

Court Invalidates Arbitration Clause In Agreement For Transport Of Goods Overseas

The 9th Circuit Court of Appeals in a recent case, *Smallwood v. Allied Van Lines, Inc.*, 2011 WL 4927404 (9th Cir. Cal. October 18, 2011), refused to compel arbitration of claims involving a carrier that shipped goods from the United States to the United Arab Emirates (“UAE”). The *Smallwood* case involved an American employee who accepted a job in the UAE. The American employee hired a carrier to ship his household goods to the UAE. In addition, the American employee asked the carrier to ship various weapons to a storage facility in the U.S. The carrier made a mistake and shipped both the household goods and weapons to the UAE. UAE officials discovered the firearms at the port of Abu Dhabi. Thereafter, UAE police arrested the American employee when he arrived at the port to pick up his goods. The American employee was later interrogated, imprisoned and convicted of gun smuggling, and is currently in deportation proceedings.

Based on the mistaken shipment of his firearms, the American employee filed suit against the carrier in California state court, alleging various tort and contract claims. The carrier removed the case to federal court on the theory that the Carmack Amendment, which is a Federal statute, preempted his state law claims. The Carmack Amendment subjects a carrier transporting cargo in interstate commerce to strict liability and limits a carrier’s liability to the actual loss or injury to the transported property. The contract contained an arbitration provision, on which the carrier moved to compel arbitration. The arbitration clause provided that all claims and disputes were to be referred to arbitration in accordance with the Dubai Chamber of Commerce and Industry Commercial Conciliation and Arbitration Regulation.

The 9th Circuit refused to compel the claims to arbitration. The 9th Circuit ruled that enforcement of the arbitration clause would be contrary to the intent of the Carmack Amendment. The intent is to protect individuals from being forced to submit to arbitration in a foreign jurisdiction as a condition of contracting with a carrier. *Smallwood*, 2011 WL 4927404 at *4; 49 U.S.C. §§ 14708(a), (f). Instead, the 9th Circuit ruled that arbitration provisions will only be enforced when the individual shipping the goods agrees to arbitrate *after* the dispute arises. *Id.*; 14708(b)(6). Thus, the Carmack Amendment is an exception to the Federal Arbitration Act’s (FAA) general mandate in favor of arbitration.

For Further Information, Please Contact:
Nicholas P. Connon, Managing Partner; Chair, Middle East Practice Group
Tel: +1.626.638.1757