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## **Rizalyn Bautista et al v. Star Cruises, Norwegian Cruise Line, Ltd. United States Court of Appeals for the 11th Circuit 396 F.3d 1289 (Decided January 18, 2005)**

Alan Katz, Class of 2006

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The district court adopted an earlier ruling by a magistrate judge that, in turn, relied on a pocket edition of Black's Law Dictionary to define an "award" as "an agreement granted by a formal process." The district court concluded that the Ochoa settlement constituted an "award" and that therefore Home was not entitled to share in it under the terms of the Home-Pan American settlement agreement. The Court of Appeals disagreed with the district court's interpretation of the term "award" and noted that under Puerto Rican law, if the terms of a contract are clear and unambiguous concerning the intentions of the parties then the literal sense of the stipulations will be observed. The Court of Appeals held that there was no ambiguity over the meaning of "award," and therefore the district court's interpretation was incorrect in that it went beyond the meaning of the word as generally used in legal writing, and as used in the Home-Pan American settlement in particular, by mischaracterizing voluntary settlement negotiation between parties as a "formal process."

Furthermore, the Court found it difficult to believe that two parties as sophisticated as Home and Pan American, represented by counsel, would not have used the term "settlement" in place of "award" if they had intended to exclude negotiated settlements from their settlement agreement. The Court noted that a paragraph of the settlement agreement mentioned both "awards" and "settlements" when describing various recoveries but specifically omitted "settlement" from the description of recoveries relating to punitive damages and/or loss of use. According to the Court, this strongly suggested that the parties recognized that an "award" and a "verdict" did not incorporate a "settlement."

The Court of Appeals found that the district court erred in determining that the Ochoa settlement was excluded from the Home-Pan American settlement because it was for "loss of use" of the Zorra. The Court found that language in the Ochoa settlement stated explicitly that the \$800,000 was being paid in consideration not only for Ochoa's release from claims of loss of use, but also for release from all possible future claims. Thus, because the Ochoa settlement settled multiple claims, it was not excluded under the Home and Pan American agreement.

The Court held that the district court erred in not finding that Pan American breached its settlement agreement with Home when it did not notify Home of the Ochoa settlement prior to entering into it, and when it refused to share the recovery proceeds with Home in the manner specified by the settlement agreement.

Seamus Weir  
Class of 2006

**ARBITRATION CLAUSE IN EMPLOYMENT AGREEMENTS OF CRUISE LINE  
CREWMEMBERS ENFORCED PURSUANT TO U.N. CONVENTION**

**The seamen employment contract exemption contained within the Federal Arbitration Act did not allow crewmembers to circumvent submitting to arbitration under Philippine jurisdiction with respect to claims arising from an onboard accident, when arbitration was compelled by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.**

Rizalyn Bautista et al v. Star Cruises, Norwegian Cruise Line, Ltd.  
United States Court of Appeals for the 11<sup>th</sup> Circuit  
396 F.3d 1289  
(Decided January 18, 2005)

Six crewmembers of the cruise ship S/S Norway were killed when the vessel's boiler exploded on May 25, 2003 while docked in Miami; four crewmembers were injured. Plaintiffs, injured crewmembers and representatives of the decedents, filed ten separate suits in a Florida circuit court against defendants Star Cruises and Norwegian Cruise Line ("NCL"), seeking damages for negligence and unseaworthiness under the Jones Act, 46 U.S.C. § 688. NCL removed the cases to federal district court pursuant to §205 of 9 U.S.C. §§ 202-208 (the "Convention Act") which implemented the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"), permitting removal prior to trial in disputes relating to an arbitration agreement or award covered by the Convention.

The crewmembers' employment contracts contained clauses that required arbitration in cases of claims and disputes arising from a seaman's employment. The contracts were executed in the Philippines, and their form and content was regulated by a Philippine administrative agency, the Philippine Overseas Employment Administration. The district court granted NCL's motion to compel arbitration in the Philippines and denied plaintiffs' motion to remand to state court. The court retained jurisdiction to enforce or confirm and resulting arbitral award.

Plaintiffs challenged the district court's jurisdiction by claiming that the case was not covered by the Convention. The Court of Appeals noted that a district court must order arbitration unless 1) the four jurisdictional prerequisites are not met or 2) one of the Convention's affirmative defenses applies. *DiMercurio v. Sphere Drake Ins.' PLC*, 202 F.3d 71 (1<sup>st</sup> Cir. 2000). The four prerequisites require that 1) there is an agreement in writing within the meaning of the Convention; 2) the agreement provides for arbitration in the territory of a signatory of the Convention; 3) the agreement arises out of a legal relationship, whether contractual or not, which is considered commercial; and 4) a party to the agreement is not an American citizen, or that the commercial relationship has some reasonable relation with one or more foreign states. *Std. Bent Glass Corp. v. Glassrobots Oy*, 333 F.3d 440 (3d Cir. 2003). The court, finding the second and fourth conditions fulfilled, turned to an analysis of the first and third conditions, observing that the Convention established a strong presumption in favor of arbitrating international commercial disputes. Despite language in 9 U.S.C. §§ 1-16, the Federal Arbitration Act ("FAA"), providing that "...nothing herein contained shall apply to contracts of employment of seamen...", the Court of Appeals held that the exemption's application outside the FAA was restricted by the second and third chapters of title 9. The court stated that Congress gave the treaty-implementing statutes primacy over the FAA, with the provisions of the latter applying only where they did not conflict. The court viewed this hierarchical structure as consistent with the premise that the Convention trumped prior inconsistent rules of law, in keeping with an exercise of Congress' treaty power and federal law. The court continued its analysis by engaging in a lengthy technical dissection of §§ 202 and 208 of the Convention before arriving at the conclusion that the arbitration provisions were commercial legal relationships under the Convention, regardless of the FAA exemption.

Finally, the court concluded that the plaintiffs' affirmative defenses – that the arbitration provision was unconscionable and that the underlying dispute was not arbitrable – failed and that the district court had properly granted NCL's motion to compel arbitration.

Alan Katz  
Class of 2006

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