

Important Contractual Provisions

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A recent North Carolina case, *Perficient v. Pickworth* (8/6/12) points out the importance of including provisions in business and employment contracts under which the parties agree where litigation will take place (a forum selection clause) and a further provision that the parties consent to jurisdiction in such forum.

Many contracts include a choice of law provision, which identifies the state or other law which will control in any dispute related to interpretation and enforcement of the agreement. But if a court lacks jurisdiction over the parties, or venue is more convenient in another location, legal action may be initiated in or transferred to, a different state, notwithstanding the choice of law provision.

A court with jurisdiction could apply the choice of law provision, even if it means applying the law of another state. Still, this may be small solace if your goal is to ensure that litigation takes place in a preferred venue.

Perficient involved an employee based in Georgia who worked for a North Carolina company. The employment agreement included a choice of law provision stating that North Carolina law would apply, but the Court “observed that the Agreement does not contain a forum selection clause.”

Thus a lawsuit by the company over misappropriation of trade secrets, breach of contract and other matters was transferred to a Georgia court for lack of jurisdiction over the defendant/employee.

Making sure your contracts include a forum selection clause and consent to personal jurisdiction won't necessarily guarantee that a court will uphold their intentions, but doing so is best practice and clearly superior to only including a choice of law provision.

There are, of course, many provisions of a legal nature that are vital to a well-drafted business contract, including, among others, insurance, indemnity, and anti-waiver clauses. It is important to make sure you understand the meaning of each, and that the other party has the same understanding and does not interpret them differently.

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