August 15, 2018

ADR Case Update 2018 - 16

Federal Circuit Courts

- **INDIVIDUAL ARBITRATION CLAUSES DO NOT ENCOMPASS ERISA CLAIMS**

  Munro v USC
  2018 WL 3542996
  United States Court of Appeals, Ninth Circuit
  July 24, 2018

  Allen Munro filed a putative class action against the University of Southern California alleging multiple violations of the school's retirement and annuity plans. USC moved to compel individual arbitration pursuant to arbitration clauses in the employees' various employment contracts.

  The district court denied the motion to compel, concluding that the arbitration agreements did not bind the retirement and annuity plans to arbitrate. USC appealed.

  The United States Court of Appeals for the Ninth Circuit affirmed, writing that "[b]ecause the parties consented only to arbitrate claims brought on their own behalf, and because the Employees' present claims are brought on behalf of the [retirement and annuity] Plans, we conclude that the present dispute falls outside the scope of the agreements." The Court found the suit to be in the nature of a qui tam lawsuit and that the individual employees were not acting on their own behalf, saying that a plaintiff seeking relief under ERISA "may not settle on behalf of a plan, but rather can only settle if the plan consents to the settlement…. The relief sought demonstrates that the Employees are bringing their claims to benefit their respective Plans across the board, not just to benefit their own accounts…"

- **SETTLEMENT SCUTTLED AS UNLAWFUL RESTRAINT OF TRADE**

  Golden v. California Emergency Physicians Medical Group
  2018 WL 3542837
  United States Court of Appeals, Ninth Circuit
  July 24, 2018

  Dr. Donald Golden worked for CEP, a partnership of approximately 2,000 doctors located in

California and ten other states. When Golden was terminated, he sued for alleged race discrimination. The case resulted in an oral settlement before a magistrate judge.

However, when the settlement was reduced to writing, Golden protested, arguing that one clause violated California law regarding restraint from engaging in one's lawful profession. The clause stated that Golden could not work in any current CEP-contracted facility or one in which CEP later contracts.

As a result of CEP's motion, the district court ordered Golden to sign, reasoning that the settlement agreement restrained Golden from competing with CEP, not from practicing medicine. Golden appealed.

The United States Court of Appeals for the Ninth Circuit reversed, finding that the district court misconstrued the law (Cal. Bus. And Prof. Code section 16600). After a review of relevant case law, the Court concluded that "a contractual provision imposes a restraint of a substantial character if it significantly or materially impedes a person's lawful profession, trade, or business," and that the provision at issue "impedes Dr. Golden's ability to practice medicine in three ways…" and that two of these (the ability to terminate Golden from a place he may be working that CEP acquires, and that the termination would happen "without any liability whatsoever") violated the law.

In voiding the settlement, the Court wrote that the settlement agreement "fails to the extent that it prevents him from working for employers that have contracts with CEP and to the extent that it permits CEP to terminate him from existing employment in facilities that are not owned by CEP. Thus, because CEP does not argue that any exception to section 16600 applies, and because the parties do not dispute that Paragraph 7 is material to the settlement agreement, the entire agreement is void, and the district court abused its discretion in ordering Dr. Golden to sign it."

New York

- **BANKRUPTCY COURT BLOCKS ARBITRATION OF DISPUTE OVER "CORE MATTERS" REGARDING STUDENT LOAN REPAYMENT (2 cases)**

  Golden v. JP Morgan
  2018 WL 3584644
  United States Bankruptcy Court, E.D. New York
  July 25, 2018

  Homaidan v, SLM, Sallie Mae et al.
  2018 WL 3584650
  United States Bankruptcy Court, E.D. New York
  July 25, 2018

  In this pair of cases, the petitioners (Golden and Homaidan) had debts discharged in bankruptcy, but filed motions to reopen the cases to determine the dischargeability of certain student loans. In addition, the petitioners sought to turn the case into a class action.

  The Court reopened the cases and the holders of the loans moved for a determination that the loans were non-dischargeable in bankruptcy, and in the alternative, to compel individual arbitration.

  The Court's opinions responded to two questions: "whether this proceeding is core or non-core; and… whether arbitration of these claims would present a severe, inherent conflict with, or necessarily jeopardize the objectives of, the Bankruptcy Code." As to the first question, the Court concluded that the "applicable law….makes it plain that the questions of the dischargeability of a debt, and whether the bankruptcy discharge has been violated, are core proceedings" in bankruptcy. As to the second, the Court found that arbitration would jeopardize the objectives of the Code.

The opinions focused on a so-called "fresh start." In a quote from the second case (which tracks the same logic as the first), the Court wrote that "[d]ischarge violations inherently impede a debtor's ability to achieve a fresh start, and therefore, compelling parties to arbitrate an alleged discharge violation is inappropriate. The resolution of Mr. Homaidan's claims directly implicates a central purpose of the Bankruptcy Code, namely his ability to achieve a fresh start. For these reasons, the Court finds that arbitration of Mr. Homaidan's claims would inherently conflict with the Bankruptcy Code's objectives of providing a fresh start, and therefore, that this consideration weighs against compelling arbitration of these claims."

Maryland

- **ARBITRATOR DID NOT MANIFESTLY DISREGARD THE LAW**

  WSC v. Trio Ventures Associates
  Court of Appeals of Maryland
  2018 WL 3629441
  July 30, 2018

  As part of the settlement of litigation over the sale of ownership interest in a joint venture, WSC and Trio entered into a purchase and sale agreement regarding a piece of real property. The PSA included both a leasing agreement and an arbitration clause.

  When a dispute arose, the parties proceeded to arbitration, where the arbitrator dismissed several of Trio's claims but granted Trio's motion for summary judgment regarding the breach of the PSA. The award required WSC to pay Trio $3.5 million.

  WSC moved to vacate the award, arguing that the arbitrator manifestly disregarded "well-established Maryland law." The trial court denied the motion, concluding that the arbitrator had not manifestly disregarded the law. The intermediate appellate court affirmed and the appeal was filed.

  The Court of Appeals of Maryland affirmed again. It noted that despite the fact that "manifest disregard" is not found in any Maryland arbitration statute and despite the U.S. Supreme Court's opinion in the *Hall Street* case, Maryland has a common law history that "recognizes manifest disregard as a permissible common-law ground for vacating an arbitration award."

  However, the Court also found that the arbitrator in the instant case "identified the applicable principles of law and, rather than disregarding them, applied them." The Court concluded that "[a]lthough WSC is correct that manifest disregard of applicable law is a viable means of challenging an arbitration award, the Circuit Court and the Court of Special Appeals correctly concluded that the Arbitrator's award did not demonstrate any such manifest disregard."

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