

## Forum Selection Clauses To Be Enforced, High Court Says

By **Stephanie Russell-Kraft**

*Law360, New York (December 03, 2013, 2:21 PM ET)* -- The U.S. Supreme Court on Tuesday unanimously reversed a Fifth Circuit decision on the enforceability of a choice of forum clause in a subcontract for federal construction work, ruling that federal courts should only disregard such clauses in extraordinary circumstances.

The high court's opinion, delivered by Justice Alito, resolved a split between circuit courts and established a clear guideline on the enforceability of forum selection clauses. The court ruled that when two parties have agreed to a forum selection clause in their contract, a district court should ordinarily transfer the case to the forum specified in the contract unless an unusual public interest factor weighs against a transfer.

The Fifth Circuit held in November 2012 that a dispute between Atlantic Marine Construction Co. Inc. and its subcontractor J-Crew Management Inc. was properly brought in Texas federal court despite an agreement that any dispute related to their construction project would be resolved in Atlantic Marine's home state of Virginia. The appellate court refused to grant Atlantic Marine's transfer request, saying it had not shown the Texas court was an "improper" forum.

But that decision wrongfully put the burden on Atlantic Marine to show the transfer would be appropriate, the Supreme Court said, finding rather that the burden was on J-Crew to show that the transfer to the forum the parties had agreed on was unwarranted.

"When parties have contracted in advance to litigate disputes in a particular forum, courts should not unnecessarily disrupt the parties' settled expectations," the opinion says. "A forum selection clause, after all, may have figured centrally in the parties' negotiations and may ... have been a critical factor in their agreement to do business together in the first place."

The dispute stems from a U.S. Army Corps of Engineers contract to design and build the Fort Hood Child Development Center at Fort Hood in Killeen, Texas. Atlantic Marine was contracted in April 2009 to design and build the center, and hired J-Crew as subcontractor. J-Crew then hired its own subcontractors for building materials, including paint and wood, and sued Atlantic after the contractor allegedly stiffed it out of \$160,000 that should have been paid to the materials suppliers.

Atlantic Marine tried to have the suit dismissed, on the grounds that it should have been brought in Virginia, but a district court and the Fifth Circuit both ruled that the Western District of Texas was a statutorily proper venue for the contract dispute.

Before the Supreme Court's decision Tuesday, forum selection clauses were not always enforced in federal court, said Michele Odorizzi, a partner in the litigation and Supreme Court and appellate practices at Mayer Brown LLP. Specifically, the Third, Sixth and Fifth Circuits have been less deferential to such clauses.

"The decision should cut down on 'forum fights' by establishing clear rules that enforce contractual obligations," Odorizzi told Law360 in a statement Tuesday.

The Supreme Court reversed the Fifth Circuit's decision and remanded the case to the district court, saying that though there was no evidence that a public interest factor might prevent the transfer of the case to Virginia, it was not the high court's place to make that call.

W. Scott Hastings, counsel for Atlantic Marine, welcomed the high court's decision Tuesday. He told Law360 that the ruling should provide certainty to parties who negotiate forum selection clauses in their contracts.

A representative for J-Crew could not immediately be reached for comment Tuesday.

Atlantic Marine is represented by W. Scott Hastings of Locke Lord LLP.

J-Crew is represented by William R. Allensworth and Chad B. Simon of Allensworth & Porter LLP.

The case is Atlantic Marine Construction Company, Inc. v. United States District Court for the Western District of Texas et al., case number 12-929, in the Supreme Court of the United States.

--Additional reporting by Brian Mahoney and Dietrich Knauth. Editing by Stephen Berg.

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