

**AAA YEARBOOK ON
ARBITRATION & THE LAW
25TH EDITION**

STEPHEN K. HUBER
BEN H. SHEPPARD, JR.

Editors



AMERICAN ARBITRATION ASSOCIATION®

UNIVERSITY of **HOUSTON** | LAW CENTER

JURIS

Questions About This Publication

For assistance with shipments, billing or other customer service matters, please call our Customer Services Department at:

1-631-350-2100

To obtain a copy of this book, call our Sales Department:

1-631-351-5430

Fax: 1-631-351-5712

Toll Free Order Line:

1-800-887-4064 (United States & Canada)

See our web page about this book:
www.arbitrationlaw.com

COPYRIGHT 2013
by JurisNet, LLC

All Rights Reserved
Printed in the United States of America
ISBN 978-1-937518-29-5
ISSN 2169-6918

JurisNet, LLC
71 New Street
Huntington, New York 11743
USA
www.arbitrationlaw.com

TABLE OF CONTENTS

Foreword	xxi	
<i>India Johnson</i>		
Introduction	xxiii	
<i>Stephen K. Huber and Ben H. Sheppard, Jr.</i>		
About the Editors	xxv	
Part I: Case Digests	1	
Chapter 1	3	
The Arbitration Agreement		
1.01 Contract Formation	3	
<i>Hergenreder v. Bickford Senior Living Group, LLC</i> ,		
656 F.3d 411 (6th Cir. 2011)		3
<i>Canales v. Univ. of Phoenix, Inc.</i> , 854 F.Supp.2d		
119 (D. Maine 2012)		4
<i>In re Zappos.com, Inc., Customer Data Sec. Breach</i>		
<i>Litig.</i> , 893 F.Supp.2d 1058 (D. Nev. 2012).....		6
<i>Bancorpsouth Bank v. Shields</i> , 385 S.W.3d 805		
(Ark. 2011)		7
<i>Hodges v. Reasonover</i> , 103 So.3d 1069 (La. 2012)		9
<i>Nazareth Hall Nursing Ctr. v. Melendez</i> , 372 S.W.		
3d 301 (Tex. App.--El Paso 2012, no pet.).....		11
<i>Burch v. Premier Homes, LLC</i> , 199 Cal. Rptr. 3d		
4 th 730 (Cal. App. 2 Dist. 2011).....		12
1.02 State Contract Law Defenses	15	
<i>Applied Energetic, Inc. v. NewOak Capital Markets,</i>		
<i>LLC</i> , 645 F.3d 522 (2nd Cir. 2011)		15
<i>Wake County Board of Education v. Dow Roofing</i>		
<i>Systems, LLC</i> , 792 F.Supp.2d 897		
(E.D.N.C. 2011).....		17
1.03 Public Policy Defenses: Unconscionability	18	
<i>Harrington v. Atlantic Sounding Co.</i> , 602 F.3d 113		
(2d Cir. 2010)		18
<i>Nino v. Jewelry Exchange, Inc.</i> , 609 F.3d 191		
(3d Cir. 2010)		21

<i>Hafer v. Vanderbilt Mortg. and Finance, Inc.</i> , 793 F.Supp.2d 987 (S.D. Tex. 2011).....	23
<i>Palmer v. Infosys Technologies Limited Incorporated</i> , 832 F. Supp. 2d 1341 (M.D. Ala. 2011)	26
<i>Hendricks v. AT&T Mobility, LLC</i> , 823 F. Supp. 2d 1015 (N.D. Cal. 2011)	28
<i>Fl-Carrollwood Care, LLC v. Gordon</i> , 72 So.3d 162 (Fla. 2d DCA 2011).....	30
1.04 Defective (Unenforceable) Arbitration	
Agreements	31
<i>In re Elec. Mach. Enter.</i> , 479 F.3d 791 (11 th Cir. 2007)	31
<i>Hill v. Hornbeck Offshore Services, Inc.</i> , 799 F.Supp.2d 658 (E.D. La. 2011).....	32
<i>Am. Gen. Home Equity, Inc. v. Kestel</i> , 235 S.W. 3d 543 (Ky. 2008).....	33
1.05 Waiver of the Right to Arbitrate.....	35
<i>Johnson Associates Corp. v. HL Operating Corp.</i> , 680 F.3d 713 (6th Cir. 2012).....	35
<i>Gray Holdco, Inc. v. Cassidy</i> , 654 F.3d 444 (3d Cir. 2011)	37
<i>Erdman Co. v. Phoenix Land & Acquisition, LLC</i> , 650 F.3d 1115 (8th Cir. 2011).....	41
<i>Kawasaki Heavy Indus., Ltd. v. Bombardier Recreational Prod., Inc.</i> , 660 F.3d 988 (7th Cir. 2011)	44
<i>Hill v. Ricoh Am.</i> , 603 F.3d 766 (10 th Cir. 2010).....	47
<i>Citibank, N.A. v. Stok & Associates, P.A.</i> , 387 Fed. Appx. 921(11 th Cir. 2010), cert. dismissed 131 S.Ct. 2955	49
<i>Petroleum Pipe Am. Corp. v. Jindal Saw, Ltd.</i> , 575 F.3d 476 (5 th Cir. 2009)	52
<i>McNamara v. Yellow Transp., Inc.</i> , 570 F.3d 950 (8 th Cir. 2009)	53
<i>Anwar v. Fairfield Greenwich Ltd.</i> , 863 F. Supp. 2d 346 (S.D.N.Y. 2012).....	54
<i>Liberty Mutual Ins. Co. v. Excel Imaging P.C.</i> , 879 F. Supp. 2d 243 (E.D.N.Y. 2012).....	56

TABLE OF CONTENTS

<i>Riverside Publ’g Co. v. Mercer Publ’g LLC</i> , 829 F. Supp. 2d 1017 (W.D. Wash. 2011)	59
<i>Brooks v. Prestige Financial Services, Inc.</i> , 827 F. Supp. 2d 509, (D. Md. 2011).....	61
<i>Lemon Drop Properties, LLC v. Pass Marinne, LLC</i> , 73 So. 3d 1131 (Miss. 2011).....	62
<i>Lewis v. Fletcher Jones Motor Cars, Inc.</i> , 140 Cal. Rptr. 3d 206 (Cal. Ct. App. 2012).....	65
<i>Roberts v. El Cajon Motors, Inc.</i> , 200 Cal. App. 4th 832 (Cal. App. 4 Dist. 2011)	69
<i>Burton v. Cruise</i> , 118 Cal. Rptr. 3d 613 (Cal. App. 4th 2010).....	71
<i>Price v. Fax Recovery Sys., Inc.</i> , 49 So. 3d 835 (FL Ct. App. 2010)	73
Chapter 2	75
Arbitral Jurisdiction	
2.01 Scope of the Arbitration Agreement	75
<i>Heinen v. Northrop Grumman Corp.</i> , 671 F.3d 669 (7th Cir. 2012)	75
<i>Cape Flattery Ltd. v. Titan Maritime, LLC</i> , 647 F. 3d 914 (9th Cir. 2011)	76
<i>Idea Nuova, Inc. v. GM Licensing Grp., Inc.</i> , 617 F.3d 177 (2d Cir. 2010)	78
<i>China Auto Care, L.L.C. v. China Auto Care</i> <i>(Caymans)</i> , 859 F. Supp. 2d 582 (S.D.N.Y. 2012).....	79
<i>Harrell’s LLC v. Agrium Advanced (U.S.)</i> <i>Technologies</i> , 795 F.Supp.2d 1321 (M.D. Fla. 2011)	82
<i>Westenfelder v. Novo Ventures (US), Inc.</i> , 797 F.Supp.2d 188 (D. Mass. 2011).....	84
<i>State ex rel. Johnson Controls, Inc. v. Tucker</i> , 729 S.E.2d 808 (W. Va. 2012)	86
<i>Olshan Found. Repair Co. of Mobile, LP v. Schultz</i> , 64 So. 3d 598 (Ala. 2010).....	87
2.02 Who Decides Arbitrability: Court of Arbitrator?	89
<i>Granite Rock Co. v. Int’l Bhd of Teamsters</i> , 130 S. Ct. 2847 (2010).....	89

<i>Rent-A-Center West, Inc. v. Jackson</i> , 130 S. Ct. 2722 (2010).....	93
<i>Fantastic Sams Franchise Corp. v. F.S.R.O. Ass’n, Ltd.</i> , 683 F.3d 18 (1st Cir. 2012)	96
<i>In re Checking Account Overdraft Litigation</i> , 674 F.3d 1252 (11th Cir. 2012)	98
<i>Petrofac, Inc. v. DynMcDermott Petroleum Operations Co.</i> , 687 F.3d 671 (5th Cir. 2012)....	99
<i>Solytar Investments, Ltd. v. Banco Santander S.A.</i> , 672 F.3d 981 (11th Cir. 2012)	101
<i>Bechtel Do Brasil Construções Ltda. v. Ueg Araucária Tda.</i> , 638 F.3d 50 (2nd Cir. 2011)...	102
<i>Republic of Ecuador v. Chevron Corp.</i> , 638 F. 3d 384 (2d Cir. 2011)	105
<i>Dealer Computer Serv., Inc. v. Old Colony</i> , 588 F.3d 884 (5th Cir. 2009)	107
<i>Fallo v. High-Tech Inst.</i> , 559 F.3d 874 (8th Cir. 2009)	108
<i>FusionStorm Inc. v. Presido Network Solutions, Inc.</i> , 871 F. Supp. 2d 1345 (M.D. Fla. 2012).....	110
<i>Sys. Research & Applications Corp. v. Rohde & Schwarz Fed. Sys., Inc.</i> , 840 F. Supp. 2d 935 (E.D. Va. 2012).....	112
<i>Schlumberger Tech. Corp. v. Baker Hughes, Inc.</i> , 355 S.W.3d 791 (Tex. App.—Houston [1st Dist.] 2011).....	113
2.03 Severability/Separability of the Arbitration Agreement	116
<i>Gore v. Alltel Commc’n, LLC</i> , 666 F.3d 1027 (7th Cir. 2012)	116
<i>Townsend v. Quadrant Corp.</i> , 268 P.3d 917 (Wash. 2012)	117
<i>Gessa v. Manor Care of Fla., Inc.</i> , 86 So. 3d 484 (Fla. 2011)	119
<i>Brubaker v. Barrett</i> , 801 F.Supp.2d 743 (E.D. Tenn. 2011)	120
<i>State of West Virginia, ex rel. Richmond American Homes of West Virginia v. Sanders</i> , 228 W.Va. 125, 717 S.E.2d 909 (W. Va. 2011)	122

TABLE OF CONTENTS

In re Morgan Stanley & Co., 293 S.W.3d 182
(Tex. 2009) 124
Johnson v. Jefferson Cnty. Racing Assn., 1 So.
3d 960 (Ala. 2008)..... 125

2.04 Non-Signatories: Arbitral Jurisdiction over Parties Who Have Not Signed the Arbitration Agreement 127
Waterford Inv. Services, Inc. v. Bosco, 682 F.
3d 348 (4th Cir. 2012) 127
Covington v. Aban Offshore Ltd. 650 F.3d 556
(C.A.5 Tex. 2011)..... 128
DK Joint Venture I v. Weyand, 649 F.3d 310
(C.A.5 Tex. 2011)..... 130
*Simmons Foods, Inc. v. H. Mahmood J. Al-Bunnia
& Sons Co.*, 634 F.3d 466 (8th Cir. 2011)..... 132
Lawson v. Life of the South Ins. Co., 648 F.3d
116 (11th Cir. 2011) 134
Ragone v. Atl. Video Manhattan Ctr., 595 F.3d
115 (2d Cir. 2010) 136
Meena Enters., Inc. v. Mail Boxes Etc., 2012 WL
4863695 (D. Md. Oct. 11, 2012) 137
*THI of New Mexico at Hobbs Ctr., LLC v.
Spradlin*, 893 F.Supp.2d 1172
(D.N.M. 2012) 140
Haskins v. First Am. Title Ins. Co.,
866 F. Supp. 2d 343 (D.N.J. 2012)..... 142
*Mims v. Global Credit and Collection
Corporation*, 803 F.Supp.2d 1349
(S.D. Fla. 2011) 144
Bilyeu v. Johanson Berenson LLP, 809 F. Supp.
2d 547 (W.D. La. 2011)..... 147
Life Technologies Corp. v. AB Sciex Pte. Ltd.,
803 F. Supp. 2d 270 (S.D.N.Y. 2011) 150
Moro Aircraft Leasing, Inc. v. Keith, 789 F.
Supp. 2d 841 (N.D. Ohio 2011)..... 152
In re Rubiola, 334 S.W.3d 220 (Tex. 2011) 155
QPro Inc. v. RTD Quality Servs., 761 F. Supp.
2d 492 (S.D. Tex. 2011) 157
Volkswagen Grp. of Am., Inc. v. Williams,
64 So. 3d 1062 (Ala. Civ. App. 2010)..... 158

Schmitz v. Merrill Lynch, Pierce, Fenner Smith, Inc., 939 N.E.2d 40 (Ill. App. Ct. 5th 2010)..... 160

2.05 Non-Signatories: Application of the 9 U.S.C. Section 3 Mandatory Stay to Non-Signatories 161

Arthur Andersen L.L.P. v. Carlisle, 129 S. Ct. 1896 (2009)..... 161

Gorsuch, Ltd. v. Wells Fargo Nat. Bank Ass'n, 830 F. Supp. 2d 1202 (D. Colo. 2011)..... 164

2.06 Class Arbitration: Developing Case Law, Including the Enforceability of Clauses Prohibiting Class Arbitration..... 166

AT&T Mobility LLC v. Concepcion, 131 S.Ct 1740 (2011)..... 166

Stolt-Nielsen S.A. v. AnimalFeeds Intl. Corp., 130 S.Ct. 1758 (2010)..... 169

In re American Exp. Merchants' Litig., 667 F. 3d 204 (2d Cir. 2012), cert. granted sub nom., *American Exp. Co. v. Italian Colors Rest.*, 133 S. Ct. 594 (2012)..... 171

Sutter v. Oxford Health Plans LLC, 675 F.3d 215 (3d Cir. 2012), cert. granted sub nom., *Oxford Health Plans LLC v. Sutter*, 133 S. Ct. 786 (2012)..... 174

Reed v. Florida Metro. Univ., Inc., 681 F.3d 630 (5th Cir. 2012) 176

Pendergast v. Sprint Nextel Corp., 691 F. 3d 1224 (11th Cir. 2012) 177

Litman v. Cellco Partnership, 381 Fed. Appx. 140 (3d Cir. 2011) 178

Cruz v. Cingular Wireless, LLC, 648 F.3d 1205 (11th Cir. 2011) 180

Fensterstock v. Educ. Fin. Partners, 611 F.3d 124 (2d Cir. 2010) 181

Greenwood v. CompuCredit Corp., 615 F.3d 1204 (9th Cir. 2010) 184

Fromer v. Comcast Corp., 886 F.Supp.2d 106 (D. Conn. 2012)..... 185

In re Checking Account Overdraft Litigation, 813 F.Supp.2d 1365 (S.D. Fla. 2011)..... 187

TABLE OF CONTENTS

<i>Schnuerle v. Insight Commc'ns Co., L.P.</i> , 376 S.W.3d 561 (Ky. 2012).....	189
2.07 Appeal of Trial Court Orders Requiring or Denying Arbitration	191
<i>Dialysis Access Center, LLC v. RMS Lifeline, Inc.</i> , 638 F.3d 367 (1st Cir. 2011).....	191
<i>Turi v. Main Street Adoption Services, LLP</i> , 633 F.3d 296 (6th Cir. 2011)	193
<i>Braintree Laboratories, Inc. v. Citigroup Global Markets Inc.</i> , 622 F.3d 36 (1st Cir. 2010)	196
<i>Univ. of Illinois v. Organon Teknika Corp.</i> , 614 F.3d 372 (7 th Cir. 2010)	198
<i>North Fork Collieries, LLC v. Hall</i> , 322 S.W.3d 98 (Ky. 2010).....	199
Chapter 3.....	203
Interaction of Federal and State Law	
3.01 Commerce Clause Preemption of State Law by the FAA	203
<i>AT&T Mobility LLC v. Concepcion</i> , 131 S.Ct 1740 (2011).....	203
<i>Preston v. Ferrer</i> , 128 S. Ct. 978 (2008).....	203
<i>Coneff v. AT&T Corp.</i> , 673 F.3d 1155 (9th Cir. 2012)	207
<i>Universal Ins. Co., Inc. v. Warrentech Consumer Prod. Servs., Inc.</i> , 849 F.Supp.2d 227, (D.P.R. 2012)	209
<i>Bradley v. Brentwood Homes, Inc.</i> , 730 S.E. 2d 312 (S.C. 2012).....	211
<i>Robinson v. Title Lenders, Inc.</i> , 364 S.W.3d 505 (Mo. 2012).....	213
<i>Nafta Traders, Inc. v. Quinn</i> , 339 S.W.3d 84 (Tex. 2011)	215
<i>Aramark Uniform & Career Apparel v. Hunan, Inc.</i> , 757 N.W.2d 205 (N.M. 2008).....	215
<i>Satomi Owners Ass'n v. Satomi, L.L.C.</i> , 225 P.3d 213 (Wash. 2009) (en banc)	216
<i>Moscatiello v. Hilliard</i> , 939 A.2d 325 (Pa. 2007)	218

	<i>Flexon v. PHC-Jasper, Inc.</i> , 731 S.E.2d 1 (S.C. App. 2012).....	219
	<i>The Shakespeare Foundation, Inc. v. Jackson</i> , 61 So.3d 1194 (Fla. App. 1 Dist., 2011).....	220
3.02	The Role of State Arbitration Law	222
	<i>Marmet Health Care Center Inc. v. Brown</i> , 132 S.Ct. 1201 (2012).....	222
	<i>Southern Pioneer Life Insurance Co. v. Thomas</i> , 385 S.W.3d 770 (Ark. 2011)	224
	<i>Quinn v. NAFTA Traders, Inc.</i> , 360 S.W.3d 713 (Tex. App.--Dallas 2012, pet. denied)	226
3.03	Federal Court Jurisdiction and the FAA	228
	<i>CompuCredit Corporation v. Greenwood</i> , 132 S.Ct. 665 (2012).....	228
	<i>Vaden v. Discover Bank</i> , 129 S. Ct. 1262 (2009)	231
	<i>Ipcon Collections L.L.C. v. Costco Wholesale Corp.</i> , 698 F.3d 58 (2d Cir. 2012)	232
	<i>Countrywide Home Loans v. Mortgage Guaranty Insurance Corp.</i> , 642 F.3d 849 (9 th Cir. 2011)	234
	<i>Community State Bank v Strong</i> , 651 F.3d 1241 (11th Cir. 2011)	235
	<i>Northport Health Serv. v. Rutherford</i> , 605 F.3d 483 (8th Cir. 2010)	238
	<i>Geographic Expeditions, Inc. v. Estate of Lhotka ex rel. Lhotka</i> , 599 F.3d 1102 (9th Cir. 2010)	239
3.04	Choice of Law and Choice of Forum	241
	<i>KPMG LLP v. Cocchi</i> , 132 S.Ct. 23 (2011).....	241
	<i>Wootten v. Fisher Investments, Inc.</i> , 688 F.3d 487 (8th Cir. 2012)	242
	<i>Pokorny v. Quixtar</i> , 601 F.3d 987 (9th Cir. 2010)	244
	<i>Northrop Grumman Ship Sys., Inc. v. Ministry of Defense of the Republic of Venezuela</i> , 575 F.3d 491 (5th Cir. 2009)	246
	<i>BDO Seidman, LLP v. SSW Holding Co, Inc.</i> , 386 S.W.3d 361 (Ark. 2012)	247

TABLE OF CONTENTS

<i>In re Lopez</i> , 372 S.W.3d 174 (Tex. 2012)	250
Chapter 4	251
The Arbitral Tribunal	
4.01 Disqualifying Arbitrators: Evident Partiality and Related Grounds	251
<i>Scandinavian Reinsurance Co. Ltd. v. Saint Paul Fire and Marine Ins. Co.</i> , 668 F.3d 60 (2d Cir. 2012)	251
<i>Dealer Computer Servs., Inc. v. Michael Motor Co., Inc.</i> , 485 Fed. Appx. 724 (5th Cir. 2012)	253
<i>Ventress v. Japan Airlines</i> , 603 F.3d 676 (9th Cir. 2010)	255
<i>Positive Software Solutions v. New Century Mortgage Corp.</i> , 476 F.3d 278 (5th Cir. 2007)	255
<i>New Regency Prods. v. Nippon Herald Films, Inc.</i> , 502 F.3d 1101 (9th Cir. 2007)	257
<i>Stone v. Bear Stearns & Co., Inc.</i> , 872 F. Supp. 2d 435 (E.D. Pa. 2012)	258
<i>DT-Trak Consulting, Inc. v. Prue</i> , 814 N.W.2d 804 (S.D. 2012)	263
<i>Rebmann v. Rohde</i> , 127 Cal. Rptr. 3d 510 (4th Dist. 2011).....	265
<i>Ponderosa Pine Energy, LLC v. Tenaska Energy, Inc.</i> , 376 S.W.3d 358 (Tex. App.— Dallas 2012, no pet.).....	266
<i>Skidmore Energy, Inc. v. Maxus (U.S.) Exploration Company</i> , 345 S.W.3d 672 (Tex.App— Dallas 2011).....	268
<i>Amoco D.T. Co., v. Occidental Petroleum Corp.</i> , 343 S.W.3d 837 (Tex.App.—Houston [14th Dist.] 2011)	270
4.02 Structural Bias: Non-neutral Neutrals	273
<i>Haworth v. Superior Court</i> , 235 P.3d 152 (Cal. 2010).....	273
4.03 Failure of Arbitral Selection Provisions	274
<i>Khan v. Dell Inc.</i> , 669 F.3d 350 (3 rd Cir. 2012).....	274

AAA YEARBOOK ON ARBITRATION AND THE LAW

<i>BP Exploration Libya Ltd. v. ExxonMobil Libya Ltd.</i> , 689 F.3d 481 (5th Cir. 2012).....	276
<i>Ins. Co. of North Am. v. Public Service Mut. Ins. Co.</i> , 609 F.3d 122 (2d Cir. 2010).....	278
<i>In re Serv. Corp. Int’l and SCI Texas Funeral Servs., Inc.</i> , 355 S.W.3d 655 (Tex. 2011).....	280
<i>Younessi v. Recovery Racing, LLC</i> , 88 So. 3d 364 (Fla. Dist. Ct. App. 2012).....	282
<i>Quickclick Loans, LLC v. Russell</i> , 407 Ill. App.3d 46 (Ill. Ct. App. 2d 2011)	283
<i>C.R. Klewin N.E., LLC v. City of Bridgeport</i> , 919 A.2d 1002 (Conn. 2007).....	285
4.04 Arbitrator Immunity.....	287
<i>Sacks v. Dietrich</i> , 663 F.3d 1065 (9th Cir. 2011) ..	287
Chapter 5.....	291
Preliminary Proceedings	
5.01 Interim Relief by the Court	291
<i>Weingarten Realty Investors v. Miller</i> , 661 F.3d 904 (5th Cir. 2011).....	291
<i>Next Step Med. Co. v. Johnson & Johnson Int’l</i> , 619 F.3d 67 (C.A.1 (Puerto Rico) 2010)	293
<i>Toyo Tire Holdings of Am. v. Continental Tire North America</i> , 609 F.3d 975 (9th Cir. 2010)	295
<i>Spinks v. Automation Personnel Serv., Inc.</i> , 49 So.3d 186 (Ala. 2010).....	296
5.02 Arbitral Subpoenas and Pre-hearing Discovery	298
<i>Colo. Mills, LLC v. SunOpta Grains and Foods, Inc.</i> , 269 P.3d 731 (Col. 2012).....	298
<i>Life Receivables Trust v. Syndicate 102 at Lloyd’s of London</i> , 549 F.3d 210 (2nd Cir. 2008)	300
5.03 Arbitral Stays of Parallel Litigation and Judicial Stays of Arbitral Proceedings.....	302
<i>PowerShare, Inc. v. Syntel, Inc.</i> , 597 F.3d 10 (1st Cir. 2010).....	302

TABLE OF CONTENTS

5.04 Judicial Stay of Litigation Pending	
Arbitration	303
<i>Louis Berger Group Inc. v. State Bank of India,</i> 802 F.Supp.2d 482 (S.D.N.Y. 2011).....	303
Chapter 6	307
The Arbitration Proceeding	
6.01 Preclusion: Res Judicata and Collateral Estoppel	307
<i>Cont'l Holdings, Inc. v. Crown Holdings Inc.,</i> 672 F.3d 567 (8th Cir. 2012).....	307
<i>FleetBoston Financial Corp. v. Alt,</i> 638 F.3d 70 (1st Cir. 2011).....	309
<i>Grisby & Associates, Inc. v. M Securities Investment,</i> 664 F.3d 1350 (11th Cir. 2011).....	311
<i>Shell Oil Co. v. CO2 Committee, Inc.,</i> 589 F. 3d 1105 (10th Cir. 2009).....	313
6.02 Remedial Authority of Arbitrators	314
<i>Reliastar Life Ins. Co. of N.Y. v. EMC Nat'l Life Ins. Co.,</i> 564 F.3d 81 (2d Cir. 2009).....	314
<i>Kitchens v. Turquoise Properties Gulf, Inc.,</i> 70 So.3d 377 (Ala.Civ.App. 2010).....	315
6.03 Awards of Costs, Fees, and Interest	317
<i>Newmont v. Ins. Co. of North Am.,</i> 615 F. 3d 1268 (10th Cir. 2010).....	317
<i>Janney Montgomery Scott LLC v. Tobin,</i> 571 F.3d 162 (1st Cir. 2009).....	318
<i>AIG Baker Sterling Heights v. Am. Multi-Cinema,</i> 508 F.3d 995 (11th Cir. 2007).....	320
<i>Laborers' Intern. Union of North America v. Brand Energy Services LLC,</i> 746 F.Supp. 2d 121 (D.D.C. 2010).....	322
<i>Don Drennen Motor Co., Inc. v. McClung,</i> 79 So.3d 593 (Ala. 2011).....	323
6.04 Representation of Corporations	324
<i>NISHA L.L.C. v. TriBuilt Construction Group, L.L.C,</i> 388 S.W.3d 444 (Ark. 2012).....	324

Chapter 7	327
Challenges to the Arbitral Award	
7.01 Statutory Deadlines for Submission of Application to Vacate or Modify Award	327
<i>James Valley Grain v. David</i> , 802 N.W.2d 158 (N.D. 2011).....	327
<i>M3 Healthcare Solutions v. Family Practice Assoc.</i> , 996 A.2d 1279 (Del. 2010).....	329
7.02 Contractual Expansion of Grounds of Judicial Review	330
<i>Hall Street Assoc. v. Mattel</i> , 552 U.S. 576 (2008)	330
<i>Brookfield Country Club, Inc. v. St. James- Brookfield, LLC</i> , 287 Ga. 408 (Ga. 2010)	331
<i>Nafta Traders, Inc. v. Quinn</i> , 339 S.W.3d 84 (Tex. 2011)	333
<i>Good Times Stores, Inc. v. Macias</i> , 355 S.W. 3d 240 (Tex.App.—El Paso 2011)	336
7.03 Challenges Based on Evidentiary and Procedural Issues	339
<i>Taylor v. Univ. of Phoenix/Apollo Group</i> , 487 Fed. Appx. 942 (C.A.5 (Tex.) 2012)	339
<i>Positive Software Solutions v. New Century Mortgage Corp.</i> , 619 F. 3d 458 (5th Cir. 2010)	340
<i>U.S. Life Ins. Co. v. Superior Nat’l Ins. Co.</i> , 591 F.3d 1167 (9th Cir. 2010)	341
<i>Century Indem. Co. v. Certain Underwriters of Lloyd’s London</i> , 584 F.3d 513 (3d Cir. 2009)	342
<i>Bosack v. Soward</i> , 586 F.3d 1096 (9th Cir. 2009)	346
<i>Thomas Diaz, Inc. v. Colombina, S.A.</i> , 831 F. Supp. 2d 528 (D. Puerto Rico 2011)	347
<i>Turquoise Properties Gulf, Inc. v. Overmyer</i> , 81 So.3d 1250 (Ala. 2011).....	349
<i>Pirtek USA, LLC v. Whitehead</i> , 51 So. 3d 291 (Ala. 2010).....	350

TABLE OF CONTENTS

<i>Talel Corp. v. Shimonovitch</i> , 84 So. 3d 1192 (Fla. Dist. Ct. App. 2012)	352
<i>Beals v. New York City Transit</i> , 94 A.D.3d 543, 942 N.Y.S.2d 86 (N.Y. App. Div. 2012)	353
<i>Susan D. Settenbrino, P.C. v. Barroga-Hayes</i> , 89 A.D.3d 1094 (N.Y. App. Div. 2011)	354
<i>Hoso Foods, Inc. v. Columbus Club, Inc.</i> , 118 Cal. Rptr. 3d 594 (Cal. App. 2d 2010)	355
7.04 Challenges That Arbitrators Exceeded Their Authority	357
<i>Rain CII Carbon, LLC v. ConocoPhillips Co.</i> , 674 F.3d 469 (5th Cir. 2012)	357
<i>White Springs Agricultural Chemicals, Inc. v. Glawson Investments Corp.</i> , 660 F.3d 1277 (11th Cir. 2011)	360
<i>Morgan Keegan & Company, Inc. v. Garrett</i> , 816 F. Supp. 2d 439 (5th Cir. 2011)	363
<i>Wells Fargo Bank, N.A. v. WMR e-PIN, LLC</i> , 653 F.3d. 702 (8th Cir. 2011)	364
<i>T.Co. Metals, LLC v. Dempsey Pipe & Supply, Inc.</i> , 592 F.3d 329 (2d Cir. 2010)	366
<i>MCI Constructors, LLC v. City of Greensboro</i> , 610 F.3d 849 (4th Cir. 2010)	368
<i>Raymond James Fin. Servs. v. Bishop</i> , 596 F. 3d 183 (4th Cir. 2010), cert. denied, ___ U.S. ___, 130 S. Ct. 145, 175 L. Ed 2d 36 (2009).....	370
<i>Spungin v. GenSpring Family Offices, LLC</i> , 883 F. Supp. 2d 1193 (S.D. Fla. 2012).....	372
<i>Hotels Nevada v. L.A. Pacific Ctr., Inc.</i> , 203 Cal. App. 4th 336, 340, 136 Cal. Rptr. 3d 832, 836 (Cal. Ct. App. 2012)	374
<i>Kelly Sutherland McLeod Architecture, Inc. v. Schneickert</i> , 125 Cal. Rptr. 3d 83 (Cal. App. 2 Dist. 2011)	375
7.05 Manifest Disregard of the Law.....	378
<i>Stolt-Nielson SA v. Animalfeeds int’l Corp.</i> , 130 S. Ct. 1758 (2010).....	378
<i>Bangor Gas Co., L.L.C. v. H.Q. Energy Servs. Inc.</i> , 695 F.3d 181 (1st Cir. 2012).....	378

<i>Affymax, Inc. v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.</i> , 660 F.3d 281 (7th Cir. 2011)	380
<i>Medicine Shoppe Int’l v. Turner Investments</i> , 614 F.3d 485 (8 th Cir. 2010)	382
<i>Lagstein v. Certain Underwriters at Lloyd’s</i> , 607 F.3d 634 (9th Cir. 2010)	383
<i>Frazier v. CitiFinancial Corp. LLC</i> , 604 F. 3d 1313 (11th Cir. 2010)	385
<i>Stolt-Nielson SA v. Animalfeeds int’l Corp.</i> , 548 F.3d 85 (2d Cir. 2008), rev’d on other grounds, 130 S. Ct. 1758 (2010).....	386
<i>Citigroup Global Mkts. Inc. v. Bacon</i> , 562 F. 3d 349 (5th Cir. 2009)	387
<i>Comedy Club, Inc. v. Improv. West Assoc.</i> , 553 F. 3d 1277 (9th Cir. 2009), cert. denied 130 S. Ct. 36 (2009).....	389
<i>Hereford v. D.R. Horton, Inc.</i> , 13 So.3d 375 (Ala. 2009).....	390
<i>Abco Builders, Inc. v. Progressive Plumbing, Inc.</i> , 647 S.E.2d 574 (Ga. 2007)	391
7.06 Non-Statutory Grounds for Review: Public Policy	392
<i>Kitsap County Deputy Sheriff’s Guild v. Kitsap County</i> , 167 Wn. 2d 428 (Wash. 2009)	392
Chapter 8.....	395
International Arbitration	
8.01 Applicability of the New York Convention	395
<i>The Ministry of Defense and Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Defense Systems, Inc.</i> , 665 F.3d 1091 (9th Cir. 2011)	395
<i>Safety Nat’l Casualty Corp v. Certain Underwriters at Lloyd’s, London</i> , 587 F.3d 714 (5th Cir. 2009)	398
<i>Rogers v. Royal Caribbean Cruise Line</i> , 547 F. 3d 1148 (9th Cir. 2008)	399

TABLE OF CONTENTS

8.02 Enforcement of the Arbitration Agreement.....	401
<i>Schneider v. Kingdom of Thailand,</i> 688 F.3d 68 (2d Cir. 2012)	401
<i>Republic of Argentina v. BG Group PLC,</i> 665 F.3d 1363 (D.C. Cir. 2012).....	403
<i>Lindo v. NCL (Bahamas), Ltd.,</i> 652 F.3d 1257 (11th Cir. 2011)	405
<i>Answers in Genesis v. Creation Ministries Int'l,</i> <i>Ltd.,</i> 556 F.3d 459 (6th Cir. 2009).....	407
<i>Thomas v. Carnival Corp.,</i> 573 F.3d 1113 (11 th Cir. 2009).	409
<i>Cont'l Transfert Technique Ltd. v. Fed. Gov't of</i> <i>Nigeria,</i> 850 F. Supp. 2d 277, (D.D.C. 2012)...	411
<i>Cont'l Transfert Technique Limited v. Federal</i> <i>Government of Nigeria,</i> 800 F.Supp.2d 161, (D.D.C. 2011)	413
<i>Constellation Energy Commodities Group Inc. v.</i> <i>Transfield ER Cape Ltd,</i> 801 F. Supp. 2d 211 (S.D.N.Y. 2011).....	415
8.03 Removal under 9 U.S.C. § 205.....	417
<i>Infuturia Global Ltd. v. Sequus Pharmaceuticals,</i> <i>Inc.,</i> 631 F.3d 1133 (9th Cir. 2011).....	417
<i>Kobel Beth Yechiel Mechil of Tartikov, Inc. v.</i> <i>YLL Irrevocable Trust,</i> 863 F. Supp. 2d 351 (S.D.N.Y. 2012).....	420
<i>Simmons v. Sabine River Authority of Louisiana,</i> 823 F.Supp.2d 420 (W.D. La. 2011)	423
<i>Ruiz v. Carnival Corp.,</i> 754 F.Supp.2d 1328 (S.D. Fla. 2010)	425
8.04 Waiver of Removal Rights Relating to the New York Convention.....	426
<i>Ario v. Underwriting Members of Syndicate 53 at</i> <i>Lloyds for the 1998 Year of Account,</i> 618 F.3d 277 (3d Cir. 2010)	426
<i>ENSCO Int'l, Inc. v. Certain Underwriters at</i> <i>Lloyd's,</i> 579 F.3d 442 (5th Cir. 2009)	429

8.05 Court Assisted Evidence Gatherings under 28 U.S.C. § 1782	431
<i>In re Consorcio Ecuatoriano de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc., 685 F.3d 987 (11th Cir. 2012)</i>	431
<i>El Paso Corp. v. La Comision Ejecutiva Hidroelectricia del Rio Lempa, 341 Fed. Appx. 31 (5th Cir. Aug. 6, 2009)</i>	432
<i>In Re Application of Mesa Power Grp., L.L.C., 878 F. Supp. 2d 1296 (S.D. Fla. 2012)</i>	434
<i>In re Chevron Corp., 753 F. Supp. 2d 536, 537 (D. Md. 2010)</i>	437
<i>In re Application of Chevron Corp., 762 F. Supp. 2d 242 (D. Mass. 2010)</i>	440
8.06 Injunctions against Arbitration	442
<i>Citigroup Global Markets, Inc. v. VCG Special Opportunities Master Fund Ltd., 598 F.3d 30 (2d Cir. 2010)</i>	442
8.07 Procedural Barriers against Enforcement of Foreign Arbitral Awards	445
<i>GSS Group Ltd v. Nat'l Port Auth., 680 F.3d 805 (D.C. Cir. 2012)</i>	445
<i>Figueiredo Ferraz E Engenharia de Projeto Ltda. V. Republic of Peru, 665 F.3d 384 (2d Cir. 2011)</i>	447
<i>Frontera Resources Azerbaijan Corp. v. State Oil Co. of Azerbaijan Republic, 582 F.3d 393 (2d Cir. 2009)</i>	453
8.08 Enforcement of Foreign Awards Vacated at the Seat of Arbitration	457
<i>Termorio S.A. E.S.P. v. Electranta S.P., 487 F.3d 928 (D.C. Cir. 2007)</i>	457
Part II: Decisions That Discuss AAA Arbitration Rules	459
A. Overview: The AAA Arbitration Rules in the Courts	461
B. Alphabetical Table of Rules Cases	463
C. Index of Cases Arranged By Type of AAA Rules	469
D. Digests of Cases Discussing AAA Rules (Arranged Alphabetically)	479

TABLE OF CONTENTS

Index of Case Digests 615

Appendices on CD-ROM

- Code of Ethics for Arbitrators in Commercial Disputes
- Commercial Arbitration Rules and Mediation Procedures
- Construction Arbitration Rules
- ICDR Guidelines for Arbitrators Concerning Exchanges of
Information
- International Dispute Resolution Procedures

