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Beware International Laws and Conventions

Practice Point by the American Bar Association

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In the decision, *McDonnell Group, LLC v. Great Lakes Insurance SE, UK Branch*. No. 18-30817, 2019 WL 2082905, (5th Cir. May 13, 2019), the Fifth Circuit held that federal law favoring the enforceability of arbitration in international contracts pre-empts state law purporting to invalidate attempts to set jurisdiction or venue in another state. While the contract at issue in the case was an insurance policy, it is clear that the implications of this case are two-fold. First, this case directly affects potential insurance coverage disputes, a common fixture in construction defect litigation. Second, it also may affect other types of construction litigation. Many states have clauses that can nullify the effects of provisions in contracts requiring another state's laws to be applied, or venue in another state, when the issues in dispute are construction issues in the home state. Such clauses may render the provision void or voidable, depending upon a state's laws. When a party is dealing with an international construction related transaction (e.g., purchase of a piece of equipment from overseas), *McDonnell* holds that a party will not be able to use a similar state statute to overcome an arbitration clause.

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