

Fifth Circuit Holds that Texas Would Recognize the 'Intertwined Claims Estoppel' Doctrine

By Odean L. Volker, Mark Trachtenberg | October 6, 2016

RELATED PRACTICES International Arbitration

The Fifth Circuit Court of Appeals, making an *Erie* guess, recently held that Texas law authorizes application of “intertwined claims estoppel” in certain circumstances to allow a defendant non-signatory to compel arbitration against a plaintiff signatory. See *Hays v. HCA Holdings, Inc.*, -- F.3d --, 2016 WL 5485127 (5th Cir. Sept. 29, 2016). As the Fifth Circuit explained, this form of estoppel may be invoked under Texas law when (1) the non-signatory defendant has a close relationship with one of the signatories to a contract and (2) the plaintiff’s claims are intimately founded in and intertwined with the underlying contract obligations. Intertwined claims estoppel applies when there is a “tight relatedness of the parties, contracts, and controversies” and is utilized by courts “to dismiss strategic pleading that seeks to avoid arbitration.

The *Hays* case began when a doctor sued multiple defendants for wrongful termination of his employment and for tortious interference with his at-will employment relationship. Some of the defendants were signatories to a Physical Employment Agreement (the “Agreement”) that contained an arbitration clause. The court granted the signatory defendants’ motion to compel arbitration. Other defendants—who were not signatories to the Agreement—also sought to compel arbitration. After concluding that certain claims against the non-signatories were referable to arbitration based on “direct benefits estoppel,” the Fifth Circuit turned to the question of whether the remaining claims against the non-signatories must be arbitrated under the intertwined claims estoppel doctrine.

The Fifth Circuit acknowledged that the Texas Supreme Court has not expressly adopted intertwined claims estoppel as a valid theory of estoppel, but determined that the Supreme Court in *Merrill Lynch* had “strongly implied the validity of this form of estoppel, particularly to counter the problem of strategic pleading.” 2016 WL 5485127 at *4 (citing *In re Merrill Lynch Trust Co. FSB*, 235 S.W.3d 185, 193-94 (Tex. 2007)). Texas courts of appeals, however, had split on the question. Ultimately, the Fifth Circuit in making its *Erie* guess, held:

Because *Merrill Lynch* intimated at the validity of intertwined claims estoppel, because lower courts in Texas have applied the theory, and because arbitration of disputes is strongly favored under federal and state policy, we hold that the Texas Supreme Court, if faced with the question, would adopt intertwined claims estoppel. *Id.* at *5

In applying intertwined claims estoppel to the matter before it, the Fifth Circuit determined that the plaintiff treated the defendants as a single unit in his pleadings by raising virtually indistinguishable factual allegations against the signatories and non-signatories and by asserting claims that were intertwined with the underlying contractual obligation of the Agreement. The plaintiff’s attempts to distinguish among defendants and claims were “the archetype of strategic pleading intended to avoid the arbitral forum, precisely what intertwined claims estoppel is designed to prevent.” *Id.*

For more information contact one of the lawyers listed below.