

California, Delaware, Illinois and New York Contractual Boilerplate: Same Provisions, Different Results?

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While transaction agreements can vary widely from deal to deal, they usually contain surprisingly similar “boilerplate” provisions that receive little attention during negotiations but significant attention in the event of a later dispute. Sophisticated parties with ties to multiple states may have some flexibility in choosing the governing law of the contract and the jurisdiction where disputes arising under the contract will be resolved. When it comes to the so-called “boilerplate,” how much does the selection of one state over another matter?

This series of three articles explores the manner in which provisions may be handled differently by courts depending on whether the underlying contract is governed by California, Delaware, New York or Illinois law.

The first installment addresses the fundamental issue of how the parties’ contract will be interpreted and to what extent courts can go beyond the words of the parties’ written agreement to give effect to their intentions.

The second installment focuses on “boilerplate” provisions which are frequently found in M&A transactions but can also be found in other commercial agreements as well.

The final installment of this article addresses some of the procedural and remedial issues that arise with contract disputes, including limitations on the outside date by which disputes may be brought (statute of limitations), who shall determine the dispute (jury waivers), whether attorneys’ fees can be recovered, and what remedies may be imposed or agreed upon, such as specific performance, limitations on damages, and liquidated damages.

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