

Arbitration Provision Survives Agent Termination

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A Canon of Construction for Workplace Agreements?

Has the judicial preference for presuming the survivability of arbitration clauses governing workplace disputes reached canonical status? According to the U.S. District Court for the Eastern District of Arkansas, the answer may be yes.

In *Patterson v. American Income Life Ins. Co.*, a former insurance agent for American Income Life Insurance Company (AILIC) sued AILIC and the individual owner/operator of her AILIC branch for minimum wage violations under both the Fair Labor Standards Act and Arkansas state law. The plaintiff was party to an agent contract that included a broad arbitration clause requiring the individual arbitration of “all disputes ... of any kind or nature arising out of or relating to [the agent contract].” The defendants moved to compel individual arbitration of wage and hour claims based on this language.

The plaintiff’s sole argument opposing the defendants’ motion was that the arbitration clause did not survive the undisputed termination of the agent contract. This argument was based on the “*expressio unius*” canon of construction, which provides that the express designation of one thing may be construed to mean the exclusion of another. The plaintiff noted four different clauses in the agent contract that expressly referenced survivability, whereas the arbitration clause was silent.

However, the court found this argument “insufficient to overcome the presumption in favor of post-expiration arbitration of disputes ‘unless negated expressly or by clear implication,’” in the agreement (quoting the U.S. Supreme Court in *Litton Fin Printing Div. v. N.L.R.B.*). And while the court might have been persuaded if every contractual provision except for the arbitration clause had included survival language, the plaintiff’s four examples could not overcome the “strong presumption in favor of arbitration.”

So, having overcome the *expressio unius* canon, the presumption of survivability for arbitration clauses may itself be approaching canonical status.

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