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Fulbright & Jaworski Wins California Appeal on Use of Class Action Waivers in Employee Arbitration Clauses

Ruling upholds validity of employment class action waiver clause

LOS ANGELES – California employers who want to fend off class actions filed by their employees scored a major victory in a California Court of Appeals decision. The court affirmed a lower court ruling which upheld the validity of the defendant employer’s class action waiver contained in an employee arbitration agreement. **Fulbright & Jaworski L.L.P.** served as trial and appellate counsel for the employer.

The ruling, by Second Appellate District Presiding Justice Paul Turner, found that the arbitration policy was not “substantively unconscionable,” and was therefore consistent with California law. The Court’s ruling affirmed the trial court’s determination that the class action waiver is enforceable. The policy includes an agreement that employees will not bring claims in a representative capacity on behalf of others.

James R. Evans, Jr. and **Joseph H. Park**, partners in the Los Angeles office of Fulbright & Jaworski, along with **Gary Birnbaum** of Phoenix law firm **Mariscal, Weeks, McIntyre & Friedlander, P.A.**, represented the employer. Attorneys Birnbaum and Evans also drafted the company’s class action waiver adopted in 2003.

“This decision is of significant importance for all California employers and for companies seeking to use waivers in a basic arbitration agreement,” Evans said.

In the case, *Ronald Konig v. U-Haul Co.*, Konig sued on behalf of himself and a proposed class of area field managers. Konig set out to recover unpaid overtime and statutory penalties based upon the alleged misclassification of these employees as salaried management. Konig sought certification of a class of all of U-Haul’s California field managers. At trial, Los Angeles Superior Court Judge Peter Lichtman ordered Konig’s individual claims to arbitration and dismissed the class action claims.

The appeals court found that U-Haul’s policy was not “substantively unconscionable,” a standard that is violated, as the court explained in the decision, when there is “the existence of overly-harsh or one-sided terms.” The appellate court distinguished the facts from a 2005 California Supreme Court case, *Discover Bank*, which found a class action

waiver in a consumer agreement was “substantively unconscionable” when it was applied to a contract involving small amounts of money.

“Plaintiff presented no evidence in the trial court the potential damages and penalties payable to class members would be ‘predictably . . . small,’” Justice Turner wrote. “Thus, plaintiff failed to establish that the class action waiver was substantively unconscionable under the *Discover Bank* test. In the absence of any evidence the potential damages payable to class members would be predictably small, the trial court reasonably could have found plaintiff failed to sustain his burden of proving the class action waiver was procedurally unconscionable.”

Fulbright’s Evans said the appeals court carefully considered the claims.

“Ultimately, the court found that the class action waiver is lawful, and found that employees’ rights are not impaired by the arbitration policy,” Evans said. “Our client specifically drafted the arbitration policy to ensure that it followed California law in order to protect the rights of both employee and employer.”

Note: Founded in 1919, Fulbright & Jaworski L.L.P. is a leading full-service international law firm, with more than 1,000 lawyers in 16 locations in Houston, New York, Washington, D.C., Austin, Dallas, Denver, Los Angeles, Minneapolis, San Antonio, St. Louis, Beijing, Dubai, Hong Kong, London, Munich and Riyadh. Fulbright provides a full range of legal services to both domestic and foreign clients worldwide. For more information, visit www.fulbright.com.

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