

In Commercial Litigation, Home-Field Advantage Can Help You Win

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Interstate commerce is happening all around us, all the time. Companies from all over the country do business with each other. Lawsuits between these companies, however, can only occur in one place (aka *venue*). Does it matter if that venue is where your client is located or will any old venue do? If you have ever seen a sporting event, the answer is likely instinctual. Home-field advantage matters. Venue can affect the outcome of litigation. Federal rules allow for filing in the defendant's judicial district *or* where a substantial part of the business occurred. In a scenario where each party has a valid claim that the case should be heard in their venue, the home-field advantage is usually awarded to the party that sues first.

A 2011 study showed NBA teams, on average, would win over 10% more games in a season if all of their games were home games. For the NFL, MLB, and NHL, the figure ranged from 6.4% to 5.2%. There are advantages in familiarity and confidence on your own turf, comfort playing in the local climate, crowd support, and avoiding the time and negative effects of travel. Additionally, the authors of *Freakonomics* attribute home-field advantage to the home team receiving slightly more favorable officiating. The notion is a crowd's influence on officials becomes significant over time, resulting in actual, statistical home-field advantage.

While there is no *statistical* evidence to suggest judges or juries would support a local litigant over a foreign one, home-field advantage in litigation is nonetheless extremely valuable. Inherent disadvantages to litigating in a new venue include unfamiliarity with the judge, local rules and local procedure. Additionally, out of state litigation is very expensive. Airfare, hotel costs, local counsel fees, and extra research to learn the nuances in law/procedure of the foreign venue can add up. For a paying client, this can create unwanted pressure on the pocketbook. Allowing an opponent to sue in their home venue can stick your client with added expenses and leave counsel on less stable footing in terms of knowledge of the law, procedure, and judges.

If a fight is inevitable, do not be afraid to throw the first punch, file suit in your venue, and secure home-field advantage for your client. Your opponent will have to endure the aforementioned expenses, learn the law, and acclimate to new procedure. Your opponent may be ill-equipped or unwilling to absorb these

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expenses and legal growing pains. As a result, your opponent may just become more amenable to settlement on your client's terms. If settlement is not an option, do not underestimate the advantage in being familiar with the law and procedure of your home venue. Finally, you never know when a local judge or jury might just be willing to give a local litigant the benefit of the doubt over a foreign one, just like those officials who blow the whistles in front of thousands of screaming fans at sporting events.

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