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**JUST A MATTER OF TIME: THE SECOND CIRCUIT RENDERS  
ANCILLARY STATE LAWS INAPPLICABLE BY AUTHORIZING  
ARBITRATORS TO DECIDE WHETHER A STATUTE OF LIMITATIONS  
CAN BAR ARBITRATION**

Daivy P. E. Dambreville\*

**I. INTRODUCTION**

The U.S. Supreme Court has long adhered to a federal policy favoring arbitration, and has consistently resolved ambiguities within arbitration clauses in favor of arbitration.<sup>1</sup> In applying this principle, courts are guided by the Federal Arbitration Act (FAA)<sup>2</sup> which provides the federal substantive law of arbitrability.<sup>3</sup> The Court has now consistently interpreted the FAA's main purpose as to guarantee that arbitration agreements are enforced according to their terms.<sup>4</sup> Yet, in regards to procedural matters of arbitrability there is a presumption that these matters should be decided by the court, unless otherwise stated in the arbitral agreement.<sup>5</sup> But where parties devise broad reaching arbitration agreements, we have seen the court determine that the arbitrator, not the court, is better equipped to decide arbitrability.<sup>6</sup> Likewise, where a choice-of-law provision introduces ambiguity into the arbitration agreement, the court has determined that the arbitrator, and not the court, shall decide procedural arbitration matters.<sup>7</sup> The court's deference to arbitrators on matters concerning choice-of-law provisions in opposition to arbitration has traditionally been based on ambiguous language found within a given provision.

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<sup>1</sup> See *Volt Info. Scis. v. Bd. of Trs. of Leland Standard Junior Univ.*, 489 U.S. 468, 476 (1989) (“[D]ue regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself resolved in favor of arbitration.”).

<sup>2</sup> Federal Arbitration Act, 9 U.S.C. §§ 1–16 (2006).

<sup>3</sup> See *Bechtel Do Brasil Construções Ltda. v. UEG Araucária Ltda.*, 638 F.3d 150, 154 (2d Cir. 2011); see also *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983) (“We are guided by the ‘federal substantive law of arbitrability’ created by the Federal Arbitration Act.”).

<sup>4</sup> See *Volt*, 489 U.S. at 479 (“The FAA’s primary purpose of ensuring that private agreements to arbitrate are enforced according to their terms.”); see also *CompuCredit Corp. v. Greenwood*, 132 S. Ct. 665 (2012) (“Section 2 of the FAA . . . requires that courts enforce arbitration agreements according to their terms.”); see also *Rent-A-Ctr., W., Inc. v. Jackson*, 130 S. Ct. 2772, 2777 (2010) (explaining that the FAA places arbitration agreements on the same level as other contracts and mandates that courts enforce the agreements in accordance to their terms).

<sup>5</sup> See *First Options v. Kaplan*, 514 U.S. 938, 939 (1995) (noting that if there is “clear and unmistakable” evidence that the parties intended the issue of arbitrability to be decided by the arbitrator then the issue is in the jurisdiction of the arbitrator).

<sup>6</sup> See *Howsam v. Dean Witter Reynolds*, 537 U.S. 79, 84 (2002); see also *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 557 (1964) (“Thus, ‘procedural questions which grow out of the dispute and bear on its final disposition’ are presumptively not for the judge, but for an arbitrator, to decide.”).

<sup>7</sup> See *Mastrobuono v. Shearson Lehman Hutton*, 514 U.S. 52, 62 (1995); see also *Volt*, 489 U.S. at 476 (concluding that in light of the federal policy favoring arbitration, ambiguities relating to the scope of the agreement should be resolved in favor of arbitration).

This suggests that in circumstances where parties' expressly, clearly, and specifically agree to have a particular law govern the arbitration procedure courts shall enforce the agreement, so long as it does not create ambiguity. Yet, courts have failed to provide guidance as to the level of clarity required to enforce an agreement whose provisions are opposition to arbitration.

Part I of this article will focus on the Second Circuit's recent expansion of the FAA, specifically its determination that ancillary state-laws governing procedural arbitration, including issues of timeliness, are preempted by the FAA.<sup>8</sup> By analyzing the Second Circuit's most recent decision in *Bechtel v. UEGA*, we will address the enhanced preemptive power of the FAA and shed light on serious concerns regarding the level of specific language required within the arbitration clause to ensure the enforcement of provisions written in opposition to arbitration.

Part II focuses on the Supreme Court's historical treatment of procedural arbitrability and illustrates its development from *Volt Information Sciences*<sup>9</sup> to *Mastrobuono* and *Howsam*. Ultimately, the Court's opinion in *Howsam*—which held that it is the arbitrator, and not the court, who rules on procedural issues such as whether a claim is time-barred—is shown to lead to a number of unresolved questions for the court. Part III examines the Second Circuit's most recent handling of procedural arbitrability issues, such as time limitations, and the disabling effect that the *Bechtel* holding has had on ancillary state laws of arbitration procedure. By effectively rendering ancillary state laws on arbitration inapplicable, the FAA has essentially become the absolute preemptive procedural law of arbitration within the Second Circuit. Under this theory, parties are virtually unable to contractually assign issues of procedural arbitrability to the courts.

Finally, I conclude that the *Bechtel* court correctly decided the issue and the subsequent effects will be beneficial to process of arbitration. The court's decision will have the effect of providing predictability to future parties of arbitration; it will also accord greater jurisdiction of arbitration issues to arbitrators; and, it will maintain the FAA's intended virtues of efficiency, cost effectiveness, and expeditiousness.

## II. EVOLUTION OF PROCEDURAL ARBITRABILITY

### A. Desperate Times: The Growth and Application of Contract Freedom in Arbitration

Section 2 of the FAA provides legal validity to the arbitral process and justifies agreements to arbitrate as lawful under the parties' freedom of contract rights.<sup>10</sup> In *Volt Information Sciences v. Board of Trustees of Leland Standard Junior University*, the Supreme Court first highlighted and emphasized the importance of contract freedom to the enforcement of

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<sup>8</sup> See *Bechtel*, 638 F.3d at 154.

<sup>9</sup> See *Volt*, 489 U.S. at 468.

<sup>10</sup> 9 U.S.C. § 2 (“A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.”); see also *Dean Witter v. Byrd*, 470 U.S. 213, 221 (1985); see also *Stolt-Nielsen v. AnimalFeeds Int'l Corp*, 130 S. Ct. 1758, 1774–75 (2010).

arbitration contracts.<sup>11</sup> The *Volt* court found that where the parties' contractual intent was *clearly* to have state law govern the arbitration, the state law was capable of invalidating the agreement to arbitrate.<sup>12</sup> The Court reasoned that section 4 of the FAA restricts the power of the courts by mandating them to compel arbitration, but must do so in the manner directed by the parties' agreement.<sup>13</sup> Pursuant to *Volt*, the parties are the masters of their arbitration agreement, and therefore they can decide which state laws will govern the arbitration process. Accordingly, we see the need for judicial oversight and interpretation in determining the parties' contractual intent. The need for judicial inclusion when deciding threshold matters of arbitrability seems to work against the FAA's essential benefits of efficient, expeditious, and inexpensive dispute resolution. Given these drawbacks, the *Volt* doctrine seems to have caustic limitations in practice. Consequently, subsequent cases have added qualifications and at times even contradicted the reasoning and decision in *Volt*.<sup>14</sup>

The Court explained, with greater clarity, the role of contract freedom in arbitration in *First Options of Chicago, Inc. v. Kaplan*.<sup>15</sup> In its decision, the Court declared the express language within the arbitration contract as the true source of final authority on matters of arbitrability.<sup>16</sup> In sum, under *Kaplan*, the court only enforces the rules created and agreed upon by the parties on issues submitted for arbitration, in accordance to the terms of the arbitration agreement.<sup>17</sup> In *Kaplan*, the arbitral contract's choice of law provision only governed issues, whereas in *Volt* the state law seemed to govern all related arbitration disputes. *Kaplan* generally continues to be applied by the Court. And yet, where a doubt as to the scope of the arbitration contract arises, the Court has consistently resolved the issue in favor of arbitration.<sup>18</sup> Again, the required inclusion of the judiciary in deciding the scope of arbitration seems to work in direct opposition of the essential benefits of the FAA.<sup>19</sup>

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<sup>11</sup> See THOMAS E. CARBONNEAU, CASES AND MATERIALS ON ARBITRATION LAW AND PRACTICE 233 (Thomson/West 2007).

<sup>12</sup> See *Volt*, 489 U.S. at 479 ("Where, as here, the parties have agreed to abide by state rules of arbitration, enforcing those rules according to the terms of the agreement is fully consistent with the goals of the FAA, even if the result is that arbitration is stayed where the Act would otherwise permit it to go forward.").

<sup>13</sup> See *id.* at 474–75 ("But § 4 of the FAA does not confer a right to compel arbitration of any dispute at any time; it confers only the right to obtain an order directing that 'arbitration proceed in the manner provided for in [the parties'] agreement.'") (emphasis added).

<sup>14</sup> See, e.g., *Kaplan*, 514 U.S. at 940–49.

<sup>15</sup> See *id.* at 938.

<sup>16</sup> See *id.* at 944 ("Courts should not assume that the parties agreed to arbitrate arbitrability unless there is 'clear and unmistakabl[e]' evidence that they did so.").

<sup>17</sup> See *id.* at 947.

<sup>18</sup> See *Green Tree Fin. Corp. v. Bazzle*, 539 U.S. 444, 452 (2003); see also *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 626–27 (1985) (explaining that we are beyond the time "when judicial suspicion of the desirability of arbitration and of the competence of arbitral tribunals" could restrict arbitration. The court found that it was required to "rigorously enforce" arbitration agreements).

<sup>19</sup> Benefits such as cost effectiveness, efficiency, and less time consuming.

## B. Time for Change: The Mastrobuono Effect on Procedural Arbitration Law

The subject of state law governing arbitrability was revisited and again redefined in the 1995 Supreme Court decision of *Mastrobuono v. Shearson Lehman Hutton*.<sup>20</sup> In *Mastrobuono*, the issue was “whether a choice-of-law provision may preclude an arbitration award of punitive damages that would otherwise be proper.”<sup>21</sup> In other words, the question for the Court was whether the arbitral tribunal could award *Mastrobuono* punitive damages despite the agreed upon governing state law that prohibited arbitrators from awarding punitive damages.<sup>22</sup>

The Court ruled in *Mastrobuono* that the state law could not preclude the arbitral tribunal from awarding punitive damages.<sup>23</sup> The Court reasoned that neither the choice-of-law provision nor the arbitration award expressed an intention to prohibit the award of punitive damages, therefore the state law, at most, only introduced ambiguity into the arbitration agreement.<sup>24</sup> Here, we see the court determine that the act of simply choosing a governing law by party does not express the parties’ intent to have a limiting rule enforced against arbitration.<sup>25</sup> The *Mastrobuono* court further noted that based on the federal policy favoring of arbitration, if an arbitration agreement is ambiguous, the ambiguities must be resolved in support of arbitration.<sup>26</sup> The manipulation and construction of the judicial line of reasoning in this case seems to suggest a motive by the court to compel and enforce arbitration by any available means.

Moreover, despite its affirmation that the purpose of the implementation of the FAA was to enforce arbitration agreements as written,<sup>27</sup> the *Mastrobuono* court again qualifies and, arguably, contradicts the doctrine in *Volt* by providing for a “party intent” evaluation. This evaluation takes into account what the parties would have reasonably intended to happen, as defined by the Court. This aspect of the decision is confusing and although Justice Stevens relied on language from *Volt* to sustain the Court’s interpretation of the FAA, he concludes that the case boils down to what the contract specifically says about punitive damages.<sup>28</sup> In doing so, the court sets the specificity requirement of terms extremely high within the arbitration clause. In addition, the *Mastrobuono* court decides that contractual silence on a specific issue must be resolved in favor of arbitration.<sup>29</sup> Hence, under this doctrine, the parties must be extremely specific as to the agreed upon limitations on arbitration and they must unambiguously state their intentions within the arbitration clause.

In effect, the court suggests that, after *Mastrobuono*, the parties’ choice of state law will be enforced only when it supports the recourse to arbitration *or* when the parties have expressly recognized and agreed that the state law contains a restriction to the right to arbitrate that is applicable to their agreement.<sup>30</sup> This approach to procedural arbitrability seems to almost always

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<sup>20</sup> See *Mastrobuono*, 514 U.S. at 52.

<sup>21</sup> See *id.* at 55.

<sup>22</sup> See *id.*

<sup>23</sup> See *id.* at 65.

<sup>24</sup> See *id.* at 62.

<sup>25</sup> See *id.*

<sup>26</sup> See *id.*; see also *Moses H. Cone*, 460 U.S. at 24.

<sup>27</sup> See CARBONNEAU, *supra* note 11, at 233.

<sup>28</sup> See *Mastrobuono*, 514 U.S. at 58.

<sup>29</sup> See *id.* at 62.

<sup>30</sup> See CARBONNEAU, *supra* note 11, at 233.

inevitably resolve disputes in favor of arbitration. The *Mastrobuono* doctrine sets an unrealistic and unattainable standard for parties seeking procedural limitations on arbitration. Since it is very unlikely that parties could actually and accurately express the potentially infinite limitations to arbitration that they may intend to have enforced. This decision begs the question—how specific is specific enough?

### C. So Little Time: Howsam and the Timeliness Issue

The issue of whether time limitations on arbitration are questions of arbitrability for the court to decide arose in *Howsam v. Dean Witter Reynolds*,<sup>31</sup> a 2002 Supreme Court case. In *Howsam*, the parties' choice of law had a time limitation rule that prohibited the invocation of arbitration on claims brought more than six years from the dispute.<sup>32</sup> The Court granted *certiorari* to the Tenth Circuit decision that held that the time limitation rule raised an issue about the dispute's arbitrability, which should only be resolved by the court and not by the arbitrator.<sup>33</sup>

As expected, the Supreme Court reversed the Tenth Circuit's decision.<sup>34</sup> Justice Breyer delivered the opinion for the Court, affirming that the time limitation rule raised a question of arbitrability, however he disagreed with the assertion that arbitrability questions were only for the court to decide.<sup>35</sup> He explained that the question of arbitrability is for the court to decide where the parties have not clearly provided otherwise.<sup>36</sup> We see here that parties can defer jurisdiction to the arbitrators on matters of arbitrability if they unambiguously state their intent within the arbitration clause.

Yet, the *Howsam* court also determines that in general circumstances (for example, procedural questions growing out of the dispute) where parties would likely expect the arbitrator to decide the matter, presumptively the arbitrator, not the court, would decide the matter.<sup>37</sup> Interestingly, the court provides a carve-out to its rule by creating an exception based on party expectation. The court goes further by concluding that parties' expect threshold matters of procedure to be decided by arbitrators.<sup>38</sup> It is unclear how the court came to this conclusion, however it cites the Revised Uniform Arbitration Act of 2000 (RUAA), which states that an "arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled,"<sup>39</sup> as the basis for the exception.<sup>40</sup>

The outcome of this decision has been that, after *Howsam*, procedural questions on gateway issues (e.g. time limitations) are presumed not to be for the court, but within the

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<sup>31</sup> *Howsam*, 537 U.S. at 79.

<sup>32</sup> *Id.* at 82.

<sup>33</sup> *Id.*

<sup>34</sup> *See id.* at 86.

<sup>35</sup> *See id.*

<sup>36</sup> *See id.* at 83 (quoting *AT&T Technologies, Inc. v. Communications Workers*, 475 U.S. 643, 649 (1986)) ("The question whether the parties have submitted a particular dispute to arbitration, *i.e.*, the 'question of arbitrability,' is 'an issue for judicial determination [u]nless the parties clearly and unmistakably provide otherwise.'" (emphasis added).

<sup>37</sup> *See id.* at 84.

<sup>38</sup> *See id.*; *see also Moses H. Cone*, 460 U.S. at 24–25 ("[T]he presumption is that the arbitrator should decide 'allegations of waiver, delay, or a like defense to arbitrability.'").

<sup>39</sup> RUAA § 6(c) cmt. 2, (2000).

<sup>40</sup> *See Howsam*, 537 U.S. at 85.

arbitrators' jurisdiction.<sup>41</sup> In other words, the court presumes that threshold issues of arbitration should be resolved by the arbitrator. Yet, this decision does not go so far as to expressly mandate procedural arbitrability jurisdiction to the arbitrator. The question still remains: whether parties can defer jurisdiction of procedural matters to the court when there is clear and unmistakable intent to do so, as stated in the arbitration clause. If the answer is yes, then how can parties actually accomplish this result?

### III. *BECHTEL'S DECISION ON PROCEDURAL ARBITRABILITY AND ITS EFFECT ON ANCILLARY STATE LAWS*

#### A. **Time Management: Bechtel Do Brasil Construções Ltda. v. UEG Araucária Ltda.**

The Second Circuit recently had the opportunity to test the limits of *Howsam* regarding time limitation rules that preclude arbitration, in *Bechtel Do Brasil Construções Ltda. v. UEG Araucária Ltda.*<sup>42</sup> The issue in *Bechtel* involved the arbitrability of the statute of limitations defense. At issue were the conflicting terms contained in the arbitration clause. The agreement first states, “[a]ny dispute, controversy, or claim arising out of or relating to the Contract, or the breach, termination or validity thereof...shall be finally settled by arbitration,”<sup>43</sup> and also includes a choice-of-law provision that specified that the procedure and administration of arbitration would be governed by New York Civil Practice Law.<sup>44</sup> Section 7502(b) of the New York Civil Practice Law states:

If, at the time that a demand for arbitration was made or notice of intention to arbitrate was served, the claim sought to be arbitrated would have been barred by limitation of time had it been asserted in court of the state, a party may assert the limitation as a bar to the arbitration on an application to the court....<sup>45</sup>

The District Court for the Southern District of New York found that the language of the contract showed “the parties’ clear intent to select New York law for arbitration procedure”, which includes limiting the arbitrators’ power to adjudicate preliminary questions of timeliness.<sup>46</sup>

Upon review, the United States Court of Appeals for the Second Circuit found that, although the matter was a close one, the timeliness of a party’s claims is a question for the

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<sup>41</sup> See CARBONNEAU, *supra* note 11, at 274 (“Therefore, ‘procedural questions which grow out of the dispute and bear on its final disposition are presumptively not for the judge, but for an arbitrator to decide.’”).

<sup>42</sup> See *Bechtel*, 638 F.3d at 150.

<sup>43</sup> See *id.* at 154 (“Any dispute, controversy, or claim arising out of or relating to the Contract, or the breach, termination or validity thereof ... shall be finally settled by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce ... except as these rules may be modified herein.”) (emphasis added).

<sup>44</sup> See *id.* (“[T]he validity, effect, and interpretation of this agreement to arbitrate shall be governed by the laws of the State of New York,” and “[t]he law governing the procedure and administration of any arbitration instituted pursuant to Clause 37 is the law of the State of New York.”).

<sup>45</sup> See *id.* at 153.

<sup>46</sup> See *id.*

arbitrator, not the court.<sup>47</sup> The rationale for the court's decision was that, despite the contract's language indicating New York law as governing the arbitral procedure, the contract does not *specifically* mention timeliness disputes or a right of parties to resort to the courts.<sup>48</sup>

## **B. Running Out of Time: Bechtel's Furtherance of the Judiciary's Agenda on Arbitration**

As illustrated by the *Mastorbuono*, *Howsam*, and countless other decisions, the Supreme Court has shown an almost impervious desire to compel arbitration and defer to the competence of arbitrators to rule over parties' claims. And to further these goals the Court seems to be less inclined to follow precedential reasoning for the sake of achieving a consistent end-result—compelling arbitration. The Second Circuit's holding in *Bechtel* befittingly abides by the Supreme Court's precedents. In *Bechtel*, the court compelled arbitration despite the parties' agreement to have arbitral procedures governed by a state-law—which explicitly permitted parties to assert statute of limitations grounds for barring arbitration on an application to the court.<sup>49</sup>

Despite the terms of the chosen state-law, the Second Circuit held that the arbitrator should decide the statute of limitations issue. On its face, this decision seems to go against established precedent insofar as the court seems unwilling to enforce the express terms of parties' agreement. However, the *Bechtel* court heavily relies upon the concept of *specificity* within contractual terms, as introduced and emphasized in *Mastorbuono*.<sup>50</sup> The court required parties to explicitly show that the arbitration clause contained specific language that indicated an intention to have the state limitation rule enforced.<sup>51</sup> And yet, the arbitration clause in *Bechtel*, seemingly, did contain the requisite language. The arbitration clause specifically named and declared the state law as “[t]he law governing the procedure and administration of ... arbitration.”<sup>52</sup> By agreeing to have New York law govern the arbitration procedure, it logically follows that the parties' intended to be bound by New York's law on arbitration procedure. Despite the parties' expressed intent, the *Bechtel* court found that the issue of procedural arbitrability was not governed by state law.

Unfortunately, the question of whether parties can defer jurisdiction of procedural matters to the court remains unclear. The *Bechtel* court has not only presumed that the arbitrator has jurisdiction as prescribed by *Howsam*,<sup>53</sup> but has, in effect, mandated jurisdiction to the arbitrator, in spite of the parties' agreement. This ruling clearly illustrates the continued effort by the courts to defeat laws which serve as obstacles to arbitration.

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<sup>47</sup> See *id.* at 154.

<sup>48</sup> See *id.* at 156.

<sup>49</sup> See *id.* at 153.

<sup>50</sup> See *Mastrobuono*, 514 U.S. at 62 (noting that under the common-law parties can not benefit from the doubt created by ambiguous language within a contract; for the court to enforce language against the interest of the parties' that drafted it, the contract must be unambiguous).

<sup>51</sup> See *Bechtel*, 638 F.3d at 155.

<sup>52</sup> See *id.* at 154.

<sup>53</sup> See *Howsam*, 537 U.S. at 85 (explaining that the condition precedent to arbitrability should be decided by the arbitrator).



### ***1. The Court's Effect on Ancillary State Laws to the Arbitration Agreement***

There are two possible explanations for the *Bechtel* court's decision. One explanation is that the court has decided that rules in opposition to arbitration will *only* be enforced where parties' specifically state the rule within the terms of the arbitration contract. This plausible explanation adheres to the *Kaplan* doctrine<sup>54</sup> insofar as the arbitration clause is considered the final, and likely the only, authority on matters of arbitrability. Under this interpretation however, state laws on arbitration procedure that are ancillary to the agreement are only applicable where the court deems it appropriate. In other words, it is at the court's discretion to apply ancillary state laws where they are found to favor to arbitration. This sort of pick-and-choose approach by the courts was first introduced by *Mastrobuono*,<sup>55</sup> and it completely undermines the parties' agreement and, consequentially, violates the parties' freedom of contract rights. Courts are expected to provide the legal community with uniformity and predictability in their rulings, yet this approach accomplishes neither.

Another explanation is that state laws on arbitration procedure are completely inapplicable and will not be adhered to or enforced by the court. Under this approach, parties are completely incapable of deferring issues of arbitrability to the court by way of state laws because the arbitration clause and the FAA are the *only* governing laws of procedure. Though the *Bechtel* court does not expressly state this as their approach, this seems to be the current position of the court. By rendering ancillary state laws on arbitration procedure inapplicable to the judiciary, the court has left parties incapable of choosing an alternative form of procedural law to govern arbitration. Following this line of reasoning, the *Bechtel* court expands the FAA's reach and application in regards to issues of procedural arbitrability, because its' decision effectively makes the FAA the absolute preemptive procedural law of arbitration in the Second Circuit.

In effect, after *Bechtel*, parties are virtually unable to defer jurisdiction on issues of procedural arbitrability to the courts because of the unenforceability of ancillary state laws and highly impractical burden of stating every enforceable limiting rule within the arbitral clause.

## **IV. CONCLUSION**

Despite a contract clearly stating the parties' intent to have a state law govern the arbitration procedure, the Second Circuit court will ultimately compel arbitration whether or not it violates state law. After *Bechtel*, if the arbitration agreement does not, itself, contain a clear statement in regards to the statute of limitations being withheld from the arbitrator, the FAA will defeat any ancillary state law on timeliness, notwithstanding an agreement to have the state law govern the procedure and administration of the arbitration. Without specifically expressing the *disabling* rule in the arbitral clause, the procedural arbitration issues will proceed to the arbitrator. Essentially, the *Bechtel* court expands *Mastrobuono*'s ruling by determining that the FAA preempts ancillary state laws despite party intent. The *Mastrobuono* court sought to enforce what it thought the parties' intended to convey within the arbitration contract, as to prevent a party

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<sup>54</sup> See *Kaplan*, 514 U.S. at 944.

<sup>55</sup> See CARBONNEAU, *supra* note 11, at 233 (“[A]fter *Mastrobuono*, party choice as to state law will be fully respected only when the choice-of-law fosters the recourse to arbitration....”).

from being penalized by an unfavorable rule. However, the *Bechtel* court compelled arbitration in accordance with the FAA despite the parties' intent not to have the FAA apply. Although the Second Circuit's decision can be criticized as not enforcing the terms stated within the arbitration agreement, the court has a very good reason for deciding in this fashion.

In conclusion, the Second Circuit's decision was correct because it provides predictability insofar as future parties to arbitration will not expect state laws on arbitral procedure—that are ancillary to the agreement—to be enforced. Second, this decision accords greater jurisdiction of arbitration matters to the arbitrator. As a result, courts will be alleviated from adjudicating on threshold procedural arbitrability issues that involve state laws. Lastly, the effect of the *Bechtel* decision is that the arbitration process will be more efficiency, less costly, and more expeditious; fulfilling the intended virtues of the FAA.