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When Drafting Choice of Venue Clauses, Check Maps for Courthouses

Contracts of all types frequently include a mandatory choice of venue for litigation in the event a dispute arises. Often, contracting parties and their counsel give little thought to these clauses other than how far they want to travel in the unlikely event of a dispute. But the Ninth Circuit's decision in *City of Albany v. CH2M Hill Inc.*, Case No. 18-35283 (9th Cir. May 13, 2019), teaches that more thought should be given to such clauses because without checking maps and available courthouses in those chosen venues, parties might get more than they bargained for. Quite simply, if there is no federal courthouse located "in" the county or city designated as the required venue, then parties may be held to have contracted for state court only.

In *CH2M Hill*, the city of Albany sued an engineering firm, CH2M Hill for breach of an engineering contract to provide services to the City. CH2M removed the case based upon diversity, but the City moved to remand the case back to state court based upon a perfectly ordinary choice of venue provision. The choice of venue provision required that "[v]enue for litigation shall be in Linn County, Oregon." The wrinkle? Although there is, of course, a federal courthouse serving Linn County, that courthouse is located in Lane County. Linn County has no federal courthouse. Over CH2M's claims of ambiguity, the Ninth Circuit reviewed the clause and the map, and held that where a venue-selection clause provides that litigation shall occur "in" a county in which there is no federal courthouse, the parties have unambiguously contracted to litigate only in state court.

This was not the first time the courts have encountered such geographic questions in applying what otherwise might be seemingly mundane venue-selection clauses. The Ninth Circuit distinguished a 1989 decision in which courthouses were absent from the selected geographic locale as merely containing permissive venue selection clauses. *Docksider, Ltd. v. Sea Technology, Ltd.*, 875 F.2d 762 (9th Cir. 1989). Likewise, in 2011, the Ninth Circuit had brushed by similar questions, but ultimately did not resolve them, in *Simonoff v. Expedia, Inc.*, 643 F.3d 1202 (9th Cir. 2011). There, a federal courthouse was in fact located in the selected county, but the question there was whether geographic limitations were imposed.

CH2M marks a clear decision in the Ninth Circuit, in accord with the Second and Fourth Circuits, that the absence of a federal courthouse will preclude federal jurisdiction in cases where contracting parties choose that location as a mandatory venue. The reach of these decisions is not yet clear. What happens, for example, when there is no courthouse in the chosen city or county at all? Are the parties deemed to have chosen some other form of litigation? Certainly, the facts of each case will dictate whether a true ambiguity exists or whether courts might use equitable powers to fill missing terms. But the best remedy may be to avoid the copy/paste trap for such clauses and turn to your favorite mapping app to ensure that all available courthouses are acceptable choices in that locale.

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