



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

Prepared by

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A. Introduction

This memorandum will seek to provide an Iowa 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 Iowa

1. Introduction

The current COVID-19 pandemic has created considerable challenges for businesses across the State of Iowa, many of which are not able to perform contractual obligations due to the various issues caused by the pandemic. Some contracts may provide relief through a force majeure clause, which generally provides circumstances under which a party may be excused from its duty to perform the contract. Even if there is no force majeure clause, an Iowa court could still find a contracting party excused from performance based on the related common law doctrines of frustration of purpose or impossibility of performance. The applicability of a particular force majeure clause or common law doctrine may provide contracting parties grounds to negotiate resolution of disputes and even defenses to non-performance during these difficult times.

2. Requirements to Obtaining Relief Using Force Majeure

The first issue to address is whether the contract contains a force majeure clause. “Force majeure” is “an event that can be neither anticipated nor controlled.” *Pillsbury Co. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 440 (Iowa 2008) (citing *Black’s Law Dictionary* 657 (7th ed. 1999)). A force majeure clause is a clause allocating the risk if performance becomes impossible or impracticable as a result of an event or effect that the parties could not have anticipated or controlled. *Id.* A force majeure clause is not intended to shield a party from the normal risks associated with the contract. *Id.*

A party must then carefully consider whether the force majeure clause excuses non-performance of the contract. Because a force majeure clause is contractual, its scope is a function of the language used in the clause. Courts in Iowa narrowly construe force majeure clauses to give effect to the parties’ intent at the time of contracting, based on the language of the clause. Unless there is evidence indicating otherwise, the court will assume that the parties adopted the common law definition of force majeure—an event that can be neither anticipated nor controlled. *Pillsbury Co.*, 752 N.W.2d at 440. The applicability of a particular force majeure clause will be very dependent on the unique facts of each situation.

Iowa courts have not engaged in any substantial discussion of the scope of force majeure clauses in the context of a pandemic such as COVID-19; however, a few cases may provide some guidance for businesses affected by the current crisis. In *American Soil Processing, Inc. v. Iowa Comprehensive Petroleum Underground Storage Tank Fund Board*, 586 N.W.2d 325, 334-36 (Iowa 1998), the Iowa Supreme Court held that a party’s inability to comply with contractual obligations due to government regulations may come within the scope of a force majeure

provision. In that case, the defendant argued the actions of the Iowa Legislature and Iowa DNR (changing the underground storage tank regulatory scheme) prevented the defendant from supplying the plaintiff with the required annual tonnage of contaminated soil required by the parties' agreement. *Id.* The Supreme Court held there were genuine issues of material fact precluding summary judgment on this issue. *Id.*

In *Rembrandt Enterprises, Inc. v. Dahmes Stainless*, No. C15-4248-LTS, 2017 WL 3929308 (N.D. Iowa Sept. 7, 2017), the United States District Court for the Northern District of Iowa refused to excuse performance under a force majeure clause during a pandemic. In *Rembrandt*, an egg product producer entered into an agreement to purchase an industrial egg dryer. *Id.* at *2. After entering into the contract but before performance, the avian flu hit the Midwest, reducing demand and eliminating the need for the egg dryer. *Id.* at *3. The Court held that the force majeure clause did not excuse the purchaser's breach of the contract, because the egg product producer's performance was limited to paying the contract price. *Id.* at *13. The Court drew a distinction between terminating performance for market-based reasons and a force majeure event, as defined in the contract.

Even if there is no force majeure clause, or the force majeure clause does not apply, an Iowa court may still find a party excused from performing under the contract based on the related doctrines of impracticability of performance or frustration of purpose. See *American Soil Processing, Inc. v. Iowa Comprehensive Petroleum Underground Storage Tank Fund Board*, 586 N.W.2d 325, 330 (Iowa 1998) (discussing Restatement (Second) of Contracts § 261). A key issue to consider is whether the circumstances impeding performance were foreseeable at the time of contracting.

3. Scope of Relief

The relief available will depend upon the terms of the force majeure provision and the circumstances surrounding the application of the provision. Unfortunately, the Iowa appellate courts have not provided specific guidance regarding the extent of relief available in the context of a properly invoked force majeure clause.

Under the common law, the Iowa Supreme Court has held that a contracting party's duty is only suspended while the impossibility continues. *Nora Springs Cooperative Company v. Brandau*, 247 N.W.2d 744 (Iowa 1976) (citing *Weiditschka v. Supreme Tent K.M.W.*, 170 N.W. 300 (Iowa 1919)).

4. Other Considerations

As the *Rembrandt* case demonstrates, it is important that the force majeure event actually prevent performance of the relevant contract term. While the COVID-19 pandemic may excuse performance of some contract obligations, it is important to carefully consider the language of the force majeure clause and the contractual obligation sought to be avoided.

Furthermore, before invoking a force majeure clause, the contracting party should consider whether the contract provides for alternative performance. A contract may permit a party to perform in one of several different ways, any one of which will discharge the contracting party's duty. If the potential force majeure event (for example, the COVID-19 pandemic or a particular government regulation) prevents performance of one alternative but not the other alternatives, the force majeure clause will not likely excuse performance. See *American Soil Processing, Inc. v. Iowa Comprehensive Petroleum Underground Storage Tank Fund Board*, 586 N.W.2d 325, 334-36 (Iowa 1998).

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