

Who Cares if You Didn't Sign the Contract? Forum Selection Clauses May Now Bind Nonsignatories Under Michigan Law

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Your company has just filed a lawsuit in Michigan state court. Can the court dismiss your suit on the grounds that you should have brought it in the jurisdiction specified in the forum-selection clause of a contract you never signed? The answer may be “yes,” according to the Michigan Court of Appeals’ recent decision in *Kewadin Casinos Gaming Authority v. Patterson Earnhart Real Bird & Wilson LLP*. The case establishes that under Michigan law, a contractual forum-selection clause can bind a nonsignatory who is “closely related” to either a signatory or the contract itself. Importantly, it also means that “closely related” nonsignatories can enforce such clauses against signatories.

Background

The dispute stemmed from the defendant law firm’s representation of the plaintiff tribal gaming authority in prior litigation. After investors in several failed casino projects sued the gaming authority and obtained a substantial judgment, the gaming authority sued the law firm in Michigan state court for legal malpractice and breach of fiduciary duty.

The law firm moved for summary disposition, relying on a forum-selection clause in a 2020 “General Counsel Contract” between the firm and the **tribe itself**—not the gaming authority, a distinct but wholly owned instrumentality of the tribe. The forum-selection clause specified that “[u]pon the demand of any party, any dispute arising under or in connection with this Contract shall be resolved” in tribal court. The trial court granted the motion, concluding (on grounds the Court of Appeals did not address) that the clause required the gaming authority to sue in tribal court. The gaming authority appealed, arguing that it was not a signatory to the General Counsel Contract and therefore was not bound by the forum-selection clause.

The Court’s Holding

The Court of Appeals reversed and remanded. Following “a majority” of federal appellate courts and “many” other state courts, the Court adopted the so-called “closely-related doctrine” and remanded for the trial court to apply that doctrine in deciding whether the gaming authority was bound by the forum-selection clause. The Court explained that “nonsignatories to an agreement may be bound by, and enforce, forum-selection clauses where, under the circumstances, the nonsignatories enjoyed a sufficiently close nexus to the dispute or to another signatory such that it was foreseeable that they would be bound.” And it listed four factors to consider in applying that standard: “(1) common ownership between the signatory and the nonsignatory, (2) direct benefits obtained from the contract at issue, (3) knowledge of the agreement generally, and (4) awareness of the forum selection clause particularly.” However, the Court cautioned that these four factors are not exhaustive and that the doctrine is “context specific,” meaning that courts must “weigh[] the significance of the facts relevant to the particular case at hand.” The Court emphasized that the “ultimate question” was whether “under these particular circumstances,” the gaming authority “had a sufficiently close nexus to the Tribe such that it was foreseeable” that the forum-selection clause would bind the gaming authority.

Implications

Continued

When negotiating contractual forum-selection clauses, U.S. and foreign companies should keep in mind that they may also have to litigate disputes in the specified jurisdiction with “closely related” nonparties. Companies should also consider that their agents, subsidiaries, or affiliates may have to defend a lawsuit in that jurisdiction. There are a number of ways to tailor the wording of the contract and its forum-selection clause to avoid facing either or both of these scenarios. For example, a forum-selection clause that is carefully limited to disputes arising between only the named parties to the contract may prevent nonsignatories from later invoking the clause.

The full case citation is *Kewadin Casinos Gaming Authority v. Patterson Earnhart Real Bird & Wilson LLP*, No. 371255, 2026 WL 803914, --- N.W.3d --- (Mich. Ct. App. Mar. 23, 2026).

The authors are members of Miller Canfield’s **International Disputes Group**. If you would like help drafting a forum-selection clause or litigating a dispute involving nonsignatories to such a clause, feel free to contact the authors or your Miller Canfield lawyer.