

Insurer Successfully Enforces Forum Selection Clause

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Creekstone/Juban I, L.L.C. v. XL Ins. Am., Inc., No. 2018-CC-0748, 2019 La. LEXIS 1366 (La. 5/8/19).

Louisiana Revised Statute 22:868(A)(2) prohibits insurance contracts that are "delivered or issued for delivery" in Louisiana, and covering subjects in Louisiana, from depriving Louisiana courts of jurisdiction over an action against an insurer. Distinguishing between the legal concepts of jurisdiction and venue, the Louisiana Supreme Court held in *Creekstone/Juban I, L.L.C. v. XL Ins. Am., Inc.* that this provision does not prohibit the enforcement of a forum selection clause contained in an insurance policy.

The plaintiff in the case, Creekstone/Juban I, L.L.C owned a multi-use commercial property. After a flood, it made a claim on an insurance policy issued by XL Insurance America. XL paid \$5 million, but Creekstone sought additional amounts that XL did not immediately pay.

Creekstone sued in Louisiana state court. In response, XL filed a declinatory exception of improper venue based on a forum selection clause contained in the policy that provided for exclusive venue in New York. Creekstone contended the clause was void under Louisiana Revised Statute 22:868(A)(2), which (as noted above) prevents an insurer from using policy language to avoid jurisdiction in Louisiana. Creekstone prevailed both in the trial court and in the First Circuit Court of Appeal. XL then sought relief from the Louisiana Supreme Court.

The Court emphasized that contractual forum selection clauses are *prima facie* valid and are enforced in Louisiana "unless the resisting party can 'clearly show that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching . . . [or that] enforcement would contravene a strong public policy of the forum in which suit is brought, whether declared by statute or by judicial decision.'" It then rejected Creekstone's argument that 22:868(A)(2) represents a public policy against forum selection clauses. The Court held that the statute only prohibits policy language limiting the "jurisdiction" – the power to "hear and determine an action" – of Louisiana courts. It does not prohibit forum selection clauses specifying the place *where* a case may be heard. Because XL's policy did not purport to deprive Louisiana courts of jurisdiction, it did not violate the statute.

The Court also rejected Creekstone's argument that 22:868(A)(2), if applied as written, will lead to absurd consequences because any dispute over an insurance policy, "no matter how small," will have to be litigated in a foreign forum. The Court noted a litigant may attempt to show that enforcement of a forum selection clause in a particular case is unreasonable or unjust, if, for example, it would be seriously inconvenient to require litigation outside of Louisiana. Creekstone, however, had not made such a showing.

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