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Disclosure of Binding Arbitration Not Required In Consumer Warranties, Says Florida Supreme Court

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On February 18, the Florida Supreme Court ruled that a warrantor of a consumer product is not required to disclose a binding arbitration agreement as part of the warranty-related items that must be disclosed "in a single document." In reaching its decision that the Federal Trade Commission's "single document rule" does not require the disclosure of binding arbitration, the court resolved a conflict that had existed under Florida law since 2008 and departed from Eleventh Circuit authority.

The Magnuson-Moss Warranty Act, set forth in 15 U.S.C. §§ 2301–2312, is a federal law that governs written warranties on consumer products. The act permits the Federal Trade Commission (FTC) to require that certain information be included in consumer product warranties. Pursuant to the act, the FTC promulgated its "single document rule," requiring that all consumer product warranties contain nine specific pieces of information in a single document. 16 C.F.R. § 701.3(a). One of the items required by the FTC is "[i]nformation respecting the availability of any informal dispute settlement mechanism elected by the warrantor." § 701.3(a)(6).

In *Krol v. FCA US LLC*, the Florida Supreme Court analyzed the FTC's single document rule to resolve a dispute between a car dealer and the retail purchaser of a used truck. The purchase order for the truck included a binding arbitration agreement, but the written warranty did not. Following a dispute regarding alleged defects in the truck, the retail purchaser filed a lawsuit against the dealer. The dealer moved to compel arbitration, citing the arbitration agreement in the purchase order. The retail purchaser, however, challenged the arbitration agreement, arguing that it was not disclosed in the written warranty pursuant to the FTC's single document rule, and is therefore unenforceable.

Ultimately, the supreme court held that a binding arbitration agreement does not qualify as an "informal dispute mechanism elected by the warrantor," as listed in the FTC's single document rule. The court reasoned that the informal dispute mechanisms contemplated by the FTC (a) are not legally binding, and (b) allow for "legal remedies" if the consumer is dissatisfied with the results of the informal dispute mechanisms. A binding arbitration agreement, on the other hand, is (a) legally binding, and (b) a **substitute** for litigation. These material differences, in the court's opinion, dictate that a binding arbitration agreement is not one of the nine items that must be disclosed in a written warranty pursuant to the single document rule.

Accordingly, companies litigating in Florida state courts may enforce a separate binding arbitration agreement related to the sale of consumer products in Florida. However, in order to ensure the availability of binding arbitration, a warrantor of consumer products should nonetheless include binding arbitration with the other warranty-related items that must be listed in a single document, in the event a warrantor finds itself litigating in federal courts in Florida.

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