

U.S. Federal Courts' Broad Jurisdiction Under the New York Convention

Kluwer Arbitration Blog

April 5, 2017

Jason P. Minkin, Jonathan A. Cipriani (BatesCareyLLP)

Please refer to this post as: Jason P. Minkin, Jonathan A. Cipriani, 'U.S. Federal Courts' Broad Jurisdiction Under the New York Convention', Kluwer Arbitration Blog, April 5, 2017, <http://arbitrationblog.kluwerarbitration.com/2017/04/05/reserved-for-april-5-ny-convention-cipriani/>

The 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”) is a lynchpin of the international arbitration system. The New York Convention provides a means for parties in one member state to enforce judgments issued by arbitration tribunals in another member state. In the United States, Congress has incorporated the New York Convention into federal statute, at 9 U.S.C. § 201 et seq. These statutory provisions provide a sweeping grant of jurisdiction to U.S. federal courts to enforce arbitration agreements falling within the New York Convention—a powerful tool for any party seeking to enforce a foreign arbitration clause.

A recent district court decision illustrates the broad deference that U.S. courts will give to parties asserting federal jurisdiction under the New York Convention. In *James Edward O'Connor v. Maritime Management Corp.*, 2017 WL 1018586 (E.D. La. Mar. 16, 2017), there was a dispute involving a plaintiff (O'Connor) who alleged he suffered asbestos exposure from years spent working as a machinist for the defendants in the early 1980s. O'Connor sued his former employer Cove Shipping, Inc. and Maritime Management Corporation (collectively, “Cove Shipping”). Suing in Louisiana, he was also able to use that state's direct action statute, La. R.S. 22:1269, to name Cove Shipping's insurer, West of England Shipowners Mutual

Insurance Association, as a defendant. West of England sought to remove the lawsuit from Louisiana state court to the U.S. District Court for the Eastern District of Louisiana, citing 9 U.S.C. § 205. That statutory provision permits removal to federal court “at any time” before trial of an action that “relates to an arbitration agreement or award falling under the [New York] Convention.” West of England relied on an arbitration clause in its Club Rules that it contended were in effect at the time of O’Connor’s alleged employment, even though O’Connor is a non-party to the insurance agreement.

Seeking remand to Louisiana state court, the plaintiff raised a bevy of merits-based arguments, including that English law prohibited application of the arbitration agreement to a non-signatory; that the costs of enforcing the arbitration agreement were prohibitive and thus infringed on the plaintiff’s ability to vindicate his rights; that West of England had waived its right to arbitrate; that federal Jones Act claims, such as the plaintiff’s, are not subject to arbitration; and that Louisiana law forbids arbitration in insurance disputes. The court quickly dispensed with these arguments, noting that they were premature. Under Fifth Circuit precedent, the court determines, as a threshold matter, whether it has jurisdiction “to decide the arbitration issue, ‘which is a distinct question from how to resolve that issue correctly.’” *O’Connor* at *2, quoting *Beisler v. Weyler*, 284 F.3d 665, 670 (5th Cir. 2002). The court noted that plaintiff’s arguments could still be raised in opposition to a motion to compel arbitration.

With plaintiff’s arguments dispatched, the court concluded that the West of England arbitration agreement met the requirements for removal to federal court under 9 U.S.C. § 205. That provision requires an arbitration agreement within the meaning of the New York Convention—i.e., a written commercial agreement providing for arbitration in a Convention-signatory nation, with at least one party that is not a U.S. citizen—and an action that “relates” to the agreement. The court found it clear that the Convention applies to the arbitration agreement at issue, “given the obvious commercial nature of marine insurance,” the fact that the agreement provides for arbitration in a signatory nation of the Convention (the United Kingdom), and that one party to the agreement (West of England) is not an American citizen.

Because it appeared “beyond dispute” that the arbitration agreement itself falls under the New York Convention, the dispositive issue, according to the court, was whether the arbitration agreement “relates to” O’Connor’s lawsuit, despite him not

being a party to the insurance policy that contained the arbitration agreement. Citing circuit precedent, the court noted that a plaintiff's suit "relates to" an arbitration agreement where it is "not completely absurd or impossible" that the arbitration agreement will conceivably have an effect on the outcome of the case. *Id.* With the arbitration agreement having cleared this "low bar," the court denied the plaintiff's motion to remand the case to state court.

The *O'Connor* decision is an example of the broad grant of jurisdiction that U.S. federal courts have to resolve disputes relating to international arbitration agreements. The court swiftly dismissed plaintiff's numerous merits-based challenges and articulated a strikingly easy standard for determining whether disputes "relate to" an agreement under the New York Convention. While the plaintiff may raise his substantive arguments at a later, procedurally appropriate time, *O'Connor* is an example of how U.S. federal courts correctly recognize the inherently federal and international character of disputes touching the New York Convention.

The effect of such a broad application of the New York Convention in United States federal courts should not be underestimated. Courts of the United States have developed particular applications of New York Convention provisions, such as detailed requirements for establishing the existence of an agreement in writing under Article II(2), and the public policy gloss of Article V(1)(e), which permits United States courts to disregard an annulment judgment if it violates notions of morality and justice. As the New York Convention is interpreted broadly, the impact of such interpretations likewise grows.