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## BLOGS

Choice of Forum/Venue

# Manufacturer Allowed to Seek Payment in Its Own Home Court

In July, the United States District Court for the Western District of Kentucky denied a defendant-distributor's motion for a change of venue on a claim brought by a crushing and screening equipment manufacturer that had initiated suit for failure to pay invoices. *Powerscreen USA, LLC v. D & L Equipment, Inc.*, 2008 WL 2944994 (W.D. Ky. July 28, 2008). The court held that where the factors favoring venue in one state or another are basically equal and the forum-selection clauses in the parties' form contracts are conflicting, the plaintiffs' choice of forum was appropriate.

The defendant-distributor had requested a change of venue to the Eastern District of Michigan, arguing that its decision not to pay invoices was made by its management in Michigan, that many witnesses on its witness list lived in Michigan, and because the forum selection clause in its standard forms made the proper venue Michigan. The court disagreed, holding that the purchase of equipment and failure to pay for it occurred in Kentucky, and that the proposed Michigan witnesses appeared to have little connection to the matter. As the forms exchanged between the parties conflicted on the issue of forum selection, the court found no "meeting of the minds" and did not consider Powerscreen's standard form of forum selection clause. Finally, it held that the relationship between the parties was that of a seller and distributor and not that of a franchisor and franchisee, making inapplicable the Michigan Franchise Investment Law provision that precludes forum selection clauses.