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International Arbitration: How Substantial Is the Presumption In Favor of It?

By John G Nevius and Peter Halprin

In *Safety National Casualty Corp. v. Certain Underwriters at Lloyd's, London*, the United States Court of Appeals for the Fifth Circuit held that Louisiana law does not trump the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"). Louisiana law expressly bars enforcement of arbitration clauses in insurance contracts in order to protect policyholder consumers from being railroaded. Surprisingly, this clear state law was not enough for the Fifth Circuit. In reaching this holding, the Fifth Circuit took issue with a contrary decision by the Second Circuit. Both cases involved attempts by foreign corporations to enforce arbitral agreements against American parties.

This decision could have a significant impact on Insurance Regulation. While the majority of states do not have explicit anti-arbitration insurance statutes, insurance companies in those that do may be able to enforce arbitration agreements despite the presence of contrary statutes. Policyholders and insurance companies alike will want to monitor these developments closely so as to be prepared for any changes as a result of regulatory reform or further appellate decisions. Arbitration proceedings may sound efficient and

practical, but the deck is often stacked against the policyholder. Several states recognize this. Regrettably, the Fifth Circuit does not.

The Supreme Court has recently agreed to hear this case and may render a decision that will bring clarity to these issues.

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