In a remarkable ruling, the U.S. Court of Appeals for the Ninth Circuit has reconsidered its 1997 holding in Kyocera v. LaPine Technologies, and concluded that the FAA does not allow the parties to an arbitration agreement to dictate the standard of review for arbitral awards. The federal circuit courts are unevenly split on the question of whether parties can enter into so-called opt-in provisions for the judicial supervision of awards. Such provisions can obligate the court of enforcement to review the award or designated parts of it on the merits. FAA Section Ten thereby becomes a “default” basis for the court scrutiny of arbitral awards. The Ninth Circuit initially upheld opt-in clauses. It was joined by the Fifth Circuit and later the Third Circuit. The Sixth, Seventh, Eighth, and Tenth Circuits, however, ruled that these agreements exceeded the parties’ contract authority and were unenforceable. Emphasizing that the rule of contract law in arbitration ends with the rendering of the award, the court stated that the FAA—the enacted law—governed matters of enforcement. (Story at 271.)

The Florida Bar’s Commission on Multijurisdictional Practice has voted unanimously to exempt arbitration from its proposed rules. The Commission’s rules would have banned unlicensed foreign attorneys from representing clients in international arbitral proceedings that took place in Florida. The rules also would have imposed stringent requirements on U.S. lawyers who were not licensed in Florida and who were involved with international arbitrations held in Florida. Miami is second only to New York City as a venue for international arbitrations. (Story at 272.)

The IBA’s Seventh Annual International Arbitration Day will be held in Sao Paulo, Brazil on February 12, 2004. (Story at 274.)

The U.S. Supreme Court has reversed an Alabama state Supreme Court decision by holding that a debt-restructuring agreement was “a contract evidencing a transaction involving commerce” within the meaning of the FAA. The arbitration agreement in the contract was, therefore, enforceable. Citizens Bank v. Alafabco, Inc. (Case summary at 276.)

In yet another decision on arbitration, the U.S. Court of Appeals for the Ninth Circuit has held an employment arbitration agreement unconscionable. The court criticized the agreement’s provisions regarding the statute of limitations, class action litigation, cost-splitting, and the employer’s unilateral right to modify or terminate the agreement. Circuit City Stores, Inc. v. Mantor. (Case summary at 277.)

The California state Supreme Court has held that a provision in an employment arbitration agreement that allowed either party to “appeal” awards of $50,000 or more to a second arbitrator unduly favored the interests of the employer and, as a consequence, was unconscionable. Little v. Auto Stiegler. (Case summary at 279.)

In the Perspectives section, Dr. Vernon Nase of the T.C. Beirne School of Law at the University of Queensland, Australia provides an excellent account of “ADR and International Aviation Disputes Between States.” He concludes that, “Despite the lethargy of states, the need to modernize the system remains.” (The article begins on page 283.)
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