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Arbitration: Federal and Georgia

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Research Guides

Arbitration: Federal and Georgia

Guide Information

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Introduction

Arbitration is the only form of alternative dispute resolution (ADR) that is binding on the parties. This method of ADR is popular for its finality as well as the fact that it is often cheaper, faster, and less formal than traditional litigation.

The Federal Arbitration Act (FAA) governs federal arbitration, and most states including Georgia also have an arbitration act that gives parties authority to choose the procedural aspects of their dispute and prevents courts from interfering with the dispute resolution. The Georgia Arbitration Act (GAC) is Georgia's arbitration code. (See O.C.G.A. §§ 9-9-1 through 9-9-18).

In enacting the FAA, Congress intended to create a federal policy in favor of arbitration. The FAA mandates arbitration of arbitral agreements "evidencing a transaction involving commerce." (See 9 U.S.C. § 2). Commerce is defined in the FAA as “commerce among the several States or with foreign nations." (See 9 U.S.C. § 1).

The federal policy in favor of arbitration is reflected in United States Supreme Court cases holding that the FAA preempts state law and is broad in reach. As a result, even if a contact is executed in Georgia, if it involves interstate commerce the FAA will preempt the GAC. Thus, Georgia practioners must have a firm grasp on preemption, the FAA, and the Georgia Arbitration Code (GAC).

The purpose of this Library Guide is to provide an overview of Federal and Georgia arbitration law to students and practioners, as well as links to other helpful sources of information on the topic.

Scope

This research guide is intended as a starting point for students and attorneys researching federal and Georgia arbitration law. The resources included in this guide include primary sources, secondary sources, as well as links to websites, blogs and associations. Under the Primary Sources tab, you will find a list and summary of important federal and Georgia cases involving arbitration, as well as links to the FAA and GAC. Under the Secondary Sources tab, you will find a list of books and treatises available at the Georgia State College of Law Library, as well as a list of law review articles and American Law Reports discussing federal and state arbitration. The websites, blogs, and associations tab provides links to other websites and institutions that provide arbitration services and legal news.

Disclaimer

This research guide is a starting point for a law student or an attorney to research Georgia and federal arbitration. This is a very active area of state and federal law, and it is imperative to Shepardize or KeyCite all cases and statutes before relying on them. This guide should not be considered as legal advice or as a legal opinion on any specific facts or circumstances. If you need further assistance in researching this topic or have specific legal questions, please contact a reference librarian in the Georgia State University College of Law library or consult an attorney.

About the Author

Natalie Rogers is a 3rd year student at Georgia State College of Law, graduating in May 2011. Natalie is a member of the Georgia State Law Review. While in law school, Natalie worked as a law clerk at Cohen, Cooper, Estep & Allen, LLC, as a judicial extern for Judge Wendy Shoob in Fulton County Superior Court, and in the "HeLP" Legal Services Clinic. Before attending law school, Natalie graduated from Queen's University in Kingston, Ontario, where she received a

Bachelor of Arts (Honors) in Psychology in 2008. For more information about this bibliography, please contact Professor Nancy Johnson via e-mail at njohnson@gsu.edu.

Key Terms

The definitions to the following key terms are direct excerpts from Professor Douglas Yarn's textbook Dictionary of Conflict Resolution, available at the Georgia State College of Law Library. A link to this text is also available on the secondary sources tab. The page numbers are provided below for easy reference to the full text of the definitions.

- Alternative Dispute Resolution (ADR): Catchall generic term referring to ways in which a society with a formal, state-sponsored adjudicative process attempts to resolve disputes without using that process. (p. 17)
- American Arbitration Association (AAA): Oldest not-for-profit administering agency in the United States primarily dedicated to dispute resolution. (p. 22)
- Arbitration: Generic term for a range of dispute resolution processes involving the referral of a dispute to an impartial third party who, after giving the parties an opportunity to present their evidence and arguments, renders a determination in settlement of a dispute. (p. 25)
- Arbitration Agreement: The part of a contract that pledges the parties concerned to use arbitration as a means of settling any present or future dispute. (p. 33)
- Arbitration Clause: Type of arbitration agreement that exists as a provision in a contract and by which parties to the contract agree to resolve future disputes through arbitration. (p. 34)
- Arbitration Rules: Procedural rules adopted by the parties for the conduct of an arbitration. (p. 34)
- Arbitrator: Person who arbitrates; person selected to hear evidence and render a decision as a determination of a dispute. (p. 35)
- Choice-of-Law Clause: Contract provision specifying the governing law. (p. 77)
- Claimant: Party who initiates an arbitration by giving notice to the respondent of his intention to arbitrate. (p. 80)
- Code of Arbitration Procedure: Rules promulgated by a particular administering agency, such as the American Arbitration Association, that govern the conduct of the arbitral proceedings. (p. 82)
- Commercial Arbitration: Voluntary, private arbitration used to settle disputes in the general commercial or business world. (p. 87)
- Compulsory Arbitration: Informal extrajudicial adjudication forced on at least one of the parties by statute without the party's consent. (p. 98)
- Confirming the Award: Process of having an arbitration award confirmed by a court so that it can be enforced as a court judgment. (p. 113)
- Demand for Arbitration: Initial notice by one party to another of an intention to arbitrate his dispute under the arbitration clause in his contract. (p. 147)
- Enforcement of Award: Court enforcement of an arbitral decision. (p. 167)
- Federal Arbitration Act (FAA): Term commonly used to denote what is officially referred to as the United States Arbitration Act. (p. 185)
- Governing Law: Substantive and procedural law applicable to a particular legal dispute. Determined by the application of conflicts of laws principles or specified by the parties to a contract in their choice-of-law clause. (p. 203)
- Modern Arbitration Statute: Legislative act providing for the enforcement of agreements to arbitrate future disputes. (p. 302)
- Modifying the Award: Correction of errors in an arbitration award by a court or arbitrator. (p. 302)
- Nonbinding arbitration: Process in which the parties submit their dispute to a neutral person who renders a decision that the parties may either accept or reject. (p. 325)
- Respondent: Adverse party who receives from a claimant a notice of intention to arbitrate. (p. 381)
- United States Arbitration Act: First federal modern arbitration statute in the United States; also known as the Federal Arbitration Act (FAA). (p. 427)
- Vacating an Award: Court ruling to set aside an arbitration award. (p. 429)

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Primary Sources

Georgia Arbitration Act

The Georgia Arbitration Code (GAC) governs arbitration in the State of Georgia not involving interstate commerce, and also arbitration under arbitral agreements that choose Georgia law. The GAC, which is Title 9 Chapter 9 of the Official Code of Georgia, can be located for free on LexisNexis.

Particularly relevant sections for the purpose of this research guide include:

§ 9-9-2(c). Applicability; exclusive method

(This section determines when the GAC applies to a dispute)

(c) This part shall apply to all disputes in which the parties thereto have agreed in writing to arbitrate and shall provide the exclusive means by which agreements to arbitrate disputes can be enforced, except the following, to which this part shall not apply:

(1) Agreements coming within the purview of Article 2 of this chapter, relating to arbitration of medical malpractice claims;
(2) Any collective bargaining agreements between employers and labor unions representing employees of such employers;
(3) Any contract of insurance, as defined in paragraph (1) of Code Section 33-1-2; provided, however, that nothing in this paragraph shall impair or prohibit the enforcement of or in any way invalidate an arbitration clause or provision in a contract between insurance companies;
(4) Any other subject matters currently covered by an arbitration statute;
(5) Any loan agreement or consumer financing agreement in which the amount of indebtedness is $25,000.00 or less at the time of execution;
(6) Any contract for the purchase of consumer goods, as defined in Title 11, the "Uniform Commercial Code," under subsection (1) of Code Section 11-2-105 and subsection (a) of Code Section 11-9-102;
(7) Any contract involving consumer acts or practices or involving consumer transactions as such terms are defined in subsection (a) of Code Section 10-1-392, relating to definitions in the "Fair Business Practices Act of 1975";
(8) Any sales agreement or loan agreement for the purchase or financing of residential real estate unless the clause agreeing to arbitrate is initialed by all signatories at the time of the execution of the agreement. This exception shall not restrict agreements between or among real estate brokers or agents;
(9) Any contract relating to terms and conditions of employment unless the clause agreeing to arbitrate is initialed by all signatories at the time of the execution of the agreement;
(10) Any agreement to arbitrate future claims arising out of personal bodily injury or wrongful death based on tort.

§ 9-9-3. Effect of arbitration agreement

(This section determines the effect of an arbitration agreement)

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit any controversy thereafter arising to arbitration is enforceable without regard to the justiciable character of the controversy and confers jurisdiction on the courts of the state to enforce it and to enter judgment on an award.

§ 9-9-12. Confirmation of award by court

(This section requires courts to confirm arbitral awards; recall that arbitration is the only form of ADR that is binding on the parties)

The court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified by the court as provided in this part.

§ 9-9-13. Vacation of award by court; application; grounds; rehearing; appeal of order

(This section determines when courts make vacate arbitral decisions. This section is particularly important in the wake of Hall Street Assoc. v. Mattel, discussed in the Supreme Court Cases section)

(a) An application to vacate an award shall be made to the court within three months after delivery of a copy of the award to the applicant.
(b) The award shall be vacated on the application of a party who either participated in the arbitration or was served with a demand for arbitration if the court finds that the rights of that party were prejudiced by:
(1) Corruption, fraud, or misconduct in procuring the award;
(2) Partiality of an arbitrator appointed as a neutral;
(3) An overstepping by the arbitrators of their authority or such imperfect execution of it that a final and definite award upon the subject matter submitted was not made;
(4) A failure to follow the procedure of this part, unless the party applying to vacate the award continued with the arbitration with notice of this failure and without objection; or
(5) The arbitrator's manifest disregard of the law.
(c) The award shall be vacated on the application of a party who neither participated in the arbitration nor was served with a demand for arbitration or order to compel arbitration if the court finds that:
(1) The rights of the party were prejudiced by one of the grounds specified in subsection (b) of this Code section;
(2) A valid agreement to arbitrate was not made;
(3) The agreement to arbitrate has not been complied with; or
(4) The arbitrated claim was barred by limitation of time, as provided by this part.
(d) The fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.
(e) Upon vacating an award, the court may order a rehearing and determination of all or any of the issues either before the same arbitrators or before new arbitrators appointed as provided by this part. In any provision of an agreement limiting the time for a hearing or award, time shall be measured from the date of such order or rehearing, whichever is appropriate, or a time may be specified by the court. The court's ruling or order under this Code section shall constitute a final judgment and shall be subject to appeal in accordance with the appeal provisions of this part.

§ 9-9-15. Judgment on award

(This section relates to the judicial enforceability of arbitral decisions and is relevant to the finality of arbitral awards)

(a) Upon confirmation of the award by the court, judgment shall be entered in the same manner as provided by Chapter 11 of this title and be enforced as any other judgment or decree.
(b) The judgment roll shall consist of the following:
(1) The agreement and each written extension of time within which to make the award;
(2) The award;
(3) A copy of the order confirming, modifying, or correcting the award; and
(4) A copy of the judgment.

Georgia Case Law

The following cases can be accessed on either Westlaw or LexisNexis. Many of these cases focus on two heavily contested issues of state and federal arbitration law: 1) when the FAA preempts state arbitration law, and 2) when courts can vacate arbitral decisions. Cases are organized by court in reverse chronological order.

Supreme Court of Georgia

Progressive Data Sys., Inc. v. Jefferson Randolph Corp., 568 S.E.2d 474 (Ga. 2002).

The Supreme Court of Georgia in this case held that the statutory provisions for vacating an arbitral award were exclusive, and so the arbitral award could not be set aside for manifest disregard. Manifest disregard has subsequently been added to the GAC as grounds to vacate an arbitral award.

This case is also available for free on Google Scholar.

Greene v. Hundley, 468 S.E.2d 350 (Ga. 1996).

In this case, a homeowner and builder arbitrated their dispute under the Georgia Arbitration Code, but one of the parties challenged the arbitration award. The Supreme Court held that the grounds for vacating an award under the Georgia Arbitration Code are exclusive.

This case is also available for free on Google Scholar.

DiMambro-Northend Assoc. v. Blank-Alvarez, Inc., 309 S.E.2d 364 (Ga. 1983).

In this case, the Georgia Supreme Court explored the scope of the FAA. The Court of Appeals held that a contract between a Maryland firm and a Michigan partnership to work on a construction project in Georgia involved interstate commerce, and thus the FAA applied.

West Point-Pepperell, Inc. v. Multi-Line Indus., Inc., 201 S.E.2d 452 (Ga. 1973).

The Supreme Court of Georgia recognized the preemptive effect of federal arbitration law upon Georgia arbitration law in this case. This case involved an arbitral dispute between two Georgia corporations: West Point-Pepperell, which had offices and plants in both Georgia and in other states, and Multi-Line Industries, who

finalized an order for goods (which were to be manufactured in North Carolina and shipped to Georgia) from West Point-Pepperell in New York City. The Supreme Court held that this transaction involved interstate commerce and thus federal law governed the case.

Georgia Court of Appeals

Airtab, Inc. v. Limbach Co., LLC., 673 S.E.2d 69 (Ga. Ct. App. 2009).

The Georgia Court of Appeals in *Airtab* addressed the vacatur of arbitral awards. In this case, Airtab challenged the arbitral award. The court held that to meet the manifest disregard standard for vacatur "[a]rbitrators must deliberately ignore applicable law."

Johnson Real Estate Inv., L.L.C. v. Aqua Industr., Inc., 639 S.E.2d 589 (Ga. Ct. App. 2006).

The Court of Appeals in *Johnson* refused to vacate an award for manifest disregard even though there was evidence that part of the award calculation included an invoice that the losing party had already paid, because the court vaguely presumed that the arbitrator had another reason for awarding this money. This case is therefore an illustration of the difficulty in having an arbitral award set aside in Georgia.

Adage, Inc., v. Bank of Am., 600 S.E.2d 829 (Ga. Ct. App. 2004).

The Georgia Court of Appeals in this case held that the "FAA rather than Georgia law controls confirmation of an arbitration award made pursuant to the FAA."

N. Augusta Assoc. Ltd. P'ship v. 1815 Exch., Inc., 469 S.E.2d 759 (Ga. Ct. App. 1996).

In this case, the parties to a construction contract contested the issue of whether the FAA or the GAC governed their dispute. The parties agreed that Georgia law would govern the dispute, however the FAA applied as well because the contract involved interstate commerce. The court held that the FAA did not preempt the GAC. The court held that "state law may apply where parties agree to be bound by state arbitration law, so long as that law does not conflict with the FAA."

Columbus Anesthesia Group, P.C. v. Kutzner, 459 S.E.2d 422 (Ga. Ct. App. 1995).

In this case, the Georgia Court of Appeals held that a contract between a Georgia medical practice and a Doctor joining the practice did not involve interstate commerce where the Doctor moved from Indiana to Georgia and contributed equipment from outside the state to the corporation since the performance of the contract did not involve equipment from outside the state and "contribution of equipment to a professional corporation after its formation does not affect interstate commerce" under the FAA.

This case is also available for free on Google Scholar.

Rhodes et al. v. Inland-Rome, Inc., 392 S.E.2d 270 (Ga. Ct. App. 1990).

The Court of Appeals in this case held that a contract for the sale of timber does not involve interstate commerce where, after the sale of the product in Georgia, one party unilaterally ships the product to another state.

Brockett Pointe Shopping Ctr., Ltd. v. Dev. Contractors, Inc., 389 S.E.2d 374 (Ga. Ct. App. 1989).

In this case, the Georgia Court of Appeals explored the scope of the FAA. The Court of Appeals held that a contract involved interstate commerce where "out-of-state goods, services, materials, and financing were supplied during the execution of the construction contract."

Federal Arbitration Act

The Federal Arbitration Act (FAA) governs Federal Arbitration. Because the FAA governs state disputes that invoke interstate commerce, it is often applicable to Georgia cases. The FAA can be located for free on Cornell University's website.

Particularly relevant sections for the purpose of this research guide include:

§ 2. Validity, irrevocability, and enforcement of agreements to arbitrate

(This section relates to the validity of arbitration agreements)

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

§ 9. Award of arbitrators; confirmation; jurisdiction; procedure

(This section requires courts to uphold arbitration judgments. This is very important to the popularity of arbitration, which is the only form of ADR that is binding on the parties)

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

§10. Same; vacation; grounds; rehearing

(This section provides the grounds upon which an arbitral award may be vacated. This section is particularly important in the wake of Hall Street, discussed below)

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—
(1) where the award was procured by corruption, fraud, or undue means;
(2) where there was evident partiality or corruption in the arbitrators, or either of them;
(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.
(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.
(c) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

Federal Case Law

The following federal cases can all be accessed on either Westlaw or LexisNexis. The Supreme Court cases can also be found for free on Supreme.Justia.com, to which the cases have been linked. The Eleventh Circuit cases are also available for free on Google Scholar, to which the cases have been linked.

In selecting these cases, I focused on two heavily contested issues of federal arbitration law: 1) when the FAA preempts state arbitration law, and 2) when courts can vacate arbitral decisions. Cases are organized by court in reverse chronological order.

Supreme Court Cases

Hall Street Assoc., L.L.C. v. Mattel, Inc., 128 S.Ct. 1396 (2008).

In *Hall Street*, the Court held that the grounds for vacating or modifying an arbitral award under FAA §§ 10 and 11 are exclusive and may not be expanded upon. The Court further held that manifest disregard is not a judicially created doctrine. In its ruling, the Court emphasized that the methods for vacatur under the FAA need to be limited in order to "substantiat[e] [the] national policy favoring arbitration." This decision affects Georgia arbitration because the Eleventh Circuit adopted manifest disregard as a judicially created method for vacating an arbitral award in *Montes v. Shearson Lehman Brothers*, described below.

Allied-Bruce Terminix Co., Inc. v. Dobson, 513 U.S. 265 (1995).

The Court considered the scope of FAA § 2 in this case. The Court held that the words "evidencing a transaction involving state law" in the FAA should be read broadly. The Court held that a case can involve interstate commerce even if the parties did not contemplate an interstate transaction.

Volt Info. Sci., Inc., v. Bd. of Tr. of the Leland Stanford Junior Univ., 489 U.S. 468 (1989).

Although the Court held that the FAA is preemptive of conflicting substantive state laws in *Southland* (below), the Court in *Volt* held that parties could control the procedural law governing their contracts through choice of law provisions in their arbitration agreements. In this case, the parties had an arbitration agreement governed by California law. Volt demanded arbitration of a dispute between the parties, but Stanford responded by filing suit in California Superior Court. The Supreme Court held that California law governed the dispute. The Court noted that there is no federal policy favoring arbitration under a certain set of procedural rules.

Southland Corp. et al. v. Keating et al., 465 U.S. 1 (1984).

In this case, franchisees of 7-Eleven stores (Keating) filed suit against the owner of 7-Eleven stores (Southland) in California state court for many claims including one under the California Franchise Investment Law. Southland's motion to compel arbitration pursuant to their arbitration agreement, which stated that federal law covered their contract, was granted "except to those claims on the Franchise Investment Law." On appeal from the California Supreme Court, the U.S. Supreme Court ruled that the California Franchise Investment Law "directly conflicts with § 2 of the Federal Arbitration Act and violates the Supremacy Clause," thus holding that the FAA preempted the conflicting California state law.

Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395 (1967).

In *Prima Paint Corp.* the Court interpreted the scope of "interstate commerce" as defined in the FAA. The Court determined that "there could not be a clearer case of a contract evidencing a transaction in interstate commerce" than between Prima Paint, who had recently acquired a business with numerous clients in many states, and Flood & Conklin, who helped Prima Paint manufacture and sell materials across state lines.

Eleventh Circuit Cases

Picard v. Credit Solutions, Inc., 564 F.3d 1249 (11th Cir. 2009).

The Eleventh Circuit determined in this case that claims brought under the Credit Repair Organizations Act are not precluded from arbitration. In its holding, the court relied upon the strong federal policy under the FAA of favoring arbitration.

B.L. Harbert Int'l, LLC v. Hercules Steel Co., 441 F.3d 905 (11th Cir. 2006).

In this case, the Eleventh Circuit Court of Appeals emphasized the importance of confirming arbitral awards in order to prevent parties from having to re-litigate claims in court, as well as to relieve courts of the burden of their caseloads. The court described the difficulty in meeting the manifest disregard standard to vacating an arbitral award.

Brown v. ITT Consumer Fin. Corp., 211 F.3d 1217 (11th Cir. 2000).

In this case, the Eleventh Circuit Court of Appeals stated that applying the wrong standard to an arbitral dispute is not sufficient to dismiss an arbitral award on the basis of manifest disregard. To meet this standard, the arbitrator must have intentionally disregarded the legal standard.

Montes v. Shearson Lehman Bros., 128 F.3d 1456 (11th Cir. 1997).

The Eleventh Circuit first adopted manifest disregard as a grounds for vacating an arbitral award in this case. The availability of manifest disregard as a method for vacatur in Georgia has been threatened by the Supreme Court's holding in *Hall Street Associates, L.L.C. v. Mattel, Inc.*

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Secondary Sources

Law Reviews and Periodicals

Below are helpful law review articles both on Georgia Arbitration and Federal Arbitration. They are organized alphabetically by author's last name within each topic. These articles can be accessed on either Westlaw or LexisNexis.

Articles on Georgia Arbitration:

David Boohaker, Note and Comment, ***The Addition of the "Manifest Disregard of the Law" Defense to Georgia's Arbitration Code and Potential Conflicts with Federal Law,*** 21 Ga. St. U. L. Rev. 501 (Winter 2004).

This Note and Comment addresses the addition of "manifest disregard of the law" as a means for vacating an arbitral award under the Georgia Arbitration Code, and how this provision may conflict with the Federal Arbitration Act (FAA). This article concludes that the FAA will preempt Georgia law in most cases, but that manifest disregard will prevail if construed as a procedural right.

Charles Davant IV, Note, ***Tripping on the Threshold: Federal Courts' Failure to Observe Controlling State Law Under the Federal Arbitration Act,*** 51 Duke L.J. 521 (October 2001).

This Note addresses the strong national policy in favor of federal arbitration. I include this under the Georgia Arbitration section as the article addresses state arbitration, and because the author highlights the Eleventh Circuit's 1988 decision in *United States Fidelity & Guaranty Co. v. West Point Construction Co.* (837 F.2d 1507 (11th Cir. 1988)), which the author notes as failing to observe controlling state contract law and holding a surety to a subcontractor must arbitrate disputes under which the subcontractor agreed to arbitrate. Focusing on the Supreme Court Case *Perry v. Thomas* (482 U.S. 483 (1987)), which held state law governs the issue of whether the parties agreed to arbitrate, the author argues lower courts have failed to follow *Perry* by enforcing the policy towards federal arbitration.

Brent S. Gilfedder, Note, ***"A Manifest Disregard of Arbitration?" An Analysis of Recent Georgia Legislation Adding "Manifest Disregard of the Law" to the Georgia Arbitration Code as a Statutory Ground for Vacatur***, 39 Ga. L. Rev. 259 (Fall 2004).

Georgia's Arbitration Code is the only state arbitration code statutorily providing for "manifest disregard" as a means for vacating an arbitral award. This Note addresses the addition of "manifest disregard" to the Georgia Arbitration Code and its implications for the judicial review of arbitral awards in Georgia. The author concludes that manifest disregard is a challenge to the finality of arbitral awards and that Georgia will face an "uphill battle" in defining this standard for vacating an arbitral award.

Kevin Patrick Murphy, Note, ***Alive But Not Well: Manifest Disregard After Hall Street***, 44 Ga. L. Rev. 285 (Fall 2009).

The author in this Note explores the history of arbitration law, the international implications that complicate the use of manifest disregard, and discusses the fate of manifest disregard as a means for vacatur under the Georgia Arbitration Code since the Supreme Court case *Hall Street Assoc. v. Mattel*, discussed in the federal case law section. The author proposes manifest disregard survived *Hall Street* and that only Congress can clarify this muddled area of law.

Articles on Federal Arbitration Law:

Matthew M. Bodah, ***What Labor Arbitrators Should Know About Arbitral Immunity***, 61 Disp. Resol. J. 28 (November 2008 - January 2009).

Author Matthew Bodah provides an overview on the law of immunity for arbitrators in this article. Both state and federal courts recognize such immunity, however in some circuits this immunity is not granted when the arbitrator has failed to do his job. The author cautions arbitrators to be aware of the emerging case law in this area in order to avoid liability.

John Coyle, ***Rethinking the Commercial Law Treaty***, 45 Ga. L. Rev. 343 (Winter 2011).

This article discusses choice of law treaties in the arbitration context. This article examines the history of such treaties, arguments for and against them, and suggests that such treaties are better for the commercial community than substantive commercial law treaties.

Christopher R. Drahozal, ***Arbitration Costs and Contingent Fee Contracts***, 59 Vand. L. Rev. 729 (April 2006).

This article addresses the deterrent effect the high costs of arbitration can have on a claimant's decision to file a case. The author argues that contingent fee contracts in arbitration would enhance claimants' access to justice via the arbitration process.

Christopher R. Drahozal, ***Federal Arbitration Act Preemption***, 79 Ind. L.J. 393 (Spring 2004).

This article addresses the preemption challenges to state laws regulating the arbitration process. The author includes a general overview of federal preemption, a review of major federal preemption cases, and an especially useful section on choice-of-law clauses and federal preemption. Especially useful to practioners and law students, the author provides a basic four-step framework for analyzing FAA preemption.

Margaret M. Harding, ***The Clash Between Federal and State Arbitration Law and the Appropriateness of Arbitration as a Dispute Resolution Process***, 77 Neb. L. Rev. 397 (1998).

In this article, author Margaret M. Harding addresses the clash between federal and state arbitration law. The author concludes that the Supreme Court has severely restricted state's power to regulate arbitration, resulting in a uniform enforcement of arbitration agreement to the expense of state law seeking to equalize the unequal balance of power in arbitration contracts.

Charles J. Moxley, Jr., ***Discovery in Commercial Arbitration: How Arbitrators Think***, 63 Disp. Resol. J. 36 (August-October 2008).

This article focuses on discovery in commercial arbitration under various arbitration rules, including the American Arbitration Association rules. This guide is intended for practioners and focuses on the principles of arbitration discovery.

F. Peter Philips, ***Drafting Dispute Management Clauses for Commercial Contracts***, 55 No. 2 Prac. Law. 55 (April 2009).

This article is aimed at practioners. The author discusses the practical challenges and considerations in drafting dispute management clauses, including arbitration clauses, in commercial contracts. The author includes model clauses and a helpful checklist of questions a drafter of such clauses should consider.

John O'Shea Sullivan & Ashby L. Kent, ***Trial Practice and Procedure***, 61 Mercer L. Rev. 1193 (Summer 2010).

This Article, written by two practicing Atlanta attorneys, focuses on recent developments in civil procedure in the Eleventh Circuit. The article includes an extensive section on Federal Consumer Protection cases, specifically whether claims brought pursuant to Credit Repair Organizations Act are subject to arbitration. They are, according to the recent case *Picard v. Credit Solutions, Inc.*, discussed in the federal case law section of this guide.

Symposium, ***Panel Three***, 24 Emory Bankr. Dev. J. 309 (2008).

This article is a transcript from a panel discussing the intersection of federal arbitration and bankruptcy law. Honorable Paul Bonapfel, a bankruptcy judge in the Georgia Northern Bankruptcy court, moderates the panel. The panel includes Robert Meade, senior vice president for program development at the American Arbitration Association, and Professor Marjorie Girth, professor and former dean of Georgia State University College of Law.

Michael A. Valenza, Alan L. Frank, & Kyle M. Kulzer, ***Successfully Getting to Arbitration: What Courts Look for When Enforcing an Arbitration Clause,*** 54 No. 6 Prac. Law. 17 (December 2008).

As indicated in its title, the article focuses on the enforcement of arbitration clauses by courts. This article is aimed at practioners and provides practical procedural information. The article also contains many helpful citations to cases focusing on the enforcement of arbitration clauses.

Don Zupanec, ***Denial of Arbitration--Stay Pending Appeal***, 26 No. 4 Fed. Litig. 15 (April 2011).

This article, aimed at practioners, discusses the procedure of appealing a stay of arbitration. The author discusses how this issue is treated in each circuit and provides litigation tips and research leads for the reader.

Books

The following books, available at the Georgia State College of Law Library, are an excellent source of information on arbitration in general, or Georgia arbitration specifically. Books are alphabetically ordered by title.

- Alternative Dispute Resolution: Practice and Procedure in Georgia by Douglas H. Yarn
  Call Number: KFG560.5 .Y37 1992 c.1
  ISBN: 1583360018
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=45546Professor Douglas Yarn's textbook is a useful guide for both lawyers and students. The textbook covers negotiation, mediation, and arbitration. The textbook provides a quick reference to specific points of law as well as highlighted 'advocacy points' for advocates. This text also includes legal forms and copies of arbitration rules (including the GAC).
- Arbitration Law in America: A Critical Assessment by Edward J. Brunet, Richard E. Speidal, Jean R. Sternlight, & Stephen J. Ware
  Call Number: KF9085 .A963 2006
  ISBN: 0521839822
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=1494123The authors of this book set forth the principal themes they think a reformed FAA should follow. The authors focus on what they perceive to be the most pressing problem areas in American arbitration. The authors dedicate an entire chapter to the issue of the appropriate role of state law in the federal arbitration system.
- Arbitration Now by Paul H. Haagen
  Call Number: KF9085 .A93 1999
  ISBN: 1570737347
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=867482This book is a compilation of readings on the use of arbitration in the United States. The essays in this volume fall into two categories: those discussing the changes and opportunities created by the increased use of arbitration; and essays taking a look at different approaches to providing frameworks for different types of arbitration.
- Arbitration: Essential Concepts by Steven C. Bennett
  Call Number: KF9085 .B46 2002
  ISBN: 0970597088
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=1233498This text is designed for use by both lawyers and law students interested in learning the fundamentals of arbitration law. The book covers the basics of all aspects of arbitration law: history, domestic statutes, the AAA, fundamental legal concepts, constructing an arbitration clause, conducting an arbitration, confirming and vacating arbitration awards, international arbitration, labor and employment arbitration, and ethical issues.
- Dictionary of Conflict Resolution by Douglas H. Yarn
  Call Number: KF9085.A68 D53 1999 c.1
  ISBN: 0787946796
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=869271Professor Douglas Yarn's Dictionary of Conflict Resolution provides definitions to 1,400 terms in an effort to standardize the language of alternative dispute resolution lawyers.
- Handbook on Commercial Arbitration by Thomas E. Carbonneau & Jeanette A. Jaeggi
  Call Number: KF9085 .H36 2006
  ISBN: 1929446470
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=1990840This handbook is a compilation of articles selected from an extensive body of writing by authors recognized as specialists in the area of arbitration.
- Historical Aspects of State Arbitration Policy: Georgia by E.R. Lanier
  Call Number: KFG560.5 .L36 2004
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=1384484Professor E. R. Lanier's textbook examines state arbitration policy from the colonization of Georgia through its publication date, 2004. For those interested in the evolution of arbitration over time in Georgia, this book is a great resource.

Treatises

The following treatises, available at the Georgia State College of Law Library, are an excellent source of comprehensive information on arbitration. Treatises are alphabetically ordered by title.

- International Commercial Arbitration in the United States by Gary B. Born
  Call Number: KF9085.A7 B67 1994
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=46842This extremely comprehensive treatise is written by Gary B. Born, the world's leading authority in international commercial arbitration and international litigation. This treatise includes a detailed examination of drafting, interpreting, and enforcing arbitration agreements, choice of law in arbitration agreements, and an analysis of various institutions' arbitration rules.
- Domke on Commercial Arbitration by Martin Domke
  Call Number: KF9085 .D6 2003
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=1325075Martin Domke's Commercial Arbitration Treatise is now in its third edition. This is an extremely comprehensive legal treatise most recently updated in 2010.
- Commercial Arbitration by Thomas H. Oehmke
  Call Number: KF9085 .O45 2003
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=2102129Oehmke's treatise, most recently revised in 2010, is a practical, complete manual for practioners on commercial arbitration.

American Law Reports

The American Law Reports (A.L.R.) provide an objective, in-depth analysis of specific legal issues, together with a complete list of every case, in every jurisdiction, that discusses it. This is a great resource to quickly familiarize yourself with a legal topic. A.L.R. can be accessed on either Westlaw or LexisNexis. The following reports focus on the preemption of state law by federal law, a complicated preemption issue with which Georgia alternative dispute resolution attorneys must be familiar.

William M. Howard, ***When Does Contract Evidence Transaction Involving Interstate Commerce Within Meaning of Federal Arbitration Act (FAA)—Legal Issues and Principles***, 10 A.L.R. Fed. 2d 489 (2006).

This report addresses the issue of when a contract evidences a transaction involving interstate commerce, therefore falling under the scope of the Federal Arbitration Act (FAA). Originally published in 1996, this report has been consistently updated with recent cases and provides a comprehensive list of Eleventh Circuit and Georgia cases.

R.L. Martyn, ***Validity and Effect, and Remedy in Respect, of Contractual Stipulation to Submit Disputes to Arbitration in Another Jurisdiction***, 12 A.L.R.3d 892 (1967).

This report addresses the issue of when an arbitration clause stipulates to arbitration in another jurisdiction. Originally published in 1967, this article has up to date Eleventh Circuit and Georgia cases.

William G. Phelps, ***Pre–emption by Federal Arbitration Act (9 U.S.C.A. §§ 1 et seq.) of State Laws Prohibiting or Restricting Formation or Enforcement of Arbitration Agreements***, 108 A.L.R. Fed. 179 (1992).

This report addresses the preemption of state arbitration law by federal law. Originally published in 1992, this report has been consistently updated with recent cases and provides a comprehensive list of Eleventh Circuit and Georgia cases.

Michael A. Rosenhouse, ***Construction and Application of Federal Arbitration Act—Supreme Court Cases***, 28 A.L.R. Fed. 2d 1 (2008).

This report collects and discusses U.S. Supreme Court cases applying or construing the FAA. Originally published in 2008, this report has been consistently updated and is a very useful source for practioners deciphering the FAA.

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Websites, Blogs, and Associations

Websites for Practioners

Department of Justice Office of Dispute Resolution

The Department of Justice (DoJ) Office of Dispute Resolution's mission is to promote the effective use of alternative dispute resolution processes. Its website provides statistical information, press releases, and resources for practioners.

Global Arbitration Review

The Global Arbitration Review is the world's leading arbitration law journal and news services. It is updated three times a week, provides breaking news, monthly features, and guest commentary and articles from the world's leading arbitration practioners.

National Arbitration and Mediation

The National Arbitration and Mediation (NAM) has a nationwide panel of nearly 2,000 top-tier former judges and practicing specialists uniquely qualified to resolve legal matters in a private forum. NAM offers arbitration, mediation, and trial-preparation services. The NAM website provides a directory of arbitrators and mediators, general information about arbitration, as well as news about its recent cases.

State Bar of Georgia - Fee Arbitration

The State Bar of Georgia websites provides information to Georgia attorneys about its Fee Arbitration Program. This website provides answers to many

Frequently Asked Questions, a link to the Fee Arbitration Rules, and a list of all the Fee Arbitration Committee members.

Blogs

Diane Levin, ADR Blogs

Diane Levin, a mediator, trainer, consultant, and attorney, tracks 240 ADR blogs from 31 countries on her website. Her website organizes blogs by category and country.

Konstantin Pilkov, International Arbitration Blog

Konstantin Pilkov, a member of numerous arbitration institutes in Europe, provides up-to-date news on International Arbitration on his frequently updated website.

Ross Runkel, LawMemo.com

Attorney and Professor Ross Runkel is the President and Editor of this blog, which focuses on Employment Law and Arbitration. His website provides many useful links to arbitration resources and recent cases.

Timothy Wolfe, Georgia Arbitration

Attorney Timothy Wolfe had been a licensed attorney for over 30 years. His website provides links to current arbitration news.

Arbitration Associations

American Arbitration Association

The American Arbitration Association (AAA) provides arbitration services in five disciplines: Commercial, Construction, International, Labor/Employment/Elections, and State Insurance ADR disciplines. Helpful information on this website includes: updates to the AAA rules, news highlights, case filing information and forms, and educational information.

American Bar Association - Dispute Resolution Section

The American Bar Association (ABA) Dispute Resolution Section has nearly 19,000 members, making it the largest association of dispute resolution professionals. This section offers training programs, resources and publications, professional networking, legal news, and conferences.

Association for Conflict Resolution

The Association for Conflict Resolution (ACR), the nation's largest professional organization of mediators, arbitrators, and educators, is a professional organization enhancing the practice and understanding of conflict resolution. Their primary activities include: conferences, professional interest sections, regional chapters, and committees and initiatives. Their website provides alternative dispute resolution news, conference information, a career center, and educational information for sale.

Association for International Arbitration

The Association for International Arbitration (AIA) provides information, training and educational activities to expand the promotion of arbitration and ADR globally by means of securing partnerships with various organizations and parties to get involved in the life of the association. It is not an arbitration institute and does not appoint arbitrators.

Global Arbitration Mediation Association, Inc.

The Global Arbitration Mediation Association, Inc. provides an e-directory and database designed to help arbitrators and mediators find appropriate professionals to resolve their dispute.

State Bar of Georgia - Dispute Resolution Section

The State Bar of Georgia Dispute Resolution Section promotes and facilitates negotiation, mediation, arbitration and methods other than traditional litigation for the resolution of legal disputes. The Section also plans and sponsors continuing education seminars and through this webpage and its newsletter publishes other information of interest to ADR practitioners and consumers.

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