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Third Circuit finds nearly six-year-old case "much ado about nothing" and dismisses appeal of order confirming arbitration award for lack of standing

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As federal courts increasingly scrutinize Article III standing, class action defendants sometimes find themselves winning substantive battles but ultimately losing the standing war. That recently happened in a class action where the defendant successfully compelled arbitration; secured a $0 award in an individual arbitration brought by the named plaintiff; and then defeated the named plaintiff's motion to vacate the award—only to have the entire case thrown out on appeal for lack of Article III standing. *George v. Rushmore Serv. Ctr., LLC*, 114 F.4th 226 (3d Cir. 2024).

The *George* case involved a relatively straightforward putative class action under the Fair Debt Collection Practices Act (FDCPA), with the named plaintiff alleging that a debt collection letter violated the FDCPA by identifying the wrong original creditor. 114 F.4th at 230. Because the underlying debt involved a credit card account, and because the named plaintiff had agreed to individually arbitrate disputes regarding that account, the district court compelled arbitration and stayed the litigation. *Id.* at 231-32.

The arbitration proved to be relatively complex, involving "extensive discovery" and a final hearing involving "testimony from three witnesses" and nearly two dozen exhibits. *Id.* at 232. The arbitrator ultimately found the debt collector not liable and awarded $0 to the named plaintiff because (1) the named plaintiff had not actually read the letter at issue, and (2) the letter was "not misleading." *Id.* at 232-33.

The named plaintiff then moved to vacate the award in the district court, disputing arbitrability, challenging the arbitrator's alleged failure to consider relevant evidence and controlling law, and claiming "evident bias" towards the defendant. *Id.* at 233. The district court rejected these arguments and denied the motion to vacate. *Id.*

On appeal, the Third Circuit identified threshold questions of finality and the named plaintiff's Article III standing. *Id.* The Court of Appeals found finality even though the district court had not yet confirmed the arbitration award nor entered judgment in favor of the defendant. *Id.* The *George* court reasoned that orders declining to vacate an arbitration award authorized an appeal under 9 U.S.C. § 16(a)(3). *Id.* at 233-34.

Standing, however, proved to be a different story. After recounting the multi-factor test that must be satisfied for a plaintiff to have Article III jurisdiction, the Third Circuit found that the named plaintiff "has not shown an information injury sufficient to confer Article III standing." *Id.* at 234-36. Nor had the plaintiff shown injury under the "traditional" approach, because the plaintiff alleged receipt of an allegedly misleading statement without alleging she experienced "confusion" because of the alleged misstatement. *Id.* at 236-37. The plaintiff likewise did not allege any other injury from the allegedly misleading letter. *Id.* at 237-38. "In sum, because George's amended complaint alleges neither an information injury nor a traditional one, George lacks standing before us and lacked standing before the District Court." *Id.* at 238.

Turning to the effect of this ruling on the district court's orders, the Court of Appeals explained that the FAA itself does not confer jurisdiction, and thus courts must "look through" a motion to compel arbitration to "find a jurisdictional basis for the underlying suit." *Id.* Because the named plaintiff never had standing in the first place, the district court lacked jurisdiction over the underlying case, the initial motion to compel, and the post-arbitration motion to vacate. *Id.* As a result, the orders granting the motion to compel and denying the motion to vacate were void. *Id.* at 239.

But the *George* court did not reach the "question of whether the arbitration award remains valid and enforceable (under the AAA rules, because George assented to the arbitrator's jurisdiction, or otherwise) or whether it should be vacated in a 'jurisdictionally correct proceeding'." *Id.* at 239-40. And the Third Circuit recognized that its ruling may be a "frustrating result" for the defendant, given that its reasoning mostly relied on "cases decided after the motion to compel." *Id.* at 240. It noted in a footnote that a different situation may be presented "in a case where gamesmanship is apparent," where "equitable considerations could compel a different result." *Id.* at 240 n.20.

Takeaway: Class action defendants facing a named plaintiff with questionable standing under Article III—but who agreed to individually arbitrate—confront a difficult conundrum. On the one hand, moving to compel arbitration risks the outcome of *George*, where the entire judicial process relating to the arbitration has been voided after the fact. On the other hand, raising a challenge to the named plaintiff's standing could give rise to claims that a defendant has waived arbitration. As federal courts continue to tighten the parameters of Article III standing, defense counsel may have no choice but to explore creative strategies for preserving arbitration rights while challenging named plaintiffs' lack of Article III standing.