TroyGould ATTORNEYS

Appeals Court Rules That Trial Court Erred in Refusing to Enforce Arbitration Provision

Russell I. Glazer
May 2010

While California law favors agreements to arbitrate, arbitration provisions in employment agreements frequently receive close judicial scrutiny. Courts demand assurance that such provisions do not unfairly benefit companies at the expense of their employees. However, in a recent decision, *Dotson v. Amgen*, the Court of Appeal reiterated that California courts will enforce reasonable arbitration provisions in employment agreements, even if they do not afford employees all the rights they would have had if they filed lawsuits in court.

Amgen hired Dotson as an in-house patent attorney. In conjunction with his employment, he was required to sign an arbitration agreement, which – among other things – provided that each side would be permitted to take only one deposition, unless the arbitrator chose to allow additional depositions. In contrast, if a case is decided in state court, each side may take an unlimited number of depositions unless the court orders otherwise.

Amgen fired Dotson four years later. Dotson filed suit in court, claiming that Amgen fired him for whistle-blowing. Amgen filed a motion to compel Dotson to submit the dispute to arbitration in accordance with the agreement Dotson signed. Dotson opposed the motion, arguing that the agreement was unenforceable. The trial court agreed. It held that the provision limiting the parties to one deposition each, unless the arbitrator permitted more depositions, was a "substantial flaw" in the agreement. In reaching this decision, the trial court relied upon precedent, holding that, to be enforceable, an arbitration agreement must afford an employee rights similar to those he would enjoy if the case had been filed in court.

The California Court of Appeal reversed the trial court's ruling. The appellate court acknowledged that the limitation on depositions was "critical," especially in the context of an employment case. The appellate court observed, "[t]he employee typically has a greater need to take depositions to get access to persons not otherwise available to him/her . . . who participated in the decision to fire." Yet the appellate court emphasized that "arbitration is meant to be a streamlined procedure" and that limiting depositions "is one of the ways streamlining is achieved." The appellate court expressed confidence that "the arbitrator will be fair" in ensuring that Dotson would be able to take the number of depositions he needed. Noting that California and federal law both favor enforcement of arbitration agreements, the appellate court held that Dotson must arbitrate his dispute with Amgen.

The appellate court's decision provides guidance for employers seeking to draft enforceable arbitration agreements. The appellate court noted that the agreement was "not overly-long" and was "written in clear, unambiguous language." The arbitration obligation "was stated numerous times and was set forth in large, bold typeface." The agreement expressly empowered the arbitrator to order any number of depositions that he determined were appropriate. In short, the agreement put Dotson on clear notice that he would be required to arbitrate any claims with Amgen if he chose to accept employment there, and contained provisions ensuring that he would be entitled to fairly litigate his claims in the arbitration forum.