

The Bulletin in Brief

The editorial team is proud to present to you the fall issue of the ASA Bulletin containing topical articles, key jurisprudence of the Swiss Federal Supreme Court, and news from ASA.

In this issue:

ASA President Elliott GEISINGER looks to the future of international arbitration in his Message to the Readers: *Beam Me Up, ~~Scotty~~ Mr Chairman*.

Jörg RISSE and Nicolas GREMMINGER address certain fears about the arbitration mechanism in the Transatlantic Trade and Investment Partnership (TTIP) expressed by some observers (“*The Truth About Investment Arbitration (not only) under TTIP – Four Case Studies*”).

Three well informed co-authors from the ICC, Andrea CARLEVARIS, Philine NAU, and Hannah TÜMPEL, present the “*2015 ICC Expert Rules*”

Piotr NOWACZYK and Konrad CZECH rethink the debate on costs in international arbitration, in their contribution “Costs and costs awards in international arbitration: a call for less criticism of arbitration costs, but improvement of costs allocation practices.

Two papers address good faith, ethical standards, and sanctions for their breach from the perspectives of counsel and arbitrators: Duarte G. HENRIQUES, “*The role of good faith in arbitration: are arbitrators and arbitral institutions bound to act in good faith?*”, and Michael HWANG, Jennifer HON, “*Approach to Regulating Counsel Conduct in International Arbitration*.”

This Bulletin’s selection of decisions from the Swiss Federal Supreme Court addresses four main topics (for abstracts in English see the Introduction to the Case Law Section, p. 533), namely:

Res judicata: Whether partial awards bind arbitrators in subsequent awards (4A_606/2013 of 2 September 2014); whether arbitrators are bound by an earlier arbitral award or its reasoning rendered by a different arbitral tribunal in a dispute between the same parties (see Bernhard BERGER, “*No Force of Res Judicata for an Award’s Underlying Reasoning. Note on 4A_633/2014 of 29 May 2015*”); and in the next Bulletin: whether arbitrators are bound by a foreign court judgment in a case involving some of the same parties (4A_508/2013 of 27 May 2014).

Resisting enforcement of an award: Does a party have to challenge an award at the place where it was rendered in order to preserve the right to resist the subsequent enforcement of the award on certain grounds? The Court found that this question called for a case-specific analysis and could

not be answered in an abstract manner. In the case at hand, the plaintiff could not reasonably be expected to challenge the award, which had been rendered in blatant disregard for his due process rights. It was not necessary, therefore, to examine whether the first award had *res judicata* effect (4A_374/2014 of 26 February 2015).

Interpretation, validity and scope of arbitration agreement: validity and scope of an arbitration clause contained in a delivery slip signed by the buyer's employee (4A_626/2014 of 3 July 2015); duty of the arbitral tribunal to verify the validity of the alleged arbitration agreement in cases in which the respondent does not participate in the arbitration (4A_676/2014 of 3 June 2015, finding the arbitration agreement to be invalid); arbitration agreement unenforceable since the contract was replaced by a subsequent contract not containing an arbitration clause (4A_305/2013 of 2 October 2013).

Ultra petita: As long as the total amount awarded does not exceed the total amount claimed, the arbitral tribunal cannot be blamed for ascribing different weight to certain categories of damages (4A_684/2014 of 2 July 2015). In passing, the Court remarked that the parties had not taken issue with the fact that the arbitral tribunal had awarded an amount in USD even though the claim was denominated in EUR.

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