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THE PHILIPPINE ADR REVIEW

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MARCH 2016

PDRC begins domestic arbitration road show



PDRC Asst. Sec. Gen. Francisco Pabilla, Jr. (second from left) with (from left) PCCI Governor for Reg. IV, Virgilio Lorenzo; Antonio Ortega, National Center for Mediation; and Clarine Tobias, PCCI Governor for Reg. V.

PDRC has rolled out its domestic road show beginning with the 25th South Luzon Area Business Conference (SLABC) on March 18 and 19, 2016 in Boac, Marinduque. The confab, with the theme "Small Enterprise...BIG Business," was the first in a series of area conferences arranged by the Philippine Chamber of Commerce and Industry (PCCI) for the year.

PDRC Assistant Secretary General Francisco D. Pabilla, Jr. spoke on commercial arbitration and PDRC's role as an arbitration center. Antonio Ortega of the National Center for Mediation talked on mediation.

Dr. Henry Basilio of PCCI made a presentation on logistics and transport infrastructure development, while Andreas Meyn discussed development of competitive human resources. Dr. Hernando Delizo then spoke on wellness tourism, after which Victor Madlangbayan talked on social enterprises.

Marinduque Governor L. Carmencita O. Reyes attended the conference. PDRC has partnered with PCCI in promoting commercial arbitration among its members. 🇵🇭

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PART ONE

The U.S. arbitration debate and why it matters to us

By: Ricky A. Sabornay

In late October 2015, The New York Times published a series of three articles on complaints against big businesses' use of arbitration to limit consumers' ability to sue before regular courts. This article summarizes the report. Part 1 discusses the criticisms of arbitration by consumers.

Arbitration is under siege again. For the past several years, there have been several attacks in courts and the U.S. Congress against the Federal Arbitration Act and the arbitration process.

Critics contend that arbitration is unfair and biased, saying that it creates "an alternate system of justice" whose rules tend to favor businesses and deprive millions of Americans a fundamental right—their day in court.

In a three-part series released last year, *The New York Times* noted how by inserting individual arbitration clauses into consumer and employment contracts, corporations have devised a way to keep people from going to court, prevent class actions, and tilt justice in their favor ("Arbitration Everywhere, Stacking the Deck of Justice," October 31, 2015, available at <http://www.nytimes.com/2015/11/01/business/dealbook/arbitration-everywhere-stacking-the-deck-of-justice.html> and

two other articles). With so much latitude, some organizations even get to "force" their employees and customers to take their dispute to Christian arbitration, which incorporate prayer into proceedings and where arbitrators can consider biblical scripture in their rulings.

The *Times* cited several instances showing how resort to arbitration has increasingly become so pervasive in the U.S. that it has "crept into nearly every corner of Americans' lives, encompassing moments like having a baby, going to school, getting a job, buying a car, building a house and placing a parent in a nursing home." These examples showed how arbitration tended to favor businesses and how proceedings could sometimes devolve into "legal free-for-alls."

According to the articles, written by banking and consumer finance reporter Jessica Silver-Greenberg and database projects editor Robert Gebeloff, the anecdotes and the records examined from "more than 25,000 arbitration proceedings between 2010 and 2014 and interviews with hundreds of lawyers, arbitrators, plaintiffs and judges in 35 states" showed that arbitration, instead of providing a quicker and more cost-efficient way to resolve disputes promotes injustice instead.

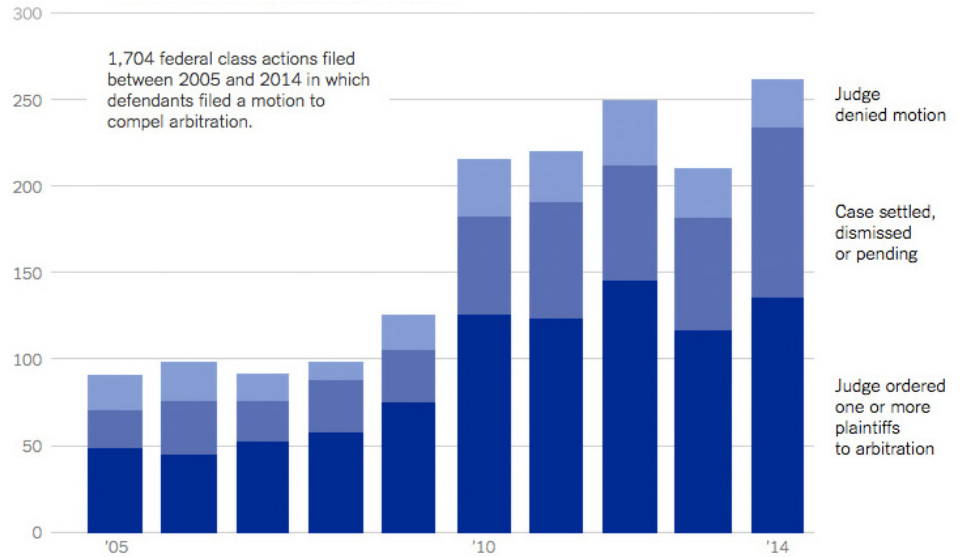
The *Times* found several occasions where some arbitrators twisted or outright disregarded the law to deliver favorable outcomes to companies, which the arbitrators purportedly consider their clients. It also found some companies—unfettered by strict judicial rules against conflict of interest—steer cases to friendly arbitrators while some arbitrators openly cultivate close ties with companies to get business.

In an interview, Victoria Pynchon, an arbitrator in Los Angeles, says plaintiffs have an inherent disadvantage in arbitration. “Why would an arbitrator cater to a person they will never see again?” she said.

Hans von Spakovsky, senior legal fellow in The Heritage Foundation’s Edwin Meese III Center for Legal and Judicial Studies, noted that despite the long history of arbitration as a successful, less expensive alternative to the cumbersome litigation system, a series of bills have in fact been introduced in the U.S. Congress to eliminate arbitration from certain fields for the protection of consumers. These include:

- **The Arbitration Fairness Act**, which would render pre-dispute arbitration agreements unenforceable and invalid in employment, consumer, antitrust, and civil rights disputes and would specify that courts alone, and not arbitrators, could determine the validity and enforceability of an agreement to arbitrate;
- **The Arbitration Fairness for Students Act**, which would prohibit colleges and universities that participate in federal student assistance programs from including pre-dispute arbitration agreements in student enrollment contracts;
- **The Consumer Mobile Fairness Act**, which would invalidate pre-dispute arbitration clauses in contracts involving consumer mobile services or mobile broadband Internet access service;
- **The Fairness in Nursing Home Arbitration Act**, which would invalidate pre-dispute arbitration clauses between long-term care facilities and their residents; and

Lawsuits involving arbitration clauses



Source: New York Times review of federal court docket

- **The Consumer Fairness Act**, which would amend the Consumer Credit Protection Act to define pre-dispute arbitration clauses in consumer contracts to be an unfair and deceptive trade practice.

None of these bills has been enacted into law, says Spakovsky. Nevertheless, the attacks against arbitration, such as the *Times* reports, continue.

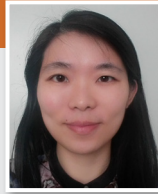
Next issue: Recent decisions by California courts that disallowed arbitration for being too restrictive.



About the Author

Atty. Sabornay is a litigation associate at Castillo Laman Tan Pantaleon & San Jose. His practice focuses on arbitration, commercial and construction litigation, real estate, labor and criminal law. He graduated from the University of the Philippines College of Law in 2012, where he received the Dean’s Medal for academic excellence. He was an editor of the *Philippine Law Journal* from 2009 to 2011 and the U.P. Law team captain for the 2010 Asia Cup Moot Court in Tokyo, Japan and 2011 International Environmental Law Moot Court in Maryland, USA.

MEMBER SPOTLIGHT

**Atty. Mary Kimberlie C.**

See is the internal counsel of the construction firm FF Cruz Co., Inc. She is also a legal writer for Rex Publishing, Inc.

Atty. See studied legal management at the Ateneo de Manila University, where she graduated in 2004. She was awarded by the same university a Certificate in Chinese Language Proficiency.

She received her Juris Doctor degree from the Ateneo Law School in 2008. She is studying for her master of laws degree at the University of Santo Tomas, where she will be graduating in June 2016.

She was formerly an associate attorney at Bernas Law Offices from 2008 to 2011, and a senior associate attorney at Ongkiko Manhit Custodio & Acorda Law Offices from 2011 to 2014. She held the rank of Attorney III in the Bases Conversion and Development Authority, where she worked from 2014 to 2015.

Atty. See has attended various seminars and workshops on arbitration, mediation, estate planning, contract drafting, corporate governance, tax rights and remedies, and corporate finance. She participated as a guest lawyer of the Armed Forces & Police Mutual benefit Association, Inc. Legal Aid Program, and as a guest speaker for the conference: A Symposium on Violence Against Women and Children, organized by Firm-24K Association.

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New Library Acquisitions

AUTHOR	TITLE	PUBLISHER, YEAR
American Arbitration Association	Handbook on Commercial Arbitration, 2nd Ed.	JurisNet, 2010
American Arbitration Association	Handbook on International Arbitration and ADR, 2nd Ed.	JurisNet, 2010
American Arbitration Association	Handbook on International Arbitration Practice	JurisNet, 2010
Arthur P. Autea	Notes and Cases on Commercial Arbitration under Philippine Law	University of the Philippines College of Law, 2013
Alexander J. Bělohávek	B2c Arbitration Consumer Protection in Arbitration	JurisNet, 2012
Nigel Blackaby & Constantine Partasides, with Alan Redfern & Martin Hunter	Redfern and Hunter on International Arbitration, Student Version, 5th Ed.	Oxford University Press, 2009
Chan Leng Sun SC	Singapore Law on Arbitral Awards (Monograph Series)	Academy Publishing, 2011
Paul D. Friedland	Arbitration Clauses for International Contracts, 2nd Ed.	JurisNet, 2007
James M. Gaitis	The College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration, 3rd Ed.	JurisNet, 2014
Thomas D. Halket	Arbitration of International Intellectual Property Disputes	JurisNet, 2012
Eduardo P. Lizares	Arbitration in the Philippines under the Alternative Dispute Resolution Act of 2004, 2nd Ed.	EPL Publications, 2011
Robert Merkin	Arbitration Law	Informa Professional, 2004
Michael J. Moser	Arbitration in Asia, 2nd Ed.	JurisNet, 2015
Lawrence W. Newman, Colin Ong	Interim Measures in International Arbitration	JurisNet, 2014
Custodio O. Parlade	International and Domestic Arbitration	Central Book Supply, Inc., 2011
Custodio O. Parlade	The Law and Practice of CIAC Arbitration	Central Book Supply, Inc., 2011
Michael Pryles, Michael J. Moser	The Asian Leading Arbitrators' Guide to International Arbitration	JurisNet, 2007
Syed Khalid Rashid, Syed Ahmad Idid	Mediation and Arbitration in Asia-Pacific, 1st Ed.	International Islamic University Malaysia, 2009
Rufus V. Rhoades, Daniel M. Kolkey, Richard Chernick	Practitioner's Handbook on International Arbitration and Mediation	JurisNet, 2005
Norton Rose	Arbitration in Asia Pacific	Norton Rose, 2010
Norton Rose	Arbitration in Europe	Norton Rose, 2005
Thomas H. Webster	Handbook of UNCITRAL Arbitration 2nd Ed.	Sweet & Maxwell, 2015
Thomas H. Webster, Michael W. Buhler	Handbook of ICC Arbitration, 3rd Ed.	Sweet & Maxwell, 2014



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