MISCELLANEOUS

SUPREME COURT UNANIMOUSLY HOLDS A TRANSPORTATION WORKER DOES NOT NEED TO WORK IN THE TRANSPORTATION INDUSTRY TO BE EXEMPT FROM COVERAGE UNDER SECTION 1 OF THE FAA.

Bissonnette v. LePage Bakeries Park St., LLC, 601 U.S.__ (2024). https://www.supremecourt.gov/opinions/23pdf/23-51_6647.pdf

FACTS: Petitioners Neal Bissonnette and Tyler Wojnarowski ("Petitioners") owned rights to distribute Respondent Flowers Foods, Inc.'s ("Respondent") products in certain parts of Connecticut. The relationship between the parties began with a contract allowing the purchase of the rights to distribute Respondent's products, which stated that any disputes would be arbitrated through the Federal Arbitration Act (FAA). Respondent baked goods, which were then sold and distributed by Petitioners. Petitioners later brought a putative class action against Respondent for underpaying them in violation of state and federal law.

Respondent moved to compel arbitration. Petitioners argued that they were exempt from arbitration under the FAA because they fell within an exemption in §1 of the Act, which applies to contracts of employment with seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce. The District Court dismissed the case in favor of arbitration, concluding that Petitioners were not "transportation workers" as specified under §1. The Second Circuit affirmed, stating that Petitioners are in the bakery industry, not the transportation industry.

HOLDING: Vacated and remanded.

REASONING: Respondent argued that the §1 exemption would become too broad if the Court did not follow the Second Circuit's implied transportation-industry requirement. Respondent also contended that the Court's analysis in Saxon "suggests" that working in the transportation industry is necessary but not sufficient for §1 to apply. Arbitration agreements are considered valid, irrevocable, and enforceable under the FAA.

The Court has previously declined to adopt an industry-wide approach to §1. The Court held that a transportation worker does not need to work in the transportation industry to be exempted under §1 of the FAA. The Court disagreed with the Second Circuit's approach to determining whether an entity falls within the transportation industry, arguing that the Second Circuit's test would create unnecessary complications regarding the nature of a company's services. The Court emphasized that §1 is not infinitely broad but rather narrow, requiring a transportation worker to, at a minimum, play a direct and "necessary role in the free flow of goods" across borders.

Because the Second Circuit did not base its conclusions on this Court's precedents regarding the transportation-industry requirement, it did not apply the correct test, thus opening the door to "arcane riddles" when considering the nature of a company's services. Therefore, the Court determined that a transportation worker does not need to work for a company within the transportation industry to be exempt under §1 of the FAA.

TEXAS SUPREME COURT HOLDS PUBLIC ADJUSTER LICENSING LAWS REQUIRING A LICENSE AND PREVENTING CERTAIN CONDUCT DOES NOT VIOLATE THE ROOFER'S FREE SPEECH RIGHTS

Texas Dep't of Ins. v. Stonewater Roofing, Ltd. Co., 641 S.W.3d 794 (Tex. 2024).
https://law.justia.com/cases/texas/supreme-court/2024/22-0427-1.html

FACTS: Appellant Stonewater Roofing Ltd. (Stonewater), a roofing contractor that was not a licensed public insurance adjuster, sued to invalidate Texas's licensing and dual-capacity regulations, alleging that the laws violated the free speech and due process rights guaranteed by the First and Fourteenth Amendments. The laws required public adjusters to obtain a license and prohibited unlicensed individuals from performing certain activities related to insurance claims. The trial court ruled in favor of the state regulator, asserting that the First Amendment is inapplicable because the challenged laws regulate professional conduct, not speech. Stonewater appealed.

HOLDING: Affirmed.

REASONING: Stonewater argued that the state regulator law's requirements restricted its ability to communicate freely with insurers and clients, thereby infringing on its constitutional rights. The Texas Supreme Court rejected this argument, reasoning that the primary role of a public adjuster involves non-expressive commercial activities rather than pure speech.

Stonewater argued that the state regulator law's requirements restricted its ability to communicate freely with insurers and clients, thereby infringing on its constitutional rights.

The court distinguished between professional conduct and speech, concluding that the defined profession of public adjusting focuses on non-expressive commercial activities like evaluating insurance coverage, assessing property damage, and calculating repair costs. These activities are inherently non-expressive and thus not protected by the First Amendment in the same way as pure speech.

The court acknowledged that while some aspects of a public adjuster's work involve communication, these communications are incidental to the core professional activities. These tasks do not transform into protected speech merely because they involve some level of communication. Therefore, the licensing requirements and restrictions imposed by the statute do not unduly burden free speech rights.

The court also referenced the Eleventh Circuit's decision in *Del Castillo v. Secretary, Florida Department of Health*, which

upheld a similar licensing scheme for dieticians and nutritionists. The Eleventh Circuit held that advising and assisting individuals on appropriate nutrition intake was occupational conduct, not speech, and thus subject to professional regulation. The court found this reasoning persuasive and applicable to this case as the laws regulate professional conduct incidental to speech and thus only require First Amendment rational basis review. The court additionally noted that false commercial statements made while holding oneself out as an adjuster could be restricted, aligning with precedents that allow the regulation of false or misleading commercial speech.

In conclusion, the court affirmed the trial court's ruling and held that the public adjuster licensing laws are constitutional as they regulate non-expressive conduct and only incidentally burden speech, ensuring that professional standards are maintained without infringing on free speech rights.

CAR RENTAL "JACKETS" ARE PART OF CONTRACT WITH CAR RENTAL COMPANY.

Calderon v. Sixt Rent a Car, LLC, ___ F. 3d ___ (11th Cir 2024). https://law.justia.com/cases/federal/appellate-courts/ca11/20-10989/20-10989-2024-08-15.html

FACTS: Plaintiffs Phillippe Calderon of Florida, Ancizar Marin of Arizona, and Kelli Borel of Colorado rented a vehicle from Sixt. Usually, a customer renting from Sixt receives their rental agreement when picking up their rental car. The Sixt rental agreement came in two parts: the Face Card and the Terms and Conditions (the "T&C"). The Face Card would provide the terms specific to that customer's rental and include the customer's signature on the bottom, while the T&C contained the general terms applicable to Sixt rentals. Right above the signature line on the face card, the text states that by signing below, the signer also assents to the T&C in the rental jacket. The T&C established the customer was responsible for any damage during the rental period and appeared most often in a preprinted booklet called "Rental Jacket."

Sixt argued that because the plaintiffs signed the Face Card using an electronic signature pad, the T&C provisions related to damages and fees were not incorporated by reference.

While each plaintiff's experience obtaining their rental was different, they all reported some similar variation such as not being informed of the Rental Agreement or being unaware that they were signing it. After each plaintiff returned the vehicle at the end of their rental period, they all received invoices from Sixt seeking payment for damages the car sustained during their rental period.

The plaintiffs filed a putative class action against Sixt in a federal district court in Florida for violations of Florida's Deceptive and Unfair Trade Practice Act and common law breach of contract, alleging Sixt sent them these invoices violating Sixt's Terms and Conditions. The district court granted summary judgment for Sixt's breach of contract claim based on its finding that the T&C was not part of the Rental Agreement. Therefore, the court held there couldn't be a breach of contract. The plaintiffs appealed to the Fourth Circuit.

HOLDING: Reversed in part.

REASONING: Sixt argued that because the plaintiffs signed the Face Card using an electronic signature pad, the T&C provisions related to damages and fees were not incorporated by reference. Without these terms being incorporated, Sixt claimed they were not in breach and could not breach their rental agreement by breaching the T&C. Thus, Sixt requested the district court ruling be affirmed.

The circuit court held that the district court erred in its judgment because the T&Cs in the rental jacket were adequately incorporated by reference under Florida, Arizona, and Colorado state law. The court reasoned that the T&C on the rental jacket was incorporated by reference under Florida law because the Face Card (1) expressly provided that the Face Card was subject to the incorporated T&C and (2) sufficiently described the incorporated T&C so that the parties' intentions could be ascertained. Similarly, the court reasoned that the same T&C was incorporated by reference under Arizona law because the reference on the Face Card was clear and unequivocal, called to the customer's attention, assented to by the customer, and terms of the incorporated T&C were readily known and available to the customer. Finally, the circuit court similarly held that since the reference to the T&C on the rental jacket was expressly identified, the T&C of the rental jacket was also incorporated correctly in Colorado law.