



## The Arbitration Decision

By David Treacy and Haley McCauley, Dinsmore & Shohl LLP

**M**H C Kenworth ruling strengthens enforcement of arbitration provisions, but are they good for your business?

Although public policy generally favors the enforcement of arbitration agreements, Kentucky courts historically have faced unique jurisdictional limitations on their ability to enforce such agreements.

Kentucky statutory law prevents state courts from enforcing arbitration agreements unless they specifically provide that the arbitration will occur in Kentucky. This limitation on Kentucky courts has presented a roadblock for companies attempting to compel the arbitration of disputes and required more specificity in drafting agreements to arbitrate.

Recently, however, Kentucky courts have relaxed their interpretation of this requirement, making it easier to enforce agreements to arbitrate in Kentucky. The Kentucky Supreme Court's opinion in MHC Kenworth-Knoxville/Nashville v. M & H Trucking, LLC continues this trend.

In MHC Kenworth-Knoxville/Nashville v. M & H Trucking, LLC, M & H Trucking purchased a truck from MHC Kenworth and signed a Customer Sales Order, which stated that "[a]ny controversy or claim arising out of or relating to this Order shall be decided by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules[.]" The Customer Sales Order in MHC Kenworth also stated that the "place of arbitration shall be the American Arbitration Association's office closest to the location of Dealer designated on the front side hereof." M & H Trucking was dissatisfied with the truck delivered to it and filed suit against MHC Kenworth and its sales person alleging fraud and intentional misrepresentation. MHC Kenworth moved to stay the litigation and compel M & H Trucking to arbitrate the dispute, but M & H Trucking argued that the agreement to arbitrate was invalid under Kentucky law. The



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trial court denied MHC Kenworth's motion to compel arbitration, and the Kentucky Court of Appeals affirmed that decision.

The Kentucky Court of Appeals relied on *Ally Cat, LLC v. Chauvin* in holding the arbitration provision unenforceable. In *Ally Cat*, the Kentucky Supreme Court held that the Kentucky Uniform Arbitration Act only gives Kentucky courts jurisdiction to enforce an agreement to arbitrate if the agreement provides for arbitration in Kentucky. Because the arbitration location designated in the Customer Sales Order in MHC Kenworth was not in Kentucky, the Kentucky Court of Appeals determined that the arbitration provision could not be enforced.

The Kentucky Supreme Court then considered the MHC Kenworth case and overturned the Court of Appeals, finding the agreement to arbitrate enforceable. The Court held that *Ally Cat* does not apply to an agreement to arbitrate governed exclusively by the Federal Arbitration Act. Because the Customer Sales Order stated that it involved a transaction in interstate commerce to which the Federal Arbitration Act should apply, the Court found that the Kentucky Uniform Arbitration Act was inapplicable and that the trial court had jurisdiction to enforce the agreement to arbitrate based on federal law.

Although the Kentucky Supreme Court's decision in MHC Kenworth does not eliminate entirely *Ally Cat*'s requirement that an agreement state that arbitration will occur in Kentucky, it provides an important exception to that rule that makes it easier for companies to require arbitration. Yet, given the intricacies and expenses often associated with arbitration, companies should take time to consider whether including a mandatory arbitration provision in their business contracts is appropriate. Arbitration is touted as a less expensive and less invasive alternative to litigation, but it can prove inefficient, overly complex, and no less expensive in certain circumstances. Indeed, the decision to arbitrate often leads to unique difficulties and costs. For example, discovery still is required with arbitration and a special judge or arbitrator must be hired – who will charge the parties for their time (unlike in the court system). Moreover, if the litigation involves multiple claims and/or parties, courts may

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## Are you among the "Willing and Able" that will allow growth?

By Scott Broughton, Center Director, Advantage Kentucky Alliance



**E**xpansion and growth means prosperity and sustainability regardless of the industry or market. Growth comes in many forms, from re-inventing a better process creating improved cash-flow to new product offerings. Without growth, competitors catch up, reverse-engineer, line-extend, improve, knock-off and ultimately, replace. Growth is a direct result of the "willing and able" taking advantage of those who are neither "willing nor able."

In other words, as one captures market share, it takes away from someone else's market share, making the one a stronger entity and moving the other closer to an early retirement. Those of you who are neither "willing nor able" essentially are opening your doors and asking, if not begging, your competitors to come and show your clients why you are obsolete. For those who are truly "willing and able," finding the Growth System that best lends itself to your philosophy and resources enabling growth should be a top priority.

Finding a Growth System that incorporates structure and focus, while being flexible enough to mold to an existing culture, is a chore that every business owner faces. For those who have a system for growth, I say excellent. Congratulations on meeting

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## Dow Corning Hosts Kentucky CIC Meeting

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of the manufacturing sector in Kentucky is the training and education provided by technical training institutions. The Carrollton Campus of the Jefferson Community and Technical College offers invaluable career training in many disciplines important to Kentucky manufacturers, including a program in Applied Process Technology. This program provides two possible degree pathways: Chemical Process Operators and Power Plant Operators. There is no doubt that this program is important to continuing workforce vitality in the chemical industry.

The Carrollton Campus, which serves a five-county region and is located centrally to a highly industrialized corridor of chemical, steel, and power generating plants with a combined employment of several thousand, is currently operating out of a charming facility, but one in need of update to achieve its lofty purpose. With the enormous current and future benefits provided to the manufacturing community by the campus, it is obvious why this project is strongly supported by local manufacturers. The Kentucky Association of Manufacturers and the Kentucky Chemical Industry Council support this much-needed upgrade.

For more information, contact Rusty Cress at 502-352-4612 or via email at [rcress@dinsmore.com](mailto:rcress@dinsmore.com).

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deem only certain claims appropriate for arbitration, leading to piecemeal litigation that does not provide the intended benefits of the arbitration agreement. Thus, parties often are required to both litigate and arbitrate, which may entail significant expense.

In the end, companies should weigh the pros and cons of arbitration and refrain from simply inserting such clauses in their contracts as a matter of routine. While it remains advantageous in many situations, arbitration is no silver bullet. Companies and their counsel must take a hard look at the particular circumstances of their business and relationships before drafting arbitration clauses (or seeking to enforce them) – what was once a go-to strategy is becoming more expensive and less desirable, even if it is now easier to enforce an agreement to arbitrate in Kentucky.

## Attacking the Issue of Skilled Workforce Shortages

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Emerson Industrial Automation located in Florence, KY is one of these 240 locations and employs 450 people. They are a major producer of power transmission drives, components, bearings and couplings in each of its principal markets and brands: Browning, Jaure, Kop-Flex, McGill, Morse, Rollway, SealMaster, and System Plast.

Emerson supports the Advanced Manufacturing Recruitment Partnerships Work Group at Gateway Community and Technical College. The work group is a partnership of employers and educators who are working to build the pipeline of potential employees in advanced manufacturing careers. Emerson has hosted multiple “STEM Days for High School” where area students attend advanced manufacturing demonstrations at Gateway Community and Technical College before participating in a lunch and tour of Emerson’s advanced manufacturing facility in Florence.

For more information, contact Jerry Morton at 859-727-5092 or via email at [jerry.morton@emerson.com](mailto:jerry.morton@emerson.com).



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