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Washington Supreme Court Ignores Choice of Law Provision in Consumer Phone Services Contract

Online contracts accepted by consumers typically specify which state’s law governs the legal interpretation of the contract. Companies generally specify the law of the state where the company is located, but courts don’t always follow that choice, which may leave the company bound by the unfamiliar laws of another state.

In *McKee v. AT&T Corp.* (2008) 164 Wn.2d 372, 191 P.3d 845, a telephone services customer claimed that AT&T wrongly charged him a city utility tax and exorbitant late fees. The parties were subject to AT&T’s Consumer Services Agreement, which specified that no class actions would be permitted. McKee, however, filed a class action.

In addressing plaintiff’s right to pursue a class action, the Washington Supreme Court ruled that the choice of law provision in the contract specifying New York law was unenforceable and that instead Washington law governed the resolution of this issue.

On its face, the contract specified that New York law - which allows waivers of class-based relief - governed the parties’ agreement. Generally, Washington courts enforce a contract’s choice of law provision but, as in many states, the provision is disregarded if: (1) without the provision, Washington law would apply; (2) the chosen state’s law violates a fundamental public policy of Washington; and (3) Washington’s interest in the determination of the issue materially outweighs the specified state’s interest. The court found that each of these tests was met, so applied Washington law in determining the enforceability of the contract’s class action waiver.

First, the court determined that if not for the choice of law provision, Washington law would apply to the contract. In its analysis the court looked to: (a) the place of contracting, (b) the location of the subject matter of the contract, (c) the place of performance of the contract, and (d) the residence or place of incorporation of the parties. New York was the state of AT&T’s incorporation, however, Washington was the place of contracting, the place of performance, the location of the subject matter, and the residence of the plaintiff.

Second, Washington law protects consumers through the availability of class actions. Because class action waivers are enforceable under New York law, it conflicts with Washington’s fundamental public policy favoring the availability of class-based relief for consumer claims.

Third, Washington’s interest in protecting large classes of Washington consumers materially outweighs New York’s limited interest in this dispute, which was solely based on AT&T being a New York corporation.

WHY THIS IS IMPORTANT

California based companies often assume that, because their contracts specify California law as governing, any disputes automatically will be governed by California law. This can be a risky assumption. When a California company does business in another state or country, no matter what chosen law is in the contract, a chance exists that a foreign court may instead apply that state’s or country’s law to the contract. Depending upon the degree of difference between the laws of California and that of the foreign jurisdiction, the company may wind up with an unexpected – and unwelcome - interpretation of its contractual relationship.

What is known as “conflicts of laws” is a very complex legal topic that cannot be adequately addressed in an email update. If your business is faced with the drafting and/or interpretation of contracts where these issues can come into play, we recommend you consult with a knowledgeable legal advisor.

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