

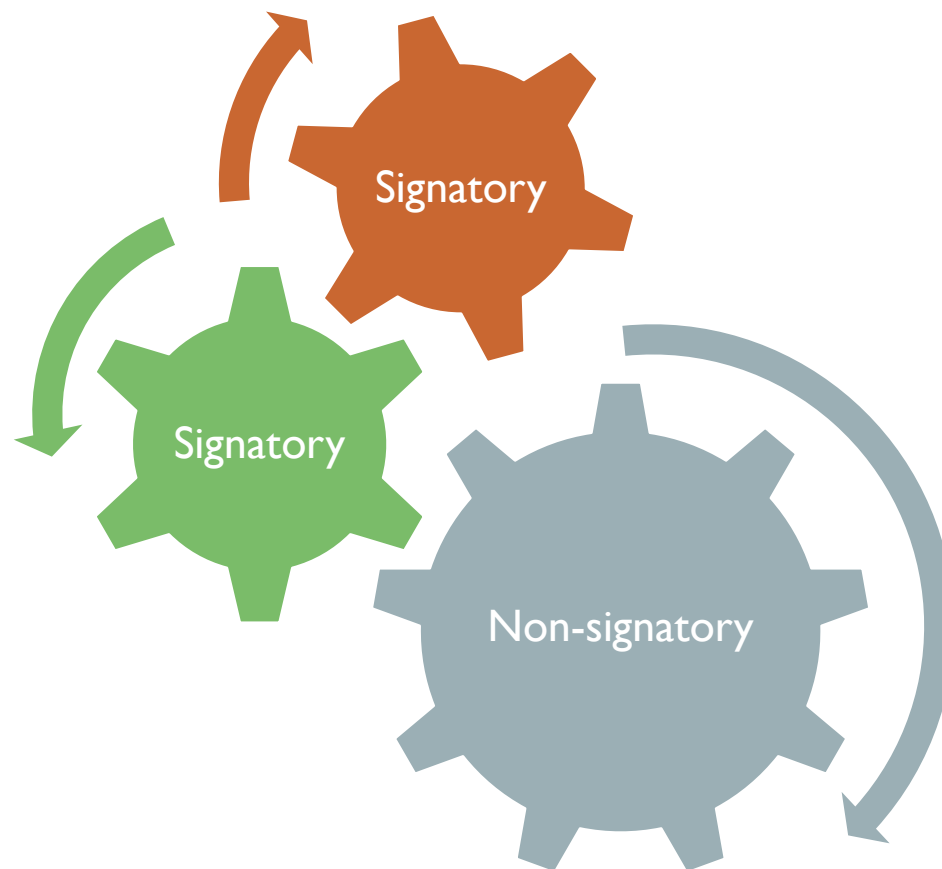
Binding non-signatories
in arbitration agreements

SWORDS, SHIELDS, AND SIDECARS

WHAT WE'LL COVER

- Common scenarios
- Rules and analysis
- Caveats

SCENARIOS



RULES, ANALYSIS, AND CAVEATS

- Who bears the burden of proof?
- Who are the parties, both signatories or only one?
- Who seeks enforcement, signatory or non-signatory?
- What grounds support enforcement?
- Who decides the question, court or arbitrator?

BURDEN OF PROOF

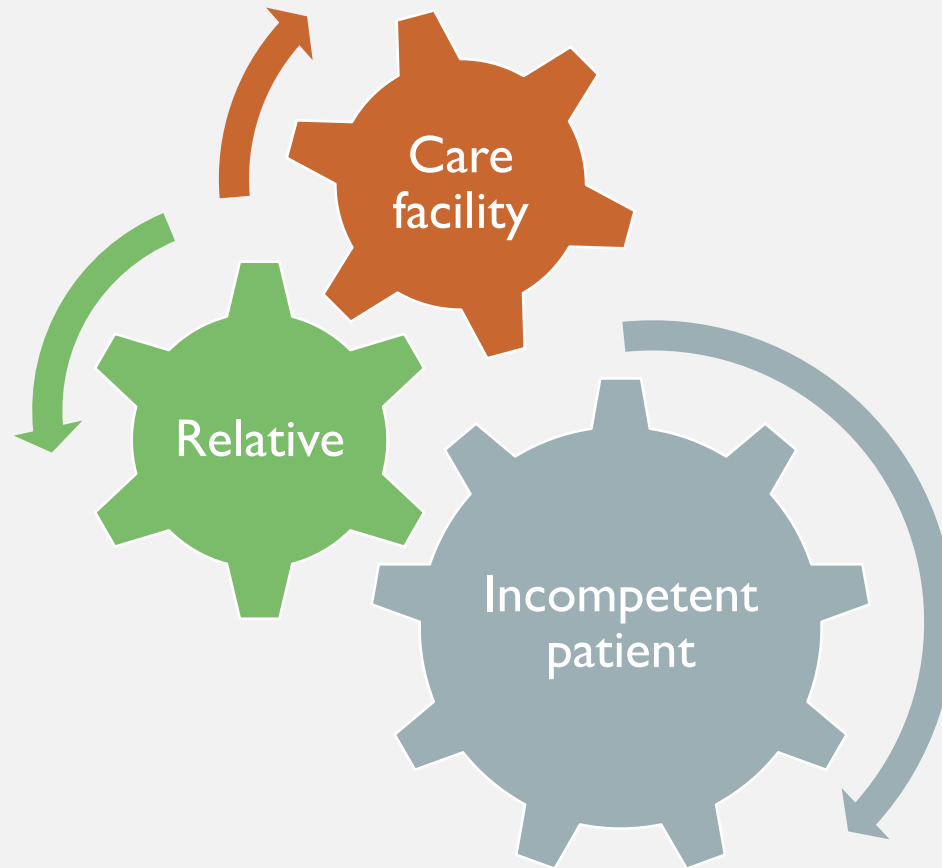
Party seeking enforcement bears the burden

Arbitration is a matter of consent, not coercion. *Cohen v. TNP 2008 Participating Notes Program, LLC* (2019) 31 Cal.App. 5th 840, 858–859.

- Is there an agreement?
- Does the agreement cover the dispute?

Ahern v. Asset Management Consultants, Inc. (2022) 74 Cal.App. 5th 675, 687

SCENARIOS



BURDEN OF PROOF

- Adult child admits parent to nursing/care facility
- Says they have power of attorney
- Presents evidence of authority to make medical decisions
- Signs contract with arbitration provision
- Parent (through GAL) sues facility
- Can facility enforce arbitration provision against parent?

THE BURDEN OF PROOF

Defendant failed to prove that children had authority to bind parent to arbitration contract, even if they signed contract admitting parent to facility.

- *Theresa D. v. MBK Senior Living LLC* (2021) 73 Cal.App.5th 18 [288 Cal.Rptr.3d 87], review denied (Mar. 9, 2022)

Until party seeking to enforce establishes that agent/child had authority to bind principal/parent, the other party has no burden to show lack of authority.

- *Kinder v. Capistrano Beach Care Center, LLC* (2023) 91 Cal.App.5th 804

SIX WAYS TO BIND NON-SIGNATORY

Third-party
beneficiary

Agency

Alter ego

Estoppel

Assumption

Incorporation
by reference

SIX WAYS TO BIND NON-SIGNATORY

Third-party
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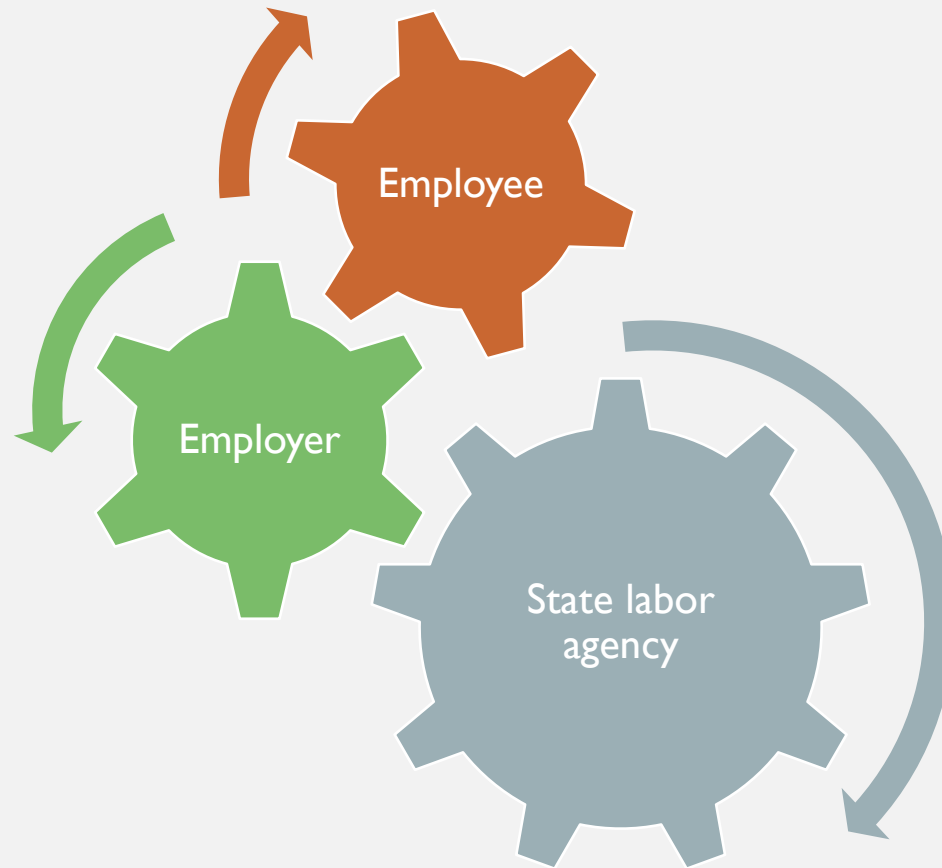
SIX WAYS TO BIND NON-SIGNATORY

Agency

Alter ego

Assumption

SCENARIOS



AGENCY, ALTER EGO, ASSUMPTION

- Worker alleges discrimination against Employer
- FEHA brings suit “on behalf of” Worker
- Worker is not a party, but signed arbitration agreement
- Employer moves to compel arbitration
- Employer argues that FEHA is Worker’s proxy, so not acting independently

AGENCY, ALTER EGO, ASSUMPTION

“The Department acts independently when it exercises the power to sue for FEHA violations. As an independent party, the Department cannot be compelled to arbitrate under an agreement it has not entered.”

- *Department of Fair Employment & Housing v. Cisco Systems, Inc.* (2022) 82 Cal.App.5th 93, 104 [297 Cal.Rptr.3d 827, 834]

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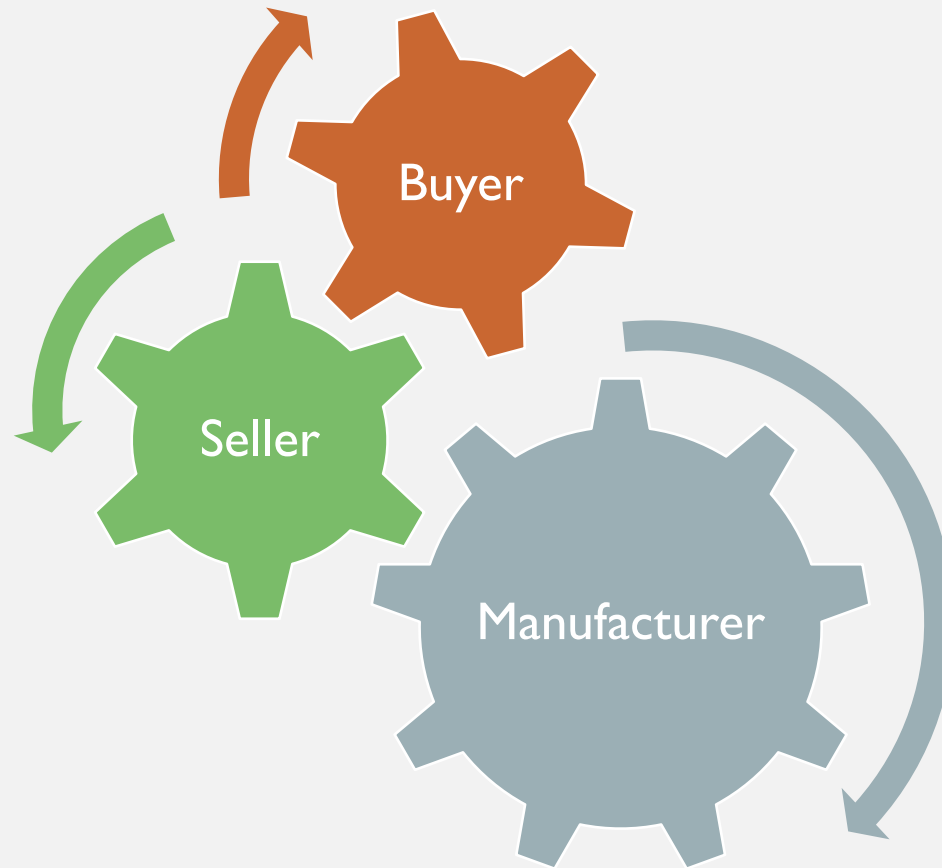
EQUITABLE ESTOPPEL

Non-signatory can enforce against signatory when

- Plaintiff sues signatory and non-signatory
- Claims are “intimately founded in and intertwined”
- With the contract

Rationale: plaintiffs may not selectively enforce contract provisions

SCENARIOS



EQUITABLE ESTOPPEL

- Consumer buys car
- Signs purchase agreement with dealership
- Sues for warranty claims against dealer and manufacturer
- Purchase agreement has arbitration provision
- Dealer moves to compel arbitration

EQUITABLE ESTOPPEL

“The Felisildas’ claim against FCA directly relates to the condition of the vehicle that they allege to have violated warranties they received as a consequence of the sales contract. Because the Felisildas expressly agreed to arbitrate claims arising out of the condition of the vehicle – even against third party nonsignatories to the sales contract – they are estopped from refusing to arbitrate their claim against FCA.”

Felisilda v. FCA US LLC (2020) 53 Cal.App.5th 486, 498 [266 Cal.Rptr.3d 640, 649]

EQUITABLE ESTOPPEL?

“We disagree with Felisilda that ‘the sales contract was the source of [FCA's] warranties at the heart of this case.’”

Ford Motor Warranty Cases (2023) 89 Cal.App.5th 1324, 1334 [306 Cal.Rptr.3d 611, 619], review filed (May 12, 2023)

WHO IS ENFORCING?

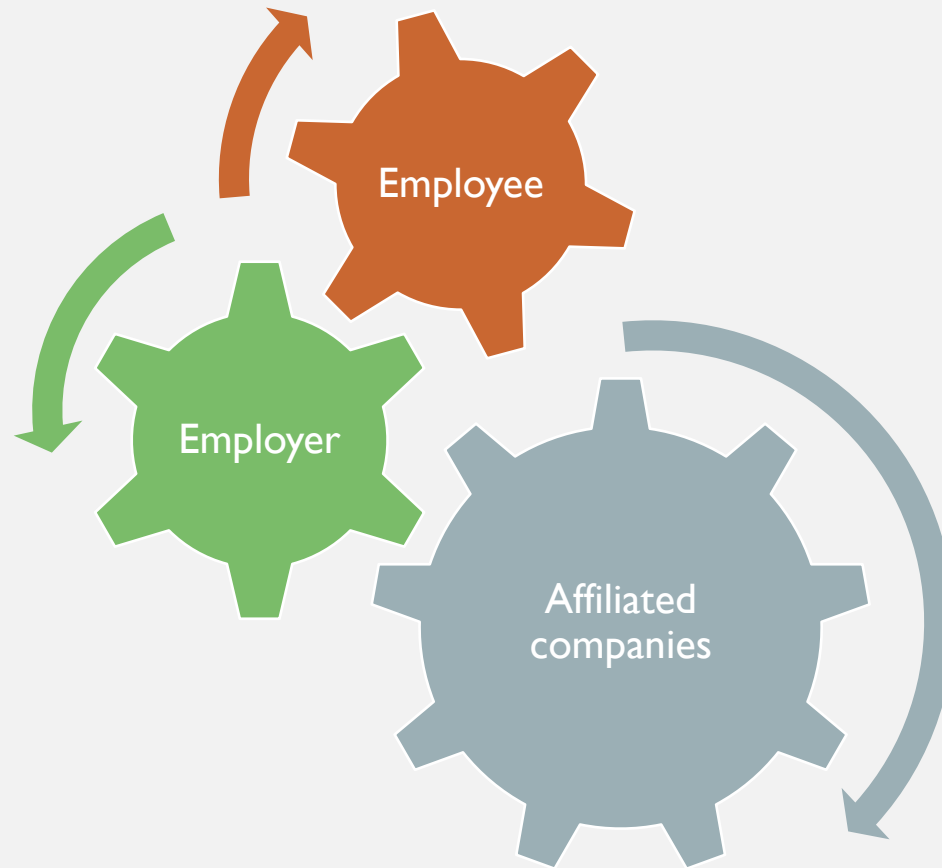


SIGNATORY



NON-SIGNATORY

SCENARIOS



EQUITABLE ESTOPPEL?

Employee signs employment contract with arbitration clause

Employee doesn't sue employer

Instead, employee sues related companies

Can related companies enforce arbitration agreement?

WHAT IF PLAINTIFF SUES NON-SIGNATORY ONLY?

EQUITABLE ESTOPPEL?

“The trial court observed, with its emphasis, that ‘[t]ypically the doctrine of equitable estoppel is applied where a signatory has sued both another signatory and certain non-signatories on identical claims.... [¶] But what happens if the other party to the contract is not also a party to the case, and never was? Neither side cites authority addressing those facts. This is an issue of first impression There is nothing wrong with either party wanting to appear in court, or in arbitration.’” *Hernandez v. Meridian Management Services, LLC* (2023) 87 Cal.App.5th 1214, 1219 [304 Cal.Rptr.3d 402, 406]

“The force of this analysis has overpowered the Other Firms’ ability to respond to it.” *Id.* at 1219 [304 Cal.Rptr.3d 402, 406]

THIRD-PARTY BENEFICIARY

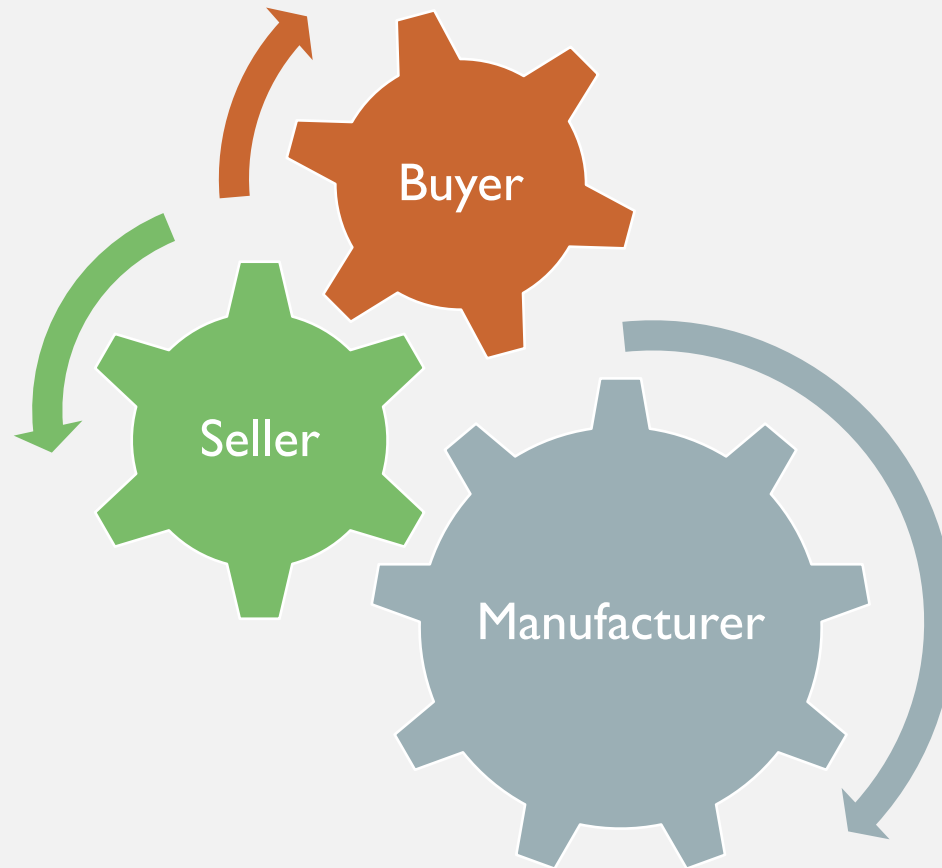
Means the contract was expressly for the third party's benefit

- 3P must benefit in fact
- Contract's motivating purpose must be to benefit 3P

Enforcement must be consistent with:

- Contract's objectives
- Parties' reasonable expectations

SCENARIOS



NOT FOR CAR MANUFACTURER

California and 9th Cir. agree:

1. Dealer's purchase contract shows no intent to benefit manufacturer
2. Helping manufacturer was not motivating purpose for purchase contract
3. "Finally, allowing FMC to enforce the arbitration provision as a third party beneficiary would be inconsistent with the "reasonable expectations of the contracting parties" where they twice specifically vested the right of enforcement in the purchaser and the dealer only."

Ford Motor Warranty Cases (2023) 89 Cal.App.5th 1324, 1334 [306 Cal.Rptr.3d 611, 619], review filed (May 12, 2023); see also *Ngo v. BMW of North America, LLC* (9th Cir. 2022) 23 F.4th 942, 950.

WHO DECIDES?

“California law makes the answer to that question clear: a ‘logical condition precedent’ that a court must decide before a case can be sent to arbitration ‘is whether, in fact, the parties agreed to arbitrate at all; it makes no sense to compel parties to go before an arbitrator without first determining they agreed to do so.’” *Benaroya v. Willis* (2018) 23 Cal.App.5th 462, 473 [232 Cal.Rptr.3d 808, 817]

BUT IS IT HARMLESS ERROR?

NO

“The wrong decision-maker decided the issue; the arbitrator exceeded his authority by purporting to compel appellant to arbitrate and making him liable for the award as Benaroya's alter ego. Therefore, the arbitration award must be set aside insofar as it binds appellant.”

Benaroya v. Willis (2018) 23 Cal.App.5th 462, 473 [232 Cal.Rptr.3d 808, 817]

THANK YOU!

- Robert Amador, Esq., Amador Law Corporation
- Hon. Jackson Lucky, ret., JAMS