



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

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A. Introduction

This memorandum will seek to provide a South Carolina 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 South Carolina

1. Introduction

The COVID-19 crisis is historically unique, and cases related to it are likely to present matters of first impression before appellate Courts in South Carolina. However, some of the established law on force majeure may be relied upon and is analyzed within this memorandum.

2. General Applicability of Force Majeure

South Carolina’s insurance statute defines “force majeure” as “any act of God, governmental act, act of terrorism, war, fire, flood, earthquake, hurricane, or other natural disaster, explosion or civil commotion.” S.C. Code Ann. § 38-59-210. Despite this definition, South Carolinians are “generally free to contract for terms upon which they agree.” *Huckaby v. Confederate Motor Speedway, Inc.*, 276 S.C. 629, 630, 281 S.E.2d 223, 224 (1981).

3. Scope of Relief

The scope of relief typically depends on the contours of the force majeure clause itself. Typically, however, the scope of relief might include delayed or excused performance of a contract, but the scope of relief is ill-defined from a case law perspective.

4. Other Considerations

There is extremely limited South Carolina case law guiding application of force majeure clauses. In *Coker Intern., Inc. v. Burlington Indus., Inc.*, a South Carolina District Court judge applying South Carolina law used classical methods of contract interpretation and applied the facts of the case to the clause to determine if the force majeure clause in the contract excused non-performance. It is notable that the force majeure clause included more reasons for excuse of performance than South Carolina’s insurance statute anticipates.

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

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