

Client Alert

A report
for clients
and friends
of the Firm February 2008

U.S. Supreme Court to Hear Arbitration Case

Court to decide whether a union-negotiated arbitration agreement covering statutory discrimination claims is enforceable.

The United States Supreme Court has agreed to hear a case involving Proskauer client 14 Penn Plaza LLC, which will decide whether a union-negotiated arbitration agreement covering employment discrimination claims is enforceable.

The case, *14 Penn Plaza LLC, et al. v. Steven Pyett, et al.*, is significant to all employers who have collective bargaining relationships. It was originally brought by a group of night watchmen and porters employed by Temco Service Industries, Inc. and represented by Local 32BJ, SEIU to monitor the lobby of 14 Penn Plaza in New York City. As a result of the building's hiring of licensed security guards to monitor the building lobby — an assignment previously performed by Plaintiffs — Plaintiffs were transferred to different duties within their job description. Local 32BJ proceeded to arbitration under the Realty Advisory Board on Labor Relations / Local 32BJ Collective Bargaining Agreement's Arbitration provision. After having their contractual grievances rejected by an arbitrator, the employees filed a federal action in the Southern District of New York alleging that the transfer was due to age discrimination. Plaintiffs filed this federal action despite the collective bargaining agreement's clear and unmistakable language providing that all claims of discrimination be submitted to arbitration. Consequently, the defendants proceeded to move to dismiss or compel arbitration pursuant to the collective bargaining agreement's arbitration provision.

The district court denied the motion to compel and the Second Circuit sustained the denial based upon *Alexander v. Gardner-Denver*, a Supreme Court precedent that has been severely undercut in recent years, and related Second Circuit precedent. Citing a pronounced circuit split on the issue between the Second and Fourth Circuits, and between the state and federal courts in the Second Circuit, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court. On Tuesday, February 19, the Supreme Court agreed to hear the case.

The Supreme Court is expected to resolve the issue explicitly left open in its prior decision, *Wright v. Universal Maritime Service Corp.*, in which it held that union-negotiated arbitration agreements covering employment discrimination claims must, at a minimum, be clear and unmistakable. However, because the agreement at issue in that case did not satisfy that standard, the Court declined to decide whether such an agreement is enforceable. The current case presents an agreement that satisfies the "clear and unmistakable" standard and provides the Court with an opportunity to resolve the issue.

Oral argument before the Supreme Court is expected to be held in the Fall of 2008. The Proskauer team representing 14 Penn Plaza includes Paul Salvatore, Ed Brill, Brian Rauch and Ian Schaefer (Labor) and Charles Sims and Mark Harris (Litigation). James Berg and Howard Rothschild of the Realty Advisory Board on Labor Relations represent the co-petitioner, Temco Service Industries.

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