

Read the "Fine Print" in your Contracts

By Betsy G. Ramos

Many contracts contain standard clauses that lawyers call "boilerplate" clauses that, while seemingly innocuous, could be very significant in any litigation that may arise for a breach of that contract. Contracts often contain choice of venue, choice of law, integration, and arbitration clauses.

The parties to a contract may overlook these standard type clauses while negotiating a contract and may not realize their significance.

If litigation arises, however, these provisions will govern what law is to be applied to the dispute, where a lawsuit may be brought, what evidence can be used to determine the terms of the contract, and whether the dispute may be litigated in a court of law or before an arbitrator.

A choice of venue clause prescribes where a lawsuit may be filed. It will typically state that it can only be brought in a certain state and potentially a certain court (i.e., state or federal court). Often big corporations will insert a choice of venue clause which will mandate that any lawsuit be brought in the state where their headquarters are located. However, this state may have no connection to where the transaction has occurred, or where the other party is located, nor even be nearby. It could make it very difficult and expensive for a New Jersey company to have to sue the other party in Wisconsin, for example.

A choice of law clause can also have a very serious impact in any future litigation. Again, if the transaction is occurring in New Jersey and your company is located in New Jersey, you would prefer that New Jersey law applies to the transaction. Unless you seek counsel in that other jurisdiction to also review your contract, there could be nuances of that state's law for which you and your attorney will be unfamiliar. It could unknowingly affect some of the terms of your contract and impact on your right to either pursue or defend a lawsuit stemming from that contract.



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An integration clause will essentially state that the contract contains the complete agreement between the parties. Any other terms and conditions that the parties had discussed would not be part of the contract. Unless certain exceptions are met, any prior or subsequent discussions or conduct of the parties could not be used to alter any of those written terms. Thus, if your contract contains an integration clause, you need to be certain all of the terms and conditions of your contract are contained within the four corners of the document.

Last, an arbitration clause is often inserted into a contract as either the preferred or required mechanism to resolve any dispute. If it is a mandatory arbitration clause, you would be giving up your right to a trial in the event of a dispute. Arbitrations are not necessarily quicker or cheaper than the expense of a civil lawsuit, plus you essentially give up your right to an appeal on the merits in the event of an adverse decision.

The bottom line is that you need to review carefully any contract before it is signed, not only for the substantive terms of the contract, but also for the boilerplate clauses that usually show up at the end of the agreement. You should attempt to negotiate those clauses so that it is fairer and more equitable for both parties involved in the transaction.

This article was prepared by Betsy G. Ramos, Esq., Co-Chair of Capehart Scatchard's Litigation Group. She has over 25 years experience as a litigator handling matters including business, estate, employment, construction, and general litigation as well as tort defense. Should you have any questions or would like more information, please contact Ms. Ramos at 856.914.2052 or by e-mail at bramos@capehart.com.

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