



LAW NOTES

from the Law Firm of
Kay & Andersen, S.C.

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What Every Employer Should Know.....

ABOUT THE SIGNIFICANCE OF FORUM SELECTION CLAUSES

Employers in Wisconsin often find themselves in litigation with former employees, administrative agencies, and other businesses. Whereas disputes with employees and administrative agencies are typically limited to a particular forum specified by statute, disputes with other businesses can lead an employer to lawsuits outside of its normal business location and perhaps even outside of Wisconsin. A contract provision can specify where any subsequent litigation should take place, as for example in a recent Wisconsin Court of Appeals decision, Converting/Biophile Laboratories, Inc. v. Ludlow Composites Corporation, No. 2005AP1628 (Wis. Ct. App. Aug. 23, 2006). In that case, a Wisconsin foam adapter manufacturer (CBL) sued a foam supplier (Ludlow) in Fond du Lac County, seeking damages relating to a recall of defective foam provided by Ludlow. Ludlow moved to dismiss the case, on the basis that its invoices contained a provision requiring disputes between the party to be heard in a state or federal court in Ohio. After the circuit court granted Ludlow's motion to dismiss, CBL appealed and the Court of Appeals reversed the circuit court. The Court of Appeals concluded that the forum selection clause was permissive rather than mandatory because it did not state that the jurisdiction and venue of disputes between the parties were exclusive to Ohio. As such, the lawsuit could proceed in Wisconsin. This case is important to Wisconsin employers because it serves as a reminder that contracts should be closely scrutinized for provisions requiring that any disputes be tried in a particular court, which may be a court outside of Wisconsin. Such forum selection clauses can substantially increase the expenses associated with litigating disputes and should be taken into consideration by management at the time a contract is drafted. Kay & Andersen, S.C. can help Wisconsin businesses in drafting contracts and pursuing or defending lawsuits arising from contract disputes.

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