Federal Arbitration Act

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The Federal Arbitration Act (FAA) was enacted in 1925. The FAA places arbitration agreements on equal footing with other types of contracts. Section 2 of the Act provides that a written agreement containing an arbitration provision is valid, irrevocable, and enforceable the same as any other contract.

In overcoming legislative and judicial hostility to arbitration agreements, the Federal Arbitration Act (FAA) and the court cases interpreting the FAA have established a broad principal of enforceability of arbitration clauses.. The FAA is applicable in both state and Federal courts; its reach is as expansive as that of the Commerce Clause. The United States Supreme Court in *Allied Bruce Terminix Companies. Inc. v. Dobbs* and *Doctor's Associates, Inc. v. Casarotto,* has emphasized that in all cases involving interstate commerce, the FAA preempts conflicting state law. For example, a state law that required that an arbitration provision be in large print on the first page of a contract would conflict with and thus be preempted by the FAA.

Under current law, when a binding arbitration clause exists, courts must stay any litigation and compel arbitration. This is so even if the state has laws precluding arbitration.

These state's statutes are of little consequence in most consumer transactions because the language of the FAA has been broadly interpreted to preempt state law.

The provisions of the FAA manifest a "liberal Federal policy favoring arbitration agreements." For the last twenty years the United States Supreme Court has clearly indicated that it strongly supports arbitration. This trend is evidenced by the Court's decision in *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.* In Cone, the court noted:

"The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitratible issues should be resolved in favor of arbitration…" The United States Supreme Court has stresses that courts should "vigorously enforce agreements to arbitrate:, and has stated that when considering arbitration agreements, "every doubt is to be resolved in favor of

arbitration." The Fifth Circuit (which covers Texas) has asserted that courts should stay litigation proceedings pending arbitration "unless it could be said with positive assurance that an arbitration clause is not susceptible on an interpretation which would cover the dispute at issue."

There are many additional Supreme Court decisions upholding arbitration based on the strong presumption of arbitration's validity. The United States Supreme Court has upheld arbitration regarding claims under RICO, the Securities Exchange Act of 1934, Title VII and held that the FAA applies in state as well as in Federal courts and preempts any conflicting state law.

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