US Supreme Court Rules on Forum Selection Clauses

By Verity Winship

Verity Winship is Associate Professor, Richard W. and Marie L. Corman Scholar at Illinois University College of Law

The US Supreme Court just issued a unanimous decision in *Atlantic Marine Construction Co. v. U.S. District Court for the Western District of Texas* about the effect of forum selection clauses in US federal courts. The Court has considered these clauses only three times before, and this is the first opinion on the subject in 25 years. In this case, the parties agreed that suits would be litigated in the state of Virginia. The plaintiff, however, brought suit in federal court in Texas. Among other things, the defendant moved to transfer the case to federal court in Virginia based on a statutory provision (28 USC 1404(a)). The parties did not dispute the validity of the clause, but disagreed about whether it mandated transfer to the designated forum.

The Supreme Court held that forum selection clauses should have controlling weight absent "extraordinary circumstances unrelated to the convenience of the parties." US courts ordinarily consider both private and public interest factors in determining whether a case should be transferred among federal courts. The Court concluded that the presence of a valid forum selection clause changes the analysis. First, plaintiff's choice of forum receives no weight. Second, courts should not consider the convenience of the parties, but only public factors, which "will rarely defeat a transfer motion." Third, although transferred cases normally get the choice-of-law rule of the pre-transfer court, the Court established an exception for cases filed outside the contractually designated forum in an attempt to limit forum shopping. Although the statutory provision at issue governs movement among courts in the US federal system only, the Court indicated that the same analysis applies to motions to dismiss for *forum non conveniens* when the designated forum is a US state or non-US court.