

District Of Massachusetts Holds That Consumers With No Arbitration Agreement Must Arbitrate Their “Closely Intertwined” Class Action Claims

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It is a legal maxim that arbitration is a creature of contract. A recent District of Massachusetts decision explores critical questions about when that creature can exist outside of the confines of a binding agreement to [arbitrate among the parties](#).

The November 27, 2019 [decision](#) by Senior U.S. District Judge George A. O’Toole ordered that plaintiff fantasy sports players were obligated to arbitrate their class action claims against DraftKings, Fan Duel, and their payment processing companies. The claims referred to arbitration included not only those brought by players with arbitration agreements with DraftKings and Fan Duel, but claims by players with no contractual relationship with the defendant on the basis that their claims were closely “intertwined” with claims subject to arbitration. However, the Court drew a line at family members of players, determining that they had not reaped any benefit from a contract with an arbitration agreement, and thus could not be compelled to arbitrate. Judge O’Toole also declined to hear challenges to the enforceability of the Terms of Use, as opposed to the arbitration provision alone, which he explained were in the first instance questions not for the court but rather for the arbitrator.

Relevant Background on the Motions to Compel Arbitration

The Court’s ruling applied to the consolidated class action styled [In re Daily Fantasy Sports Litigation, MDL No. 16-02677-GAO](#), arising from more than 80 individual and putative class actions against DraftKings, Fan Duel, and their payment processing companies. The defendants had moved to compel the arbitration of all plaintiffs’ class claims, including those by players who had accepted each company’s Terms of Use, players who had accepted only one company’s Terms of Use, and players’ family members. The plaintiffs argued that the arbitration agreements were unenforceable, and that no plaintiff should be compelled to arbitrate claims against a defendant with whom it did not have a direct contractual relationship.

The Court’s Decision to Compel All Parties to Arbitrate

First, in response to challenges as to the enforceability of DraftKings’ and Fan Duel’s arbitration

agreements, the Court held that the companies' Terms of Use created a binding contract with the players. And because the players did not challenge the formation of the arbitration agreement itself, their attacks on the entire contractual relationship and the interpretation of the arbitration agreement were delegated to the arbitrator and not the Court.

Second, the Court considered whether claims by "cross-over" plaintiffs, who asserted civil conspiracy claims against the company with whom they had no contract, were subject to arbitration. The Court noted "there may be rare circumstances where a party may be required to arbitrate a claim even in the absence of an express contractual obligation to do so, if the claim not subject to such arbitration is closely 'intertwined' with claims that are contractually subject to arbitration." For plaintiffs' civil conspiracy claims, the Court determined they were "not just 'intertwined,'" but "the very same." The Court reasoned, "There is no good reason to split the prosecution of the player plaintiff's conspiracy claims between arbitral and judicial forums," which would risk "the pointless duplication of proceedings" and "inconsistent outcomes." For these same reasons, the Court concluded that claims against the payment processing companies should be arbitrated even though there was "no explicit contractual obligation" to arbitrate.

Finally, for plaintiff family members bringing claims under state gambling statutes, the Court distinguished its analysis from that of the players. The Court urged "more caution" for plaintiffs who had signed no agreement at all. Although equitable estoppel may apply against non-signatories who "directed a direct benefit from" and thus "embraced" a contract with an arbitration clause, the Court observed there was "no evidence" of a benefit in this case. For this reason, the Court adhered to "the well-established principle that 'arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit,'" ruling that family member plaintiffs were not bound to arbitrate their claims.

Key Takeaways from the Decision

This much-anticipated decision exposes a critical exception to the rule that plaintiffs cannot be compelled to arbitrate without an express contractual agreement with the defendant if its claims are inextricably intertwined with an arbitrable dispute. The opinion specifically demonstrates how this tactical defense may be available in cases with multiple defendants accused of conspiracy and racketeering activities. The decision also delves into more foundational questions of when the enforceability of an arbitration agreement is itself an arbitrable issue. Class action defendants, especially those facing claims by multiple parties, should carefully consider the decision and how it can inform their litigation strategy.

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