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NINTH CIRCUIT DECISION INTERPRETS ARBITRATION PROVISION NARROWLY

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The U.S. Court of Appeals for the 9th Circuit recently issued a decision holding that a dispute pertaining to liability for damage caused during the salvage of a vessel could proceed in court, despite the inclusion of an arbitration provision in the salvage contract. In light of this decision, it would be prudent to review the language of arbitration clauses in contracts, particularly those pertaining to work or services provided in jurisdictions covered by the 9th Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, Northern Mariana Islands), to ensure the wording of the arbitration clause reflects the intent of the parties.

In *Cape Flattery Limited v. Titan Maritime, LLC*, a shipowner (Cape Flattery) had contracted with a salvage company (Titan) to remove a stranded vessel from a reef. The contract contained a provision calling for disputes "arising out of" the contract to be resolved by arbitration in England.

Titan removed the vessel from the reef, but apparently damaged the reef in doing so. Pursuant to federal law, the U.S. government sought to recover from Cape Flattery for damage to the reef. Cape Flattery filed suit in federal court, seeking indemnification from Titan for the damages sought by the government. Titan moved to compel arbitration under the salvage contract, and the federal district court denied its motion.

On appeal, the 9th Circuit held that the claim for indemnification was collateral to the salvage contract and did not "arise out of" that contract. As a result, the court held that Cape Flattery's indemnification claim was not subject to arbitration and could be pursued in a U.S. court. The court found that if the parties had intended all disputes associated with the contract to be resolved by arbitration, they would have used broader language such as "arising out of or relating to." Since they did not, arbitration was not required.

Although the 9th Circuit decision is not binding on all U.S. courts, and some other courts have adopted a less restrictive reading of the phrase "arising out of," this decision is a warning that contract parties must be very clear in the wording of arbitration clauses and should have an understanding of the law that will be applied in determining the arbitrability of disputes.