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**Draft Letter**

Ms. Jessie Parker,

Pursuant to your request, I drafted a letter to Martin chan. Please let me know if I can make any further assistance regarding the case.

Best regards,

Applicant

**RAND SPIVEY LLP**

**202 First Street**

**Northport, Columbia**

February 25, 2020

Martin Chan

ALLEN & PROCTOR LLP

Three Emerson Center

Northport, Columbia

Re: Western Insurance Company v. SecureTrade, Inc.

Dear Mr. Chan:

On behalf of Western, we hereby response that any motion by SecureTrade to compel arbitration would be denied and your argument is unsound.

### **Facts and issues**

SecureTrade sells consumers extended warranties for various products. SecureTrade has to have an insurance policy to back up these warranties to cover claims by consumers. To obtain required insurance policy and to provide for review of consumer claims prior to approval or rejection, SecureTrade entered into a contract with Assurance called the Brokerage & Administration Agreement (BAA)

BAA contains an arbitration clause. Assurance in turn procured the required insurance policy (the Insurance Policy) for SecureTrade from Western, which is an insurance company affiliated

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with assurance. SecureTrade entered into the Insurance Policy with Western. The Insurance Policy does not contain an arbitration clause.

Assurance claims that SecureTrade breached BAA and thus invoked the arbitration clause. In its separate action against SecureTrade, Western claims that SecureTrade committed fraud with regard to the Insurance Policy.

The issue is whether the court grant SecureTrade's motion to compel arbitration against Western.

### **Any motion by SecureTrade to compel arbitration would be denied**

#### **General rule**

Arbitration is a matter of contract and a party cannot be compelled to arbitrate any dispute that he has not agreed to arbitrate, while it is true that the Columbia Arbitration Act (CAA) reflects a strong policy in favor of arbitration. Tuscany

The court can allow a party who is not a signatory to a contract with an arbitration clause to compel a party who is a signatory to arbitrate under the doctrine of equitable estoppel, because a signatory should not be permitted to avoid arbitrating claims of the very type that he agreed to arbitrate simply because a nonsignatory seeks to arbitrate such claims. Thus, a non signatory may compel a signatory to arbitrate under CAA via equitable estoppel when the signatory raises claims against the nonsignatory that are intertwined with the contract containing the arbitration clause, dependent on rights or duties under the contract. Tuscany

But it is not at all foreseeable or reasonable that a party who has not chosen to become a

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signatory to any contract with an arbitration clause might be compelled to arbitrate with anyone. Therefore, a nonsignatory may compel another nonsignatory to arbitrate only when the other nonsignatory has sought or obtained a direct benefit from the contract containing the arbitration clause. In other words, only when the nonsignatory attempts to recover, or actually recovers, for breach of the contract as, for example, a third-party beneficiary. Tuscany

In addition, a nonsignatory may compel another nonsignatory to arbitrate under CAA via equitable estoppel, but only when the nonsignatory has sought or obtained such a direct benefit from the contract containing the arbitration clause. Tuscany

### **The only case a signatory may compel a nonsignatory to arbitrate**

The court have extended that a signatory may compel a nonsignatory to arbitrate only when the nonsignatory has sought or obtained such a direct benefit from the contract containing the arbitration clause. Tuscany

BAA and the Insurance policy is different two transactions with two different contracts. The insurance Policy is a commercial insurance product that covers the contractual obligations of the insured to consumers on extended warranties. SecureTrade paid a premium to Western for the Insurance Policy and Western issued the Insurance Policy to SecureTrade. Western and SecureTrade are the sole signatories to the Insurance Policy and it does not contain an arbitration clause.

Assurance just procured the Insurance Policy for SecureTrade pursuant to a contract referred to as a BAA. Assurance and SecureTrade are the sole signatories to the BAA, which contains an arbitration clause. Under BAA, SecureTrade engaged Assurance not only to obtain the Insurance Policy, but also to review consumer claims prior to approval or reject. Therefore, two contract has distinctively different objectives.

The assurance's referring to Western itself is not enough to prove that Western obtained a direct benefit from BAA. And it is not at all foreseeable or reasonable that a party who has not chosen to become a signatory to any contract with an arbitration clause might be compelled to arbitrate with anyone.

Therefore, the motion will certainly be denied.

### **Mr. Chan's argument is unsound**

#### **Public policy**

You asserted that CAA's strong policy in favor of compelling arbitration referring Tuscany case.

As discussed above, however, arbitration is a matter of contract and a party cannot be compelled to arbitrate any dispute that he has not agreed to arbitrate. Tuscany

Therefore, it is not generally allowed that a signatory to compel a nonsignatory in an arbitration.

#### **There's no direct benefit**

You also asserted that CAA's strong policy operates to compel arbitration whenever an action is intertwined an arbitration and whenever a party to an action has a preexisting relationship with a party to an arbitration. And because Western and Assurance are affiliates and as such have a preexisting relationship; BAA Assurance entered into with SecureTrade and the Insurance Policy Western issued to SecureTrade are intertwined.

Furthermore, you argue that CAA's strong policy operate to compel arbitration whenever a party in an action seeks or obtains a direct benefit from a signatory to a contract containing an arbitration clause. Because Western obtained a direct benefit from Assurance, a signatory to the BAA, which contains an arbitration clause, by obtaining a premium from SecureTrade for the Insurance Policy.

Whether a nonsignatory has sought or determined a direct benefit from the contract should turn ultimately on what the nonsignatory has done, i.e., effectively suing on the contract, rather than on what the nonsignatory maybe, i.e., factually or legally related to one of the signatories. Tuscany

In the Tuscany case, the plaintiffs' complaint raises sixteen disparate claims and the nonsignatory plaintiffs' claim are obscure and convoluted. Therefore, the defendants may nevertheless compel the nonsignatory plaintiffs to arbitrate the claims they raise in their claim.

But, the fact that Assurance is an affiliate of western is not enough to prove an direct benefit, because Whether a nonsignatory has sought or determined a direct benefit from the contract should turn ultimately on what the nonsignatory has done. Tuscany

In the Assurance's arbitration case, Assurance claims that SecureTrade breached BAA.

In the Western v. SecureTrade case, Western sued SecureTrade on the ground that SecureTrade committed fraude with regard to the Insurance Policy, rather than on what the Assurance's claim that SecureTrade breached BAA. They are different claims and not related each other at all. Therefore, your argument that Western is directly benefited from Assurance is not true.

Furthermore, Western seeks an order requiring SecureTrade to pay damages on the ground of fraud which is different from Assurances remedies. Thefore, it can't be said that Western

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directly benefited from Assuance's signatory of the contract.

For the reason above, any motion by SecureTrade to compel arbitration would be denied and your argument is unsound, and therefore, you should drop your motion to compel arbitration.

Very truly yours,

RAND SPIVEY LLP

Jessie Parker

Question #6 Final Word Count = 1222

**END OF EXAM**