

**Recent Developments in U.S. International Arbitration Law:
Will Congress Take On the Supreme Court?**

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Introduction

In its 2009-2010 term, the U.S. Supreme Court issued two decisions particularly significant for whether the United States will remain an attractive international arbitration seat, especially given legislation pending in Congress that would limit the use of arbitration in both international and domestic contexts. In the case of *Stolt-Nielsen S.A. v. Animalfeeds Int'l Corp.*,^[1] the

Court held that imposing class arbitration on parties without their explicit consent violated the Federal Arbitration Act (FAA),^[2] and in *Rent-A-Center, West, Inc. v. Jackson*,^[3] the Court reinforced the current U.S. legal framework limiting courts' authority to interfere with contracts containing arbitration clauses.^[4]

When parties to a contract choose which country's law will govern the contract and in which country any arbitration of a contract dispute will be hosted, a common concern is the extent to which a country's law gives the parties control over arbitral procedures and limits judicial review of arbitral awards. *Stolt-Nielsen* and *Rent-A-Center* each symbolize an arbitration-friendly trend in U.S. law that makes the United States a leading international arbitration forum.

But the Arbitration Fairness Act, pending in the U.S. House of Representatives and Senate since 2007 in one form or another, proposes amendments to the FAA that might supersede these and other Supreme Court decisions favoring arbitration. The two current versions of this legislation limit parties' ability to resort to arbitration in consumer, franchise, and employment disputes, and expand grounds for judicial review of arbitral awards.^[5] Situating the jurisprudence in its real-world context—where clauses mandating settlement of disputes via arbitration are routinely used in labor agreements, cell phone and other consumer contracts, and franchise agreements—both versions mention “[a] series of [U.S.] Supreme Court decisions [that] have changed the meaning of the [FAA] so that it now extends to disputes between parties of greatly disparate economic power.”^[6] But because neither version distinguishes between domestic and international arbitration, the legislation could have the effect of making litigation in national courts the only option for resolving many cross-border disputes with a U.S. connection. The Arbitration Fairness Act, according to some observers, could consequently make the United States a less attractive seat for international arbitrations and negatively affect U.S. businesses if enacted into law. After a brief post-election session – which is very unlikely to deal with this legislation – all pending legislation will expire with the end of the 111st Congress. It is not clear whether or in what form this anti-arbitration legislation will be introduced in the next Congress, and what priority the new Republican leadership in the House (or the slim Democratic majority in the Senate) will place on it.

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***Stolt-Nielsen*: Class Arbitration Requires Parties' Explicit Consent**

The petitioners in *Stolt-Nielsen* were a group of shipping companies serving a large share of the global market for parcel tankers – seagoing vessels with compartments separately chartered to customers wishing to ship small quantities of liquids. One such customer was the respondent, AnimalFeeds International Corporation (“AnimalFeeds”), which supplied and shipped raw ingredients like fish oil to animal feed producers worldwide under a form contract containing an arbitration clause.^[7]

After AnimalFeeds commenced a class action antitrust lawsuit against the shipping companies, a federal district court sent the case to arbitration pursuant to the underlying contract. AnimalFeeds sought arbitration in New York City on behalf of a class of purchasers of parcel tanker transportation services.^[8] The shipping companies and AnimalFeeds stipulated that the applicable arbitration clause was “silent” about class arbitration, and submitted to an American Arbitration Association (AAA) panel the question of whether class arbitration could proceed. The AAA panel ruled in favor of allowing the class arbitration.

The shipping companies then successfully sought to vacate the panel’s ruling under section 10(a)(4) of the FAA, which allows the U.S. district court, where an arbitral award is made (in this case, the Southern District of New York), to vacate an award upon the application of any party “[w]here the arbitrators exceeded their powers.” The U.S. Court of Appeals for the Second Circuit reversed the district court.^[9] The Supreme Court granted *certiorari* “to decide whether imposing class arbitration on parties whose arbitration clauses are silent on that issue is consistent” with the FAA.^[10]

The Court reversed the Second Circuit’s decision, reaffirming that an arbitration decision can be found unenforceable and vacated under section 10(a)(4) of the FAA only when an arbitrator “strays from interpretation and application of the agreement and effectively ‘dispense[s] his own brand of industrial justice.’”^[11] The AAA panel in this case, the Court concluded, had simply adhered to public policy arguments favoring class arbitration, acting without any basis in the FAA, maritime law, or New York state law, to decide that the parties had intended to authorize class arbitration and structured their contract to that effect.^[12]

According to the Court, by imposing class arbitration despite the parties’ stipulation that they had not agreed on the issue, the arbitration panel’s conclusion was “fundamentally at war” with a “foundational FAA principle,”^[13] namely, “the basic precept that arbitration ‘is a matter of consent, not coercion.’”^[14] Participating parties’ “contractual rights and expectations”^[15] drove “agreement[s] to forgo the legal process and submit to private dispute resolution.”^[16] And “the differences between bilateral and class-action arbitration [were] too great for arbitrators to presume, consistent with their limited powers under the FAA, that the parties’ mere silence on the issue of class-action arbitration constitute[d] consent to resolve their disputes in class proceedings.”^[17]

The *Stolt-Nielsen* decision consequently reaffirms that arbitration is a creature of contract. The Court’s rejection of the AAA panel’s ruling reflects how an arbitration panel cannot alter the terms of arbitration in a manner that neither of the parties expects or the law does not mandate. In this case, according to the Court, the parties to the agreement governing the dispute would have had to submit to class arbitration, a form of arbitration that they neither planned nor anticipated.^[18] That outcome would presumably have defeated their purpose of resorting to arbitration in the first place – planning a procedure to which they both agreed and by which they could settle future disputes arising from their business relationship.

***Rent-A-Center*: Parties Seeking To Avoid Arbitration Can Only Challenge Arbitration Clauses**

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The *Rent-A-Center* decision reaffirms the FAA's limited framework for judicial review of parties' decisions to resort to arbitration. This case concerned an employment discrimination suit by Antonio Jackson against his former employer, Rent-A-Center, which operates a national chain of rent-to-own stores. After Jackson filed suit in the U.S. District Court for the District of Nevada, Rent-A-Center moved to compel arbitration under the FAA on the grounds that Jackson had signed a stand-alone agreement to arbitrate disputes related to his employment or the agreement's enforceability. Jackson opposed the motion, arguing, in part, that the agreement was unconscionable under Nevada law.^[19]

The district court granted Rent-A-Center's motion, but the U.S. Court of Appeals for the Ninth Circuit reversed, holding that "where 'a party challenges an arbitration agreement as unconscionable, and thus asserts that he could not meaningfully assent to the agreement, the threshold question of unconscionability is for the court.'"^[20] The Supreme Court granted *certiorari* to determine whether, under the FAA, "a district court may decide a claim that an arbitration agreement is unconscionable, where the agreement explicitly assigns that decision to the arbitrator."^[21]

The Court ruled for Rent-A-Center, holding that where a stand-alone arbitration agreement includes a specific provision referring to arbitration the determination of the agreement's enforceability, a court can only resolve a challenge to that specific provision and nothing else. Section 2 of the FAA states that a written arbitration provision in a "contract . . . involving commerce . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."^[22] The FAA accordingly places arbitration agreements "on an equal footing with other contracts"^[23] and allows such agreements' invalidation only for such "generally applicable" contract defenses as fraud, duress, or unconscionability.^[24] This requirement reflects the doctrine of severability, which leaves to courts questions of the validity of arbitration clauses and to arbitrators questions concerning the validity of contracts containing arbitration clauses.^[25] Underscoring this doctrine is the FAA's mandate to enforce a "written provision . . . to settle by arbitration a controversy' . . . without mention of the validity of the contract in which it is contained."^[26]

A party's challenge to another provision of a contract or to a contract in its entirety, the Court continued, consequently did not preclude enforcement of a specific arbitration clause.^[27] Since Jackson had challenged the entire contract, and not the specific portion delegating to arbitration the matter of whether the contract as a whole was valid, the Court, reversing the Ninth Circuit, ruled that arbitration had to proceed.^[28] The fact that the contract at issue was itself an arbitration agreement made no difference because applying the severability rule did not "depend on the substance of the remainder of the contract."^[29]

Rent-A-Center and *Stolt-Nielsen*, viewed in the context of other Supreme Court arbitration jurisprudence, reinforce the relatively arbitration-friendly status of current U.S. law. In 2006, the Court acknowledged in *Buckeye Check Cashing, Inc. v. Cardegna* that Congress enacted the FAA "to overcome judicial resistance to arbitration" and to codify a "national policy favoring arbitration."^[30] In 2008, in *Hall Street Associates, L.L.C. v. Mattel, Inc.*, the Court affirmed that the FAA provides the sole framework for vacating or modifying an arbitral award.^[31] This framework is quite limited, as clarified by *Stolt-Nielsen* and *Rent-A-Center*.

The Arbitration Fairness Act Of 2009

The proposed Arbitration Fairness Act would, if enacted into law, expand judicial review of arbitral awards and limit parties' ability to resort to arbitration. The legislation mandates that, for the disputes within its scope, absent specific exceptions, "the validity or enforceability of an agreement to arbitrate shall be

determined by [courts rather than arbitrators], irrespective of whether the party resisting arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing such [an] agreement.”^[32]

The provision would affect international arbitration as well; the text of the legislation does not distinguish between domestic and international arbitration and invalidates the doctrine of severability that *Rent-A-Center* reaffirmed.^[33] The text also expansively defines the sorts of disputes addressed.

As proposed, the Arbitration Fairness Act would apply broadly – to employment, consumer or franchise disputes, or disputes “arising under any statute intended to protect civil rights.” The bill pending in the House of Representatives defines an “employment dispute” as basically *any* employer-employee dispute.^[34] It defines a “consumer dispute” as a “dispute between a person other than an organization who seeks or acquires real or personal property, services, money, or credit for personal, family, or household purposes and the seller or provider of such property, services, money, or credit.”^[35] Covered franchise disputes would include those in which: a) a franchisee operates under a marketing plan or system that a franchisor has substantially prescribed; b) the franchisee’s business operation under that plan is substantially associated with the franchisor’s trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and c) the franchisee is required to pay a franchise fee.^[36] The House bill would encompass *all* disputes of the sort indicated, whether or not they involve a foreign party.

In the Senate version of the legislation, covered franchise disputes would be limited to those involving a “franchisee with a principal place of business in the United States.” The covered “civil rights disputes” would be only those that arise under the U.S. Constitution, a state constitution, or a federal or state statute concerning discrimination on the basis of, among other things, race, gender, disability, religion, or national origin.^[37] In cases concerning these federal or state statutes, the Senate version also mandates that one of the parties must be an individual.^[38]

Some scholars argue that if enacted, the Arbitration Fairness Act (particularly the House version) would significantly reduce the sorts of disputes that can be arbitrated, strengthen U.S. courts’ power to interfere with arbitral awards, and thus negatively affect international arbitration in the United States and, by extension, U.S. business interests.^[39] An article by independent arbitrator Edna Sussman outlines one such scenario. She contends that enactment of this legislation would cause the United States to be viewed as a hostile forum for arbitration and to lose its position as a preferred international arbitration seat.^[40] Concretely, the Act would “chill parties from including arbitration clauses that could even arguably fall” within its purview and “deter parties from arbitrating cases for fear that the Act would provide a basis to challenge the arbitration before or after the fact.”^[41] Sussman argues that:

- U.S. multinational companies, and foreign companies doing business in the United States, might avoid choosing U.S. law to govern their contracts;
- Foreign businesses that routinely use arbitration to settle all contract disputes might avoid entering into contracts with U.S. entities -competitively disadvantaging U.S. business;
- U.S. companies that want to use arbitration to settle international contract disputes might only be able to do so if they pay the extra costs stemming from the selection of a foreign arbitral situs, and foreign partners might pressure them to maintain accessible assets in arbitration-friendly locales, so that an arbitral award could be paid without litigation in U.S. courts.^[42] Otherwise, foreign businesses would have to cope with a U.S. litigation process “viewed by many

around the world as unduly expensive, burdensome, and intrusive of company executive and employee time.”^[43]

Conclusion: The Arbitration Fairness Act’s Prospects

The U.S. Supreme Court has long acknowledged arbitration’s importance to international commerce, having once stated that an insistence that “all disputes . . . be resolved under our laws and in our courts” would hinder U.S. businesses’ expansion and that advance agreement “on a forum acceptable to both parties is an indispensable element in international trade, commerce, and contracting.”^[44] But the Arbitration Fairness Act would certainly limit international arbitrations with a U.S. nexus. Congress has scheduled a post-election session starting November 15, but it will be preoccupied with more pressing priorities, such as taxes, appropriations, Medicare payments, the START (Strategic Arms Reduction) treaty with the Russian Federation, and extension of unemployment insurance.

If the legislation is reintroduced in the 112nd Congress, its support would differ, and the text would not necessarily be the same. Its principal Senate sponsor, Sen. Russell Feingold, was not re-elected. It is not clear whether Republican positions on this issue will be influenced more by pro-arbitration business interests or Tea Party populism.

If arbitration reform does become a priority in the new Congress, one alternative might be to codify fairness standards already proposed by some in the alternative dispute resolution community. For example, former Ninth Circuit Judge (and U.S. Secretary of Education) Shirley Hufstедler and former F.B.I. and C.I.A. director William Webster recently proposed codifying arbitration guidelines^[45] on, among other things, arbitrator impartiality and transparency regarding arbitrators’ backgrounds.^[46] The international arbitration community, however, would have to consider how such codifications would affect arbitrations under the auspices of arbitral institutions (e.g., International Chamber of Commerce, London Court of International Arbitration) based outside of the United States.

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ENDNOTES

[1] *Stolt-Nielsen S.A. v. Animalfeeds Int’l Corp.*, No. 08–1198 (U.S. Apr. 27, 2010), available at <http://www.supremecourt.gov/opinions/09pdf/08-1198.pdf>.

[2] *See id.*, slip. op. at 1 (citing 9 U.S.C. § 1 *et seq.*) (defining the issue underlying the case as “whether imposing class arbitration on parties whose arbitration clauses [were] ‘silent’ on that issue [was] consistent” with the FAA).

[3] *Rent-A-Center, West, Inc. v. Jackson*, No. 09-497 (U.S. June 21, 2010), available at <http://www.supremecourt.gov/opinions/09pdf/09-497.pdf>.

[4] *See id.*, slip op. at 1 (defining the issue underlying the case as whether, under the FAA, “a district court may decide a claim that an arbitration agreement is unconscionable, where the agreement explicitly assigns that decision to the arbitrator.”). U.S. courts have, in fact, long viewed arbitration as a “creature of contract.” *United Steelworkers of Am. v. Am. Mfg. Co.*, 363 U.S. 564, 570-71 (1960) (Brennan, J., concurring) (“[S]ince arbitration is a creature of contract, a court must always inquire, when a party seeks to invoke its aid to force a reluctant party to the arbitration table, whether the parties have agreed to arbitrate the particular

dispute.”). To that end, the FAA provides for expedited judicial review to confirm, vacate, or modify arbitration awards, and requires the confirmation of such awards in all but a few circumstances. See 9 U.S.C. § 9 (2010). A court may only vacate an award where “the award was procured by corruption, fraud, or undue means” or where the arbitrator or arbitration panel was evidently partial or corrupt, committed misconduct prejudicial to a party’s rights (i.e., misconduct in refusing to postpone the hearing upon sufficient cause shown or in refusing to hear pertinent and material evidence), exceeded their powers “or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.” *Id.* § 10(a). The grounds for modifying or correcting an award include “evident material miscalculation of figures” or “an evident material mistake” in the description of “any person, thing, or property referred to in the award,” “where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision,” or when the award is “imperfect in [a] matter of form not affecting the merits.” *Id.* § 11. These are the exclusive grounds for vacatur and modification of an arbitration award and may not be supplemented by contract. See *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008).

[5] See Arbitration Fairness Act of 2009, H.R. 1020, 111th Cong. (2009) [hereinafter House Act]; Arbitration Fairness Act of 2009, S. 931, 111th Cong. (2009) [hereinafter Senate Act].

[6] *Id.* § 2(2).

[7] See *Stolt-Nielsen*, slip op. at 1-3.

[8] The American Arbitration Association had developed rules specifically pertaining to class arbitration, including a threshold requirement that arbitration resolve whether an arbitration clause permitted arbitration on behalf of or against a class, following the U.S. Supreme Court’s decision in *Green Tree Financial Corporation v. Bazzle*, 539 U.S. 444 (2003). In *Bazzle*, the Court reviewed a South Carolina Supreme Court decision that contracts, which were silent in regard to class arbitration, actually authorized class arbitration. The Court, in a plurality opinion that one other justice joined in order to allow the Court to pass a controlling judgment, ruled that whether contracts authorized such arbitration in the first place was a matter for arbitrators; the Court did not reach the question of how to actually determine whether class arbitration was allowed. See *Id.* at 455 (Stevens, J., concurring in judgment and dissenting in part).

[9] See *Stolt-Nielsen*, slip op. at 2-5

[10] *Id.* at 1.

[11] *Id.* at 7 (quoting *Major League Baseball Players Ass’n. v. Garvey*, 532 U.S. 504, 509 (2001) (*per curiam*)).

[12] See *id.* at 7-12.

[13] *Id.* at 20.

[15] See *id.* at 18 (quoting *Volt*, 489 U.S. at 479).

[16] *Id.* (citing *AT&T Tech., Inc. v. Commc’ns Workers*, 475 U.S. 643, 648-49 (1986)).

[17] *Id.* at 23. The Court compared bilateral arbitration and class arbitration, stating that bilateral arbitration entailed parties forgoing “the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution: lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes.” *Id.* at 21 (citations omitted). But class arbitration’s benefits were “much less assured,” consequently “giving reason to doubt the parties’ mutual consent to resolve disputes” through such a mechanism. *Id.* at

21-22 (citations omitted). Class arbitration did not involve resolution of a single dispute between parties to a single agreement, but “many disputes between hundreds or perhaps even thousands of parties.” *Id.* at 22 (citation omitted). The American Arbitration Association’s rules governing class arbitration did not presume the privacy and confidentiality applying to bilateral arbitrations, “thus potentially frustrating the parties’ assumptions when they agreed to arbitrate.” *Id.* An award in class arbitration did not bind “just the parties to a single arbitration agreement, but adjudicate[d] the rights of absent parties as well.” *Id.* Finally, “the commercial stakes of class-action arbitration [were] comparable to those of class-action litigation...even though the scope of judicial review [was] much more limited.” *Id.* at 22-23 (citation omitted).

[18]An *amicus curiae* brief supporting the shipping companies further discussed why parties to the pending arbitration in this case – an international arbitration – would not have expected to submit to class arbitration. See Brief of Ass’n of Ship Brokers and Agents et al. in Support of Petitioners at 26-38, *Stolt-Nielsen S.A. v. Animalfeeds Int’l Corp.*, No. 08–1198, available at http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/08-1198_PetitionerAmCu9ShippingOrgs.pdf (citations omitted). Parties to contracts involving maritime commerce, the brief noted, were often from different countries. This “transnational character” provided compelling evidence that silence did not amount to acquiescence to class arbitration. Citing a number of studies regarding foreign judicial systems’ lack of openness to class actions or similar suits, the brief argued that the class action was “a uniquely American device” that had gained some acceptance in common law countries, but remained relatively unknown in civil law countries. *Id.* The FAA nonetheless did not allow arbitration of disputes the parties to an arbitration clause had not agreed to arbitrate. Thus, an arbitration agreement’s silence as to class arbitration meant that the agreement had to be “interpreted consistently with the expectations of parties from around the world – many of which [were] from legal systems that reject class actions.” A disregard of such expectations would create a solid basis for a challenge to enforcement under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”), which allows a signatory state to not enforce an arbitral award that a) “deals with a difference not contemplated by or not falling within” an arbitration clause; b) “contains matters beyond the scope of submission to arbitration; c) involves a “procedure that was not in accordance with the agreement of the parties”; or d) “would be contrary to the public policy” of the state. *Id.* at 39-40 (citing Convention on the Recognition and Enforcement of Foreign Arbitral Awards [New York Convention] art. V(1)(cc), (1)(d), (2)(b)), June 10, 1958, 330 U.N.T.S. 38 (entered into force June 7, 1959); see also 9 U.S.C. § 201 (providing that the FAA applies to actions brought under the New York Convention to the extent that there is no conflict with the Convention as ratified by the United States).

[19]See *Rent-A-Center*, No. 09-497, slip op. at 1-2.

[20]*Id.* at 3 (citing *Jackson v. Rent-A-Center, West, Inc.*, 581 F.3d 912, 917 (2009)).

[21]*Id.* at 1.

[22]*Id.* at 3 (quoting 9 U.S.C. § 2).

[23]*Id.* (citing *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006)).

[24]*Id.* at 4 (quoting *Doctor’s Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996)).

[25]See, e.g., *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403-404 (1967); *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943 (1995); *Buckeye*, 546 U.S. at 444-46; *Preston v. Ferrer*, 552 U.S. 346, 353-54 (2008).

[26]*Rent-A-Center*, slip op. at 7 (citing 9 U.S.C. § 2) (emphasis in original).

[27] *See id.*

[28] *See id.* at 8-12 (citations omitted).

[29] *Id.* at 8.

[30] *Buckeye*, 546 U.S. at 443 (citing 9 U.S.C. § 2).

[31] *See supra* note 4.

[32] House Act § 4; Senate Act § 3.

[33] *Id.*

[34] House Act § 4 (defining an “employee dispute” as “a dispute between an employer and employee arising out of the relationship of employer and employee as defined by the Fair Labor Standards Act [i.e., an “employer” is generally any person acting directly or indirectly in the interest of an employer in relation to an employee, while an employee is generally any individual employed by an employer]”).

[35] *Id.*

[36] *See id.*

[37] Senate Act § 3.

[38] *Id.*

[39] *See, e.g.*, Edna Sussman, *The Arbitration Fairness Act: Unintended Consequences Threaten U.S. Business*, 18 AM. REV. INT’L ARB. 455 (2009); Mark Kantor, *Legislative Proposals Could Significantly Alter Arbitration in the United States*, 74 J. INT’L ARB. 444-52 (2008); Peter Rutledge, *Who Can Be Against Fairness? The Case Against the Arbitration Fairness Act*, 9 CARDOZO J. CONFL. RESOL. 267, 269 (2008); David Caron & Seth Schreiber, *Anticipating the 2009 U.S. “Fairness in Arbitration Act,”* 2(3) WORLD ARB. & MED. REV. 15 (2008); Thomas Carbonneau, *“Arbitricide”: The Story of Anti-Arbitration Sentiment in Congress*, 18 AM. REV. INT’L ARB. 233, 247 (2007); William W. Park & Alexander A. Yanos, *Treaty Obligations and National Law: Emerging Conflicts in International Arbitration*, 58 HASTINGS L.J. 251, 282 (2006). These articles specifically address prior versions of the Arbitration Fairness Act, introduced in 2007, but contain commentary that is equally applicable to the Act’s current versions. They provide an overview of why arbitration has become such a popular method of dispute resolution in regard to international commerce and argue that this legislation (as well as prior proposed FAA amendments) would reduce selections of the United States as a seat for international arbitrations, reduce the retention of U.S. arbitration institutions and arbitrators, displace specific contractual provisions and expectations regarding cross-border dispute resolution, encourage multinational corporations to draft contracts with as few U.S. contacts as possible to avoid litigation in U.S. courts, and conflict with U.S. treaty obligations. *See id.*

[40] *See Sussman, supra* note 39, at 482-83.

[41] *Id.* at 477 (quoting Committee on the Federal Courts of the New York County Lawyers’ Association, *Report on the Proposed Arbitration Fairness Act of 2007* at 4 (Apr. 15, 2008), available at <http://www.nycla.org>).

[42] *See id.* at 482-83.

[43] *Id.* at 483.

[44] *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 8-9 (1972).

[45] Shirley M. Hufstедler & William H. Webster, *Arbitration Under Siege*, NAT'L L. J., Sept. 20, 2010, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202472117839&slreturn=1&hbxlogin=1> (last visited Nov. 3, 2010).

[46] *See id.* The article specifically refers to guidelines recognized by the AAA. *See* American Arbitration Association, Consumer Due Process Protocol, <http://www.adr.org/sp.asp?id=22019> (last visited Nov. 3, 2010); American Arbitration Association, Employment Due Process Protocol, <http://www.adr.org/sp.asp?id=28535> (last visited Nov. 3, 2010); American Arbitration Association, Healthcare Due Process Protocol, <http://www.adr.org/sp.asp?id=28633> (last visited Nov. 3, 2010).

