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# ARBITRATION OF EXECUTIVE DISPUTES: BENEFIT ELIGIBILITY

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A recent court decision highlights the potentially broad application of arbitration provisions in executive employment agreements. In *Maroney v. Triple "R" Steel, Inc.*, a federal trial court concluded that an executive was required to arbitrate his claim for COBRA coverage under his employment agreement's general arbitration clause because the employment agreement obligated the company to provide medical coverage.

The ruling is a bit enigmatic in its explication of why the executive failed to successfully secure COBRA coverage. The court said the company, while the executive was employed, "obtained a Blue Cross Blue Shield medical insurance plan . . . for [the executive]." That plan included a section on COBRA rights. Although the company failed to inform the executive of his COBRA rights following termination of employment, the executive sent the company a letter electing COBRA coverage and included a check for his initial premium. The company endorsed the executive's check and forwarded it to the insurer. The puzzling part is that the insurer returned the check, indicating that it would only accept payment from the company and not from the terminated employee. On two subsequent occasions, the executive personally delivered premium checks to the company. The company did not, however, properly submit those checks or its own checks to the insurer, and the executive eventually lost insurance coverage for failure to pay premiums.

The executive then filed suit. The company asserted that the court lacked jurisdiction because the claim was subject to arbitration under the terms of the executive's employment agreement. The court agreed. After noting that Illinois, like most states and the federal government, favors the enforcement of arbitration clauses, the court concluded that the claim at least arguably arose out of or was connected with the employment agreement and therefore was within the scope of the arbitration clause.

The decision raises a couple of questions for employers. The first, of course, is whether an employer wants to arbitrate employment disputes. Some feel that the cost of doing so is less than the cost of defending a lawsuit. Others believe arbitration is just "litigation without rules," and the cost savings are uncertain. Important, of course, is whether an employer thinks the actual results of arbitration will tend to be more favorable, leaving aside the costs of the process.

*"[A]greements should clearly specify the scope of an executive's obligation to arbitrate compensation and benefit disputes, including whether both eligibility and benefit determinations are to be subject to mandatory arbitration."*

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The second question for employers favoring arbitration concerns the scope of the claims to be arbitrated. Even companies generally favoring arbitration may prefer that disputes relating to *benefits* (as opposed to *eligibility*) under broad-based employee benefit programs be handled under those plans' normal claims and appeals procedures. In this way, all participants' claims can be handled in the same fashion under uniform, well-practiced procedures. One approach might be to compel the arbitration of claims of *eligibility* for coverage under plans subject to ERISA, without requiring arbitration of *benefit* claims under those programs (instead subjecting benefit claims to the plans' normal claims and appeals procedures, followed by the opportunity to file a lawsuit). It may be particularly appropriate for benefit claims under *insured* plans to be handled through the normal plan appeals channels since an employer could otherwise find itself obligated under an arbitration award to pay benefits that the insurer refuses to provide. The result would be an unexpected self-insured obligation.

Employers wishing to except benefit determinations from their arbitration provisions should do so clearly. That is the lesson from court decisions addressing whether arbitration provisions in collective bargaining agreements apply to individual benefit determinations. In those cases, the results have been fact specific, typically turning on whether the bargaining agreement incorporates or references a summary plan description or plan document which itself sets forth a claims and appeals process. If a bargaining agreement does incorporate or reference an SPD or plan document, arbitration will typically be excused. Otherwise, arbitration of benefit disputes may well be required.

With respect to benefit claims under plans not subject to ERISA – particularly equity-based incentive programs – companies that generally favor arbitration will likely want to require the arbitration of eligibility and benefit disputes alike. The argument for subjecting executives to the same benefit determination process as applies to other employees would, of course, not apply so forcefully to these more narrowly tailored programs.

**Lessons**. Companies should consider whether their general philosophy on the arbitration of disputes should apply as well to executive employment agreements. If so, those agreements should clearly specify the scope of an executive's obligation to arbitrate compensation and benefit disputes, including whether both eligibility and benefit determinations are to be subject to mandatory arbitration. This is particularly important where the compensation or benefit at issue is described not only in the employment agreement, but also in further detail in a separate plan document or other writing.

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