

When It Is For The Court To Decide: Court of Appeal Rules That It Is The Trial Court,
And Not The Arbitrator, Which Has Jurisdiction To Determine Whether A Party Has
Waived A Contractual Right To Arbitration

By: Edward F. Morrison, Jr., Esq.
Larry A. Schwartz, Esq.

Disputes often arise, both under the Federal Arbitration Act, as well as the California Arbitration Act, as to which body decides whether a matter is to be arbitrated. In that regard, there is often a dispute as to whether an arbitral tribunal, or the Court, decides whether there has been a waiver of a contractual right to arbitrate.

In a lengthy decision involving a number of arbitral issues, Desert Regional Medical Center, Inc. v. Leah Miller (2023) Westlaw 18142878, a California Court of Appeal affirmed a Trial Court's Order denying Desert Regional Medical Center's Petitions to Compel Nurses Leah Miller, Lynn Fontana, and Ranita Romero to arbitrate their labor claims alleging rest and meal break violations by the hospital. The hospital contended that the Trial Court erred when denying its Petitions to Compel Arbitration and by failing to stay the nurses' individual claims until after the completion of arbitration of a separate proceeding initiated by the nurses' union. The hospital also argued the Trial Court erred in denying the hospital's Petitions to Compel Arbitration based on a finding that the hospital had waived the right to arbitrate. In that regard, the hospital asserted the issue of waiver must be determined by the arbitrator, and not the Trial Court; and even if the Court had jurisdiction to decide waiver, there was insufficient evidence to support a finding of waiver.

As relevant to this article, the Court of Appeal (which affirmed all of the rulings of the Trial Court) ruled that, whether or not the Federal Arbitration Act or the California Arbitration Act applied, the Trial Court had jurisdiction to determine the issue of waiver. Quoting the Court:

"Thus, regardless of whether state or federal law applies in determining whether a waiver is at issue for the court or arbitrator, the result is the same in this case: The trial court had jurisdiction to decide the issue of waiver."

In support of its opinion, the Court of Appeal acknowledged that many procedural issues as to arbitration, such as time limits, notice, laches, estoppel, and other conditions precedent to arbitration will fall with the arbitrator. However, the Court of Appeal ruled that the issue of waiver, in the first place, is one that the Trial Court has jurisdiction of. It should be noted that the Court of Appeal reviewed the Federal Arbitration Act, as well as the California Arbitration Act, including *Code of Civil Procedure* § 1281.2 in issuing its opinion.

The Desert Regional case is important in that it provides further authority that the issue of waiver will be one for the Trial Court, not the arbitral tribunal, to decide.

About the Authors: Edward F. Morrison, Jr. is the founding partner and Larry A. Schwartz is Of Counsel to The Morrison Law Group, a professional corporation. Their biographies can be viewed at morrisonlawgroup.com.

Publication Note: The Morrison Law Group wishes to disseminate this publication to all clients and colleagues of the Firm who wish to receive it. Should any recipient desire to be removed from the distribution list, or wishes to have a colleague added, please contact Jim Van Dusen at The Morrison Law Group at 213 356-5504 .

Disclaimer Note: The legal article presented above is intended to provide general information which may be of interest or use to clients and colleagues of The Morrison Law Group and should not be construed as legal advice on any matter.