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A Tale of Two Judges: Lack of Binding Precedent on Arbitration Agreements Causes Uncertainty for Rhode Island Employers

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Can two judges on the same court reach contradictory conclusions about the enforceability of the same arbitration agreement presented to two employees in the same manner? In Rhode Island, the answer is yes, as the U.S. District Court for the District of Rhode Island's recent decisions in *Conduragis v. Prospect CharterCARE, LLC* and *Britto v. St. Joseph Health Services of Rhode Island* demonstrate. These decisions underscore the leeway that trial courts in Rhode Island have when ruling on the enforceability of arbitration agreements—and the resulting uncertainty that employers face when drafting such agreements.

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Background

The plaintiffs in *Conduragis* and *Britto* worked for Roger Williams Medical Center (RWMC). In 2014, CharterCARE acquired RWMC and sent RWMC's employees a letter explaining the acquisition. The letter stated that the CharterCARE entity that would become their employer could "change the terms of [their] employment, including compensation and benefits, at any time." The letter requested that employees sign it to acknowledge the terms of their employment and instructed them to sign other employment documents, including the company's arbitration agreement.

Both plaintiffs signed the arbitration agreement, which required them and their employer to submit "any controversy, claim or dispute between [them] and [their employer] relating to or arising out of [their] employment or the cessation of that employment . . . to final and binding arbitration." Both plaintiffs were subsequently discharged, and despite the clear language of the arbitration agreement, both plaintiffs brought employment-related lawsuits against the CharterCARE entity that employed them. The employer moved to compel the plaintiffs to submit their claims to arbitration pursuant to the arbitration agreement with mixed results.

Conduragisv v. Prospect CharterCARE, LLC

In early December 2017, Judge John J. McConnell denied the employer's motion to compel Conduragis to arbitrate his claims arising under the Family and Medical Leave Act and analogous state law. Judge McConnell began his analysis by finding that, because the employer had presented the arbitration agreement to the employee by way of the letter and because the arbitration agreement did not include an integration clause stating that it was the parties' full and final agreement on the subject of dispute resolution, he was required to construe the arbitration agreement and letter together as one agreement outlining the terms of Conduragis's employment. Next, Judge McConnell found that the employee's promise to arbitrate was not supported by consideration—that is, the employer did not give the employee anything or forego its ability to do anything in exchange for the employee's promise to arbitrate. Specifically, although the arbitration agreement contained mutual promises to arbitrate employment-related disputes, Judge McConnell held that the employer did not actually promise to arbitrate its

claims against the Conduragis because, in the letter, the employer had reserved the right to change any term of Conduragis's employment, including its obligations under the arbitration agreement. Finally, relying on a Rhode Island trial court decision, the *Conduragis* court concluded that Conduragis's continued employment was not sufficient consideration to support his agreement to arbitrate his claims.

Britto v. St. Joseph Health Services of Rhode Island

Less than five months after the *Conduragis* decision, Chief Judge William E. Smith expressly disagreed with that decision and granted the employer's motion to compel an employee to arbitrate his state and federal discrimination claims in *Britto*. Unlike Judge McConnell, Judge Smith construed the arbitration agreement independently of the letter because they were standalone documents that required separate signatures. Accordingly, the letter's reservation-of-rights clause did not extend to the arbitration agreement. As a result, the employer's promise to arbitrate disputes between itself and Britto was sufficient consideration for Britto's promise to do the same. Additionally, citing a Rhode Island Supreme Court decision that held that continued employment was sufficient consideration to support a modification to a commission plan contained in an employment agreement and a United States Court of Appeals for the First Circuit opinion that found that continued employment can support an arbitration agreement under Puerto Rico law, the *Britto* court found that, even if it were to read the arbitration agreement and letter together, Britto's continued employment would be sufficient consideration to render the arbitration agreement enforceable.

Key Takeaways

As *Conduragis* and *Britto* show, Rhode Island employers have little definitive guidance to assist them in drafting enforceable arbitration agreements. However, reading the cases together reveals the steps that an employer can take to increase the likelihood that a court will enforce its arbitration agreements.

First, as was true of the arbitration agreement in *Conduragis* and *Britto*, employers may want to carefully write the obligation to arbitrate as a mutual obligation. This is particularly important in Rhode Island, where the Rhode Island Supreme Court has not yet addressed whether continued employment is sufficient consideration to support an arbitration agreement.

Second, employers may want to ensure that arbitration agreements are not contained in handbooks or offer letters but instead are standalone documents that require a separate signature. As *Conduragis* shows, this might not be enough to compel a conclusion that the arbitration agreement is not part of some larger agreement that consists of numerous employment-related documents, but it is a helpful piece of evidence to show that the arbitration agreement is not simply a term of employment that the employer can unilaterally modify.

Third, employers may want to consider adding a modification clause to their arbitration agreements that provides that no part of the arbitration agreement may be amended, discharged, modified, or waived except in a writing signed by both parties. This type of clause would likely prevent a judge from concluding that a reservation -of-rights clause contained in an offer letter or other employment document—which would allow the employer to unilaterally modify any term of employment—applied to the parties' obligations to arbitrate their disputes.

Fourth, an employer can ensure that its arbitration agreements contain an integration clause that states that the arbitration agreement is the entire and final agreement regarding the resolution of disputes between the employer and employee. Indeed, in finding that the arbitration agreement and letter constituted one agreement, Judge McConnell specifically noted the absence of such a clause from the arbitration agreement.

Finally, offer letters enclosing or referring to arbitration agreements may state that they are for informational purposes only and do not give rise to any contractual obligations. Such a disclaimer can help an employer show that the offer letter is not part of a larger employment agreement that also encompasses the arbitration agreement.