LEGAL UPDATES

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Fifth Circuit: Reference to Defunct Entity Did Not Abrogate Intent to Arbitrate

Service

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The Fifth Circuit Court of Appeals recently reversed a district court's denial of a motion to compel arbitration, finding that the parties' arbitration clause expressed a clear intent to arbitrate and that the reference in the arbitration clause to a now defunct entity applied to the rules governing the arbitration, and not the applicable forum. *See Baker Hughes Saudi Arabia Co. Ltd. v. Dynamic Indus., Inc.*, 126 F.4th 1073, 1086 (5th Cir. 2025).

In 2017, Baker Hughes Saudi Arabia Company Limited (Baker Hughes) and Dynamic Industries, Incorporated (Dynamic) entered a contract containing an arbitration clause. As relevant here, that clause provided that any "dispute shall be referred by either party to and finally resolved by arbitration under the Arbitration Rules of the DIFC LCIA...." *Id.* at 1078. DIFC LCIA was the Dubai International Financial Centre's joint partnership with the London Court of International Arbitration. In September 2021, Dubai "abolished the DIFC-LCIA" and replaced it with a "new arbitral institution that is functionally identical" to the DIFC-LCIA "in many respects." *Id.*

A dispute arose between Baker Hughes and Dynamic under the parties' agreement. Baker Hughes commenced an action in state court, which Dynamic removed to the Eastern District of Louisiana. Dynamic then moved to dismiss Baker Hughes claims under the doctrine of forum *non conveniens* or, in the alternative, to compel arbitration. The district court denied the motion, finding that because "the parties' designated forum no longer existed...the 'forum-selection clause' was unenforceable." *Id.* at 1079.

The Fifth Circuit disagreed. According to the court, the district incorrectly treated the language above as a "forum-selection clause." Instead, a "plain reading" of the provision is that the parties' agreed to submit disputes to

"arbitration under the DIFC-LCIA rules without specifying a particular forum." *Id.* at 1081. In other words, according to the court, the arbitration clause "sets only the rules of arbitration and not the forum." *Id.* at 1082. The court recognized that "every circuit" that has addressed the issue has determined that a clause adopting the rules of a specific institution "implicitly" selects such institution. *Id.* at 1084–85. However, the court concluded that it need not reach that issue because the clause "was not integral" to the contract. *Id.* at 1086.

Instead, "even assuming that the parties impliedly designated DIFC-LCIA as the proper arbitral forum," the court found that "where the parties' dominant purpose was not to set an exclusive forum and instead was to arbitrate generally, courts will compel arbitration in an alternate forum." *Id.* at 1087. Under the circumstances, "the forum selection clause (if it is one) is…severable from" the rest of the contract. *Id.* "Because the parties' primary intent was to arbitrate generally, the district court is empowered to compel arbitration and to appoint a substitute arbitrator consistent with the parties' intent as manifested in the subcontract." *Id.* at 1090.

What this means to you

Reinsurance practitioners are often faced with decades-old contracts whose arbitration clauses may designate rules or forums which are longer active. That does not necessarily mean the parties' dispute is not still arbitrable.

Contact us

If you have questions regarding the court's decision, please contact Brian O'Sullivan, Michael Robles, Richard Swor, or your Husch Blackwell attorney.