

New U.S. Supreme Court Case Bolsters Enforceability of Forum-Selection Clauses

A recent United States Supreme Court case indicates that federal courts will be more likely to enforce contractual forum-selection clauses. Forum-selection clauses are those contract clauses that require a suing party to bring their case in a particular state or court. While the use of such clauses is not new, the Supreme Court clarified how these clauses will be evaluated and enforced in federal courts, and suggested that they will be enforced more often. *Atlantic Marine Construction Co. v. United States District Court for the Western District of Texas*, 134 S. Ct. 568 (2013), a contractor and subcontractor had a contract with a forum-selection clause that required any lawsuits between them to be brought in Virginia. Despite the clause, the subcontractor sued the contractor in Texas. The contractor sought to enforce the forum-selection clause by having the lawsuit in Texas dismissed or transferred to a court in Virginia. The district court held that dismissal was improper and decided not to transfer the case because the contractor failed to meet its burden to show that transferring the case would be "in the interest of justice or increase the convenience to the parties and their witnesses." The court also noted that a Texas court would be more familiar with the application of Texas law under the Texas choice-of-law rules, which would have to be applied even if the case was transferred to Virginia. The Fifth Circuit Court of Appeals affirmed.

The Supreme Court reversed the lower courts' decisions and clarified the process courts must use when parties' contracts contain forum-selection clauses. The court held that when a party challenges the plaintiff's choice of forum based on a forum-selection clause, the correct procedure is to bring a motion to transfer under U.S.C. § 1404(a). Normally, the district court would consider a variety of public and private factors in deciding a motion to transfer. However, when the parties' contract contains a valid forum-selection clause, three things change. First, a court may not give any weight to the plaintiff's choice of forum and the burden is on the plaintiff defying the forum-selection clause to show why transfer to the forum the parties had agreed upon is unwarranted. Second, the court may not consider private interests of the parties outside of the forum-selection clause, so it may consider only public interest factors (which usually will not defeat a forum-selection clause). Finally, the party that ignores a forum-selection clause cannot take advantage of its chosen forum's "choice-of-law" rules. In other words, the court receiving the transferred case will not be required to apply the choice-

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of-law rules of the state the plaintiff selected when it defied its forum-selection clause.

In essence, this means that it will be difficult to avoid a valid forum-selection clause, at least in federal court. The Supreme Court itself said that when a party makes a motion to transfer a case to the forum agreed upon in a contract, "a district court should transfer the case unless extraordinary circumstances unrelated to the convenience of the parties clearly disfavor a transfer." The Atlantic Marine decision may discourage "forum-shopping" plaintiffs from violating their forum selection clauses by filing suit in jurisdictions they see as more favorable to their claims.

In light of Atlantic Marine, it may be a good time to review your contracts to see if they include, or should include, forum-selection clauses. If you are considering whether to update your contracts or terms and conditions of sale, or if you would like to know more about the effect of commercial contract provisions like the one discussed above, your Reinhart attorney or the [Commercial and Competition Law Group](#) can help you.

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