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REACHING OUT FROM THE GRAVE: ARBITRATION AGREEMENTS SURVIVE IN WRONGFUL DEATH SUITS

In two recent Texas Supreme Court decisions, the Court has been forced to decide whether an arbitration agreement between a decedent and his employer requires the employee's wrongful death beneficiaries to arbitrate their claims against the employer. *In re Labatt Food Service, L.P.*, ____ S.W.3d ____ (Tex. 2009) and *In re Jindal Saw Limited*, ____ S.W.3d ____ (Tex. 2009), the Court held that even though the deceased employees' wrongful death surviving beneficiaries were not parties to the Employment Agreements and did not sign the Arbitration Clauses, they were bound by the employers' Arbitration Clauses in the Employment Agreements.

Facts Of The Cases

In re Labatt Food Service, L.P. and *In re Jindal Saw Limited* each involved an employer who did not provide workers' compensation insurance to cover its employees in the event of on-the-job injuries. Rather, each company provided a Benefit Plan in which the employees could elect to participate. Pursuant to the Benefit Plan, the employees agreed to and signed Arbitration Agreements which provided that all disputes under the Plans, the Arbitration Agreements, or the employees' employment must be submitted to an arbitrator pursuant to the Federal Arbitration Act (FAA).

Unfortunately, in each case, an employee died as a result of an on-the-job injury. The employees' beneficiaries filed wrongful death and survival actions against the employers. The employers sought to compel arbitration, asserting that the Arbitration Agreements signed by the now-deceased employees bound not only the employees but the employees' beneficiaries as well.

The beneficiaries argued they were not bound by the Arbitration Agreements for two reasons: (1) they did not sign to the Arbitration Agreements, and (2) the entire Agreements were void because the indemnity clauses included in the Agreements were pre-injury waivers in violation of Texas Labor Code section 406.033(e).¹

¹Texas Labor Code section 406.033(e) provides "A cause of action described in Subsection (a) may not be waived by an employee before the employee's injury or death. Any agreement by an employee to waive a cause of action or any right described in Subsection (a) before the employee's injury or death is void and unenforceable."

The respective trial courts refused the employers' requests to compel arbitration. On the employers' writs of mandamus to the courts of appeals, the appellate courts upheld the trial courts' refusals to compel arbitration.

Subsequently, the employers sought relief from the Texas Supreme Court. The Supreme Court Orders, which were released within two weeks of each other, directed the trial courts to enter an order compelling arbitration of the beneficiaries' wrongful death and survival actions.

If The Employee Would Have Been Forced To Arbitrate, So Are You.

Under the FAA, whether an arbitration agreement binds a person who did not sign the agreement is an initial determination for courts rather than arbitrators. As these Arbitration Agreements in these cases were silent as to who was to determine whether the beneficiaries are bound by the Agreements, the issue is left up to the court system rather than the arbitrators to determine.

Although presented with several arguments to support compelling arbitration, the Court determined that the beneficiaries were all bound to arbitrate based on only one argument: The derivative nature of their claims required arbitration.

The Court has consistently held that the right of statutory beneficiaries to maintain a wrongful death action is entirely derivative of the decedent's right to have sued for his own injuries immediately prior to his death. The Court found, "it is well established that statutory wrongful death beneficiaries' claims place them in the exact "legal shoes" of the decedent, and they are subject to the same defenses to which the decedent's claims would have been subject."

The beneficiaries argued that they should not be bound to the Agreements because the decedents did not have the authority to bind them to the Arbitration Agreements when the wrongful death cause of action actually belongs, not to the decedents, but to the surviving spouse, children, and parents of the decedents. While it is true that the beneficiaries receive the exclusive benefit of the wrongful death suit, this is only meant to compensate the beneficiaries for their own personal loss. Still, the cause of action is entirely derivative of the decedent's rights, and the beneficiaries have no other cause of action. Thus, regardless of the fact that the beneficiaries were seeking compensation for their own personal loss, they still stand in decedents' legal shoes and are bound by the Agreements.

The beneficiaries also claimed that they were not subject to arbitration because the entire agreement was invalid on the basis that the indemnification clause which they claim is a pre-injury waiver that violates Labor Code section 406.033(e). The beneficiaries argued that the contract as a whole, including its arbitration clause, was rendered invalid by the allegedly illegal indemnity clause.

The Court determined that the legality of the indemnity clause, and the contract as a whole, was not an issue which could be determined by the court system. Instead this is an issue for the arbitrator. There are two types of challenges to an arbitration provision: (1) a specific challenge to the validity of the arbitration agreement or clause and (2) a broader challenge to the entire contract, either on a ground that directly affects the entire agreement, or on the ground that one of the contract's provisions is illegal and renders the whole contract invalid. A court may determine the first type of challenge, but a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator.

Therefore, the Court determined that if the deceased employees could have sued their employer for the on-the-job injuries immediately prior to their deaths, the employees would have been compelled to arbitrate their claims pursuant to the Arbitration Agreements. Thus, the beneficiaries must arbitrate their wrongful death actions as well because their causes of actions were entirely derivative of the decedents' rights. Thus, the trial courts clearly abused their discretion by refusing to compel arbitration.

Where Do We Go From Here?

Based on the slew of new appellate decisions which have upheld the validity of the arbitration agreements, it seems that the courts will continue to support arbitration agreements in the employment arena.

Although Plaintiffs may not wish to litigate their personal injury or wrongful death claims in an "arbitrator's court" instead of a state court, the courts are eager to compel arbitration. In light of the economic crisis that much of the United States is suffering, the courts' favoring of our contractual method of settling a dispute outside the courtroom seems to make fiscal sense to the government as well.

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