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Third Circuit Holds that Ambiguities Preclude Arbitration

In *Maddy v. General Elec. Co.*, 2015 WL 7776471, the Third Circuit affirmed the district court's denial of a motion to compel arbitration. The issue was whether the plaintiffs, employees paid an hourly wage plus overtime, were subject to mandatory arbitration. The dispute arose because the plaintiffs sought payment for unpaid overtime under state and federal laws from their employer, General Electric, the defendant. The defendant filed a motion to compel arbitration.

After several years of working for the defendant, the plaintiffs signed a form acknowledging that the defendant had implemented a mandatory alternative dispute resolution program (Program) and that by continuing employment they would be bound to resolve disputes pursuant to the Program. The final step in the Program was arbitration. See *Maddy v. General Elec. Co.*, 80 F. Supp. 3d 544, 546 (2015). There were two versions of the Program—a 2008 version (2008 Program) and a 2009 version (2009 Program). The 2008 Program and 2009 Program applied to different types of employees. If the 2008 Program was the program referenced in the form signed by the plaintiffs, the Program would not have applied because neither plaintiff would have been the type of employee covered under the Program. If the 2009 Program was referenced in the form, on the other hand, the plaintiffs *arguably* would have been obligated to arbitrate their claims. The form signed by the plaintiffs did not, however, specify which version of the Program they were “acknowledging.”

The district court denied the defendant's motion to compel arbitration holding that: (1) the acknowledgement form lacked “clear language of assent” and was ambiguous as to which version of the Program applied to the plaintiffs; and (2) even if the form referenced the 2009 Program, the plaintiffs were not the type of employees covered by the 2009 Program. 2015 WL 7776471 at *2.

Construing the facts in the light most favorable to the plaintiffs, the Third Circuit affirmed the district court's ruling. The court noted, among other things, that it was unclear which version of the Program applied to the plaintiffs—a conclusion supported by the fact that the defendant provided conflicting declarations on that issue.

The Third Circuit went on to note that the 2009 Program was ambiguous as to whether the plaintiffs were the type of employees covered thereunder, and that this ambiguity would be resolved against the defendant as the drafter of the language. Hence, and even assuming the 2009 Program applied, the court held that the plaintiffs were not the type of employee required to arbitrate disputes, and upheld the district court's denial of the defendant's motion to compel arbitration.

Maddy serves to remind employers of two fundamental lessons. *First*, when employers implement or replace a program mandating arbitration or an alternative dispute resolution, they should take steps to ensure that the employees are aware of—and clearly agree to—the program. *Second*, and relatedly, when an employer wants to change the type of employee subject to the program, the program itself should contain a clear definition of the employees governed thereby. Here, the employer had failed to ensure that the employees were aware of the specific program referenced in the form and also failed to explicitly define the type of employee governed by the program.

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