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Illinois federal judge sends putative class action over Hyundai's emergency crash assistance services to arbitration based on clickwrap assent

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A district court in the Seventh Circuit recently granted a motion to compel arbitration and stay proceedings in a putative class action involving Hyundai's Blue Link crash assistance program. *Tamburo v. Hyundai*, No. 23-cv-00282, 2024 WL 22230 (N.D. Ill. Jan. 2, 2024).

The named plaintiff, John Tamburo, bought a 2015 Hyundai vehicle in 2017 and enrolled in the vehicle's Blue Link feature and other connected services, which included an SOS emergency button and crash reporting. 2024 WL 22230, at *1. Hyundai claimed that, when he enrolled, Tamburo assented to a Connected Services Agreement ("CSA") through a clickwrap device. *Id.* In 2021, after his subscription lapsed, Tamburo logged into a Customer Web Portal and re-assented to the CSA twice via clickwrap. *Id.* at *4. In 2022, Tamburo re-assented to the terms of the CSA again when he logged into the mobile app to access the connected services. *Id.*

Tamburo filed a putative class action against Hyundai on behalf of himself and other customers who assented to the CSA, asserting various state law claims. *Id.* at *1. He alleged, among other things, that he was not informed that he had to accept the CSA in order to enroll in the Blue Link feature or that the CSA contained an arbitration provision and class action waiver. *Id.*

The district court applied the fact-intensive inquiry for internet contract formation set forth in *Sgouros v. TransUnion Corp.*, 817 F.3d 1029 (7th Cir. 2016), which looks to (1) "whether the web pages presented to the consumer adequately communicate all the terms and conditions of the agreement," and (2) "whether the circumstances support the assumption that the purchaser receives reasonable notices of those terms." *Id.* at *3 (citing *Sgouros*, 817 F.3d at 1034). The district court found that the clickwrap process of "checking a box next to hyperlinked terms" generally provides adequate notice and is "common in interstate commerce." *Id.* at *4.

Though there arguably was a factual dispute over whether Tamburo had assented to the terms of the initial CSA when he signed up for the Blue Link feature, the district court found that Tamburo later assented to the CSA at least three separate times in 2021 and 2022. *Id.* at *3-4.

The plaintiff nevertheless claimed that (1) he entered into the CSAs under duress, and (2) the CSAs were unconscionably broad. The district court dismissed each of these arguments in quick succession.

First, the district court found that the CSA did not meet the "high standard" of duress because a user could simply refuse to accept the terms of the CSA and forego the Blue Link service. *Id.* at *4. In other words, each user had "free will to accept or refuse the terms and chose to click 'I accept.'" *Id.*

Second, the district court concluded that the CSA was not unconscionably broad because Blue Link and the other connected services were voluntary; they did not "oppress or surprise" the customer; the parties mutually agreed to arbitration and Hyundai provided services in exchange; the CSA did not cause a significant cost disparity between the parties; and a user could cancel at any time. *Id.* at *5.

The district court granted the motion to compel arbitration, stayed the case pending arbitration, and deferred questions about whether Tamburo's class claims were arbitrable to the arbitrator. *Id.*

Takeaways: Clickwrap agreements remain ubiquitous in modern business. The *Tamburo* decision reinforces that arbitration provisions in clickwrap agreements are common and are usually enforceable, given that the clickwrap device provides a consumer with sufficient notice of contractual terms.