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**BLOGS**  
Arbitration

## Arbitration Clause on Website and Invoice Not Part of Agreement

A federal district court for the Northern District of Illinois recently refused to dismiss, in favor of arbitration, a distributor's claim for unlawful termination. In *Metro Premium Wines v. Bolger Vineyards, Inc.*, 2011 U.S. Dist. LEXIS 65306 (N.D. Ill. June 14, 2011), a producer of wines terminated a 20-year-old oral distribution relationship with its exclusive distributor in the Chicago area. The distributor's suit alleged that the winemaker had conspired with another distributor to eliminate the plaintiff and to take over its customer contacts and other confidential information. The winemaker moved to dismiss, arguing that the parties had agreed to arbitrate all disputes. The arbitration clause relied on by the winemaker was contained in the standard "terms and conditions" section of its website and on the back of its pre-printed invoices. The distributor responded that it was unaware of the arbitration clause, did not agree to it, and that its own purchase orders contained no such terms. The arbitration clause first appeared on the winemaker's documents in 2010, but the parties had been doing business with each other since 1990.

In denying the winemaker's motion to dismiss, the court found that California's enactment of the Uniform Commercial Code applied to the case and that it was a "classic" example of the "battle of the forms," governed by U.C.C. § 2-207. When two parties to a sale of goods do not have a single, consistent agreement governing the sale, and instead exchange pre-printed purchase orders and invoices that have inconsistent terms, the law provides that the parties' agreement will consist of any terms that do not conflict and any default rules under the U.C.C. The court found that the arbitration clause contained on the winemaker's website and invoices was inconsistent with the distributor's offer to purchase. As a result, the arbitration clause was not part of the parties' agreement and the motion to dismiss was denied.