

September 11, 2024

## ADR Case Update 2024 - 16

### Federal Circuit Courts

- **ARBITRATION PROVISION UNENFORCEABLE**

[\*Parker v Tenneco, Inc.\*](#)

United States Court of Appeals, Sixth Circuit  
2024 WL 3873409  
August 20, 2024

Two Tenneco Employees filed a class action against their ERISA Plan Fiduciaries seeking Plan-wide remedies that included restoration of losses, injunctions, and removal. Fiduciaries moved to compel arbitration under the Plan's mandatory individual arbitration provision. The court denied the motion, holding that the arbitration provision was unenforceable, as it eliminated Employees' substantive ERISA rights through its class action waiver and by restricting financial recovery to losses suffered by a claimant's individual account. Fiduciaries appealed.

The United States Court of Appeals, Sixth Circuit affirmed. Following the precedent of four other circuits, the Court held that the mandatory individual arbitration provision barred the "effective vindication" of Employees' ERISA rights. ERISA specifically authorizes plan participants to sue on behalf of their plan and to obtain plan-wide relief. The arbitration provision here eliminated both actions and was therefore unenforceable.

- **PENSION PLAN CLAIM ARBITRABLE UNDER CBA**

[\*Sysco Indianapolis LLC v Teamsters Local 135\*](#)

United States Court of Appeals, Seventh Circuit  
2024 WL 3869445  
August 20, 2024

Sysco retiree John Smith became eligible for a \$500/monthly Supplemental Early Retirement Benefit (SERB), but Sysco refused to pay. The Teamsters filed a grievance and arbitration on Smith's behalf, and Sysco successfully sued for a declaratory judgment that the grievance was not "substantively arbitrable." The court held that Smith's claim fell outside the CBA's arbitration

clause because 1) the CBA did not incorporate the SERB; 2) bargaining history showed that the parties had considered, but rejected, language that would have incorporated the SERB; and 3) the SERB was governed by its own, separate, document. The Teamsters appealed.

The United States Court of Appeals, Seventh Circuit reversed. Smith claimed that Sysco's refusal to pay the SERB violated CBA Article 18, which provides for employee participation in a 401(k). The CBA's broad arbitration provision applied to "any" CBA compliance dispute, and Sysco failed to show that this provision actively excluded the SERB. Had the parties sought to limit the CBA's provisions "to those expressly set forth therein," they could have included a "zipper clause" stating that "the parties have had the opportunity to bargain over all mandatory subjects of bargaining and that they waive their right to bargain over such matters during the term of the agreement." They did not. The Union's grievance fell within the scope of the arbitration clause on its face and, absent a showing that the clause was "not susceptible of an interpretation that covers the asserted dispute," must be sent to arbitration.

- **COUNTERCLAIMS WITHIN SCOPE OF ARBITRATION PROVISION**

[JES Farms Partnership v Indigo Ag Inc.](#)

United States Court of Appeals, Eighth Circuit

2024 WL 3980722

August 29, 2024

JES Farms sold its corn crops through an online marketplace operated by Indigo Ag. The relationship was governed by the parties' Marketplace Seller Agreement (MSA) and addenda which set the purchase price for specific transactions. JES initiated arbitration against Indigo for nonpayment in breach of the MSA, and Indigo counterclaimed for breach of the MSA and several of the pricing addenda. JES sued for a declaratory judgment that the counterclaims relating to the pricing addenda were outside the scope of the MSA's arbitration agreement. Indigo moved to compel arbitration. The court granted the motion to compel as it related strictly to MSA claims, but held that the addenda-based claims were not arbitrable because the arbitration agreement applied only to disputes "relating to crop transactions." JES appealed.

The United States Court of Appeals, Eighth Circuit affirmed in part and reversed in part. All of Indigo's counterclaims were arbitrable under the MSA's broad arbitration provision, which applied to "any dispute" between the parties. The arbitration provision's specific reference to "crop transactions" did not narrow the scope of its coverage, but was most naturally read as a "duplicative emphasis on capaciousness." Moreover, the pricing addenda were directly related to crop transactions. The court remanded with directions to grant Indigo's motion to compel.

- **ARBITRATION AGREEMENT UNCONSCIONABLE**

[Ronderos v USF Reddaway, Inc.](#)

United States Court of Appeals, Ninth Circuit

2024 WL 3894525

August 22, 2024

Jose Ronderos was terminated from his position as a line haul manager with USF Reddaway, a trucking company, shortly after taking medical leave for cancer treatment. Ronderos sued Reddaway for disability discrimination and retaliation. Reddaway moved to compel arbitration under the Arbitration Agreement it had required Ronderos to sign as a condition of submitting his job application. The court denied the motion, holding that the Agreement was procedurally unconscionable to a moderate degree, and so permeated with substantive unconscionability as to prohibit severance. Reddaway appealed.

The United States Court of Appeals, Ninth Circuit affirmed. The Agreement was a procedurally unconscionable contract of adhesion, presented to Ronderos on a take-it-or-leave-it basis without any explanation of its terms or meaningful time to review. Further, the Agreement's "opaque" language involved "surprise," creating the impression that the employee must split arbitration costs when such cost-sharing was in fact prohibited by California law. The Agreement was substantively unconscionable in 1) imposing strict, unilateral filing requirements on the employee that, if violated, constituted waiver, 2) mandating a one-year filing period, which significantly

reduced the applicable limitations period; and 3) preserving only Reddaway's right to injunctive relief. The court below did not abuse its discretion in finding that these provisions rendered the Agreement so "tainted with illegality" that "no justice would be furthered by severance."

- **NONSIGNATORY NOT BOUND TO ARBITRATION**

[Regions Bank v Scarbrough](#)

United States District Court, N.D. Mississippi, Oxford Division

2024 WL 3901189

August 21, 2024

In 2017, Sam Scarbrough purchased a CD at Regions Bank, naming his brother, Steven, as the third-party payable-on-death beneficiary. In 2022, Sam withdrew the funds from the CD and purchased a new one, directing that Steven remain the beneficiary. Although a bank associate later confirmed that Sam had "adamantly" made this request, the Bank neglected to put Steven's name on the account, and he was unable to access the funds upon Sam's death. Steven sued the Bank, and the Bank moved to compel arbitration under the Deposit Agreement for the 2017 account. Alternatively, the Bank argued that, based on Steven's claims to be a third-party beneficiary, equitable estoppel bound Steven to the arbitration agreement set forth in the Signature Card Sam signed when opening the 2022 account.

The United States District Court, N.D. Mississippi, Oxford Division denied the motion to dismiss. The Bank failed to show an agreement to arbitrate. The 2017 account to which Steven had been a named beneficiary was not at issue, and neither Steven's name nor signature appeared on the Signature Card for the 2022 account. Steven could not be bound to the 2022 account agreement on equitable estoppel grounds: it was in fact inequitable to treat Steven as a beneficiary for purposes of binding arbitration while denying him that status for account purposes.

## California

- **ARBITRATION AWARD VACATED FOR PREJUDICIAL LEGAL ERROR**

[Samuelian v Life Generations Healthcare, LLC](#)

Court of Appeal, Fourth District, Division 3, California

2024 WL 3878448

August 20, 2024

Following a corporate dust-up, Robert and Steven Samuelian, co-founders and majority owners of Life Generations (the Company) agreed to a partial buyout, and the Company implemented a new operating agreement with a noncompetition clause. The Company later attempted a forced buyout of the Samuelians for allegedly violating the noncompetition clause. The parties submitted to arbitration, signing an agreement allowing the resulting award to be vacated or corrected for "errors of law or legal reasoning." The arbitrator held that the forced buyout was invalid, finding the noncompetition clause was unenforceable under the "per se" validity test applicable upon "termination of employment or sale of interest in a business." The Samuelians successfully sued to confirm the award. The court dismissed the Company's motion to vacate, concluding that the arbitrator had applied the appropriate standard. The Company appealed.

The Court of Appeal, Fourth District, Division 3, California reversed. The arbitration agreement expressly authorized the Court to review the award for errors of law. Reversal for errors of law also required a showing of prejudice. Here, the arbitrator erred in applying the per se standard, which "only applies if the restrained party sells its entire business interest." This choice caused prejudice to the Company, as the arbitrator acknowledged that this decision prevented the Company from presenting evidence relevant to the "reasonableness" standard applicable to partial sales, and that applying the reasonableness standard would now require an additional hearing. The Court directed that the award be vacated on remand.

- **NONSIGNATORY COULD NOT ENFORCE ARBITRATION**

[Mahram v Kroger Co.](#)

Court of Appeal, Second District, Division 8, California

2024 WL 3878309

August 19, 2024

Payam Mahram used Instacart to order groceries from his local Kroger store. Mahram sued Kroger for false advertising and unfair competition. Kroger moved to compel arbitration under the arbitration agreement set forth in Instacart's Terms, to which Mahram had agreed in signing up for the app. Kroger argued that, under the agreement's delegation clause, it was for the arbitrator to decide Kroger's right to enforce the contract as a third-party beneficiary. The court denied the motion, and Kroger appealed.

The Court of Appeal, Second District, Division 8, California affirmed. Threshold arbitrability was for the court, not the arbitrator, to decide. There was no evidence that Mahram "had agreed to arbitrate anything – including threshold issues of arbitrability – with anyone but Instacart." Indeed, the Terms expressly disclaimed responsibility for "interactions with any Third Party Provider (including a Retailer)." Kroger was not a third-party beneficiary, as neither Mahram nor Kroger sought to extend contractual benefits to Kroger. Mahram just wanted to get groceries; Instacart wanted a "slice of the profits"; and the "identity and welfare of the grocer were incidental."

## Massachusetts

- **STATUTE MANDATED CONFIRMATION OF ARBITRATION AWARD**

[Boston Teachers Union, Local 66 v School Committee of Boston](#)

Supreme Judicial Court of Massachusetts

2024 WL 3942132

August 27, 2024

The CBA between the Boston Teachers Union and the School Committee of Boston required the Committee to hire eighteen paraprofessional substitutes. The Committee failed to do so and the Union filed a grievance, resulting in an arbitration award ordering the Committee to comply. The Committee did not comply, and the Union sued to confirm the award. The court dismissed for failure to state a claim, arguing that the Union failed to provide specific evidence of noncompliance. Since the Committee did not dispute the award itself, the court concluded that the Union had "no statutory right to confirmation. The Union appealed.

The Supreme Judicial Court of Massachusetts reversed. Mass. G. L. c. 150C §10 provides that a court "shall confirm" an arbitration award absent timely action to vacate, modify, or correct the award. The provision "means what it says," and the Union was "not required to demonstrate anything" for the court to confirm the award.

## Ohio

- **COUNTY AUDITOR COULD NOT APPEAL TAX SETTLEMENT VALUATIONS**

[Snodgrass v Harris](#)

Supreme Court of Ohio

2024 WL 3863575

August 20, 2024

Nexus Gas Transmission appealed the Ohio Tax Commissioner's valuation of its gas-transmission pipeline, which passes through 13 Ohio counties. The parties resolved the appeal through a settlement agreement, and the Commissioner issued a new final determination setting

forth the new, agreed-upon valuations. The Auditor for Lorain County appealed the settlement to the Board of Tax Appeals (BTA), claiming that the new valuations failed to comply with statutory criteria, and that the original valuations should be reinstated. The BTA dismissed the Auditor's appeal as moot: the valuation had been resolved in the settlement and there was no longer a live issue or controversy. The Auditor appealed.

The Supreme Court of Ohio affirmed. Auditors in counties affected by a Commissioner's final determination have the statutory right to appeal that determination to the BTA. The Commissioner, on the other hand, is vested with "all powers, duties, and functions" of the department of taxation, including the authority to "compromise and settle a tax claim." Allowing an auditor to appeal the values or legal issues compromised in a settlement would render the Commissioner's settlement authority "meaningless." An auditor may still appeal a final determination if the Commissioner acted inconsistently with statutory authority by, for example, achieving settlement via fraud or duress. Here, the Auditor's challenge went to the "essence of the compromise itself" and was, therefore, inconsistent with the Commissioner's authority to settle tax claims.

## Washington

- **CLAIMS OUTSIDE SCOPE OF CBA ARBITRATION AGREEMENT**

[\*Service Employees Int'l Union Healthcare v Snohomish County Public Hospital\*](#)

Court of Appeals of Washington, Division 1

2024 WL 3857564

August 19, 2024

The CBA between hospital owner Evergreen Health Care and its employees' Union required Evergreen to provide a retirement plan and make matching contributions. Evergreen accordingly established a 401(k) Plan and agreed, in the Plan Document, to make its matching contributions within a "reasonable time following the end of each calendar month." The Union sued Evergreen for breaching the Plan by failing to make timely contributions. The court granted Evergreen's motion to dismiss, holding that the Union's claims were subject to arbitration under the CBA, as breach of the Plan necessarily constituted breach of the CBA under which the Plan was founded. The Union appealed.

The Court of Appeals of Washington, Division 1 reversed. The Union's claims were outside the scope of the CBA's arbitration agreement. The agreement did not apply to all aspects of the parties' labor relationship, but only to disputes over the CBA's terms and conditions. The Union's claims rested entirely on breach of Evergreen's obligations under the Plan Document and could be determined "solely by reference to the Plan." The fact that the Plan was initially founded in accordance with the CBA "does not in and of itself bring disputes arising under the benefit plan into the scope of the CBA's arbitration clause."

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

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