

April 9, 2025

ADR Case Update 2025 - 7

Federal Circuit Courts

- COURT FAILED TO ALLOW DISCOVERY ON FORMATION**

[Cornelius v CVS Pharmacy Inc.](#)

United States Court of Appeals, Third Circuit

2025 WL 980309

April 2, 2025

Store manager Michele Cornelius filed hostile work environment claims against CVS following her termination in 2021. CVS moved to compel arbitration under its Arbitration Policy. Cornelius argued that there was no valid agreement to arbitrate and, alternatively, that she was protected from arbitration under the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA). The court granted the motion to compel and dismissed, finding the existence of a valid arbitration agreement. The Arbitration Policy had been presented to Cornelius in 2014 as part of a PowerPoint "Training Course," and Cornelius did not opt out via the required method of sending a letter to CVS. The EFAA did not apply because Cornelius's claim did not raise a "sexual harassment dispute." Cornelius appealed.

The United States Court of Appeals, Third Circuit affirmed in part, vacated in part, and remanded. The EFAA did not apply, as the dispute between the parties arose when Cornelius first submitted internal complaints to CVS in 2019, prior to the EFAA's March 3, 2022 effective date. Remand was required, however, as the lower court based its formation finding on outside evidence without granting Cornelius the opportunity for discovery. Cornelius raised a number of factual and legal issues that went "to the heart of the agreement's validity." In particular, Cornelius alleged that substantive provisions governing arbitration, such as the right to legal counsel and the opt-out procedures, were not contained in the Arbitration Policy, but were set forth in separate documents. Discovery was needed to allow for the lower court to determine which documents were part of the arbitration agreement.

New Jersey

- **ISSUE WAS NOT EXCLUDED FROM ARBITRATION**

[Rappaport v Pasternak](#)

Supreme Court of New Jersey

2025 WL 970902

April 1, 2025

Laurence Rappaport was the managing member for a group of LLCs, known together as KABR. KABR removed Rappaport from his managerial position for mismanagement and misconduct. Rappaport initiated arbitration, claiming that KABR had acted without cause. The arbitrator awarded Rappaport \$4.9M in damages and lost income. Upon the parties' request for clarification, the arbitrator confirmed that he had considered and denied Rappaport's request for \$25M in carried interest. The court confirmed the award, but the appellate court reversed, finding that the parties had excluded the issue of carried interest from arbitration, and that it had been raised only sua sponte by the arbitrator himself. The court found it "implausible" that the \$4.9M award figure included carried interest, and modified the award to provide for Rappaport to receive carried interest going forward. KABR petitioned for review.

The Supreme Court of New Jersey reversed. New Jersey law allows for vacatur when an arbitrator 1) makes an award on a claim "not submitted to the arbitrator," and 2) the award may be corrected "without affecting the merits of the decision upon the claims submitted." The appellate court's finding of exclusion resulted from the court's confused interpreting of the hearing transcript. The record showed that Rappaport had raised the issue in his pre-hearing and post-hearing motions, and that it was "vigorously disputed" by the parties at multiple points during the arbitration. Even if the claims were excluded, the appellate court's remedy failed because it "fundamentally affected" the merits of the arbitrator's decision, which reflected the arbitrator's assessment of several types of damages, including the carried interest claim.

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

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