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### DO PLAINTIFFS HAVE AN OBLIGATION TO TIMELY INITIATE ARBITRATION PROCEEDINGS?

Mandatory arbitration agreements have become a ubiquitous part of today's civil justice system. Arbitration agreements require that a dispute between parties be adjudicated before an independent and neutral decision maker before any lawsuit can be filed in the court system.

Often times, however, a claimant bound by the terms of an enforceable arbitration agreement will file a lawsuit in a state or federal court. In Texas, the filing of a lawsuit in any court suspends the applicable statute of limitations. But, what happens to the limitations period when a court dismisses a case that is subject to an arbitration agreement and orders the case to arbitration? Does the claimant have an indefinite amount of time to initiate an arbitration proceeding?

The Court of Appeals for the Eighth District of Texas recently addressed this issue in *Good Times Stores Inc. v. Macias*, No. 08-10-00047-CV, Tex. App. LEXIS 4326 (Tex. App.—El Paso June 8, 2011, no pet. h.).

### THE FACTS OF THE CASE

On March 24, 2008, Macias filed suit against Good Times alleging that she had suffered an on-the-job injury on July 13, 2006. On September 2, 2008, the trial court signed an agreed order dismissing the suit against Good Times without prejudice and referring the dispute to arbitration in accordance with a standing arbitration agreement.

Four months later, Macias filed written notice of her intent to arbitrate her claim. Good Times filed a motion requesting that the arbitrator dismiss the arbitration proceedings because Macias had not initiated arbitration within the applicable two-year limitations period. It additionally argued, citing Section 16.064 of the Civil Practice and Remedies Code, that Macias had not initiated her arbitration claim within 60 days after the trial court signed the dismissal order. The arbitrator granted the motion to dismiss.

noting that Macias had failed to explain her delay in initiating arbitration following dismissal of her suit.

After the arbitrator dismissed the arbitration proceeding, Macias requested to have the arbitrator's decision vacated, which the trial court granted. Good Times appealed the decision to the Court of Appeals for the Eighth District of Texas.

On appeal, the Court held that the arbitrator did not exceed his authority or misconstrue applicable law in dismissing the action because Macias had not initiated the arbitration proceedings within the 60-day time period prescribed by law and had not explained the reason for her failure to do so.

## TAKE AWAYS

This case serves as a reminder that courts in Texas will enforce definite time limitations on a claimant's opportunity to initiate an arbitration proceeding *after* the original proceeding is dismissed from state or federal court in accordance with a standing arbitration agreement.

Under Section 16.064 of the Civil Practice and Remedies Code, the statutory time period within which a party is permitted to bring a claim is suspended for 60 days once a lawsuit is dismissed because of lack of jurisdiction. After this 60-day period, the statute of limitations begins to run again and a claimant must commence a subsequent action in a court or forum of proper jurisdiction before the limitations period lapses.

Although not specifically addressed by the Court in *Good Times*, it is important for a party defending against a claim to review the contractual provisions of the arbitration agreement. Often times, these agreements include clauses that place time limits on a party's opportunity to arbitrate a claim.

For example, assume that on March 1, 2011, a state court enters an order that dismisses a suit and refers it to arbitration. Assume also that the statute of limitations does not lapse until March 2012. Does the claimant have until March 2012 – an entire year – to initiate arbitration? The answer will likely depend on the terms of the arbitration agreement. For example, the agreement may include a provision that requires the claimant to initiate arbitration within 90 days of the date when the dispute first arose or within 90 days of the date the suit was referred to arbitration by a state or federal court.

The main take away is simple—don't allow a claimant and/or his attorney dictate the pace of litigation by idly waiting for the claimant to file a subsequent action in arbitration. Once a lawsuit is dismissed and referred to arbitration, there are very likely statutory and contractual time limitations imposed on the claimant's opportunity to bring a cause of action in arbitration.

After these deadlines lapse, a party defending a claim is in a good position to argue a Motion to Dismiss for Want of Prosecution and/or Motion for Summary Judgment on the basis that the claimant failed to timely request arbitration.



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