**Title:** New York and New Jersey Businesses: Put A Forum Clause In Your Agreements

**Subtitle:**

**Meta Description:** Do your New York and New Jersey business agreements have a forum clause? If they don't, you should negotiate to have one in your favor.

**Date:** 1-2-2012

**Author:** Dan Brecher

**Formatted Content:**

**Raw Content:** Do your <span style="text-decoration: underline;"><a href="http://www.scarincihollenbeck.com/practices/corporate-transactions-and-business-law/">business agreements</a></span> have a <em>forum clause</em>?  If they don't, you should negotiate to have one in your favor.
If you enter into contractual agreements with others who are located at an inconvenient distance from you, whether at the other end of the state or even outside the United States, a good way to avoid undue expense and a weakening of your negotiating stance in the event of a subsequent contract dispute is to include a forum provision in your agreements. A well-crafted forum clause provides that if a dispute arises, it shall be resolved in a court local to you.
A forum clause may seem of limited importance at the time the agreement is being negotiated, but it is important when seeking to resolve subsequent disputes with the distant customer, and you ought to be willing to trade something of lesser value for it if the issue is brought up in the give and take of negotiations. Whether or not this point comes up in the negotiations, you should consider having a forum clause whenever doing business with a distant customer.
Why should you have to hire attorneys in Canada or Florida to pursue a customer who is acting in bad faith in refusing to pay the full agreed price for your goods, and is doing so just because it will be expensive for you to sue in the customer's local court?
A simple paragraph inserted into your agreements can remove that obstacle, and even turn it to your advantage by stating: "This Agreement shall be governed by and construed in accordance with the laws of the State of [your State], without regard to the principle of conflict of laws. The parties hereto hereby submit to the exclusive jurisdiction of the federal and state courts located in the County of [your County], State of [your State] with respect to any dispute arising under this Agreement, and any other agreements entered into hereafter between them in any way related to, or in furtherance of, the purposes stated in this Agreement."
Note: if feasible, it would also be desirable to include: "The parties irrevocable waive the defense of an inconvenient forum to the maintenance of such suit or proceedings.
For example, if you are selling goods or services to a company in Australia, you don't want to pay the costs of litigation in Australia to get a judgment in the event of a dispute with the customer? And, even if the customer has paid you, what if the customer later complains the goods or services were defective?  You don't want to have to go to Australia to defend against the claim; and this simple paragraph is available to protect you in advance.
Our <a href="http://www.scarincihollenbeck.com/">business law attorneys</a> were recently retained to bring an action on behalf of our client against an Australian company that was acting in bad faith in refusing to honor its obligations after it had obtained valuable information and services from our client.  The client did not have to go to Australia in order to bring suit because the contract negotiated between the parties has the forum selection clause we recommended containing the Australian company's consent to our client’s New York County home jurisdiction.
While some customers may resist such a clause, if you have the negotiation position to insist upon its inclusion in your agreements, or if it is in the initial draft agreement presented to a willing customer who simply signs the agreement, you have gained some protection against mischief by the customer in the event of non-payment or some other future dispute.
Tomorrow's blog provides additional suggestions that may save you time and money in pursing claims in disputes with customers that are located in distant jurisdictions, as well as providing you with leverage for a fair negotiation of settlement of the dispute. In next week’s blog on this topic, we provide some alternatives to consider in negotiations with a customer who resists inclusion of the forum clause that we recommend.
&nbsp;