

December 6, 2013

TO: Clients and Friends of the Firm

RE: **Supreme Court Rules on Forum Choice Clause**

Parties may specify in a contract where a dispute will be litigated. On Tuesday, the U.S. Supreme Court issued a decision with implications for these choice-of-forum clauses.

In its *unanimous* decision,* the Court required a federal district court to transfer a case to the district chosen by the parties to the contract in dispute. This is not the first time that federal (or state) courts have upheld choice-of-forum clauses, but the Court clarified several matters:

- In an action involving a federal forum-selection clause, a court must transfer the action to the district selected by the parties to the contract.
- A federal court can refuse to enforce a federal forum-selection clause only rarely, when the *public interest* requires a different forum. The parties' *private interests*, including location of witnesses and evidence, are irrelevant.
- Where a state forum is chosen by contract, a federal district court must dismiss the case. (*Note: This has significant consequences if the statute of limitations has since run!*)

Contract clauses should fit the needs and situation of each client, but we can offer these general drafting comments after the Court's decision:

- 1) Choice-of-forum clauses are generally enforceable, can reduce litigation costs and can provide distinct advantages (and disadvantages) to the respective parties.
- 2) If a client believes a state court would be the best forum for litigation, the contract can specify a state court forum only and it will be enforced by federal courts (unless the matter is one of exclusive federal jurisdiction).
- 3) Where parties have equal negotiating power and disagree over a desirable forum, there may be other effective solutions, such as a clause requiring the plaintiff to sue in the defendant's home forum.
- 4) Remember that alternative dispute resolution mechanisms, such as arbitration and mediation, may be desirable choices, depending on many factors.

We hope this information is useful, and we will be glad to provide further comments.

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* *Atlantic Marine Constr. Co v. United States Dist. Court for Western Dist. of Tex.*, No. 12-929.