Kluwer Arbitration Blog

2024 in Review: Key Arbitration Developments in 2024 in the United States

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In the United States, 2024 brought a collection of refinements in the country's arbitration jurisprudence, with courts issuing decisions that reinforced federal pro-arbitration policies and clarified important procedural issues for investment and commercial arbitration.

Below, we explore four pivotal cases that shaped the arbitration landscape this year—first from the U.S. Courts of Appeals, and then from the United States Supreme Court.

***Webuild S.p.A. v. WSP USA Inc.*: Section 1782 Discovery Barred for ICSID Arbitrations**

As reported on the Blog, the Second Circuit Court of Appeals' ruling in *Webuild S.p.A. v. WSP USA Inc.* (2d Cir. July 19, 2024) clarified that ICSID tribunals are not eligible "foreign or international tribunal[s]" under 28 U.S.C. § 1782, a statute that allows U.S. courts to provide discovery assistance to foreign and international tribunals. The case arose when Webuild, an Italian construction company, sought discovery from WSP USA Inc., a U.S.-based entity, to aid its investor-State arbitration against the Republic of Panama under the International Centre for Settlement of Investment Disputes (ICSID) rules pursuant to a bilateral investment treaty (BIT).

Webuild argued that ICSID arbitration panels should be classified as "international tribunals" under Section 1782, distinguishing these tribunals from the United States Supreme Court's widely discussed 2022 decision in *ZF Automotive US, Inc. v. Luxshare, Ltd.*, which precluded Section 1782 discovery for international commercial arbitrations and *ad hoc* investor-State arbitrations administered under the UNCITRAL Rules. The Second Circuit, applying *ZF Automotive*, disagreed with Webuild, holding that ICSID tribunals are not foreign or international tribunals under Section 1782. The Second Circuit reasoned that ICSID tribunals are formed through agreements between private parties and States, operating independently of governmental or intergovernmental oversight, and therefore fall outside Section 1782's purview.

The Second Circuit's decision further narrows the use of Section 1782, aligning ICSID tribunals with international commercial arbitration and *ad hoc* UNCITRAL investor-State arbitrations under *ZF Automotive*. Previously, parties to ICSID arbitrations often turned to U.S. courts for discovery, leveraging the broad reach of Section 1782 to obtain documents and witness testimony for use in their investor-State claims. *Webuild* limits this option, compelling parties to rely on the procedural mechanisms provided within the ICSID framework itself.

NextEra Energy v. Spain: No *Achmea* Defense to Enforcement Jurisdiction, but Likely No "Anti" Anti-Suit Injunctions Either

Since 2018, when the Court of Justice of the European Union ruled in the *Achmea* case that intra-EU arbitration is incompatible with EU law, States in intra-EU arbitrations have raised the *Achmea* decision as a barrier to arbitral jurisdiction and, often, to the enforcement of intra-EU awards. In August 2024, the DC Circuit Court of Appeals issued its opinion in *NextEra Energy Global Holding v. Spain*, No. 23-7031. The case was in fact three consolidated cases, all seeking to enforce intra-EU Energy Charter Treaty ("ECT") awards against Spain. The lower courts had split: in *NextEra v. Spain* and *9REN v. Spain*, Judge Chutkan found that she had jurisdiction under the US Foreign Sovereign Immunities Act to enforce the awards despite Spain's *Achmea* objection, but in *Blasket v. Spain*, Judge Leon found that he lacked jurisdiction to enforce the award based on Spain's *Achmea* objection. As covered on the Blog, the DC Circuit held that US courts have jurisdiction to confirm intra-EU ECT awards despite the *Achmea* decision, affirming *NextEra* and *9REN*, and reversing *Blasket*.

The DC Circuit's decision also addressed a district court's ability to grant anti-suit injunctions against foreign States. In *NextEra* and *9REN*, the district court had issued anti-suit injunctions that barred Spain from pursuing its own anti-suit injunctions against the enforcement proceedings in the Netherlands and Luxembourg. The DC Circuit reversed in a 2-1 decision, with the majority holding that the district court's "anti" anti-suit injunctions were an abuse of discretion because it had not considered all of the relevant factors, including that Spain is a sovereign State and so comity concerns were heightened. The court explained that while "the need to protect [US courts'] jurisdiction to enforce" arbitral awards "could support an injunction against private parties, it alone does not account for all of the implicated interests when relief is sought against a foreign sovereign." Judge Pan, who would have upheld the district court's exercise of its discretion in issuing the anti-suit injunctions, dissented from that part of the opinion.

The court did note that its opinion did not "categorically foreclose anti-suit injunctions against foreign sovereigns," but that the anti-suit injunctions had to be vacated in these cases based on the record below. The DC Circuit left open, however, what circumstances would support an anti-suit injunction against a foreign State, as well as what parties seeking to enforce awards against States who themselves pursue anti-suit injunctions against enforcement should do.

Smith v. Spizzirri: FAA Mandates Stays, Not Dismissals, for Arbitration Cases

The Supreme Court's unanimous decision in *Smith v. Spizzirri* (2024) addressed a procedural inconsistency that had perplexed courts for years: whether a court which has compelled arbitration of a dispute pursuant to a valid agreement between the parties must stay the case or has the option to dismiss the underlying lawsuit entirely. The question had developed into a split between the Circuit Courts of Appeals, with the Sixth, Second, Third, Tenth, Eleventh, and Seventh holding that a stay was mandatory and the Eighth, First, Fifth, and Ninth holding that courts may dismiss the cases as well.

The case originated from a consumer contract for food delivery, which included a mandatory arbitration clause. After a dispute arose, the district court ordered arbitration but dismissed the judicial proceedings entirely. This dismissal was challenged, and the Ninth Circuit affirmed the dismissal.

At the heart of this dispute was Section 3 of the Federal Arbitration Act (FAA), which provides that courts :

> "shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration." (emphasis added).

In a six-page decision, Justice Sotomayor, writing for the Court, emphasized the importance of adhering to the text of the FAA and the Court's previous interpretation of "shall" as creating an obligation "impervious to judicial discretion." The Court further reasoned that the structure and purpose of the FAA supported a mandatory stay of proceedings because a stay, rather than a dismissal, provides judicial oversight for the enforcement of arbitration awards and compliance with the terms of the arbitration agreement. The Court highlighted that dismissals can inadvertently create obstacles for parties seeking to confirm or challenge an arbitration award, disrupting the streamlined dispute resolution process envisioned by the FAA.

The case resolves a question which the Supreme Court had acknowledged, but left unanswered for 24 years, reserving the question in *Green Tree Financial Corp.-Ala. v. Randolph* (2000) and reiterating the open question as recently as 2019. By resolving this Circuit split, the Court's decision provides guidance to a long-acknowledged uncertainty.

***Coinbase v. Suski*: Competing Clauses Resolved by Courts, not Tribunals**

The Supreme Court also resolved *Coinbase v. Suski* by unanimous decision. This latest case involving Coinbase and arbitration (following in the footsteps of 2023's *Coinbase v. Bielski*) boiled down to a conflict between two dispute resolution clauses in two different contracts. Respondents were a class of Coinbase users who had signed up for a "Dogecoin" sweepstakes. They had all signed two contracts: (1) the Coinbase User Agreement, which included an arbitration clause and delegated the authority to decide arbitrability disputes to the arbitrators, and (2) the Official Rules for the sweepstakes, which gave California courts sole jurisdiction to resolve all disputes related to the sweepstakes. Respondents filed a class action in the Northern District of California alleging the sweepstakes violated California law. Coinbase moved to compel arbitration based on the Coinbase User Agreement. The district court denied Coinbase's motion and the Ninth Circuit affirmed, both holding that (1) the court should decide which contract governed and whether the dispute was arbitrable and (2) the Official Rules' forum selection clause governed and superseded the User Agreement's arbitration clause under California law.

On the first holding, the Supreme Court agreed with the lower courts. Writing for the Court, Justice Jackson held that courts, not arbitrators, must decide whether a later contract supersedes an earlier arbitration agreement because US law requires "clear and unmistakable" evidence of an intent to arbitrate. The Court rejected Coinbase's severability argument, determining that the Respondents' challenge applied "equally" to the whole contract. The Court also declined to address the second holding, that the Official Rules' forum selection clause superseded the User Agreement's arbitration clause, because it was outside the scope of the question presented. Justice Gorsuch concurred, writing separately to emphasize that the Court's decision "simply reaffirms well-established principles about the primacy of the parties' agreements when it comes to

arbitration." He also, however, suggested that the Court's decision should not be read to mean that dueling clauses will always be resolved in favor of courts deciding arbitrability. Ultimately, "it depends on what the parties have agreed" and "sometimes, the parties' agreements may be best read as vesting that power [to decide arbitrability] in an arbitrator."

The decision is a reminder of the risks that can arise from competing dispute resolution clauses in contracts between the same parties. These risks are particularly heightened when some (but not all) of the clauses select arbitration, while others select litigation. And while the Supreme Court's decision in *Coinbase* was in many ways a routine application of longstanding law, it should serve as a warning to parties hoping to stay out of US courts to ensure that their contracts do not present this type of conflict.

Conclusion

2024 was yet another busy year for arbitration in the United States. These are just a few of the many cases in which courts grappled with questions dealing with arbitration and the enforcement of arbitral awards, and resolved questions that, in some cases, had been open for decades. 2025 promises to be just as exciting.

Additional 2024 year in review posts are available here.

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