



STATE OF ALABAMA FORCE MAJEURE LAW COMPENDIUM (during COVID-19 pandemic)

Prepared by

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A. Introduction

This memorandum will seek to provide an Alabama exemplar for the USLAW NETWORK Compendium of Law on relevant considerations with respect to invoking “force majeure” clauses in contracts in light of the ongoing COVID-19 crisis.

B. Force Majeure in Alabama

1. Introduction

Force majeure clauses generally permit a party to suspend, delay, or terminate its performance without penalty where it has been unable to complete its performance due to the occurrence of certain defined events outside its control. Common examples of events covered by force majeure clauses are Acts of God, governmental or judicial actions, wars, work stoppages, and natural disasters. In the absence of a force majeure clause, parties typically are limited to narrow contractual defenses of impracticability or frustration of purpose.

2. Requirements to Obtaining Relief Using Force Majeure

Alabama does not define “force majeure” by statute. Furthermore, Alabama has little to no case law specifically addressing the application of force majeure provisions in any context, much less the context of pandemics or outbreaks of disease. Typically, a party seeking to excuse its performance under a force majeure clause must show that (1) the event in question caused its inability to perform, and (2) the event in question constitutes a force majeure event. This will be easier if the clause has specific events defined in the force majeure clause and more difficult if the clause refers generally to “unforeseeable events”, “acts of God”, or “acts of a government authority.” If a force majeure clause refers to specific events and concludes with a more general catch-all phrase, courts typically will interpret the general phrase narrowly in accordance with the specific items listed beforehand.

3. Scope of Relief

The scope of relief available primarily is determined by the language of the contract. Some contracts only allow for suspension of performance, whereas others may excuse performance partially or entirely. Similarly, some contracts excuse or suspend performance once it becomes commercially impracticable, whereas others require performance to be impossible.

4. Other Considerations

As a general matter, Alabama does not recognize the defenses of impracticability or impossibility in breach-of-contract actions. “Where one by his contract undertakes an obligation which is absolute, he is required to perform within the terms of the contract or answer in damages, despite an act of God, unexpected difficulty, or hardship, because these contingencies could have been provided against by his contract.” *Silverman v. Charmac, Inc.*, 414 So. 2d 892, 894 (Ala. 1982). There is a very narrow defense for legal impossibility, but “illegality resulting

from an unfavorable exercise of discretion by governmental officials” does not constitute legal impossibility. *Peppertree Apartments, Ltd. v. Peppertree Apartments*, 631 So. 2d 873, 879 (Ala. 1993). For sales governed by the Uniform Commercial Code, Alabama has enacted the UCC’s impracticability defense. Ala. Code § 7-2-615.

Many force majeure clauses require the party asserting the defense to give timely notice to the other party. A failure to give timely notice may result in waiving the force majeure defense.

This Compendium outline contains a brief overview of certain laws concerning various litigation and legal topics. The compendium provides a simple synopsis of current law and is not intended to explore lengthy analysis of legal issues. This compendium is provided for general information and educational purposes only. It does not solicit, establish, or continue an attorney-client relationship with any attorney or law firm identified as an author, editor or contributor. The contents should not be construed as legal advice or opinion. While every effort has been made to be accurate, the contents should not be relied upon in any specific factual situation. These materials are not intended to provide legal advice or to cover all laws or regulations that may be applicable to a specific factual situation. If you have matters or questions to be resolved for which legal advice may be indicated, you are encouraged to contact a lawyer authorized to practice law in the state for which you are investigating and/or seeking legal advice.