NEUTRAL NOTES

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DELEGATION PROVISIONS IN ARBITRATION CLAUSES MUST BE SPECIFICALLY AND SEPARATELY CHALLANGED

In Parnell v. CashCall, Inc. and Western Sky Financial, LLC, and Martin A. ("Butch") Webb, the Eleventh Circuit Court of Appeals, following the Supreme Court's directive in Rent-A-Center, did not deal with claims of usurious loan rates, jurisdiction, or even the application of Cheyenne River Sioux Tribal Nation law. Instead, based upon Parnell's failure to specifically challenge the delegation provision, it left the matter for the arbitrator to decide.

The facts in Parnell are somewhat disturbing. Parnell, a veteran and "experiencing less than ideal financial circumstances" responded to a television advertisement for short-term loans from Western Sky Financial from his home in Georgia. He was approved for a $1,000 loan and the agreement and other terms were subsequently sent to him. The Loan Agreement provided an arbitration provision as follows:

WAIVER OF JURY TRIAL AND ARBITRATION.
PLEASE READ THIS PROVISION OF THE AGREEMENT CAREFULLY. Unless you exercise your right to opt-out of arbitration in the manner described below, any dispute you have with Western Sky or anyone else under this loan agreement will be resolved by binding arbitration. Arbitration replaces the right to go to court, including the right to have a jury, to engage in discovery (except as may be provided in the arbitration rules), and to participate in a class action or similar proceeding. In Arbitration, a dispute is resolved by an arbitrator instead of a judge or jury. Arbitration procedures are simpler and more limited than court procedures.

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CONTROVERSIAL ARBITRATION AGREEMENT ENFORCED IN DIRECTV, INC. V. IMBURGIA

The Supreme Court, in a split opinion with contentious dissents, recently held, in DIRECTV, that California's highest court's interpretation was preempted by the Federal Arbitration Act (FAA) and that Court must enforce the arbitration agreement from DIRECTV and its consumer customers. In an opinion written by Justice Stephen Breyer, the majority openly sparred with the dissent and other courts regarding consumer rights' issues.

DIRECTV had a service agreement with its customers which included an arbitration provision in Section 9. The agreement provided that "any Claim either of us asserts will be resolved only by binding arbitration" but that "if the 'law of your state' makes the waiver of class arbitration unenforceable, then the entire arbitration provision 'is unenforceable.'" (Emphasis added.)

Much of the majority's decision dealt with interpreting "law of your state" and federal preemption.

Justice Breyer reasoned that the "law of your state" must mean only enforceable law and not provisions of law that have been subsequently overturned. For example, at one point the law of California would have made the contract's class arbitration waiver unenforceable. But, in 2011 the U.S. Supreme Court held that California's Discover Bank rule "'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress' embodied in the Federal Arbitration Act."

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The Jacobs Center for Justice and Alternative Dispute Resolution is dedicated to assisting individuals and companies in resolving problems and disputes of all types.

HOW MUCH DIVERSITY IS "COMPLETE" FOR MLP'S?

A more technical analysis regarding arbitration occurred in Grynberg v. Kinder Morgan Energy Partners, et al. The Tenth Circuit Court of Appeals, in analyzing a question of jurisdiction, held that the Court should look to all owners of a limited partnership in analyzing diversity jurisdiction. Thus, in Grynberg, the Court said complete diversity was lacking.

Grynberg involved trusts and was based on a petition to vacate an arbitration award entered against them in the District of Colorado. The Grynbergs invoked the Court's diversity jurisdiction. The Grynbergs were citizens of Colorado, Kinder Morgan Energy Partners (KMEP) was a Delaware master limited partnership (MLP), and Kinder Morgan CO2 Company (KMCO2) was a Texas limited partnership with one partner KMEP.

The district court dismissed the action for lack of jurisdiction. The Tenth Circuit addressed the diversity question for MLPs which are master limited partnerships or limited liability companies whose ownership interests, called common units, are publicly traded. The case dealt with whether Carden v. Arkoma Associates, 494 U.S. 185, 195 (1990), controls. In that case, the Supreme Court said the citizenship of all unit holders must be considered. The Grynbergs argued that Carden was inapplicable to the MLP.

The Grynbergs attempted to limit the jurisdictional discussion to KMEP's home in Delaware and that KMCO2 was a Texas limited partnership wholly owned by KMEP.

Diversity jurisdiction requires complete diversity going back to Strawbridge v. Curtiss in 1806. The Tenth Circuit reviewed the application of Carden and concluded that an MLP citizenship consisted of its unit holders' citizenship and directed the Grynbergs policy arguments "to Congress, not the courts."

The Court said that, in general, for jurisdictional citizenship, there are two types of business organizations, corporations and unincorporated associations. For diversity a corporation is a citizen of its state of incorporation and the state where its principal place of business is located and "beginning with *Chapman v. Barney*, 129 U.S. 677 (1889), the Supreme Court has held an unincorporated entity's citizenship is typically determined by its members' citizens (the *Chapman* rule). In this case, the Chapman rule was applied by the District Court which held that the citizenship for diversity purposes of the MLPs was determined by the citizenship of their unit holders. The Circuit Court said "*Carden* was the result of case authority spanning a century of Supreme Court decisions uniformly applying the *Chapman* rule and holding that various forms of unincorporated associations are citizens of their members' states of citizenship." The Court also noted that the Supreme Court had recognized but one exception to the Chapman rule in Puerto Rico v. Russell & Co. in 1933:

> The Court determined that a *sociedad en comandita* - an entity created under Puerto Rico law - was a citizen of Puerto Rico for diversity analysis. The Court explained, "[T]he sociedad is a juridical person … [whose] personality is so complete in contemplation of the law of Puerto Rico that we see no adequate reason for holding that the sociedad has a different status for purposes of federal jurisdiction than a corporation organized under that law." *Russell*, 288 U.S. at 481. For example, the *sociedad en comandita* is created by filing articles of association as public records, the articles may allow the entity to continue to exist despite the death or withdrawal of members, management and legally binding decision making power may be vested solely in designated managers, and the members are not typically liable for the *sociedad*'s acts and debts. *Id*. At 481. The Grynbergs argue a similar exception is warranted here because MLPs share many corporate characteristics. We disagree for two reasons.

Despite the Grynbergs' aggressive argument that the MLPs were similar to the Puerto Rican *sociedad en comandita*, the Tenth Circuit disagreed. Significantly, the Court declared that "MLPs and corporations are publicly traded, centrally managed, and have freely transferable interests. But the similarities end there. MLPs are formed as unincorporated entities under state law, and *Carden* reaffirmed the dichotomy between corporations and unincorporated entities."

The answer to the Grynbergs' issue in this case was really quite simply stated by the Court of Appeal as follows: "The Grynbergs of Colorado concede diversity jurisdiction is lacking in this case if we determine the *Chapman* rule applies. It does."

PRACTICE TIP: Grynberg v. Kinder Morgan Energy Partners, et al. was based upon a petition to vacate an arbitration award. The bottom line was that the Court concluded the Grynbergs lacked complete diversity to bring the matter in Colorado. The more significant holding, obviously, is that for MLPs the citizenship of each of the unit holders will be considered thereby making complete diversity far more complicated.

Delegation Provisions in Arbitration Clauses Must Be Specifically and Separately Challenged (*Cont'd from pg. 1)*

> Any Arbitration will be limited to the dispute between yourself and the holder of the Note and will not be part of a class-wide or consolidated arbitration proceeding.
> *Agreement to Arbitrate*. You agree that any Dispute, except as provided below, will be resolved by Arbitration, which shall be conducted by the Cheyenne River Sioux Tribal Nation by an authorized representative in accordance with its consumer dispute rules and the terms of this Agreement.
> *Arbitration Defined*. Arbitration is a means of having an independent third party resolve a Dispute. A "Dispute" is any controversy or claim between you and Western Sky or the holder or servicer of the Note. The term Dispute is to be given its broadest possible meaning and includes, without limitation, all claims or demands (whether past, present, or future, including events that occurred prior to the opening of this Account), based on any legal or equitable theory (tort, contract, or otherwise), and regardless of this type of relief sought (i.e. money, injunctive relief, or declaratory relief). A Dispute includes, by way of example and without limitation, any claim based upon marketing or solicitations to obtain the loan and the handling or servicing of my account whether such Dispute is based on a tribal, federal or state constitution, statute, ordinance, regulation, or common law, and including any issue concerning the validity, enforceability, or scope of this loan or the Arbitration agreement….

The Loan Agreement's Truth in Lending Act Disclosure Statement made plain the 232.99% annual percentage rate and the finance charge of $3,905.56 would make the total cost of the loan $4,905.56.

Shortly after the loan was secured, it was sent to CashCall to take over the loan. After sending in his first payment, Parnell filed suit in state court alleging that Western Sky's business practices exploited tribal sovereign immunity and attempted to avoid federal and state regulations including the Georgia Payday Lending Act. The case was removed to federal court and moved to compel arbitration.

The Court concluded that Parnell's complaint

> largely parallels the shortcomings of Jackson's opposition to the motion in *Rent-A-Center*. Parnell includes in the final paragraphs of his complaint that the Loan Agreement contains an arbitration provision that violates substantive Georgia law.… Echoing the generalized allegations in *Rent-A-Center*, Parnell's complaint further alleges that "[t]he *Loan Agreement* is unconscionable" because the interest rate is usurious; the designation of tribal law and jurisdiction is contrary to Georgia law and public policy; the forum selection clause "is unconscionable as such a forum deprive[s] Plaintiff and the putative class of their day in court"; arbitration is prohibitively expensive; and the Loan Agreement prohibits class actions.… At no point in his complaint does Parnell specifically challenge the parties' agreement *to commit to arbitration* the question of the enforceability of the arbitration agreement. Rather, he asks us to review the validity of the arbitration agreement as a whole, a task which the delegation provision expressly commits to an arbitrator.

The Court stated that its holding "merely follows the directive set forth in *Rent-A-Center* and emphasizes that when a would-be plaintiff seeks to challenge an arbitration agreement containing a delegation provision, he or she must challenge the delegation provision directly."

The Court of Appeals ruled that there was a delegation provision in the Loan Agreement. Although Parnell challenged the validity of the arbitration provision itself, he did not articulate a separate challenge to the delegation provision specifically. Thus, based upon the FAA, the Court said it must "treat the delegation provision as valid, enforce the terms of the Loan Agreement, and leave to the arbitrator the determination of whether the Loan Agreement's arbitration provision is enforceable."

Essentially, the Court of Appeals deferred to the Supreme Court holding in Rent-A-Center and said "absent a challenge to the delegation provision itself, the federal courts must treat the delegation provision 'as valid under § 2, and must enforce it under §§ 3 and 4, leaving any challenge to the validity of the Agreement as a whole for the arbitrator.'"

The Court noted that when it attempted to research the laws of the Cheyenne River Sioux Tribe it found none and thus turned to the Georgia state law for a statement on the plain meaning rule and applied it. Nonetheless, its application regarding the delegation provision compelled the matter to be arbitrated absent a specific challenge to the delegation provision. The Court noted and rejected Parnell's claim that essentially its holding would require "one challenge to an agreement as a whole, followed by a challenge to a certain clause, followed by challenges to single sentences, followed by challenges to words tacked on to conjunctions at the end of a sentence." The Court held, in Parnell, that when a loan agreement contains the delegation provision it must generally be enforced unless specifically challenged.

PRACTICE TIP: Parnell, following Rent-A-Center, makes clear that when a delegation provision is present (committing to the arbitrator to the threshold determination of whether the agreement to arbitrate is enforceable) that provision must be specifically challenged according to the Supreme Court in Rent-A-Center, West, Inc. v. Jackson, 561 U.S. 63, 72, 130 S.Ct. 2772, 2779 (2010). Absent such a challenge, courts must treat the delegation provision as valid and permit the parties to proceed to arbitration. In other words, despite interest rate charges that amounted to 232.99% in Parnell, and reference to Cheyenne River Sioux Tribal Nation laws that do not appear to exist, counsel must be careful to challenge the delegation provision first before attempting to set aside the entire arbitration provision in order to be successful.

Controversial Arbitration Agreement Enforced in DIRECTV, Inc. v. Imburgia *(Cont'd from pg. 1)*

AT&T Mobility LLC v. Concepcion.

The California high court subsequently held that despite the U.S. Supreme Court's holding in Concepcion, the law of California would find the class action waiver unenforceable. The California court "conceded that this Court [the U.S. Supreme Court] in *Concepcion* had held that the Federal Arbitration Act invalidated California's rule." Nonetheless, Justice Breyer continued that "[B]ut it then concluded that this latter circumstance [meaning a recognition that Concepcion invalidated California law] did not change the result…."

Justice Breyer further opined that despite disagreements with the Supreme Court opinion, in Concepcion, and the fact that that decision "was a closely divided case, resulting in a decision from which four Justices dissented, has no bearing on that undisputed obligation." Under the supremacy clause there is no choice but to follow the ruling of the Supreme Court. Justice Breyer declared "[t]he Federal Arbitration Act is a law of the United States, and *Concepcion* is an authoritative interpretation of that Act. Consequently, the judges of every State must follow it."

The majority characterized this statement as an "elementary point of law" and noted that the Federal Arbitration Act permitted parties to choose the applicable law citing as examples the law of Tibet and the law of pre-revolutionary Russia or the law of California including the Discover Bank rule and "irrespective of that rule's invalidation in *Concepcion*."

Justice Breyer conceded that when the contract was written "the parties likely believed that the words 'law of your state' included California law that then made class arbitration waivers unenforceable." But, "this Court subsequently held in *Concepcion* that the *Discover Bank* rule was invalid. Thus the underlying question of contract law at the time the Court of Appeal made its decision was whether the 'law of your state' included *invalid* California law."

By that characterization, the majority concluded that "California courts would not interpret contracts other than arbitration contracts" that way and that the law of your state must refer to "valid state law." The majority declared that it found no prior decision or history suggesting that California would interpret the law of your state to include state laws that had otherwise been held invalid and summarized that "[t]he view that state law retains independent force even after it has been authoritatively invalidated by this Court is one courts are unlikely to accept as a general matter and to apply in other contexts."

Generally, based upon this analysis, although at some greater length, the Supreme Court majority concluded that the California Court of Appeal must "enforce" the arbitration agreement since it had relied upon a California law at the time of its decision that had been invalidated. There was a brief dissent by Justice Clarence Thomas who said that in his view the FAA does not apply to proceedings in state courts.

Justice Ruth Bader Ginsburg, in a robust dissent, disagreed with the majority's conclusions. Essentially, she found that the majority should have given the benefit of the doubt to the consumer and not to DIRECTV. In fact, she stated that "[t]he Court today holds that the California Court of Appeal interpreted the language … so unreasonably as to suggest discrimination against violation in violation of the FAA. As I see it, the California court's interpretation of the 'law of your state' provision is not only reasonable, it is entirely right."

The balance of the dissent is both technical and spirited. Justice Ginsburg noted that she is concerned that "these decisions" have resulted in the deprivation of consumers' rights and diminished rights for redress. She concluded that "this Court has again expanded the scope of the FAA further degrading the rights of consumers and further insulating already powerful economic entities from liability for unlawful acts."

PRACTICE NOTE: The struggle over class action waivers, particularly in consumer contracts, continues and appears to be unresolved.

ALERT TO THE INTERNATIONAL ARBITRATION REVIEW

I would like to bring to your attention the International Arbitration Review and suggest that you consider looking at it. The Review can be found at: www.wilmerhale.com/uploadedFiles/Shared_Content/Editorial/Publications/Documents/2015-06-the-international-arbitration-review-sixth-edition.pdf Quoting the Editor James H. Carter, he notes that "International arbitration is a fast-moving express train, with new awards and court decisions of significance somewhere in the world rushing past every week." The Review has chapters from over forty countries. For my audience I highlight some of the comments made regarding arbitration in the United States.

> There have been no significant developments in US arbitration law during the past year resulting from US Supreme Court decisions, but lower court decisions continue to seek to define the extent, if any, to which "class" arbitrations, conducted by representative claimants on behalf of others on a collective basis, will find a place in US arbitral jurisprudence; and the Supreme Court may decide a case affecting this issue in the coming year. Such cases arise most often in the context of consumer or franchise cases that have few international aspects. But since US arbitration law is largely uniform in its application to both domestic and international cases, the effect of the resolution of these issues is likely to be significant for both.

The commentators noted that the Federal Arbitration Act governs all types of arbitration in the United States "regardless of the subject matter of the dispute.... The FAA's largely hands-off approach reflects US federal policy strongly favouring arbitration as an alternative to sometimes congested, ponderous and inefficient courts.... In the international context, this pro-arbitration policy is further evidenced by the implementation of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the

Cont'd on pg. 6, column 3

FIFTH CIRCUIT AND NLRB CLASH AGAIN IN MURPHY OIL

In Murphy Oil USA, Incorporated v. National Labor Relations Board, the Fifth Circuit again dealt with a binding arbitration agreement and waiver of jury trial and several orders of the National Labor Relations Board finding unfair labor practice conduct for violations of Section 8(a)(1) of the Act.

The Board had concluded that Murphy Oil unlawfully required certain of its employees in Alabama to sign an arbitration agreement.

FACTS:

In November 2008, Sheila Hobson began working for Murphy Oil in Calera, Alabama, and signed the agreement which provides as follows: "[e]xcluding claims which must, by … law, be resolved in other forums, [Murphy Oil] and Individual agree to resolve any and all disputes or claims … which relate … to Individual's employment … by binding arbitration." The agreement further "requires employees to waive the right to pursue class or collective claims in an arbitral or judicial forum."

In June of 2010 Hobson and three other employees filed a collective action against Murphy Oil in federal court alleging violations of the Fair Labor Standards Act. Murphy Oil moved to dismiss and compel individual arbitration pursuant to its arbitration agreement. Contemporaneously, Hobson filed an unfair labor practice charge with the Board in January 2011.

In a separate case of first impression, the Board held in D.R. Horton, Inc. that an employer violates Section 8(a)(1) of the Act by requiring employees to sign an arbitration agreement waiving the right to pursue class and collective claims in all forums. See Roger B. Jacobs NOTES ON *D.R. HORTON*: NLRB LIMITED ARBITRATION RIGHTS, 63 Lab. L.J. 143 (Summer 2012).

Following the Board's decision in D.R. Horton, Murphy Oil implemented a revised arbitration agreement for all employees hired after March 2012 which provided that employees were not barred from participating in proceedings to adjudicate unfair labor practice charges before the Board. However, Hobson and the other three employees were hired before March 2012 so the revision did not apply to them.

The Fifth Circuit noted that in December 2013 the Court rejected the Board's analysis of arbitration agreements in D.R. Horton. However, while rejecting the Board's analysis the Court held specifically, in D.R. Horton, that its language could have been misconstrued as prohibiting an employee from filing an unfair labor practice charge. Despite the clear language and signals of the Fifth Circuit, the Board continued with its own position and issued a decision in Murphy Oil in October 2014 after the Fifth Circuit's initial D.R. Horton decision. The Court stated that "[t]he Board, unpersuaded by our analysis, reaffirmed its *D.R. Horton* decision." After lengthy discussion the Court stated that "the Board disregarded this court's contrary *D.R. Horton* ruling that such arbitration agreements are enforceable and not unlawful…. Our decision was issued not quite two years ago; we will not repeat its analysis here. Murphy Oil committed no unfair labor practice by requiring employees to relinquish their right to pursue class or collective claims in all forums by signing the arbitration agreements at issue here."

The Fifth Circuit was clear that it had a concern regarding the Board's application of D.R. Horton to "new parties and agreements" and gave a muted comment that "[w]e do not celebrate the Board's failure to follow our *D.R. Horton* reasoning, but neither do we condemn its nonacquiescence."

The Fifth Circuit held, in Murphy Oil, that the arbitration agreement in effect for employees before March 2012 violated the Act and upheld the Board's order requiring Murphy Oil to take corrective action.

Murphy Oil did so and revised its arbitration agreement. The revision specifically stated that nothing in it precluded employees "from participating in proceedings to adjudicate unfair labor practice[] charges before the [Board.]" The Court stated "[w]e disagree with the Board. Reading the Murphy Oil contract as a whole, it would be unreasonable for an employee to construe the Revised Arbitration Agreement as prohibiting the filing of Board charges when the agreement says the opposite. The other clauses of the Agreement do not negate that language. We decline to enforce the Board's order as to the Revised Arbitration Agreement."

The plain meaning of the revision was clear. The revised agreement modified the arbitration clause but the Board insisted on following D.R. Horton even though it had already been rejected at least once by the Court of Appeals.

The Fifth Circuit noted the reach of its decisions in a federal system. Nonetheless, it stated that "[o]ur decision in *D.R. Horton* forecloses that argument in this circuit…. Though the Board might not need to acquiesce in our decisions, it is a bit bold for it to hold that an employer who followed the reasoning of our *D.R. Horton* decision had no basis in fact or law or an 'illegal objective' in doing so."

Murphy Oil only reinforced the Fifth Circuit's earlier decision, in D.R. Horton, twice rejecting the NLRB's findings regarding arbitration agreements, binding arbitration, and waivers.

PRACTICE NOTE: Murphy Oil is a further restatement and reinforcement of the clash between courts and the NLRB, probably heading to the Supreme Court. Since Board membership has now been filled out, it is likely there will continue to be disagreements between the NLRB and courts, particularly on this subject as well as others including independent contractor v. employee status.

Confining this discussion to class action arbitration waivers it seems likely that the Board will continue down its path finding such arbitration agreement violative of Section 7 rights and in violation of Section 8(a)(1) of the Act while courts will continue to reject that position until it is conclusively resolved and perhaps rejected at a higher level.

UNLICENSED PRACTICE OF LAW—IN WEST VIRGINIA—CAN BE ARBITRATED

In Geological Assessment & Leasing, and William Capouillez v. O'Hara, the West Virginia Supreme Court of Appeals rejected the unequivocal holding of a lower court that a plaintiff's claim that a defendant engaged in the unauthorized practice of law can never be referred to arbitration.

The West Virginia case involved claims against William Capouillez, a geologist, who had represented, as "consultant," landowners in lease negotiations with companies who sought to lease their land to drill for oil and gas. Mr. Capouillez provided representation but was not paid for his assistance in negotiating the leases. Instead, the leases (he negotiated) contained provisions that provided a revenue stream to the landowners and him. The leases required the oil and gas companies to pay him directly. The leases, also, specifically identified him as a "consultant" for the landowner and prevented the landowner and the oil and gas company from modifying the lease to his detriment.

This particular appeal was based on three different leases he negotiated. Each of the leases contained an arbitration provision as follows:

> 29.1 Any controversy or claim arising out of or relating to this Lease, or the breach thereof shall be ascertained and settled by three (3) disinterested arbitrators in accordance with the rules of the American Arbitration Association, one thereof to be appointed by the Lessor, one by the Lessee, and the third by the two (2) so appointed aforesaid, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Arbitration proceedings hereunder shall be conducted at the county seat or the county where the lease or action occurred which is cause for the arbitration, or such other place as the parties to such arbitration shall all mutually agree upon. The cost of such arbitration will be borne equally by the parties.

Interestingly, any revisions to the agreement needed to be approved by the consultant if those revisions directly or indirectly affected his "rental and/or royalty payments and/or obligations of Lessor or Lessee…."

The lawsuits against Capouillez alleged essentially that he engaged in the unauthorized practice of law and offered legal advice regarding ownership interest and contract language to the claimants. The plaintiffs sought rescission and to void their agreements with Capouillez as well as a disgorgement of monies paid to him and to eliminate future payments. Capouillez moved to compel the plaintiffs to participate in arbitration even though the arbitration provision did not mention Capouillez in the arbitration clause. "Only the lessor-plaintiffs and lessee oil and gas company are identified." Thus, the plaintiffs argued that Capouillez was "not intended to be encompassed by each lease's arbitration clause."

The West Virginia high court ruled that the matters dealt with interstate commerce and thus were controlled by the Federal Arbitration Act (FAA). As a consequence of Section 2 of the FAA, the state law provision might have otherwise prevented arbitration of a particular claim involving the authorized practice of law.

Quoting from the U.S. Supreme Court, the West Virginia Court said "When state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA." Thus, in this dispute, the circuit court's conflicting rule was displaced and preempted by the FAA. The Court noted, however, in its conclusion, that upon remand while the circuit court considers this matter its decision could deal with each of the several claims that had been raised including misrepresentation, duress, undue influence, lack of capacity, or other grounds that might be utilized to set aside the contract. Obviously arbitration rules in West Virginia.

PRACTICE TIP: Individuals holding themselves out as consultants or otherwise should be mindful that there may be consequences regarding their representation. Nonetheless, any provision that bars outright arbitration of claims, even regarding the unauthorized practice of law, is likely to be set aside.

Alert to the International Arbitration Review (*Cont'd from pg. 4*)

New York Convention) and the Inter-American Convention on International Commercial Arbitration (the Panama Convention) in Chapters 2 and 3, respectively, of the FAA."

The entire article is worth reading and I will leave it to you and merely use it as a segue to some of the discussion in this newsletter.

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