FEES & BURGESS, P.C.

SUPPLY CHAIN MANAGEMENT MEMO

Volume 8, Issue 2 May 2011

DOOR-CLOSING STATUTES AND PROTECTING YOUR CONTRACT RIGHTS

FEES & BURGESS, P.C., Emphasizes:

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- **Employment Law & Litigation**
- **Construction Litigation**
- **Corporate Law & Government Contracting**
- **Insurance Defense**
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Alabama is one of several jurisdictions that has what is commonly known as a door-closing statute. While the precise wording of these statutes can vary from state to state, the common theme among these laws is that they bar a corporation from commencing a proceeding in a particular state's courts, based on a contract, if the corporation has failed to qualify to do business in that state. For example, assume ABC Corporation (ABC) is a corporation formed under the laws of the state of New York, with its headquarters in New York, but it has facilities in multiple states. ABC's Alabama facility enters into a contract with an Alabama supplier to purchase services to be performed in Alabama. The service provider then clearly breaches its agreement with ABC by failing to provide the services. If ABC has not qualified to do business in Alabama, ABC cannot file a lawsuit in an Alabama state or federal court based on the vendor's breach of contract because of Alabama's door-closing statute.

The most important exception to all door-closing statutes is that they do not apply to transactions involving interstate commerce. In the example above, Alabama's door-closing statute would apply because the contract calls for the performance of services solely within the state of Alabama. The statute would not apply if, for example, an Alabama corporation contracted with a Georgia corporation for the delivery of products from Georgia to Alabama. Since the products would have to travel across state lines to get into Alabama, the contract involves interstate commerce, and the statute does not apply. However, if an Alabama company contracted with a Georgia company to have products delivered from the Georgia company's warehouse in Birmingham, Alabama, to Huntsville, Alabama, that would probably be an intrastate transaction, and the statute would likely apply.

It is important to note that just because a corporation does some interstate business associated with a state that has a door-closing statute, it does not mean the corporation gets a pass on its contracts involving intrastate transactions. Each transaction is assessed separately to determine whether it is intrastate or interstate business.

Generally speaking, contracts for the provision of services within a single state, regardless of where the contracting parties are located, are more likely to be viewed by courts as intrastate business. That being said, contracts involving goods (e.g., the purchase of component parts used by the corporation to manufacture products for its customers) or a mix of goods and services (e.g., many construction contracts) can be found by a court to be intrastate business as well.

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Determining whether a transaction involves interstate commerce, rather than being wholly intrastate, can be a difficult assessment to make, even for lawyers and judges. If a corporation thinks it may be on the verge of entering into an intrastate transaction in a state where it is not registered to do business, it would be wise to determine if that state has a door-closing statute that may be triggered. If it does, the prudent course of action might be to go through the qualification process for that state prior to signing the agreement. At least with respect to Alabama's door-closing statute, all contracts involving intrastate business within Alabama that are entered into by a non-Alabama corporation prior to qualifying to do business within the state are deemed void. So, this is an issue that needs to be addressed prior to transacting potentially intrastate business in the state, if there is any real risk the statute might apply.

These statutes are largely aimed at generating revenue for the states that implement them by charging fees and/or taxes in order for a corporation to qualify to do business in that state. The fees and taxes charged in order to qualify to do business within a state are usually relatively minor in comparison to the potential consequences of not going through this procedure. So, when in doubt about whether a transaction in another state would be considered intrastate business, a corporation should perform a door-closing statute analysis before signing up to the deal.

Information on the procedure and fees associated with qualifying to do business in Alabama can be found on the Alabama Secretary of State's website at: http://www.sos.state.al.us/BusinessServices/ForeignCorps.aspx.

PROPOSED BILL WOULD REQUIRE U.S. GOVERNMENT TO BUY DOMESTIC FOR "GREEN" PURCHASES

Representative John Garamendi of California introduced a bill (H.R. 487) in January of 2011 that would require all green technologies purchased by federal agencies or by states using federal funds to include 100% domestic content. The bill, if passed, would also require 100% domestic content for all green technologies purchased for property eligible for the renewable energy production or investment tax credits. The bill's requirements would be phased in over four years, with 30% domestic content being required the first fiscal year after the bill passed, 50% in the second year, 80% in the third year, and 100% thereafter. The bill defines "green technologies" as renewable energy and energy efficiency products and services that: (1) reduce dependence on unreliable sources of energy by encouraging the use of sustainable biomass, wind, small-scale hydroelectric, solar, geothermal, and other renewable energy and energy efficiency products and services; and (2) use hybrid fossil-renewable energy systems.

The bill has been referred to the Committee on Oversight and Government Reform and the Committee on Ways and Means.

Seminars

FEES & BURGESS, P.C., is proud to offer Seminars/Webinars on the following topics. If you would like more information, on these and additional seminars, please contact us at seminars@feesburgess.com.

A Recession Era Guide to Collecting on Construction Contracts

Conducting Effective Workplace Investigations

Construction Contracting

Contingent Employees and Labor Outsourcing

Diversity Training

Elements of an Electrical Manufacturing Services Contract

Employment Law Survival Training for Managers

Family Medical Leave Act

Hiring and Firing

Immigration Compliance

Incoterms ® 2010

Indemnity and Limitation of Liability Contract Clauses

International Contracting

Limiting Liability for Sexual Harassment

Managing Gender Identity Issues in the Workplace

Negotiation and Resolution of Federal Contract Claims

Privacy in the Workplace

Reducing Employee Benefits Costs for Alabama Businesses

Reducing Risk in Purchasing Terms and Conditions

Reduction in Workforce Strategies

Retaliation and Whistleblowers

Uniform Commercial Code: Primer to Articles 1, 2, and 2A

Violence in the Workplace

Wage and Hour Issues/Fair Labor Standards Act

Americans with Disabilities Act Managing

Employee Use of Internet and E-mail in the Workplace

FEES & BURGESS, P.C. — Calendar of Events

FEES & BURGESS, P.C., is proud to present, or participate in the presentation of, the following upcoming seminars:

May 15-18, 2011; 3:15-4:15 p.m., Orlando, Florida, Gaylord Palms Resort & Convention Center

Contracting for the Purchase and Sale of Goods in a Risky Global Market

At the 96th Annual International Supply Management Conference and Educational Exhibit, Jeffrey Roth and Allen Anderson of Fees & Burgess, P.C., will be presenting the course titled "Contracting for the Purchase and Sale of Goods in a Risky Global Market."

Contracts are a first and last line of risk management, because they both define the responsibilities of the parties in the first instance and further define the performance of the parties in the last instance. Accordingly, ISM members must be versed in identifying their areas of risk in a supply chain relationship, and, once identified, must know how to account for those risks in their contract terms.

This risk identification and management session is aimed at supply chain staff of all levels, and in a wide range of disciplines, including engineering, design, project management, production, sales, manufacturing, and purchasing and procurement.

If you would like more information on these and more seminars, please go to www.feesburgess.com.

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SPEAKERS

FEES & BURGESS, P.C., provides speakers, training programs, seminars, and webcasts for various trade associations; business groups; and clients. For information regarding a program, please contact us at seminars@feesburgess.com.

NEWSLETTERS

FEES & BURGESS, P.C., also publishes *F&B Quarterly Bytes* focusing on multiple practice areas and *F&B HR Corner* focusing on human resource issues. To receive any of these e-newsletters, please e-mail us at newsletters@feesburgess.com with your contact information.

To remove your name from our mailing list, please e-mail newsletters@feesburgess.com.

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