

# New Case Mandates Specific Language in Dispute Forum Clauses

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The Massachusetts Appeals Court has just issued a controversial decision, *Boland v. George S. May International Company*, affecting “choice of forum” contract clauses wherein the parties identify the state having jurisdiction over disputes. Specifically, even if the parties’ choice of forum clause identifies a particular state, Massachusetts might not honor that selection. Each Massachusetts company doing business with out-of-state companies should review its choice of forum clause in light of the *Boland* case to ensure its disputes are resolved in the jurisdiction specified in the contract.

The *Boland* case involved the interpretation of a choice of forum contract clause that read: “Jurisdiction shall vest in the State of Illinois.” Despite the clear intent of the clause, the Massachusetts company filed its complaint in Massachusetts. The Illinois company sought to dismiss the complaint because it was not filed in Illinois in accordance with the choice of forum clause. The Court of Appeals held Massachusetts had “concurrent” jurisdiction because the choice of forum clause did not specify Illinois had “exclusive” jurisdiction.

The key “Take Away” from this case is each Massachusetts company doing business with out-of-state companies should review its forum selection clause to ensure the desired jurisdiction is identified as being “exclusive”. In addition to identifying the “exclusive” jurisdiction, the clause should also identify the jurisdiction whose laws shall govern (e.g., “Jurisdiction shall vest exclusively in the Commonwealth of Massachusetts and the laws of the Commonwealth of Massachusetts shall exclusively govern the validity, construction, interpretation, and effect of this Contract”).

The *Boland* case exemplifies the need to periodically review and update business contracts to stay current with the law and thus achieve the parties’ objectives.