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BALANCING FEDERAL ARBITRATION POLICY WITH WHISTLEBLOWER PROTECTION:
A COMMENT ON *KHAZIN V. TD AMERITRADE*

By
Faith Van Horn*

I. INTRODUCTION

In *Khazin v. TD Ameritrade*,¹ an employee of a financial services company filed suit against his employer pursuant to a whistleblower protection provision in the Dodd-Frank Act.² The employer filed a motion to compel arbitration of the claim, alleging that it was within the arbitration agreement signed by the employer and employee.³ The Third Circuit held that this whistleblower retaliation claim did not fall within the exception in the Dodd-Frank Act prohibiting arbitration of certain types of claims, and the Court granted the motion to compel arbitration.⁴ Although this decision, when taken alone, makes the Third Circuit appear to be hospitable to arbitration, it does not actually indicate much about the Third Circuit's stance on arbitration as a general matter. However, the case does provide insight into the interaction between the Dodd-Frank Act and the federal policy favoring arbitration embodied in the FAA.⁵ To date, there are few federal court decisions dealing with the issue of the arbitrability of Dodd-Frank whistleblower claims because the Act is relatively recent, but the Third Circuit's decision in *Khazin* is consistent with other previously litigated cases.

II. BACKGROUND

The plaintiff-appellant, Boris Khazin (hereafter "Khazin"), is a financial services professional who previously worked as an employee of the defendant-appellee, TD Ameritrade, Inc. (hereafter "TD").⁶ At the beginning of Khazin's employment, Khazin and TD executed an employment agreement that contained an arbitration clause in which the parties agreed to arbitrate all disputes arising out of Khazin's employment with TD.⁷

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¹ *Khazin v. TD Ameritrade Holding Corp.*, 773 F.3d 488 (2014).

² *Id.* at 489 (citing Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1848 (2010)).

³ *Id.* at 490.

⁴ *Id.* at 495.

⁵ *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983) ("Section 2 [of the FAA] is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary").

⁶ *Khazin*, 773 F.3d at 489.

⁷ *Khazin*, 773 F.3d at 489.

Khazin's responsibilities at TD involved performing due diligence on the financial products offered by the company to ensure compliance with securities regulations.⁸ During the course of his work, Khazin discovered that one of the products offered by TD to customers did not comply with certain securities regulations.⁹ Upon making this discovery, Khazin reported the problem to his supervisor, Lule Demmissie, along with his recommendations for bringing the product into compliance.¹⁰

Demmissie was initially receptive to Khazin's concerns, and requested that he analyze the "revenue impact" of his proposal.¹¹ When Khazin's analysis revealed that his proposed changes would save customers \$2 million, but would cost TD \$1.15 million and would negatively impact one of Demmissie's divisions, Demmissie ordered Khazin not to make any changes to the product's pricing.¹² Khazin later approached Demmissie again to recommend changes to remedy the violation, but again Demmissie told Khazin that changes would not be made, and told him to stop contacting her regarding the matter.¹³

Over the following months, Demmissie, along with TD's human resources department, approached Khazin about an unrelated billing irregularity that Khazin claims had nothing to do with his duties at TD.¹⁴ The billing problem turned out to be non-existent, but nevertheless, Khazin was told that he could no longer be trusted, and TD terminated his employment.¹⁵

Khazin initially brought suit against TD in New Jersey state court, alleging state law claims and violation of the Dodd-Frank Act, claiming that he was terminated as retaliation for whistleblowing.¹⁶ The state court dismissed the Dodd-Frank claim for lack of subject matter jurisdiction, holding that federal courts have exclusive jurisdiction over Dodd-Frank claims, and compelled arbitration of the state law claims.¹⁷

Khazin then brought his Dodd-Frank claim in federal district court in the District of New Jersey, claiming that the Dodd-Frank Act's Anti-Arbitration Provision ("the Provision") prevents whistleblowers from being compelled to arbitrate their claims.¹⁸ The Provision states that "[n]o predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this

⁸ *Id.* at 489.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Khazin*, 773 F.3d at 489-90.

¹³ *Id.* at 489.

¹⁴ *Id.* at 490.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Khazin*, 773 F.3d at 490.

¹⁸ *Khazin*, 773 F.3d at 490.

section.”¹⁹ TD argued that (1) the Provision did not forbid arbitration of Khazin’s particular type of claim, and (2) the Provision did not apply retroactively to bar enforcement of agreements, such as this one, signed before the Act took effect.²⁰ The district court found in favor of TD, holding that the Act does not apply retroactively.²¹ Khazin now brings an appeal arguing that the arbitration agreement he signed is not enforceable under the Provision.²²

III. COURT’S ANALYSIS

On appeal, the Third Circuit examined the issue of whether the Anti-Arbitration Provision, or any other provision, of the Dodd-Frank Act invalidates the arbitration agreement that Khazin signed as part of his employment agreement with TD.²³ The district court did not reach this issue, instead deciding the case in favor of TD based on the non-retroactivity of the Dodd-Frank provisions.²⁴ The Third Circuit affirmed the decision of the district court, but on different grounds, concluding that because Khazin’s claim arises under Dodd-Frank’s amendment to the Securities Exchange Act (referred to in the opinion as the “Dodd-Frank claim”), it does not fall within the specific exemptions granted by the Provision.²⁵

A. The Dodd-Frank Act Only Adds the Anti-Arbitration Provision to Specific Causes of Action

The Third Circuit began its analysis by examining the history of the Dodd-Frank Act and its Anti-Arbitration Provision. Specifically, the Third Circuit distinguished causes of action arising under the Sarbanes-Oxley Act (“SOX”) from those arising under the Dodd-Frank amendments to the Securities Exchange Act (“the Dodd-Frank cause of action”).²⁶ The whistleblower protection program was created by the Dodd-Frank Act in 2010 as an amendment to the Securities Exchange Act of 1934, and is designed to prevent employers from retaliating against employees who provide information to the Securities Exchange Commission (“SEC”), participate in SEC proceedings, or make statutorily required disclosures under the Sarbanes-Oxley Act and other securities

¹⁹ *Id.* at 490 (quoting 18 U.S.C. § 1514A(e)(2)).

²⁰ *Id.* at 490.

²¹ *Id.*

²² *Id.*

²³ *Khazin*, 773 F.3d at 490-91.

²⁴ *Id.* at 491.

²⁵ *Id.* at 494.

²⁶ *Khazin*, 773 F.3d at 491-92.

statutes.²⁷ The Act also created a new cause of action for whistleblowers who have suffered retaliation.²⁸ Khazin’s claim arises under this new cause of action.²⁹

The Third Circuit noted the substantive distinctions between the SOX and the Dodd-Frank causes of action for whistleblowers: specifically each “act has its ‘own prohibited conduct, statute of limitations, and remedies.’”³⁰ SOX also has an exhaustion requirement, which the Dodd-Frank cause of action does not have, and the potential remedies under each cause of action are different.³¹ These distinctions are significant because they justify treating claims arising under each of the acts differently.³²

In addition to creating a whistleblower protection provision under the Securities Exchange Act, the Dodd-Frank Act also added the Anti-Arbitration Provision to the existing whistleblower protection provisions under SOX and the Commodity and Exchange Act.³³ In both, the provision states that “no predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.”³⁴ However, the Dodd-Frank Act did not include the Anti-Arbitration Provision in the new cause of action it created under the Securities Exchange Act.³⁵ This is the distinction on which Khazin’s case turned.

B. The Language of the Anti-Arbitration Provision Does Not Include Claims Arising Under the Dodd-Frank Cause of Action

The Third Circuit decided that Khazin’s claim failed because it did not arise under one of the limited causes of action covered by the Dodd-Frank Anti-Arbitration Provision.³⁶ After examining the text and structure of the Dodd-Frank Act, the Third Circuit concluded that the Provision only attaches to certain statutory claims, and that Khazin’s claim was not one of them.³⁷

²⁷ *Id.* at 491 (quoting *Lawson v. FMR LLC*, 134 S. Ct. 1158, 1174 (2014)).

²⁸ *Khazin*, 773 F.3d at 491.

²⁹ *Id.*

³⁰ *Khazin*, 773 F.3d at 491 (quoting *Ahmad v. Morgan Stanley & Co.*, 2 F. Supp. 3d 491, 497 (S.D.N.Y. 2014)).

³¹ *Khazin*, 773 F.3d at 491.

³² *Id.* at 493.

³³ *Id.* at 491.

³⁴ *Khazin*, 773 F.3d at 491-92 (citing 18 U.S.C. § 1514A(e)(2)).

³⁵ *Khazin*, 773 F.3d at 491.

³⁶ *Khazin*, 773 F.3d at 492.

³⁷ *Id.* at 492.

1. *The Anti-Arbitration Provision Was Not Applied to the Dodd-Frank Cause of Action*

The Third Circuit noted that the Anti-Arbitration Provision enacted as part of the Dodd-Frank Act is limited in its scope.³⁸ Khazin argued that the Provision referred to his cause of action brought under the Dodd-Frank Act. However, the Third Circuit reasoned that the “this section” referred to by the Provision is the section containing the SOX cause of action:³⁹ Section 1514A of Title 18 of the United States Code.⁴⁰

In reaching its conclusion, the Third Circuit examined the structure of the Dodd-Frank Act and the amendments that it adds to existing statutes.⁴¹ Specifically, the Third Circuit noted that the Provision specifically prohibits enforcement of predispute arbitration agreements relating to disputes “arising under *this* section.”⁴² The Court reasons that, because the Anti-Arbitration Provision explicitly states that it “amend[s] ‘Section 1514A of title 18, United States Code by adding that provision at the end,’” the “this section” referred to in the Provision is Section 1514A, which contains the SOX cause of action.⁴³ Therefore, even though the Dodd-Frank cause of action and the Anti-Arbitration Provision are located in the same section of the Dodd-Frank Act, the Anti-Arbitration Provision does not apply to the Dodd-Frank cause of action. Because Khazin’s claim arises under the Dodd-Frank cause of action, the court reasoned, the Anti-Arbitration Provision did not apply to his claim.⁴⁴ The text of the Dodd-Frank Act explicitly applies the Provision to the SOX cause of action, not broadly to all securities-related whistleblower causes of action.⁴⁵

2. *“When Congress Amends One Statutory Provision But Not Another, It is Presumed to Have Acted Intentionally”⁴⁶*

Khazin argued that the Anti-Arbitration Provision was not attached to the Dodd-Frank cause of action due to an unintentional omission by Congress because “a bill as massive as Dodd-Frank will inevitably contain gaps not intended by Congress.”⁴⁷ The

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ 18 U.S.C. § 1514A(e)(2).

⁴¹ *Khazin*, 773 F.3d at 492.

⁴² *Id.* (emphasis in opinion).

⁴³ *Id.* at 492 n.3 (quoting Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. at 1376, 1848 (2010)).

⁴⁴ *Khazin*, 773 F.3d at 492.

⁴⁵ Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1848 (2010).

⁴⁶ *Khazin*, 773 F.3d at 493 (quoting *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 174 (2009)).

⁴⁷ *Khazin*, 773 F.3d at 492.

Third Circuit disagreed, reasoning that the fact that Dodd-Frank added the Provision to other causes of action but not the Dodd-Frank cause of action indicates “that the omission was deliberate.”⁴⁸ In support this conclusion, the court noted that “the amendments to SOX, including the Anti-Arbitration Provision, are adjacent to the Dodd-Frank cause of action in the text of Dodd-Frank,” which further shows that the omission was not an oversight.⁴⁹

C. The Differences Between the Sarbanes-Oxley and the Dodd-Frank Causes of Action Justify Treating Claims Arising Under Each of the Acts Differently

Khazin argued that his Dodd-Frank claim should be treated in the same way as a SOX claim, and that not applying the Anti-Arbitration Provision to his claim would “undermine Dodd-Frank’s broader purpose” of protecting whistleblowers.⁵⁰ The Third Circuit disagreed, citing the many differences between claims brought under each of the causes of action.⁵¹ The Court reasoned that applying the purpose of the statute in contravention of the literal language of the law could frustrate congressional intent, and that the text and structure of the Dodd-Frank Act were clearly not intended to grant Khazin a right to resist arbitration of his claim.⁵²

The Third Circuit also supported its decision with reference to the “liberal federal policy favoring arbitration.”⁵³ The Third Circuit also noted that courts must enforce arbitration agreements as written, including agreements involving statutory rights, unless Congress has explicitly overridden the FAA in this regard with a contrary command.⁵⁴ Although Congress did override the FAA by appending the Anti-Arbitration Provision to some causes of action, the court reasoned, Congress declined to add the Provision to the Dodd-Frank cause of action.⁵⁵ The court therefore concluded that Khazin’s claim was arbitrable.⁵⁶

⁴⁸ *Id.*

⁴⁹ *Id.* at 493.

⁵⁰ *Id.*

⁵¹ *Id.* at 493.

⁵² *Khazin*, 773 F.3d at 493.

⁵³ *Khazin*, 773 F.3d at 493 (quoting *Moses H. Cone Mem’l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 24 (1983)).

⁵⁴ *Khazin*, 773 F.3d at 493.

⁵⁵ *Id.*

⁵⁶ *Id.*

D. The Dodd-Frank Act Does Not Invalidate All Broadly Worded Arbitration Agreements

Finally, the Third Circuit noted that the district court's decision to enforce the arbitration agreement is consistent with previous cases in which courts interpreted similar provisions of the Dodd-Frank Act.⁵⁷ Khazin argued that a Fourth Circuit case, *Santoro v. Accenture Federal Services, LLC*⁵⁸ contains language suggesting that the Anti-Arbitration Provision invalidates all agreements to arbitrate Dodd-Frank claims.⁵⁹ The Third Circuit rejected this reasoning because such an interpretation would be inconsistent with congressional intent as expressed in the FAA, and because the claims in *Santoro* did not involve whistleblower protection, which distinguished those claims from Khazin's.⁶⁰

In support of his claim Khazin also cites a FINRA regulation, which provides that whistleblower disputes are not required to be arbitrated pursuant to predispute agreements.⁶¹ Khazin argued that this FINRA regulation meant that he could not be compelled to arbitrate his claim.⁶² The Third Circuit, however, looked to regulatory notices to conclude that the regulation clearly only applies to claims arising under SOX.⁶³

IV. SIGNIFICANCE

As the Third Circuit noted in *Khazin*, the Dodd-Frank Act is thousands of pages long and adds multiple amendments to several existing statutes.⁶⁴ As the arguments made by plaintiff Khazin illustrate, the scope of some of these amendments is unclear without a careful reading of both the Dodd-Frank Act and the provisions of the existing statutes that the Act amends. This case is particularly significant for practitioners in the Third Circuit because it definitively establishes that claims arising under the Dodd-Frank amendments to the Securities Exchange Act are arbitrable.⁶⁵ Absent a future action by Congress adding an Anti-Arbitration Provision to the Dodd-Frank cause of action, practitioners can now know that their clients' agreements to arbitrate claims arising out of Dodd-Frank's amendments to the Securities Exchange Act will be enforced in the Third Circuit.

⁵⁷ *Id.*

⁵⁸ *Santoro v. Accenture Fed. Servs., LLC*, 748 F.3d 217 (2014).

⁵⁹ *Khazin*, 773 F.3d at 493-94.

⁶⁰ *Id.* at 494.

⁶¹ *Khazin*, 773 F.3d at 494 (citing Order Approving a Proposed Rule Change Amending FINRA Rules 13201 and 2263 Relating to Whistleblower Disputes in Arbitration, 77 Fed. Reg. 15,824 (Mar. 12, 2012)).

⁶² *Id.*

⁶³ *Khazin*, 773 F.3d at 494.

⁶⁴ *Id.* at 491.

⁶⁵ *Id.* at 492.

It is, however, important to note that the Third Circuit's decision in *Khazin* does not reveal much one way or the other about the Third Circuit's broader position on enforcement of arbitration agreements. Given the language and structure of the Dodd-Frank Act's amendments to the Securities Exchange Act, the Third Circuit was left with no real choice but to enforce the arbitration agreement between *Khazin* and TD.⁶⁶ Because FAA Section 2 requires courts to enforce arbitration agreements as written unless there is a contrary command by Congress,⁶⁷ and because it appears clear from the structure and text of the Dodd-Frank act that Congress intentionally did not append the Anti-Arbitration Provision to the amended Securities Exchange Act (the Dodd-Frank cause of action),⁶⁸ the only feasible interpretation of Dodd-Frank required the Court to enforce the agreement and compel arbitration.

This case is also of special significance because, so far, the Third Circuit appears to be the only Court of Appeals to have ruled on the specific question of the arbitrability of claims arising under the Securities Exchange Act as amended by Section 922 of the Dodd-Frank Act. Other circuits have ruled on the larger question of Dodd-Frank's effect on broadly worded arbitration agreements.⁶⁹ However, this case is was the first instance in which a circuit court was presented with the specific question of whether and how the Anti-Arbitration Provision affects claims arising under statutes amended by Dodd-Frank but which do not include the Provision. After *Khazin*, practitioners now have the answer to that question: whistleblower claims arising under the Securities Exchange Act as amended by Dodd-Frank are arbitrable.

V. CRITIQUE

The Dodd-Frank Act targets the financial services sector, with a stated purpose of “promot[ing] the financial stability of the United States by improving accountability and transparency in the financial system.”⁷⁰ Additionally, the Act specifically places the Provision in some statutes while leaving it out of others,⁷¹ making it indeed unreasonable to suggest that the Provision applies to effectively invalidate any broad arbitration agreement that could potentially, though does not actually, interfere with the Anti-Arbitration Provision. Because the Dodd-Frank Act is barely five years old, there is a

⁶⁶ *Id.* at 492 n.3.

⁶⁷ *CompuCredit Corp. v. Greenwood*, 132 S. Ct. 665, 669 (2012).

⁶⁸ *Khazin*, 773 F.3d at 492.

⁶⁹ For example, *Santoro v. Accenture Fed. Servs., LLC*, 748 F.3d 217 (4th Cir. Va. 2014) and *Holmes v. Air Liquide USA, L.L.C.*, 498 Fed. Appx. 405 (5th Cir. Tex. 2012) both interpreted Dodd-Frank anti-arbitration provisions narrowly, applying the provisions only to claims arising under the section of the statute to be amended by that portion of the Dodd-Frank Act.

⁷⁰ Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1848 (2010).

⁷¹ For example, sections in the Dodd-Frank Act that do contain anti-arbitration provisions include § 922(e)(2) modifying the Sarbanes-Oxley Act, § 748(n)(2) modifying the Commodity and Exchange Act, and § 1057(d)(2) discussing employee protection.

limited amount of precedent dealing with the arbitrability of claims brought under existing statutes that were amended by the Act. However, to the extent that the issue of arbitrability under Dodd-Frank has been litigated, the Third Circuit's holding in *Khazin* is consistent with previous decisions.

Early cases addressing the application of the Dodd-Frank amendments to arbitration agreements illustrate courts' unwillingness to allow the Act to be used as a broad means of invalidating arbitration agreements. In *Holmes v. Air Liquide USA, L.L.C.*,⁷² the Fifth Circuit held that the Dodd-Frank amendments will not invalidate a broad arbitration agreement simply because a whistleblower claim has been brought under a statute amended by Dodd-Frank.⁷³ The Fifth Circuit noted that if the Anti-Arbitration Provisions contained in the Dodd-Frank Act were read to apply to every statute that has been amended by Dodd-Frank, even where Dodd-Frank did not add an Anti-Arbitration Provision to that statute, this would lead to "unreasonable results."⁷⁴ If such arguments were successful, the result would be "the untenable conclusion that the Act wholesale invalidates all broadly-worded arbitration agreements...even when plaintiffs bring wholly unrelated claims."⁷⁵

Two years later, the Fourth Circuit offered an even narrower analysis. In *Santoro v. Accenture Fed. Servs., LLC*,⁷⁶ the Fourth Circuit case cited by *Khazin* in support of his argument that the Anti-Arbitration Provision does apply to his claim, the Fourth Circuit examined the interaction between the Dodd-Frank Act and FAA Section 2.⁷⁷ Rather than offering support for *Khazin*'s argument, the Fourth Circuit in *Santoro* emphasized the limited application of the Dodd-Frank Anti-Arbitration Provision to whistleblower claims arising under specific statutes amended by Dodd-Frank.⁷⁸ The court in *Santoro* concluded that the Provision does not apply to any and every claim arising out of the employment context.⁷⁹ The Fourth Circuit in *Santoro* emphasized that the Anti-Arbitration Provision only applies to whistleblower claims, holding the Anti-Arbitration Provision to be inapplicable because the plaintiff did not bring a whistleblower claim.⁸⁰ Although *Khazin* did bring a whistleblower claim, unlike the plaintiff in *Santoro*, the *Santoro* case still serves to emphasize the limited scope of the several Anti-Arbitration

⁷² *Holmes v. Air Liquide, L.L.C.*, 498 Fed. Appx. 405 (2012).

⁷³ *Holmes*, 498 Fed. Appx. at 406.

⁷⁴ *Id.* at 407.

⁷⁵ *Holmes*, 498 Fed. Appx. at 407.

⁷⁶ *Santoro v. Accenture Fed. Servs., LCC*, 748 F.3d 217 (2014).

⁷⁷ *Santoro*, 748 F.3d at 221.

⁷⁸ *Id.* at 223.

⁷⁹ *Id.*

⁸⁰ *Id.*

Provisions contained in the Dodd-Frank Act by upholding the arbitrability of disputes under statutes to which the Dodd-Frank Act did not add an anti-arbitration provision.⁸¹

The Third Circuit in *Khazin* took this analysis of the application of the Anti-Arbitration Provision one step further. The court in *Khazin* emphasized that not only does the Provision only apply to whistleblower claims, but it is also limited by the text and structure of the Act to specifically defined whistleblower claims.⁸²

The Third Circuit also cited two district court cases, *Ruhe v. Masimo Corp*⁸³ and *Murray v. UBS Sec., LLC*,⁸⁴ both of which also involved claims arising under the Dodd-Frank cause of action. In *Ruhe*, as in *Khazin*, the plaintiff argued that the Anti-Arbitration Provision was unintentionally omitted as the result of a mere “drafting error.”⁸⁵ The court in *Ruhe* disagreed, noting that Congress later proposed further amendments to the statute which did not include an anti-arbitration provision.⁸⁶ In *Murray*, the court held that there was not enough evidence to show that Congress unintentionally omitted the Anti-Arbitration Provision. Rather, the *Murray* court reasoned, the differences between the Dodd-Frank cause of action and the SOX cause of action, which does contain the Provision, indicated that the omission was intentional.⁸⁷

In *Khazin*, the Third Circuit rested its holding primarily on the text and structure of the amendments Dodd-Frank adds to existing statutes.⁸⁸ The Court focused on the plain meaning of the Act. This analysis led the court to conclude that because Congress did not include the Anti-Arbitration Provision in the amendments to the Securities Exchange Act, Congress did not intend for the Anti-Arbitration Provision to be applied to claims arising under the Securities Exchange Act.⁸⁹ This holding leaves the door open for Congress to add the Anti-Arbitration Provision to the Securities Exchange Act amendments if Congress did indeed intend for the Provision to apply to claims arising under that cause of action.

VI. CONCLUSION

The plain language and the structure of the Dodd-Frank Act amendments compel the conclusion that the omission of the Anti-Arbitration Provision from the Dodd-Frank cause of action was intentional and not the result of a drafting error. Therefore, the Third

⁸¹ *Id.* at 224.

⁸² *Khazin*, 773 F.3d at 492.

⁸³ *Ruhe v. Masimo Corp.*, 2011 U.S. Dist. LEXIS 104811 (C.D. Cal. Sept. 16, 2011).

⁸⁴ *Murray v. UBS Sec., LLC*, 2014 U.S. Dist. LEXIS 9696 (S.D.N.Y. Jan. 27, 2014).

⁸⁵ *Ruhe*, 2011 U.S. Dist. LEXIS 104811 at *12-13.

⁸⁶ *Id.* at *14.

⁸⁷ *Murray*, 2014 U.S. Dist. LEXIS 9696 at *23-27.

⁸⁸ *Khazin*, 773 F.3d at 492.

⁸⁹ *Khazin*, 773 F.3d at 493.

Circuit may not read in the Anti-Arbitration Provision and apply it to Khazin's claim. If Congress indeed intended for the Provision to apply to the Dodd-Frank cause of action, Congress can amend this section to include the provision. But, until Congress takes such action, agreements to arbitrate claims arising under the Dodd-Frank cause of action will be upheld in the Third Circuit.