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The Third Circuit Orders Another Review in Cornelius v. CVS Pharmacy, Inc.—Resolution Will Wait for Another Day in New Jersey Federal Court, but Not Because of the EFAA

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Case law related to the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 ("EFAA") continues to develop.

In late 2024, the Third Circuit seemed poised to bring further clarity as to which claims fall within the EFAA and, therefore, are shielded from pre-dispute arbitration agreements. On April 6, 2025, the Court provided guidance related to the timing of "disputes" as used in the statutory text, but remanded for further consideration of whether an arbitration agreement existed at all under New Jersey law. *Cornelius v. CVS Pharmacy, Inc.,* 2025 WL 980309 (3d Cir. Apr. 2, 2025).

Cornelius was a longtime CVS employee who alleged that she experienced discrimination from her male supervisor. After Cornelius filed numerous internal complaints, CVS terminated her employment in November 2021. She brought a Charge to the EEOC, received a right-to-sue letter, and filed a lawsuit in the U.S. District Court for the District of New Jersey. CVS moved to compel arbitration pursuant to its "Arbitration Policy." Plaintiff opposed, arguing that the EFAA rendered the arbitration agreement unenforceable as to her claims. The District Court disagreed, ruling that the EFAA did not apply to Cornelius's claims because "her claims did not constitute a 'sexual harassment dispute'" within the meaning of the statute, and compelled arbitration. *Id*. at *2.

The Third Circuit affirmed that the EFAA did not apply to Cornelius' claims. Emphasizing that "[w]e begin and end with the text," the Court focused on whether her "dispute" arose before or after the EFAA's March 3, 2022 effective date. Based on the ordinary meaning of the words used in the statute, "dispute" was distinguishable from "injury" and the Court agreed that the EFAA did not apply, though on alternate grounds. The case, however, was remanded back to the District Court to consider whether discovery was necessary to resolve the motion to compel. *Id*. at *3-4.

Does the EFAA Apply to These Claims?

Congress codified the EFAA directly into the Federal Arbitration Act. Under 9 U.S.C. § 402: "at the

election of the person alleging conduct constituting a sexual harassment dispute . . . no predispute arbitration agreement . . . shall be valid or enforceable with respect to a case which . . . relates to the . . . sexual harassment dispute." The District Court ruled that Cornelius' claims did not constitute a "sexual harassment dispute" under the EFAA. *Id*. at *2.

The statute also states that the EFAA is limited to "any ***dispute*** or claim that ***arises*** or accrues on or after the date of enactment of this Act," which was March 3, 2022. Cornelius conceded that her claims accrued before November 2021. Focusing on the text of the statute, the Third Circuit found that a "'dispute . . . arises' when an employee registers disagreement—through either an internal complaint, external complaint, or otherwise—with his or her employer, and the employer expressly or constructively opposes that position." The complaints that Cornelius submitted to CVS during her employment (*i.e.*, prior to November 2021) were rejected (*i.e.*, "disputed") by CVS. Accordingly, per the Third Circuit, her "dispute arose" well before March 3, 2022, and the EFAA did not apply to her Title VII claim. *Id*. at *5.

Was Discovery Regarding the Existence of an Arbitration Agreement Required?

Next, the Court considered whether the District Court should have permitted discovery regarding the existence of an arbitration agreement between Cornelius and CVS under New Jersey law. The question arose because, "[w]hile the District Court intended to resolve CVS's motion [to compel arbitration] under Rule 12(b)(6), which would give no occasion for the District Court to consider whether discovery was warranted, its consideration of materials outside of the Complaint placed its analysis within the realm of Rule 56 and the possible need for discovery." *Id*. at *8.

In 2014, CVS rolled out its Arbitration Policy. The Arbitration Policy was presented to employees via a "PowerPoint training course" that included a hyperlink to a separate "Policy Guide." The Policy Guide provided "a full copy of the Arbitration Policy" and separately explained how employees could accept the Arbitration Policy or opt out. *Id*. at *2. The employee's acknowledgment of the Arbitration Policy, with the opt-out instructions, was found at the end of the PowerPoint, not the Policy. *Id*. The District Court held that there was a valid arbitration agreement between the parties based on information from the training course and Policy Guide. *Id*. at *6

On appeal, the parties agreed, as did the Third Circuit, that "the District Court applied the Rule 56 summary judgment standard because it considered facts and evidence outside Cornelius's Complaint." *Id*. at *6. Thus, from a procedural standpoint, it remained unresolved if Cornelius was entitled to discovery to support her argument that an arbitration agreement did not exist for these claims. Citing its decision in *Young v. Experian Information Solutions, Inc.*,119 F.4th 314 (3d Cir. 2024), which was decided after the District Court ruled in *Cornelius*, the Third Circuit noted that prior rulings should "be read as encouraging factual discovery when such discovery is warranted, which will often be the case," but that "discovery is not required 'when no factual dispute exists as to the existence or scope of the arbitration agreement.'" *Id*. at *6 (quoting *Young*).

Deferring to the District Court's "broad discretion to order and control the scope of discovery," the Third Circuit vacated the lower court's order and remanded "for consideration of whether discovery into the validity of the arbitration agreement is warranted under Rule 56(d) and for consideration of Cornelius's legal challenges to the arbitration agreement under New Jersey law." *Id*. at *8. Practitioners will need to wait and see how lower courts address the Third Circuit's latest guidance to evaluate what is needed to enforce—and challenge—a motion to compel arbitration.

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