Archive – Summaries of Selected Cases on Arbitration Decided by U.S. Courts of Appeals, with emphasis on the 6th Circuit Cases (updated through March 2013)

1. Arbitration Clauses Interpreted

Narrow Arbitration Clause Results in Protracted Piecemeal Litigation. In Turi, et al. v. Main Street Adoption Services, LLP, et al., 633 F.3d 496 (6th Cir. 2011), the Court of Appeals dismissed as premature the appeal of district court rulings on personal jurisdiction and venue, reversed the district court's retaining subject-matter jurisdiction over certain claims covered by an arbitration clause, but affirmed the district court's assertion of jurisdiction over the plaintiffs' remaining claims not covered by the arbitration clause. The plaintiffs sued an entity that facilitated adoption of foreign children on multiple causes of action. One of the issues was whether the arbitration clause in the adoption agreements foreclosed litigating the claims in federal court. The Court of Appeals held that the district court's denial of Main Street's motion, to dismiss the lawsuit and compel arbitration, was reviewable under the Federal Arbitration Act (FAA) and Fed. R. App. P. 4. Although it generally has jurisdiction only over final orders, the Court had interlocutory appellate jurisdiction because the FAA provision on appeals from refusals to stay a lawsuit or compel arbitration was intended to support a party's contract right to resolve certain questions through arbitration and avoid court proceedings. Rejecting the defendant's argument that an arbitrator must determine the question of arbitrability of the plaintiff's claims, the Court noted that the agreement to arbitrate was narrow, deliberately limited to fee disputes exceeding $5,000. In addition to fee disputes, the plaintiffs' claims involved disputes that were not related to fees, not intermingled with the fee disputes, and not even arguably covered by the arbitration clause. Since there was no ambiguity regarding subject-matter jurisdiction, there was no need for the arbitrator to decide arbitrability of any of the plaintiffs' claims.

Application of Poorly Drafted ADR Clause to Poorly Drafted Pleading. In Inhalation Plastics, Inc. v. Medex Cardio-Pulmonary, Inc., 383 F. App'x 517 (6th Cir. 2010) (not recommended for full-text publication), the Court interpreted the scope of a poorly drafted ADR clause in the context of a poorly drafted complaint, holding that the narrowly worded clause applied to a portion, but not all, of the lawsuit's claims.

Third Party Subject to Arbitration as Principal of a Party to Commercial Agreement. In MJR International, Inc. v. American Arbitration Association, Inc., et al., 398 F. App'x 115 (6th Cir. 2010) (not recommended for full-text publication), the Court addressed the binding effect and scope of an arbitration clause in a commercial agreement between Victoria's Collection and Oxford Investment Group. After Victoria's initiated arbitration proceedings, the arbitrator granted its request to add MJR International, Inc. as a party to the arbitration, on the theory that Oxford had signed the commercial agreement as an agent on behalf of MJR. In MJR's suit to enjoin the arbitration, the Court rejected MJR's arguments that: 1) Oxford was not acting as MJR's agent when it entered the agreement; and 2) the agreement's forum-selection clause contradicted the arbitration clause, with the resulting ambiguity precluding a finding that arbitration was the exclusive remedy under the agreement.

Cognovit Clause and Arbitration Clause in Contract. In Export-Import Bank of the United States v. Advanced Polymer Science, Inc, et al., 604 F.3d 242 (6th Cir. 2010), Export-Import Bank of the United States ("Ex-Im"), was assignee and holder of a promissory note and guaranties which included an arbitration provision and a confession of judgment clause. Ex-Im filed suit and obtained judgment against the guarantors. In their motion to vacate the judgment, the guarantors asserted, among other things, that because federal law favors arbitration, the confession of judgment clause conflicted with and must give way to the arbitration provision; otherwise the arbitration clause would be functionally useless. The Court of Appeals ruled in favor of Ex-Im, holding that

the "arbitration provision does not facially conflict with the confession of judgment provision, so the guaranties are not fatally ambiguous." Slip op. at 9.

2. Agreements to arbitrate

Dispute not Arbitrable. In Dental Associates, P.C., d/b/a Redwood Dental Group v. American Dental Partners of Michigan, LLC and American Dental Partners, Inc., 520 F. App'x 349 (6th Cir. 2013). (not recommended for full-text publication), the Court held that a dispute was not arbitrable. The parties had entered into multiple contracts, but the arbitration clause in one of the agreements was not part of an umbrella agreement governing the parties' overall relationship.

Continuity of Business after Merger. In Keith Dawson v. Rent-A-Center Inc., 490 F. App'x 727 (6th Cir. 2012). (not recommended for full-text publication), the Court held that an employee's agreement to arbitrate with his employer survived the employer's merger into another corporation because there was a "continuity of business" between the two companies.

No Agreement to Arbitrate in Last Integrated Contract. In Mark E. Dottore v. The Huntington National Bank, 480 F. App'x 351 (6th Cir. 2012). (not recommended for full-text publication), the receiver of an investment fund sued the bank in connection with an investment fraud case. Affirming the district court's denial of the bank's motion to compel arbitration, the Sixth Circuit held that there was no agreement to arbitrate under applicable Ohio law. The fund accounts were opened with agreements that contained no arbitration provision. Thereafter, when there was a bank merger, notice to all bank customers included an agreement to arbitrate. However, later, a representative of the investment fund signed a change of signature form that included "Your Deposit Account Terms and Conditions" that governed the account unless varied or supplemented in writing. This last contract is complete and unambiguous on its face, and is presumed integrated under Ohio Law. It has no arbitration provision. Therefore, extrinsic evidence of the parties' intent is not admissible.

3. Enforcement of Arbitration Clause: Court Procedure & Jurisdiction

Remember to Get Court Order Staying Proceedings during Mediation. One of the issues in Dixie M. Webb v. Kentucky State University et al, 468 F. App'x 515 (6th Cir. 2012) (not recommended for full-text publication), is whether the district court made a mockery of the mediation process and sabotaged the process by granting summary judgment in an employment discrimination case while the parties engaged in mediation. The Court of Appeals held that the district court properly granted summary judgment and noted that the plaintiff could have asked the court to stay court proceedings while the parties mediated.

Arbitration Clause in Copyright Case; Motion Filed in Wrong District but Stay Issued. In Telos Holdings, Inc. d/b/a Point Classics v. Cascade, GmbH, et al, 2009 WL 3415157, Case No. 3:09-0380, 2009 U.S. Dist. LEXIS 96687 (M.D. Tenn. October 19, 2009), Point Classics and Cascade had entered into a Licensing Agreement regarding 49 sound recordings. The Agreement included a clause specifying that disputes be resolved by arbitration in Malibu, California. Point Classic sued Cascade and other defendants in the Middle District of Tennessee, alleging copyright infringement regarding the 49 recordings as well as 2,400 other recordings. On defendant Cascade's motion to compel arbitration, the district court held that: 1) the arbitration clause was valid and applied to the 49 recordings; 2) although the court cannot compel arbitration in this case because the Agreement required arbitration in Malibu, outside its judicial district, it is proper for the court to invoke its inherent authority to stay the arbitrable portion of the litigation to allow the parties time to agree on how to proceed with the arbitration or allow the moving party to file a motion to compel arbitration in the appropriate district; and 3) given that a portion of the litigation is subject to

arbitration, a stay of the remaining claims is mandatory under Section 3 of the Federal Arbitration Act.

4. Enforcement of Arbitration Clause: Waiver

The Circuit Courts of Appeal vary in evaluating waiver claims. *Compare* Garcia v. Wachovia Corp, 699 F.3d 1273 (11th Cir. 2012) (defendant in class action waived arbitration), copy available at http://www.ca11.uscourts.gov/opinions/ops/201116029.pdf, *with Rota-McLarty v. Santander Consumer USA, Inc.*, No. 11-1597, 2012 WL 5936033 (4th Cir. Nov. 28, 2012) (party may lose right to compel arbitration if "in default in proceeding with such arbitration" under 9 U.S.C. § 3; defendant did not default under analysis of two factors, (1) amount of delay and (2) extent of moving party's trial-oriented activity; reason for delay not relevant), copy available at http://www.ca4.uscourts.gov/Opinions/Published/111597.P.pdf.

In *Johnson Associates Corp. v. HL Operating Corp.*, 680 F.3d 713 (6th Cir. 2012), the Sixth Circuit held that the defendant waived its contractual right to arbitration in a case where, over an 8 month period, the defendant obtained an extension of time to answer the complaint, asserted 10 affirmative defenses and a counterclaim, engaged in a judicial settlement conference and other informal settlement efforts, requested changes in the Case Management Order, and engaged in discovery. The plaintiff was prejudiced in that the discovery was not fully transferrable to the arbitration process. Following prior Sixth Circuit precedent, the Court stated that "'a party may waive an agreement to arbitrate by engaging in two courses of conduct: (1) taking actions that are completely inconsistent with any reliance on an arbitration agreement; and (2) delaying its assertion to such an extent that the opposing party incurs actual prejudice.'" *Id.* at 717.

In *Hurley et al. v. Deutsche Bank Trust Company Americas, et al.*, 610 F.3d 334 (6th Cir. 2010), the plaintiff had alleged violations of the Servicemembers' Civil Relief Act and state law claims. The Court held that the defendants waived their right to enforce an arbitration clause in mortgage documents because they took actions completely inconsistent with any reliance on the arbitration agreement for 26 months, and their delay resulted in actual prejudice to the plaintiffs.

5. Class Arbitration

Arbitrator's Decision to Allow Class Arbitration. The U.S. Supreme Court cited the *Jock* case in its decision in Oxford Health Plans LLC v. Sutter, 133 S.Ct. 2064 (2013). The Court had denied certiorari in *Jock, Sterling Jewelers Inc. v. Laryssa Jock et al*, No. 11-693 (U.S. March 19, 2011), leaving intact the Second Circuit Court of Appeal's decision in *Jock v. Sterling Jewelers Inc.*, 646 F. 3d 113 (2nd Cir. 2011) . Distinguishing *Jock* from *Stolt-Nielsen*, the Second Circuit reversed a trial court's decision to vacate an arbitration award allowing class arbitration. The district court granted the plaintiffs' motion to stay the litigation and refer the matter to arbitration. The arbitrator decided (before the Supreme Court had issued its decision in *Stolt-Nielsen*) the plaintiffs could proceed with a class arbitration. Construing the parties' arbitration agreement against its drafter, Sterling, the arbitrator noted the agreement did not include an express prohibition of class claims and did not mention class claims. The agreement did include, however, arbitration provisions more broadly worded than the agreement in *Stolt-Nielsen*: employees may "'seek and be awarded equal remedy through [Sterling's] REVOLVE [dispute resolution] program'" and the arbitrator had "'the power to award any types of legal or equitable relief that would be available in a court of competent jurisdiction.'" Sterling had chosen not to revise its RESOLVE contract, even though several arbitral decisions in the past had permitted class claims. The district court vacated the arbitrator's award, finding the case factually indistinguishable from Stolt-Nielsen. The Second Circuit reversed, holding that the lower court had "improperly substituted its own interpretation of the parties' arbitration agreement for that of the arbitrator's to conclude that the arbitrator had

reached an incorrect determination that the parties' arbitration agreement did not prohibit class arbitration." The district court substituted its own legal analysis for the arbitrator's and failed to conduct the proper inquiry: "whether, based on the parties' submissions or the arbitration agreement, the arbitrator had the authority to reach an issue." The stipulated "silence" of the parties in Stolt-Nielsen was interpreted by the Supreme Court to mean the parties "'had not reached any agreement on the issue of class arbitration.'" That is, there was no explicit or implicit agreement to submit to class arbitration. Also, simply agreeing to arbitrate "does not equal an agreement to class-action arbitration." The issue in this case is whether the arbitrator had the power to reach a certain issue, not whether the issue was correctly decided. An arbitrator exceeds her authority by considering issues beyond those submitted by the parties or reaching issues clearly prohibited by law or by the terms of the parties' contract. Section 10(1)(4) imposes a high hurdle for vacating an award. The district court erred in engaging in a substantive review of the arbitrator's decision. The question of class arbitration was properly submitted to the arbitrator. Neither the law nor the parties' agreement categorically barred the arbitrator from deciding the issue – *Stolt-Nielsen* does not stand for the proposition that arbitration agreements can only be construed as permitting class arbitrations where they have express provisions permitting class arbitrations. The agreement in this case does not prohibit the arbitrator from determining whether the agreement contemplates class arbitration. She had a colorable justification for her decision under Ohio law – Ohio law does not bar class arbitration. An intervening change of law, standing alone, is not grounds for vacating an otherwise proper award. Unlike the arbitrator in *Stolt-Nielsen*, the arbitrator here did not base her decision on public policy grounds.

6. Scope of Arbitrator's Authority

Telecom Arbitration. Ohio Bell Tel. Co. v. Pub. Utils. Comm'n of Ohio, 711 F.3d 637 (6th Cir. 2013) involved an arbitration conducted by the Public Utilities Commission of Ohio. The Court held that the Commission did not exceed its authority in its determination on how two telecom carriers should interconnect their networks to service 9-1-1 calls under the federal Telecommunications Act of 1996. Specifically, it did not exceed its authority by applying Section 251(a) of the Act when one of the carriers had petitioned only for interconnection under Section 251(c)(2).

Arbitrator Exceeded Scope of Authority in Contract Interpretation; "Functus Officio" Doctrine. In Muskegon Central Dispatch 911 v. Tiburon, Inc., 462 F. App'x 517 (6th Cir. 2012) (not recommended for full-text publication), the Court of Appeals affirmed the district court's decision vacating an arbitrator's award and remanded the dispute to a new arbitrator. The arbitrator exceeded the scope of his authority: 1) by concluding that one of the parties to a contract had the responsibility to escalate and complete a contractual dispute resolution procedure, and 2) by reading a contract provision as a mandatory and exclusive procedure for the parties to seek contract damages. A new arbitrator was appropriate on remand under the "functus officio" doctrine (non-judicial official without further authority because duties of original commission fully accomplished).

7. Appointment of Arbitrators

Multi-Party Cases. In BP Exploration Libya Ltd. V. ExxonMobil Libya Ltd., 689 F.3d 481 (5th Cir. 2012), the Fifth Circuit discussed appointment of arbitrators in a multi-party case. The arbitration provisions in a contract involving BP, ExxonMobil, and Noble North Africa Limited contemplated a dispute with only two parties. When a breakdown in agreeing on a panel of arbitrators occurs, the District Court has the authority under 9 U.S.C. § 5 to intervene and appoint arbitrators. The District Court erred, however, when it deviated from the parties' express agreement to arbitrate before a three-member panel. It improperly required each of the three parties to select an arbitrator, with those

three arbitrators to then select two neutral arbitrators, resulting in a five-member panel. Because of the express agreement, a three-member panel is required. Copy of opinion at http://www.ca5.uscourts.gov/opinions/pub/11/11-20547-CV0.wpd.pdf.

8. *Ex parte* communication with arbitrator

Ex parte communication not grounds to vacate award. In Barrick Enterprises, Inc. v. Crescent Petroleum, Inc. et al. 496 F. App'x 614 (6th Cir. 2012) (not for full-text publication), Crescent Petroleum, Inc., one of the parties in an arbitration of a contract dispute, attacked the award on two grounds. First, the arbitrator had *ex parte* communications with an employee of the other party, prejudicing Crescent and exceeding the arbitrator's authority. Second, the arbitrator applied the wrong evidentiary standard. Rejecting Crescent's arguments, the Court of Appeals first considered the provision in the arbitration agreement on the issue of whether *ex parte* questioning was permitted: "[t]he Arbitrator shall be free to direct questions and request documents or records from the parties as may be needed to evaluate and render a final determination of the Account Balance so long as any such questions or requests, and the subsequent disclosures thereto, are disclosed to the opposing party." Finding that it was unclear whether the arbitrator had to just alert parties that questioning would occur and cover certain subjects (which he did), or whether he must disclose the actual questions asked (which he did not), the Court declined to set aside the award given the arbitrator's interpretation of the disclosure requirement. Moreover, Crescent acquiesced to the *ex parte* questioning. Lastly, the arbitrator (an accountant) did not go beyond his expertise in his decision and did not adopt an impermissible liability standard.

9. Appeal arbitrator

Case with trial and appeal levels of arbitration; no grounds to vacate; district court addition to award not error. Stonebridge Equity, dba Stonebridge Business Partners v. China Automotive Systems, Inc., 520 F. App'x 331 (6th Cir. 2013).(not for full-text publication), a contract dispute case, involved a trial arbitration, followed by review by an appeal arbitrator, federal district court, and the Court of Appeals. The Court of Appeals held that: 1) the arbitrator did not manifestly disregard the law by using extrinsic evidence to interpret an ambiguous contract (without the Court deciding whether manifest disregard survives *Hall Street*); 2) the trial arbitrator's award drew its essence from the contract and therefore did not violate the arbitration agreement; 3) the appeal arbitrator was not required to state in her decision that she was applying de novo review of the award where she clearly knew that she was so required; and 4) the district court's addition of a minor paragraph to the arbitration award for enforcement purposes was permissible under 9 U.S.C. § 11 (court may "modify and correct the award, so as to effect the intent thereof and promote justice between the parties).

10. Preserving issues for court review

Third party adequately objected to arbtrator's jurisdiction; arbitrability is issue for court. In David C. Tabor, M.D. v. Glenwood Systems, LLC, dba Glenwood Systems, Inc., 485 F. App'x 821 (6th Cir. 2012) (not for full-text publication), an arbitrator issued an award against Dr. Tabor. Crossville Medical Oncology, P.C. (solely owned by Tabor) had sued Glenwood Systems, Inc. regarding a medical billing services agreement. After Crossville and Glenwood were ordered to arbitrate, Glenwood filed a counterclaim against both Crossville and Dr. Tabor individually. At a preliminary arbitration hearing, counsel for Crossville objected that Tabor was not a proper party. Even though he never objected in writing, Tabor had not clearly and unmistakably agreed to submit the issue of arbitrability to the arbitrator. Arbitrability should have been decided by the federal district court, per *First Options of Chicago, Inc. v. Kaplan,* 514 U.S. 938 (1995). The Court of Appeals reversed the district court's decision confirming the arbitration award and remanded

the case to the court to determine whether Dr. Tabor was bound by the arbitration agreement.

FINRA arbitration. In Murray v. Citigroup Global Mkts., Inc., 511 F. App'x 453 (6th Cir. 2013), an employee sued his employer in state court. The employer removed the case to federal district court and successfully moved to compel a FINRA arbitration. After the arbitration, the employee moved to vacate. The Court of Appeals held that the district court properly denied the motion. The employee failed to challenge the scope of the arbitration panel's authority and therefore forfeited his arguments that the panel exceeded its authority. Further, the employee failed to request a reasoned award from the panel which automatically doomed his manifest disregard argument.

11. Motions to Confirm Interim Award: Ripeness

Post-Stolt-Nielsen Ripeness. In Dealer Computer Services, Inc. v. DUB Herring Ford, et al., 623 F.3d 348 (6th Cir. 2010) *rehrg. and rehrg. en banc den.* (2010), the Court considered the impact of *Stolt-Nielsen* on a ripeness issue: did the district court have jurisdiction to confirm an arbitration panel's interim award denying class arbitration? The district court, following guidance provided by the Court of Appeals in a pre-*Stolt-Nielsen* ruling, determined that the case was not ripe, it lacked jurisdiction, and dismissed the motion of Dealer Computer Services (DCS) to confirm the arbitrator's interim award. The majority of the Court of Appeals affirmed, agreeing that the appellant failed to demonstrate that it was subject to cognizable hardship if immediate judicial review of the interim award were denied. The dissent, on the other hand, stated that in the aftermath of *Stolt-Nielsen*, the Court's prior holding in the case involving the parties was no longer the law and DCS had shown that the case was ripe.

12. Motions to Confirm Award

Enforcement of Arbitration Award. In Equitable Resources, Inc., v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC; Local 8-512, 621 F.3d 538 (6th Cir. 2010), the Court affirmed the district court's order enforcing an arbitration award entered in favor of a union. The Court rejected Equitable claims that the Award was defective: 1) the arbitrator did not act outside of his authority by imposing the CBA on non-parties; 2) the arbitrator did not resolve a labor representation dispute not committed to arbitration; 3) the remedy will not violate public policy in implementation; and 4) the arbitrator did not dispense his own brand of industrial justice.

Consequences of Not Providing Arbitration Agreement to Arbitrator. In Quintin and Courtney MacDonald v. William E. Gunther, Jr. (In Re: William E. Gunther, Jr.), 431 B.R. 307 (B.A.P. 6th Cir. 2009), homeowners had obtained an arbitration award against a property inspector who later filed bankruptcy in 2007. The arbitrator ruled in favor of the homeowners, awarding more than $98,000 in damages and providing that each party bear their own arbitration costs and expenses. In 2006 the Chancery Court confirmed the arbitration award, but denied the homeowners' request for an increase in the amount of the award, citing Tenn. Code Ann. § 29-5-314. During the arbitration, the parties did not provide to the arbitrator their July 2005 agreement to arbitrate ("July Agreement"). The July Agreement provided that if the homeowners received an arbitration award in excess of $10,000, then the home inspector shall pay the entire fee of the arbitrator, and if either party filed suit to enforce the terms of the agreement, then the prevailing party shall be entitled to recover reasonable attorney's fees and other costs associated with the litigation. Under these circumstances, the homeowners should not have sought confirmation of the award in Chancery Court without a request that allocation of costs be severed from the judgment as beyond the scope of the arbitrator's authority. Also, the homeowners either failed to ask the Chancery Court to award costs and expenses of pursuing confirmation of the award, or they made a request that was denied. Any rights under the July Agreement were subsumed

by the arbitration award and the Chancery Court's confirmation of the award. Therefore, the Bankruptcy Court correctly disallowed the portion of the homeowners' proof of claim for arbitration expenses and attorney's fees based on the July Agreement.

13. Motions to Vacate

Deciding Arbitrator Bias Issue. In Scandinavian Reinsurance Co. Ltd. V. St. Paul Fire & Marine Ins. Co., 668 F.3d 60 (2d Cir. 2012), two arbitrators failed to disclose service as arbitrators in another concurrent arbitration involving common witness, similar legal issues, and a related party. To determine whether overlapping service showed bias, the Second Circuit enumerated a non-exhaustive list of factors to consider.

14. Appeal: Applicable Law

State Law not FAA Applied; Less Deference to Arbitrator's Decision. In Evanston Insurance Company v. Cogswell Properties, LLC, 683 F.3d 684 (6th Cir. 2012), *rehrg and rehrg en banc den.* (2012), an insurance policy included the following appraisal provisions: "'[a] decision agreed to by any two [umpire and appraisers] will be binding'" and "'[i]f there is an appraisal we [Evanston Insurance] will still retain our right to deny the claim.'" The policy did not require a hearing-type appraisal process. It therefore did not constitute an arbitration agreement for purposes of the Federal Arbitration Act with its more deferential court review provisions. Under Michigan law, an appraisal clause "'constitutes a common-law arbitration agreement,'" not a statutory arbitration agreement, for the limited purpose of determining the appropriate standard of judicial review of appraisal awards. The district court correctly ruled that the appraisal award at issue "demonstrated a manifest mistake and an error of law."

15. Collateral Estoppel

Collateral Estoppel Effect of Arbitration Decisions. Schreiber v. Philips Display Components Co., 580 F.3d 355(6th Cir. 2009) (Not followed as Dicta by Bender v. Newell Windon Furnishings, Inc., 681 F.3d 253 (6th Cir. 2012)), is an LMRA and ERISA case in which the plaintiffs alleged breach of a collective bargaining agreement and fiduciary duties regarding retiree health benefits. A prior arbitration decision addressed the employer's obligation to provide life insurance benefits to certain retirees. The Court recognized significant precedent that an arbitrator's decision has preclusive effect in federal court if the elements of collateral estoppel are met. On remand, the appellee employer may be able to establish that portions of the retirees' claims are barred by collateral estoppel. 580 F.3d at 367-68.

16. Arbitrator Decision Displaced Court Default

In In Re Frank Barracco v. JP Morgan Chase Bank, N.A., 491 F. App'x 622 (6th Cir. 2012)(not recommended for full-text publication), affirming a district court's reversal of a bankruptcy court's decision, the Court held that an arbitrator's decision displaced a state court default judgment.

17. Collective bargaining agreements

Arbitrability under Collective Bargaining Agreements

In Int'l Assoc. of Machinists & Aerospace Workers, AFL-CIO, Local Lodge 1943, v. AK Steel Corp., 615 F.3d 706 (6th Cir. 2010), the district court granted summary judgment to the union in its suit to compel the arbitration of grievances against the company. The parties had a Return to Work Agreement that did not have a "clear and unmistakable" provision that an arbitrator would decide substantive arbitrability of issues, but their subsequent long-term Collective Bargaining Agreement (CBA) did have such a provision. Reversing the district court, the Court of Appeals held that the district court, not an arbitrator, must: 1) determine whether the grievances arose under the parties' Return to Work Agreement; and, 2) if so, also decide the substantive arbitrability of those grievances. Any

grievances falling under the CBA would go to an arbitrator.

In Teamsters Local Union No, 783 v. Anheuser-Busch Inc., 626 F.3d 256 (6th Cir. 2010), the union filed suit to compel arbitration of a grievance over a section of the collective bargaining agreement and its effect on pension rights and benefits. On appeal, the majority of the Court held: 1) the union's complaint was not time-barred under the 6 month statute of limitations under Section 10(b) of the National Labor Relations Act; and 2) the grievance regarding an employee's pension rights was expressly excluded from the parties' broad arbitration agreement.

In *Teamsters Local Union No. 89 v. The Kroger Co., et al.,* 617 F.3d 899 (6th Cir. 2010)(Declined to Follow by 36th Dist. Court v. AFSCME Local 917 (Mich. App. 2012)), the union had filed suit to compel arbitration pursuant to a collective bargaining agreement (the Master Agreement) that contained a broad arbitration clause. The Court of Appeals rejected Kroger's arguments that: 1) employees were not eligible to invoke the the Master Agreement's grievance procedures because the employer-employee relationship between Kroger and the local union members terminated in when Kroger subcontracted operations to other entities; 2) a Letter of Understanding between Kroger and the union was evidence that the Master Agreement's grievance procedures had ceased to apply and that any grievances arising under the Letter of Understanding fell outside the scope of the Master Agreement's arbitration provision. The Court concluded that Kroger failed to rebut the presumption in favor of arbitratility.

Seniority grievance case; extremely limited Court review authority. Brotherhood of Locomotive Eng'rs & Trainmen v. United Transp. Union, 700 F.3d 891 (6th Cir. 2012) affirms an arbitration board's decision regarding a seniority grievance under the Court's extremely narrow review authority. The Court's opinion includes analysis of the terms of the collective bargaining agreements at issue, the Railway Labor Act, the U.S. Supreme Court's Steelworkers Trilogy and its progeny, as well as *Michigan Family Resources, Inc. v. Service Employees Int'l Union Local 517M,* 475 F.3d 746 (6th Cir. 2007) (en banc) and *Titan Tire Corp. of Bryan v. United Steelworkers of Am., Local 890L*, 656 F.3d 368, 372 (6th Cir. 2011).

De novo review of alter ego determination. In Road Sprinkler Fitters Local Union No. 669, U.A. v. Dorn Sprinkler Co., 669 F.3d 790 (6th Cir., 2012), the Court held that an employer was not an alter ego of a company that had a collective bargaining agreement and, therefore, was not required to arbitrate grievances. Discussing the possibly conflicting authority in the Sixth Circuit, the Court held that de novo review is the proper standard for reviewing a district court's determination of an alter ego issue on summary judgment, even though that determination is fact intensive.

Failure to pursue arbitration. In Emswiler v. CSX Transp., Inc., 691 F.3d 782 (6th Cir. 2012)(Declined to Follow: Oakey v U.S. Airways Pilots Disability Income Plan (D.C. CA. July 19, 2013)), an employee sued his employer and union after his seniority was adjusted. The district court properly granted summary judgment to the employer and union because the employee failed to pursue arbitration mandated by the Railway Labor Act.

Related entities. *In Printing Service Company v. Graphic Communications Conference of the International Brotherhood of Teamsters, Local 508 of District Council 3*, F. App'x 632 (6th Cir. 2012) (not for full-text publication), reversing the district court, the Court of Appeals held that the arbitrator correctly determined that the collective bargaining agreement applied to the purchase and use of a printer by the company's related entity that was a non-union shop.