

# Professional Liability Update

## Venue Victory: Superior Court Strengthens Contractual Choice in context of venue-selection clauses in *Somerlot v. Jung, et al.*”

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### I. INTRODUCTION

Recently, the Superior Court of Pennsylvania affirmed the right of parties to a contract to pre-select the venue that will decide legal disputes that may arise between the parties.

The Pennsylvania Rules of Civil Procedure address which venue is proper for a given lawsuit. For many years, venue in medical professional liability actions against health care providers was proper only in a county where the cause of action arose, i.e. where the relevant treatment occurred, pursuant to Rule 1006 (a.1).

In 2022, the Supreme Court of Pennsylvania eliminated this exception to the standard Rule regarding venue . This means that health care providers are now subject to the same venue rules as any other defendant. Consequently, under Rule 2179, venue in actions against health care providers which are corporations or similar entities, is proper not only in a county where the cause of action arose, but in any county where the health care provider regularly conducts business. Moreover, under Rule 1006(c), in actions against multiple defendants, venue is proper against a health care provider in any county where venue is proper as to any of the defendants.

For example, since 2022, in a professional liability action filed against a healthcare provider where the relevant treatment occurred in Bucks County, Pennsylvania, venue is proper in Philadelphia County, Pennsylvania if any codefendant regularly conducts business in Philadelphia County.

However, regardless of the Rules of Civil Procedure and statutory law that may address venue, contracting parties are generally free to pre-select a proper venue for legal disputes that might arise between them by including a venue-selection clause in their contract.

In a recent decision, *Somerlot v. Jung, et al.*, the Superior Court of Pennsylvania held that venue-selection clauses are enforceable contracts between health care providers and patients and supersede the procedure rules as to venue.

### II. SOMRELOT v. JUNG, et al.

#### a. Relevant Facts/Procedural History

In the summer of 2021, Plaintiff Samari Somerlot sought treatment from Soon Jung, MD, at a pain management practice located in Bucks County, Pennsylvania, due to pain and decreased range of motion after a fall. Following several office visits, Dr. Jung planned an implant of Boston Scientific’s Spinal-Cord Stimulator. Surgery was scheduled for October 1, 2021, at the practice’s surgical facility in Bucks County, Pennsylvania.

Prior to surgery, the pain management practice presented Ms. Somerlot with a one-page, eight paragraph consent form in single-spaced, ten-point font. The consent form primarily addressed the provision of consent for the procedure, identified risks, discussed anesthesia, and authorized necessary medical care. Importantly, paragraph seven stated as follows:

NOTICE: Any legal claims or civil actions, including, but not limited to, a claim for medical malpractice in any way related to this admission/procedure, and medical services provided by [the practice] or its employees, shall be brought solely in the Courts of Bucks County, in the Commonwealth of Pennsylvania.

Ms. Somerlot signed and dated the contract.

Complications arose during surgery. Ms. Somerlot was left paralyzed from the waist down. She and her husband sued Dr. Jung, the practice, and Boston Scientific in Philadelphia County, bringing claims for medical malpractice, corporate negligence, product liability, and loss of consortium.

Boston Scientific agreed that venue was proper as to it on the product-liability claims because it regularly conducted business in Philadelphia County. Dr. Jung and the practice, however, objected to venue in Philadelphia County based on the venue-selection clause in the Consent contract. The trial court sustained the preliminary objections filed on behalf of Dr. Jung and the practice and transferred the case to Bucks County.

#### **b. Appeal to the Superior Court**

On appeal, the Plaintiffs argued that (1) Rule 1006(c), which provides that venue is proper as to all defendants in any county where it is proper as to one defendant, superseded the venue-selection clause, and (2) that the venue-selection clause was unenforceable. In its opinion, the Superior Court began its analysis by determining that Rule 1006(c) did not supersede the venue selection clause. Rather, the Court held that Rule 1006(c) only created the possibility of proper venue since a court in which venue is proper under the Rules of Civil Procedure should decline to hear the case when the parties have freely agreed that litigation shall be conducted in another venue. Here, although Philadelphia County was a proper venue under the Rules of Civil Procedure, Ms. Somerlot had already agreed, pursuant to the valid contract, that any suit arising out of her surgery would be filed in Bucks County, which was also a proper venue under the Rules of Civil Procedure.

Next, the Superior Court held that the venue-selection clause was enforceable. First, the Court noted that there is no case that requires an “opt-out” provision for a venue-selection clause and declined to create such a new requirement here.

Second, the Court found significant that the clause was clear and unambiguous: it included the word “NOTICE,” in all caps, to draw the reader’s attention to the paragraph, and clearly conveyed that by signing, Ms. Somerlot knew she was agreeing to sue Dr. Jung and the practice solely in Bucks County.

Third, the Court explained that a valid offer and acceptance existed related to the contract. The offer came when Dr. Jung and the practice presented the consent form to Ms. Somerlot. Acceptance came when Ms. Somerlot signed and returned the form. The Court further noted that Ms. Somerlot could have made a counteroffer by crossing out the venue-selection clause, signing the form, and handing it back. Alternatively, Ms. Somerlot could have rejected the offer altogether by declining to proceed with surgery. Importantly, the Court noted that Ms. Somerlot’s life was not in danger nor was she under duress when she signed the consent form.

Fourth, the Court rejected Plaintiffs' argument that the venue-selection clause was unreasonable at the time of suit. The test for unreasonableness is whether the agreed upon forum is available to the plaintiff and the forum can do substantial justice to the cause of action. Here, Ms. Somerlot and her husband resided just two miles from the Court of Common Pleas of Bucks County. Consequently, the Court reasoned that Bucks County was actually a more readily available venue to Ms. Somerlot and her husband than Philadelphia County.

Finally, the Court found that the venue-selection clause was not unconscionable. As previously explained, Ms. Somerlot was free to walk away from the out-patient surgery and, thus, she did not lack a meaningful choice when she signed the consent form. Furthermore, there was no evidence that the clause unreasonably favored the defendants.

### **III. Implications and Recommendations**

Venue-selection clauses are enforceable contracts between health care providers and patients. However, such clauses should be carefully drafted and may not be enforced in all scenarios.

A venue-selection clause should be clear and unambiguous. The clause should be set forth in its own paragraph and include a heading, best in all caps, to draw the reader's attention. The clause should also unambiguously explain that by signing, the reader agrees that any action arising out of the relevant care or treatment must be brought in the chosen venue.

General contract defenses apply to venue-selection clauses. For example, such clauses are unenforceable where the signer is under duress or lacks capacity to contract. It is therefore unlikely that a venue-selection clause would be enforced in the context of emergency or inpatient treatment. For non-emergent and outpatient treatment, however, venue-selection clauses may be enforced.

Recommendation is to include a clear and concise venue selection clause in consent to care documents.

We are available to discuss.