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ADR Case Update 2022 - 5

Federal Circuit Courts

- **DECISION TO AMEND TERMS DID NOT RELATE TO FUND "ADMINISTRATION" FOR PURPOSES OF LMRA ARBITRATION PROVISION**

  Krueger v Angelos
  2022 WL 453980
  United States Court of Appeals, Fourth Circuit
  February 15, 2022

  The Steamship Trade Association of Baltimore, Inc. (STA) and the International Longshoremen's Association (ILA) entered into trust agreements (Agreement) creating an employee benefits fund (Fund), which was governed by an equal number of union trustees (the Union) and management trustees (Management). At a trustees' meeting, the Union moved to amend the Agreement's definition of "Employer," which included only the STA and current or former STA members. The Union proposed expanding the definition to include non-STA employers in CBAs with the ILA. The amendment vote ended in deadlock, with all Union votes in favor and all Management votes against. After Management refused the Union's arbitration request, the Union sued to compel arbitration under Labor Management Relations Act Section 186(c)(5)(B), requiring arbitration of deadlock decisions relating to the "administration" of employee funds. Management moved for dismissal, which the court granted. The Union appealed.

  The United States Court of Appeals, Fourth Circuit affirmed, finding no statutory grounds for arbitration under LMRA Section 186(c)(5)(B), which applies only to decisions relating to fund "administration," meaning the day-to-day operations and implementation of a fund. The amendment decision here would have changed the terms of the Agreement, and therefore went to the nature of the Agreement rather than to its administration. The Agreement's arbitration clause provided no contractual arbitration grounds, as the clause specified that an arbitrator "shall not have the power or authority to change or modify the basic provisions of this Agreement." The parties agreed that the term "Employer" was a "basic provision," and the amendment proposed a fundamental change to that provision, notwithstanding that the term already included some non-STA members and had been subject to previous amendment. The Court rejected the Union's argument that arbitration would merely allow the arbitrator to "step into

the shoes" of a trustee to implement the proposed change. Since the parties had never agreed to the amendment, there was no change for the arbitrator to implement.

- **TILA BARRED ARBITRATION OF CLAIMS RELATING TO HOME EQUITY CREDIT**

  Lyons v PNC Bank, National Association
  2022 WL 453060
  United States Court of Appeals, Fourth Circuit
  February 15, 2022

  William Lyons opened a Home Equity Line of Credit (HELOC) with a predecessor to PNC Bank (PNC). In 2010, he opened a PNC deposit account (2010 Account), signing a standard account agreement (Agreement) that included a set-off provision. PNC amended the Agreement in 2013 (2013 Amendment) to include an arbitration clause with a 45-day opt-out. Lyons opened another account in 2014 (2014 Account), signing the amended Account Agreement. Lyons's HELOC ended with an outstanding balance and PNC took one set-off payment each from his 2010 Account and 2014 Account. Lyons sued under the Truth in Lending Act (TILA). PNC removed to federal court and moved to compel arbitration under the Agreement's arbitration clause. The district court held that the TILA, as amended by the 2013 Dodd-Frank Act, barred PNC from enforcing arbitration against HELOC set-off claims arising from Lyons's 2014 Account, but not the 2010 Account. The parties filed cross-appeals.

  The United States Court of Appeals, Fourth Circuit affirmed in part and reversed in part, holding that TILA, as amended by Dodd-Frank, prohibited PNC from enforcing arbitration against Lyons's HELOC set-off claims. TILA Section 1639(c)(e)(3) clearly and unambiguously bans enforcement of any contract provision "relating to" a mortgage or home-secured credit line that would "bar a consumer" from bringing action in federal court. Although it does not specifically identify arbitration agreements, Section 1639(c)(e)(3) is located within a section entitled, "Arbitration," and legislative history shows clear Congressional intent to prohibit mandatory arbitration clauses in this context. Because PNC accessed Lyons's bank accounts to set off HELOC debt, the Agreement's arbitration provision necessarily "related to" his home-secured credit line. The lower court erred in holding that Dodd-Frank did not apply to the 2010 Account based on the effective date of the 2103 Amendment, which fell shortly before Dodd-Frank's effective date. There was no formation of the arbitration agreement until Lyons's 45-day arbitration opt-out expired, at which point Lyons's silence constituted acceptance. PNC's records showed that Lyons's opt-out period expired on June 11, 2013, ten days after Dodd-Frank became law.

California

- **ARBITRATION AGREEMENT UNCONSCIONABLY LIMITED EMPLOYEE'S ABILITY TO BRING FEHA CLAIM**

  Ramirez v Charter Communications, Inc.
  2022 WL 498706
  Court of Appeal, Second District, Division 4, California
  February 18, 2022

  Employee Angelica Ramirez signed an arbitration agreement (Agreement) with Charter Communications (Charter) as a condition of her employment. Following her termination, she sued Charter for FEHA violations and wrongful discharge. Charter moved to compel arbitration and seek attorney fees under the Agreement. Ramirez opposed, arguing that the Agreement was unconscionable. In response, Charter requested that any unconscionable provisions be severed, and the remaining Agreement enforced. The court denied Charter's motions and severance request, finding that the Agreement was substantively unconscionable. Charter appealed.

  The Court of Appeal, Second District, Division 4, California, affirmed. The Agreement unconscionably limited an employee's ability to bring a FEHA claim by 1) shortening the filing period, from up to three years under FEHA, to one year, potentially compelling an employee to arbitrate before the DFEH had time to investigate and issue a "right to sue" letter; 2) imposing an

interim fee award on any non-prevailing party who resisted arbitration, even where that party's claims were not "frivolous, unreasonable, or groundless"; 3) lacking mutuality in requiring arbitration for claims employees were likely to bring while excluding those more common to employers; and 4) restricting discovery to an inadequate level, as Ramirez was unable to depose three of the seven witnesses required for her case. It was not necessary for Ramirez to claim harm from each provision, as unconscionability is determined based on the contract as it existed at the time of signing. Severance was properly denied below, as the Agreement was permeated by significant unconscionable terms and could not be remedied by removal of any one provision.

Georgia

- **COURT SHOULD CONSIDER ARBITRATION AWARD IN MOTION TO VACATE EVEN IF NOT IN EVIDENCE**

  Serban v Hunter
  2022 WL 439593
  Court of Appeals of Georgia
  February 14, 2022

  Nicoleta Serban (Serban) hired home building company Hunter Reising, Inc. (HR) in a contract (Contract) signed by the company's CEO/Principal, Evan Hunter (Hunter). Serban sent an arbitration demand to Hunter invoking the Contract's arbitration clause. When Hunter failed to appear, the arbitrator entered an award for Serban. Hunter sued to vacate or modify the award, claiming that it erroneously named him in his individual, rather than corporate, capacity. Serban counterclaimed to confirm the award. The court held that it was unable to vacate, modify or confirm the award because the parties failed to submit the award into evidence at hearing. Serban appealed.

  The Court of Appeals of Georgia reversed and remanded. The court erred in refusing to consider an award material to the parties' claims for evidentiary reasons because the award's existence was never in dispute. The award was part of the pleadings, attached as an Exhibit to the petitions of both parties, and both parties admitted to the award's existence.

Case research and summaries by Deirdre McCarthy Gallagher and Rene Todd Maddox.