February 1, 2018

ADR Case Update 2018 - 3

Federal Circuit Courts

- **FAA APPLIES TO MARITIME INSURANCE CONTRACT**

  Galilea, LLC v. AGCS Marine Insurance Company, et al.
  2018 WL 414108
  United States Court of Appeals, Ninth Circuit
  January 16, 2018

  After its yacht ran ashore, Galilea brought an action against insurance underwriter AGCS to recover under a maritime insurance policy. AGCS moved to dismiss for failure to state a claim and to compel arbitration. Galilea argued that the application for coverage and the insurance policy failed to fully represent the scope of the agreement. The court granted the motion to compel for two of the claims and denied it as to the others. Galilea and AGCS appealed.

  The United States Court of Appeals for the Ninth Circuit affirmed in part, reversed in part, and remanded. The Court determined that the insurance application was not a contract and that the insurance policy governed. Therefore, all claims under the application were outside the scope of any motion to compel.

  The governing contract - the policy - would be subject to state insurance regulation if there were no established federal maritime rule. Here, however, there was: the FAA, which has long been deemed to apply to maritime transactions.

  Galilea argued that MT's Uniform Arbitration Act should apply, which makes unenforceable arbitration clauses in insurance policies. The Court found maritime rules were not precluded under McCarran-Ferguson.

- **BINDING ARBITRATION PROVISIONS UNENFORCEABLE**

  Degidio, individually and on behalf of others v. Crazy Horse Saloon
  2018 WL 456905
  United States Court of Appeals, Fourth Circuit
  January 18, 2018

Exotic dancer Alexis Degidio brought a collective and class action against Crazy Horse (Club), alleging that the Club misclassified her and others as independent contractors and violated minimum wage and overtime provisions under the Fair Labor Standards Act and the South Carolina Payment of Wages Act. Degidio did not have an agreement to arbitrate with the Club; however, while litigation was pending, the Club executed arbitration agreements with other class members. The Club subsequently moved to compel arbitration. The court denied the motion and the Club appealed.

The United States Court of Appeals for the Fourth Circuit affirmed and remanded. The Court found that the Club used arbitration not as an alternative to judicial proceedings but as an attempt to have another bite at the apple in the event the court issued an unfavorable opinion. The Club pursued legal arguments for three years rather than informing the Court that it intended to compel arbitration with respect to dancers who elected to sign the arbitration agreements. The Club's contention that it could not file a motion to compel until the court had certified the class gave the Club an incentive to delay and use arbitration as a backstop. The Court also found that the agreements to arbitrate, executed during the pendency of the litigation, misled dancers into thinking that they had to sign the agreements in order to have a say over their conditions of employment. Doing so without the knowledge of the court heightened the potential for duress.

- **NO ARBITRATION WHERE NO AGREEMENT TO ARBITRATE**

Matthew Warciak v. Subway Restaurants, Inc.
2018 WL 548265
United States Court of Appeals, Seventh Circuit
January 25, 2018

Matthew Warciak's mother had a T-Mobile cell phone plan that contained an arbitration clause. Matthew was an authorized user on his mother's plan; however, he was not a party to the agreement with T-Mobile. In 2016, Matthew received a spam text message promoting a Subway sandwich. He sued Subway under federal and state consumer protection statutes. Subway moved to compel arbitration; however, because Subway and Matthew had never agreed to arbitrate, Subway based its motion on the agreement between T-Mobile and Matthew's mother. The court applied federal estoppel law and granted Subway's motion to compel arbitration. Matthew appealed.

The United States Court of Appeals for the Seventh Circuit reversed and remanded. Generally, a court can't compel a party to arbitrate a dispute unless that party has agreed to do so. Here, Matthew and Subway did not agree to arbitrate. The Court applied state promissory estoppel principles to determine whether Matthew, a non-party to the arbitration agreement with T-Mobile, should be bound. In Illinois, a claim of estoppel exists if a person, by statements or conduct, induced a second person to rely, to his or her detriment, on the statements or conduct of the first person. Subway could not show detrimental reliance, so Matthew was not bound to arbitrate.

Maryland

- **CLAIMS WITHIN SCOPE OF HEALTH CARE ACT TO BE FILED IN ADR OFFICE**

Davis v. Frostburg Facility Operations, LLC
2018 WL 477340
Court of Appeals of Maryland
January 19, 2018

Davis sued for injuries she sustained at one of Frostburg's facilities. The court dismissed the claim for failure to first file in the ADR Office, as required by the Maryland Health Care Medical Malpractice Claims Act (HCA). The Court of Special Appeals affirmed the court's decision to dismiss the complaint.

The Court of Appeals of Maryland issued a writ of certiorari to consider, in part, whether the trial

court erred in dismissing Davis' claim for failure to first file in the ADR Office. Per the HCA, a plaintiff claiming a medical injury committed by a health care provider and greater than $30,000 in damages must first file in the ADR office, where the claim will then be subject to non-binding arbitration. At issue was whether Davis alleged a medical injury within the coverage of the HCA. The Court found two counts of her claim to be within HCA scope: one related to a faulty lift operated by a health care worker, and another concerning an employee acting within the scope of employment. Both should have been filed in the ADR Office.

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