FROM OGLETREE DEAKINS LAW FIRM

U.S. Supreme Court Sends Federal Arbitration Act Interstate Commerce Exemption Issue Back to Ninth Circuit for Workers Whose Work is Entirely Inside Louisiana

On October 17, 2022, the Supreme Court of the United States vacated a Ninth Circuit ruling that held that delivery drivers who deliver supplies from a warehouse in California to restaurant franchise locations within the state were exempt from the Federal Arbitration Act (FAA) as a "class of workers engaged in foreign or interstate commerce." The Supreme Court granted a petition for certiorari in *Domino's Pizza, LLC v. Carmona*, but remanded the case to the Ninth Circuit with instructions to provide "further consideration in light of" the high court's June 2022 decision in *Southwest Airlines Co. v. Saxon*, which held that airline employees who loaded and unloaded cargo from planes traveling interstate are exempt from the FAA.

The move hands a win, at least for now, to employers in California seeking to enforce arbitration agreements with delivery workers, and it opens the door for the Ninth Circuit to refocus its analysis on the FAA's interstate commerce exemption to the roles of the workers in interstate commerce, rather than whether the employer's business is in interstate commerce. Under qualifying circumstances, the FAA favors the enforcement of arbitration agreements. Many states, including California and Louisiana, are hostile to arbitration agreements.

The *Domino's* case involves a group of delivery drivers who transport supplies used to make pizzas from a warehouse to franchise locations. While the goods were delivered to the warehouse from suppliers in other states, the drivers at issue only transported the goods to franchise locations in California and therefore their delivery activities occurred entirely *intrastate*.

The drivers filed suit alleging that they were not reimbursed for expenses incurred on the job as required by California law. The employer removed the dispute to federal court and moved to compel arbitration under the FAA. A U.S. District Court in California refused, holding that that the drivers fell within the FAA's so-called residual clause for workers engaged in interstate commerce because Domino's is "directly involved in the procurement and delivery of interstate goods." The Ninth Circuit, the federal appellate court for California, affirmed.

However, in *Southwest Airlines*, the Supreme Court rejected an industry-wide argument that all airline workers fall into the interstate commerce exemption similar to "seamen" and "railroad workers." Instead, the high court in that case focused on the specific job duties of the cargo loaders, noting that workers who fall into the exemption "must be actively engaged in transportation of those goods across borders via the channels of foreign or interstate commerce." The high court, thus held that those who physically load and unload cargo off planes traveling in interstate commerce, "are, as a practical matter, part of the interstate transportation of goods."

This focus on the role of the workers in the interstate commerce rather that the nature of the employer's business being involved in interstate commerce could lead the Ninth Circuit in the *Domino's* case to a different conclusion.

Key Takeaways

The Supreme Court vacated a ruling that had found that delivery drivers in the final stage of delivery of goods entirely *intrastate* still fell into the exemption in the FAA for workers in interstate commerce. However, in doing so, the high court failed to directly address the FAA exemption, creating uncertainty for employers in how it applies to workers involved in an interstate supply chain. Employers seeking to enforce arbitration agreements with similar sets or workers will have to wait for the Ninth Circuit to reconsider the issue under the reasoning of the high court in the *Southwest Airlines* case.

In August, 2022, Ogletree Deakins held a webinar for LMTA members focused on managing risk where LMTA members have drivers and equipment that travel into California. ***[VIEW WEBINAR ONLINE – SEE ACCESS NOTES BELOW.]*** One of the issues we discussed was arbitration as a risk management tool but noted that California is hostile to compulsory arbitration and that Louisiana law, which generally favors arbitration agreements, has an exception where the targeted worker is hired to do manual labor or perform physical work, an idea that captures many workers involved in transportation as drivers, loaders and warehouse workers.

The *Domino's* case may suggest a way to use the FAA to put enforceable arbitration agreements in place for Louisiana workers who, like the delivery workers in the *Domino's* case perform services entirely within Louisiana.

Andrew (Drew) P. Burnside | Ogletree Deakins
Hancock Whitney Center, 701 Poydras Street, Suite 3500 | New Orleans, LA 70139 | Telephone: 504-648-2609 | Mobile: 504-723-7070
drew.burnside@ogletree.com | www.ogletree.com | Bio
Licensed in Louisiana and Texas

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