



IDEA POWER

Accessible Excellence/Global Reach®



ATTORNEYS

SEILLER WATERMAN LLC

derbycitylaw.com™

Meidinger Tower
22nd Floor
Louisville, KY 40202
502.584.7400

Member:
Legal Netlink Alliance
An International Alliance
of Independent Law Firms

SEILLER WATERMAN LITIGATION PRACTICE LAW UPDATE

THE SHIFTING SANDS OF ARBITRATION LAW: AGREEMENTS SHOULD BE REVIEWED TO ENSURE ENFORCEABILITY

By [Auric Steele](#)



In recent years, Kentucky courts have rendered certain arbitration clauses unenforceable under the strict criteria of state law, while finding similar clauses to be enforceable under the standards set by federal law. As enforceability may depend upon the question of which law applies and upon whether certain criteria are met, thorough review of all such agreements is appropriate.

THE WIDESPREAD USE OF ARBITRATION

Arbitration is a form of dispute resolution in which parties submit their dispute to a neutral third party, by whose decision they agree to be bound. An arbitration clause is a provision in a contract that requires disputes to be resolved through arbitration, rather than taken to court. Arbitration clauses are common in many different types of contracts. In Kentucky, and across the nation, there is a strong public policy in favor of arbitration as an alternative to litigation.

Despite the prevalence of arbitration clauses, once a dispute arises, a party sometimes regrets its prior agreement to arbitrate and decides that it would prefer to take the dispute to court.

ALLY CAT AND THE KENTUCKY ARBITRATION ACT

Ally Cat, LLC v. Chauvin, 274 S.W.3d 451 (Ky. 2009) (“Ally Cat”), was the culmination of a series of Kentucky cases that focused on certain restrictive language in the Kentucky Uniform Arbitration Act (KUAA). This language, when strictly construed, limits the power of a Kentucky court to enforce an agreement to arbitrate to those agreements which specifically state that the arbitration will take place in Kentucky. The KUAA provides: “The making of an agreement...providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under this chapter and to enter judgment on an award thereafter.” KRS 417.200.

With the holding in Ally Cat, the Kentucky Supreme Court rendered unenforceable an untold number of agreements to arbitrate.

Subsequently, a party wishing to avoid a prior agreement to arbitrate could opt out of the agreement by invoking Ally Cat, if applicable, thus freeing the party to litigate the dispute.

ARBITRATION AND FEDERAL LAW

One year after its pronouncement in Ally Cat, the Kentucky Supreme Court’s decision in Ernst & Young, LLP v. Clark, 323 S.W.3d 682 (Ky.2010), made clear that there are limits to the application of Ally Cat. Specifically, the Court held that where the provisions of the Federal Arbitration Act (FAA) apply, Ally Cat does not.

THE KUAA is modeled after and substantially similar to the FAA (9 U.S.C. § 1, et seq.), with a few notable exceptions. One of those exceptions is that the FAA does not require, as a condition of enforcement in a Kentucky court, that the arbitration agreement specify that the arbitration will occur in Kentucky.

The FAA applies to agreements evidencing a transaction involving commerce and where the agreement itself contains a choice of law provision requiring that resolution of disputes be governed by the FAA. In Ernst & Young, the Court noted that Ally Cat has no applicability to an arbitration agreement governed exclusively by the FAA. Therefore, such an agreement can be enforced by Kentucky courts.

AGREEMENTS SHOULD BE REVIEWED TO ENSURE ENFORCEABILITY

Based upon current interpretation of Kentucky arbitration statutes, agreements must meet unique requirements in order to be enforceable; however, similar agreements may be valid where other law applies. In addition to the above, recent decisions by the U.S. Supreme Court may further limit the scope of an agreement to arbitrate. The shifting sands of arbitration law require periodic review and evaluation to ensure that agreements are valid and enforceable.

The shifting sands of arbitration law require periodic review and evaluation to ensure that agreements are valid and enforceable.

For more information on this topic or any other legal concerns or questions, please contact your Seiller Waterman attorney.

Visit our [Idea Power Archives](#) for past articles on other topics.

