U.S. Supreme Court Removes Obstacle to Enforceability of Employment Arbitration Agreements

May 01 2001

Posted By: Doris E. Brosnan

Practice Area: Labor and Employment

In a narrow 5-4 opinion, the U.S. Supreme Court removed a potential obstacle to the enforceability of agreements requiring employees to arbitrate employment disputes in *Circuit City Stores Inc. v. Adams* (No. 99-1379), decided on March 21, 2001. The majority found that the Federal Arbitration Act (FAA), which requires enforcement of valid arbitration agreements, applies to employment contracts except those in the transportation industry. The decision is an important victory for businesses wanting to have their workplace disputes settled by arbitrators rather than in court.

The Facts and The Decision

Circuit City's employment application included an arbitration provision in which the applicant agreed to settle all disputes arising out of the individual's application, candidacy for employment, employment or cessation of employment with Circuit City by arbitration. Plaintiff Saint Clair Adams signed that application, and two years after being hired filed an employment discrimination claim against Circuit City under California's Fair Employment Act and other common law claims. Circuit City asserted that the employment application constituted a valid agreement to arbitrate, and that the FAA compelled arbitration of his claims.

The federal district court agreed, and ordered Adams to arbitrate his claims. The U.S. Court of Appeals for the Ninth Circuit reversed. It interpreted Section 1 of the FAA – which excludes from the Act's coverage "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce" – to exempt all employment contracts from the FAA's reach.

The Supreme Court overruled the Ninth Circuit, finding that the FAA applies to all employees, except those engaged in transportation industries. The FAA, the Court noted, compels arbitration of a variety of disputes, including state employment law claims. The Court's decision was largely an academic discussion involving principles of statutory interpretation. What is more important is the question of what the opinion means for the future of employment litigation.

The Future of Employment Claims

Now that it is clear that the FAA applies to employment contracts, a variety of employment law claims can be decided by arbitrators as opposed to judges and juries, including:

- Cases involving federal discriminationstatutes such as Title VII, the Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act (ADEA);
- State employment law claims such asthose arising under the Wisconsin Fair Employment Act and
- Common law claims involving contract rights and torts suchas wrongful discharge.

Further, because the FAA preempts state laws that might interfere with agreements to arbitrate, the states are powerless to legislate in ways that would undermine the ruling in Circuit City. Opponents of mandatory arbitration must now seek federal legislation that would prevent employers from forcing employees to arbitrate disputes.

However, the future role of the administrative agencies charged with enforcing discrimination statutes, including the Equal Employment Opportunity Commission (EEOC) and the Wisconsin Equal Rights Division (ERD) is unclear. Does a private arbitration agreement constrain these agencies from bringing suits in their own name to recover monetary damages for the individual signing the arbitration agreement? Federal circuit courts have been divided on this question. The Supreme Court accepted certiorari on this issue and will review the case of EEOCv. Waffle House, 193 F.3d 804 (4th Cir. 1999) next term.

Eliminating Employment Litigation Through Mandatory Arbitration Agreements

Arbitration has many advantages over litigation before courts and administrative agencies. Arbitration is faster, less expensive, has no formal rules of evidence and requires less discovery. There are no juries, no public trials and no guaranteed access to public decisions. Arbitration ends after one hearing and one decision, since an arbitrator's decision is virtually immune from appeal. Although a mandatory arbitration procedure may increase the total number of employer-employee disputes, arbitration will dramatically decrease the settlement value of employee claims. Because arbitration does not involve protracted document production, depositions, motions and rules of evidence, an employer facing a bogus employee claim will not need to make an economic decision to settle in order to avoid legal fees.

Although *Circuit City* removes what a potential obstacle tomandatory arbitration, employers need to be careful in planning and implementing arbitration procedures. If the arbitration procedure favors the employer too much, courts will hold the agreements unconscionable. Courts are sensitive to procedural issues such as the selection of arbitrators, the payment of arbitration fees, the availability of discovery and the range of damages available to the employee. If the arbitration agreement is carefully crafted to past court decisions on these issues, it has a better chance of withstanding legal challenges.

The Employment Law team of von Briesen & Roper s.c. has the knowledge and experience to assist your company in creating and implementing a mandatory arbitration program. From drafting the agreement and procedure, to providing names of arbitrators, to training your managers on handling claims, we can help you take advantage of this opportunity to lower your company's risk and legal bills with regard to employment claims.
