CHAPTER 34

SMA ARBITRATION

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BACKGROUND AND HISTORY OF MARITIME ARBITRATION IN THE UNITED STATES

"Still, a moderate number of international maritime arbitrations took place in New York following the enactment of the FAA. It was only after the end of the World War II that the Act’s appropriateness for dispute resolution expanded substantially. The U.S. vessels that had survived the war were widely engaged in the commerce of American products to countries that had seen their economies devastated by the war. This reality favored even more the development of admiralty arbitration. In the early 1950s, despite the fact that the maritime arbitration community was known for being controlled by a small group of people, New York admiralty lawyers were actively engaged in the promotion and conduct of the arbitral processes for resolution of their clients’ disputes. Individuals employed within local maritime trades were frequently asked to serve as arbitrators. The dynamics that were occurring at this time within the..."
SMA ARBITRATION

- **Overview of the SMA Rules**
  - Grown out of the practice and experience developed by New York lawyers specialized in maritime arbitration
  - Goals of cost-efficiency, speed and fairness
  - Widely accepted and adaptable to the needs of the parties
  - Include a shortened arbitration procedure, rules regarding salvage arbitration and rules for mediation and conciliation
  - Arbitrators’ code of ethics

- **SMA Rules and the FAA**
  - Governing law of SMA Arbitrations
  - Rules were established and have been amended in conformity with the FAA
  - Role that it plays in arbitration proceedings
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- **The Agreement to Arbitrate**
  - Recommended clause / issues of form
  - Affiliated corporate relations

- **Commencing the arbitration**
  - Requirements of the request for arbitration
  - Time-bar issues (COGSA one year time-bar and others)

- **Consolidation of disputes**
  - Interests of efficiency, swiftness, uniformity and predictability
  - Requirements
  - How SMA arbitrators have approached consolidation
SMA ARBITRATION

- **Arbitration tribunals**
  - Who are the arbitrators
  - Appointments
  - Disclosure and challenges
  - SMA Code of ethics

- **General conduct of the proceedings**
  - Hearings, time-tables, written and oral statements, submission of documents, communications between the parties and the tribunal, failures to proceed and waivers.
**Taking of evidence**

- Types of evidence that are admissible
- Importance in light of Section 10(3) of the FAA
- Witness statements, affidavits
- Documents
- Subpoenas (Section 7 of the FAA / Section 23 of the SMA Rules)
- Other types of evidence such as inspection of vessels / offshore units, expert opinions
- Adverse inference
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- **Pre-award security**
  - The SMA has been regarded as one of the best surviving venues for parties seeking equitable security through reasoned and balanced pre-judgement awards
  - Types of security
  - Core factors/requirements to consider by the arbitrators
  - Form of the order for security and possibility of confirmation pursuant Section 9 of the FAA

- **SMA Awards**
  - Form and scope
  - Possibility of awarding “reasonable” attorneys’ fees
  - Sources and decision process
  - Distinctive feature of publication (Lexis-Nexis) - providing certainty, predictability, and transparency, decreasing the likelihood of inconsistent decisions
  - Confirmation, enforcement and vacation
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- **SMA Shortened arbitration procedure**

- **SMA alternative dispute resolution**
  - ✓ Mediation rules
  - ✓ Conciliation rules
SMA ARBITRATION

- **Conclusions**
  - Panels composed of experienced industry peers
  - Swift proceedings
  - Possibility of consolidation
  - Wide-ranging availability of pre-award security
  - Award system - example of transparency
Thank you!

André Pereira da Fonseca