

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS,
HOUSTON DIVISION

Lummus Global Amazonas, S.A. v. Aguaytia Energy Del Peru, S.R.
Ltda.

256 F. Supp. 2d 594 (S.D. Tex. 2002) · No. No. CIV.A.H-01-495 · Decided June 14, 2002

SUMMARY

The United States District Court for the Southern District of Texas reviewed challenges to ICC arbitration awards arising from a contract for the design and construction of natural gas facilities in Peru. The court vacated and remanded the award as to certain IGV taxes and the effect of the parties’ stipulation regarding credits and payments, while confirming the remaining aspects of the arbitration award. The court denied the request to vacate the entire award based on alleged arbitrator bias and other asserted defects.

CASE DETAILS

COURT	United States District Court, Southern District of Texas, Houston Division
WRITING FOR THE COURT	Rosenthal
JURISDICTION	Texas
DECIDED	June 14, 2002
DOCKET	No. CIV.A.H-01-495
DISPOSITION	partially_vacated_and_remanded
PROCEDURAL POSTURE	Petition to vacate, modify, or amend international arbitration awards under the Federal Arbitration Act, Inter-American Convention, and New York Convention.
STANDARD OF REVIEW	Deferential review under FAA §§ 10, 11, 12; awards may be vacated only for corruption, fraud, evident partiality, misconduct, exceeding powers, or manifest disregard of law.
PRECEDENTIAL VALUE	Published
PARTIES	Lummus Global Amazonas, S.A. v. Aguaytia Energy Del Peru, S.R. Ltda.

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the arbitration panel manifestly disregarded New York law on concurrent delay in awarding liquidated damages for LGA's failure to meet interim deadlines
2. Whether the contract terms defining completion milestones were too indefinite to be enforceable
3. Whether the panel manifestly disregarded New York law on the basis of design in awarding carbon dioxide corrosion damages
4. Whether the panel's evidentiary rulings excluding parol evidence regarding the pipe credit cap violated due process
5. Whether arbitrator Jaffe exhibited evident partiality or misconduct requiring vacatur
6. Whether the panel's refusal to incorporate the parties' stipulation required vacatur of the entire award

HOLDINGS

1. The arbitration panel did not manifestly disregard New York law on concurrent delay; the panel correctly stated and applied the law, and its findings on Company Delays were supported by the record.
2. The contract terms were not too indefinite; the panel's interpretation of the 48-hour testing requirement and other protocols drew its essence from the agreement.
3. The panel did not manifestly disregard New York law on the basis of design; the panel found Schedule 2.06's specification of 'saturated' gas did not relieve LGA of responsibility for addressing CO2 corrosion, based on conflicting expert testimony.
4. The panel's exclusion of extrinsic evidence did not deprive LGA of a fundamentally fair hearing; the panel correctly found Section 5.05(b) unambiguous when read with Schedule 5.05(B).
5. LGA failed to allege facts showing evident partiality or misconduct by Jaffe; the disclosures made were sufficient, and LGA waived its objections by failing to challenge timely.
6. The panel's refusal to incorporate the stipulation did not require vacatur of the entire award; the panel did not exceed its authority or engage in misconduct, and the issue is remanded for resolution of the stipulation's effect.

KEY QUOTATIONS

“Judicial review of arbitrators' decisions is 'extraordinarily narrow' under the Federal Arbitration Act.”

(604)

“A district court should 'interpret the arbitrator's award and the contract broadly so as to uphold the award.’” (606)

“The Fifth Circuit has described First Options as the Supreme Court's 'clear approval of the 'manifest disregard' of the law standard in the review of arbitration awards under the FAA.’” (606)

“As the matters contained in the May 2001 Stipulation were resolved by the parties and not subject to resolution by the Tribunal, there is no proper basis for 'correcting' or 'interpreting' the Final Award.” (630)

FACTUAL BACKGROUND

LGA designed and built natural gas facilities in Peru for Aguaytia under a contract with an ICC arbitration clause. The arbitration panel resolved numerous claims and counterclaims over two phases, issuing interim and final awards requiring LGA to pay Aguaytia a net amount of \$13.4 million. LGA challenged six specific aspects of the awards and sought vacatur of the entire award based on alleged arbitrator bias and the panel's refusal to incorporate a stipulation.

PROCEDURAL HISTORY

LGA petitioned to vacate, modify, or amend arbitration awards issued after a two-phase ICC arbitration concerning a construction contract. Aguaytia moved to confirm and enforce the awards with a stipulated offset. The district court reviewed the awards under the FAA and international conventions.

DISPOSITION

partially_vacated_and_remanded

REMAND INSTRUCTIONS

Remand to arbitration for determination of the amount of IGV taxes owed and resolution of the effect of the parties' stipulation as to payments and credits on the arbitration award.

CASES CITED

- Gulf Coast Indus. Workers Union v. Exxon Co., 991 F.2d 244 (5th Cir. 1993)
- Psarianos v. Standard Marine, Ltd., 790 F. Supp. 134 (E.D. Tex. 1992)
- Williams v. Cigna Fin. Advisors Inc., 197 F.3d 752 (5th Cir. 1999)
- In the Matter of the Arbitration Between Trans Chem. Ltd. & China Nat'l Mack Import & Exp. Corp., 978 F. Supp. 266 (S.D. Tex. 1997)
- First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938 (1995)
- Halligan v. Piper Jaffray, Inc., 148 F.3d 197 (2d Cir. 1998)
- Executone Info. Sys., Inc. v. Davis, 26 F.3d 1314 (5th Cir. 1994)
- Manville Forest Prods. Corp. v. United Paperworkers Intern. Union AFL-CIO, 831 F.2d 72 (5th Cir. 1987)
- United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29 (1987)
- Anderman/Smith Operating Co. v. Tennessee Gas Pipeline Co., 918 F.2d 1215 (5th Cir. 1990)

- Ainsworth v. Skurnick, 960 F.2d 939 (11th Cir. 1992)
- Mosler Safe Co. v. Maiden Lane Safe Deposit Co., 199 N.Y. 479, 93 N.E. 81 (1910)
- XLO Concrete Corp. v. John T. Brady & Co., 104 A.D.2d 181, 482 N.Y.S.2d 476 (N.Y. App. Div. 1984)
- Strauss Paper Co., Inc. v. RSA Exec. Search, Inc., 260 A.D.2d 570, 688 N.Y.S.2d 641 (N.Y. App. Div. 1999)
- Young Fehlhaber Pile Co. v. State, 265 A.D. 61, 37 N.Y.S.2d 928 (N.Y. App. Div. 1942)
- Commonwealth Coatings Corp. v. Continental Cas. Co., 393 U.S. 145 (1968)
- Andros Compania Maritima, S.A. v. Marc Rich & Co., A.G., 579 F.2d 691 (2d Cir. 1978)
- Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co., 991 F.2d 141 (4th Cir. 1993)
- Gulf Coast Indus. Workers Union v. Exxon Co., USA, 70 F.3d 847 (5th Cir. 1995)
- Cordis Corp. v. C.R. Bard, Inc., 1993 WL 723844 (S.D. Tex. 1993)
- Tempo Shain Corp. v. Bertek, Inc., 120 F.3d 16 (2d Cir. 1997)
- Totem Marine Tug & Barge, Inc. v. N. Am. Towing, Inc., 607 F.2d 649 (5th Cir. 1979)
- Delta Queen Steamboat v. Dist. 2 Marine Eng'rs Ben. Assoc., 889 F.2d 599 (5th Cir. 1989)
- HMC Mgmt. Corp. v. Carpenters Dist. Council of New Orleans and Vicinity, 750 F.2d 1302 (5th Cir. 1985)
- Diapulse Corp. of Am. v. Carba, Ltd., 626 F.2d 1108 (2d Cir. 1980)
- Valentine Sugars, Inc. v. Donau Corp., 981 F.2d 210 (5th Cir. 1993)
- Fort Hill Builders, Inc. v. Nat'l Grange Mut. Ins. Co., 866 F.2d 11 (1st Cir. 1989)
- Ballantine Books Inc. v. Capital Distrib. Co., 302 F.2d 17 (2d Cir. 1962)
- Frere v. Orthofix, Inc., 2000 WL 1789641 (S.D.N.Y. 2000)
- Katz v. Weinberg, 167 F. Supp. 2d 556 (S.D.N.Y. 2001)
- W.W.W. Assocs., Inc. v. Giancontieri, 11 N.Y.2d 157, 565 N.Y.S.2d 440, 566 N.E.2d 639 (1990)
- Bernstein Seawell & Kove v. W.E. Bosarge, 813 F.2d 726 (5th Cir. 1987)
- Forsythe Intl. S.A. v. Gibbs Oil Co. of Texas, 915 F.2d 1017 (5th Cir. 1990)

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