

## Pilots and Employers: Check Those Dispute Resolution Clauses Before Take-off

A Georgia court of appeals recently dismissed a pilot's defamation and tortious interference with a business expectancy claim against his former employer. The former employer is a Georgia-based manufacturer and servicer of aircraft. In 2007 the employer hired the pilot as a "production test pilot." At the time of his hire, the pilot agreed to abide by the employer's "Dispute Resolution Policy," (DRP) or, in other words, a binding arbitration agreement between the employer and the pilot.

Under the arbitration agreement, the DRP was a structured dispute resolution process that applied to Covered Claims and consisted of four levels: Level 1: Human Resources Review; ... Level 2: Management Panel Review; ... Level 3: Mediation[;] ... Level 4: Arbitration. The pilot and other employees had to complete each level of the process before proceeding to the next level. Covered Claims that were required to go through this process by agreement between the parties included, but were not limited to claims relating to involuntary terminations, tort claims, intentional torts, negligence, defamation, invasion of privacy, infliction or emotional distress.

Claims excluded from the DRP were generally claims against the Company which did not have any relationship to the employee's work or relationship to the Company. The DRP was the sole and exclusive forum and remedy for all Covered Claims. The employee and Company agreed and waived any right to jury trial for any Covered Claim. Finally, in pertinent part, the arbitration agreement stated the agreement related to Interstate Commerce: "[t]his Policy is an agreement to arbitrate pursuant to the Federal Arbitration Act [FAA], 9 U.S.C.A. Sections 1-14[.]"

On February 14, 2011, the pilot was piloting a crew airplane during a production test flight. Upon landing, the plane experienced several system failures. The pilot and his co-pilot's response to those issues caused the plane to depart the runway, resulting in damage to the plane. The employer immediately grounded the pilot and subsequently terminated his employment. The pilot sued the employer, alleging that company's dissemination of false conclusions that he was "at-fault for the incident had cost him numerous pilot positions." The pilot further alleged that the company's actions after his employment tortuously interfered with a legitimate business expectancy and that he had lost income from the company's improper acts. In addition, the pilot alleged in his state court action that the company defamed him during a pilots' meeting that was held during the evening on the day the pilot was fired. Thereafter, a number of company pilots allegedly warned various third parties

and the company counseled its employees to not have anything to do with the pilot because he was suing the company.



The pilot filed his defamation and other tort claims in state court and demanded a jury trial in essence. The company moved to dismiss the case with prejudice because all claims had to be sent to arbitration under the arbitration agreement. The company asked the court in sum, to dismiss the state court action and compel the arbitration process set forth in the arbitration agreement the pilot signed when he first started working for the company. The trial court agreed with the company and ordered the parties to arbitration.

The pilot appealed the trial court's decision and argued on appeal that he should have been allowed to go to a jury of 12 in state court instead of arbitrating the case before one or a panel of private arbitrators. According to the pilot, his claims were not covered by the arbitration agreement. First the pilot argued his claims arose from actions that took place after his employment ended. The court of appeals disagreed however, noting that the plain language of the arbitration agreement referenced claims that related to the termination of "former employees."

The pilot also argued that even if the agreement applied to former employees, it did not apply to the torts he was asserting against the company. The court of appeals cited to the language in the agreement where the claims relating to or arising out of the employment relationship, in including termination would be subject to arbitration. Intentional torts were also included, such as defamation expressly, which was not the case in other arbitration agreements where pilots were able to go to a jury because the torts were not expressly included within the "covered claims" language of the arbitration agreement. Noting that the FAA did apply to employment contracts and the presumption is to favor the quicker process of arbitration, the pilot's demand for a jury trial was dismissed and the lower court affirmed to compel arbitration.

If you have any questions concerning this article, do not hesitate to contact Chris Denison at 678-367-8672, [cdenison@denisonandassociates.com](mailto:cdenison@denisonandassociates.com).

The contents of ALN are published solely for informational purposes, and should not be construed as legal advice. Receipt of this publication does not establish an attorney-client relationship. The opinions of legal counsel should be sought concerning specific facts and circumstances. In some states, this publication may be considered ATTORNEY ADVERTISING. TENNESSEE NOTICE: **THIS IS AN ADVERTISEMENT.**