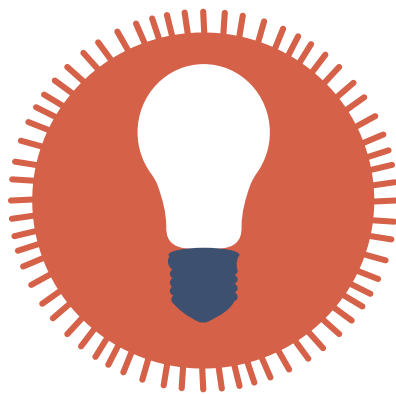


MURTHA MEANS MORE INFORMATION



CONSTRUCTION LAW GROUP NEWS

February 2014

Forum Selection Clauses Remain Enforceable

Companies working in multiple states with contracts containing forum selection clauses can take comfort that courts will likely find such clauses enforceable. The United States Supreme Court's recent holding in Atlantic Marine Construction Co., Inc. v. U.S. District Court for the Western District of Texas, 2013 WL 6231157, 2013 U.S. Dist. LEXIS 8775 (2013), confirmed that clauses in contracts that specify the jurisdiction in which disputes must be resolved will be enforced except in very limited circumstances. Specifically, the Supreme Court stated that "[w]hen parties have contracted in advance to litigate disputes in a particular forum, courts should not unnecessarily disrupt the parties' settled expectations."

The Court did allow for the consideration of "public interest" factors in determining whether to enforce a forum selection clause. Such public interest factors include "the administrative difficulties flowing from court congestion; the local interest in having localized controversies decided at home; and the interest in having the trial of a diversity case in a forum that is at home with the law." Although the Court did identify these factors that may serve as the basis for not enforcing a forum selection clause, the Court was quick to add that these factors will rarely result in a clause not being enforced. Therefore, a party performing work pursuant to a contract with a forum selection clause that requires disputes to be resolved in a state other than where the project is located, can expect that the clause will be enforced absent overwhelming "public interest factors." [Note, some states (e.g. Connecticut) have statutes prohibiting forum selection clauses in construction contracts. The Court did not address the enforceability of a forum selection clause in a contract concerning a construction project that is located in a state that bars such clauses.]

Should you have any questions with regard to the above, please contact your attorney or an attorney in our Construction Law Group.

If you have any questions about the issues addressed here, or any other matters involving Construction Law issues, please feel free to contact:

Sara P. Bryant
617.457.4048
sbryant@murthalaw.com

Loring A. Cook, III
617.457.4014
lcook@murthalaw.com

Michael J. Donnelly
860.240.6058
mjdonnelly@murthalaw.com

David P. Friedman
203.653.5438
dfriedman@murthalaw.com

Maury E. Lederman
617.457.4133
mlederman@murthalaw.com

Lauren R. MacLellan
617.457.4134
lmaclellan@murthalaw.com

Richard J. Saletta
617.457.4016
rsaletta@murthalaw.com

Monica P. Snyder
617.457.4137
msnyder@murthalaw.com

Andrew G. Wailgum
617.457.4006
awailgum@murthalaw.com

This E-Blast is merely an overview intended to advise you of the key aspects of this new legislation. A review of the specific statutory requirements is required to ensure compliance. If you have any questions or would like assistance securing a lien under the revised law, please contact your attorney or a member of the Construction Law Group.

