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U.S. Supreme Court Rules That Nonsignatory to International Arbitration Agreement May Compel Arbitration

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Can your business be compelled to defend an international arbitration brought by an entity with whom you never agreed to arbitrate? On June 1, 2020, a unanimous United States Supreme Court answered this question in the affirmative. The decision, *GE Energy Power Conversion France SAS v. Outokumpu Stainless USA, LLC*, stands for the proposition that a nonsignatory to an international arbitration agreement may compel arbitration by relying on U.S. domestic-law arbitration doctrines allowing enforcement by nonsignatories.

The facts of the case are straightforward. ThyssenKrupp entered into a series of contracts with F.L. Industries to build machinery at ThyssenKrupp's manufacturing plant in Alabama. F.L. Industries then entered into a subcontract with GE Energy, a French company, to manufacture the motors for the machinery. Shortly after GE Energy delivered the motors, ThyssenKrupp sold the plant to Outokumpu. Outokumpu later sued GE Energy, alleging that the motors had failed.

GE Energy moved to compel arbitration, relying on the arbitration clauses in the contracts between ThyssenKrupp and F.L. Industries. Although GE Energy was not a party to the contracts, it argued it could enforce their arbitration clauses against Outokumpu under a domestic-law theory of equitable estoppel. Outokumpu disagreed, arguing that the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention," a multilateral treaty between the United States and 163 other nations addressing international arbitration) precluded GE Energy from compelling an international arbitration. Outokumpu argued that because the New York Convention requires a signed agreement, domestic-law doctrines like equitable estoppel that allow nonsignatories to enforce domestic arbitration agreements conflict with the Convention.

The Supreme Court rejected Outokumpu's argument, holding that even if the New York Convention requires a signed arbitration agreement, that signature requirement does not restrict who may request arbitration pursuant to a recognized agreement. The Court held that there is nothing in U.S. law or the Convention preventing a nonsignatory from relying on domestic-law doctrines allowing nonsignatory enforcement. In theory, the Court's holding encompasses not only the doctrine of equitable estoppel but also other domestic doctrines allowing non-signatories to compel or be compelled to arbitrate. Such doctrines include assumption, piercing the corporate veil, alter ego, incorporation by reference, and waiver, as well as third-party-beneficiary theories.

The Court did not address whether the facts of the case supported GE Energy’s equitable estoppel theory. It remanded the case to the lower court to make that determination.

As a consequence of this decision, U.S. and foreign companies entering into international contracts are well-advised to consider, at the time of contracting, whether they wish to arbitrate future disputes with nonparties to the contract. If not, there are a number of ways to tailor the wording of the contract's arbitration clause in order to prevent that from happening. For example, a non-waivable arbitration clause that is carefully limited in scope to disputes arising between the parties to the contract may prevent nonsignatories from compelling arbitration in the future.

Please contact the authors or your Miller Canfield attorney if you have further questions.