**Title:** New York and New Jersey Businesses: Some Further Suggestions For a Forum Clause

**Subtitle:**

**Meta Description:** New York and New Jersey businesses should use a forum clause when dealing with a customer located at a distance from you.

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**Raw Content:** In yesterday's blog, we described the benefits of a<span style="text-decoration: underline;"> <a href="http://www.scarincihollenbeck.com/practices/corporate-transactions-and-business-law/">forum clause</a> </span>when dealing with a customer located at a distance from you. We recommended inserting a clause that has the customer consenting to the jurisdiction of your local courts for the resolution of any disputes.
Here we discuss some additional provisions that can not only save you time and money, but can also serve to put the customer in a more cooperative frame of mind for negotiating a resolution of the dispute that is more in keeping with your view of what is satisfactory.
At <span style="text-decoration: underline;"><a href="http://www.scarincihollenbeck.com/">Scarinci and Hollenbeck</a></span>, we have found that including in your agreements a provision in which the parties agree to accept simplified service of process can prove helpful to resolving the dispute, since it eliminates the ability of a distant customer to frustrate the institution of the dispute by avoiding service of process, and, therefore, this provision speeds the resolution of the dispute. This provision also allows you to save the expense of hiring a process server.
The provision we recommend allows you to institute a local lawsuit utilizing overnight mail or certified mail for the service of process. Even less costly, would be service of the summons and complaint by email or facsimile.
Wording for such a clause could be as follows:
"The parties further agree that service of process upon a party mailed by Federal Express, UPS or other similar reputable courier or delivery service, shall be deemed in every respect effective service of process upon the party in any such suit or proceeding.  Nothing herein shall affect a party's right to serve process in any other manner permitted by law."
Here is another provision that can be helpful in dealing with a distant customer:
"The parties agree that a final non-appealable judgment in any such suit or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on such judgment or in any other lawful manner."
We have found that including these seemingly non-material procedural clauses in our clients' contractual agreements can be instrumental in protecting against the substantial costs and inconvenience of foreign litigation or arbitration.  Moreover, these provisions often create financial and logistical pressures forcing the distant customer to come to the table with a realistic settlement proposal.
This type of advanced planning is protection against a customer threatening litigation in an effort by the customer to negotiate an unwarranted discount. It can also help you to avoid or resolve unnecessary litigation of a customer's claim of defective goods or services. A customer faced with the requirement of litigating on your "home field" may be encouraged to simply drop its claims against you, or to enter into a more prompt and effective resolution of the dispute.
Customers who might otherwise seek to use distance and costs of litigation in negotiating unwarranted discounts from the amounts owed, or to institute a nuisance suit against you in their distant forum, are less likely to do so if you are able to arm yourself in advance against such tactics by including in your agreements the recommended forum clause mandating submission of disputes to the courts close to your own offices.