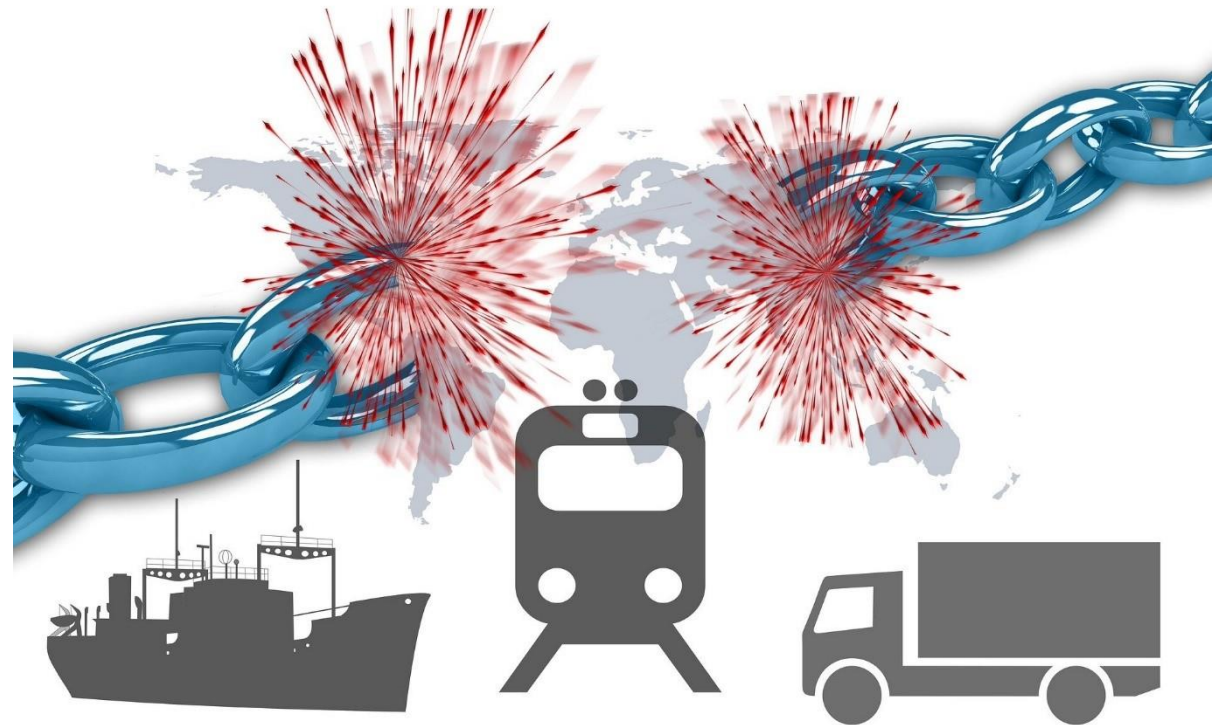
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Supply Chain Issues Today – Overview

- Definition
- Supply Chain Disruption
- War
- Other Causes



Litigation Landscape / Recent Case Law

Two types of cases emerging in courts with direct links to supply chain disruption:

- Injunctive Relief / Breach of Contract
- Claims for Insurance Coverage Based on Supply Chain Disruption

Contract Defenses

- Impracticability
- Impossibility
- Commercial Frustration of Purpose
- Force Majeure



Responding to Supply Chain Disruptions – Litigation

- Disadvantages of Litigation



Responding to Supply Chain Disruptions – Using Contract Language and the UCC

- Drafting
- Renegotiation
- Termination



Drafting – Contract Terms

UCC § 2-301 – General Obligations of Parties

- Quantity
- Price
- Time of Delivery



Drafting – Contract Terms

- Other Delivery Concerns
 - UCC 2-307 - Delivery
 - UCC 2-324 – No Arrival, No Sale
 - UCC 2-613 – Casualty to Identified Goods
- Unspecified Terms
 - UCC 2-311



Drafting – Anticipating Shortages and Allocating Risk

Contract language can be used to spread risk when there are supply shortages.

- Pro-Buyer
- Pro-Supplier



Drafting – Limitation of Liability & Indemnification

- Clauses may address liability for incidental damages resulting from a disruption in the supply chain, and whether a party can “look up” the supply chain for indemnity.



Drafting

- Force Majeure
 - Causation



Right to Adequate Assurances

- UCC 2-609 - Assurances
- UCC 2-610 – Anticipatory Repudiation
- Sample Letter

Renegotiation (UCC 2-209)

- Termination (UCC 2-106(3) & 2-309)



Questions?





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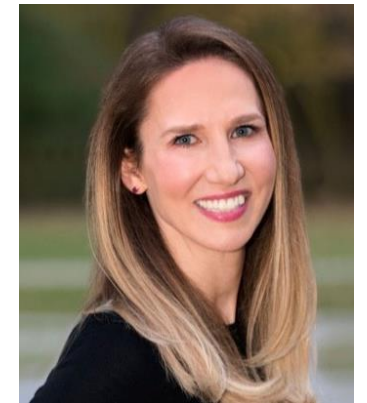
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Thank You!

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