NEXSEN | PRUET
INTERNATIONAL LAW
April 2011

Appeals Court Says International Contract Requires Litigation in England

A recent court ruling proves the adage - the devil is in the details. In *Albemarle Corp. v. AstraZeneca UK Ltd.*, the U.S. Court of Appeals for the Fourth Circuit, which has jurisdiction over the Carolinas and three other states, found that a supply contract clause means a company cannot seek relief through U.S. courts. The appeals court affirmed a lower court ruling that dismissed a breach of contract lawsuit because the contract between the parties provided that it "shall be subject to English Law and the jurisdiction of the English High Court."

Albemarle made pharmaceutical ingredients at its plant in South Carolina that AstraZeneca used to manufacture a pharmaceutical product at its plant in England. Albemarle sued AstraZeneca in South Carolina, claiming breach of a 2005 supply contract. Under the contract, AstraZeneca had agreed to buy a substantial portion of its needs of certain pharmaceutical ingredients from Albemarle.

AstraZeneca moved to dismiss Albemarle's South Carolina lawsuit for improper venue (location) based on the interplay between the supply contract's clauses addressing choice of law (the jurisdiction whose law would govern disputes arising from the contract) and choice of forum (the court where a lawsuit to enforce the contract can be filed). AstraZeneca then filed a lawsuit against Albemarle in England claiming breach of contract, duress, and conspiracy.

Under American federal law, a choice of forum clause like the one in the 2005 supply contract, stating that a contract is "subject to … the jurisdiction of the English High Court," means that a lawsuit to enforce the contract may be, but does not have to be, filed in the English court. Under English law, however, "subject to" in this context means that such a lawsuit *must* be filed in the English court.

In a December 8, 2010 decision, the U.S. appeals court concluded that English law controls because the parties' choice of law clause stated that the contract "shall be

subject to English Law" and because enforcing the clause as written would not be unreasonable and would not violate a strong public policy of South Carolina. Accordingly, Albermarle should have filed its breach of contract lawsuit in England. The court stated:

> In agreeing to these provisions, the parties undoubtedly accepted that litigation on disputes arising under the 2005 contract would be conducted in England …. It, therefore, cannot be surprising to them that we enforce the 2005 contract that way, especially in light of our longstanding tradition of favoring the enforcement of contracts according to their terms.

This case serves as a reminder that contract terms should be written clearly and reviewed carefully. It is especially important that companies engaged in international commerce specify which country's laws will govern a contractual dispute and where any litigation will be filed. Otherwise, they risk incurring the expense of having to prosecute and/or defend multiple lawsuits in different locations.

NP International Law Group

NEXSEN PRUET

Charleston, SC
843.577.9440
Kenn Kopf
Brad Waring

Charlotte, NC
704.339.0304
Peter Santos

Columbia, SC
803.771.8900
Bob Coble
David Dubberly*
Victoria L. Eslinger
Mark Knight
April C. Lucas
Michael A. Mann
Ed Menzie
Todd Serbin
Val Stieglitz*

Greensboro, NC
336.373.1600
Jim Bryan
Bill Wilcox

Greenville, SC
864.370.2211
David Gossett
John Hardaway
Sara Kanos

Hilton Head, SC
843.689.1583
Melissa Azallion

Raleigh, NC
919.755.1800
Joseph Diab
Ernest C. Pearson
David Robinson

*International Law Team Chairs