Insurance and Contract Risk After UAP Disclosure: Force Majeure, Exclusions, and Coverage

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Key points

- Force majeure clauses are read narrowly and by their listed events; a UAP event is most likely to excuse performance through a government order (airspace closure, facility shutdown) that a catch-all reaches (*JN Contemporary*), and money obligations are rarely excused (*SVAP III*).
- War and hostile-action exclusions have been read to require hostilities between sovereign or quasi-sovereign entities (*Pan American*; *Universal Cable*), which favors coverage for damage caused by a non-human actor.
- Aviation war-perils exclusions also reach government confiscation, detention, and requisition whether or not there is a war (*Aircastle*), so a government seizure after a UAP incident belongs on war-risk cover.
- Civil-authority business-interruption coverage usually requires physical damage nearby; a closure "based on fears of future attacks" was not covered (*United Air Lines*).
- Draft now: define a "UAP Event" by reference to 50 U.S.C. §3373(n)(8) and allocate the risk expressly (Forms E5-1, E5-2).

1. Summary

Official confirmation of NHI and of UAP activity would raise ordinary contract and insurance questions in an unfamiliar setting. The sections below take them in turn: excuse of performance under contracts (§2), property and business interruption coverage (§3), aviation and space (§4), life and accident policies (§5), and drafting (§6).

2. Contracts: force majeure and excuse

Force majeure and excuse. Whether a disclosure event, or UAP activity itself (airspace closures, interference with equipment, government restrictions), excuses performance depends on the clause's language. Clauses that list "acts of God," "acts of government," "war," "hostilities," or "any cause beyond the reasonable control" of a party will be tested. Courts construe force majeure

clauses narrowly and require causation. The post-COVID cases show how an unlisted event is handled. In *JN Contemporary Art LLC v. Phillips Auctioneers LLC*, 29 F.4th 118 (2d Cir. 2022), a clause covering "circumstances beyond our or your reasonable control, including, without limitation, as a result of natural disaster, fire, flood, general strike, war, armed conflict, terrorist attack or nuclear or chemical contamination" was read with *ejusdem generis*, and "the COVID-19 pandemic, coupled with the state government's orders restricting the activities of nonessential businesses," fell within it. A UAP event that prompts government airspace closures or facility shutdowns would be argued the same way: the government order, more than the phenomenon itself, is what places the event within a catch-all of this kind. Absent a clause, the common-law doctrines of impossibility, impracticability (UCC §2-615; Restatement (Second) of Contracts §261), and frustration of purpose apply, and require an unforeseeable event that makes performance impracticable.

California's statutory excuse and its limits. California has a statute that reads as if written for this issue: performance is excused when "prevented or delayed by an irresistible, superhuman cause," unless the parties have "expressly agreed to the contrary," and when prevented or delayed by the operation of law (Civ. Code §1511, subds. 1-2). The post-COVID decisions show how narrow it is. A tenant shut by government closure orders still owed rent, because the orders did not prevent it from paying; the lease's force majeure clause, which excluded failures "which can be cured by the payment of money," was an express agreement to the contrary; and impossibility and frustration failed for the same reason. *SVAP III Poway Crossings, LLC v. Fitness International, LLC* (2023) 87 Cal.App.5th 882, 892-95. Money obligations will rarely be excused by a UAP event, however extraordinary. Where a clause does apply, its allocation terms decide who keeps money already paid: musicians kept their deposits after a festival was cancelled for COVID-19 because the contract let them do so if they were "otherwise ready, willing, and able to perform." *VFLA Eventco, LLC v. William Morris Endeavor Entertainment, LLC* (2024) 100 Cal.App.5th 287, 298-301. Contracts for events, launches, or flights that a UAP incident or a related airspace closure could cancel should say expressly whether such an incident is a force majeure event and who bears deposits and costs.

3. Property and business interruption

3.1 War, hostile action, and sovereign acts

Insurance exclusions. Property, aviation, and life policies commonly exclude "war," "hostile or warlike action," "insurrection," and "acts of a sovereign power." Whether damage caused by a non-human craft, or by government action against one, is "war" or "hostile action" is uncertain. The war exclusion has been read to require hostilities between sovereign or quasi-sovereign entities (*Pan American World Airways, Inc. v. Aetna Casualty & Surety Co.*, 505 F.2d 989 (2d Cir. 1974); *Universal Cable Productions, LLC v. Atlantic Specialty Insurance Co.*, 929 F.3d 1143 (9th Cir. 2019)). A non-human actor is not a recognized sovereign (Issue F1, F5), which favors coverage.

3.2 Civil-authority coverage

Business-interruption policies often cover lost income when "access to the Insured Locations is prohibited by order of civil authority as a direct result of damage" to nearby property. That language is a poor fit for UAP events. After September 11, the Second Circuit held that United Air Lines could not recover for the shutdown of Reagan National Airport under such a clause: flights had been halted before the attack on the Pentagon, and the government's later decision to keep the

airport closed "was based on fears of future attacks," not the damage itself. *United Air Lines, Inc. v. Insurance Co. of the State of Pennsylvania*, 439 F.3d 128, 134-35 (2d Cir. 2006). An airspace or area closure ordered because of UAP activity, with no physical damage, will meet the same objection. Policyholders exposed to closures should buy civil-authority coverage that does not require physical damage, or a non-damage business interruption endorsement.

3.3 Terrorism, nuclear, and causation provisions

- **Terrorism coverage.** The federal terrorism backstop applies only to an "act of terrorism" certified by the Secretary of the Treasury under the Terrorism Risk Insurance Act, which requires conduct by individuals acting to coerce the civilian population or influence government policy. Damage caused by a non-human actor would not be certified, so terrorism coverage purchased under TRIA is unlikely to respond.
- **Nuclear and radioactive contamination exclusions** are standard in property policies. If UAP material is radioactive (Issue E3), losses from contamination may fall under those exclusions regardless of their source.
- **Causation.** Many policies contain anti-concurrent-causation language that excludes a loss if an excluded cause contributed to it in any sequence. A loss caused by a UAP incident and by the government's response to it should be analyzed under each cause separately.
- **Fortuity.** All-risks coverage applies to fortuitous losses. An insured that knew of UAP activity at a site before buying coverage may face a known-loss defense.

4. Aviation and space

Aviation war-perils exclusions reach government seizure without any war. The standard aviation "War, Hi-Jacking and Other Perils Exclusion" covers more than hostilities. Its clause (f) excludes "[c]onfiscation, nationalisation, seizure, restraint, detention, appropriation, requisition for title or use by or under the order of any Government (whether civil, military or de facto)," and clause (d) excludes acts "for political or terrorist purposes" by persons "whether or not agents of a sovereign power." Applying that wording, a New York court held that the exclusion barred all-risks claims by lessors whose aircraft Russian airlines kept after the 2022 invasion of Ukraine, treating the war and the Russian government's measures as the efficient proximate cause of the loss. *Aircastle Ltd. v. Chubb European Group S.E.*, 259 N.Y.S.3d 893, 900, 907-09 (Sup. Ct. N.Y. County 2026). For UAP risks the consequence is that an aircraft, payload, or recovered object detained or requisitioned by a government after a UAP incident falls under the all-risks policy's war-perils exclusion (and so belongs on war-risk cover) whether or not any "war" exists, while damage from the phenomenon itself is not obviously within any clause of the exclusion. The opposite result follows when the exclusion's words are tied to military action: a "Hostile/Warlike Action" exclusion did not bar losses from the NotPetya cyberattack. *Merck & Co. v. Ace American Insurance Co.*, 475 N.J. Super. 420 (App. Div. 2023), appeal dismissed, 256 N.J. 190 (2024). Policyholders should place war-risk cover alongside all-risks cover and read clause (f) closely.

Hull and liability policies apply to accidents involving UAP on their ordinary terms; the coverage questions are the war-perils and government-action exclusions above.

Montreal Convention. For international carriage, the carrier is liable for death or bodily injury caused by an accident on board or during embarkation or disembarkation (art. 17). Liability up to the first tier is strict; above it the carrier escapes liability if it proves the damage was not due to its negligence or was solely due to a third party (art. 21), and it may be exonerated to the extent the passenger's own negligence contributed (art. 20). An accident caused by an unidentified object would be litigated on the second tier: the carrier will argue that the damage was solely due to a third party.

Space insurance. Launch and in-orbit policies cover satellite loss and damage, typically on an all-risks basis with war, nuclear, and government-confiscation exclusions. Damage to a satellite by an unidentified object raises the same "war" and "hostile act" questions as aviation, with the added problem of proving the cause from telemetry alone. Operators should ask insurers in writing whether an anomaly attributed to UAP would be treated as excluded.

5. Life and accident insurance

Accidental death: accidental death benefits generally cover death by external, violent, and accidental means; exclusions for war and aviation may be invoked.

Specialty products: "alien abduction" policies have been sold as novelties; their terms would be enforced as written.

6. Drafting and market response

Market response: insurers may add express UAP or NHI exclusions after disclosure. Policyholders should review renewals.

7. Practice points

- Review force majeure clauses in long-term contracts (aerospace, energy, telecommunications, events) for language covering government actions, airspace closures, and "unknown" causes; consider adding express provisions.
- Review insurance programs for war, hostile action, and government action exclusions; consider buy-backs.
- After any loss involving a UAP, give prompt notice and preserve evidence (Forms D4-1, E3-1).
- For insurers, draft any new exclusions precisely (define "unidentified anomalous phenomena" by reference to 50 U.S.C. §3373(n)(8) or by functional description) to avoid ambiguity construed against the drafter.