



GPM Litigation Spotlight: December 2016

December 7, 2016

GPM Files Amicus Brief in D.C. Circuit on U.S. Public Policy Regarding Fundamental Fairness in American Jurisprudence in International Conflicts of Issues

Last month, Jan Evans co-authored an amicus curiae brief to the D.C. Circuit Court of Appeals on behalf of our client, Professor Richard W. Painter. Painter, a graduate of Harvard University and Yale Law School, is a nationally recognized expert on legal ethics, served as Associate Counsel to the President (White House Counsel's Office) between 2005 and 2007, has had several visiting-professor appointments in the U.S. and abroad, currently teaches at the University of Minnesota Law School, and is a regular commentator.

The focus of the amicus is whether American rules of ethics govern in a confirmation decision by an American court of a foreign arbitration award issued by the London Court of International Arbitration (LCIA). In this case, the U.S. District Court for the District of Columbia confirmed a multi-million dollar foreign arbitral award rendered by the LCIA against the Government of Belize. Belize appealed on several grounds.

Relevant to the amicus issue, the confirmation decision came over Belize's objection that the award was contrary to American public policy because it was tainted by the appearance of bias under American ethics rules. The question was whether one of the arbitrators should have been removed from the three-person panel—as Belize requested of the LCIA—on the basis that he had the appearance of a conflict of interest. A division of the LCIA considered and rejected Belize's objection under its own procedural rules.

The amicus analysis considered whether the district court should have applied U.S. Supreme Court precedent in analyzing the conflict-of-interest issues rather than accept the LCIA's decision under its own rules as "well reasoned." The argument also involved an evaluation of how British barristers' Chambers operate in England as compared to the operations of American law firms. Painter's opinion, as expressed in the amicus, is that the district court's analysis is fundamentally incompatible with longstanding Supreme Court precedent safeguarding the vital role of fundamental fairness in the American system of jurisprudence.

The United States is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which guides enforcement proceedings of signatory countries. Under the convention, countries may refuse to enforce a foreign arbitral award where it "would be contrary to the public policy of that country"—



which has been interpreted by the D.C. Circuit as applicable "only where enforcement would violate the forum state's most basic notions of morality and justice."

The weekend before filing, the Prime Minister of Belize, through his counsel, extended his thanks to Painter, GPM, Jan, and her co-author for their interest in the issue. We hope the D.C. Circuit will agree with Painter's views, but if not, a petition for certiorari may follow.