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Finnish Co. Can't Dodge Arbitration Over Engine Failure

By Christopher Crosby

Law360 (August 16, 2018, 5:07 PM EDT) -- A Texas federal judge has refused to break up arbitration launched by an insurer over a malfunctioning power plant engine, saying it's up to an International Centre for Dispute Resolution panel to decide whether a Finnish engine seller must arbitrate the claims.

U.S. District Judge Gray H. Miller on Tuesday nixed the attempt by engine seller and servicer Wärtsilä North America Inc. and parent company Wärtsilä Finland Oy to stop ICDR arbitration proceedings set to begin in Paris.

Wärtsilä and its parent company had sued the arbitration center after an administrator there refused to halt proceedings brought by the Hartford Steam Boiler Inspection and Insurance Co. over a failed reciprocating engine used at a power plant in Raton, New Mexico.

Wärtsilä had argued that its agreement to do maintenance on the engine was between itself and a regional power regulator, and that ICDR arbitrators did not have jurisdiction to even hear Hartford's case.

But Judge Miller said Tuesday that it was up to the arbitrators to decide if they had jurisdiction to consider the claims, something they'd yet to do.

"This case was not even in front of the arbitration panel yet and already the parties have made significant arguments pointing to multiple arbitration provisions that may or may not have been assignable," Judge Miller said.

While clear error by arbitrators can be corrected by a court, arbitration is typically immune from its oversight unless there's a "clear absence" of jurisdiction, the judge said.

"This was not the simple issue that Wartsila suggests. And it is certainly not an issue that seems appropriate to ask an administrator who is tasked with getting the parties to choose the panel to resolve. It is an issue more appropriately considered by the panel."

The underlying dispute has its origins in a engine Wärtsilä sold the Arkansas River Power Authority in May 2002 for a power plant in Raton. The city later purchased the engine as-is, and in 2012 Wärtsilä performed \$58,000 worth of maintenance on it.

Hartford, however, launched arbitration proceedings against Wärtsilä in January 2014 claiming the equipment Wärtsilä worked on lasted just eight days before experiencing "catastrophic failure" that spewed debris. No one was hurt.

Wärtsilä told an administrator for ICDR that Hartford, as Raton's insurer, lacked jurisdiction as the contract named the Arkansas River Power Authority and didn't allow parties to assign beneficiaries.

Hartford, for its part, told the ICDR that certain documents exchanged between the parties includes Raton in an arbitration clause, and urged an administrator not to dismiss the case out of hand, citing the complex nature of the jurisdictional arguments.

Attorneys for the arbitration center, meanwhile, said that as a "neutral administrator of arbitrations," ICDR takes no position on the parties' dispute, and said that under the doctrine of arbitral immunity, it should not have been named to the litigation.

In addition to agreeing to ICDR's immunity arguments, Judge Miller said Tuesday that the court lacked jurisdiction over Hartford and could not exert Texas law over the arbitration provisions.

Counsel for the parties did not immediately return a request for comment Thursday.

Wartsila is represented by Adam D. Pogach and Brian Trachtenberg of Pogach & Trachtenberg PLLC.

The ICDR is represented by Leslee N. Haas of Johnson Trent Taylor LLP.

Hartford is represented by Rogge Dunn and Brian P. Shaw of the Rogge Dunn Group PC.

The case is Wartsila North America Inc. et al v. International Centre for Dispute Resolution et al., case number 4:18-cv-01531, in U.S. District Court for Texas Southern.

--Editing by Emily Kokoll.