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TEXAS INSURANCE LAW NEWSBRIEF



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TEXAS SUPREME COURT GRANTS MANDAMUS RELIEF TO COMPEL ARBITRATION IN CONSTRUCTION DEFECTS CASE

The Supreme Court of Texas recently granted mandamus relief to a homebuilder seeking to arbitrate construction defects cases after the trial court certified a class action lawsuit against it. In a per curiam opinion, *In Re U.S. Home Corporation, et.al., Relators* No.03-1080 (Tex. October 12, 2007), the high court reviewed the trial court's refusal to compel arbitration - as requested by the builder - in a class action lawsuit arising from the homebuilder's alleged failure to install shower pans in the homes and related claims for mold damage and alleged physical illnesses.

In conditionally granting mandamus relief to compel arbitration as provided for in the purchase agreement, the Court disagreed with the trial court on five specific issues and found that: 1) "there is nothing per se unconscionable about arbitration agreements," 2) the arbitration agreements were not procured by fraud despite having been printed on the back of the single-sheet contract, 3) the agreement was supported by mutual consideration, 4) fees as charged under the schedule provided by the American Arbitration Association were not unduly burdensome and costly, and 5) while the agreement provided for mediation and arbitration, mediation was not a condition precedent for arbitration. The Court found that the contract was not ambiguous and the claims were subject to the arbitration provision. Accordingly, the Texas Supreme Court conditionally granted the homebuilders' petition for writ of mandamus directing the trial court to grant the motion to compel arbitration.

EMPLOYEE'S CHILDREN NOT BOUND BY NONSUBSCRIBER'S ARBITRATION PROVISION

The Corpus Christi Court of Appeals recently denied mandamus relief to an employer seeking to compel arbitration of the employee's minor children's claims against the employer despite an arbitration agreement between the employer and employee. In *In Re SSP Partners*, 2007 WL 2948313 (Tex.App. – Corpus Christi, October 11, 2007), an employee was stabbed while working at one of SSP's convenience stores. SSP is a nonsubscriber under the Texas Workers' Compensation Act and had established a plan that provided benefits for on-the-job injuries which included a provision requiring the employee to arbitrate any related disputes. A dispute arose

and the employee pursued arbitration. The employer also sought to arbitrate the employee's minor children's loss of parental consortium claims.

In denying the employer's request to compel arbitration of the children's claims, the court observed that "the children's claims are separate and distinct from those asserted by Garcia [the employee] under the contract." They also noted that while a claim for loss of parental consortium is derivative to the extent liability must be established, it is separate and independent, and not automatically extinguished because an injured parent settled (or agreed to arbitrate) her claim for personal injuries. The Court concluded: "the rules of law or equity do not bind Garcia's minor children to her contract and that they are not subject to arbitration as third party or direct beneficiaries of the arbitration agreement." Accordingly, the employer's petition for writ of mandamus was denied.

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