LEGAL UPDATES

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Fourth Circuit Clarifies Standards for Enforcing Foreign Arbitral Awards

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In *Employers' Innovative Network v. Bridgeport Benefits*, No. 24-1350 (4th Cir. July 18, 2025), Employers contracted with Bridgeport, Capital Security, Inc., and a few other parties to obtain and administer employee health insurance. The relationship soured, and litigation ensued in West Virginia state court. After removal to federal court, the district court stayed the matter pending arbitration because the parties' contracts required arbitration in Bermuda under Bermudian law.

After losing in arbitration, Employers alleged bias by the sole arbitrator, citing undisclosed conflicts of interest. Employers asked the arbitrator to withdraw, and sought a "do-over" before a different arbitrator. The arbitrator denied he was conflicted, refused to withdraw, and Employers appealed that refusal to the Bermuda Arbitration Institute, which rejected the challenge (finding it "highly implausible"). Employers did not exercise their right to appeal that decision to the Bermuda Supreme Court.

Bridgeport sought to enforce the arbitral award in the Southern District of West Virginia under Chapter 2 of the Federal Arbitration Act (FAA), which implements the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In response, Employers argued that the district court should refuse to recognize the validity of the award because enforcing the award would "go against the public policy of the United States," which is a defense to enforcement under Article V(2)(b) of the New York Convention. The district court enforced the award, finding that the "public policy" defense was "narrow" and failed "at the threshold" because Employers waived the argument by failing to appeal to the Bermuda Supreme Court and, in any event, the alleged facts did not demonstrate bias.

On appeal, the Fourth Circuit agreed with Employers that its failure to appeal to the Bermuda Supreme Court did not waive the right to argue against

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enforcement of the award. However, the Fourth Circuit vacated the district court's order and remanded for further factfinding, holding that it was unclear which chapter of the FAA should govern enforcement of the arbitral award—an issue that could affect the available defenses to enforcement.

Specifically, "the legal impact of the arbitrator's alleged bias may not be the same under the rules from each chapter" of the FAA. Noting that the FAA "is not a triumph of legislative draftsmanship," the Fourth Circuit summarized the three "chapters" of the FAA and "why it matters" as follows:

Chapter 1 of the FAA governs domestic commercial arbitrations and allows courts to vacate awards for "evident partiality" or arbitrator bias.

Chapter 2 of the FAA implements the New York Convention, covering most international commercial arbitrations and providing only limited defenses to enforcement, such as violation of public policy, but not specifically "evident partiality."

Chapter 3 of the FAA implements the Panama Convention, not applicable here.

The Fourth Circuit identified critical factual uncertainties concerning the citizenship of the parties and the dispute's international nexus which precluded it from determining which chapter of the FAA applied.

Citizenship of the Parties: If all parties are U.S. citizens, Chapter 2 applies only if the contractual relationship involves property, performance, enforcement, or a reasonable relation abroad. The record was unclear, especially regarding the citizenship and principal place of business of Capital Security, Ltd., a Bermudian entity.

International Nexus: The district court must determine whether the relationship involves sufficient foreign elements to invoke Chapter 2.

The court emphasized that the recognition of arbitration awards can be governed by only one of the three chapters of the FAA and that the defenses available to resist enforcement differ between Chapters 1 and 2. If Chapter 1 applies, a party may assert arbitrator bias ("evident partiality") as a defense. If Chapter 2 applies, only the narrower defenses under the New York Convention are available, such as "public policy"—which the court noted has a much higher bar.

According to the court, "the outcome of this case turns on complex and fact-intensive questions that went unaddressed by the district court." The court therefore vacated and remanded to the district court.

What this means to you

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This decision underscores the importance of thorough factual development when seeking to enforce or resist enforcement of foreign arbitral awards in U.S. courts. Parties to cross-border contracts should carefully consider the citizenship of contracting entities and the location and performance of their agreements, as these factors may determine which FAA chapter applies and what defenses are available.

Contact us

If you have questions regarding the court's decision, please contact Michael Robles, Brian O'Sullivan, or your Husch Blackwell attorney.

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