

Kentucky Decision Requiring Arbitration Shows A Little Language Makes A Big Difference

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CurrentsLetterKK is for this week's Kentucky decision on the subject of the enforceability of class action waivers, a continuing hot topic we have reported on [here](#) and [here](#). The Western District of Kentucky's decision in [Coram v. Shepherd Communications, Inc.](#) highlights that seemingly small bits of contractual language can be decisive. This decision seemingly turned on contractual language providing that an arbitrator would have the authority to allocate the costs and fees of a matter on a case by case basis. The lawsuit involved 48 cable installers earning between \$16,800 and \$32,800 per year and alleging violations of wage/hour laws. The employer pointed to a class action waiver signed by each of the plaintiffs requiring them to individually arbitrate such claims. The plaintiffs argued that individual arbitration would be prohibitively expensive and chill their rights to pursue their claims. Because of the noted language, the court was not persuaded. Citing the strong federal policy in favor of arbitration evidenced by U.S. Supreme Court decisions in recent years, the court noted that the clause allowing the arbitration to allocate costs and fees meant that it was just as likely that the employer would bear the costs of arbitration as the employee. Seemingly, the decision might have come out differently without that contractual provision. The case illustrates the importance for employers of crafting arbitration agreements and class action waivers carefully to maximize their likelihood of enforcement and minimize the risk of expense class and collective actions.

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