

Updates from the World of Arbitration

BY LANDON CLAYMAN

The Eleventh Circuit recently handed down two noteworthy decisions that are related to earlier rulings it has made on important arbitration issues.

In *Becker v. Davis*, the court reinforced earlier rulings relating to parties that are not signatories to written contracts containing arbitration agreements. First, the court reaffirmed that under principles of equitable estoppel a nonsignatory plaintiff cannot avoid arbitration if its claims rely on the terms of such written contracts. The court further held that when a claim of the nonsignatory plaintiff contains both arbitrable disputes (ones that rely on the terms of the written contract), and non-arbitrable disputes (ones that do not), the arbitrable disputes must be sent to arbitration, while the other aspects of the claim will not be subject to arbitration. Finally, the Eleventh Circuit reaffirmed that nonsignatory defendants may invoke the arbitration clause of the written contract. Specifically, the court held that a nonsignatory plaintiff may be estopped from avoiding arbitration against nonsignatory defendants to the extent the plaintiff's claims involve disputes that rely on the terms of a written contract containing an arbitration clause.

In *Dale v. Comcast Corp.*, the court revisited a developing area of the law of arbitration, and held that a class action waiver contained in the arbitration clause of a consumer contract was unconscionable and unenforceable. Recognizing that in earlier decisions it had upheld and enforced arbitration agreements precluding class action relief, the court ruled



Looking at all arbitration issues

that class action waivers must be evaluated on a case-by-case basis, considering the totality of the circumstances. Relevant considerations, it said, include the fairness of the arbitration provisions, the cost of vindicating individual claims compared to the potential recovery, the ability to recover attorneys' fees and thus to obtain representation to prosecute an individual claim, and the practical effect the class action waiver will have on the defendant's ability to engage in potentially unlawful behavior.



Announcing

Jorden Burt is pleased to welcome two associates, Lynda Chang in our DC office and Michael Wolgin in our Miami Office. Both Ms. Chang and Mr. Wolgin were summer associates with the firm in 2006.

Ms. Chang received her J.D. from The George Washington University Law School. While at GWU, she was a semi-finalist in the Moot Court Competition, participated in the Alternative Dispute Resolution Negotiations Competition and was Vice President of the Asian-Pacific American Law Student Association. She holds a B.A., with distinction, from Cornell University

Mr. Wolgin received his J.D. from the University of Miami School of Law. While at UM, he was a quarterfinalist in the Moot Court Competition, a staff editor for the Inter-American Law Review, a member of the International Moot Court Board, and a participant in the NITA Litigation Skills program. He holds a B.S., with distinction, from Yeshiva University.