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ADR Case Update 2020 - 5

Federal Circuit Courts

- **NO AGREEMENT TO ARBITRATE**

VIP, Inc. v. KYB Corporation, et al.
2020 WL 881263
United States Court of Appeals, Sixth Circuit
February 24, 2020

VIP, a retailer of automotive parts, purchased shock absorbers from KYB subsidiary KAC through buying groups that negotiate pricing. Neither the buying group agreements nor the KAC invoices contained arbitration provisions. The buying group agreements provided a warranty allowance for those who accepted terms and conditions of the KYB Limited Warranty, one of which mandated arbitration in accordance with AAA Commercial Rules, including its delegation provision. After VIP sued KYB for anticompetitive activities, KYB moved to dismiss and compel arbitration. The court denied the motion and KYB appealed.

The United States Court of Appeals for the Sixth Circuit affirmed. KYB's assertion that this was a delegation case rested on the assumption that the incorporation of AAA's Commercial Rules established that plaintiffs agreed to the arbitration clause in the first instance. They did not. The arbitration agreement applied only to original retail purchasers. The language of the contract made clear that VIP did not fall within this category, differentiating between "original retail purchasers" and "authorized KYB product sellers."

- **DECISION DIRECTING PARTIES TO ARBITRATE, COUPLED WITH A STAY, WAS NON-APPEALABLE**

Intl FCStone Financial, Inc. v. Jacobson et al.
2020 WL 881270
United States Court of Appeals, Seventh Circuit
February 24, 2020

Commodities future investors Jacobson et al. (defendants) had trading accounts with clearing firm FCStone. After volatility in the market wiped out defendants' account balances, defendants launched arbitration against FCStone before FINRA, alleging that FCStone violated the Commodity Futures Exchange Act. FCStone responded with a declaratory judgment action, claiming that FINRA lacked jurisdiction and the parties must arbitrate before the National Futures Association (NFA). The court determined that the party's disputes did not fall within FINRA's regulatory ambit and directed defendants to submit their disputes to the NFA. It also denied FCStone's motion for a preliminary injunction without prejudice and scheduled a status conference to take place a day after the defendants' deadline to submit their claims to the NFA. Defendants appealed and the court responded by staying the case and concluding that the appeal divested the court of its jurisdiction to decide unresolved issues related to the arbitration order.

The United States Court of Appeals for the Seventh Circuit dismissed the appeal. Section 1291 of the Judicial Code grants courts of appeals jurisdiction over "all final decisions of the district courts of the US." A decision is final if it "ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment." This case, which remained open to resolve certain issues, was non-final and, accordingly, non-appealable. Because the defendants here attempted to appeal a non-appealable order, the district court's jurisdiction over arbitration-related issues remained intact.

Massachusetts

- **CAUSE OF ACTION FOR WRONGFUL DEATH CLAIM BROUGHT BY PERSONAL REPRESENTATIVE WAS DERIVATIVE AND ARBITRATION AGREEMENT WAS BINDING**

GGNSC v. Jackalyn Schrader
2020 WL 949951
Supreme Judicial Court of Massachusetts
February 27, 2020

Jackalyn Schrader, who acted as power of attorney for her mother, Emma, signed an arbitration agreement upon admitting Emma to the Golden Living Center Heathwood (part of GGNSC). After Emma passed away, Jackalyn brought a wrongful death suit against GGNSC and GGNSC sued Jackalyn in the US District Court to compel arbitration. The court granted the motion to compel and Jackalyn appealed to the First Circuit to certify two questions to the Supreme Court of Massachusetts:

Was the wrongful death claim of the decedent's statutory heirs derivative or independent of the decedent's own cause of action?

If the answer to the first question did not resolve the issue presented to the federal court, was Jackalyn's wrongful death claim nonetheless subject to the decedent's Agreement that her next of kin, guardian, executor, administrator, legal representative or heir would arbitrate claims against GGNSC?

The Supreme Judicial Court of Massachusetts looked to a plain reading of the wrongful death statute, interpretation of wrongful death actions over time, and persuasive authority from other States, and found that a wrongful death claim of a statutory beneficiary was derivative of the decedent's action and that the arbitration clause in question was enforceable. Especially persuasive was a 1958 amendment to permit compensation "under such circumstances that the deceased could have recovered damages for personal injuries if his death had not resulted." Through this, the Legislature tethered a wrongful death claim to tortious conduct that caused the decedent's personal injury. In response to Jackalyn's argument that the arbitration agreement could not control Emma's beneficiaries because they never consented to its terms, the Court noted that consent was not an issue because the decedent's wrongful death claim belonged to her alone. The facts here demonstrated no fraud, duress, undue influence, or unconscionability with the signing of the agreement. Jackalyn, as personal representative, had time to review the documents and was apprised that the agreement was not mandatory (in bold writing) and contained a 30-day revocation period.

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

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