July 20, 2015

Alabama Supreme Court Requires Policyholders to Arbitrate

In *American Bankers Ins. Co. v. Tellis*, 062615 ALSC 1131514 (June 26, 2015), the Alabama Supreme Court held that policyholders, who did not sign, read, or even receive insurance forms that contained arbitration agreements, nevertheless, had manifested their assent to the arbitration agreements by affirmatively renewing their policies and paying premiums. Accordingly, the court held that the policyholders were required to arbitrate their claims that American Bankers had sold them homeowners' insurance with a level of coverage that they could never receive even if the covered property was a total loss.

In the case, several policyholders had sued the insurer for breach of contract, fraud, unjust enrichment, and other claims. The insurer moved to compel arbitration based on arbitration agreements contained in two of the forms that constituted a part of the policy. The trial courts denied the motions to compel, and the insurer appealed. Several appeals that arose out of nearly identical facts were then consolidated.

The policyholders stated that the arbitration provision was not contained in the insurance applications that they signed, and that they did not sign, read or receive the two insurance forms in which the arbitration provisions appeared. They argued that, as a result, they never agreed to arbitrate their disputes.

The Alabama Supreme Court held that the arbitration provision did not have to be in the insurance application, or any document that the policyholders signed, in order to be enforceable. The court noted that the insurance policy stated that it was not complete without the declarations page and that the declarations page listed the two forms that contained the arbitration agreements. The court held that the policyholders had a duty to "to investigate those forms because the declarations page indicated that the forms were part of the policy." The court held that the policyholders' failure to do so did not relieve them of the arbitration agreements those forms contained. Instead, the court ruled that by renewing their policies and paying the premiums for them, the policyholders ratified the insurance policies, including their arbitration provisions.

The chief justice of the court issued a vigorous dissent, arguing that the plaintiffs could not be denied their constitutional right to a jury without a knowing and voluntary waiver of their jury right which, he maintained, had not occurred. The dissent went further, arguing that the Federal Arbitration Act (FAA) was originally intended to be strictly a procedural statute limited to federal cases and that it should not apply to lawsuits in state court. The chief judge cited substantial authority for his position, mostly in the form of the FAA's legislative history and dissenting opinions in other cases, including dissents by various justices of the United States Supreme Court.

Keywords: alternative dispute resolution, litigation, insurance application, forms, renewal, payment of premiums, ratification, arbitration, right to a jury

—*Mitchell L. Marinello, Novack and Macey LLP, Chicago IL*