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New York Court of Appeals: McCarran-Ferguson Act Does Not Reverse Preempt Application of the Federal Arbitration Act to Enforce Arbitration Provisions in Agreements Which Were Ancillary to California

March 20, 2016

California Insurance Law Was Not Impaired, Invalidated or Superseded by the Operation of the Federal Arbitration Act

Monarch Consulting, Inc. v. National Union Fire Insurance Co. of Pittsburgh, Pa., __ N.Y.3d __, 2016 WL 633946 (N.Y., Feb. 18, 2016) **Case at a Glance** National Union Fire Insurance of Pittsburgh ("National Union Fire") issued workers' compensation insurance policies to three employers, on policy forms appropriately filed with the State of California. The insurer and the three insureds also entered into separate written Payment Agreements containing additional terms concerning payments to be made under the policies, which were not filed with the State. The Payment Agreements contained arbitration agreements that committed all disputes arising out of the agreements to arbitrators for decision. Reversing an intermediate appellate court, the New York Court of Appeals held that the arbitration agreements in the unfiled Payment Agreements were enforceable under the Federal Arbitration Act ("FAA"), the operation of which was not reverse preempted by the McCarran-Ferguson Act, and that the arbitrators had the authority to decide whether specific claims and issues were arbitrable. **Summary of Decision** National Union Fire issued workers' compensation policies to three different California-based employers, and appropriately

submitted the policies to the California Department of Insurance and the California Workers' Compensation Insurance Rating Bureau, as required by California law. National Union Fire and its insureds also entered into Payment Agreements, which should have been submitted to the California regulators but were not. The Payment Agreements provided that National Union Fire would extend credit to the insureds by deferring payments due under the policies in return for the provision of collateral on behalf of the insureds. The Payment Agreements also contained arbitration provisions, which required the arbitration of any disputes arising out of the Payment Agreements, and provided that the arbitrators would "have exclusive jurisdiction over the entire matter in dispute, including any question as to its arbitrability." The parties operated under the Payment Agreements for several years until disputes arose, resulting in three separate actions being filed in New York state court. Motions filed by National Union Fire to compel arbitration were granted in two actions and denied in the third action. Appeals were filed in all three cases, and were consolidated. The Appellate Division determined that California law required that the Payment Agreements be filed with the State of California, and that the appropriate penalty for the failure to file the Payment Agreements was to decline to enforce the arbitration provisions. An appeal was taken to New York's highest court. The determining legal issue involved the interplay between the Federal Arbitration Act ("FAA"), the McCarran-Ferguson Act ("McCarran") and § 11658 of the California Insurance Code, which required that the Payment Agreements be filed so that the regulators could ensure that they complied with the California Insurance Code and accompanying regulations. However, at the relevant time, neither the California Insurance Code nor the accompanying regulations prohibited or regulated either the permissibility or the form of arbitration agreements in insurance documents and "were silent with respect to arbitration provisions in workers' compensation insurance policies and endorsements." The California Legislature enacted a new section for the Insurance Code in 2011, § 11658.5, which regulates arbitration provisions in workers' compensation policies and endorsements, but that new section does not apply to the agreements at issue in this case due to the effective date of § 11658.5. McCarran reverse preempts the application of federal law to the business of insurance if the federal measure does not "specifically relate to the business of insurance" and would "invalidate, impair or supersede" the law of a state regulating the business of insurance. The Court's analysis proceeded on the assumption that absent preemption by McCarran, the FAA would apply to this dispute and require arbitration. The court found that the resolution of the dispute "turns on whether the application of the FAA ... would 'invalidate, impair or supersede' California Insurance Code § 11658...." The court held that McCarran did not reverse preempt the FAA with respect to § 11658 or any other provision of the California Insurance Code because California law did not, at the relevant times, prohibit, limit, or regulate the use or the form of arbitration provisions in insurance contracts, including workers' compensation policies. Therefore the application of the FAA would not invalidate, impair or supersede California's insurance law. The court held that even though § 11658 may have required the filing of the Payment Agreements with the State, the purpose of the filing requirement had nothing to do with arbitration, and neither the goal of § 11658 nor the administrative scheme of California's regulation of insurance was undermined by applying the FAA to the particular

agreements at issue. The court further held that under the specific terms of the broad arbitration agreement the issue of whether the arbitration agreement was enforceable due to the failure to submit the Payment Agreements to the State of California and the issue of whether the disputes between the parties were arbitrable, i.e., within the scope of the agreement to arbitrate, had been committed, by agreement, to the exclusive jurisdiction of the arbitrators. The court cited authorities which permitted the contractual delegation of the arbitrability issue to arbitrators. Finally, the court found that permitting the arbitrators to decide the consequences, if any, for the agreement to arbitrate of the failure to file the Payment Agreements with the State of California did not compromise California's overall insurance regulation scheme since the California Department of Insurance was free to pursue an administrative enforcement action against National Union Fire should it desire to do so based upon the failure of National Union Fire to submit the Payment Agreements to the State. The court of Appeal therefore reversed, directing that National Union Fire's motions to compel arbitration be granted in all three actions. *Reprinted with permission of Thomson Reuters, Inc. All rights reserved.*