May 27, 2020

ADR Case Update 2020 - 10

Federal Circuit Courts

- **UNION WAIVED RIGHT TO NON-JUDICIAL GRIEVANCE PROCEDURES, INCLUDING ARBITRATION**

  Sysco Minnesota, Inc., v. Teamsters Local 120
  2020 WL 2464922
  United States Court of Appeals, Eighth Circuit
  May 13, 2020

  Sysco Minnesota and Teamsters Local 120 had a CBA providing that there shall be no lockout, strike, or other interference with the business during the life of the Agreement (Article 23) and that no employee shall be requested to go through a primary picket line where a union is on primary strike (Article 24). When Local 41 representing Sysco Kansas City set up a picket line, all but four of Local 120's members refused to cross, disrupting Sysco Minnesota's operations. Sysco sued Local 120 under section 301 of the LMRA for violating their CBA. The court granted Sysco's motion for summary judgment, finding that Local 120 waived its right to arbitration and breached the no-strike clause. Local 120 appealed.

  The United States Court of Appeals for the Eighth Circuit affirmed. A party waives its rights to a CBA's grievance and arbitration procedures if it knows of its right to these procedures, acts inconsistently with that right, and prejudices the other party in doing so. Local 120 knew it had the right to grievance procedures, but invoked the litigation procedures when it answered the complaint, stipulated to expedited discovery, participated in pre-trial scheduling, and concluded discovery. Had the district court ordered arbitration at the summary judgment stage, Sysco would have been prejudiced. Sysco Minnesota and Sysco KC's common ownership was not sufficient to establish that Local 41's picket line was a primary picket line (per Article 24). Sympathy strikes were prohibited (per Article 23). Local 120 was liable because its officers told members that they had the option to either cross or respect the picket line.

- **COURT AFFIRMS JUDGMENT COMPELLING ARBITRATION AFTER SUPREME JUDICIAL COURT DETERMINATION ON STATUTORY BENEFICIARIES UNDER WRONGFUL DEATH STATUTE**

GGNSC Administrative Services, et al., v. Jackalyn Schrader
2020 WL 2315764
United States Court of Appeals, First Circuit
May 11, 2020

Jackalyn Schrader, personal representative of a deceased former nursing home resident, brought a state wrongful death action against the nursing home. The court compelled arbitration at the nursing home's request and Schrader appealed, arguing that she was not bound by the decedent's agreement to arbitrate with the nursing home because her wrongful death right of recovery was independent of the decedent's wrongful death claim. The United States Court of Appeals for the First Circuit certified questions of law to the Supreme Judicial Court of Massachusetts (SJC) regarding whether the wrongful death claim was a derivative claim as to which decedent's representatives and beneficiaries would be bound by decedent's agreement to arbitrate. The SJC answered in the affirmative.

The United States Court of Appeals for the First Circuit affirmed the district court's judgment compelling arbitration, holding that it was bound to accept the clear statement of state law articulated by the SJC. Under traditional equal protection analysis, a legislative classification must be sustained if the classification itself is rationally related to a legitimate governmental interest. Allowing decedents to agree to arbitration of their beneficiaries' wrongful death claims advanced the government intent that wrongful death rights…remain tied to the decedent's action, as well as Massachusetts's strong public policy in favor of arbitration in commercial disputes. This did not infringe beneficiaries' equal protection rights.

- **CAR RENTAL JACKETS WITH ARBITRATION LANGUAGE NOT INCORPORATED INTO AGREEMENTS**

Abigail Bacon, et al., v. Avis Budget Group and Payless Car Rental
2020 WL 2517969
United States Court of Appeals Third Circuit
May 18, 2020

Plaintiffs brought a putative class action against rental car companies for unauthorized charges in conjunction with rentals in the U.S. and in Costa Rica. Some of the reservations were made on the website. The car companies moved to compel arbitration pursuant to arbitration clauses located in the rental document jackets into which rental associates placed the rental agreements (U.S.) and on the second page of the agreement (Costa Rica). The court denied the car companies' motions on the ground that the undisputed facts showed that U.S. plaintiffs did not assent to the arbitration provision. With the Costa Rica Agreement, the Court found that a disputed factual issue existed as to whether that plaintiff was on reasonable notice of the arbitration provision. The court held that the record of the website reservations was not sufficiently developed concerning assent and that the issue could be resolved after further discovery. The car companies appealed.

The United States Court of Appeals for the Third Circuit affirmed. The Court had appellate jurisdiction because both orders denied motions to compel arbitration. One gateway question before compelling a party to arbitrate under the FAA is whether the parties have a valid arbitration agreement. The Court held that the U.S. Agreements did not incorporate the rental jacket beyond doubt and thus did not bind plaintiffs to the arbitration provision in the jacket. With the Costa Rica Agreement, a single-page, two-sided agreement with the arbitration provision on the back, a genuine dispute existed over whether the signer of the agreement was on reasonable notice of the arbitration provision and whether the rental associate showed the agreement in a way that would have revealed there was writing on the back side. The court had no basis to determine whether Plaintiffs had assented to the websites' terms because Defendants failed to produce admissible evidence concerning the layouts or contents of the websites Plaintiffs accessed.

Case research and summaries by Deirdre McCarthy Gallagher and Richard Birke.

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