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MEMORIAL MOOT COURT COMPETITION

2011 OFFICIAL
COMPETITION PROBLEM

SUPREME COURT OF THE UNITED STATES

No. 08-9132

DAVID HELM *v.* ASHFORD & HALEY LLP

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF RADNOR

The recent economic crisis has had especially severe effects in Radnor, a state with an economy that relies heavily on manufacturing. Despite enjoying some success in its efforts to diversify the economy by offering incentives to technology and service companies, Radnor still relies heavily upon manufacturing companies to provide jobs and tax revenues. As economic output declined in recent years, Radnor began to experience budget shortfalls.

To bring its budget into balance, Radnor enacted several pieces of legislation in 2008 to reduce government spending. One of the most controversial decisions, which was opposed by both the Radnor State Bar Association and the Judicial Conference of Radnor, was to eliminate Radnor's intermediate appellate court, vesting appellate jurisdiction solely in the Radnor Supreme Court. Traditionally, Radnor had provided all litigants, in both civil and criminal matters, with a right to appeal the decisions of the county circuit courts to the Radnor Court of Appeals. Further review by the Radnor Supreme Court was entirely within the discretion of the justices of that court.

In 2007, the Radnor Court of Appeals decided approximately 4,000 cases, issuing an opinion for each case. In contrast, the Radnor Supreme Court decided only about 300 cases. After the 2008 legislation eliminated the Radnor Court of Appeals, the seven justices of the Radnor Supreme Court recognized that they could no longer provide an appeal of right for each case. The justices, therefore, amended the rules of appellate procedure to eliminate the automatic right to an appeal, as

well as the right to an appeal of any interlocutory order. Under the revised Radnor Appellate Rule 3 (the complete text of which is reproduced in Appendix A), a party who wants to appeal a final judgment of a circuit court must file a Petition for Appeal with the Radnor Supreme Court. Appellate Rule 3 provides little direction on the circumstances that warrant review, and the Radnor Supreme Court has interpreted the rule as giving it “broad discretion” whether to review a case. In 2009, the Radnor Supreme Court decided approximately 800 cases.

In 2010, the Radnor Supreme Court received a petition for appeal in a case decided by the Marshall Circuit Court captioned David Helm v. Ashford & Haley LLP, Case No. 14CV01-CT-0452. The plaintiff in that case was David Helm, the Commissioner of the Radnor Department of Insurance, acting in his capacity as rehabilitator for Allegiance Health Insurance Co. (“Allegiance”). Helm took control of Allegiance in 2008 after an emergency meeting with the president and treasurer of Allegiance. The president of Allegiance disclosed that the financial statements Allegiance had filed with the Department of Insurance contained material errors, that Allegiance lacked sufficient reserves to remain in compliance with state requirements, and that Allegiance was insolvent. After independently investigating Allegiance’s financial condition, Helm exercised his statutory power to take control of Allegiance and to begin rehabilitation proceedings.

During the investigation that occurred as part of those proceedings, Helm concluded that the material misstatements in Allegiance’s financial statements

were caused by errors made by Ashford & Haley, a firm that provided accounting and consulting services to Allegiance. Helm believed that Ashford & Haley had been negligent in its valuation of certain assets and liabilities. Helm also believed that former Ashford & Haley partner, Carolyn Roland, had intentionally misstated certain liabilities to preserve her professional relationship with Simple Wisdom, Inc. (“Simple Wisdom”), one of the companies Allegiance insured.

Simple Wisdom had opened a direct-mail sales department and call center in Knighton, the largest city in Marshall County, Radnor, several years ago. Simple Wisdom provided health insurance for its employees through Allegiance. Simple Wisdom experienced a highly negative claims history in 2007, resulting in an increase in the premiums Allegiance charged. Simple Wisdom experienced a negative claims history in 2008 as well. This time, however, Simple Wisdom avoided an increase in premiums by presenting financial calculations to Allegiance that purported to show that the increases in premiums made after 2007 would adequately cover future claims. Carolyn Roland provided assurances that the financial model presented by Simple Wisdom was accurate.

Unknown to Allegiance was that the financial model had been prepared by Carolyn Roland. Correspondence between Roland and Simple Wisdom during 2008 reveals that Roland, in fact, did not believe the model was accurate and that, based on Simple Wisdom’s claims history, a failure to increase its premiums would result in substantial losses to Allegiance. Simple Wisdom itself became insolvent in 2009

and dissolved. That same year, Carolyn Roland resigned from the partnership at Ashford & Haley and moved to Thailand with the former controller for Simple Wisdom.

After conducting an extensive investigation, Helm filed a lawsuit against Ashford & Haley alleging negligence, breach of fiduciary duty, fraud, and deception. All of the claims asserted by Helm were brought on behalf of Allegiance in his role as rehabilitator. Helm sought both compensatory and punitive damages.

Helm filed the lawsuit in the Marshall Circuit Court because the Radnor Insurance Rehabilitation Act (“RIRA”) provides that the Marshall Circuit Court shall have exclusive jurisdiction to decide all cases arising out of a rehabilitation proceeding. The Act further provides that any provision of a contract setting venue outside the Marshall Circuit Court is void if the contract becomes part of a rehabilitation proceeding. Relevant portions of the RIRA are reproduced in Appendix B.

Ashford & Haley moved to compel arbitration of the case based on its contract with Allegiance. Section 22 of that contract provides as follows:

Any claim or controversy arising out of or relating in any way to this Agreement or the relationship between Client and Ashford & Haley, whether that claim or controversy arises in contract, tort, or otherwise, shall be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The parties agree that the Federal Arbitration Act shall govern the interpretation of this agreement to arbitrate.

The Marshall Circuit Court, however, refused to compel arbitration, holding that the exclusive venue provision in the RIRA voided both the arbitration clause in the contract and any contrary provisions in the Federal Arbitration Act (“FAA”).

While recognizing that federal law, including the FAA, generally supplants contrary state law, the court relied upon the McCarran-Ferguson Act for its exercise of reverse preemption. The McCarran-Ferguson Act provides that “[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance.” 15 U.S.C. § 1012(b). The court interpreted this provision as restricting the operation of the FAA to the extent it interfered with the exclusive venue provision of the RIRA.

The parties proceeded to a bench trial, and the circuit court ultimately entered a judgment in favor of Helm and against Ashford & Haley. The court awarded Helm \$2,000,000 in compensatory damages and \$10,000,000 in punitive damages. In entering the award of punitive damages, the court stated as follows: “The serious professional misconduct committed by Ms. Roland, and Ashford & Haley’s failures to prevent those actions, warrant a strong sanction. Ashford & Haley must suffer a penalty sufficient to deter them from similar misconduct in the future. I, therefore, find that an award of \$10,000,000.00 is appropriate.”

Ashford & Haley then filed a petition with the Radnor Supreme Court seeking review of the judgment, as well as review of the circuit court’s order denying

Ashford & Haley’s motion to compel arbitration. In its petition, Ashford & Haley argued that because the circuit court had entered an award of punitive damages, appellate review was mandatory to ensure its due process rights. The Radnor Supreme Court, however, denied Ashford & Haley’s petition for review in a one-sentence order, which simply stated, “The Court, having review Ashford & Haley’s petition for review and David Helm’s response in opposition, now finds that the petition should be, and hereby is, DENIED.”

Ashford & Haley filed a petition for certiorari with the United States Supreme Court, presenting the following two issues:

- 1) Do the Radnor Rules of Appellate Procedure comport with the Due Process Clause of the Fourteenth Amendment in that they do not afford a defendant at least one appeal as of right to review judgments that award punitive damages?
- 2) Does the McCarran-Ferguson Act “reverse preempt” the Federal Arbitration Act and thereby permit state law to abrogate an arbitration agreement covering an ordinary tort suit between the rehabilitator of an insolvent insurer and its accountant?

The Supreme Court granted Ashford & Haley’s petition on both issues.

Appendix A

Radnor Rule of Appellate Procedure 3

- (a) A party to a case in any circuit court may petition this court to accept an appeal from an adverse final judgment by filing a Petition for Appeal with this Court within 30 days after entry of the adverse judgment.
- (b) A party opposing a Petition to Appeal may file a response to the Petition within 30 days after service of the Petition.
- (c) A Petition for Appeal shall not exceed 4,000 words in length. Any response to a Petition is subject to the same limit. The parties may bring to the Court's attention relevant portions of the record and file an appendix, not to exceed 100 pages, in support of or opposition to the Petition. The Court will not consider the full record or transcript of proceedings in the circuit court unless it grants a Petition for Appeal.
- (d) The grant of an appeal is a matter of judicial discretion. In considering whether to grant an appeal, this Court may consider whether the circuit court's decision conflicts with this Court's precedent, whether the case presents an undecided question of law, whether this Court's precedent should be reconsidered, or any other consideration the Court deems relevant.

Appendix B

Excerpts from Radnor Insurance Rehabilitation Act

Radnor Code § 11.140

In any rehabilitation proceeding brought under this Act, the provisions of this Act shall govern those proceedings, and all conflicting contractual provisions contained in any contract between the insurer and any third party that are subject to the rehabilitation proceeding shall be subordinated to the provisions of this Act.

Radnor Code § 11.152

The Marshall Circuit Court shall have exclusive jurisdiction over all rehabilitation proceedings brought under this Act. Any provisions contained in contracts between the insurer and any third party that are subject to the rehabilitation proceeding purporting to require resolution of a dispute in another venue shall be deemed void.