

# WHEN ACCIDENTS HAPPEN: LEGAL DEFENSES FOR TRAVEL ADVISORS

The fact pattern is all too familiar: a family books a vacation through its trusted travel advisor. While on the vacation, an accident occurs and a family member suffers a serious personal injury. Upon returning home, the family retains a lawyer and later files a civil action naming the travel advisor, among others, as a defendant. Worse, the case is filed in the state where the family resides, hundreds or perhaps thousands of miles from where the travel advisor is located.

When faced with the prospect of defending such a lawsuit, it is important to identify “first line” legal defenses with your legal counsel. Doing so may protect you from the lawsuit entirely, or at least prevent the case from proceeding in an unfamiliar forum or venue.


Properly drafted, your own “terms and conditions” statement can provide one of two such defenses, in the form of either a forum selection clause or an arbitration clause. While each can ultimately relieve you of the burden of defending a suit in a distant or otherwise inconvenient location, how they accomplish that objective is entirely different. A forum selection clause is used when the parties to a contract wish to agree in advance that any litigation which may later arise under the contract will be commenced in a specific court in a specific location. In contrast, an arbitration clause stipulates

that the parties to the contract will forgo litigating their dispute in the courts altogether. Instead, they agree to have the matter decided through binding arbitration, an alternative dispute resolution process that is often faster and more cost-effective than litigation.

Most courts recognize the validity of these clauses provided there is fair and adequate notice of the applicable provision, and provided the forum selected has a reasonable relationship to the parties. Travel advisors should be aware of these considerations when drafting their terms and conditions statement. Doing so will increase the likelihood that such provisions are upheld as valid and enforceable. Once a lawsuit is filed, it is equally important to immediately bring these clauses to the attention of your legal counsel, as many jurisdictions require that they be raised in the first response to the complaint. Failure to do so may result in a potential waiver of the forum selection or arbitration clause.

A challenge to jurisdiction is also an invaluable first line defense, especially when facing a lawsuit in an unfamiliar forum. Until recently, many larger corporations had resigned themselves to the notion that the geographical footprint of a large corporate defendant would undermine any challenge to jurisdiction. However, the United States Supreme Court has in the last several years issued a series of decisions (Daimler AG

v. Bauman, Walden v. Fiore) that have provided a fresh framework to attack jurisdiction. These opinions hold that the bar for establishing general jurisdiction over a defendant, even a large corporate defendant, is very high. The defendant must feel “at home” in order for the court to exercise jurisdiction. Many factors are considered in determining whether a defendant is “at home,” and it is essential that counsel for travel advisors weigh this potential preliminary defense at the outset of litigation.

These are just a few examples of first line defenses that travel advisors can use to protect themselves from lawsuits filed in inconvenient locations. It is imperative that travel advisors collaborate with their legal counsel to ensure the inclusion of a valid and enforceable forum selection clause or arbitration clause. And, in the event a lawsuit is filed, it is essential that travel advisors raise the existence of these provisions with their counsel to ensure that these potential defenses are raised and not inadvertently waived. Preserving these first line defenses at the outset of litigation can mean the difference between immediate dismissal of the lawsuit and the prospect of long, protracted, and costly litigation in a distant venue. 

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