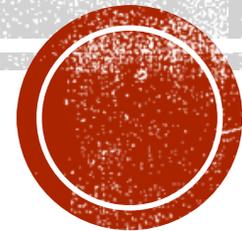


# BEER IN A TIME OF DISRUPTION



By Mike Drumm  
[www.beerattorney.com](http://www.beerattorney.com)

Day 2 without Breweries...

Found a lady sitting on my couch. Apparently she's my wife. She seems nice.

Day 4 without Breweries...

Met my wife's boyfriend...nice guy

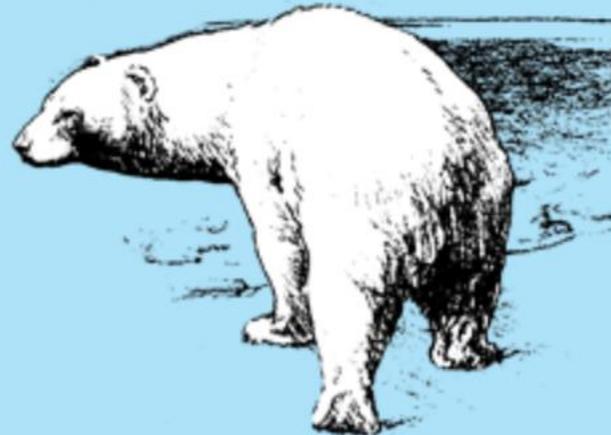
- **This presentation provides general information on recent legal developments that may be of interest. This presentation does not provide legal advice for any specific situation and does not create an attorney-client relationship between any viewer and the firm.**



# CONTROL

- Do not let what is out of your control interfere with the things you can control

This too shall pass.  
This one just happens to weigh  
a ton and walks very  
very slowly.



your  cards  
someecards.com



# IMPORTANT - TAKE CARE OF YOURSELF

-Family

-Friends

-Meditation  
(deep breaths  
at a minimum)



Insight Timer



headspace



# CASH IS KING — GAIN MORE CAPITAL

- SBA Economic Injury Disaster Loan
- Start preparing now
  - Recent tax returns
  - Interim financials (Income Statement and Balance Sheet)
  - Bank statements



# CASH IS KING — PRESERVE CAPITAL

- Reach out to anyone you owe money to:
  - Landlord
  - Bank
  - Suppliers
  - Investors



# SURVIVAL MODE— REDUCE WORKFORCE

- Communicate clearly with your workers and have a plan
- Reduce workforce if possible
  - Essential workers
  - Tough decisions



**Make sure there is a brewery for them to come back to!**

- Laws vary by state
- Employers need to consider both the various federal laws and the specific state law of their jurisdictions, so we can only discuss generally here. If you are going to do something at all creative or unusual, it is strongly recommended that you run it by counsel first.



# SURVIVAL MODE— REDUCE WORKFORCE

- Layoffs v. furloughs v. hour reduction
- Layoff is typically termination, no end date
- Furlough is essentially a temporary layoff with set beginning and end date
- In each, employee would be eligible for unemployment
- In some states, a reduction in hours may qualify employee for unemployment benefits (i.e. receive wages and unemployment within certain limits)
- Employees should file for UI benefits first week of layoff/furlough (and reduction, if available) to maximize compensation



# SURVIVAL MODE—WORKFORCE

- Pending Legislation
- The *Keeping Workers Paid and Employed Act* would prevent workers from losing their jobs and small businesses from going under due to economic losses caused by the coronavirus pandemic. The plan would provide cash-flow assistance through 100 percent federally guaranteed loans to employers who maintain their payroll during this emergency. If employers maintain their payroll, the loans would be forgiven, which would help workers to remain employed and affected small businesses and our economy to quickly snap-back after the crisis. This proposal would be retroactive to March 1, 2020, to help bring workers who may have already been laid off back onto payrolls.



# REACH OUT TO YOUR DISTRIBUTOR

- What is their plan?
- Can they pay you?
- Can you self distribute beer they won't buy?
- Is now a good time to breakup?



# REVIEW YOUR CONTRACTS

- Lease
- Insurance Policies
- Loans
- Distribution Agreements
- Hop Contracts



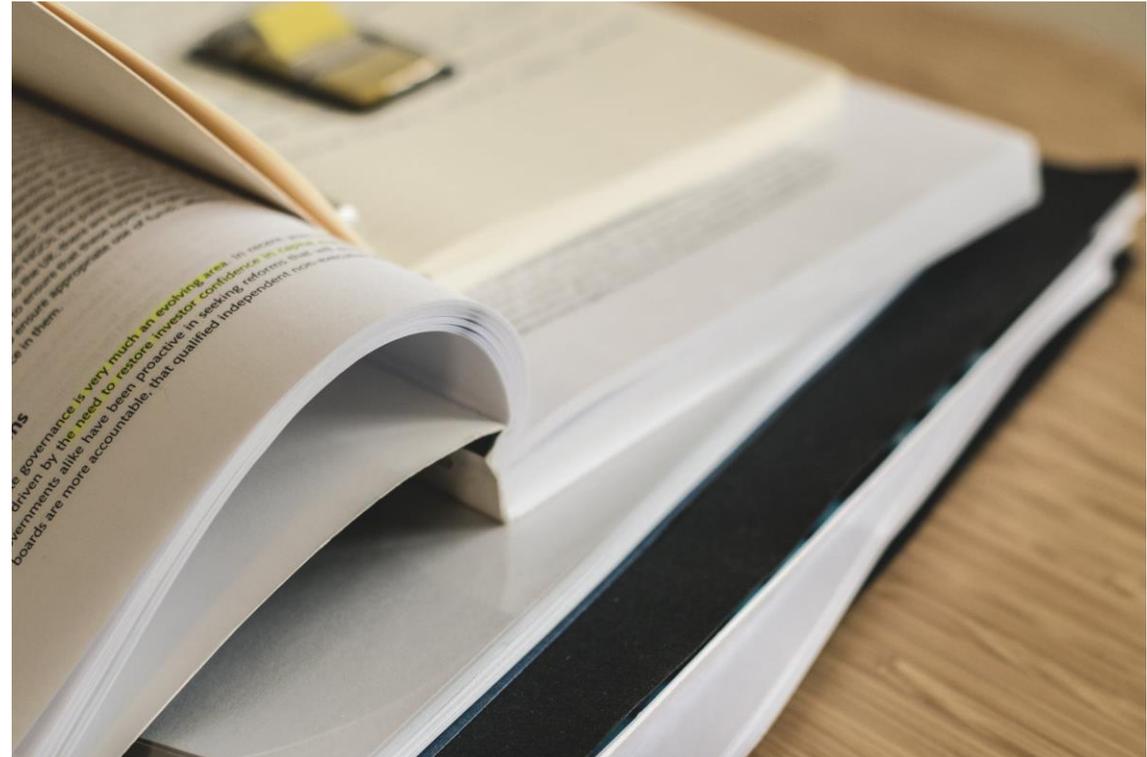
# REVIEW YOUR CONTRACTS

- Cancel
  - ASCAP/BMI/SESAC
  - Pandora Mood/Sirius XM
  - Paid advertisements (and outdated ones)
  - Reduce Premium Basis
    - Delivery/Tap Room
    - Work Comp and General liabilities
      - Reduction in Payroll



# WORDS TO LOOK FOR

- Force Majeure
- Personal Guarantee
- Casualty
- Abatement
- Extenuating Circumstances
- Impossibility
- Beyond Control
- Epidemic
- Government Orders
- Suspend
- Withhold



# PERSONAL GUARANTEE

Without a personal guarantee, you may lose your business assets (equipment, inventory, etc.) but your personal assets should be safe.

A personal guarantee gives your lender the right to pursue your (the guarantor's) personal assets if your business defaults on a business loan.

Most Loans and Leases require a personal guarantee



# REVIEW YOUR INSURANCE POLICIES

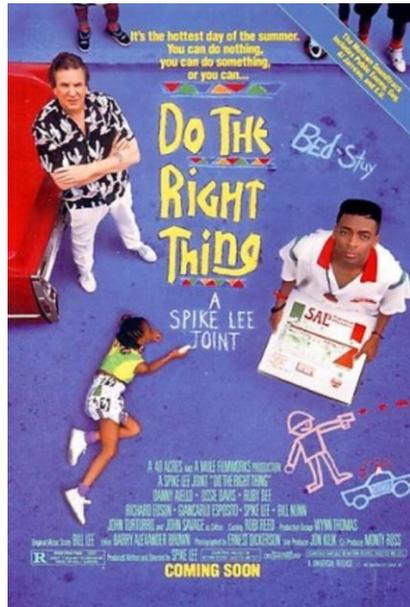
(EVEN THOUGH IT MAY NOT HELP)

- Business interruption insurance is generally intended to cover losses from direct interruptions to a company's operations, such as a fire, natural disaster or other event.
- Tied to physical property
- Generally need specific communicable disease coverage (ties back to SARS losses).
- The specific language will control (so review yours!)
- **Make a claim anyway**
  - (some claims are required to be made within a certain time)

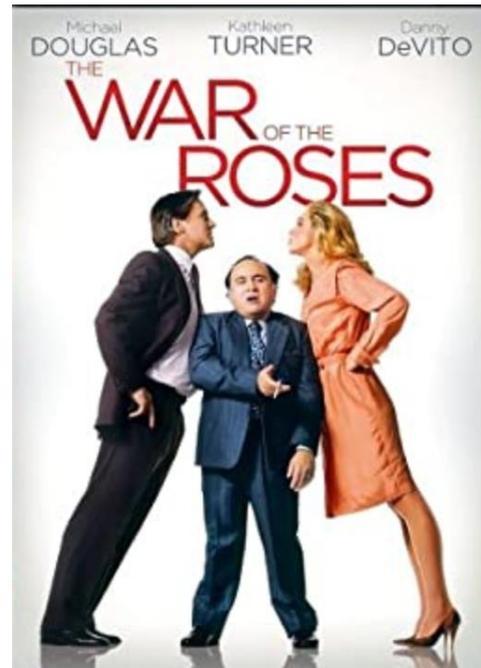


# STEP 1 AND STEP 2

- Step 1- Do the Right Thing



- Step 2 - War

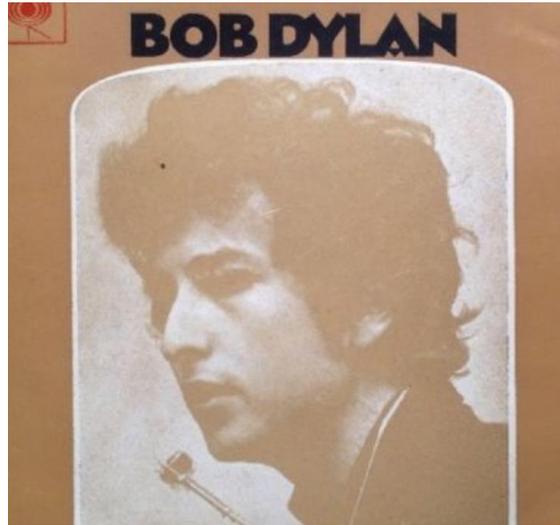


# LEASE

- Step 1-Talk to your landlord

Landlord,

As you may have heard, my brewery (is closed/is no longer able to sell beer on premises/is only open for to go sales). As you can imagine, this loss of revenue will have a dramatic impact on our continued operations. Due to these unforeseen and extraordinary circumstances, we are reaching out and asking for any help that you may be able to provide with regards to our rent payments. Please let us know how you can help in this crisis. It is appreciated.



## Dear Landlord

WRITTEN BY: BOB DYLAN

Dear landlord  
Please don't put a price on my soul  
My burden is heavy  
My dreams are beyond control  
When that steamboat whistle blows  
I'm gonna give you all I got to give  
And I do hope you receive it well  
Dependin' on the way you feel that you live



# LEASE

- Step 1-Talk to your landlord
  - Get a plan-they have a vested interest in your survival
- Lease Items to Check...
  - Can landlord temporarily close the business during times of emergency?
  - Is there a “continuous operation” provision requiring open so many business hours or days per week?
- What is the landlord’s plan if you are unable to pay rent?

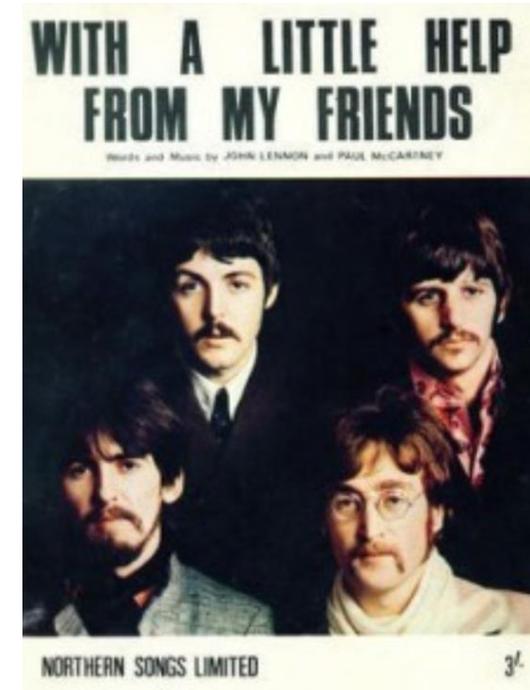


# LEASE

- Step 1-Talk to your landlord
  - When does your lease expire?
  - Rent Waiver
  - Rent Abatement
    - Rent abatement allows a tenant to suspend rent payments or pay only a portion of the rent.

For example- only pay for production space vs taproom

- Rent Deferral
  - Rent would be required to be repaid at a later time, either in a lump sum or by increasing subsequent payments.
- If not successful, move to Step 2



# LEASE-FORCE MAJEURE

- Step 2 – Review your Lease
- Force Majeure
  - Look for reference to money or payment obligations:
    - No Party shall be deemed in default of this Agreement or, unless otherwise expressly provided therein, any Ancillary Agreement for any delay or failure to fulfill any obligation (**other than a payment obligation**)



# LEASE-CASUALTY CLAUSE

- Step 2 – Review your Lease

Similar to business interruption insurance reasoning and allows a lease to be terminated or requires a landlord to provide the tenant with rent abatement due to an event that substantially damages the property, such as theft, fire, wind, falling objects or lighting.



# LEASE-RIGHTS OF USE

- Step 2 – Review your Lease

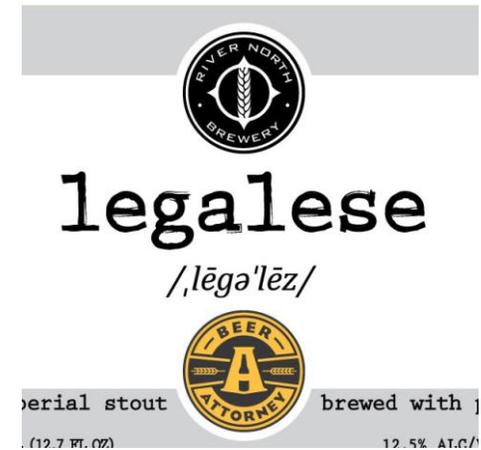
- **Tenant's Rights of Use and Access** – Some leases may require Landlord to provide 24/7 access to the leased premises or include specific remedies for tenants if they are not in default and are unable to access or use the premises.



# LEASE-RIGHTS OF USE

- Step 2 – Review your Lease

- **Tenant's Rights of Use and Access** – Some leases may require Landlord to provide 24/7 access to the leased premises or include specific remedies for tenants if they are not in default and are unable to access or use the premises.
- Look for anything that says the landlord has to provide you with a building you can use (for a taproom/brewery/etc.)



# CAN MY LANDLORD EVICT ME?



- Check lease first for eviction rights / timing.
  - Short Answer-Probably.
  - But timing/steps are critical to know.
- Options depend on where you are.
  - Check with local laws/government. Some cities are passing laws to suspend evictions.
    - Be sure this applies to businesses and not just homes.
  - Some courts are suspending evictions or have closed their dockets.
  - Some police/sheriff's offices are not enforcing evictions.
- Can landlord still lock you out?

A self-help eviction occurs when a landlord retakes possession of a property without using the eviction process. ... Even if the tenant has not paid rent, has destroyed property, or has violated a term in the lease or rental agreement, a landlord may only legally remove the tenant by following state eviction procedures



# LEASE-CREATIVE ARGUMENTS TO COME

- Not a short term solution...but:
- Eminent Domain
- Some tenants may contend that government action requiring businesses to close temporarily to prevent the rapid spread of COVID-19 effectively converts leased spaces for “public use,” requiring government compensation.



And other legal arguments will arise.



# REACH OUT TO YOUR LENDER

- SBA loans are made through banks, credit unions and other lenders who partner with the SBA.
- Reach out to the bank that made your loan.



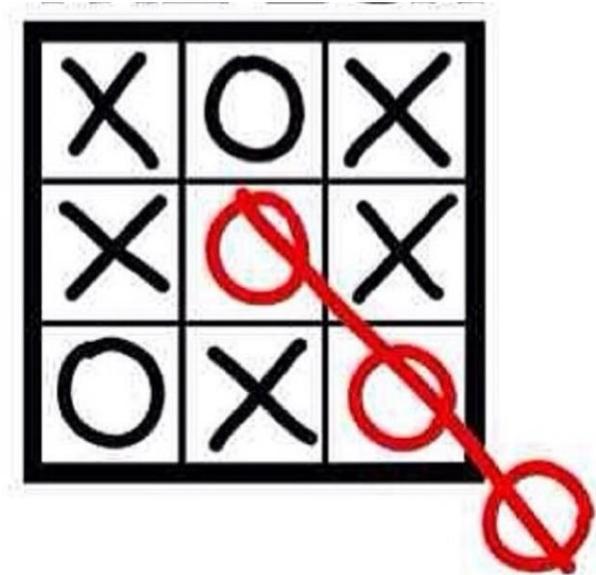
# DON'T SIGN NEW CONTRACTS

- Unprecedented times
- Don't legally commit (unless you have to)
- Does help required a Personal Guarantee?



# THINK OUTSIDE THE BOX

- Make sure you are insured for any new uses (packaging/delivery)
- Collab brew with a packaging breweries
- Package beer (mobile canning, barrels, crowlers)
- Repurpose taproom space
  - Remote work spaces to limited number of people
    - (you have tables, chairs and internet)
- Reach out to home brew clubs to sell draft beer



# OPPORTUNITIES?

- Increased demand for packaged beer?
  - Less Draught Beer available – increased demand for packaged beer?
- Survive the Storm. Be “Jenny”



# STAY SAFE, STAY HEALTHY

This affects the entire industry and world. You are not alone.

Thank You

## QUESTIONS?

Mike Drumm

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