

## **New Hampshire – Force Majeure Law**

Under New Hampshire law, a force majeure clause in a contract will be construed in accordance with the rules of ordinary contract construction. Absent a clearly applicable force majeure clause, the analysis should move on to other principles of contract law. Under New Hampshire law, a breach of contract occurs when there is a failure without legal excuse to perform any promise which forms the whole or part of a contract." *Lassonde v. Stanton*, 157 N.H. 582, 588, 956 A.2d 332 (2008) (quotation omitted). The claimant in a breach of contract claim must take such measures to lessen his or her loss as can be effectuated "with reasonable effort and without undue risk." *Coos Lumber Co. v. Builders Supply Co.*, 104 N.H. 404, 408, 188 A.2d 330 (1963); see also *Grenier v. Barclay Square Commercial Condo. Owners' Assoc.*, 150 N.H. 111, 119, 834 A.2d 238 (2003) ("[A] party seeking damages occasioned by the fault of another must take all reasonable steps to lessen his or her resultant loss.").

New Hampshire also recognizes the doctrine of impossibility of performance and commercial frustration. The doctrine of commercial frustration is similar to the doctrine of impossibility of performance in that both require extreme hardship in order to excuse the promisor, but "commercial frustration" is different from impossibility of performance in that it assumes the possibility of literal performance but excuses performance because supervening events have essentially destroyed the purpose for which the contract was made. *Perry v. Champlain Oil Co.*, 101 N.H. 97, 98, 134 A.2d 65, 66 (1957).

Similarly, the New Hampshire Supreme Court has recognized the "Act-of-God" defense and has indicated that it may be applicable under appropriate circumstances. See *Goddard v. Berlin Mills Co.*, 82 N.H. 225, 227 (1926) ("[a]n occurrence is not an act of God excusing human accountability, unless resulting from 'a cause which operates without interference or aid from man'"), quoting *Reed v. Hatch*, 55 N.H. 327, 337 (1875); *State v. Boston & M.R.R.*, 99 N.H. 66 (1954) (the high wind that caused fire ignited by train to spread was not an intervening cause "unless it was of such extraordinary force as to constitute an act of God"). However, there are no reported cases in New Hampshire addressing the Act-of-God defense as respects construction contracts. Most cases are in reference to liability for bodily injury.