The impact of climate change on sporting events has been associated with several business and legal challenges, including managing safety risks for athletes while competing in extreme heat (Taylor, 2019), ski resorts having enough snow to remain open (Burki, Elsasser, & Abegg, 2003), rising tides threatening ocean side resorts (Buckley, 2017), and reduced availability of irrigation water for golf courses (Peeples, 2019). One additional challenge receiving only nominal attention to date is the potential for disruption in the contractual obligations between colleges and universities due to game cancellations as a result of increasingly volatile weather. For example, in 2017 alone, almost 20 NCAA D-I college football games and several other collegiate athletic contests were canceled, postponed, relocated, or rescheduled due to hurricanes and other extreme weather events resulting in an estimated $10-15 million in economic losses (Chappell, 2017; Cangialosi et al., 2018; Wong, n.d.) and substantial disruption to travel schedules (Spain, 2017; Culpepper, 2017; Berkowitz, 2017; Kirk & Godfrey, 2017).

Event cancellation insurance policies can provide protection for lost revenues but these policies often contain exclusions due to inclement weather (Wong, n.d.). Thus, the risk of cancellation due to weather related events may be the type of risk the institutions should address at the time of negotiating game contracts through the strategic use of force majeure clauses. Force majeure provisions are common to game contracts, but the scope and legal effect of those provisions is not clear when a game is canceled or delayed due to inclement weather. Several game cancellations by cause of weather events are the basis of settled and pending litigation which raised unanswered questions regarding the effectiveness of the force majeure clause (McKewon, 2018; Kubena, 2018).

Typically, liability for breach of contract (i.e. non-performance) is absolute (Restatement [Second] of Contracts, ch. 11, 1981), however, a claim of force majeure can be used as an affirmative defense to excuse non-performance (1 Am. Jur. 2d Act of God § 3, 2005). Force majeure can excuse the parties from contractual obligations in the face of unusually severe, unexpected weather (Knoll & Bjorkklund, 2014). However, it may be more difficult to determine what is unusually severe, and what is unexpected in terms of extreme weather if not addressed at the time of contracting (Sniffen, 2007).

The purpose of this study was to examine the language of force majeure provisions in current game contracts to determine how they would apply to an extreme weather cancellation and predict the likely legal effectiveness of these clauses. We used a qualitative case study research design to investigate force majeure provisions contained in 25 football game contracts representing a diverse range of athletic conferences, institution sizes, and geographic locations. Next, we conducted interviews of athletic administrators responsible for negotiating game contracts to gain insights into whether the risks associated with game cancellations due to extreme weather during scheduling of games is addressed during negotiations. The legal requirements for force majeure enforcement will be presented together with complete results from the document analysis and interviews.