

Xe's Arbitration Bid Denied In Misclassification Suit

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Law360, New York (May 22, 2012, 8:07 PM ET) -- A Washington federal judge on Tuesday denied Xe Services LLC's bid to compel arbitration in a putative class action brought by specialists who claim they lost out on pay and benefits because they were misclassified as independent contractors.

However, U.S. District Judge Colleen Kollar-Kotelly's denial was without prejudice, and she gave Xe Services until June 8 to file a renewed bid to compel arbitration of the lawsuit.

The court didn't want to rule definitively because the Xe failed to bring up a delegation agreement — language that delegates gateway questions of arbitrability to the arbitrator — sooner in the case, which robbed the plaintiffs of a change to furnish a meaningful response.

"Under these circumstances, the court declines to rule on the merits in the absence of more fulsome and targeted briefing on the precise issue at hand," the court said.

The case was originally filed in June 2011. The plaintiffs said they worked for the defendants in Iraq and Afghanistan and should have been beneficiaries of their employee health, pension, disability and welfare plans.

Their eight-count amended complaint, filed in September, included claims for breach of contract and breach of fiduciary duty under the Employee Retirement Income Security Act, as well as overtime claims. The plaintiffs asked for relief including \$120 million for "economic and noneconomic damages" and \$120 million for punitive damages.

The defendants conceded that courts, not arbitrators, typically have authority to determine whether parties have formed such an agreement, but said that didn't currently apply, as the plaintiffs hadn't challenged the provisions independently from the agreement as a whole, according to Tuesday's ruling.

Xe pointed to a U.S. Supreme Court decision in 2010 case *Rent-A-Center West Inc. v. Jackson*, which upheld a delegation agreement. But in that case, Rent-A-Center unambiguously sought enforcement of the delegation agreement in its opening memorandum before the district court, and Jackson first challenged the delegation agreement on appeal, the court noted.

"Here, in sharp contrast, the defendants' opening memorandum does not even mention the delegation agreement, let alone seek its enforcement. Indeed, in their opening memorandum, defendants present the

question of arbitrability as if it were an issue for this court, not the arbitrator," the ruling said.

That meant the plaintiffs weren't put on notice that they might have to address the enforceability of the delegation agreement in their opposition papers, the court said.

Xe moved to compel arbitration in November, and said that the plaintiffs signed agreements that mandated arbitration of every cause of action in the suit.

"Plaintiffs continue to assert the arbitration agreements are invalid and not lawfully formed agreements," Scott Bloch, who represents the plaintiffs, said Tuesday.

Xe Services, formerly known as Blackwater Worldwide, said in December that it was changing its name to Academi.

The defendants in the case are Xe Services, U.S. Training Center Inc., United States Training Center Security Consulting LLC — formerly known as Blackwater Security Consulting LLC — and Blackwater Worldwide Trust, Health and Welfare Plan and Trustees.

An attorney for the defendants was not immediately available for comment.

The plaintiffs are represented in this suit by Scott Bloch of the Law Offices of Scott J. Bloch PA.

The defendants are represented by Rene Thorne, Garen Dodge and Jennifer Harper of Jackson Lewis LLP.

The case is Mercadante et al. v. Xe Services LLC et al., case number 1:11-cv-01044, in the U.S. District Court for the District of Columbia.

--Editing by Katherine Rautenberg.