



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

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A. Introduction

This memorandum will seek to provide a Connecticut 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 Connecticut

1. Introduction

With many businesses unable to operate or operating at reduced levels due to the COVID-19 pandemic, many commercial parties are reviewing their contractual rights and obligations to determine whether a force majeure clause excuses their performance. “Force Majeure” excuses contracting parties from liability when an extraordinary event or circumstances outside their control (such as war, natural disasters, or an “act of God”) prevents one or both parties from fulfilling their obligations. Most force majeure clauses do not free a party from performing entirely, but suspend performance for the duration of the force majeure event. In the absence of a force majeure clause, the common law recognizes the defenses of commercial impracticability/impossibility, and/or frustration of purpose. These concepts may apply when performance of the contract is radically different from what the parties intended.

2. Requirements to Obtaining Relief Using Force Majeure

Force majeure is controlled by the law governing the contract, rather than general concepts of force majeure. See, e.g., Stanley Works v. Halstead New England Corp., No. CV010506367S, 2001 Conn. Super. LEXIS 1382, at *14 (Conn. Super. Ct. May 18, 2001) (a court’s interpretation of a force majeure provision is guided by well-established principles of contract law). Whether a force majeure clause excuses parties from their contractual obligations depends on the precise wording used, the allocation of risk between the parties in the contract, the circumstances in which the parties entered into the contract, and the particular circumstances of the situation. See, e.g., Rich Taubman Assocs. v. Sweeney Todd’s Hair Design, No. SPNO30972, 2005 Conn. Super. LEXIS 1103, at **9-10 (Conn. Super. Ct. Feb. 9, 2005) (requiring tenant to continue paying minimum rent based on carve-out clause in force majeure provision).

Force majeure clauses generally define the types of events which relieve a party from performance. See, e.g., Stanley Works, supra at **15-16 (licensee required to make minimum royalty payments despite inability to perform because contract was clear and unambiguous that parties intended to bind licensee to minimum royalty payments in the event of a termination). Where the term epidemic or pandemic is used, the force majeure clause will cover COVID-19. Where no relevant event is specifically identified, a court must determine whether the parties intended the event to be covered. Connecticut has little to no case law specifically addressing the application of force majeure provisions in the context of pandemics or outbreaks of disease.

Contracts may, instead, refer to events or circumstances “beyond the parties’ reasonable control.” In such cases, whether the force majeure clause covers issues arising from COVID-19 is

a question of interpretation and is fact specific. Parties will need to show that their non-performance was truly outside their control and could not have been prevented or mitigated.

Even if COVID-19 or related government closures are the types of events covered by the force majeure clause in the contract, the event must impact a party's ability to perform before they will be relieved from liability. A party seeking to rely on a force majeure clause must show that they cannot perform the contract due to the force majeure event, the force majeure event was the cause of the inability to perform, non-performance was due to circumstances beyond their control, and there were no reasonable steps they could have taken to avoid or mitigate the non-performance. Increased costs is not usually a sufficient basis to excuse non-performance or delay. See Int'l Auto. Showcase, Inc. v. SMG, No. CV030477177S, 2004 Conn. Super. LEXIS 1908, at **5-6 (Conn. Super. Ct. July 21, 2004) (applying doctrine of supervening impossibility and noting "only in the most exceptional circumstances have courts concluded that a duty is discharged because additional financial burdens make performance less practical than initially contemplated").

3. Scope of Relief

Where a force majeure clause is successfully invoked, a party will be excused from its obligations and/or liability under the contract. Force majeure clauses may also provide for extensions of time or termination in the event of continued delay or non-performance. A right of termination could provide significant leverage for a party to renegotiate the terms of the contract.

If the contract lacks a force majeure clause, the affected party will have to look to other provisions of the contract and/or the common law to be relieved of its obligations.

4. Other Considerations

A business seeking to rely on a force majeure clause must also comply with any contractual requirements such as a requirement to give notice of its intention to rely on the clause to the other party within applicable timeframes, including any required notice formalities. Where a party anticipates it will be unable to meet its obligations, it is critical to explore whether there are any steps the party can take to mitigate their non-performance, such as locating alternative sources of labor or materials, or in the case of restaurants and box stores, offering curbside pickup or delivery.

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

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