Ruling on Arbitrators is Good News for Employers

News
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In a published opinion issued on October 9, 2014, the 4th District of the California Court of Appeal ruled in *Network Capital Funding Corporation v. Erik Papke* that courts, not arbitrators, should decide whether a pre-dispute arbitration agreement requires parties to arbitrate claims on a class or individual basis. This is a very good decision for employers. Arbitrators may have an inherent conflict of interest deciding the existence of class action waivers because they stand to earn considerably more fees if they permit a demand to proceed as a class action rather than on an individual basis only. Additionally, the United States Supreme Court has recently held that an arbitrator's decision on whether an arbitration agreement includes a class action waiver is not reviewable by the courts. Now, after *Papke*, civil courts with no conflicts of interest on the issue are to decide the question, and those decisions are subject to appellate review if, for whatever reason, the trial court makes an incorrect determination.

Network Capital is represented by Lonnie Giamela and Jimmie Johnson of Fisher Phillips.

Papke entered into a pre-dispute arbitration agreement with Network Capital during his employment with the company. Papke later filed class action litigation in Orange County Superior Court alleging various wage-hour claims on behalf of himself and a class of current and former employees of Network Capital. Network Capital sought to enforce the pre-dispute agreement and contended that Papke should be ordered to arbitrate all of his claims on an individual basis as the pre-dispute arbitration agreement ultimately waived his right to bring a class action claim. Papke elected to dismiss his civil lawsuit and file a demand for arbitration alleging the same class action allegations.

In a novel move, Network Capital sought to enjoin Papke's pursuit of arbitration by suing him in Orange County Superior Court and seeking declaratory relief that Papke must arbitrate his claims on an individual basis. Papke challenged the lawsuit and filed a motion that sought to have the arbitrator hear the issue of whether he could proceed on a class or individual basis. The trial court ultimately found in favor of Network Capital and Papke appealed the decision to the California Court of Appeal.

Citing United States Supreme Court authority, the 4th District noted that at its core, arbitration is a matter of consent, not coercion; and that arbitrators are only empowered to decide those questions agreed upon by the parties in advance. Citing additional Supreme Court authority, the *Papke* court further noted that absent clear language within the arbitration agreement to the contrary, courts

further noted that absent clear language within the arbitration agreement to the contrary, courts decide questions of "arbitrability" – i.e., questions of whether the parties agreed to submit a particular type of dispute to arbitration.

The main issue faced by the 4th District, therefore, was whether a dispute concerning the existence of a class action waiver amounted to a question of whether the parties had agreed to submit a particular type of dispute to arbitration, or merely a question of whether the parties had agreed to a certain type of procedure to resolve their disputes. As noted by the *Papke* court, the U.S. Supreme Court has not yet addressed this question. However, both the 3rd and 6th Circuit Courts of Appeals have recently held that determining the existence of a class action waiver constitutes a determination of whose claims the parties have agreed to arbitrate – i.e., whether the parties have agreed to arbitrate only bilateral claims or the claims of other similarly-situated parties, as well. In turn, the *Papke* court held that resolving the existence of a class action waiver within an employment agreement constitutes an issue of "arbitrability" for the courts to determine because such questions resolve if the parties have agreed to submit to arbitration only the plaintiff's claims or the claims of his or her similarly-situated co-workers, as well.

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Related People

Lonnie D. Giamela
Partner
213.330.4454
Email