



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

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A. Introduction

This memorandum will seek to provide a Georgia 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 Georgia

1. Introduction

Under Georgia law, there are two provisions potentially available to those seeking to excuse performance under a commercial contract due to COVID-19 in the absence of a specific contractual provision or words such as “epidemic,” “pandemic” or other similar variations: (1) the “act of God” clause in contracts and (2) the “act of God” defense to contractual breach pursuant to O.C.G.A. § 13-4-21. Although, historically, “pandemic” and “epidemic” are not typically specified in of contractual relief.

2. Requirements to Obtaining Relief Using Force Majeure

Georgia has very little decisional law on *force majeure* clauses. An “act of God” provision, which is often included in the *force majeure* clause of commercial contracts, lays out when a party, or parties, may cease to fulfill their obligations to perform. But the scope of any relief provided under *force majeure* clauses and the like is governed by the specific terms of the contract. Without specific use of words such as “pandemic,” “epidemic,” or “viral outbreak,” the “act of God” provision may guide a party as to their available remedies. However, Georgia case law is silent with respect to whether a pandemic, like COVID-19, constitutes an “act of God.” For over 150 years, the Supreme Court of Georgia has defined an “act of God” as “any accident produced by physical causes which are irresistible[,] such as lightning, storms, perils of the sea, earthquakes, inundations, sudden death or illness...exclude[ing] all idea of human agency.”¹ Given that Georgia case law is currently silent on the topic of whether pandemics, such as COVID-19, constitute an “act of God,” we can anticipate varying judicial outcomes and verdicts as these cases begin making their way through the court system.²

3. Scope of Relief

Additionally, some contracts—by their very language—expressly limit qualifying acts of God. Georgia case law specifically outlines an “act of God” as one that is not human caused and it must

¹ *Cannon v. Hunt*, 113 Ga. 501, 509 (1901) (quoting *Fish v. Chapman & Ross*, 2 Ga. 349, 357 (1847)).

² See *Uniroyal, Inc. v. Hood*, 588 F.2d 454, 460 (5th Cir. 1979) (“Whether a particular casualty is an act of God is a mixed question of law and fact. ‘The defining and limitation of the term, its several characteristics, its possibilities as establishing and controlling exemption from liability, are questions of law for the court; but the existence or non-existence of the facts on which it is predicated is a question for the jury.’” (quoting *Goble v. Louisville & Nashville R.R. Co.*, 187 Ga. 243, 251 (1938))).

also not be reasonably predictable or avoidable.³ Stated simply, an “act of God” must be caused by an extraordinary act of nature. The specific cause and facts surrounding COVID-19 are still coming to light and will have a great impact on how the courts in Georgia apply and interpret the particular “act of God” provisions of commercial contracts. Ultimately, the scope of relief available in Georgia will be guided by the terms of the particular contracts at issue and the individual courts’ interpretation of the parties’ intent.

4. Other Considerations

As mentioned above, under Georgia law, an individual seeking to invoke “act of God” as a defense to non-performance of a contract may be able to do so by statute, even if no *force majeure* provision is included in the contract itself. Code section 13-4-21 specifically provides:

“If performance of the terms of a contract becomes **impossible** as a result of an act of God, such impossibility shall excuse nonperformance, except where, by proper prudence, such impossibility might have been avoided by the promisor.”

O.C.G.A. §13-4-21 (emphasis added).

This is also sometimes referred as the law of impossibility of performance. While a contractual “act of God” provision, as defined and discussed above, may relieve performance for difficulty in performance that is less than impossible, the statutory defense requires that the act of God render performance “impossible.”

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.

³ “The term ‘act of God’ in its legal sense applies only to events in nature so extraordinary that the history of climatic variations and other conditions in the particular locality affords no reasonable warning of them.” *Sampson v. Gen. Elec. Supply Corp.*, 78 Ga. App. 2, 8 (1948) (internal citation omitted).