



www.jamsadr.com

[About](#) | [Neutrals](#) | [Rules & Clauses](#) | [Practices](#) | [Panel Net](#)

JAMS Institute

LEARNING FROM EACH OTHER

October 9, 2019

ADR Case Update 2019 - 20

Federal Circuit Courts

- **FRENCH COURT'S AFFIRMATION OF AWARD ENTITLED TO RECOGNITION**

Cerner Middle East Limited v. iCapital, LLC
2019 WL 4582838
United States Court of Appeals, Ninth Circuit
September 23, 2019

iCapital, owned by Ahmed Saeed Mahoud Al-Badi Al-Dhaheiri, (Defendants) contracted with Cerner Middle East Limited to develop medical information software. The parties executed the Cerner Business Agreement (CBA), which required binding arbitration under International Chamber of Commerce (ICC) rules, with the seat of arbitration in Paris and choice of law of Missouri. In 2012, the parties executed a Settlement Agreement with Section 5 of the agreement revising the language of the original arbitration clause, and retaining the provisions on rules, arbitration seat, and choice of law. In 2013, Cerner initiated a request for arbitration against Defendants, contending that iCapital failed to make payments per the Settlement Agreement. iCapital objected to the arbitration and Dhaheiri declined to respond to correspondence from the arbitration administrator. The three-member arbitral tribunal held that it had jurisdiction over both iCapital and Dhaheiri and that Defendants were liable to Cerner for more than \$62 million in damages. Cerner filed a complaint in Oregon state court to enforce the award against Dhaheiri's property in Oregon. Defendants removed the case to federal court and moved to dismiss, asserting that Cerner could not enforce the arbitration award until a court of "competent jurisdiction" – which the Oregon court was not – confirmed the panel's conclusion that Dhaheiri was properly within the panel's jurisdiction. The court dismissed the action and Cerner appealed. While the appeal was pending, the Court of Appeal of Paris (the Paris Court), a court with jurisdiction over Dhaheiri, confirmed the arbitration panel's conclusion that Dhaheiri was subject to the panel's jurisdiction.

The United States Court of Appeals for the Ninth Circuit reversed and remanded. Defendants argued that the Paris Court decision was not entitled to recognition under the principles of international comity because it was incorrect, focusing on "usual practices of international trade" rather than Missouri law. The Court disagreed. The tribunal referenced usual practices of international trade in its decision and principles of Missouri law. That the French court may not have separately discussed those legal principles in its decision did not mean that it was unaware

of those principles or rejected them by basing its own decision on a different body of law. More broadly, the Court extends comity to a foreign decision unless the ultimate results fail to meet a minimum standard of reasonableness. The conclusion of the Paris Court that Dhaheiri was properly bound by the arbitration clauses in the various agreements was not unreasonable under Missouri law. The French court was not off the mark in concluding the tribunal could have reasonably exercised jurisdiction over Dhaheiri because iCapital, LLC signed a valid arbitration agreement and Dhaheiri was iCapital's alter ego.

California

- **EMPLOYER BARRED FROM ATTENDING MMC PROCEEDING**

Gerawan Farming, Inc. v. Agricultural Labor Relations Board
Court of Appeal, Fifth District, California
2019 WL 4666356
September 24, 2019

Gerawan, a family-owned farming business, and the United Farm Workers of America engaged in mandatory mediation and conciliation (MMC) ordered by the Agricultural Labor Relations Board after the parties failed to agree on initial terms of a collective bargaining agreement. When Gerawan employee Lupe Garcia and his attorney, along with other Gerawan employees, attempted to attend an MMC proceeding, the mediator denied the request on the grounds that the employees and attorney were not parties to the confidential MMC procedure. Garcia petitioned the Board to determine whether he and other Gerawan employees had a constitutional right to attend the MMC proceedings. The Board held that they did not and Gerawan filed for declaratory relief in superior court, alleging that the Board's decision violated the constitutional right of public access. Garcia intervened, seeking the same relief. The trial court found that the Board's decision was not unconstitutional and granted summary judgment in favor of the Board. Gerawan and Garcia appealed.

The Court of Appeal, Fifth District, California, affirmed. Gerawan lacked standing because Gerawan's was essentially a facial challenge, as Gerawan had yet to be denied access to other agricultural employers' MMC proceedings, something it contended the Board Order would preclude. While relaxed standing rules for First Amendment facial challenges had been applied in the free speech area, the relaxation had not yet been extended to right of access cases. Gerawan was also unable to satisfy the two-prong test to establish a constitutional right of access to MMC proceedings: a history of public access to types of proceedings similar to mandatory mediation and conciliation (experience) and that the benefits of public access to the MMC proceeding would outweigh the drawbacks (logic). As the Board explained in its decision denying access: "Labor negotiations are conducted in private in order that negotiators may speak freely without fear of offending their constituencies and reach compromises without appearing weak."

Case research and summaries by Deirdre McCarthy Gallagher and Richard Birke.

Contact Information

David Brandon
Program Manager
JAMS Institute
415-774-2648

DBrandon@jamsadr.com