



CUSHMAN &
WAKEFIELD

APPRAISALS DURING “BLACK SWAN” EVENTS

LESSONS FROM COVID-19

HOSTED BY: MILLER | BARONDESS

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TODAY'S PANELISTS



JAMES
GOLDMAN



BRADLEY
LOFGREN



ADAM
DEMBOWITZ



AMNON
SIEGEL



PRIOR “BLACK SWAN” EVENTS

1. Early 90s: Savings & Loan Crisis
2. 9/11
3. The Great Recession



COVID “BLACK SWAN” EVENT

- Nationwide Stay-At-Home Orders
- CA: Gov. Newsom’s Executive Order: Rent Deferral; Moratorium On Residential Evictions
- NY: Gov. Cuomo’s 90-Day Moratorium On Residential And Commercial Evictions
- City Of Los Angeles: Moratorium On Residential And Commercial Evictions
- Fannie And Freddie For Multifamily Properties: Mortgage Forbearance On Condition Of No Evictions of Tenants



CASE STUDY

- Exercise of Rent Renewal/Extension at Beginning of COVID
- Narrow Definition of Market Comps
- Market Comps All pre-date onset of COVID

LEGAL CONCEPTS

APPLICABLE TO BLACK SWAN EVENTS

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FORCE MAJEURE

- In the legal context, generally means an unforeseeable event that prevents a party from fulfilling a contract
- In the Leasing context:
 - Force Majeure is not in all leases, and leases that do have it define it differently
 - Even if there is a force majeure clause in the lease, it rarely excuses non-payment of rent



OTHER LEGAL CONCEPTS

APPLICABLE TO BLACK SWAN EVENTS

IMPOSSIBILITY / IMPRACTICABILITY OF PERFORMANCE; FRUSTRATION OF PURPOSE

Impossibility/Impracticability of Performance: Implied by law into every contract

- Performance made impracticable by an unforeseeable event not caused by non-performing party
- Temporary Commercial Impracticability: temporarily suspends performance until event passes
- Reasonable extension of time to perform (think moratorium on evictions)

Frustration of Purpose:

- Supervening event frustrated the fundamental reason of both parties entering the contract
- Frustration not fairly contemplated within the risks of the contract

Applies to all contracts: leases; real estate purchases; construction contracts; loan documents.



HOW DO LAWYERS ATTACK APPRAISALS

- Experience, Credentials, Potential Bias
- Adherence to the Contract
- Confirm Accuracy of All Representations/Assumptions
- Consistency with Comps and Market Data
- Adjustments for Market Conditions (e.g. Black Swan Event)
- Beware of Excluding Data Points



KEY ISSUES

1. Appraiser's Opinion Must Be Reasonable & Defensible
2. Appraiser's Opinion Must Be In Sync With Lawyer's Theory /Theme of Case



Q&A