

CLIENT ALERT

The Fourth Circuit Derails Class Action by Sending Conspiracy Claims to Individual Arbitrations

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On Friday, the U.S. Court of Appeals for the Fourth Circuit held that class representatives in a price-fixing case against manufacturers of cotton yarn must arbitrate their claims. *In re: Cotton Yarn Antitrust Litigation*, No. 05-2392, 2007 WL 2965586 (4th Cir. Oct. 12, 2007). In an opinion that reflects the strong national policy favoring arbitration, the Fourth Circuit rejected plaintiffs' contentions that the manufacturers' arbitration provisions, which include non-joinder clauses and a one-year limitations period, unduly frustrate plaintiffs' rights under the Sherman and Clayton Acts.

Plaintiffs filed their claims in 2004 (which were consolidated in an MDL proceeding in the U.S. District Court for the Middle District of North Carolina) against yarn manufacturers Parkdale Mills, Inc., Avondale Inc. and Frontier Spinning Mills, Inc. on the heels of disclosure that Parkdale was cooperating with the U.S. Department of Justice in an investigation into possible collusive conduct in the yarn market. (The Justice Department subsequently closed its investigation without any action against either Frontier or Avondale or any of their officers.) Defendants responded by moving to compel arbitration based on arbitration provisions contained in their purchase order contracts. (Parkdale settled the civil claims against it while the motion was pending.)

Plaintiffs contended that they should be permitted to litigate their claims in federal court as a class proceeding arguing, among other things, that the arbitration provisions were not part of their oral contracts with the manufacturers, and in any event they were unenforceable because they were unconscionable and unduly frustrated plaintiffs' statutory rights. Plaintiffs focused in particular on the provisions' prohibition on class proceedings and joinder of multiple defendants and the reduced limitations period. The district court largely agreed.

Refusing to send plaintiffs' claims to arbitration, the district court found that with respect to Frontier, only those plaintiffs that signed contracts were governed by arbitration, and that, regardless, defendants' arbitration provisions were unenforceable. Apparently troubled by the perceived inefficiency posed by individual arbitrations involving a single plaintiff against a single defendant, the district court held that plaintiffs would be unduly hindered in their ability to prove their conspiracy allegations if they were not permitted to proceed against defendants simultaneously. The district court also found that the shortened limitations period would not allow plaintiffs to properly vindicate their statutory rights. Frontier and Avondale appealed.

The Fourth Circuit vacated, holding that plaintiffs could adequately vindicate their statutory rights in arbitration under the provisions' terms. The Court rejected plaintiffs' argument and the district court's holding that plaintiffs' inability to arbitrate against both remaining defendants in the same proceeding would unduly undermine their ability to prove their conspiracy claims, noting the many other situations in which all alleged co-conspirators might not be part of the same action. And, although the Court recognized the likely additional expense involved in individual arbitrations, it did not find that to be a sufficient basis for invalidating the clauses, particularly because plaintiffs failed to develop a record demonstrating that the costs would be sufficiently prohibitive. On the limitations issue, the Court found that the four-year statute of limitations conferred by the

Clayton Act is procedural and not substantive, and therefore the contractual one-year period did not deprive plaintiffs of substantive rights.

With respect to the existence of arbitration obligations, the Fourth Circuit found that purchasers that did not sign contracts were nonetheless required to arbitrate because arbitration is a well established usage of trade in the textile industry. As such, arbitration automatically became part of the parties' contracts regardless of whether a purchaser signed the contract or otherwise affirmatively indicated acceptance of the term.

The Fourth Circuit's ruling is a strong endorsement of commercial arbitration provisions, and sends a powerful message about the potential potency of such provisions in limiting companies' exposure to protracted, expensive class litigation.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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