February 5, 2025

ADR Case Update 2025 - 3

Federal Courts

- **SCRA DID NOT SUPERSEDE ARBITRATION AGREEMENT**

  Espin v American Bankers Association
  United States Court of Appeals, Fourth Circuit
  2025 WL 301694
  January 27, 2025

  While Pablo Espin was serving active military duty, his Citibank credit card charged the reduced military interest rate mandated by the Servicemembers Civil Relief Act (SCRA). Once Espin left the military, Citibank charge him standard – higher – civilian rates. Espin and other former military members (Plaintiffs) sued Citibank, claiming that this increase violated SCRA and the Military Lending Act (MLA). The court denied Citbank's motion to compel arbitration under the credit card Terms' arbitration agreement, which included a class action waiver. Because SCRA expressly allows for class actions "nothwithstanding any previous agreement to the contrary," the court held that SCRA superseded the arbitration agreement. Citibank appealed.

  The United States Court of Appeals, Fourth Circuit reversed and remanded. SCRA's language did not evince a "clearly expressed congressional intent" to override the FAA mandate to enforce arbitration agreements. While SCRA authorizes a claimant to file and prosecute a civil class action, it does not require a claimant to do so, or prohibit claimants from resolving a SCRA claim in another forum. The MLA, in contrast, expressly provides that "no agreement to arbitrate any dispute involving the extension of consumer credit shall be enforceable against" covered military members. The Court remanded the case for the lower court to determine whether the MLA applied to Plaintiffs' accounts.

- **COURT EMPOWERED TO APPOINT SUBSTITUTE ARBITRATOR**

  Baker Hughes Saudi Arabia Co. Ltd. v Dynamic Industries, Inc.
  United States Court of Appeals, Fifth Circuit
  2025 WL 304463
  January 27, 2025

Dynamic Industries subcontracted to provide services to Baker Hughes Saudi Arabia on an oil-and-gas project. The subcontract's arbitration agreement gave Dynamic the option to initiate arbitration in Saudi Arabia but, if Dynamic chose not to do so, the agreement's "Schedule E" gave both parties the option to initiate arbitration under the rules of the DIFC LCIA Arbitration Centre. The DIFC LCIA was subsequently abolished. Baker Hughes later sued Dynamic, and Dynamic moved to compel Schedule E arbitration. The court denied the motion, holding that the Schedule E "forum selection clause" was no longer enforceable because the chosen forum no longer existed. Dynamic appealed.

The United States Court of Appeals, Fifth Circuit reversed. The court erred in interpreting the language in Schedule E as a forum selection clause. Schedule E provided for arbitration "under the Arbitration Rules of the DIFC LCIA." It did not designate an exclusive arbitral forum, but only a set of rules to apply if the parties opted for Schedule E arbitration. Since the agreement provided two arbitration options – Dynamic-initiated arbitration in Saudi Arabia or Schedule E arbitration – those rules were not "integral" to the parties' agreement. Rather, the agreement manifested the parties' intention "to arbitrate generally." In that circumstance, the court below was empowered to compel arbitration and appoint a substitute arbitrator "consistent with the parties' intent."

- **SANCTIONS IMPOSED FOR "FRIVOLOUS" APPEAL OF ARBITRATION ORDER**

  Retzios v Epic Systems Corporation
  United States Court of Appeals, Seventh Circuit
  2025 WL 289402
  January 24, 2025

  Epic Systems terminated Caroline Retzios for refusing to comply with the company's COVID-19 vaccine requirement. Retzios filed a Title VII action, and Epic moved to compel arbitration pursuant to her stock agreement. Retzios opposed, arguing that 1) the arbitration agreement did not cover claims relating to COVID-19 and/or vaccination; 2) enforcement was barred by promissory estoppel; and 3) Epic waived its enforcement rights by failing to object to her EEOC unemployment compensation action. The court granted Epic's motion to compel and dismissed the case. Retzios appealed.

  The United States Court of Appeals, Seventh Circuit affirmed, with sanctions. Under the FAA, the court below erred in dismissing, rather than staying, the case, thereby rendering its order appealable. Retzios' claims were "uniformly frivolous": 1) her termination claim clearly related to her employment; 2) promissory estoppel did not apply to parties bound by contract; and 3) participating in administrative proceedings presents no bar to arbitration. Yet, "even after the district judge explained why" her claims were "wrong," Retzios insisted on repeating those claims on appeal. Retzios' insistence on litigating and appealing her case before arbitration "exacerbated" the dispute and wasted party and judicial resources. The court granted Epic's motion for sanctions and ordered reimbursement of Epic's expenses incurred on appeal.

- **CLAIMANT MANIFESTED AGREEMENT TO ONLINE TERMS OF SERVICE**

  Bryant v JPMorgan Chase Bank, N.A.
  United States District Court, C.D. California
  2025 WL 313204
  January 27, 2025

  Michael Bryant sued Experian Information Solutions for failing to resolve identity theft claims relating to a credit card opened in his name. Experian moved to compel arbitration under the Terms to which Bryant agreed when enrolling in Experian's "CreditWorks" credit monitoring service. Experian provided the declaration of Dan Smith, the Director of Product Operations, which explained CreditWorks' online browsewrap agreement: in order to complete CreditWork's online enrollment process, Bryant had been required to click a designated button to express his agreement with Terms made available by hyperlink. Only then could Bryant proceed into the site. Bryant opposed the motion, arguing that Experian failed to produce an actual agreement, and that Smith's declaration was inadmissible because Smith lacked personal knowledge of any such

agreement.

The United States District Court, C.D. California granted Experian's motion to compel. Bryant's argument created no genuine issue of material fact as to the existence of an agreement. By virtue of his position at ECS, Smith had access to consumer records to show that Bryant had enrolled in CreditWorks, and that, to do so, Bryant necessarily had to click the designated button manifesting his agreement to the site's Terms.

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

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