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Court Rules COVID-19 Order Constitutes Partially Excusing Rent

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Most, if not all, governors in the U.S. have issued Executive Orders limiting, or even prohibiting, the operation of certain businesses. Almost every tenant and the use of their leased premises have been impacted in some way by COVID-19. The impact of the respective governors' Executive Orders may depend upon whether the business is an "essential" business. Whether an Executive Order may relieve a tenant, in whole or in part, from a rent obligation depends upon the terms of the tenant's lease and the terms of the Executive Order.

However, one example in which a tenant was successful in arguing that it should be relieved of at least part of its obligation to pay rent was found in the case of *In re: Hitz Rest. Grp.* In this case, the U.S. Bankruptcy Court for the Northern District of Illinois held that a restaurant tenant was partially excused from paying rent for certain months after Illinois Governor J.B. Pritzker issued an order requiring restaurants to cease operations. The court relied on the lease's force majeure clause, which states that the tenant's lease obligations are excused if hindered by "government action" or "orders."

Even though it appears that businesses in many states are beginning to reopen, accrued unpaid rent will become an issue eventually, and tenants will need to prepare for landlords' demands and claims.

For additional information, please contact Mike Bedell or any other member of Masuda Funai's Real Estate Practice Group.