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I. EMPLOYMENT LAW

The U.S. Supreme Court Holds Warehouse Workers Not Entitled to Overtime for Security Screens

In *Integrity Staffing Solutions, Inc. v. Busk*, 574 U.S. ___ (December 9, 2014), Jesse Busk and Laurie Castro were former employees of Integrity Staffing Solutions, Inc. (Integrity), a company that provides warehouse space and staffing to clients such as Amazon.com. Busk and Laurie both worked in warehouses in Nevada filling orders placed by Amazon.com customers. At the end of each day, all the workers were required to pass through a security clearance checkpoint where they had to remove their keys, wallets, and belts, pass through a metal detector, and submit to being searched. The whole process could take up to 25 minutes. Similarly, up to ten minutes of the workers' 30-minute lunch period was consumed by security clearance and transition time.

In 2010, Busk and Castro sued Integrity and argued that these practices violated the Fair Labor Standards Act (FLSA) as well as Nevada state labor laws. The employees claimed they should be paid for the time spent waiting to complete these mandatory security screenings because the screenings were for the exclusive benefit of the company. The employees also claimed that the company could have taken steps to decrease this waiting time by adding more security screeners or by staggering when shifts ended so that employees could pass through the checkpoints more quickly. Yet, the company failed to take such measures.

In a unanimous decision, the Supreme Court found that the company was not required to pay employees for this waiting time. The Supreme Court held that the workers couldn't show the security screens were "integral and indispensable" to their principal work activities, the standard the court previously set under the FLSA. The Court provided "an activity is not integral and indispensable to an employee's principal activities unless it is an intrinsic element of those activities and one with which the employee cannot dispense if he is to perform those activities." The screenings were not an intrinsic element of retrieving products from warehouse shelves or packaging them for shipment. And Integrity Staffing could have eliminated the screenings altogether without impairing the employees' ability to complete their work.

As such, the court held that the employees' time spent waiting to undergo antitheft security screenings is not compensable under the Fair Labor Standards Act of 1938, as amended by the Portal-to-Portal Act of 1947, because such screenings are not the "principal activity or activities which [the] employee is employed to perform" nor are they "integral and indispensable" to the employees' duties.

Dodd–Frank's Anti-Arbitration Provision Does Not Apply to Whistle-Blower Retaliation Claim

In *Khazin v. TD Ameritrade Holding Corp.*, 2014 U.S. App. LEXIS 23098 (3d. Cir. (N.J.) December 8, 2014), Boris Khazin, was a financial services professional and former employee of Appellees TD Ameritrade, Inc. and Amerivest Investment Management Company who at the start of his employment, executed an employment agreement in

which the parties agreed to arbitrate all disputes arising out of Khazin's employment.

At TD, Khazin was responsible for performing due diligence on financial products offered to TD customers. When he eventually discovered that one of TD's products was priced in a manner that did not comply with the relevant securities regulations, he reported this violation to his supervisor and recommended changing the price to remedy the violation.

In response, the supervisor instructed Khazin to conduct an analysis of the "revenue impact" of his proposed change. The analysis revealed that although remedying the violation would save customers $2,000,000, it would cost TD $1,150,000 in revenues and negatively impact the balance sheet of one of the supervisor's divisions. After reviewing these results, his supervisor allegedly told Khazin not to correct the problem and to stop sending her emails on the subject. When Khazin subsequently approached her to renew his initial recommendation, she again informed him that no change would be made.

Over the next few months, the supervisor and TD's human resources department confronted Khazin about a purported billing irregularity that, according to him, was unrelated to his duties and turned out to be nonexistent. Nevertheless, Khazin was told that he could no longer be trusted, and his employment was terminated.

Alleging that TD Ameritrade had fired him for reporting the securities violations to his supervisor, Khazin filed suit for whistleblower retaliation pursuant to the Dodd-Frank Act. Although Khazin had signed an arbitration agreement with TD Ameritrade he argued that it had been nullified by another provision in Dodd-Frank that prohibits the enforcement of predispute arbitration agreements in certain whistleblower disputes. The District Court disagreed, compelled arbitration, and dismissed the complaint.

Khazin appealed raising issues of first impression in the Third Circuit surrounding the proper interpretation of Dodd-Frank's restrictions on predispute arbitration agreements. Khazin's primary contention was that the District Court erred in finding that his arbitration agreement was enforceable notwithstanding the Anti-Arbitration Provision and the general anti-arbitration spirit of the Dodd-Frank Act. TD contended that this argument failed because neither the Anti-Arbitration Provision nor any other provision of Dodd-Frank prohibits the arbitration of the sort of claim that Khazin chose to bring against TD. The District Court acknowledged that TD had made this argument but did not address it further.

Affirming the lower court's order dismissing Khazin's complaint and compelling arbitration of his claim under 15 U.S.C. § 78u-6(h), the Third Circuit found that the plain text and structure of the Dodd-Frank Act limits the provision barring the enforcement of predispute arbitration agreements to whistle-blower claims brought under the Sarbanes-Oxley Act, the Commodity Exchange Act and the Consumer Financial Protection Act. The Dodd-Frank Act includes no similar arbitration prohibition for Section 78u-6(h) claims. The court stated “[t]he fact that Congress did not append an anti-arbitration provision to the Dodd-Frank cause of action while contemporaneously adding such provisions elsewhere suggests … that the omission was deliberate.” The court held that Khazin's whistleblower claim is subject to arbitration for the simple reason that it is not covered by any of these restrictions.

II. INSURANCE LAW

Under Pennsylvania Law, Insured Can Assign the Right to Recover Damages from Insurer's Bad Faith Toward a Third Party

In *Allstate Prop. & Cas. Ins. v. Wolfe*, 2014 Pa. LEXIS 3309 (Pa. December 15, 2014), Jared Wolfe was injured when his vehicle was struck from behind by an automobile driven by Karl Zierle. Wolfe attributed blame to Zierle and demanded $25,000 from Zierle's insurer carrier, Appellant Allstate Property and Casualty Insurance Company equating to half the liability limits under the applicable policy. Allstate counter offered $1,200, which Wolfe refused.

Wolfe then instituted a personal injury action against Zierle seeking compensatory damages grounded in negligence. Allstate assumed Zierle's defense while maintaining its additional right, under the policy, to effectuate a settlement.

In discovery, Wolfe confirmed that Zierle had been intoxicated at the time of the collision and secured leave of court to amend the complaint to advance a claim for punitive damages. Allstate in turn, advised Zierle that indemnification for exemplary awards was unavailable under his policy and, therefore, Zierle might wish to consult with a personal attorney to address this aspect of the litigation.

Before trial, on at least one occasion, Wolfe again inquired into the possibility of settlement. Neither he nor Allstate made additional, material monetary concessions, however. A jury trial ensued, and Wolfe secured a verdict and judgment against Zierle comprised of $15,000 in compensatory damages and $50,000 in punitive damages. Allstate proceeded to satisfy the compensatory component of the judgment only but refused to pay the $50,000 in Punitive Damages, claiming that such Damages were not covered by Zierle’s car insurance policy. As to the punitive-damages portion, Wolfe and Zierle entered into an agreement whereby Wolfe committed to forbear from executing in exchange for an assignment from Zierle of all claims arising under the policy which he might possess against Allstate.

Relying upon this assignment, Wolfe proceeded to commence a civil action against Allstate in a Pennsylvania common pleas court, alleging that Allstate refusal to settle reflected bad faith on the carrier's part. Wolfe sought damages under common-law contract theory and per Section 8371 of the Judicial Code which served to supplement the remedies previously available to insureds in certain scenarios involving bad-faith conduct by their insurers, inter alia, by authorizing punitive-damages awards. Allstate removed the litigation to a federal district court.

At the bad faith trial against Allstate, the jury found that Allstate had acted in bad faith in its defense of Zierle and awarded $50,000 in punitive damages against Allstate.

Allstate commenced an appeal in the Third Circuit, in which the insurer maintained its position that Wolfe lacked standing. In light of the conflicting decisions in Pennsylvania and federal courts concerning the assignability of a right to damages under Section 8371, the Third Circuit lodged a certification petition in the Pennsylvania Supreme Court. The Court accepted certification to clarify whether, under Pennsylvania law, an insured may assign the right to recover damages from his insurance company deriving from the insurer's bad faith toward the insured.

The Court held that, under Pennsylvania law, an insured could assign the right to recover damages from his or her insurer deriving from the insurer's bad faith toward the insured. In support of the holding, the Court provided that “The General Assembly did not contemplate that the supplementation of the redress available for bad faith on the part of insurance carriers in relation to their insureds would result either in a curtailment of assignments of pre-existing causes of action in connection with settlements or the splitting of actions.”

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