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Commercial and Competition Law Update – The Wisconsin Supreme Court Finally Lets Companies Limit Damage Claims by Contract

The Wisconsin Supreme Court has rarely (if ever) enforced a contract waiving liability for future mistakes, but recently the Court did enforce an agreed limitation on the amount of damages in such cases. The Court's decision allows businesses to manage the amount of risk they take on, at least in business-to-business transactions.

The case involved Ameritech's Yellow Pages publishing business and an angry customer who paid for directory ads that were not published. The customer complained about substantial business losses, including lost profits, it sustained because of the mistake. But the customer had signed Ameritech's standard contract, which contained a limitation on the amount of damages a customer could recover for Ameritech's mistakes. The Supreme Court found that the contract limitation struck the right balance. It gave the customer a little relief by returning the customer's payment plus a credit toward future ads; it gave the customer clear notice of the damage limitation; and it said the customer could bargain for more protection in return for paying a higher price. The Court's decision is reported at Rainbow Country Rentals & Retail, Inc. v. Ameritech Publishing, Inc., No. 2004AP239 (Nov. 22, 2005).

After reviewing the "totality of the circumstances," the Court found that the damage limitation clause was a reasonable way for Ameritech to reduce its business risk and protect itself from speculative, unpredictable damage claims stemming from directory mistakes. While the Court warned that broad liability waivers are disfavored in the law, it held that businesses may use damage limitation clauses like this one to limit the amount of potential liability when customers have sufficient bargaining power, notice, and when the clause itself is reasonable under the circumstances.

The lesson here is that there is a way to draft contracts to reduce some of the risks of doing business and limit damages to reasonable amounts under Wisconsin law, but care must be taken at the drafting stage to make them enforceable. Reinhart's Commercial and Competition Law Group has a great deal of experience drafting such contracts and advising clients about them. Please feel

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