

The Arbitration Newsletter

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The Arbitration Newsletter is published periodically by Whitaker Chalk Swindle & Schwartz PLLC, Fort Worth, Texas, to explore the rapidly developing law and practice of commercial arbitration both in the U.S. and other countries.¹

SIGN THE ARBITRATION AGREEMENT! (Huckaba v. Ref-Chem, L.P.)²

Lots of appellate arbitration cases concern signatories, non-signatories, and other related issues. Ref-Chem, L.P.’s arbitration agreement with its employee Kimberly Huckaba made it clear, at least to the Fifth Circuit, that the parties intended that both employer and employee sign their arbitration agreement as a condition precedent to its validity. Because the employer did not sign its arbitration agreement with Huckaba, the District Court for the Western District of Texas erred in compelling Huckaba to arbitrate her claims against her former employer.

The arbitration agreement in question recited the parties’ “mutual recognition” of the benefits of arbitration, the “mutual agreement of both parties to the binding arbitration provision,” the surrender by signing the agreement of “any right [the parties] may have to sue each other,” provided for no amendment of the agreement “except in writing and signed by all parties,” and contained signature blocks for both Huckaba and Ref-Chem.

Ref-Chem never signed the arbitration agreement although it maintained the copy signed by Huckaba “in her personnel file as a business record” and “voluntarily agreed to arbitrate any disputes between” Ref-Chem and Huckaba according to Ref-Chem’s human resources director. Huckaba stated under oath that she signed the arbitration agreement with the expectation and intent that Ref-Chem would also sign it and that she never “orally” agreed to arbitration.

The Fifth Circuit applied Texas state contract law, without any “presumption in favor of arbitration,” and determined that it was the intent of the parties that both employer and employee would sign the arbitration agreement as a condition precedent to the agreement’s validity. This intent was clearly expressed in (i) the parties surrender of “any right” to sue each other “by signing the agreement,” (ii) no modification of the agreement except “in writing and signed by all parties,” and (iii) signature blocks on the agreement. The Court only had to consider the first arbitrability test – is there a valid arbitration agreement based on applicable state contract law? Based on the terms of the

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² 2018 U.S. App. LEXIS 15678 (5th Cir. June 11, 2018).

arbitration agreement, Huckaba's affidavit, and rejecting the application of any "presumption" favoring arbitration ("when determining whether a valid arbitration agreement exists"), the Court found the parties intended that the arbitration agreement required signatures of both employer and employee to become valid and enforceable.

OBSERVATIONS

1. Always observe the execution formalities for an arbitration agreement.
2. Confirm all conditions precedent to a valid, enforceable arbitration agreement.
3. Make sure that both or all parties to the arbitration agreement sign it, even if the agreement does not expressly require it.
4. State clearly in the arbitration agreement the intent of the parties to form and execute the arbitration agreement.
5. Use an arbitration agreement checklist in your pre-execution review of the agreement. Many such checklists are readily available.
6. Remember that arbitration is a creature of contract and the parties' contract creates the arbitration rights and obligations of all parties to the agreement.