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A PUBLICATION OF LEITNER, WILLIAMS, DOOLEY & NAPOLITAN, PLLC

### Sixth Circuit Holds USERRA Claims Are Arbitrable

*Landis v. Pinnacle Eye Care, LLC*, No. 07-6204, 2008 WL 3267618 (6th Cir. Aug. 11, 2008).

The Court of Appeals for Sixth Circuit recently held that employee claims under the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”) are subject to arbitration.

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#### FACTS AND PROCEDURAL HISTORY

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The plaintiff, Dr. Timothy Landis, was hired as an optometrist by Louisville Optometric Centers II (“LOC”). At the time of his hiring, Dr. Landis signed an employment agreement that required any disputes arising under the employment agreement to be settled by mediation, or if mediation proved unsuccessful, by arbitration administered by the American Arbitration Association.

Dr. Landis also served as a member of the Indiana National Guard, and in April 2004, he was ordered to report for duty in Afghanistan. Dr. Landis alleged that prior to departing for Afghanistan he negotiated the conditions of his continued employment with a manager of LOC. Among other things, LOC allegedly agreed to maintain his optometry practice by hiring additional optometrists to care for his patients. The employment agreement, however, was not amended to include these modifications.

Dr. Landis alleges that LOC failed to honor the modified terms of the

agreement upon his return from Afghanistan. He further alleges that he was demoted and told that his continued involvement in the military would be damaging to his career. In 2006, Dr. Landis filed suit in federal court alleging, among other things, employment discrimination based on military service in violation of USERRA.

The district court held that Dr. Landis' claims were within the scope of the arbitration agreement and that USERRA did not preempt the arbitration agreement. Accordingly, the district court granted the defendants' motion to stay the proceedings in federal court and ordered arbitration.

### MAJORITY ANALYSIS

The Court of Appeals began by reviewing Supreme Court precedent concerning arbitration agreements. Although the Supreme Court has not specifically addressed the arbitrability of USERRA claims, the Court of Appeals observed that many statutory claims are arbitrable. According to the Supreme Court's holding in *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991), "statutory claims may be the subject of an arbitration agreement, enforceable pursuant to the [Federal Arbitration Act]." The Court of Appeals noted that the Supreme Court has required that parties be held to the terms of arbitration agreements unless the party opposing the arbitration agreement can demonstrate that Congress intended to prevent parties from waiving their right to a judicial resolution of the statutory rights at issue. *Gilmer*, 500 U.S. at 26. A party may demonstrate such an intent by referencing the text or legislative history of the statute, or by showing a conflict between arbitration and the purposes of the statute. *Id.* Furthermore, questions of arbitrability must always be resolved in a way that reflects the federal policy favoring arbitration. *Id.*

Further, the Court of Appeals observed that the only other circuit to address the issue had concluded that USERRA claims are arbitrable. *Garrett v. Circuit City Stores, Inc.*, 449 F.3d 672 (5th Cir. 2006). Relying on *Gilmer*, the Fifth Circuit concluded that: 1) nothing in the text of USERRA precluded arbitration; 2) reference to legislative history is unnecessary because the text of the statute is clear; and 3) there is no conflict between arbitration and the purposes of USERRA. *Garrett*, 449 F.3d at 677-81. The Court of Appeals adopted the reasoning of the Fifth Circuit on each of these points.

First the court concluded that the text of USERRA did not preclude arbitration. The only statutory language that even arguably applies is found in 38

U.S.C. § 4302(b). That section provides that

[t]his chapter supersedes any . . . contract, agreement . . . or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.

The court concluded, however, that the arbitration agreement did not limit or reduce Dr. Landis' rights under the USERRA. On the contrary, the arbitration clause merely established the forum in which those rights would be adjudicated. Accordingly, the court concluded that this language does not indicate a Congressional intention to preclude arbitration.

Second, the court concluded there is no need to reference legislative history because the text of the statute is clear. Finally, the court concluded that arbitration was consistent with the structure and purposes of USERRA. That the Department of Labor and the Attorney General are granted administrative and enforcement authority over USERRA is of no consequence. The court noted that nothing would prevent the Attorney General from representing a plaintiff in arbitration and that arbitration presents a fair opportunity for a claimant to present a USERRA claim.

### CONCURRING ANALYSIS

The concurring opinion agreed with the majority's analysis but wrote separately to point out an oddity of the court's holding and to request that Congress clarify the language of the statute. Specifically, the concurring opinion expressed concern about the statutory language prohibiting the contractual establishment of prerequisites to the exercise of rights under the statute. According to the concurring opinion, this language permits arbitration agreements that require parties to arbitrate *instead of* filing suit because arbitration is not a prerequisite to the exercise of the right. Rather, arbitration is the manner in which the right will be exercised. On the other hand, the concurring opinion argues, the statute prohibits arbitration agreements that require parties to arbitrate their claims *before* filing suit because such an arbitration agreement would establish a prerequisite to the exercise of the statutory right. The concurring opinion suggests that this result is incongruous but mandated by the plain language of the statute. Suspecting that this is not precisely what Congress intended, the concurrence suggests that Congress use clearer language when addressing the arbitrability of a statutory claim.

## CONCLUSION

All members of the court agreed that Dr. Landis' USERRA claims were arbitrable. Accordingly, the judgment of the district court was affirmed.

The take-away message of this case is the federal policy favoring arbitration will often apply to federal statutory claims. Specifically, USERRA claims may be subject to an applicable arbitration agreement. However, to avoid the concerns addressed in the concurring opinion, it is best to craft arbitration agreements as a substitute for judicial remedies rather than a prerequisite to the petition for judicial remedies.

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