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Eleventh Circuit: arbitration clause broad enough to be "related to" post-termination dispute, but is it too broad to be enforceable?

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Takeaway: Parties seeking to compel arbitration often rely on the rule that where an arbitration agreement contains broad language, any ambiguity about whether a claim must be arbitrated should be resolved in favor of arbitration. The Eleventh Circuit, in reversing a decision by the Northern District of Georgia, recently relied on that rule in finding that a cable subscriber agreement containing an arbitration clause "related to" a dispute arising after the termination of the subscriber agreement. *Hearn v. Comcast Cable Commc'ns, LLC* , 992 F.3d 1209 (11th Cir. 2021). But the Eleventh Circuit remanded to the district court to determine whether the arbitration clause was too broad to be enforced against a consumer of cable services, describing the enforceability issue as "a close question."

Michael Hearn purchased cable service in 2016 from Comcast for his home in Georgia. In connection with the installation of the cable service, he executed a work order acknowledging he received a "Comcast Welcome Kit" that included a Comcast Subscriber Agreement. The subscriber agreement contained a broad arbitration clause stating that "[a]ny dispute involving [the customer] and Comcast shall be resolved through individual arbitration." *Id*. at 1211. The agreement defined "dispute" as "any claim or controversy related to Comcast, including but not limited to any and all … claims that arise after the expiration or termination of this Agreement." *Id*. Mr. Hearn subsequently terminated his cable service in 2017.

Over a year and a half later (in March 2019), he called Comcast again to purchase cable service. He claimed that he called Comcast to start a new account, while Comcast claimed that he called to reconnect the prior service. Mr. Hearn further claimed that, during this call, a Comcast representative accessed his credit information without obtaining his consent and that, as a result, the "credit check lowered [his] credit score." *Id*.

Later that month, he filed a putative class action lawsuit against Comcast, alleging violations of the Fair Credit Reporting Act (FCRA). Comcast moved to compel arbitration, based on the arbitration clause in the subscriber agreement. The district court denied the motion to compel arbitration, ruling that Mr. Hearn's FCRA claim did not "relate" to the prior agreement.

Comcast appealed and the Eleventh Circuit reversed. Analyzing a number of different provisions in the subscriber agreement, and recognizing that courts must resolve "any doubts concerning the scope of arbitrable issues … in favor of arbitration," the panel concluded that Mr. Hearn's FCRA dispute did indeed relate to the prior agreement. *Id*. at 1213-14 (citation omitted). For example, the panel concluded that the prior agreement's "Reconnection Provision" was broad enough to apply to Mr. Hearn's acquisition of cable services in 2019. *Id*. at 1214. It is also found that the provision entitled "Our right to Make Credit

Inquiries" related to Mr. Hearn's FCRA claim. *Id*.

But that was not the end of the inquiry. Commenting on the scope of the arbitration clause, the panel stated "we have not enforced a provision exactly like the one in this case. Here, the Arbitration Provision is different in that it applies broadly to all disputes between the parties and applies even if the dispute arises after the Subscriber Agreement is terminated." *Id*. at 1213-14. The panel viewed the enforceability issue as "a close question that we leave for another day." *Id*. at 1214. Because the district court determined that the FCRA claim did not relate to the prior agreement, it did not reach Mr. Hearn's claim that enforcement of the arbitration clause would be unconscionable. Accordingly, the panel reversed the district court's decision on the "related to" issue and remanded for determination of whether the arbitration clause was too broad to be enforceable.