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# VENUE FOR MOTIONS TO CONFIRM OR VACATE ARBITRATION AWARDS UNDER THE FEDERAL ARBITRATION ACT

## INTRODUCTION

Today arbitration<sup>1</sup> is a method of dispute resolution widely employed as an alternative to litigation.<sup>2</sup> Arbitration is often preferred to litigation for a number of reasons: it is entered into voluntarily; the parties choose the arbitrator or agree how the arbitrator will be chosen; the rules of procedure are more flexible; there is greater confidentiality and a speedier disposition; and it is less expensive.<sup>3</sup>

In 1925, Congress enacted the Federal Arbitration Act<sup>4</sup> (the "Act") in response to reluctance by courts<sup>5</sup> to enforce contract arbitration provisions.<sup>6</sup> The Act provides that a party to an arbitration agreement may enforce the agreement to arbitrate against a breaching party.<sup>7</sup> The Act also provides for the confirmation, vacation or modification of awards

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1. One commentator has defined arbitration as a process by which parties voluntarily refer their disputes to an impartial third person, an arbitrator, selected by them for a decision based on the evidence and arguments to be presented before the [arbitrator]. The parties agree in advance that the arbitrator's determination, the award, will be accepted as final and binding upon them.

M. Domke, Domke on Commercial Arbitration § 1:01, at 1 (rev. ed. 1984).

2. See Pedersen v. South Williamsport Area School Dist., 677 F.2d 312, 317 (3d Cir.), cert. denied, 459 U.S. 972 (1982). Arbitration agreements are often found in such areas as labor, see, e.g., American Postal Workers Union v. United States Postal Serv., 823 F.2d 466, 468 n.1 (11th Cir. 1987), the oil industry, see, e.g., Phillips Petroleum Co. v. Marathon Oil Co., 794 F.2d 1080 (5th Cir. 1986), the food industry, see, e.g., Schulze & Burch Biscuit Co. v. Tree Top, Inc., 831 F.2d 709, 713 (7th Cir. 1987), the construction industry, see, e.g., Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 4-5 (1983), and the securities industry, see, e.g., Shearson/American Express, Inc. v. McMahon, 482 U.S. 220 (1987).

3. See Scherk v. Alberto-Culver Co., 417 U.S. 506, 510-11 (1974) (avoids costliness and delays); Conticommodity Serv. Inc. v. Philipp & Lion, 613 F.2d 1222, 1224 (2d Cir. 1980) ("speedy and relatively inexpensive"); Hanes Corp. v. Millard, 531 F.2d 585, 597 (D.C. Cir. 1976) (speed, parties preselect location and procedural rules); Dees v. Distenfield, 618 F. Supp. 123, 126 (C.D. Cal. 1985) (speedy, inexpensive, neutral expert); S. Goldberg, E. Green & F. Sander, Dispute Resolution 189-90 (1985) (discussing all advantages). But see *id.* at 190-91 (arbitration has been criticized as having opposite characteristics).

4. Ch. 213, 43 Stat. 883 (1925) (codified at 9 U.S.C. §§ 1-14 (1982)).

5. See, e.g., cases cited *infra* note 17.

6. See S. Rep. No. 536, 68th Cong., 1st Sess. 2 (1924).

7. Section 2 of the Act provides:

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 U.S.C. § 2 (1982).

made in arbitration.<sup>8</sup> In most cases, confirmation or vacation is not sought and "the award is accepted by the losing party without question."<sup>9</sup> But where compliance does not occur, actions to enforce the award are governed by the Federal Arbitration Act and may be brought pursuant to section 9 or section 10 of the Act. Section 9 provides: "If no court is specified in the agreement of the parties, then such application [for confirmation] may be made to the United States court in and for the district within which such award was made."<sup>10</sup> Similarly, section 10 provides: "[T]he United States court in and for the district wherein the award was made may make an order vacating the award . . ."<sup>11</sup> Because they contain similar provisions, sections 9 and 10 of the Act are often referred to interchangeably.<sup>12</sup>

A disagreement has developed among courts as to the proper venue for motions brought pursuant to sections 9 and 10, in the absence of language in the arbitration agreement designating venue. The controversy is over which district courts have proper venue to hear motions to vacate or confirm arbitration awards.<sup>13</sup> Resolution of this controversy is important because the convenience of both parties and the efficient use of our judicial system are at stake. The basic question underlying the disagreement is whether these provisions are permissive, meaning that any district court with federal subject matter jurisdiction would also have proper venue, or whether the provisions are exclusive, meaning that venue is proper only in the district where the arbitration actually took place.<sup>14</sup> Proponents of the permissive view cite the need for convenience, the interests of justice and judicial economy.<sup>15</sup> Proponents of the exclusive view emphasize the same interests, but reach the opposite conclusion.<sup>16</sup>

This Note compares the permissive and exclusive interpretations of

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8. See *id.* §§ 9-11.

9. Healy, *An Introduction to the Federal Arbitration Act*, 13 J. Mar. L. & Com. 223, 228 (1982).

10. 9 U.S.C. § 9 (1982).

11. *Id.* § 10.

12. See *Enserch Int'l Exploration, Inc. v. Attock Oil Co.*, 656 F. Supp. 1162, 1164 n.5 (N.D. Tex. 1987); see also *Motion Picture Laboratory Technicians Local 780 v. McGregor & Werner, Inc.*, 804 F.2d 16, 19 (2d Cir. 1986) (section 9 motion to confirm is "an action essentially identical to a section 10 motion to vacate"); *Concourse Beauty School, Inc. v. Polakov*, 685 F. Supp. 1311, 1315 (S.D.N.Y. 1988) (should treat a section 10 case the same as a section 9 case).

13. Section 11, which applies to modification of awards, contains a venue provision almost identical to section 10. See 9 U.S.C. §§ 10-11 (1982). This Note, however, focuses on sections 9 and 10 because these sections have generated the majority of court decisions on this issue.

14. See *Concourse*, 685 F. Supp. at 1314.

15. See, e.g., *Motion Picture*, 804 F.2d at 19; *Smiga v. Dean Witter Reynolds, Inc.*, 766 F.2d 698, 706 (2d Cir. 1985), *cert. denied*, 475 U.S. 1067 (1986); *NII Metals Servs., Inc. v. ICM Steel Corp.*, 514 F. Supp. 164, 166 (N.D. Ill. 1981).

16. See, e.g., *Central Valley Typographical Union No. 46 v. McClatchy Newspapers*, 762 F.2d 741, 744 (9th Cir. 1985); *Enserch*, 656 F. Supp. at 1165 n.8.

sections 9 and 10 of the Federal Arbitration Act. Part I of this Note examines the genesis and purpose of the Act. Part II analyzes the statutory language and the legislative history, and demonstrates that the exclusive view is founded on a misplaced emphasis on ambiguous statutory language. This Note concludes that the permissive view best conforms with Congress' intent when it enacted the Federal Arbitration Act.

## I. FEDERAL ARBITRATION ACT

In order to determine the issue of venue, it is necessary to examine how the purposes and interpretation of the Federal Arbitration Act as a whole led to an expansive approach for applying the Act. The Act was necessary to overcome judicial reluctance to enforce arbitration agreements and awards. This reluctance carried over into the American common law<sup>17</sup> from the English courts, which refused to enforce such agreements in equity.<sup>18</sup> However, as court congestion, delay, expense and "pressure from the business community"<sup>19</sup> increased, Congress recognized the need for this legislation.<sup>20</sup>

The Act's purpose was to ensure that arbitration provisions in contracts relating to maritime transactions and interstate commerce<sup>21</sup> are "valid, irrevocable and enforceable."<sup>22</sup> Section 3 provides for a stay of proceedings in any court of the United States upon an issue referable to arbitration under written agreement of the parties.<sup>23</sup> Section 4 directs that, upon petition of a party to a written arbitration agreement, any district court with jurisdiction shall compel arbitration.<sup>24</sup> Sections 9, 10

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17. See, e.g., *Tobey v. County of Bristol*, 23 F. Cas. 1313, 1321 (C.C.D. Mass. 1845) (No. 14,065) ("It is certainly the policy of the common law, not to compel men to submit their rights and interests to arbitration, or to enforce agreements for such a purpose."); *Meacham v. Jamestown, F. & C.R.R.*, 211 N.Y. 346, 354, 105 N.E. 653, 656 (1914) (Cardozo, J., concurring) ("It is true that some judges have expressed the belief that parties ought to be free to contract about such matters as they please. In this state the law has long been settled to the contrary.").

18. Several reasons for not enforcing arbitration agreements developed in English law, including the fear that arbitration did not provide full redress to valid legal grievances and that if arbitration agreements prevailed and were enforced, the courts would be ousted of much of their jurisdiction. See S. Rep. No. 536, 68th Cong., 1st Sess. 2 (1924); see also *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625 n.14 (1985) ("[T]he Act was designed to overcome an anachronistic judicial hostility to agreements to arbitrate, which American courts have borrowed from English common law."); *Kulukundis Shipping Co., S/A v. Amtorg Trading Corp.*, 126 F.2d 978, 985 (2d Cir. 1942) ("[I]t is our obligation to shake off the old judicial hostility to arbitration.").

19. See Cohen & Dayton, *The New Federal Arbitration Law*, 12 Va. L. Rev. 265, 265 (1926); *The United States Arbitration Law and Its Application*, 11 A.B.A. J. 153, 153 (1925); Comment, *A Statutory Proposal to Determine Arbitral Forums for 10(b) Disputes*, 28 Santa Clara L. Rev. 389, 392 (1988).

20. See H.R. Rep. No. 96, 68th Cong., 1st Sess. 1 (1924).

21. See 9 U.S.C. § 2 (1982).

22. *Id.*; see also H.R. Rep. No. 96, 68th Cong., 1st Sess. 1 (1924) ("such agreements shall be recognized and enforced").

23. See 9 U.S.C. § 3 (1982).

24. See *id.* § 4. Under section 4, a court may compel arbitration outside the district

and 11 address, respectively, the confirmation, vacation, and modification of arbitration awards.<sup>25</sup>

Initially, the Arbitration Act was perceived as merely providing a procedure for the enforcement of arbitration agreements.<sup>26</sup> Under this view, arbitration awards could be enforced only in federal courts.<sup>27</sup> Over time, however, courts began to view the Act as substantive law, thereby allowing greater applicability of the Act and obligating state courts to enforce such agreements.<sup>28</sup>

In *Moses H. Cone Memorial Hospital v. Mercury Construction Co.*,<sup>29</sup> the Supreme Court explicitly held that the Act creates federal substantive law, and that state courts are obliged, under section 3, to grant stays in favor of arbitration.<sup>30</sup> The Court stated that applicability of section 3 to state courts is necessary to carry out Congress' intent to enforce arbitration agreements in state courts, as well as federal courts.<sup>31</sup> One year

in which the action to compel is brought only when another site is specified in the arbitration agreement. *See Oil Basins Ltd. v. Broken Hill Proprietary Co.*, 613 F. Supp. 483, 488 (S.D.N.Y. 1985).

25. *See* 9 U.S.C. §§ 9-11 (1982).

26. H.R. Rep. No. 96, 68th Cong., 1st Sess. 1 (1924). A controversy still persists among the justices as to whether the Act should be read as only procedural. *See Southland Corp. v. Keating*, 465 U.S. 1, 26 (1984) (O'Connor, J., dissenting) ("Congress believed that the FAA established nothing more than a rule of procedure") (emphasis in original). However, in a concurring opinion in *Southland*, Justice Stevens supported the Court's finding of the Act as federal substantive law. "Although Justice O'Connor's review of the legislative history of the Federal Arbitration Act demonstrates that the 1925 Congress that enacted the statute viewed the statute as essentially procedural in nature, I am persuaded that the intervening developments in the law compel the conclusion that the Court has reached." *Id.* at 17 (Stevens, J., concurring).

27. Congress' intent to make arbitration agreements generally enforceable would be significantly undermined if the Act were read only as a set of procedural federal rules. The right to enforcement would depend upon the forum in which it was asserted. *See Southland Corp.*, 465 U.S. at 15. The same agreement to arbitrate would be enforceable in federal court, but would not be enforceable in state court. *See Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 26 n.34 (1983). In addition, it would leave "the recalcitrant party free to sit and do nothing." *Id.* at 27.

28. In the 1959 case of *Robert Lawrence Co. v. Devonshire Fabrics, Inc.*, 271 F.2d 402, 409 (2d Cir. 1959), *cert. dismissed*, 364 U.S. 801 (1960), the Court of Appeals for the Second Circuit became the first circuit court to hold that the Act creates substantive law. Some district court decisions prior to *Robert Lawrence* treated the Act as substantive. *See, e.g., Jackson v. Kentucky River Mills*, 65 F. Supp. 601, 603 (E.D. Ky. 1946), *aff'd*, 206 F.2d 111 (6th Cir. 1953).

In *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*, 388 U.S. 395, 404-05 (1967), the Supreme Court established that the Federal Arbitration Act applied to diversity cases brought in federal court, but did not consider its application in state courts. The *Prima Paint* Court agreed with the *Robert Lawrence* decision that the Act prevailed over state law, but for different reasons. *See id.* at 400. The Court stated that the Act is based upon Congress' control over interstate commerce and over admiralty, and its power to "prescribe how federal courts are to conduct themselves with respect to subject matter over which Congress plainly has power to legislate." *Id.* at 405.

29. 460 U.S. 1 (1983).

30. *See id.*

31. *See Moses H. Cone*, 460 U.S. at 26 n.34. The Court also indicated that it favored applying section 4 to state courts, but did not resolve the question. *See id.* at 26-27.

later, in *Southland Corp. v. Keating*,<sup>32</sup> the Supreme Court overturned a California statute that invalidated arbitration agreements, concluding that Congress had "declared a national policy favoring arbitration."<sup>33</sup>

## II. STATUTORY LANGUAGE AND LEGISLATIVE HISTORY ANALYSIS

### A. *Statutory Language*

The use of the word "may" in sections 9 and 10, without accompanying permissive or exclusive language, creates an ambiguity. Courts adopting the permissive view state that ordinary canons of statutory construction suggest that Congress would have used stronger language, such as "may only," rather than "'application may be made' or 'may apply,' if the intention was to restrict the power of a federal court in Arbitration Act cases."<sup>34</sup> Congress has, in fact, used such exclusive language in other statutes when it intended to restrict venue.<sup>35</sup>

Courts following the exclusive interpretation find that, by its designation of one particular court, the statute indicates exclusive venue.<sup>36</sup> As one court has stated, "[j]ust as one can speculate that Congress could have used stronger language, one can also surmise that if Congress had not intended to vest jurisdiction in one court it would have specified no court at all, or would have authorized 'any court of competent jurisdiction . . . .'"<sup>37</sup>

The word "may," however, is not dispositive of whether venue is permissive or exclusive.<sup>38</sup> Unlike other special venue provisions which are

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Section 4 provides: "A party aggrieved . . . may petition any United States district court which . . . would have jurisdiction under Title 28 . . . for an order directing that such arbitration proceed . . . ." 9 U.S.C. § 4 (1982). Applying section 4 to states may, however, be stretching legislative intent in light of Congress' amendment of this section in 1954 substituting "United States district court" for "court of the United States." The Senate report explained that "among Federal courts, such a proceeding would be brought only in a district court." S. Rep. No. 2498, 83d Cong., 2d Sess. 8 (1954), *reprinted in* 1954 U.S. Code Cong. & Admin. News 3991, 3998.

32. 465 U.S. 1 (1984).

33. *Id.* at 10.

34. *Paul Allison, Inc. v. Minikin Storage, Inc.*, 452 F. Supp. 573, 574 (D. Neb. 1978); *see also Amalgamated Clothing & Textile Workers Union v. Federation of Union Representatives*, 664 F. Supp. 995, 996 (S.D. W. Va. 1987) (defendant ignored "permissive nature of the language employed").

35. *See infra* note 39 and accompanying text.

36. *See Island Creek Coal Sales Co. v. City of Gainesville*, 729 F.2d 1046, 1049-50 (6th Cir. 1984), *cert. denied*, 474 U.S. 948 (1985); *City of Naples v. Prepakt Concrete Co.*, 490 F.2d 182, 184 (5th Cir.), *cert. denied*, 419 U.S. 843 (1974); *Enserch Int'l Exploration, Inc. v. Attock Oil Co.*, 656 F. Supp. 1162, 1165 (N.D. Tex. 1987).

37. *Enserch*, 656 F. Supp. at 1165.

38. *See Paul Allison*, 452 F. Supp. at 574; *see also Smiga v. Dean Witter Reynolds, Inc.*, 766 F.2d 698, 706 (2d Cir. 1985) (citing *Paul Allison*) *cert. denied*, 475 U.S. 1067 (1986).

For example, the venue provision under Title 28 for a civil action for the collection of Internal Revenue taxes, which provides that "[a]ny civil action for the collection of internal revenue taxes may be brought in the district where the liability for such tax accrues, in the district of the taxpayer's residence, or in the district where the return was filed,"

more clearly drafted,<sup>39</sup> sections 9 and 10 must be interpreted by examining legislative intent and the purpose of the entire Act.

### B. *Legislative Intent*

The legislative history of the Arbitration Act offers little specific guidance in determining proper venue under these sections. The Supreme Court acknowledged in another context that "the legislative history [of the Act] is not without ambiguities."<sup>40</sup> Furthermore, neither the House report nor the Senate report discusses section 9 or 10 at length, and neither addresses the issue of venue under these sections.<sup>41</sup>

Nevertheless, courts have found that the Act's legislative history does indicate that the Act should be broadly interpreted. For example, the Court of Appeals for the Second Circuit, in *Robert Lawrence Co. v. Devonshire Fabrics, Inc.*,<sup>42</sup> stated that it was "clear that the Congress intended to exercise as much of its constitutional power as it could in order to make the new Arbitration Act as widely effective as possible."<sup>43</sup> Similarly, in *Moses H. Cone Memorial Hospital v. Mercury Construction Co.*,<sup>44</sup> and *Southland Corp. v. Keating*,<sup>45</sup> the Supreme Court relied on legislative

28 U.S.C. § 1396 (1982), is permissive only and does not bar suit in a district in which venue would be proper on some other basis. See *Caleshu v. United States*, 570 F.2d 711, 713 (8th Cir. 1978); *United States v. Stone*, 59 F.R.D. 260, 264 (D. Del. 1973).

In contrast, venue under section 706(f)(3) of the Civil Rights Act of 1964 for unlawful employment practices has been interpreted to be exclusive. This statute provides:

[s]uch an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records . . . are maintained . . . or in the judicial district in which the aggrieved person would have worked . . . but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office.

42 U.S.C. § 2000e-5(f)(3) (1982). As one court interpreted it, this provision was "intended to be the exclusive venue provision [ ] for Title VII employment discrimination actions and that the more general provisions of [28 U.S.C.] § 1391 are not controlling in such cases." *Kravec v. Chicago Pneumatic Tool Co.*, 579 F. Supp. 619, 622-23 (N.D. Ga. 1983); *accord* *Thurmon v. Martin Marietta Data Sys.*, 596 F. Supp. 367, 368 (M.D. Pa. 1984) (mem.).

39. Compare the Truth-In-Lending Act, 15 U.S.C. § 1640(e) (1982) ("Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction . . .") and the Clayton Act, 15 U.S.C. § 15(a) (1982) ("may sue therefore in any . . . district in which the defendant resides or . . . has an agent") with the Miller Act, 40 U.S.C. § 270b(b) (1982) ("Every suit instituted under this section shall be brought . . . in the United States District Court for any district in which the contract was to be performed and executed and not elsewhere . . .") and the Clean Air Act, 42 U.S.C. § 7604(c)(1) (1982) ("Any action . . . may be brought only in the judicial district in which such source is located.").

40. *Southland Corp. v. Keating*, 465 U.S. 1, 12 (1983).

41. See *NII Metals Servs., Inc. v. ICM Steel Corp.*, 514 F. Supp. 164, 166 (N.D. Ill. 1981) (Arbitration Act is hardly a model of clarity with respect to section 9); H.R. Rep. No. 96, 68th Cong., 1st Sess. 2 (1924); S. Rep. No. 536, 68th Cong., 1st Sess. 3 (1924).

42. 271 F.2d 402 (2d Cir. 1959), cert. dismissed, 364 U.S. 801 (1960).

43. *Id.* at 406.

44. 460 U.S. 1 (1983).

45. 465 U.S. 1 (1984).

history to find that the Arbitration Act is federal substantive law.<sup>46</sup>

Despite these Supreme Court rulings that the Act is substantive law,<sup>47</sup> at least one court embracing the exclusive view incorrectly continues to rely on the early procedural interpretation of the Act to support its view.<sup>48</sup>

When the Act is examined in its entirety, it is clear that a permissive interpretation is necessary to reconcile all sections of the Act.<sup>49</sup> For example, section 3 requires that a stay be granted when an issue is arbitrable.<sup>50</sup> An exclusive reading of sections 9 and 10, however, would "effectively read Section 3 out of the Act."<sup>51</sup> A stay would become meaningless because the stay "could only lead to ultimate dismissal,"<sup>52</sup> unless the court staying the action was the district court where the arbitration would take place.

In addition, sections 9 and 10 are distinguishable from those special venue provisions that federal courts have found to require exclusive venue. Both section 1400(b) of Title 28 and section 706(f)(3) of the Civil Rights Act of 1964 were based on clear congressional intent to limit venue.<sup>53</sup> Such a clear intent is not evident with respect to sections 9 and 10.<sup>54</sup>

46. In reaching this decision, the Court expressed an unwillingness "to attribute to Congress the intent, in drawing on the comprehensive powers of the Commerce Clause, to create a right to enforce an arbitration contract and yet make the right dependent for its enforcement on the particular forum in which it is asserted." *Id.* at 15.

47. *See supra* notes 28-33, 42-46 and accompanying text (discussing the Court's decisions).

48. *See Enserch Int'l Exploration, Inc. v. Attock Oil Co.*, 656 F. Supp. 1162, 1167 (N.D. Tex. 1987). Citing Justice O'Connor's dissent in *Southland Corp.*, the court in *Enserch* found that it must adopt an exclusive view in order to preserve Congressional intent. *See Enserch*, 656 F. Supp. at 1166-67 (citing *Southland Corp.*, 465 U.S. at 21). Those courts which still view the Act as procedural find that the provisions should be exclusively read, despite the Supreme Court's expansion of the Act's applicability and the resulting anomaly that "any state court with jurisdiction . . . may vacate an award . . . but only one federal court may do so." *Id.* at 1166 (emphasis in original). The Supreme Court has rejected this anomaly with regard to sections 3 and 4. *See Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 26 nn.34-35 (1983).

49. *See NII Metals Servs., Inc. v. ICM Steel Corp.*, 514 F. Supp. 164, 165 (N.D. Ill. 1981). *Cf. Moses H. Cone*, 460 U.S. at 27 (allowing a state court to act under section 3, but not section 4 would be "a pointless and wasteful burden on the supposedly summary and speedy procedures prescribed by the Arbitration Act").

50. Section 3 provides: "If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration . . . the court in which such suit is pending . . . shall . . . stay the trial of the action until such arbitration has been had." 9 U.S.C. § 3 (1982).

51. *NII Metals*, 514 F. Supp. at 166. Although the court addressed only section 9, the effect would be the same if section 10 were read exclusively.

52. *Id.*

53. *See supra* note 38 (discussing § 706(f)(3) of the Civil Rights Act of 1964); *infra* note 59 (discussing § 1400(b) of Title 28).

54. *See supra* notes 40-41 and accompanying text.

### C. Policy Reasons

The purpose of arbitration is to provide for the efficient, expeditious, inexpensive and binding resolution of disputes.<sup>55</sup> It also aids in relieving the crowded court system.<sup>56</sup> The reasons for increased support and encouragement of arbitration as a method of dispute resolution must be viewed in their entirety. These interests are best served by allowing any district court with proper jurisdiction to review arbitration awards.

Because the Act's language is ambiguous<sup>57</sup> and the legislative history is silent,<sup>58</sup> these methods of analysis offer little guidance in determining where proper venue should lie for section 9 and 10 motions. Rather, it is necessary to look at the purpose of the Arbitration Act, and the venue rules generally, to determine where proper venue lies.<sup>59</sup>

The underlying goals of venue rules are to ensure litigation in a convenient forum and to prevent plaintiffs from bringing suit in an arbitrary location.<sup>60</sup> Determination of venue may be governed by the general provisions of Title 28 or by venue provisions imbedded within a controlling statute.<sup>61</sup> Sections 9 and 10 should be seen as special venue provisions.<sup>62</sup> A special venue provision, expressly covering venue of a particular kind

55. See *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 510-11 (1974); *Conticommodity Serv., Inc. v. Philipp & Lion*, 613 F.2d 1222, 1224 (2d Cir. 1980); *Hanes Corp. v. Millard*, 531 F.2d 585, 597 (D.C. Cir. 1976).

56. See *Conticommodity*, 613 F.2d at 1224; *Robert Lawrence Co. v. Devonshire Fabrics, Inc.*, 271 F.2d 402, 410 (2d Cir. 1959), *cert. dismissed*, 364 U.S. 801 (1960).

57. See *supra* notes 34-39 and accompanying text.

58. See *supra* notes 40-54 and accompanying text.

59. For example, for venue in patent cases under section 1400(b) of Title 28, the Supreme Court found that "Congress adopted [the venue provision] as a special venue statute . . . to eliminate [abuses caused] by . . . allowing [civil patent infringement] suits to be brought in any district in which the defendant could be served." *Schnell v. Peter Eckrich & Sons, Inc.*, 365 U.S. 260, 262 (1961) (citation omitted); see also *Dickey-John Corp. v. Richway Sales*, 78 F.R.D. 66, 67 (N.D. Ill. 1977) (section 1400(b) was intended "to prevent patent venue from lying in just any judicial district in which the defendant could be found").

60. See *Leroy v. Great Western United Corp.*, 443 U.S. 173, 180, 183-84 (1979); *Whittier v. Emmet*, 281 F.2d 24, 30 (D.C. Cir. 1960), *cert. denied*, 364 U.S. 935 (1961). For cases discussing the interest of convenience, see *United Coal Co. v. Land Use Corp.*, 575 F. Supp. 1148, 1159 (W.D. Va. 1983); *NTN Bearing Corp. of America v. Charles E. Scott, Inc.*, 557 F. Supp. 1273, 1277 (N.D. Ill. 1983); see also C. Wright & A. Miller, *Federal Practice and Procedure* § 1063, at 224 (1987) (principles of federal venue ensure litigation is in a convenient forum and that choice of forum is not arbitrary).

61. See Comment, *supra* note 19, at 404. Congress has enacted venue provisions for specific statutes. See, e.g., *supra* notes 38-39. The general statute applies to civil actions where a specific act is silent as to venue. See *Randolph Laboratories, Inc. v. Specialties Dev. Corp.*, 62 F. Supp. 897, 898 (D.N.J. 1945), *aff'd*, 178 F.2d 477 (3d Cir. 1949), *cert. denied*, 339 U.S. 952 (1950); 28 U.S.C. § 1391 (1982). For a list of special venue statutes see ALI Study of Division of Jurisdiction Between State and Federal Courts, app. F at 498 (Official Draft 1969) [hereinafter ALI Study].

62. See *Stroh Container Co. v. Delphi Indus., Inc.*, 783 F.2d 743, 747-48 n.7 (8th Cir.) (discussing section 9), *cert. denied*, 476 U.S. 1141 (1986); ALI Study, *supra* note 61, at 498; see also *Amalgamated Clothing & Textile Workers Union v. Federation of Union Representatives*, 664 F. Supp. 995, 996 (S.D. W. Va. 1987) (language of Act is permissive and venue may be determined by general venue statutes, including transfer of venue).

of action, will control over the general venue statutes.<sup>63</sup> Provisions in the general statute supplement the special provision in the absence of contrary restrictive indications in the special provision.<sup>64</sup>

The choice of venue in diversity cases under the general venue statute includes the residence of all the plaintiffs or all the defendants or where the claim arose.<sup>65</sup> Proper venue for suing a corporation is even broader; suit may be brought where the corporation is incorporated, is licensed to do business or is doing business.<sup>66</sup> These possible fora clearly allow more flexibility, and therefore more convenience, than would only one forum.

In determining proper venue under sections 9 and 10 of the Arbitration Act, the district where the award was made should be considered, but should not be conclusive. Judicial convenience must also be considered.<sup>67</sup> It is wasteful for a court already having jurisdiction to dismiss the action before it.<sup>68</sup> Once a federal court has jurisdiction and venue, it should have the authority to confirm an arbitration award even though it was not the district where the award was granted.<sup>69</sup>

Furthermore, limitations on venue result in battles over proper venue and "hypertechnical" case law, frustrate the purpose of the statute, consume the courts' time, and strain the prompt and efficient adjudication of parties' rights.<sup>70</sup> As one commentator has noted, "[i]n practical operation . . . [a] rigid statutory formula can[not] assure that a particular case will be litigated in the most efficient manner and in the most convenient forum."<sup>71</sup>

The exclusive view presumes that the district where arbitration takes place has already been determined by the parties to be convenient.<sup>72</sup> But

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63. See *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222, 228-29 (1957); *MacEvoy Co. v. United States*, 322 U.S. 102, 107 (1944); *Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204, 208 (1932).

64. See *School Dist. v. Harper & Row Publishers, Inc.*, 267 F. Supp. 1006, 1009 (E.D. Pa. 1967); see, e.g., *Miller Brewing Co. v. Landau*, 616 F. Supp. 1285, 1291 (E.D. Wis. 1985) (venue provisions of the RICO statute, 18 U.S.C. § 1965, are not exclusive, but are supplemented by those found in 28 U.S.C. § 1391); *Farmers Bank v. Bell Mortgage Corp.*, 452 F. Supp. 1278, 1280 (D. Del. 1978) (venue provisions of Organized Crime Control Act are not exclusive).

65. See 28 U.S.C. § 1391(a) (1982).

66. See *id.* § 1391(c).

67. See *Stroh Container Co. v. Delphi Indus., Inc.*, 783 F.2d 743, 748 n.7 (8th Cir.), *cert. denied*, 476 U.S. 1141 (1986); *Amalgamated Clothing & Textile Workers Union v. Federation of Union Representatives*, 664 F. Supp. 995, 996 (S.D. W. Va. 1987).

68. *NII Metals Servs., Inc. v. ICM Steel Corp.*, 514 F. Supp. 164, 166 (N.D. Ill. 1981); *accord Concourse Beauty School, Inc. v. Polakov*, 685 F. Supp. 1311, 1315 (S.D.N.Y. 1988) (quoting *NII Metals*).

69. See *Smiga v. Dean Witter Reynolds, Inc.*, 766 F.2d 698, 706 (2d Cir. 1985), *cert. denied*, 475 U.S. 1067 (1986); *Paul Allison, Inc. v. Minikin Storage, Inc.*, 452 F. Supp. 573, 574 (D. Neb. 1978).

70. *Wydick, Venue in Actions for Patent Infringement*, 25 *Stan. L. Rev.* 551, 551 (1973); see also ALI Study, *supra* note 61, at 498 (repeal of many special venue provisions might well be considered in the interest of simplicity).

71. *Wydick, supra* note 70, at 565-66.

72. See *Central Valley Typographical Union No. 46 v. McClatchy Newspapers*, 762

this is not always true. The location of arbitration is often agreed to in contracts made a considerable time before a dispute arises, and this location may no longer be convenient when the dispute occurs.<sup>73</sup>

When section 9 or 10 motions are brought in a district other than where the award was made, questions over the proper forum can be resolved under the court's discretion to transfer under 28 U.S.C. § 1404.<sup>74</sup> Using this approach, some district courts have transferred cases to the district where the award was made.<sup>75</sup> In doing so, they based their decisions on the litigants' convenience, not on an exclusive interpretation of venue under these provisions.<sup>76</sup>

However, when the district in which the award was made is clearly not a convenient forum for litigation, especially for the defendant, the cost of bringing the suit increases. Consequently, a party who may have valid reasons to seek a vacation or modification of their award may be inhibited by the cost of bringing a motion in an inconvenient forum. Allowing general venue provisions under Title 28 to supplement these special arbitration venue provisions of sections 9 and 10 would aid in the prompt determination of a truly convenient forum.

A permissive view would also be more beneficial in a case where one party files a section 9 motion in one court and the other party files a section 10 motion in another. The first suit filed should have priority, absent a showing of convenience in favor of the second forum, or the presence of special circumstances.<sup>77</sup> Thus, if the first action is brought in a district other than where the award is made, but that court has subject matter jurisdiction and proper venue pursuant to the general venue statute, the suit should be allowed.

Finally, contrary to the exclusive view, a permissive view does not necessarily frustrate the parties' desire for a speedy disposition. The court

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F.2d 741, 744 (9th Cir. 1985); *Enserch Int'l Exploration, Inc. v. Attock Oil Co.*, 656 F. Supp. 1162, 1165 n.8 (N.D. Tex. 1987).

73. See, e.g., *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 4-5 (1983) (five years between contract and dispute); *Stroh Container Co. v. Delphi Indus., Inc.*, 783 F.2d 743, 746 (8th Cir.) (eight years between contract and dispute), *cert. denied*, 476 U.S. 1141 (1986); *Island Creek Coal Sales Co. v. City of Gainesville*, 729 F.2d 1046, 1047 (6th Cir. 1984) (five years between contract and dispute), *cert. denied*, 474 U.S. 948 (1985).

74. Section 1404(a) provides: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a) (1982).

75. See *J.V.B. Indus., Inc. v. Federated Dep't Stores, Inc.*, 684 F. Supp. 22, 23-24 (E.D.N.Y. 1988); *Amalgamated Clothing & Textile Workers Union v. Federation of Union Representatives*, 664 F. Supp. 995, 996 (S.D. W. Va. 1987).

76. See *J.V.B. Indus.*, 684 F. Supp. at 23-24; *Amalgamated Clothing*, 664 F. Supp. at 996-97.

77. See *Motion Picture Laboratory Technicians Local 780 v. McGregor & Werner, Inc.*, 804 F.2d 16, 19 (2d Cir. 1986); *Fort Howard Paper Co. v. William D. Witter, Inc.*, 787 F.2d 784, 790 (2d Cir. 1986); *Concourse Beauty School, Inc. v. Polakov*, 685 F. Supp. 1311, 1315 (S.D.N.Y. 1988); see also *J.V.B. Indus.*, 684 F. Supp. at 24 (balance of convenience is in favor of the second action).

where the motion to vacate or confirm is brought could easily hear arguments as to convenience and other relevant factors, and then decide to hear the motion or to transfer to a more convenient forum. Thus, a permissive view would best satisfy the interests of the parties who have chosen arbitration to resolve their disputes, further judicial economy and promote arbitration as a method of dispute resolution.

#### CONCLUSION

Arbitration provides a method of binding dispute resolution that avoids litigation and is generally more time and cost efficient. The Federal Arbitration Act provides for the enforcement of arbitration agreements. In applying the statute, the courts following the permissive and exclusive views base their interpretations on the statutory language in sections 9 and 10, but this focus is misplaced. The language in the provisions is ambiguous, and the legislative history is silent. Therefore, the interpretation of sections 9 and 10 should focus on the purpose of the Arbitration Act as a whole.

Prolonged litigation on the issue of venue results in the consumption of court time and negates many of the benefits for which arbitration was initially chosen, especially cost and time efficiency. By favoring a permissive interpretation of the venue provisions in sections 9 and 10, courts could best give effect to the basic goals of arbitration and the Federal Arbitration Act, and at the same time ease their own caseloads.

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