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MISSISSIPPI SUPREME COURT NIXES ARBITRATION AGREEMENT, ALLOWS EMOTIONAL DISTRESS AWARD WITHOUT PROOF OF INJURY

On June 14, 2007, and June 21, 2007, the Mississippi Supreme Court issued two decisions adversely affecting all Mississippi employers.

In *Smith v. Captain D's LLC*, No. 2006-CA-00024-SCT, 2007 WL 1704343 (Miss. 2007), the Court held that an employee was not required to arbitrate her sexual assault claim because the claim was not covered by her agreement to arbitrate employment claims. On August 17, 2004, Tammy Smith sued her employer, Captain D's and a co-worker, Christopher Howell, saying that Howell raped her during working hours and that Captain D's negligently hired and supervised Howell. Captain D's asked the trial court to compel arbitration, based on an arbitration agreement in Smith's employment application. The trial court granted Captain D's motion. Smith then appealed to the Mississippi Supreme Court, arguing that - (1) she did not agree to arbitrate; (2) if she did, the contract was not binding; and (3) if it was binding, it wasn't broad enough to cover a sexual assault claim. The Court ruled for Smith on that last point, finding her sexual assault claim unrelated to her employment. The court therefore reversed the arbitration order and reinstated Smith's suit.

In *Jones v. Fluor Daniel Services Corp.*, No. 2005-CA-00825-SCT, 2007 WL 1775523 (Miss. 2007), the Court reversed a summary judgment that dismissed emotional distress and other claims brought by African-American employees who asserted that their supervisor had used



racially insulting words on the job and had treated Hispanic co-workers better. Among other things, the plaintiffs claimed that the supervisor, while talking to Hispanic co-workers, referred to them as “monkeys.” However, they offered no evidence of actual injury. Their appeal required the Mississippi Supreme Court to consider whether outrageous words alone can support a jury verdict awarding money damages for intentional infliction of emotional distress. The Court’s answer: The Court held that if plaintiffs proved their allegations, even without any proof of actual injury, jurors could award damages, since this tort claim is justified by the outrageous nature of the conduct itself, rather than the damage inflicted. Therefore, the Court reversed the trial court’s judgment with respect to the plaintiffs’ claims for intentional infliction of emotional distress and remanded the case to the trial court for proceedings on those claims.

Consequences

The *Captain D’s* Court departed from a decade-long trend favoring enforcement of arbitration agreements. It is too early to tell whether this signals a course reversal. It certainly warns employers to make their employment arbitration agreements as broad *and* as specific as possible. The news on emotional distress claims is worse: words *can* hurt you even more than sticks and stones.

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L A B O R A N D E M P L O Y M E N T C O N T A C T S

BIRMINGHAM, AL

David R. Boyd
205.226.3485
dboyd@balch.com

Leslie Allen Coyne
205.226.3484
lallen@balch.com

Aaron L. Dettling
205.226.8723
adettling@balch.com

Monica G. Graveline
205.226.8722
mgraveli@balch.com

Douglas B. Kauffman
205.226.8758
dkauffman@balch.com

Lisa J. Sharp
205.226.8714
lsharp@balch.com

M. Jefferson Starling, III
205.226.3406
jstarling@balch.com

JACKSON, MS

R. Pepper Crutcher, Jr.
601.965.8158
pcrutcher@balch.com

Armin J. Moeller, Jr.
601.965.8156
amoeller@balch.com

David M. Thomas, II
601.965.8157
dthomas@balch.com

E. Russell Turner
601.965.8159
rturner@balch.com

ATLANTA, GA

T. Joshua R. Archer
404.962.3556
jarcher@balch.com

Michelle Rothenberg-Williams
404.962.5349
mrothenberg-williams@balch.com

MONTGOMERY, AL

David R. Boyd
334.269.3132
dboyd@balch.com

W. Pete Cobb, II
334.269.3128
pcobb@balch.com

Charles B. Paterson
334.269.3143
cpaterso@balch.com

John G. Smith
334.269.3150
jgsmith@balch.com

Dorman Walker
334.269.3138
dwalker@balch.com

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