K&L ALERT
California Litigation
JULY 2003

Cruz v. PacifiCare Health Systems: The California Supreme Court's Decision on Section 17200 Arbitration has Something for Everyone ... to Dislike

The California Supreme Court in *Cruz v. PacifiCare Health Systems, Inc.*[1] has at last decided whether and to what extent a "private attorney general" must arbitrate a claim under California Business & Professions Code §§ 17200, et seq. – and there is plenty about the decision for both plaintiffs and defendants to dislike.

Defendants will undoubtedly be unhappy that the court has ruled that a "private attorney general" need not arbitrate claims for injunctive relief – even if the "private attorney general" is bound by an otherwise valid arbitration agreement. On the other side of the coin, plaintiffs will dislike that the same "private attorney general" must arbitrate claims for monetary restitution, and that the arbitration generally should go first.

POTENTIAL IMPACT OF CRUZ ON BUSINESS

The *Cruz* decision is important to businesses operating in California, because the decision could substantially increase their legal costs by changing the effect of existing arbitration clauses. Many businesses utilize standard-form arbitration clauses in the hopes of decreasing their litigation expense. Although an arbitration clause can be found in any contract, the clauses almost universally appear in employment agreements, leases, agreements to provide medical services, loan agreements, and many other types of standard-form contracts directed to consumers. The clauses typically cover all types of claims arising out the contract.

When arbitration first entered the picture, it reportedly cost less than court proceedings and was believed to be quicker than court proceedings, because discovery is usually more limited. Appeals are very limited. By declaring certain "private attorney general" claims to be inarbitrable, the California Supreme Court has lessened the ability of businesses to take full advantage of arbitration agreements.

"PRIVATE ATTORNEY GENERAL" ACTIONS

Under California's Unfair Competition Law, Business & Professions Code §§ 17200, et seq., "any" person – even someone who has suffered no injury – may bring an action on behalf of the general public challenging a business practice as "unlawful", "unfair" or "fraudulent." An uninjured "private attorney general" may also challenge false or misleading advertising. The two available remedies are (1) injunctive relief, i.e. a court order compelling a business to take a certain action or to refrain from acting; and (2) a court award of monetary restitution, which usually means the business must refund money acquired through the wrongful business practice.

One recurring issue in Section 17200 practice has been whether and to what extent a "private attorney general" must arbitrate a Section 17200 claim, assuming the "private attorney general" has entered into a valid arbitration agreement. The California Supreme Court finally decided that issue in *Cruz v. PacifiCare Health Systems, Inc.* – holding that the "private attorney general" need not arbitrate claims for injunctive relief, but must arbitrate claims for monetary restitution.

CLAIMS FOR INJUNCTIVE RELIEF

In *Cruz*, the plaintiff had enrolled in one of PacificCare's health plans. Acting as a "private attorney general," the plaintiff alleged that PacificCare had implemented undisclosed policies designed to discourage PacificCare's primary care physicians from delivering medical services. The plaintiff brought claims for injunctive relief, and for monetary restitution.

PacificCare moved for a court order compelling the plaintiff to arbitrate his claims, and to stay the court action until the arbitration was complete. The plaintiff argued that he did not have to arbitrate his claim for injunctive relief, citing a prior California Supreme Court case, *Broughton v. Cigna Heathplans*.[2] In *Broughton*, the Court held that claims for injunctive relief brought under a consumer protection statute similar to Section 17200 for the public benefit were not subject to arbitration. The trial court agreed with the plaintiff, and refused to order the plaintiff to arbitrate his claim for injunctive relief.

The supreme court upheld the trial court's decision on that point. Because the plaintiff sought injunctive relief for the public's benefit under Section 17200, the Court found that the earlier *Broughton* case controlled. As in *Broughton*, the Court held that a "private attorney general" need not arbitrate claims for injunctive relief because (1) the injunctive relief is not sought to benefit a private party, but to benefit the public as a whole; and (2) a court is better able than an arbitrator to oversee an injunction, which may require ongoing supervision.

CLAIMS FOR MONEY RESTITUTION

The trial court in *Cruz* also held that a "private attorney general" need not arbitrate claims for monetary restitution. The supreme court disagreed for two reasons. First, the court noted that the United States Supreme Court has long held that claims for damages were "fully arbitrable," and could see no difference between monetary restitution and damages in the arbitration context. Second, the court found that an arbitrator is perfectly capable of overseeing restitution to the general public, because a restitution award does not require ongoing supervision the way that an injunction does.

ARBITRATION MUST GENERALLY COME FIRST

The court further answered the natural question posed by its rulings: which comes first, arbitration or court proceedings? The court held that a trial court can and generally should stay the proceedings in the trial court to let the arbitration or restitution claims proceed, in order to avoid disrupting the arbitration and rendering it ineffective.

CONCLUSION

Although the *Cruz* decision resolves a frequently litigated and expensive procedural issue, the decision does not clearly favor either plaintiffs or defendants. As Justice Baxter pointed out in his dissent, the decision will likely compound the cost of litigating Section 17200 suits that involve arbitration clauses. Beyond that, the *Cruz* case does not answer the next question in the Section 17200 arbitration analysis – what happens when a "private attorney general" who is ***not*** subject to an arbitration clause brings suit on behalf of those who are? For that, we must await further pronouncements from the California appellate courts.

1 30 Cal. 4th 303 (2003).

2 21 Cal. 4th 1066 (1999).

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