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ADR Case Update 2022 - 6

Federal Circuit Courts

- **NO MANIFEST DISREGARD WHERE LAW SUBJECT TO REASONABLE DEBATE**

  Warfield v ICON Advisers, Inc.
  2022 WL 552029
  United States Court of Appeals, Fourth Circuit
  February 24, 2022

  After ICON terminated employee James Warfield, a securities broker, the parties submitted to FINRA arbitration. The panel awarded Warfield compensatory damages for wrongful termination without just cause. Warfield sued to enforce the award, and ICON moved to vacate. The court vacated the award for manifest disregard of North Carolina's at-will employment doctrine, which does not recognize wrongful termination actions. Warfield appealed.

  The United States Court of Appeals, Fourth Circuit, reversed. Manifest disregard of the law can be found only where an arbitrator refuses to apply legal principles that are "clearly defined and not subject to reasonable debate." Although North Carolina is an at-will employment state, case law indicates that an arbitration clause may imply for-cause termination protections. It was, therefore, "subject to reasonable debate" whether the parties' submission to FINRA arbitration evinced such protections. ICON also failed to show that the arbitration panel knowingly rejected applicable law, as ICON provided no case law refuting implied protections, and the arbitrators provided no explanation for their decision. In these circumstances, knowing refusal could be found only if ICON had been able to show manifest disregard in "every conceivable route" to the panel's decision.

- **IMMUNITY TO JUDICIAL ENFORCEMENT OF ARBITRAL AWARD MUST BE EXPRESSLY WAIVED**

  Leonard A. Sacks & Associates, P.C. v International Monetary Fund
  2022 WL 569317
  United States Court of Appeals, District of Columbia Circuit
  February 25, 2022

Facing claims from multiple contractors after renovating its headquarters, the IMF contracted with its long-time counsel, the law firm of Leonard A. Sacks & Associates, P.C. (Sacks), to negotiate settlements. The parties' contract asserted IMF's immunity from suit and provided that any disputes not settled by mutual agreement would be resolved by arbitration according to the terms of District of Columbia law. When the IMF disputed Sacks' fees, Sacks demanded arbitration and was awarded a portion of the requested fees. Sacks sued to modify or vacate the award. The IMF removed the case to federal court and moved to dismiss on immunity grounds, and Sacks opposed. The district court granted IMF's motion to dismiss, and Sacks appealed.

The United States Court of Appeals, District of Columbia Circuit affirmed. The IMF is statutorily immune from every form of judicial process except to the extent it expressly waives that immunity. The parties' contract made no express waiver of immunity for arbitral enforcement. Instead, the contract described arbitration as a means by which the IMF preserved its immunity from judicial process and specified that submission to arbitration "shall not be considered to be a waiver of the immunities of the IMF." The arbitration was therefore not binding upon the IMF in any legal sense, and IMF's compliance with the award would be voluntary.

- **REMAINDER OF ARBITRATION CLAUSE MAY BE ENFORCED AFTER PARTY HAS WAIVED ELEMENTS FOUND UNCONSCIONABLE**

Campbell v Keagle Inc.
2022 WL 633305
United States Court of Appeals, Seventh Circuit
March 4, 2022

Brandi Campbell worked as an entertainer at The Silver Bullet Bar, owned by Keagle. When Campbell sued Keagle for FLSA violations, Keagle moved to compel arbitration under their employment contract. The court denied Keagle's motion, holding the contract's arbitration clause unconscionably favored Keagle: it allowed Keagle to unilaterally choose the arbitrator and hearing location and required Campbell to bear arbitration costs even if she prevailed. The court rejected Keagle's request to sever the unconscionable provisions and enforce the remainder of the clause. Keagle accepted striking the provisions found to be unconscionable but sought to arbitrate rather than litigate.

The United States Court of Appeals, Seventh Circuit reversed and remanded with instructions to name an arbitrator. By accepting the court's unconscionability rulings, Keagle waived those contractual entitlements. The remaining provision was an enforceable manifestation of the parties' mutual assent to arbitration. The waived provisions could be filled in with guidance from the FAA, which provides that arbitration shall take place in the same judicial district as the litigation and authorizes the court to appoint an arbitrator if the parties have lapsed in doing so. The Court rejected Keagle's argument that the case lacked federal court subject-matter jurisdiction because the Silver Bullet Bar lacked a connection to interstate commerce within the scope of the FLSA. This was a coverage, rather than a jurisdictional issue, to be decided by the arbitrator or, if necessary, the federal judge below.

- **ARBITRATOR COULD USE EVIDENCE OF PAST PRACTICES TO INTERPRET MEANING OF FACIALLY UNAMBIGUOUS CONTRACT TERMS**

Warrior Met Coal Mining, LLC v United Mine Workers of America
2022 WL 656118
United States Court of Appeals, Eleventh Circuit
March 4, 2022

After Warrior employee Bradley Nix arrived two minutes late for a safety meeting, he was suspended pending discharge under the CBA's "four-strike" attendance policy. The UMWA sought arbitration, claiming that the discharge lacked just cause. The arbitrator decided that discharge was too severe a penalty and that Nix should instead be suspended for 60 days. Warrior sued to vacate the award, and the UMWA counterclaimed for enforcement and attorney fees. On cross-claims for summary judgment, the court ruled in favor of Warrior, holding that the arbitrator's authority was limited to determining whether the fourth strike had occurred. The

UMWA appealed.

The United States Court of Appeals, Eleventh Circuit reversed and remanded, rejecting Warrior's argument that the clear language of the four-strike provision left no room for arbitral interpretation. An arbitrator may rely on evidence of party intent or past practices to interpret even facially unambiguous terms. Having determined that the provision was open to interpretation, the Court's review was limited to determining whether, not how well, the arbitrator interpreted the contract. Here, the arbitrator described his process of interpreting the contract, explaining his standard of just cause and his reliance on Warrior's past practices. Any doubt whether the arbitrator's decision constituted modification or interpretation of the agreement must be resolved in favor of interpretation.

Georgia

- **EXPECTANT MOTHER'S ARBITRATION AGREEMENT DID NOT APPLY TO CLAIMS RAISED ON BEHALF OF HER CHILD**

  Emory Healthcare, Inc. v van Engelen
  2022 WL 600762
  Court of Appeals of Georgia
  March 1, 2022

  Jackie van Engelen gave birth in a hospital in the Emory Healthcare system. As part of the admittance process, she was presented with and signed two identical copies of an administration/registration agreement that included an arbitration clause. After the baby was born, hospital administrators labeled one of the agreements with stickers containing the baby's birth date, admission date, and gender. Due to labor complications, the baby died while still at the hospital, and van Engelen and her husband sued for wrongful death on their child's behalf. Emory moved to dismiss and compel arbitration. Van Engelen opposed, arguing that the arbitration clause did not apply to claims raised on behalf of her child. The court denied Emory's motion, and Emory appealed.

  The Court of Appeals of Georgia affirmed. The clear and unambiguous terms of the two identical agreements showed that van Engelen signed both in her personal capacity and not as a representative for her then-unborn child. In both agreements, van Engelen signed above a line indicated for patients or patient representatives. The agreements provided lines for the signatory to designate the "Relationship of Representative to Patient," which van Engelen left blank. The placement of stickers on one of the agreements was a subsequent unilateral modification that did not alter van Engelen's contract status. The Court rejected Emory's argument that this holding would invalidate all admission forms signed by expectant mothers on behalf of their unborn children. The hospital could easily have employees double-check the signatures and designations or simply label the agreements in advance.

- **INCORRECT INTERPRETATION OF LAW INSUFFICIENT TO SHOW MANIFEST DISREGARD**

  Magnum Contracting, LLC v Century Communities of Georgia, LLC
  2022 WL 536153
  Court of Appeals of Georgia
  February 23, 2022

  Century, the general manager of a subdivision development project, subcontracted Magnum to install and maintain erosion control at the site. The contract included an arbitration clause and an indemnification provision, including a duty to defend. Century and Magnum were sued for damages resulting from runoff onto an adjacent property and Century requested Magnum to provide defense and indemnification. Magnum refused, and Century demanded arbitration. After the panel ruled for Magnum, Century sued to vacate the award. The court vacated, finding that the panel's failure to address Century's duty to defend claim or to apportion fault in a subsequent hearing showed "imperfect execution" of the award and "manifest disregard of the law." Magnum

appealed.

The Court of Appeals of Georgia reversed, finding that the panel did not "imperfectly execute" the award by not ruling separately on the duty to defend or fault and cost allocation. While it was unlikely that a court would have reached the same conclusion as the panel, arbitrators exercise greater freedom in crafting awards. Century could have requested fault and cost allocation, but did not, and the panel had made clear that Century's failure to prevail on the merits would constitute a final decision on costs and fees. The panel "may well have failed to recognize that the contract's duty to defend was separate from the duty to indemnify," but incorrect interpretation of the law does not constitute manifest disregard.

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