

## Maine – Force Majeure Law

Under Maine law, force majeure is defined as “an unanticipated and uncontrollable event, including an act of nature such as a flood, tornado, or hurricane.” - *Opinion of the Justices of the Supreme Judicial Court of Maine*, 123 A. 3d 494, 521, n. 26 (Me. 2015). There are no cases directly on point addressing any remedies in the construction context and, in fact, very little consideration of the concept of force majeure in either the Maine state or federal district courts. See e.g., *Opinion of the Justices of the Supreme Judicial Court of Maine*, 123 A. 3d 494, 521, n. 26 (Me. 2015) (in which court mentions force majeure in the context of a case dealing with separation of powers between the legislative and gubernatorial branches). Presumably, if required to consider whether a force majeure provision in a contract were triggered, a Maine court would construe unambiguous terms of a valid contract in accordance with the rules of ordinary contract construction.

Maine does recognize impossibility of performance and acts of God as defenses to contract performance. In *Lakeman v. Pollard*, 43 Me. 463 (1857), the court held that a neighborhood outbreak of a contagious disease, cholera, excused performance under a labor contract. *Id.* at 466. The Court held that the “plaintiff was under no obligation to imperil his life by remaining at work in the vicinity of a prevailing epidemic so dangerous in its character that a man of ordinary care and prudence, in the exercise of those qualities, would have been justified in leaving by reason of it, nor does it make any difference that the men who remained there at work after the plaintiff left were healthy, and continued to be so.” *Id.* Of importance, the court in *Lakeman* allowed for recovery in quantum meruit for the work the contractor did perform. *Id.*, citing 1 Parsons on Contracts, 524. See also *Forrest Assocs. v. Passamaquoddy Tribe*, 760 A. 2d 1041, 1045 (Me. 2000) (“To sustain a claim in quantum meruit, a plaintiff must establish that ‘(1) services were rendered to the defendant by the plaintiff; (2) with the knowledge and consent of the defendant; and (3) under circumstances that make it reasonable for the plaintiff to expect payment.’”) (further citation omitted).