

Fifth Circuit Reaffirms Positions Favoring Arbitration

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In its August 8, 2016 decision, *Cooper v. WestEnd Capital Mgmt., LLC*, the Fifth Circuit Court of Appeals reminded parties of the limited and deferential judicial review of arbitration awards. The Fifth Circuit affirmed a district court's refusal to enjoin arbitration and upheld the court's confirmation of an arbitration award. The Fifth Circuit concluded with a reminder, citing language from a Ninth Circuit decision: "The risk that arbitrators may construe the governing law imperfectly in the course of delivering a decision that attempts in good faith to interpret the relevant law is a risk that every party to arbitration assumes."

Before the Court was a dispute regarding the parties' limited liability company operating agreement. The operating agreement allowed two managers to expel a third for cause and required the parties to submit all disputes to arbitration. In August 2012, two of the managers did just that and voted to expel the third manager from the company.

In response, the expelled manager sought a temporary restraining order to enjoin arbitration. The district court refused to enjoin the arbitration and stayed the suit in favor of the arbitration. Eventually, the arbitrator ruled against the expelled manager, and the same district court confirmed the arbitration award. The expelled manager appealed the decision on the grounds of, among other arguments, choice-of-law, evident partiality, arbitrator's exceeding his authority, arbitrability, and limitations. Emphasizing that the review of an underlying award is "exceedingly deferential," the Fifth Circuit rejected every argument:

- **Choice-of-law:** To remove a matter from the default application of the Federal Arbitration Act (the "FAA"), the parties' contract must expressly reference a state's arbitration law. A choice-of-law provision stating that the "Agreement shall be governed by and construed and interpreted in accordance with the law of the State of California" was found to insufficient to compel the application of California's arbitration standards.
- **Evident Partiality:** To sustain a claim of evident partiality the objecting party must "produce specific facts from which a reasonable person would have to conclude that the arbitrator was partial." The fact that an arbitrator affiliated with the arbitral institution administering the arbitration—but not assigned to the case—had a prior relationship with one of the other two managers did not prove that the assigned arbitrator held any prejudice against the expelled manager.
- **Arbitrability:** The express adoption of arbitral rules that grant arbitrators authority to determine their jurisdiction is "clear and unmistakable evidence that the parties agree to arbitrate arbitrability." Because the parties' operating agreement adopted the JAMS Rules, the expelled manager was prohibited from arguing that questions regarding arbitrability of a claim were beyond the arbitrator's jurisdiction.
- **Limitations:** Procedural questions, such as whether a claim is barred by a statute of limitations, are generally to be reviewed by the arbitrator. Therefore, the expelled manager's argument that a claim should have been time-barred was ultimately for the arbitrator to decide.

For additional information, please contact one of the lawyers listed below.