# RECENT DEVELOPMENTS

## *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.**

### I. INTRODUCTION

The policy behind the Federal Arbitration Act[1] (FAA) is to ensure the "rapid and unobstructed enforcement of arbitration agreements."[2] However, the ambiguity of the FAA's venue provisions for enforcement of arbitration awards[3] has resulted in disagreement about the appropriate scope of their application, often delaying the award's enforcement.[4]

It is evident under the FAA that the court where the award was granted has jurisdiction over confirmation proceedings when parties do not provide for a specific venue for enforcement of those awards.[5] The court where the award was granted also has jurisdiction over vacation or modification proceedings.[6] The jurisdictional issue arises, however, when the contractual

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* 120 S.Ct. 1331 (2000).

[1] 9 U.S.C. §§ 1–16 (1994 & Supp. 2000).

[2] Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 22 (1983) (stating that "Congress' clear intent, in the Arbitration Act, [is] to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible.").

[3] 9 U.S.C. §§ 9–11 (1999 & Supp. 2000).

[4] Appellate courts are divided on the issue of whether the FAA's venue provisions should be permissive or restrictive. The following circuits interpreted the provisions permissively: P & P Indus., Inc. v. Sutter Corp., 179 F.3d 861, 869–70 (10th Cir. 1999) (§§ 9 and 10 permissive); Apex Plumbing Supply, Inc. v. U.S. Supply Co., Inc., 142 F.3d 188, 192 (4th Cir. 1998) (§ 9 permissive); *In re* VMS Sec. Litig., 21 F.3d 139, 144–45 (7th Cir. 1994) (§§ 9 and 10 permissive); Nordin v. Nutri/System, Inc., 897 F.2d 339, 344 (8th Cir. 1990) (§ 9 permissive); Smiga v. Dean Witter Reynolds, Inc., 766 F.2d 698, 706 (2d Cir. 1985) (§ 9 permissive). *Cortez*, 120 S.Ct. at 1335. The following circuits interpret the provisions restrictively: Sunshine Beauty Supplies, Inc. v. U.S. Dist. Ct., Cent. Dist. of Cal., 872 F.2d 310, 312 (9th Cir. 1989) (§§ 9 and 10 restrictive); Central Valley Typographical Union No. 46 v. McClatchy Newspapers, 762 F.2d 741, 744 (9th Cir. 1985) (§ 10 restrictive); Island Creek Coal Sales Co. v. Gainesville, 729 F.2d 1046, 1049–50 (6th Cir. 1984) (§ 9 restrictive); United States *ex rel.* Chi. Bridge & Iron Co. v. Ets-Hokin Corp., 397 F.2d 935, 939 (9th Cir. 1968) (§ 10 restrictive). *Id.* at 1335.

If the venue provisions in the FAA are permissive, then motions to confirm, vacate, or modify can be brought either in the jurisdiction where the award was rendered or in the jurisdiction that is proper under the general venue statute. *See id.* at 1335-36. However, if the venue provisions are restrictive then motions to confirm, vacate, or modify can only be brought in the jurisdiction where the award was rendered. *Id.* at 1336.

[5] 9 U.S.C. § 9 (1994 & Supp. 2000) (stating that "[i]f no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made.").

[6] 9 U.S.C. §§ 10–11 (1994 & Supp. 2000).

agreement provides for subsequent proceedings to occur in "any court having jurisdiction thereof."[7] The FAA neither contains such language nor provides guidance for such broad jurisdictional provisions in the legislative history.[8]

Thus, the Supreme Court granted certiorari in *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.*[9] to resolve the conflict between circuits and to determine whether parties can "contractually agree to a venue as broad as 'any court of competent jurisdiction' or whether the parties must name each and every specific court in which motions to confirm[, modify,] or vacate may be heard."[10]

## II. FACTS AND PROCEDURAL HISTORY OF *CORTEZ*

Bill Harbert Construction Company ("Harbert") entered into a contract with Cortez Byrd Chips, Inc. ("Cortez") to construct a wood chip mill in Brookhaven, Mississippi.[11] As part of the contract, the parties agreed to submit to arbitration "[a]ll claims or disputes between the Contractor and the Owner arising out of or relating to the Contract, or the breach thereof."[12] The parties also agreed that the award by the arbitrator would be final; that the judgment entered on the agreement to arbitrate could be in any court with the proper jurisdiction; that the award could be "enforceable under [the] applicable law in any court" with the proper jurisdiction; and "that the law of [Mississippi,] the place where the project was located," would govern.[13]

Harbert submitted an application to the American Arbitration Association when a dispute subsequently arose with Cortez.[14] The arbitration was conducted, and the award was issued in late 1997 in Birmingham, Alabama.[15] In January 1998, Cortez sought to vacate,[16] modify,[17] or stay[18]

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[7] *Cortez*, 120 S.Ct. at 1334.

[8] Michael G. Schwartz & Amy Yip-Kikugawa, Note, Sunshine Beauty Supplies, Inc. v. United States District Court: *Restrictive Venue and Motions to Confirm or Vacate Under the Federal Arbitration Act*, 32 U.S.F. L. REV. 629, 630 (1998).

[9] Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co., 120 S.Ct. 1331 (2000).

[10] Schwartz & Yip-Kikugawa, *supra* note 8, at 630; *see supra* note 4 and accompanying text.

[11] *Cortez*, 120 S.Ct. at 1334.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] The venue specified for vacating arbitration awards is stated as follows: "[T]he United States court in and for *the district wherein the award was made* may make an

the Alabama arbitration award granted in favor of Harbert in the United States District Court for the Southern District of Mississippi, where the contract was performed.[19] Harbert filed a motion to confirm[20] the award seven days later in the United States District Court for the Northern District of Alabama.[21]

A finding by the Alabama District Court that the FAA's venue provisions were permissive, "thus supplement[ing] . . . not supplant[ing] the general provision" would have allowed the Alabama court to stay the proceedings and give the appropriate deference to the "court of first filing."[22] Instead, the Alabama District Court rejected a permissive reading of the provisions and denied the motion stating that "venue was proper only in the Northern District of Alabama."[23] Harbert was awarded judgment "for $274,256.90 plus interests and costs."[24]

On appeal to the Court of Appeals for the Eleventh Circuit, the court affirmed the award in favor of Harbert. The Court held that it was bound by pre-1981 Fifth Circuit precedent that the FAA's venue provisions to confirm,

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order vacating the award upon the application of any party to the arbitration[.]" 9 U.S.C. § 10(a) (1994 & Supp. 2000) (emphasis added).

[17] The venue specified for modifying arbitration awards is stated as follows: "[T]he United States court in and for *the district wherein the award was made* may make an order modifying or correcting the award upon the application of any party to the arbitration[.]" 9 U.S.C. § 11 (1994 & Supp. 2000) (emphasis added).

[18] *See infra* note 39 and accompanying text.

[19] *Cortez,* 120 S.Ct. at 1334. It was proper under the general venue statute because "venue in a diversity action [is proper] in 'a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.'" *Id.* at 1335 (quoting 28 U.S.C. § 1391(a)(2) (1994 & Supp. 2000)).

[20] The proper venue for confirmation of arbitration awards is as follows:

> If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall *specify the court,* then at any time within one year after the award is made any party to the *arbitration may apply to the court so specified for an order confirming the award,* and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If *no court is specified* in the agreement of the parties, then such application may be made to the United States court in and for the *district within which such award was made.*

9 U.S.C. § 9 (1994 & Supp. 2000) (emphasis added).

[21] *Cortez,* 120 S.Ct. at 1334.

[22] *Id.* at 1335–36.

[23] *Id.* at 1334.

[24] *Id.*

modify, or vacate awards were applicable exclusively in the district in which the arbitration award was made, the Northern District of Alabama.[25]

## III. DECISION OF THE UNITED STATES SUPREME COURT

The Supreme Court granted certiorari to determine the proper interpretation—permissive or restrictive—of the FAA's venue provisions governing motions to confirm, vacate, or modify.[26] In reversing the lower courts' decisions, the Court found that a permissive, rather than restrictive, interpretation was more appropriate in light of the legislative history of the statute and the general policy behind the FAA, the conflict that a restrictive interpretation may cause motions to stay proceedings, and the "anomalous"[27] impact of an alternatively restrictive interpretation on international arbitration provisions.

Rejecting both parties' attempts to compare the statutory construction of phrases appearing in other parts of the FAA, the Court held that statutory history actually provided better insight into the proper interpretation.[28] At the time the FAA was enacted, venue provisions would have allowed civil suits to be brought "in the district in which the defendant resided" because of the significantly more restrictive general venue statute.[29] Moreover, restrictive interpretations would have been more expected since courts generally disliked forum selection clauses.[30] Thus, an arbitration agreement that

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[25] Harbert Constr. Co. v. Cortez Byrd Chips, Inc., 169 F.3d 693, 694–95 (11th Cir. 1999).

[26] Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co., 527 U.S. 1062 (1999). The Court's opinion also applied to the provision governing motions to confirm arbitration awards, 9 U.S.C. § 9 (1994 & Supp. 2000), even though it was not at issue at the District Court proceeding. *Cortez*, 120 S.Ct. at 1336. The Court felt that all three venue provisions governing motions to confirm, vacate, and modify are "best analyzed together" because of their "contemporaneous enactment and the similarity of their pertinent language." *Id.*

[27] *Cortez*, 120 S.Ct. at 1338.

[28] *Id.* at 1336.

[29] *Id.* (citing 28 U.S.C. § 112(a) (1926)). Allowing suits to proceed in jurisdictions outside of a party's residence were difficult because of the "restrictive views of personal jurisdiction." *Id.* at 1336 n.2. The Court compares this notion with the holding in *International Shoe Co. v. Washington*, 326 U.S. 310, 316–20 (1945), which stated that a corporation, similar to an individual, can be subject to suit in the jurisdiction as long as minimum contacts are established. *See id.*

[30] *Cortez*, 120 S.Ct. at 1336 (citing The Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 9–10 (1972)). The Supreme Court recognized in *Bremen* that "[f]orum-selection clauses have historically not been favored by American courts. . . . [Both] federal and

provided for action in the jurisdiction where the arbitration was conducted would have been futile.[31]

The FAA, on the other hand, provided for special venue provisions that were uncharacteristic of prior courts' more conservative readings of the general venue provisions.[32] In fact, the Court pointed out that there seemed to be no indication by Congress to extend the limitations under the general venue provisions to the venue provisions of the FAA particularly since section 9 of the FAA allows for an agreement to confirm an arbitration award either in a court specified by the parties or where the award was rendered.[33] Further, the Court rejected Harbert's position that sections 10 and 11—the modification and vacation provisions—should be read separately from section 9.[34]

The Court also stated that a permissive interpretation of the FAA's venue provisions is more consistent with an overall desire to have a "liberal federal policy favoring arbitration."[35] Allowing the parties to have flexibility in selecting a forum would be part and parcel of promoting arbitration as a viable and accommodating method of dispute resolution. The Court stated that parties often select a forum because of its convenience, that is, one of the parties resides there or the contract dispute originated there.[36] It also stated that "parties may be willing to arbitrate in an inconvenient forum . . . for the convenience of the arbitrators, or to get a panel with special knowledge or

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state [courts] have declined to enforce such clauses on the ground that they were 'contrary to public policy,' or that their effect was to 'oust the jurisdiction' of the court." 407 U.S. at 9. However, the Court went on to say that "[a]lthough this view apparently still has considerable acceptance, other courts are tending to adopt a more hospitable attitude toward forum-selection clauses." *Id.* at 9-10.

[31] *Cortez*, 120 S.Ct. at 1337.

[32] *Id.*

[33] *Id.*; 9 U.S.C. § 9 (1994 & Supp. 2000).

[34] *Cortez*, 120 S.Ct. at 1337. The Court commented that if the confirmation provision was intended to be interpreted separately from a vacation or modification provision, then a "proceeding to confirm the award begun in a forum previously selected by agreement of the parties (but outside the district of the arbitration) would need to be held in abeyance if the responding party objected." *Id.* Then, "[t]he objecting party would . . . have to return to the district of the arbitration to begin a separate proceeding to modify or vacate the arbitration award, and if the award withstood attack, the parties would move back to the previously selected forum for the confirming order originally sought." *Id.* The Court stated that such a situation would be absurd and inconvenient for the parties involved. *Id.*

[35] Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983).

[36] *Cortez*, 120 S.Ct. at 1337.

experience, or as part of some compromise . . . ."[37] Although parties may be willing to pick an inconvenient forum for the arbitration, they "might well be less willing to pick such a location if any future court proceedings had to be held there."[38] Thus, providing the parties with the ability to weigh their options in selecting a satisfactory jurisdiction would support the FAA's policy favoring arbitration.

A restrictive interpretation of the venue provisions would also conflict with the FAA's provision covering motions to stay.[39] The provision allows parties to stay the trial pursuant to their agreement.[40] Therefore, a restrictive reading of §§ 9–11 would suggest that if an arbitration occurred "outside the district of that litigation, [then] a subsequent proceeding to confirm, modify, or set aside the arbitration award could not be brought in the district of the original litigation (unless that also happened to be the chosen venue in a forum selection agreement)."[41] Such reasoning, the Court stated, would conflict with a prior holding permitting a court that had the initial power to stay a proceeding under § 3 to maintain the power in subsequent proceedings to confirm arbitration awards.[42] Nonetheless, the Court was careful in noting that this alone was not dispositive.[43]

Lastly, the Court stated that a restrictive interpretation would also create incompatible results for arbitration in the international arena. The FAA's sections 204, 207, and 302 "provide for liberal choice of venue for actions to confirm awards subject to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the 1975 Inter-American Convention on International Commercial Arbitration."[44] Therefore, a

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[37] *Id.*

[38] *Id.*

[39] 9 U.S.C. § 3 (1994 & Supp. 2000). The provision is as follows:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties *stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement,* providing the applicant for the stay is not in default in proceeding with such arbitration.

*Id.* (emphasis added).

[40] *Id.*

[41] *Cortez*, 120 S.Ct. at 1337–38.

[42] *Id.* at 1338 (citing Marine Transit Corp. v. Dreyfus, 284 U.S. 263, 275–76 (1932)).

[43] *See id.*

[44] *Id.*; *see also* 9 U.S.C. §§ 204, 207, 302 (1999).

restrictive interpretation of §§ 9–11 would effectively hinder American courts from confirming, vacating, or modifying "foreign arbitrations not covered by either convention."[45] The Court was disinclined to create such "venue gaps."[46]

As a result, the Court reversed the lower courts and remanded the case for further proceedings based on their finding that the FAA's provisions governing motions to confirm, vacate, or modify arbitration awards are intended to be permissive.[47]

## IV. ANALYSIS

The Supreme Court's granting of certiorari to review the *Cortez* case may, on the one hand, have come as a surprise particularly after the refusal to grant certiorari in four federal circuit cases involving labor and employment arbitration.[48] On the other hand, though, the case presented an issue of significant conflict among the circuits[49] and arguably defied the purpose and policy of the FAA, to efficiently resolve conflicts through the use of arbitration.[50]

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[45] *Cortez*, 120 S.Ct. at 1338.

[46] *Id.*

[47] *Id.* at 1339.

[48] Perhaps, the denial of certiorari indicates that the Court "believes that arbitration law has stabilized and . . . is now the responsibility of the lower federal courts to resolve emerging issues and conflicts." *Denials of Certiorari*, 11 WORLD ARB. & MEDIATION REP. 3, 3 (2000). The four federal cases that were denied certiorari were the following listed in *Denials of Certiorari*: Albertson's, Inc. v. United Food and Commercial Workers Union, 157 F.3d 758, 762 (9th Cir. 1998) (holding that employees covered by a collective bargaining agreement can take any FLSA claim to court even though the claims are also covered by a grievance-arbitration procedure), *cert. denied*, 120 S.Ct. 39 (1999); Koveleskie v. SBC Capital Mkts., Inc., 167 F.3d 361, 365 (7th Cir. 1999) (holding that Title VII does not "preclude enforcement of pre-dispute arbitration agreements"), *cert. denied*, 120 S.Ct. 44 (1999); Int'l Union of Operating Eng'rs, Local 351 v. Cooper Natural Res., Inc., 163 F.3d 916, 919–20 (5th Cir. 1999) (holding that a "last chance agreement will in most cases supersede the terms of a collective bargaining agreement, and should be viewed as such by an arbitrator"), *cert. denied*, 120 S.Ct. 45 (1999); Local Union 1393 Int'l Bhd. of Elec. Workers v. Utilities Dist. of W. Ind. Rural Elec. Membership Coop., 167 F.3d 1181, 1184–85 (7th Cir. 1999) (holding that an employer who retains an exclusive right to discharge an employee is not subject to arbitration of the discharge, even though the collective bargaining agreement includes a broad arbitration clause), *cert. denied*, 120 S.Ct. 61 (1999). *Id.*

[49] *See supra* note 4 and accompanying text.

[50] *See Denials of Certiorari, supra* note 48, at 3.

A majority of the circuits found the FAA's venue provisions to be permissive.[51] The Tenth Circuit in *P & P Industries, Inc. v. Sutter Corp.* [52] was the most recent circuit to address the interpretation of the venue provisions. Similar to the circumstances in *Cortez*, P & P Industries, Inc. ("P & P") filed a motion in the Oklahoma district court to vacate an arbitration award granted in favor of Sutter.[53] About one week later, Sutter moved to confirm the arbitration award in Texas, where the award was rendered.[54] After first addressing the jurisdictional issues in Texas, the motions were eventually transferred to Oklahoma. [55] P & P appealed to the Tenth Circuit after the Oklahoma district court confirmed the award in favor of Sutter stating that the "FAA allowed any federal district court, not just the one in the district where the award was rendered, to confirm the award."[56]

Like the Supreme Court in *Cortez*, the Tenth Circuit cited to *In re VMS Securities Litigation*,[57] the leading authority of a permissive reading of the statute. It found that an examination of statutory construction, Congressional intent, and logic would avoid the "absurd results"[58] that may occur if a restrictive reading were adopted. Further, the court pointed out that "none of the minority opinions contain any detailed analysis of the issue," that is nothing more than a list of cites of "ostensibly applicable precedent."[59]

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[51] *See supra* note 4 discussing the cases that held the FAA venue provisions were permissive.

[52] P & P Indus., Inc. v. Sutter Corp., 179 F.3d 861 (10th Cir. 1999).

[53] *Id.* at 865.

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *In re* VMS Sec. Litig., 21 F.3d 139 (7th Cir. 1994).

[58] *P & P Indus., Inc.*, 179 F.3d at 868–69 (citing *In re* VMS Sec. Litig., 21 F.3d 139, 144 (7th Cir. 1994); Sutter Corp. v. P & P Indus., Inc., 125 F.3d 914, 919 (5th Cir. 1997)). The court stated that a restrictive interpretation would render section 3 (stay of proceedings) of the FAA "meaningless," and wastefully and inefficiently allocate judicial resources. *Id.* at 869. Moreover, Congressional intent would indicate that "when Congress intends for one specific district court to be the exclusive forum for a certain matter, it uses unambiguous language to express its intentions." *Id.*

[59] *Id.* at 869–70. The court pointed out that the "Eleventh Circuit stated simply that it was bound by a pre-split Fifth Circuit case—*Naples v. Prepakt Concrete Co.*, 490 F.2d 182, 184 (5th Cir. 1974)—which the modern Fifth Circuit, in Sutter, found inapplicable." *Id.* at 870. Further, the court stated that the "Ninth Circuit in *Sunshine Beauty Supplies, Inc.* [*v. U.S. Dist. Court for the Cent. Dist. of California*, 872 F.2d 310 (9th Cir. 1989), the leading authority interpreting the venue provisions restrictively,] and *Central Valley Typographical Union, No. 46 v. McClatchy Newspapers*, 762 F.2d 741, 744 (9th Cir. 1985), considered itself bound by circuit precedent, but that circuit precedent—*United*

*Cortez* adopted much of the analysis used in the circuit courts to support a permissive reading of the venue provisions. In particular, though, the Supreme Court focused on upholding the policy behind the FAA. Although two district courts have declined to extend *Cortez*, neither case severely threatens the ruling. In *In re Vitamins Antitrust Litigation*[60] the court agreed with the Supreme Court's reasoning in *Cortez* but chose to follow the state law in interpreting the venue provisions of the Clayton Act restrictively.[61]

The second case that declined to extend *Cortez* was *In re RealNetworks, Inc., Privacy Litigation.*[62] The *In re RealNetworks* court did not extend beyond the *Cortez* Court's comment that the FAA venue provisions are more appropriately analyzed at the time of their enactment,[63] in determining that in

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*States ex rel. Chicago Bridge & Iron Co. v. Ets-Hokin Corp.*, 397 F.2d 935 (9th Cir. 1968)—contains no analysis of the issue, and merely states its conclusion." *Id.* The court's last example pointed out that the "Sixth Circuit relie[d] solely on *Prepakt Concrete Co., Ets-Hokin Corp.*, and *Commonwealth Edison Co. v. Gulf Oil Corp.*, 541 F.2d 1263, 1272 n.16 (7th Cir. 1976), a case the Seventh Circuit ignored as 'dicta' on this point in *In re VMS Sec. Litig.*, 21 F.3d at 143." *Id.*

[60] In re Vitamins Antitrust Litig., 94 F. Supp.2d 26 (D.D.C. 2000).

[61] *See id.* at 31. The plaintiffs brought an antitrust suit against various vitamin suppliers claiming that they conspired to "fix prices and allocate market shares of vitamins, vitamin premixes, and other bulk vitamin products." *Id.* at 28. Three of the alien defendants moved for a motion to dismiss based on the lack of personal jurisdiction. *Id.* The plaintiffs asserted that the defendants should be subject to jurisdiction because it is in accordance with the principle that special venue provisions should "supplement, rather than preempt, general venue statutes." *Id.* at 30 (quoting Go-Video, Inc. v. Akai Elec. Co., 885 F.2d 1406, 1409 (9th Cir. 1989)). The court rejected the interpretation stating that while they agree with the Supreme Court's reasoning in *Cortez* regarding the venue provisions of the FAA, they must "follow the current state of the law in this Circuit with regard to the venue provision . . . of the Clayton Act [because] [t]he two statutes are simply not identical and thus could conceivably be treated differently." *Id.* at 31. As a result, the court held that the defendants can only be sued in the jurisdiction where they "reside, are found or transact business." *Id.* (citing GTE New Media Servs., Inc. v. BellSouth Corp., 199 F.3d 1343, 1351 (D.C.C. 2000)).

[62] No. 00 C 1366, 2000 WL 631341 (N.D. Ill. May 8, 2000). In this case, the plaintiffs brought a class action suit against RealNetworks alleging that "RealNetworks' software products secretly allowed RealNetworks to access and intercept users' electronic communications and stored information without their knowledge or consent." *Id.* at *1. The court had granted the defendant's motion to stay the litigation and enforce the agreement to arbitrate the dispute. *Id.* The plaintiffs contested requesting that additional arguments in opposition to an arbitration be heard and the ruling be reconsidered. *Id.* In particular, they argued that the agreement to arbitrate in Washington was invalid because the License Agreement containing the arbitration clause did not constitute a "writing" within the meaning of the FAA or the Washington Arbitration Act. *Id.* at *2.

[63] *Id.*

this case the word "written" was meant to include electronic communications.[64] The plain meaning of "written" neither appears to exclude electronic communications,[65] nor suggests that Congress cannot include new words to "fortify the current rule with a more precise text that curtails uncertainty" because they excluded it from the statute at the time of its enactment.[66]

Although *In re Vitamins* and *In re RealNetworks* decline to extend *Cortez*, they fail to sufficiently challenge the main principle that motions to confirm, vacate, or modify arbitration awards can occur in any jurisdiction proper under the general venue statute or in the jurisdiction where the award was rendered. Therefore, parties should have little, if any, trouble instituting an action to enforce their arbitration awards in a jurisdiction proper under the FAA provisions.

## V. CONCLUSION

The *Cortez* holding allows parties in an arbitration to have a broader range of forums to consider when seeking to enforce the award rendered. The Court clearly established that as long as parties are able to show that the place they seek to confirm, vacate, or modify the arbitration award is proper under the general venue statute or proper as the place where the award was issued, courts will have jurisdiction over the motion. *Cortez* stays true to the policy that the FAA's provisions are intended to be liberally construed in favor of arbitration. Further, the Court seemed to give thorough consideration to the practical effects of their holding on parties' desires to include arbitration clauses and award enforcement provisions in contracts, on court dockets, on other statutory venue provisions and on other areas of law where arbitration is used to settle disputes.

Although *Cortez* addressed the venue question in the context of construction contracts, the holding is meant to encompass all contracts falling under the FAA. Therefore, forum selection agreements to confirm awards in a jurisdiction that in the future happens to be a different site from where the arbitration occurs will still be able to proceed with their motion without difficulty. This holding strengthens the parties' rights to resolve and enforce their claims. Moreover, it promotes the policy behind the FAA to effectively and efficiently resolve disputes through arbitration.

*Karyn A. Doi*

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[64] *Id.* at *3–*4.

[65] *Id.* at *3.

[66] *Id.* at *4 (quoting ProCD, Inc. v. Zeiderberg, 86 F.3d 1447, 1452 (7th Cir. 1996)).