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## THE BASSETT BULLETIN™

### IS YOUR ARBITRATION AGREEMENT BINDING?

Does your company have an arbitration agreement in place which reads that all disputes between employers and employees need to be resolved with arbitration? Does your program specifically say that the arbitration will be binding? If your program doesn't say that all arbitration is binding, does that mean that your employees have the option of going to trial rather than going to arbitration? The San Antonio Court of Appeals recently reviewed this very dispute between an employer and a former employee.

### NABORS DRILLING VS. CARPENTER

In *Nabors Drilling U.S.A., L.P. v. Carpenter*, the San Antonio Court of Appeals had to decide if Carpenter, a former employee, was bound to attend arbitration for the issues that he had with his former employer, Nabors Drilling. Carpenter argued, among many things, that the arbitration agreement he signed was not binding against him because the resolution program did not read that arbitration was binding. Therefore, Carpenter argued that he could choose to file suit instead. The Court of Appeals reversed the trial court's ruling and held that arbitration can still be binding even if the word "binding" is not used in the program.

### THE FACTS OF THE CASE

When Carpenter began working for Nabors Drilling, he was given a copy of a document entitled "Nabors' Dispute Resolution Program and Rules." This program established a procedure for resolving disputes through the use of arbitration. Carpenter signed a form acknowledging that he had received a copy of the program.

When Carpenter left his employment with Nabors Drilling, he filed suit against his former employer for various claims including Texas Labor Code violations, hostile work environment, sexual discrimination, intentional infliction of emotional distress, and assault. After Nabors Drilling answered the suit, they moved to compel arbitration on all of Carpenter's claims against them.

One of Carpenter's many reasons for arguing that arbitration was not mandatory was that the program established by Nabors Drilling failed to indicate if arbitration was binding. Nabors Drilling simply responded that the parties had a valid arbitration agreement and that all of Carpenter's claims fell within the scope of the agreement. Carpenter did not deny the existence of this policy, but argued that arbitration was not mandatory.

The trial court agreed with Mr. Carpenter's arguments and denied Nabors Drilling's Motion to Compel Arbitration. The trial court held that it was "having trouble finding some sort of unambiguous language in this policy that says that these disputes should be submitted to an arbitrator and that the arbitrator's decision should be binding."

## DECISION

The Court of Appeals agreed with Nabors Drilling and held that the program required the parties to arbitrate Carpenter's claims. The Court of Appeals based its decision by citing case law that stated arbitration agreements are interpreted under contract principles. The language of an arbitration agreement must clearly indicate the intent to arbitrate; however, the language does not have to assume any particular form. The omission of the term "binding" from an arbitration agreement does not automatically transform it into a non-binding arbitration agreement.

Finally, the Court held that arbitration agreements must be examined as a whole in order to determine if they are ambiguous or not. In this case, the court held that the Nabors Drilling program unambiguously read that arbitration was intended as the means to resolve disputes and Carpenter's claims fell squarely in line with this agreement. Thus, the arbitration clause held up and the parties had to go to arbitration.

## WHAT CAN YOU AS AN EMPLOYER DO TO ENFORCE ARBITRATION?

How can an employer help avoid this situation so that their arbitration agreements are binding? Unfortunately, you can never completely prevent a person from filing suit; however, here are a couple of tips to help avoid this situation:

1. Keep It Clear. When you are referring to arbitration in your resolution program, make sure that you say that arbitration is "binding," if that is what you intend. Do not use language that could be open to interpretation.
2. Avoid Ambiguous Language. Avoid language in your programs that reads, "By my signature below, I acknowledge and understand that I am required to adhere to the dispute resolution program and its requirements for submission of dispute to a process that may include arbitration." Although the Court of

Appeals found that this does not mean that arbitration is not binding, it does leave some room open for interpretation. You can make this statement more powerful by taking out the language “that may include.” Simply have the statement read that they are agreeing to arbitration.

3. **Make It Conspicuous.** Bold the portions of your program that discuss binding arbitration and how disputes will be resolved. Also, make sure that all of your employees have signed off that they have read and acknowledge whatever resolution program has been established.

No one can avoid the possibility of an employee arguing that their dispute does not belong in arbitration. However, make sure that your intentions are clear and that your employees know your program.

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