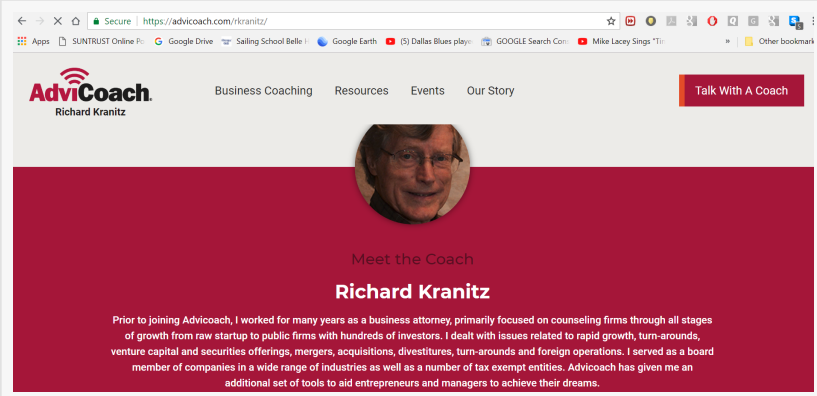
Business Attorney Richard A. Kranitz publishes comment on the issue of arbitration clauses in business agreements

In Midwest Neurosciences Associates, the Wisconsin Supreme Court reviewed whether a dispute should be arbitrated and contemplated the parties' intent

GRAFTON, WISCONSIN, UNITED STATES, February 15, 2019 /EINPresswire.com/ -- Richard A. Kranitz, in a newly published comment, reviews the issue of arbitration clauses in business agreements. The full comment will be published on his Blog at https://richardkranitzblog.blogspot.com/



Richard Kranitz, Business Coach in Wisconsin

Mr. Kranitz explains that, in a recent decision of the Supreme Court of Wisconsin, the Court considered whether a dispute should be arbitrated where the original operating agreement contained an arbitration clause, but the subsequent agreement did not.

> In Midwest Neurosciences Associates, the Wisconsin Supreme Court noted that only those disputes that the parties have agreed to so submit to arbitration are relegated to proceed in that forum"
>
> *Richard A. Kranitz, business attorney in Wisconsin*

In 2015, three doctors, acting through their own legal entities were members of Midwest Neurosciences Associates, LLC (hereinafter "Midwest"). "[O]n August 1, 2005, the parties at issue executed an Operating Agreement which modified a previous operating agreement of August, 2002 so to admit, among others, Dr. Pannu to Midwest. Dr. Pannu executed the Operating Agreement as President of Great Lakes and also signed a personal guaranty for the obligations of Great Lakes. The Operating Agreement contains the arbitration clause at issue." On March 6, 2006, Dr. Pannu signed the Ancillary Restrictive Covenant that addressed covenant not to compete. "The Ancillary Restrictive Covenant, however, did not specifically incorporate by reference Section 13.7, the arbitration section, of the Operating Agreement."

The members of Midwest decided to dissolve the LLC in 2015 and dispute arose over whether during the negotiation, parties entered into the Redemption Agreement, which among other things, voided the non-compete provision. Eventually, Midwest and one of the doctor's entity, NEA, sued Dr. Pannu and his entity, Great Lakes Neurosurgical Associates, LLC. "Before a responsive pleading was filed, Midwest and NEA moved to stay the proceedings and compel arbitration in accordance with Section 13.7 of the Operating Agreement. Midwest and NEA argued that the Operating Agreement was the governing contract between the parties and that Section 13.7 within that agreement unambiguously required the parties to arbitrate violations of

Section 8.13 of the Operating Agreement and the Ancillary Restrictive Covenant." Dr. Pannu filed a responsive pleading asserting that the Redemption Agreement was a valid agreement and thus voided the Operating Agreement and the Ancillary Restrictive Covenant.

"On March 16, 2016, the circuit court issued a written order granting Great Lakes and Dr. Pannu's motion and declaring that the Redemption Agreement was a valid contract. The court determined that as of March 31, 2015, the Operating Agreement and the non-compete provisions of the Ancillary Restrictive Covenant were invalid, unenforceable and/or inapplicable to Great Lakes and Dr. Pannu. The order also denied Midwest and NEA's motion to stay the action and compel arbitration." Midwest and NEA appealed.

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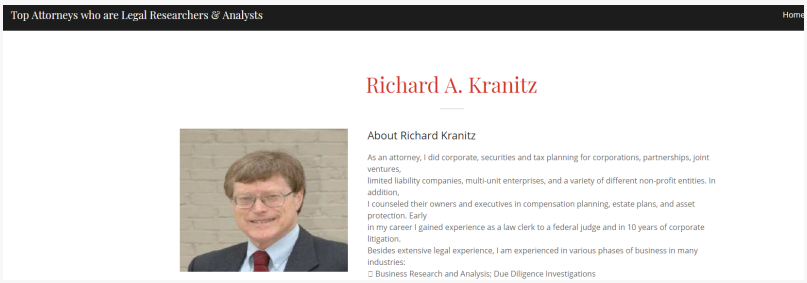

Attorney Profile Richard Kranitz

"On December 20, 2017, the court of appeals issued its decision concluding that the 'determinative question is whether the circuit court erred by not ordering the parties to submit their dispute to arbitration.' The court of appeals held 'that the question of whether the arbitration clause was superseded should have been submitted to arbitration.' As such, the court of appeals declined to address the multiple other issues that Midwest and NEA raised on appeal and reversed and remanded, instructing the circuit court to grant Midwest and NEA's motion to compel arbitration." (internal citations omitted).

Wisconsin Supreme Court provided a general overview of the principles governing arbitration clauses and noted that "[c]onsequently, only those disputes that the parties have agreed to so submit to arbitration are relegated to proceed in that forum. A court should order arbitration 'only where the court is satisfied that neither the formation of the parties' arbitration agreement nor (absent a valid provision specifically committing such disputes to an arbitrator) its enforceability or applicability to the dispute is in issue.'" (internal citations omitted).

Noting the various conflicting provisions amongst the Operating Agreement, the Ancillary Restrictive Covenant, and the Redemption Agreement, Wisconsin Supreme Court concluded that "[d]ue to the foregoing, Midwest and NEA failed to demonstrate 'clear and unmistakable' intent to arbitrate. Thus, the question of whether the parties agreed to arbitrate must, in this instance, be decided by the circuit court." The case is Midwest Neurosciences Associates, LLC v. Great Lakes Neurosurgical Associates, LLC, 2018 WI 112.

About Richard A. Kranitz

Richard Kranitz is an experienced attorney and business consultant in the areas of corporate, securities and tax planning for corporations, partnerships, joint ventures, limited liability companies, multi-unit enterprises, and a variety of different non-profit entities. In addition, he has counseled their owners and executives in compensation planning, estate plans, and asset protection.

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