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CLIENT ALERT

Good News for Goldman: Second Circuit Requires Individual Arbitration of Title VII Claim

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The Second Circuit ruled yesterday in *Parisi v. Goldman Sachs & Co.* (Second Cir. No. 11-5229-cv, March 21, 2013) that the employer can compel a female former managing director to go to individual arbitration on her claim of systemic gender discrimination. *Parisi* is one of several closely-watched cases pending in the Second Circuit that address the issue of whether employers can enforce mandatory arbitration agreements. Yesterday's opinion reversed a trial court decision concluding that the plaintiff could proceed with her claim as a class action in federal court, reasoning that individual arbitration would effectively deny her substantive right under Title VII to bring a pattern-or-practice claim against Goldman.

Parisi and two other female former employees brought a class action complaint against Goldman Sachs, alleging that the firm engaged in a "continuing pattern and practice" of gender discrimination against managing directors and other executives in violation of Title VII, New York State and New York City law. Goldman moved to compel arbitration and to enforce a mandatory arbitration agreement signed by Parisi. That agreement broadly required all employment disputes to be resolved in arbitration under a protocol that precluded class cases. Parisi opposed the motion, principally on the basis that a denial of her ability to bring a pattern-or-practice case in arbitration would be contrary to her substantive right under Title VII to pursue such a claim.

The appellate court's opinion begins with a forceful endorsement of the policy favoring private party arbitration of statutory claims set forth in the Federal Arbitration Act (FAA). The court rejected the plaintiff's argument that being forced to resolve her gender discrimination claim through individual arbitration would constitute a denial of a substantive right conferred by Title VII. The court rejected the plaintiff's argument that Title VII implies a right to bring a class action under Rule 23 of the Federal Rules of Civil Procedure, concluding that Rule 23 provides only procedural rights. Noting that private plaintiffs do not have a right to bring a pattern-or-practice case under Title VII, the court observed that, in arbitration, plaintiff would be able to offer evidence of alleged systemic gender bias at the firm. The court concluded: "[W]e see no reason to deviate from the liberal federal policy in favor of arbitration and conclude that the district court erred in denying the motion to compel arbitration."

Parisi is an important decision concerning one of the most contentious issues in labor and employment class action litigation. Courts continue to wrestle with the issue of whether employers can require mandatory individual arbitration of statutory employment law claims. Plaintiffs argue that the right to proceed in class or collective action is required under certain statutes. Other pending cases addressing this issue include *Sutherland v. Ernst & Young* in the Second Circuit, (involving the Fair Labor Standards Act), and *D.H. Horton v. NLRB* in the Fifth Circuit (involving the National Labor Relations Act).

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

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