

Home-Field Advantage

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In sports, there is no doubt that home-field advantage is quite significant and can mean the difference between winning and losing. In the book, *Scorecasting*, by Professors Tobias J. Moskowitz and L. Jon Wertheim, statistics were compiled on the probability of winning when teams play at home. It recorded soccer having the largest average home advantage ranging from 60 to almost 70 percent. In basketball, the NBA teams win approximately 62 percent of their home games; in cricket, the NHL and rugby, home teams win about 60 percent of the time.

Although not a game to most litigants, litigation, similarly, has advantages when being filed in places that are familiar to the party choosing the place to “play.” In lawyer-speak, the place where a case is fought in court is called a “venue” or “forum.” With some exceptions, the law permits parties when contracting to choose the venue in which they will fight it out in court should a disagreement arise under the contract. In most instances, a principal, for example, will choose to insert a venue clause in a contract that requires litigation to be brought in the court in which its headquarters or principal place of business is located. On those rare occasions when parties to a contract truly have equal bargaining power, they may choose an equally inconvenient venue for litigation.

The Hometown Venue

The advantages of choosing your hometown as a venue may not always be apparent when a contract is signed. The advantages of a hometown venue do not, of course, guarantee success or that the home team or litigant will have its own fans present in court rooting for them during its litigation.

There are, however, undoubtedly, subtle but important advantages that may mean the difference between winning and losing. A company may want to litigate in its own forum because that is where its lawyers are located; it may also be an important citizen of that community and a significant employer there. It may,

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therefore, wish to take advantage of a judge's and jury's favorable bias toward them.

The practical advantages may be significant too. It is less costly for a company to litigate in its own community, especially if all of its witnesses are located there. Also, if in a hometown, the company would not have to pay for travel for its lawyers or witnesses should the matter involve evidentiary and other hearings or trial. If sued in a foreign state, the party would have to try to find a new lawyer or law firm that it may not have had any familiarity with, and attempt to persuade all of its witnesses to travel there to testify on its behalf.

For years, the courts around the country have given great deference to the choices of venues selected by parties in their contracts, notwithstanding whether the defendant had any connection with the forum state. In *Atlantic Marine Constr. Co. v U.S. Dist. Court for the Western District of Texas*, 134 S.Ct. 558 (2013), the U.S. Supreme Court clarified that a chosen venue has to be proper under the law before it can be required by a venue selection clause in the parties' contract. As a general rule, the preferred forum or venue is that which is the center of gravity of the activ-

ity in question. If the forum chosen in a contract bears no relationship to the disputed activity, then legal support exists for a dispute over the correctness of the venue selected by the plaintiff.

Forcing a Venue

So, push back when a principal attempts to force a venue in a contract and, even if you lose that battle and

are sued outside of your hometown, try moving to change venue even if you are in the venue provided in your contract, if it bears no relationship to you or the disputed activity. Even if your hometown still does not feel like an advantage when it comes to litigation, forcing your opponent out of its hometown is likely a disadvantage for it and, consequently, an advantage for you.



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