

The Non-Subscriber Case Law Update

A Bi-Monthly Publication Dedicated to Detailing Recent Cases Pertaining to Non-Subscription Issues.

February, 2008

Recent Arbitration Cases

Below are two cases which address issues that pertain to arbitration and specifically, arbitration of non-subscriber cases.

Lester v. Environmental Recycling Technologies, Inc., 41 Employee Benefits Cases 1737 (5th Cir. 2007) pertains to an employee who claimed that he signed an arbitration agreement under duress. Mr. Lester was a machine operator for the Environmental Recycling Technologies when he sustained a knee injury. After the accident, the employer threatened to withhold payment of medical expenses unless the arbitration agreement was signed. Mr. Lester relented. He later filed suit in federal court alleging negligence, violations of ERISA, breach of fiduciary duty and breach of the duty of good faith and fair dealing. The district court compelled arbitration and dismissed Mr. Lester's fiduciary duty and breach of duty of good faith and fair dealing claims. On appeal, Mr. Lester claimed that he was entitled to a jury trial on the issue of duress as it pertained to his execution of the arbitration agreement. The court ruled he was only entitled to a jury trial if he made an initial showing of duress. One of the elements of duress is that the employer must threaten action or conduct which it does not have a legal right to do. Here, the court analyzed Texas law and found that a non-subscriber has a right to not pay its injured employee's medical bills. As a result, if the allegations of Mr. Lester are taken as true, he cannot establish duress. As to the ERISA issue in this case, the court found that ERISA pre-empted the employee's breach of fiduciary duty claim wherein he sought punitive damages from the employer. Specifically, the court found that such remedies were not available under ERISA and dismissed that portion of the Plaintiff's suit. The court also found that an employer does not have a common law duty of good faith and fair dealing to its employees in the state of Texas and affirmed the District Court's dismissal of this claim.

In re Igloo Products, Inc., 238 S.W.3d 574 (Tex. App. – Houston [14th Dist.], 2007), the appeals court was presented with a mandamus action related to the denial of an employer's motion to compel arbitration. The employee was killed while in the course and scope of employment. His wife and children filed a wrongful death lawsuit. On appeal, the wife and children attempted to avoid arbitration by arguing they were not parties to the arbitration agreement. The employer argued they had accepted the benefits of the arbitration agreement by accepting death benefits under the employee benefit plan. The court of appeals side stepped the issue and focused on the following language in the arbitration agreement signed by the deceased employee: "*I understand and agree that any and all such disputes that cannot first be resolved through the Company's internal dispute resolution procedures or mediation must be submitted to binding arbitration.*" The court found that the arbitration only covered claims which had not been resolved through internal procedures and mediation. Since the lawsuit was not filed after mediation or the internal grievance procedures, the agreement did not apply since the employee only agreed to arbitrate claims that failed after proceeding through that process.

Comment:

What can we learn from Igloo Product? Be careful what language you include within the arbitration agreement. Ask yourself if the grievance procedure and the mediation requirement are really necessary. Obviously, when you draft the arbitration agreement you can avoid the language contained within the Igloo case. However, too many procedural hurdles leaves you open to arguments of procedural unconscionability and an invalid arbitration agreement.

Fenley & Bate, L.L.P.

ATTORNEYS AT LAW

224 E. Lufkin Avenue ■ P.O. Box 450 ■ Lufkin, Texas 75902-0450
TELEPHONE (936) 634-3346
TELEFAX (936) 639-5874

415 N. Washington, Ste B, Livingston, Texas 77351
TELEPHONE (936) 327-1100
TELEFAX (936) 327-1107

EMAIL OFFICE@FENLEY-BATE.COM

