

ALL RISE.

HEAR YE, HEAR YE, HEAR YE, THE  
SUPREME COURT OF FLORIDA IS NOW  
IN SESSION, ALL WHO HAVE CAUSE  
TO PLEAD, DRAW NEAR, GIVE  
ATTENTION AND YOU SHALL BE  
HEARD.

GOD SAVE THESE UNITED STATES,  
GREAT STATE OF FLORIDA, THIS  
HONORABLE COURT.

LADIES AND GENTLEMEN, SUPREME  
COURT OF FLORIDA, PLEASE BE  
SEATED.

>> GOOD MORNING AND WELCOME TO  
THIS SESSION OF THE FLORIDA  
SUPREME COURT.

THE FIRST CASE ON THE DOCKET IS  
AIRBNB VERSUS JOHN DOE.

>> MY NAME IS JOEL PERWIN, THE  
COUNCIL FOR AIRBNB.

AS A PRELIMINARY, WHEN SOMEBODY  
WANTS TO REGISTER ON THE AIRBNB  
AS A HOST OR GUEST, HE HAS TO  
FILL OUT A FORM AND HE HAS TO  
CLICK A BOX THAT CONSTITUTES HIS  
AGREEMENT TO ABIDE BY AIRBNB'S  
TERMS OF SERVICE.

RED BOX RIGHT NEXT TO IT, TERMS  
OF SERVICE, HE CLICKS ON IT.

TERMS OF SERVICE BEGIN WITH ALL  
CAPITAL LETTERS.

YOUR LEGAL RIGHTS AND REMEDIES  
ARE LIMITED AND IF YOU SCROLL  
DOWN YOU GET TO A PROVISION THAT  
SAYS DISPUTE RESOLUTION, ANY  
DISPUTE, BINDING ARBITRATION,  
WAIVED THE RIGHT TO TRIAL BY  
JURY, ARBITRATION RULES, NOT  
JUST GENERAL BUT IN ACCORDANCE  
WITH THE AAA ARBITRATION RULES  
AND SUPPLEMENTARY PROCEDURES FOR  
CONSUMER RELATED DISPUTES.

>> ON THAT POINT AM I CORRECT IN  
UNDERSTANDING IN THIS ELECTRONIC  
FORMAT THE PERSON SIGNING UP CAN  
CLICK ON A LINK THAT WILL TAKE  
THEM TO THOSE RULES?

>> THE RED BUTTON, CLICK ON THE  
LINK.

YOU COULD THROW IT ON THE FRONT  
PAGE BUT THERE ARE A LOT OF  
GENERAL CATEGORIES AND IT IS A  
COUPLE PAGES LONG SO IT IS MORE

DISCRETE AND I THINK MORE  
COMPREHENSIBLE IF YOU LINK IT TO  
TERMS OF SERVICE.

THE BIG CAPITAL LETTERS THEY  
READ THIS, IT LIMITS YOUR  
RIGHTS.

YOU GET IN THERE AND IT SAYS AAA  
RULES, IDENTIFY THE RULES, GIVES  
YOU THE PHONE NUMBER, THE  
WEBSITE AND CONTRARY TO WHAT YOU  
ARE TOLD YOU DON'T HAVE TO GO  
FIND IT OR LOOK FOR IT.

THERE'S A HYPERLINK TO IT WHICH  
MEANS CLICK ON IT AND YOU ARE  
RIGHT INTO IT.

ONCE AGAIN YOU COULD DUMP THE  
AAA RULES INTO TERMS OF SERVICE  
BUT THEY ARE LONG, PAGE AFTER  
PAGE.

>> IF THE STANDARD IS CLEAR AND  
UNMISTAKABLE SHORT OF LOOKING TO  
A REPRODUCING FAA RULES OR AAA  
RULES COULDN'T THEY JUST HAVE  
SAID ALL DISPUTES INCLUDING THE  
ARBITRABILITY OF THIS SHALL BE  
DECIDED BY THE ARBITRATOR, THOSE  
ADDITIONAL 5 OR 6 WORDS WOULD  
HAVE MADE UNMISTAKABLE THE  
DESIRE HERE.

WHAT IS YOUR RESPONSE?

>> THEY SAY THAT AND THE  
QUESTION OF WHERE THEY SAY THAT  
YOU LINK TO TERMS OF SERVICE,  
YOU CLICK ON THEM AND THEY SAY  
THE ARBITRATOR SHALL HAVE THE  
POWER TO RULE ON HER OWN  
JURISDICTION INCLUDING  
OBJECTIONS WITH THE EXISTENCE,  
SCOPE OR VALIDITY, OR  
ARBITRABILITY OF ANY CLAIM OR  
COUNTERCLAIM.

>> MY QUESTION IS YOU AGREE YOU  
WOULD HAVE A STRONGER CASE IF  
THE AGREEMENT IN ITS PLAIN  
LANGUAGE SAID THE SAME THING.

>> ON ITS FACE WHERE?

ON THE OPENING PAGE WHERE YOU  
ARE PUTTING GENERAL RUBRICS,  
THROWING 3 PAGES THERE?

ON TERMS OF SERVICE WHERE YOU  
HAVE A LIST, THROW IN ALL OF THE  
AAA RULES, LIST THEM THERE?

>> WHY NOT JUST PUT IN 5 OR 6  
WORDS, NONE OF THAT, JUST 6 OR 7

WORDS THAT BASICALLY SAY,  
WHETHER HE OR SHE GETS THE CASE  
OR NOT.

IN MY WORLD STILL IMPORTANT SO  
WHY NOT PUT THAT IN.

>> IT WOULD PUT IT IN THEIR AND  
WHETHER IT IS CLEAR OR  
UNMISTAKABLE.

THERE ARE LOTS OF PROVISIONS IN  
TERMS OF SERVICE, LOTS IN THE  
ARBITRATION RULES THAT ARE  
REALLY IMPORTANT.

THEY WOULD ISOLATE, TO ADDRESS  
THE ISSUE.

THEY GIVE YOU A TO STREET  
LINKAGE AND THEN IT IS  
HIGHLIGHTED.

READ THIS, DISPUTE RESOLUTION  
AND THAT IS THE WAY IT IS  
WRITTEN.

HOW IT COULD HAVE BEEN WRITTEN  
RESPECTFULLY.

>> YOUR POSITION IS ESSENTIALLY  
THE WAY THIS IS SET UP  
ELECTRONICALLY, THESE RULES AS A  
PHYSICAL ATTACHMENT TO A PAPER  
DOCUMENT.

IT IS LIKE SEE EXHIBIT A AND YOU  
CAN GO BACK IN THE BACK AND LOOK  
AT EXHIBIT A WITH THE RULES.  
DON'T SEE HOW THIS IS ANY  
DIFFERENT FROM THE PHYSICAL  
DOCUMENT.

>> THAT IS WHAT THE CASE IS  
SAYING AND IT IS BETTER IF YOU  
LINK TO IT AND SAY HERE IT IS  
THAN IF YOU DUMP INTO IT.

>> WOULDN'T WE BE ESSENTIALLY  
ACTING IN A LEGISLATIVE CAPACITY  
IF WE TOOK IT UPON OURSELVES  
ABOUT WHAT WOULD BE THE BEST WAY  
TO -- OF IT DIDN'T MEET THAT.

THE CONTRACT AND ATTACHMENTS  
THAT WERE PRESENTED TO THE  
CONSUMER AND ASK DOES THIS  
LANGUAGE DO THE TRICK?

>> I THINK SO.

WE ARE LOOKING AT WHAT THEY DO  
SAY.

MIGHT HAVE BEEN BETTER, MIGHT  
HAVE BEEN WORSE.

LOOK AT THE OVERWHELMING  
UNANIMOUS CASES TO ADDRESS THIS,  
THEY ARE LOOKING AT THIS

LANGUAGE, CONTRACTS THE DON'T  
HAVE A HYPER LINK THE WAY WE DO  
AND THEY SAY WE HAVE THREE  
DISTRICT COURTS OF FLORIDA  
INCLUDING THE FOURTH DISTRICT IN  
ITS LATEST DECISION, EVERY  
ELEVENTH CIRCUIT DECISION TO  
LOOK AT THE ISSUE, SAME LANGUAGE  
INCLUDING THE RECENT OVERDRAFT  
DECISION WHICH CAME OUT IN A  
SUPPLY, THE OTHER FEDERAL  
DECISIONS, OTHER STATE COURT  
DECISIONS THAT INVOLVE LINKAGES,  
NOT A HYPERLINK TO THE RULES BUT  
IDENTIFY THEM.

THAT IS ENOUGH, THEY ARE CLEAR  
AND IN CONTRAST WE'VE BEEN GIVEN  
CASES BY OPPOSITION THE DON'T  
HAVE HYPERLINKS AND HIS LANGUAGE  
CAN ONLY ENFORCE OUR POSITION  
BECAUSE IT IS SO CLEARLY  
INADEQUATE.

LIKE THE BURLINGTON CASE FROM  
TEXAS THEY CITE WERE AFFORDED TO  
THE ARBITRATOR IS WITHHELD,  
QUOTE, INCLUDING THE QUESTION OF  
ARBITRABILITY AND I WENT THROUGH  
EVERY OTHER CASE OF A CITED.  
THEY CONTRAST SO DRAMATICALLY  
FROM THIS LANGUAGE COULD THE  
CASE IS SUPPORTED.

THERE WERE 5 RATIONALES THE  
DISTRICT COURT GAVE.

THEY SAY UNLESS YOU THROW IT IN  
IT IS NO GOOD.

EVERY CASE HAS REJECTED THAT.  
THEY LINK.

THE AAA RULES ARE NOT ATTACHED  
TO.

THEY LINK.

IN TERMS OF SERVICE, SIMPLY  
REFERENCED THE QUESTION OF  
ARBITRABILITY.

OF THE COURT IS GOING TO ADOPT  
THAT POSITION THAT IS AS RADICAL  
AS YOU CAN GET.

THAT THE PARTS FROM EVERY CASE  
EVER DECIDED.

LET ME TALK ABOUT THE TWO  
RATIONALES THAT ARE DIFFERENT,  
BOTH OF BEEN REJECTED BY EVERY  
COURT BUT ONE.

AND THEY DON'T PRECLUDE A  
CONCLUSION THIS LANGUAGE IS

CLEAR AND UNAMBIGUOUS, ONE, THAT THE TERMS OF SERVICE THEMSELVES REFERENCE THE AAA RULES HOW THE ARBITRATION IS TO BE ADMINISTERED IN THE ARGUMENT SAYS THAT ONLY KICKS IN IF YOU DECIDE THE ARBITRATOR WILL DECIDE ARBITRABILITY AND THESE RULES DETERMINE HOW HE ADMINISTERS IT.

WE SAY AND THE CASES SAY THAT'S NOT A REASONABLE INTERPRETATION. IF THAT WERE A REASONABLE INTERPRETATION, THEN WHEN A COURT DECIDES JURISDICTION OR VENUE OR NON-CONVENIENT IT IS NOT ADMINISTERING THE LAWSUIT BECAUSE IT IS A PULMONARY QUESTION THAT MAY KICK IT TO ANOTHER TRIBUNAL LIKE THIS ONE. OF COURSE THAT IS ADMINISTRATION OF THE LAWSUIT AND OF THE ARBITRATION.

IT IS EVERYTHING AN ARBITRATOR DECIDES.

THE WORD ADMINISTERED AS ALL THE CASES SAY COVERS EVERYTHING INCLUDING ARBITRATORS RESOLUTION OF THE ISSUE OF ARBITRABILITY.

THE LAST POINT THE DISTRICT COURT MADE IS THAT THE ARBITRATION RULE SAYS THE ARBITRATOR SAYS THE POWER, THE SUGGESTION WE GET FROM OUR OPPONENTS IS IT DOESN'T SAY THE COURT DOES NOT HAVE CONCURRENT POWER.

EVERY CASE DISAGREED WITH THAT AND THAT IS THAT IT SAYS THE POWER.

THE ARBITRATOR IS GIVEN THE POWER.

THERE IS A CASE ON POINT THAT SUGGESTED OUT OF THE SIXTH CIRCUIT, HOW DO YOU ADMINISTER A REGIME IN WHICH BOTH THE COURT HAS THE POWER.

HOW DO YOU DO IT THE PLAINTIFF RUNS TO COURT AND SAYS YOU HAVE THE POWER, THE OTHER PART WHO RUNS TO COURT AND SAYS YOU HAVE THE POWER, A RACE TO THE COURTHOUSE.

THAT IS WHAT THE 6 CIRCUIT COURT

SAID.  
YOU CAN'T ADMINISTER SOMETHING  
LIKE THIS.  
WHOEVER RUNS TO COURT FIRST IS  
GOING TO WIN.  
IT HAS TO MEAN WHAT IT SAYS.  
THE POWER.  
THAT IS WHAT CASES SAY.  
WE'VE NOT HEARD A RESPONSE TO  
THAT PARTICULAR ARGUMENT.  
>> ONE THING IN THE BLANTON CASE  
IS THE PARTIES CONTRACT IN THE  
SHADOW OF THE LAW.  
THIS CONTRACT WAS ENTERED INTO  
IN 2016.  
THE PRINCIPLE OF HIS LANGUAGE  
WAS PRETTY WELL-ESTABLISHED.  
AT WHAT POINT DOES IT CEASE TO  
BE SOMETHING WE LOOK AT IN THE  
ABSTRACT AS IF WRITING A CLEAN  
SLATE VERSUS THIS IS SOMETHING,  
OUR PARTIES EXPECTED TO  
UNDERSTAND THESE COURTS HAVE  
SAID FOR YEARS THIS IS DEEMED  
CLEAR AND UNMISTAKABLE LANGUAGE?  
WAS THE JUDGE RIGHT THAT THAT IS  
PART OF HOW WE ARE LOOKING AT  
THIS?  
>> MY OPPONENT WOULD SAY THE  
PARTIES ARE NOT REQUIRED TO READ  
CASE LAW.  
I WOULD NEVER SUGGEST THAT AND I  
WOULD AGREE ON THAT BUT THEY ARE  
REQUIRED TO READ THE LANGUAGE,  
THE UNANIMOUS BODY OF CASE LAW  
TELLS YOU THIS COURT WILL MAKE  
ITS OWN DECISION.  
I WOULD NEVER SUGGEST IT WOULD  
REPRESENT -- RUBBERSTAMP OTHER  
CASES BUT WHAT I'M SUGGESTING IS  
THIS OVERWHELMING WEIGHT OF  
AUTHORITY WHICH IS ESTABLISHED  
THIS AS THE CLEAR WAY TO THE LAW  
IN THIS AREA INFORMS THE  
QUESTION OF WHETHER THIS  
LANGUAGE IS CLEAR AND  
UNAMBIGUOUS, IT IS PART OF THE  
LEXICON.  
IT IS AN ACCEPTED RUBRIC UNDER  
WHICH TO CONCLUDE THE LANGUAGE  
IS CLEAR AND AN AMBIGUOUS.  
INDEPENDENT OF THOSE CASES, IT  
IS.  
YOU CAN'T DUMP THE AAA RULES

INTO THE WEBSITE EVEN WITH A  
PIECE OF PAPER YOU WOULD HAVE IT  
AS AN ATTACHMENT.

YOU CAN'T DUMP ALL THE AAA RULES  
INTO THE TERMS OF SERVICE, PAGE  
AFTER PAGE AFTER PAGE, EVEN  
THERE, IF ON PAPER, IT WOULD BE  
AN ATTACHMENT.

LET ME GO BACK TO THE  
RATIONALES.

WE'VE GOTTEN ONE MORE ARGUMENT  
THAT OUR OPPONENTS MADE, AND  
THAT IS THAT THE RULES SHOULD BE  
SOMEHOW DIFFERENT IF THE PEOPLE  
EXECUTING THE CONTRACT AREN'T,  
QUOTE, PARTICIPATED.

WE SAY FIRST, YOU INTRODUCE NO  
EVIDENCE YOU ARE NOT  
SOPHISTICATED.

YOU MAY BE SOPHISTICATED PEOPLE  
WHO WANT TO RENT AND AIRBNB,  
THEY SAID THAT IS YOUR BURDEN,  
RONCO.

IT IS OUR BURDEN TO SHOW THAT IS  
A VALID ARBITRATION PROVISION  
WHICH WAS NEVER DENIED.

THIS IS IN THE STANDARD OF  
REVIEW.

IT IS THEIR BURDEN TO SHOW THE  
ISSUE IS NOT ARBITRABLE BECAUSE  
OF SOPHISTICATION OR ANY OTHER  
REASON.

THERE IS NO RECORD ON THAT  
POINT.

THAT IS THE END OF IT.

SECOND.

ON THE MERITS.

THE CASES ARE OVERWHELMING THAT  
THE SOPHISTICATION OF THE  
PARTIES IS NOT A FACTOR.

IF YOU ARE APPLYING AN OBJECTIVE  
TEST, IS THIS AMBIGUOUS OR NOT,  
HOW ARE YOU GOING TO FACTOR IN A  
SUBJECTIVE CONSIDERATION OF  
SOPHISTICATION OF THE PARTIES?

WHERE DOES THAT WORK IN?

HOW DOES IT FIT IN?

THE ANSWER IS IT DOESN'T.

SOPHISTICATION OF PARTIES IS NOT  
RELEVANT TO THE QUESTION OF  
WHETHER CONTRACTUAL LANGUAGE IS  
CLEAR AND UNAMBIGUOUS.

EVERYBODY IS SUPPOSED TO BE ABLE  
TO READ IT IF IT IS CLEAR AND

UNAMBIGUOUS AND ONCE AGAIN THE  
OVERWHELMING MAJORITY OF CASES  
SAY THAT.

THIS NEW CASE INVOLVED  
UNSOPHISTICATED PARTIES WHO HAD  
BANK ACCOUNTS AND THE ELEVENTH  
CIRCUIT SAID WE SAID OVER AND  
OVER THAT SOPHISTICATION IS NOT  
A FACTOR.

WE CITED A PLETHORA OF  
DECISIONS.

LAST POINT.

EVEN IF THE COURT DECIDES THAT  
THIS IS A QUESTION FOR THE COURT  
AND NOT THE ARBITRATOR.

THIS IS CLEAR AND UNAMBIGUOUS.  
THIS COURT CAN DECIDE FOR ITSELF

I DON'T WANT YOU TO, I DON'T  
THINK THAT IS THE RIGHT WAY TO  
GO HERE, IT IS NOT WHAT I PREFER  
BUT IF YOU LOOK AT THIS, IF YOU  
LOOK AT THIS LANGUAGE AS AGAINST  
THE ALLEGATIONS MADE BY THEIR  
COMPLAINT IT IS CERTAINLY  
RELATED TO AND ARISES OUT OF THE  
ARBITRATION AGREEMENT WITH  
AIRBNB.

YOU DON'T EVEN HAVE THESE CLAIMS  
UNLESS YOU SIGN AN AGREEMENT.

YOU ARE RELYING ON TERMS OF  
SERVICE WHICH ARE PART OF THAT  
AGREEMENT, A WHOLE ROW OF CASES  
ON THAT AND I RESPECTFULLY  
SUBMIT THE BRIEFS ON THAT.

I DON'T THINK THAT IS WHERE THE  
COURT RESPECTFULLY SHOULD COME  
OUT.

THIS LANGUAGE IS CLEAR AND  
UNAMBIGUOUS AS A MATTER OF LAW  
AND THE COURT MAKING ITS OWN  
DECISION TO JOIN THE  
OVERWHELMING MAJORITY OF OTHER  
COURTS, FINDING IT TO THE SAME  
EFFECT.

>> COUNSEL?

>> MAY IT PLEASE THE COURT,  
THOMAS SEIDER FOR BRANNOCK  
HUMPHRIES & BERMAN.

ARBITRATION IS SUPPOSED TO BE A  
MATTER OF CONSENT.

THE QUESTION IS WHETHER THEY  
CONSENTED TO HAVE THEIR CLAIMS  
SINCE TO AN ARBITRATOR, MORE  
SPECIFICALLY WHETHER THEY AGREED

TO DELEGATE THE QUESTION OF  
ARBITRABILITY TO AN ARBITRATOR  
AND AWAY FROM THE TRIAL COURT.  
THERE IS NO CLEAR AND  
UNMISTAKABLE EVIDENCE TO THAT  
EFFECT AND THAT IS THE STANDARD.  
THE SUPREME COURT HELD THE  
QUESTION OF ARBITRABILITY IS  
ARCANE AND DIFFICULT TO  
UNDERSTAND AND AS A RESULT THE  
LAW CREATES PRESUMPTION AND THE  
PRESUMPTION IS THAT A TRIAL  
COURT WILL MAKE THIS DECISION IN  
PLACE OF AN ARBITRATOR.

>> LET'S LOOK AT WHAT IS IN THE  
CONTRACT FIRST.

THAT IS DETERMINED AS MATTER OF  
FLORIDA LAW.

>> FLORIDA OR FEDERAL LAW THE  
EXPRESSLY WAS OF THE CONTRACT.

>> WHAT IS WITHIN THE CONTRACT  
OF ITSELF IS A MATTER FAR ALONG.  
WHEN WE REFERENCE THE RULES, IS  
IT INCLUDED AS PART OF THE  
CONTRACT UNDER FLORIDA LAW.

>> IT IS FOR THE PURPOSES  
SPECIFIED.

>> IS IT PART OF THE CONTRACT?

>> HE IS, SO LONG AS THERE'S A  
CLAIM BEING SENT TO ARBITRATION.

>> IT IS PART OF THE CONTRACT.

YOUR POSITION IS NOT THAT BUT  
AAA RULES ARE NOT PART OF THE  
CONTRACT.

YOUR ARGUMENT AS I UNDERSTAND IT  
IS EVEN THOUGH IT IS PART OF THE  
CONTRACT IT DOESN'T SUFFICE  
UNDER FEDERAL ARBITRATION ACT  
LAW.

TO BE CLEAR AND UNMISTAKABLE  
UNDER FIRST OPTIONS.

>> I WAS TRYING TO MAKE A  
SPECIFIC POINT THAT  
INCORPORATION IS NOT AN ALL OR  
NOTHING PROPOSITION.

THERE ARE CIRCUMSTANCES UNDER  
WHICH YOU CAN INCORPORATE A  
COLLATERAL DOCUMENT IF A CERTAIN  
SET ARISES.

WHAT THE CONTRACT SAYS IS THE  
PARTIES AGREE THEY WILL  
ARBITRATE ANY CLAIMS IN THE  
SCOPE OF THE AGREEMENT.  
THEY AGREE TO ARBITRATE

ARBITRABLE CLAIMS AND WHAT IT SAYS IS AAA RULES WILL APPLY TO ANY ARBITRATION.

>> SOMETHING THAT IS PART OF THE CONTRACT OR NOT YOU MAY HAVE CONDITIONS PRECEDED TO THE OPERATIVE TERMS OF THE CONTRACT.

>> THAT'S A BETTER WAY TO PUT IT.

CONDITIONS PROCEED TO AAA RULES COMING INTO PLAY SO WHEN YOU SYNTHESIZE THOSE PROVISIONS WHAT YOU GET IS PARTIES AGREE THE AAA RULES WILL APPLY TO ARBITRABLE CLAIMS BUT THERE IS NO DEFINITIVE ANSWER OR ANY ANSWER AT ALL PROVIDED THE AGREEMENT AS TO WHO IS GOING TO MAKE THAT INITIAL DECISION OF ARBITRABILITY.

>> THE TERMS INCLUDE AAA RULES, DOES IT END THERE?

IT IS INCORPORATED BY REFERENCE AND PART OF THE CONTRACT AND YOU LOOK AT THE LANGUAGE AND THE LANGUAGE SEEMS TO BE CLEAR AND UNMISTAKABLE AND ARBITRATOR IS GOING TO DECIDE ARBITRABILITY, WHY IS THAT NOT CLEAR OR UNMISTAKABLE UNDER FEDERAL LAW?

>> TWO ANSWERS TO THAT, THEY NEED TO LOOK AT THOSE RULES AND THE RULES ARE NOT GOING TO APPLY IN THE EVENT CLAIMS ARE SENT TO ARBITRATION.

>> FOR THEM TO BE OPERABLE AS A MATTER OF LAW.

>> THEY NEED TO UNDERSTAND WHY RULES ARE BEING INCORPORATED AND FOR WHAT PURPOSE.

YOU ONLY NEED TO LOOK AT THE RULES TO FIND THE PROCEDURAL, FOR FUTURE ARBITRATION.

>> LOOKING AT A REAL ESTATE CONTRACT AND IT INCORPORATES OTHER DOCUMENTS AS A MATTER OF LAW, IF THE PERSON EXECUTING THE REAL ESTATE CONTRACT, IF THEY DON'T LOOK AT THEM THEY ARE NOT BINDING CONTRACT.

>>

>> IF IT NEVER IS SATISFIED.

THEY DON'T NEED TO READ IT OR THEY ONLY HAVE TO READ THE

DOCUMENT FOR THE PURPOSE SPECIFIED, IF THEY WANT TO KNOW HOW ARBITRATION WILL PROCEED OR WHAT THE FILING FEE IS GOING TO BE BUT WHAT THEY DON'T NEED TO KNOW IS THE THRESHOLD QUESTION OF ARBITRABILITY WILL BE ANSWERED BY THOSE PROCEDURE RULE RULES.

>> WHERE DOES IT SAY THIS?

WHERE IN THE CONTRACT DOES IT TAKE CLICK THIS LINK IF YOU'RE CONCERNED HOW YOUR CLAIM WILL BE ARBITRATED?

THIS IS A GREAT ARGUMENT IF WE IMAGINE INTO THE RECORD AND THE CONTRACT THESE LIMITING PRINCIPLES.

THE TROUBLE WITH THE ARGUMENT IS NONE OF THIS IS IN THE CONTRACT AND IF YOU CLICK ON THE LINK THE QUESTION OF ARBITRABILITY WILL BE DECIDED BY THE ARBITRATOR.

>> IF SOMEBODY GETS TO RULE 7 A THEY WILL SEE AN ARBITRATOR HAS THE ABILITY TO DECIDE QUESTIONS OF JURISDICTION INCLUDING ARBITRABILITY.

I TO FOCUS, ARBITRATOR SHALL HAVE THE POWER TO DECIDE ARBITRABILITY, THAT IS KNOWN AS CONFIDENCE LANGUAGE AND WHAT THEY SAY HAS A POSITIVE DIMENSION BUT NOT A NEGATIVE ONE MEANING IT GIVES THE POWER TO AN ARBITRATOR TO MAKE THIS DECISION BUT IT IS NOT SUPPOSED TO DISPLACE THE TRIAL COURTS AUTHORITY TO MAKE THE DECISION AND THAT IS DOUBLY SO WHERE THERE IS THIS PRESUMPTION, TO MAKE THE DECISION.

>> I USING A TRIAL COURT INTERPRETING THAT PROVISION COULD CORRECTLY DECIDE NOTWITHSTANDING THE LANGUAGE THAT THE TRIAL COURT HAS THE POWER TO DETERMINE ARBITRABILITY?

LET'S SAY YOU ARE RIGHT AND THIS DOESN'T IMMEDIATELY FORECLOSE THE QUESTION, THE QUESTION COMES BEFORE TRIAL COURT OF GENERAL JURISDICTION AND THE ONLY

LANGUAGE IN THE RECORD IS THE  
POWER SHALL BE VESTED OR THE  
ARBITRATOR SHALL HAVE THE POWER.  
CONSISTENT WITH GENERAL CONTRACT  
INTERPRETATION A TRIAL COURT  
COULD WITHOUT COMMITTING ERROR  
SAY IT HAS POWER TO DETERMINE  
ARBITRABILITY.

HUM A FEW BARS OF THAT.

TELL ME HOW YOU GET THERE.

>> SHALL HAVE THE POWER HAS BEEN  
INTERPRETED IN A NUMBER OF  
CONTEXTS.

THE CONSTITUTION SAYS CONGRESS  
SHALL HAVE THE POWER TO LEVY  
TAXES THE COURTS HAVE HELD OTHER  
GOVERNMENTAL ENTITIES DON'T HAVE  
THE POWER.

A BETTER ANALOG IS STATUTES SAY  
FEDERAL COURTS SHALL HAVE  
JURISDICTION OVER CERTAIN  
MATTERS AND WHAT THE UNITED  
STATES SUPREME COURT HELD, THAT  
DOES NOT REVEAL THE JURISDICTION  
OVER THE SAME MATTERS SO SHALL  
HAVE THE POWER IS A PHRASE THAT  
HAS MEANING IN CASE LAW AND THE  
MEANING IS WHAT WE ARGUED HERE,  
IT IS PERMISSIVE BUT NOT  
MANDATORY.

IF -- IF AIRBNB MADE THIS  
MANDATORY THEY WOULD HAVE REALLY  
ARBITRATOR WILL DECIDE QUESTIONS  
OF ARBITRABILITY.

SHALL HAVE THE POWER HAS A  
SPECIFIC MEANING AND WHAT WE  
KNOW FROM A SCHOLARSHIP  
SURROUNDING THIS IS THE REASON  
THIS LANGUAGE WAS CREATED IS  
PRECISELY SO, AND ARBITRATOR  
COULD HAVE NONEXCLUSIVE ABILITY  
TO DECIDE QUESTIONS OF  
ARBITRABILITY.

>> TO SIMPLIFY THIS A LITTLE  
BIT, UNDER FIRST OPTIONS, WE ARE  
TRYING TO DETERMINE WHAT THE  
PARTIES AGREE TO WHICH IS WHAT  
YOU DO IN EVERY CONTRACT CASE.  
IS THAT CORRECT?

>> WITH THE ADDED CAVEAT IT IS  
NOT JUST A MATTER OF WHETHER THE  
PARTIES AGREE TO SOMETHING OR  
THIS SPECIFIC --

>> CLEAR AND UNMISTAKABLE

EVIDENCE WHAT THEY AGREED TO WITH THE SPECIFIC ISSUE BUT IN TERMS OF BASIC CONTRACT ARBITRATION, YOU APPLY BASIC RULES AND LOOK AT THE WHOLE AGREEMENT AND IT SEEMS THE ARGUMENT IS IN TWO SECTIONS. DOES THE LANGUAGE IN THE RULES COUNT?

>> YES, SIR.

>> THE FIRST PART OF THE ARGUMENT SEEMS TO FOCUS ON AN ARGUMENT THEY DON'T COUNT. THE RULES COUNT DETERMINE WHAT THEY AGREED TO.

>> AND

>> THE LANGUAGE IN THE RULES IS THAT CLEAR AND UNMISTAKABLE EVIDENCE.

YOU GO BACK TO THE PRINCIPLE THAT YOU LOOK AT THE WHOLE AGREEMENT.

YOU GO BACK TO THE FIRST PART OF THE PAGE, THE FIRST PART OF THE CONTRACT AND IT SAYS ALL DISPUTES WILL BE ARBITRATED.

IF THERE WAS ANY QUESTION, NOT CONCEDING THAT THERE IS, LOOKING AT THE RULES THEMSELVES ARE LOOKING AT WHAT IS ARBITRATED, WHY NOT LOOK AT THE OTHER AND SAY ANY REASONABLE PERSON READING THIS IT IS CLEAR AND UNMISTAKABLE THEY AGREED TO ARBITRATE AND THESE RULES SAY THIS AND IT SEEMS STRAIGHTFORWARD.

>> WE DO DISAGREE THAT THE IT SELF IS CLEAR AND UNMISTAKABLE AND IT IS PERMISSIVE AND NOT MANDATORY BUT THERE IS ALSO A PROBLEM OF THE UNMISTAKABLE STANDARD IS NOT SUPPOSED TO REQUIRE THE INFERENTIAL LEAPS. YOU ARE TALKING CROSS-REFERENCE RULES, TRACKING DOWN THE RULE ON JURISDICTION TO FIGURE OUT A CONCEPT THE SUPREME COURT HAS RECOGNIZED AS ARCANE AND DIFFICULT TO UNDERSTAND AND THE THRUST OF FIRST OPTIONS TO OVERLOOK THIS CONCEPT AND PEOPLE DON'T KNOW WHAT ARBITRABILITY IS IN THE FIRST PLACE.

I DIDN'T KNOW WHAT IT WAS BEFORE THIS CASE.

>> ARBITRATION OF CONSENT. THE PARTY HAS TO WAIVE THEIR RIGHT TO JURY TRIAL AND CONSENT TO ARBITRATION, THE DECISION THE PARTY MAKES AND WHAT I AM HEARING HERE TODAY IS THE AGREEMENT, THEY CAN ATTACH AS MANY ATTACHMENTS AS THEY WANT TO ONLINE.

THEY COULD HAVE 100,000 PAGES AND IN THE FOOTNOTE THEY COULD SAY THE ARBITRATOR WILL GET TO DECIDE IF THIS GOES TO ARBITRATION OR NOT AND THAT IS OKAY AS LONG AS IT IS PART OF THE PACKAGE.

THAT IS OKAY AND THAT IS PRETTY MUCH THE LAW IF WE GO IN THAT ROUTE, THE LAW OF THE LAND ON EVERYTHING, ONLINE, ATTACH WHAT YOU WANT TO IT.

IT ALL COUNTS.

IS THAT WHAT WE ARE DOING?

>> THAT IS WHAT A B&B DOES.

AS LONG AS YOU PUT IT SOMEWHERE IN THE AGREEMENT NO MATTER HOW BURIED IT IS OR HOW FAR AWAY IT MIGHT BE FROM THE ARBITRATION PROVISION.

>> PART OF OUR OBLIGATION IN THESE CASES, ARBITRATION IS A QUESTION OF CONSENT, BEFORE SOMEBODY WAVES IT THE WE MAKE A DECISION WHETHER THE LANGUAGE WAS CLEAR AND UNAMBIGUOUS SO THE PERSON KNEW WHAT HE OR SHE WAS WAVING?

>> CORRECT.

THE DECISION FOR THIS COURT, LOOKING AT THIS CONTRACT HERE, JUST BECAUSE EVEN IF THIS COURT WERE TO FIND THE WOOL IS ON A US THE PLACEMENT IS SIGNIFICANT.

>> FIRST OPTIONS DOESN'T HAVE A CONSPICUOUS ROOF -- REQUIREMENT. THIS PART OF THE AGREEMENT, ON THE FRONT PAGE OR ANYTHING LIKE THAT, IT IS SIMPLY WHETHER YOU LOOK AT THE WHOLE AGREEMENT IT IS CLEAR AND UNMISTAKABLE, THAT'S WHAT THE CONTRACT SAYS.

>> FIRST OPTIONS DOESN'T SAY ONE

WAY OR ANOTHER THAT THE LANGUAGE  
NEEDS TO BE CONSPICUOUS.  
THEY WERE NOT EVEN INTERPRETING  
CONTRACTUAL LANGUAGE.  
THERE'S THE QUESTION OF INTENT.  
ARBITRATION PROCEEDING.  
NOTHING IN FIRST OPTIONS SAYS  
HOW LANGUAGE NEEDS TO BE  
PORTRAYED IN AGREEMENT.  
WE ARGUE CLEAR AND UNMISTAKABLE  
MEANS EXPRESS AND EXPLICIT,  
NOTHING EXPRESSED LOOK EXPLICIT  
ABOUT LEAVING THIS LANGUAGE OUT  
OF THE ARBITRATION PROVISION AND  
BURYING IT IN THIS RULE.  
>> I DON'T SEE MUCH EVIDENCE  
WITH WHAT JOEL PERWIN SAID THAT  
ANYTHING IS BURIED IN THIS  
CONTRACT IF YOU DON'T QUARREL  
WITH CLEAR STATEMENTS ABOUT HOW  
IT AFFECTS PEOPLE'S RIGHTS.  
THAT IS IN THE CONTRACT, HOW  
AIRBNB ENCOURAGES THE PARTY AT  
THE OUTSET, TO READ EVERYTHING  
AND ADVISES PARTIES THAT THERE  
ARE THINGS TO PAY ATTENTION TO.  
>> IT DOES DIRECT PARTIES TO  
READ THESE CAREFULLY.  
THE SET OF RULES, THEY CAN BE  
READ AND WHAT JOEL PERWIN IS  
ASKING YOU TO ASSUME A SOMEBODY  
IN THEIR POSITION, TO READ 22  
PAGES OF TERMS AND CONDITIONS  
AND PULL OUT -  
>> ISN'T IT JUST THAT IT IS  
THERE, HIS ARGUMENT IS IN THE  
CONTRACT, NOT WHAT ANYONE WILL  
READ OR NOT BUT WHAT IS IN THE  
AGREEMENT.  
>> WE CAN ASSUME THEY ARE GOING  
TO READ BUT OVER THE COURSE OF  
READING 60 ODD PAGES, WILL BE  
CLEAR AND UNMISTAKABLE TO THE  
PARTIES READING, DELEGATING  
ARBITRABILITY.  
>> IT IS IN THE RULES, IT IS NOT  
IN THE FOOTNOTE.  
IT IS THERE.  
>> IT IS RULE 7 A, FAIR DISTANCE  
FROM THE ARBITRATION PROVISION  
ITSELF AND WE WOULD ARGUE A  
REASONABLE POSSIBILITY SOMEBODY  
READING THOSE RULES WOULD SAY  
WITH REGARDS TO ARBITRATION.

SOMETHING THAT WOULD AFFECT THE FRONT END QUESTION, THIS IS JUST AN ISSUE THAT WILL COME INTO PLAY ONCE WE ARE THERE.

>> NOT EVEN IN A BIZARRE PLACE, WHAT THE ARBITRATOR CAN RULE ON, AND WHETHER SOMETHING IS ARBITRABLE OR NOT.

THOSE THINGS FOLLOW WITH ONE ANOTHER.

>> THE QUESTION IS TWOFOLD, WHETHER SOMEBODY READING THAT UNDERSTANDS IF THIS WILL APPLY ON THE FRONT END OR ONCE THEY ARE IN FRONT OF AN ARBITRATOR IN CALIFORNIA OR WHEREVER IT MAY BE AND SHALL HAVE THE POWER AS CONFIRMING MANDATORY EXCLUSIVE POWER ON THE ARBITRATOR TO MAKE THOSE DECISIONS, CASES WE CITED IN THE BRIEF THAT THEY SHALL HAVE THE POWER MEANS SOMETHING ELSE.

WHAT WE HAVE HERE IS A REASONABLE INTERPRETATION OF THE LANGUAGE SUPPORTED BY CASE LAW, SHALL HAVE THE POWER MEANS NONEXCLUSIVE RIGHT TO MAKE A DECISION LIKE FEDERAL COURTS SHALL HAVE THE POWER TO RULE IN THEIR JURISDICTION IT DOES NOT MEAN TRIAL COURT STATE COURTS DON'T HAVE THE POWER.

ONCE YOU GET TO A REASONABLE INTERPRETATION MAKES THE LANGUAGE AMBIGUOUS AND THE FIRST OPTIONS AS AMBIGUOUS LANGUAGE WHICH IS TO SAY LANGUAGE FOR REASONABLE INTERPRETATION, AS A MATTER OF LAW, THE POWER TO DECIDE ARBITRABILITY.

THAT'S THE POINT OF FIRST OPTIONS THAT WE HAVE THIS PRESUMPTION AND ONLY GOING TO READ THIS EXPRESS DELEGATION FOR A CONTRACT IF THERE IS NO WAY SOMEBODY READING COULD REACH THAT CONCLUSION OR SOMETHING ELSE.

AT THE END OF THE DAY WHAT THIS BOILS DOWN TO IS NOT CLEAR AND UNMISTAKABLE AND ALSO WHAT WE TALK ABOUT TODAY, MANDATORY VERSUS PERMISSIVE AND

ADMINISTRATION AS A  
JURISDICTIONAL CONCEPT THESE ARE  
THINGS THAT WILL BE CLEAR OR  
UNMISTAKABLE TO MOST PEOPLE  
ENTERING THESE CONTRACTS.  
CLEAR AND UNMISTAKABLE MEANS  
EXPLICIT AND EXPRESS, BUT AS  
JUSTICES MENTIONED IT IS NOT A  
HARD PROBLEM TO FIX.  
IT REQUIRES A SINGLE SENTENCE,  
THERE IS AN ARBITRATION  
PROVISION IN TERMS OF SERVICE  
AND ALL WE NEED IS A SENTENCE  
THE SAYS NOT A TRIAL COURT WILL  
DECIDE QUESTIONS OF  
ARBITRABILITY AND ONCE THE  
SENTENCE IS THERE, AIRBNB'S  
PROBLEMS ARE SOLVED.  
IT'S NOT A DIFFICULT FIX AND IT  
IS SOMETHING THAT WOULD EXPLAIN  
THE CONCEPT OF ARBITRABILITY TO  
SOMEBODY READING, AND THE CLEAR  
AND UNMISTAKABLE STANDARD.

>>

>> THERE WERE EARLY DECISIONS.  
AND THEY REACHED - THERE IS A  
TERMINAL ESCAPE VELOCITY.  
THERE IS NOT ANY ANALYSIS IN  
MOST OF THE CASES.  
NO ONE DISCUSSES AT ALL HOW THIS  
LANGUAGE CAN BE CLEAR AND  
UNMISTAKABLE.  
AND SO THIS LANGUAGE IS  
NOT CLEAR AND UNMISTAKABLE.  
THE RULE ITSELF DOES NOT GIVE  
EXCLUSIVE POWER TO AN ARBITRATOR  
TO MAKE THIS DECISION.  
AIR B&B'S MAY NOT COMMIT HIS THE  
COURT SHOULD FOLLOW THE FEDERAL  
CIRCUIT.  
THE CONTRACT AND CLEAR AND  
UNMISTAKABLE STANDARD THAT THEY  
CONTROL.

>> IS IN THE CONTEXT YOU ARE  
READING FROM THE CONSUMER AND IT  
IS OBVIOUS THE WHOLE POINT IS IT  
COMES OUT OF THE COURT AND INTO  
ARBITRATION.

IF I READ THE AGREEMENT AS  
JUSTICE LAWSON WAS SAYING, THAT  
QUESTIONS WHETHER SOMETHING IS  
ARBITRATED OR PART OF THAT, THAT  
IN THE ABSTRACT BY SAYING THAT  
DOESN'T MEAN SOMEONE ELSE

DOESN'T ALSO HAVE THE POWER.  
IN THE CONTEXT IT MIGHT BE TRUE  
BUT IF THE CONTEXT IS EITHER OR  
CONTEXT AND ONE OF THE TWO  
OPTIONS HAS THE POWER, ISN'T IT  
IMPLICITLY SAYING THAT I AM  
INTENDING TO MAKE THAT THE  
EXCLUSIVE JOB OF THE ONE I'M  
GIVING IT TO?

>> ACTUALLY RUNS INTO THE  
PROBLEM THE FIRST OPTION  
DISCUSSES, PARTIES MAY  
UNDERSTAND I AM AGREEING TO ALL  
SORTS OF CLAIMS RELATED TO THIS  
AGREEMENT BUT WHAT THEY ARE NOT  
GOING TO UNDERSTAND IS THERE'S  
THIS THRESHOLD QUESTION OF WHO  
DECIDES ARBITRABILITY.

THE PARTIES DO OVERLOOK SO THAT  
IS WHY THAT NEEDS TO BE SPELLED  
OUT DIFFERENTLY THAN THE REST OF  
THE ARBITRATION TERMS AND THAT  
IS WHAT FIRST OPTIONS IS TRYING  
TO SAY.

DON'T KNOW IF I'M INTO MY TIME.

>> YOU ARE WELL OVER IT.

IF YOU WOULD SUM UP IN 30  
SECONDS.

>> I TO MAKE THE BIG PICTURE  
POINT THAT WHAT WE NEED IS CLEAR  
AND UNMISTAKABLE LANGUAGE.  
WHAT WE HAVE INSTEAD IS  
ARBITRATION PROVISION THAT IS  
SILENT ON QUESTIONS OF  
ARBITRABILITY, THAT GIVE ONLY  
UNDER CERTAIN CIRCUMSTANCES A  
PERMISSIVE AND NON-MANDATORY  
AUTHORITY TO AN ARBITRATOR, THAT  
IS NOT CLEAR, THAT IS NOT  
UNMISTAKABLE SO WE ASK THIS  
COURT TO APPROVE THE DECISION OF  
THE SECOND DISTRICT.

THANK YOU.

>> MAY IT PLEASE THE COURT.

I TO GET THROUGH FIVE POINTS.

EVERY CASE IS DECIDED ON ITS OWN  
FACTS.

WE HAVE A CONTRACT THAT HAD 6  
DIFFERENT REFERENCES AND EACH  
WAS TO 500 PAGES, WE MAY HAVE A  
DIFFERENT CASE, THE COURT MAY  
DECIDE A DIFFERENT WAY.

DOESN'T MEAN THE COURT CAN  
DECIDE THIS WAY BASED ON THESE

FACTS.

JUSTICE PAULSON, THE ISSUE IS DECIDED BY FEDERAL LAW, THOSE ARE ELECTED AT PAY 17 BECAUSE IT IS UNDER THE FEDERAL ARBITRATION ACT.

>> UNDER FIRST OPTIONS IT MAKES CLEAR WHAT IS IN THE CONTRACT WE LOOK TO STATE LAW PRINCIPLES.

>> THAT IS NOT AND UNAMBIGUOUS. I DON'T SEE REFERENCE TO STATE LAW.

THIS CALLS FOR APPLICATION OF CALIFORNIA LAW.

>> WITH A PARTY IS AGREE TO ARBITRATE A CERTAIN MATTER INCLUDING ARBITRABILITY COURTS SHOULD APPLY ORDINARY STATE LAW PRINCIPLES THAT GOVERN FORMATION OF CONTRACTS AND THEN GO ON TO ADDRESS WHETHER OR NOT THE EXTRA CONDITION, WHETHER CLEAR AND MYSTICAL EVIDENCE OR NOT, WHETHER THE ARBITRABILITY SHOULD BE DECIDED BY THE COURT FOR THE ARBITRATOR IS A SEPARATE COMPONENT UNDER FEDERAL ARBITRATION ACT.

>> STATE LAW PRINCIPLES ARE VERY RELEVANT.

THIS IS ALL UNDER THE ADOPTION OF FEDERAL LAW.

NOT GOING TO FIGHT ABOUT IT.

>> MAKE SURE I UNDERSTAND, ARE YOU TELLING ME THIS IS A MATTER OF FEDERAL LAW, NOT FLORIDA LAW WHAT CONSTITUTES THE CONTRACT?

>> AS TO WHAT IS CLEAR AND UNAMBIGUOUS, I POINTED TO FLORIDA CASES BECAUSE WHEN THE CASES FILED IN FLORIDA COURT AND DECIDING AN ISSUE OF FEDERAL LAW IS NOT BOUND BY ANYTHING BUT THE US SUPREME COURT AND LOOK AT THE FEDERAL CASE AS PERSUASIVE, IT IS AN ISSUE OF FEDERAL LAW.

>> CIRCUIT COURT OF APPEAL DECISIONS ALL GO YOUR WAY ARE IMPORTANT.

>> THEY DON'T HAVE TO GO MY WAY. THEY COULD HAVE GONE THE OTHER WAY.

>> THIS IS HELPFUL, THE POINT IS WHEN WE DECIDE WHAT THE CONTRACT

IS HE SAYS THAT'S A MATTER OF  
STATE LAW.

A TEST FOR WHAT IS CLEAR AND  
UNMISTAKABLE YOU SAY IS A MATTER  
OF FEDERAL LAW.

YOU WANT THE ANSWER TO BE THE  
STATE LAW SAYS THE WHOLE THING  
IS THE CONTRACT.

>> DON'T MEAN TO FIGHT ABOUT IT.  
>> DON'T THINK YOU WANT TO FIGHT  
WITH ME ABOUT IT.

>> I DON'T WANT TO FIGHT WITH  
YOU ABOUT ANYTHING.

WE GO BACK A LONG WAY.

THE QUESTION RESPECTFULLY IS  
NOT.

A GIVEN PERSON UNDERSTAND THE  
SUBJECTIVE TEST, IS A CLEAR AND  
UNMISTAKABLE?

THAT IS THE ISSUE.

>> HANG ON FOR A SECOND.

IF WE ARE TALKING ABOUT A  
CONTRACT, WHETHER EXXON OR  
YOU'LL IS GOING TO PUT ON A  
PIPELINE ACROSS THAT AND THE  
CONTRACT IS THIS BIG, THE PEOPLE  
WILL REVIEW THE CONTRACT AND BE  
SOPHISTICATED LAWYERS LOOK AT IT  
WITH A MAGNIFYING GLASS, EVERY  
WORD OF IT, WE ARE TALKING JOHN  
AND JANE SMITH?

THAT IS WHAT WE ARE TALKING  
ABOUT.

>> WE DON'T KNOW IF THESE ARE  
THE MOST SOPHISTICATED PEOPLE ON  
THE FACE OF THE EARTH, THEY MAY  
HAVE RENTED THESE THINGS 100  
TIMES WILL BE COMMERCIAL  
LAWYERS.

THERE IS NO EVIDENCE AND IT WAS  
THEIR BURDEN OF PROOF.

THESE GUYS MAY BE GENIUSES.

WE DON'T KNOW.

IN ANOTHER CASE IF THEY MADE A  
RECORD ON THAT I COULD DEAL WITH  
IT.

I HAVE GIVEN YOU A PLETHORA OF  
CASES THAT SAY SOPHISTICATION IS  
NOT AN ISSUE BECAUSE IT IS AN  
OBJECTIVE TEST.

IS A CLEAR, IS IT UNEQUIVOCAL.

WHAT DO YOU DO WITH THE ISSUE OF  
SOPHISTICATION QUESTION, YOU  
CAN'T, IT DOESN'T FIT, YOU

DECIDED IS CLEAR AND  
UNMISTAKABLE THE OTHER SIDE  
MAKES A RECORD AND THEY DID NOT  
DO SO.

POINT REBOOT I JUST DID THAT.  
POWER, ARBITRATORS HAVE THE  
POWER.

THEY HAVE THE POWER.

I SAID WHAT HAPPENS?

THE COURT IN THE SIXTH CIRCUIT  
SAYS WHAT HAPPENS IF THAT IS  
TRUE, THEY RUN TO THE  
COURTHOUSE.

WHOEVER GETS THERE FIRST IS  
GOING TO WIN.

THERE IS NO WAY TO ADMINISTER  
THAT.

THE ARBITRATOR HAS THE POWER AND  
WE CITED THE CASES ON IDENTICAL  
LANGUAGE THAT IF THE ARBITRATOR  
HAS THE POWER, THAT IS THE  
POWER.

IN THE FEDERAL CASES THERE IS A  
SUPREMACY CLAUSE AND THERE'S  
CONCURRENT JURISDICTION THE  
SUPREMACY CLAUSE SAYS IF THEY  
ARE IN CONFLICT, FEDERAL RULE  
GOVERNS.

IT TELLS YOU WHAT HAPPENS IF  
THERE'S A CONFLICT, HOW TO  
RESOLVE IT.

WE GOT A CONFLICT, SOMEBODY WANT  
TO THE ARBITRATOR OR THE COURT  
WE DON'T KNOW WHAT TO DO AND  
RESPECTFULLY YOU DON'T INTERPRET  
STATUTES OR CONTRACTS TO BE  
ABSURD OR RESPECTFULLY  
UNREASONABLE AND THAT IS WHY ALL  
THESE COURTS HAVE UNANIMOUSLY  
SAID WHEN YOU GIVE ARBITRATORS  
THE POWER AND SAY NOTHING ABOUT  
COURTS THE PROVISION NEVER  
MENTIONS COURTS IT MEANS THEY  
HAVE THE POWER.

THE CASES ARE CLEAR.

THE JUDGES DIDN'T JUST  
REFLEXIVELY FOLLOW SOME LINE OF  
DECISIONS AND SAVE A FEDERAL WE  
WILL SAY IT.

COURTS DON'T DO THAT.

COURT SOMETIMES PROCURE A FIRM  
OR WRITE SHORT OPINIONS.

THERE ARE DECISIONS.

>> IF YOU DON'T SUM UP IN 30

SECONDS.

>> THEY GO THROUGH THIS IN GREAT  
DETAIL AND DECIDE THE QUESTION,  
THERE'S A REASON ALL THESE  
COURTS ARE ON ONE SIDE OF THE  
ISSUE.

NOT THAT THEY MISSED SOMETHING,  
BUT THEY WERE RIGHT.

THEY FORCED THIS PROVISION.

>> THANK YOU BOTH FOR YOUR  
ARGUMENTS IN THIS CASE TODAY.