

District Court Declares that Fraudulent Inducement Claim Is Not Available To Arbitrate

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SOUTHERN DISTRICT OF NEW YORK
AXA VERSICHERUNG V. NEW HAMPSHIRE INSURANCE CO.
(CIVIL ACTION NO. 05-10180 MAY 3, 2010)

This lawsuit was initiated by AXA Versicherung (“AXA”) against three subsidiaries of AIG, including New Hampshire Insurance Co. (“New Hampshire”) regarding an reinsurance agreement. The action went to trial where AXA was awarded an amount in excess of thirty-four million dollars plus punitive damages. AIG appealed the decision to the Second Circuit who remanded the matter for a determination of whether certain claims should have been sent to arbitration. Specifically, the question of whether the issue of fraudulent inducement was subject to arbitration under the contract.

AIG argued that many of the alleged misrepresentations were grounded in contract and as a result were subject to the arbitration clause contained in the agreement. AXA, in turn, argued that the fraudulent inducement claim was not duplicative of the contract claims because the misrepresentations centered on future, not past, obligations. The district court ruled in favor of AXA finding that the fraudulent inducement claims sound in fraud and not contract. Furthermore, the district court found that New Hampshire waived its right to arbitrate by failing to raise the issue earlier in the litigation. The district court determined that by waiting until the end of discovery, the parties consented to litigate the action and not arbitrate.

IMPACT (ARBITRATION): Practitioners should always be cognizant of waiving their right to arbitration if it is not asserted early on in the litigation process. The standard applied by many of the jurisdictions is that if discovery is completed (or a substantial portion of the discovery is completed), a party cannot invoke the arbitration clause.

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