March 26, 2025

ADR Case Update 2025-6

Federal Circuit Courts

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

  Davitashvili v GrubHub Inc.
  United States Court of Appeals, Second Circuit
  2025 WL 798378
  March 13, 2025

  Standard agreements between restaurants and online delivery platforms GrubHub, Postmates, and Uber (Defendants) prohibit the restaurants from selling meals for lower prices "off-platform." A group of restaurant patrons and delivery platform users filed an antitrust class action against Defendants, claiming that this practice artificially raises restaurant prices. Defendants moved to compel arbitration against the users (Plaintiffs) of their respective delivery platforms under their respective Terms. The court denied the motion holding that 1) GrubHub users formed no agreement to arbitrate, as GrubHub's website failed to put a reasonable user on notice of its Terms; 2) as to Postmates and Uber, arbitrability was for the court to decide; and 3) Plaintiffs' claims were not arbitrable, as they lacked "any nexus" to Defendants' Terms. Defendants appealed.

  The United States Court of Appeals, Second Circuit affirmed in part and reversed in part. GrubHub users did form an agreement to arbitrate: notice of the Terms and hyperlinks were sufficiently "spatially coupled" and "temporally coupled" to place a user on reasonable notice of the Terms. The lower court erred in deciding arbitrability under the Terms of Uber and Postmates, as their arbitration agreements delegated arbitrability to the arbitrator. However, GrubHub's arbitration provision included no delegation clause, leaving arbitrability for the courts to decide. Here, antitrust claims fell outside the scope of GrubHub's arbitration provision, as the claims had "nothing to do with" Plaintiffs' access and use of GrubHub's online platform.

- **WEBSITE USERS MANIFESTED ASSENT TO TERMS**

  Dhruva v CuriosityStream, Inc.
  United States Court of Appeals, Fourth Circuit

2025 WL 738138
March 10, 2025

Users of CuriosityStream sued the video streaming website for selling identifying data in violation of federal and state privacy laws. CuriosityStream moved to compel arbitration under its Terms, to which Users had agreed in signing up for the streaming service. The court denied the motion on formation grounds. Although the sign-up page did provide a "reasonably prudent user" sufficient notice of the Terms, Users were not given "clear notice that by clicking the 'Sign up now' button, they were expressing agreement" to those Terms. CuriosityStream appealed.

The United States Court of Appeals, Fourth Circuit reversed. A "reasonable internet user" signing up for a streaming service would understand that they were entering into a contract for a continuing relationship that would be governed by Terms. Users were given adequate notice of the Terms, as a notification containing a clearly identifiable hyperlink notified Users that the "affirmative act of using the site" signified agreement, and that clicking the "Sign up now" button constituted assent to the Terms. The Court rejected Plaintiffs' claim that the "Sign up now" label was ambiguous. A button need not be labeled "I accept" or "I agree": a "clear and conspicuous notice" that clicking on a button will be taken as assent "can do the trick."

- **ILLUSORY AGREEMENT UNENFORCEABLE**

Johnson v Continental Finance Company, LLC
United States Court of Appeals, Fourth Circuit
2025 WL 758026
March 11, 2025

A class of Continental Finance credit card holders (Plaintiffs) sued Continental for violating Maryland usury laws through a "rent-a-bank" scheme. Continental moved to compel arbitration under Plaintiffs' account agreements. The court denied the motion, holding that 1) it was for the court, not the arbitrator, to determine contract formation; 2) despite the agreements' choice-of-law provisions, agreement formation must be determined under Maryland state law; and 3) Continental's right to change "any Term" of the agreements at its "sole discretion" rendered the agreements illusory, and, therefore, unenforceable. Continental appealed.

The United States Court of Appeals, Fourth Circuit affirmed. Formation was for the courts, not the arbitrator to decide. Continental's argument, that the agreements' delegation clauses required formation to be decided by the arbitrator under the agreements' choice of law, "put the cart before the horse." A court cannot enforce an agreement before it establishes that there is, in fact, an agreement. Here, Continental's right to change the agreements' terms at any time at its sole discretion rendered the agreements "so one-sided and nebulous" that they lacked "the minimum reciprocity needed to form a contract under Maryland law."

- **PARTIES SHOULD ARBITRATE CONFLICTING AWARDS**

Sullivan v Feldman
United States Court of Appeals, Fifth Circuit
2025 WL 758029
March 11, 2025

A group of surgeons and medical entities (Doctors) entered into an Engagement Agreement for the Feldman Law Firm to form and manage an insurance risk-pooling arrangement for them. Over a two-year period, the parties initiated eight separate arbitrations, all proceeding simultaneously, until the court finally enjoined Feldman from initiating any more judicial or arbitration proceedings involving the same parties, contract, or disputes. Soon after, arbitrators in four of the actions together presided over a single evidentiary hearing, and all four held in favor of Doctors. However, the four awards ranged from $1.5M to $88M and contradicted one another on several issues, such as the permissibility of class arbitration and enforcement against a non-signatory. Upon cross-motions to confirm and vacate the awards, the court confirmed all four and entered a Partial Final Judgment in the amount of the largest award. Feldman appealed. Feldman then initiated a new arbitration to resolve the conflicting arbitrations, which the court stayed consistent with its previous injunction against new actions.

The United States Court of Appeals, Fifth Circuit affirmed in part, reversed in part, vacated in part and remanded. The court vacated one arbitral decision to enforce arbitration against a non-signatory, but confirmed the remainder, finding that each of the arbitrators "arguably interpreted" the arbitration agreement. There remained, however, the problem of enforcing conflicting awards. The lower court's choice to enforce only the largest monetary award "rendered meaningless the other three confirmed awards." This problem could be resolved, however, by the court lifting its stay to allow the parties to arbitrate the conflicting awards. The parties had agreed to arbitrate their disputes, "no matter how messy," and maintaining the stay thwarted their right to do so.

- **ARBITRATOR ARGUABLY INTERPRETED CBA**

Quality Custom Distribution Services LLC v Int'l Brotherhood of Teamsters, Local 710
United States Court of Appeals, Seventh Circuit
2025 WL 798856
March 13, 2025

During COVID, restaurant supplier Quality Custom Distribution (QCD) failed to meet its CBA requirement to guarantee senior employees forty paid hours per week. In arbitration, QCD argued that this failure fell within the CBA's Acts of God exception. QCD argued that the Illinois Governor's order limiting restaurant operations caused the demand for restaurant supplies to drop, reducing the company's workload. The arbitrator disagreed. An Act of God, the arbitrator found, was a natural disaster, such as a flood or a tornado. Regulations and orders constituted human intervention, and were not of themselves Acts of God. The district court denied QCD's motion to nullify the award, and QCD appealed.

The United States Court of Appeals, Seventh Circuit affirmed. Parties in arbitration choose to have an arbitrator, rather than a judge, "resolve disagreements about the meaning of contractual words," and, so long as the arbitrator does this, the arbitration stands. Here, there could be "no doubt" that the arbitrator interpreted the contract to determine what constituted an "Act of God." The Court has, "year after year," held that an arbitrator does not err simply in "adopting one view rather than another from the panoply of possible interpretations." The Court chided QCD for choosing to litigate in the face of such judicial clarity and awarded of attorneys' fees to the Union.

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