Arbitration in the Fifth - June 2020

July 8, 2020 Odean Volker

PRACTICES Litigation

June produced the lowest monthly tally of arbitration-related opinions so far this year. Notable in June are the Fifth Circuit's *In re Spiros Partners, Ltd*., discussing limits on discovery in aid of collective action notices, and *Kalenga v. Irving Holdings, Inc*. where the Western District of Texas ordered submission of evidentiary support in relation to its consideration of a collective action notice.

Opinion of the Fifth Circuit

In re Spiros Partners, Ltd., 20-50318, 2020 WL 3407771 (5th Cir. June 19, 2020) (per curiam). Petition for writ of mandamus granted in part and denied in part. It is error for a district court to send notice of a collective action to putative members who are subject to a valid arbitration agreement. If there is a genuine dispute as to the "existence or validity" of any arbitration agreement, a district court "should permit submission of additional evidence, carefully limited to the disputed facts." Production of the names of the putative members along with their respective arbitration agreements (subject to an order that the information not be used for any purpose outside the matter) was not error. However, requiring submission of evidence as to arbitration of claims with would-be collective members was error as such discovery was not "carefully limited to the disputed facts" and would invite evidence of matters that are not "in the agreement."

Opinions by United States District Courts

Motions to Compel Arbitration

Reed v. Royal Sonesta Inc., CV 20-384-WBV-KWR, 2020 WL 3545392 (E.D. La. June 30, 2020). Motion to compel granted. Court declined request to modify discovery limitations contained in the parties' arbitration agreement. Delegation clause stating that the arbitrator shall decide all questions of interpretation or enforceability evinces an intent to have the arbitrator decide whether a claim must be arbitrated.

Action Indus., Inc. v. Innophos, Inc., CV 19-00509-BAJ-RLB, 2020 WL 2928438 (M.D. La. June 3, 2020). Motion to compel granted. Under Louisiana law, the terms and conditions containing an arbitration clause referenced on the purchase order and detailed on defendant's website were properly incorporated by reference.

Iheanacho v. Air Liquide Large Indus. U.S. L.P., CV 19-532-SDD-SDJ, 2020 WL 3451689 (M.D. La. June 24, 2020). Motion to compel granted. Use of the term "undersigned parties" was too vague to impose a signature requirement. Even if the agreement did require written acceptance via signature, the offer and the acceptance under Louisiana law do not have to conform to one another in form.

Kapai v. Unified Bus. Techs., Inc., 4:19-CV-00749-RWS-CAN, 2020 WL 3066646 (E.D. Tex. May 8, 2020), report and recommendation adopted, 2020 WL 3064490 (June 9, 2020). Motion to compel granted. Michigan law requires a party to demonstrate both procedural and substantive

unconscionability. When a party fails to specify excessive arbitration costs and instead speculates that a "risk" of prohibitive costs exists, a court is not required to invalidate the arbitration agreement.

Norman v. Travelers Ins. Co., 3:19-CV-2351-S-BN, 2020 WL 2857949 (N.D. Tex. May 5, 2020) (Horan, Mag. J.), report and recommendation accepted, 3:19-CV-2351-S, 2020 WL 2857502 (N.D. Tex. June 2, 2020). Motion to compel granted. Language within the arbitration clause stating that the clause governs all disputes "relating to" the agreement is interpreted as a broad provision covering almost all disputes arising between the parties to a contract.

Moody v. IC Sys., Inc., 3:19-CV-618-E, 2020 WL 3001395 (N.D. Tex. June 3, 2020). Nonsignatories motion to compel denied. Debt collector sought to compel arbitration in reliance on agreement between the consumer and service provider. Evidence did not support finding that debt collector was "agent" of the service provider.

Darrow v. InGenesis Inc., SA-20-CV-00530-XR, 2020 WL 3620430 (W.D. Tex. July 2, 2020). Motion to compel granted. While the parties' employment relationship involved multiple contracts, the agreement to arbitrate and "forum selection" provisions were not in conflict.

The Reynolds & Reynolds Co. v. I3 Brands, Inc., 4:19-CV-01260, 2020 WL 3490378 (S.D. Tex. June 26, 2020). Order adopting Magistrate Judge's Memorandum and Recommendation granting a motion to compel. Arbitrability was delegated to arbitrators based on the incorporation of the American Arbitration Association rules. An enforceable delegation clause does not prevent the determination of whether the right to arbitrate was waived. A party only invokes the judicial process to the extent it litigates a specific claim that it subsequently seeks to arbitrate. 2020 WL 3493547 (S.D. Tex. May 27, 2020) (Edison, Mag. J.).

Other Arbitration-Related Issues

Nueces County, Tex. v. Certain Underwriters at Lloyd's of London, 2:20-CV-065, 2020 WL 2849944 (S.D. Tex. June 2, 2020). Motion to remand denied. Defendants removed on the basis that an arbitration agreement that purported to fall under the Chapter 2 of the FAA. The agreement was contained in a policy involving at least one insurance company that was a citizen of a foreign country. Plaintiff sought to recover on the basis of that insurance policy. Therefore, the removal was not frivolous. Removal was not waived by policy language.

Kalenga v. Irving Holdings, Inc., 3:19-CV-1969-S, 2020 WL 2841396 (N.D. Tex. June 1, 2020). Motion for judicially-supervised notice in collective action – submission of additional evidence ordered. District courts may not send a collective action notice to an employee with a valid arbitration agreement unless the record shows that nothing in the agreement would prohibit that employee from participating in a collective action. Defendants ordered to produce a list identifying all "potential opt-in plaintiffs" and indicating those that have signed an arbitration agreement and separately ordered to "submit evidence and briefing demonstrating each potential opt-in plaintiff who should not receive notice because of a valid arbitration agreement."

Cajun Services Unlimited, LLC v. Benton Energy Serv. Co., CV 17-0491, 2020 WL 3188991(E.D. La. June 15, 2020). Appeal from an interlocutory order denying a motion to compel arbitration does not divest the district court of jurisdiction to address matters that remain before the court, including post-judgment motions.