



## International Arbitration ADVISORY ■

**AUGUST 6, 2013**

### Arbitrator's Decision to Limit Discovery Not Enough to Vacate Arbitration Award Under the FAA

In a recent decision, *Bain Cotton Co. v. Chesnutt Cotton Co.*, the U.S. Court of Appeals for the Fifth Circuit refused to expand the “extremely narrow” grounds upon which an arbitration award is subject to judicial review under the Federal Arbitration Act (FAA). By a *per curiam* decision,<sup>1</sup> the court left undisturbed an arbitration award where the plaintiff, Bain, argued that the arbitral tribunal’s denial of discovery requests during the course of arbitration constituted evidence of partiality or corruption that, under the FAA, would provide a basis to overturn the arbitral tribunal’s award.

At issue before the court in the *Bain* action was an “acreage contract” between the parties that required Chesnutt to deliver to Bain all of the cotton produced upon a specified amount of farmland. When the actual amount of cotton produced on the farmland was approximately 13 percent below the amount estimated for delivery in the contract, Bain suspected that Chesnutt withheld a portion of the cotton and sold it elsewhere for higher returns. On September 30, 2011, Bain filed its complaint claiming breach of the contract and an application for an order to compel arbitration. Arbitration commenced shortly thereafter. During arbitration, Bain requested records from Chesnutt to support its claims of breach. Chesnutt provided Bain with documents showing the number of bales of cotton ginned for certain farmland under the acreage contract, but did not provide documents showing the number of acres planted and what type of crop was planted. Chesnutt asserted that it could not provide the additional documents because they belonged to individual farmers—all of whom were not parties to the arbitration—and were maintained in numerous Farm Service Agency offices across western Texas. As such, and despite Bain’s insistence that such documents were necessary, the arbitral tribunal did not require production of the additional documents. On May 7, 2012, the arbitral tribunal issued an award adverse to Bain.

<sup>1</sup> Pursuant to 5th Cir. R. 47.5, the decision is unpublished.

The district court denied Bain's motion to reopen the case and vacate the award, finding that Bain had "failed to meet its high burden of convincing th[e] Court that the award should be disturbed." The court reasoned that there was evidence of production by Chesnutt and that "[w]hether there is better evidence available is not for the Court to second guess in light of the deference owed to the arbitration panel." The court concluded that it was "disinclined to disturb an arbitration award even if the parties did not receive the full measure of discovery and procedure as would have been obtained in a court setting."

The Fifth Circuit affirmed the district court's decision, noting the "strong federal policy favoring arbitration," and reiterated the distinction between arbitration and litigation more generally. Specifically, and after noting the limited circumstances under which an arbitration award may be vacated under Section 10 of the FAA, the Fifth Circuit concluded that although "the district court or this court—or both—might disagree with the arbitrators' handling of Bain's discovery requests, that handling did not rise to the level required for vacating under any of the FAA's narrow and exclusive grounds."

### **Impact of *Bain Cotton Co.*:**

- The Fifth Circuit has confirmed the limited circumstances in which an award may be vacated, as set forth in the FAA. As a result, parties to arbitration can have greater confidence in the integrity and enforceability of an arbitration award despite a tribunal's decision to limit discovery.

*This advisory was written by John Roesser, Gary Adamson and Louis Russo.*

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