

Kristal Voth

From: Hoffman, Lonny [LHoffman@Central.UH.EDU]
Sent: Wednesday, March 26, 2008 8:42 AM
To: Kristal Voth; levi_benton@justex.net; brown@wrightbrownclose.com; ecarlson@stcl.edu; ecarlson@houston.rr.com; sduncan@lockeliddell.com; tjacks@jackslawfirm.com; terry.jennings@1stcoa.courts.state.tx.us; bwade@cdmlaw.com
Subject: RE: Proposed amendment 902 (11new)

Another possibly interesting addition to the conversation. Take a look at the decision that the US Supreme Court's announced yesterday in *Hall St. v. Mattel*. Here's the link: <http://www.supremecourtus.gov/opinions/07pdf/06-989.pdf>. In it, the court notes that:

"The FAA is not the only way into court for parties wanting review of arbitration awards: they may contemplate enforcement understate statutory or common law, for example, where judicial review of different scope is arguable."

It distinguishes these other ways from the "the expeditious judicial review under sections 9, 10 and 11" of the FAA, and, in this connection, describes that expeditious judicial review process more fully:

"An application for any of these orders will get streamlined treatment as a motion, obviating the separate contract action that would usually be necessary to enforce or tinker with an arbitral award in court.³"

My sense from reading these passages is that the Court is saying you follow what is in the FAA for confirming, vacating, modifying or correcting an award and that's it. period.

This suggests that any concern about the FAA not speaking specifically to how one first authenticates an arbitral award is misguided. The process is supposed to be expeditious. that means that all parties must do is follow the very specific and tailored requirements of the FAA in order to confirm, vacate, modify or correct an award. In other words, Hall St's description of the FAA seems entirely consistent with what I previously concluded in my memo in parsing the TGAA, which mirrors the FAA on these points.

Don't know if I'm right; this was just my first reaction after reading the case this morning.

Other thoughts?

From: Kristal Voth [mailto:kvoth@obt.com]
Sent: Tue 3/18/2008 8:57 AM
To: levi_benton@justex.net; brown@wrightbrownclose.com; ecarlson@stcl.edu; ecarlson@houston.rr.com; sduncan@lockeliddell.com; Hoffman, Lonny ; tjacks@jackslawfirm.com; terry.jennings@1stcoa.courts.state.tx.us; bwade@cdmlaw.com
Subject: Proposed amendment 902 (11new)

Dear Members:

3/26/2008

I am attaching hereto the following:

1. Email from Lonny Hoffman dated March 17, 2008, 12:03pm which has attached a five page comment by Lonny dated Mach 17, 2008;
2. Email form Elaine Carlson dated March 17, 2008 at 9:44am, which contains a comment from Justice Frank Evans(2 pages);
3. Memo that I sent to Lonny Hoffman on March 17, 2008, at 3:52pm.

The purpose of my memo was not for any corrections or changes to Lonny's memo but merely to make us all aware of the federal Act. The only thing I overlooked concerning USCA 9, § 13 (Federal Arbitration Act) was to point out in paragraph C there is a reference to "affidavits". However, none of this changes my opinion concerning Lonny's memo and I follow the recommendation that he makes.

Please let me hear from each of you so that we will be prepared to report at our next full Supreme Court Advisory meeting on April 4th.

Thanks.

Buddy Low



-- PRIVILEGED & CONFIDENTIAL COMMUNICATION --

This communication is privileged and contains confidential information. If it has been sent to you in error, please disregard, reply to the sender that you received it in error, and delete it. Any distribution or other reproduction is strictly prohibited.

IRS Circular 230 Disclaimer. This e-mail and any attachments are not intended for use and cannot be used: (i) to avoid any tax-related penalties under the Internal Revenue Code; or (ii) to promote, market, or recommend to another party any transaction or tax-related matters addressed herein or in any attachments. Please contact us if you desire an opinion on such matters.