

Choice of Forum Clauses Can Prevent Travels to Far Off Lands

by Dan Brecher on August 28, 2012

While everyone enjoys a good vacation, most New York and New Jersey businesses prefer to settle their business disputes close to home. Therefore, it is imperative to include a choice of forum clause in all business agreements.

In general, a choice of forum clause establishes the location where disputes between the parties will be resolved. While some may view choice of forum clauses as mere “boiler-plate” contract terms, they can become extremely important when the agreement involves parties that operate on opposite sides of the country or even opposite sides of the world.

As with most contract clauses, choice of forum clauses can be drafted narrowly or broadly. For example, a typical forum clause might state: “Any dispute arising under or in connection with the agreement or related to any matter which is the subject of the agreement shall be subject to the exclusive jurisdiction of the state and/or federal courts located in the County of New York in the State of New York.” The clause above is quite narrow because it states that all disputes must be resolved in New York City and does not limit the clause to claims simply “arising out of the contract,” but also applies to claims “related” to the contract. As such, it affords greater protection.

To demonstrate how valuable a choice of forum can be, I recently won a court motion determining that an Australian company that does not do business in New York is still subject to suit here under a choice of forum clause agreed upon by the parties. In response to a motion to dismiss asserting forum non conveniens and lack of jurisdiction, the New York federal court ruled that the Australian company could not reasonably contend that it did not expect to have to defend in New York a lawsuit arising out of the contract given the wording of the choice of forum clause.

Thus, our client, a small New York based company, avoided the prohibitively costs and logistical nightmare of having to pursue a business lawsuit in Australia.

If you have any questions about choice of forum clauses or would like to discuss this topic, please contact me, Dan Brecher, or the Scarinci Hollenbeck attorney with whom you work.