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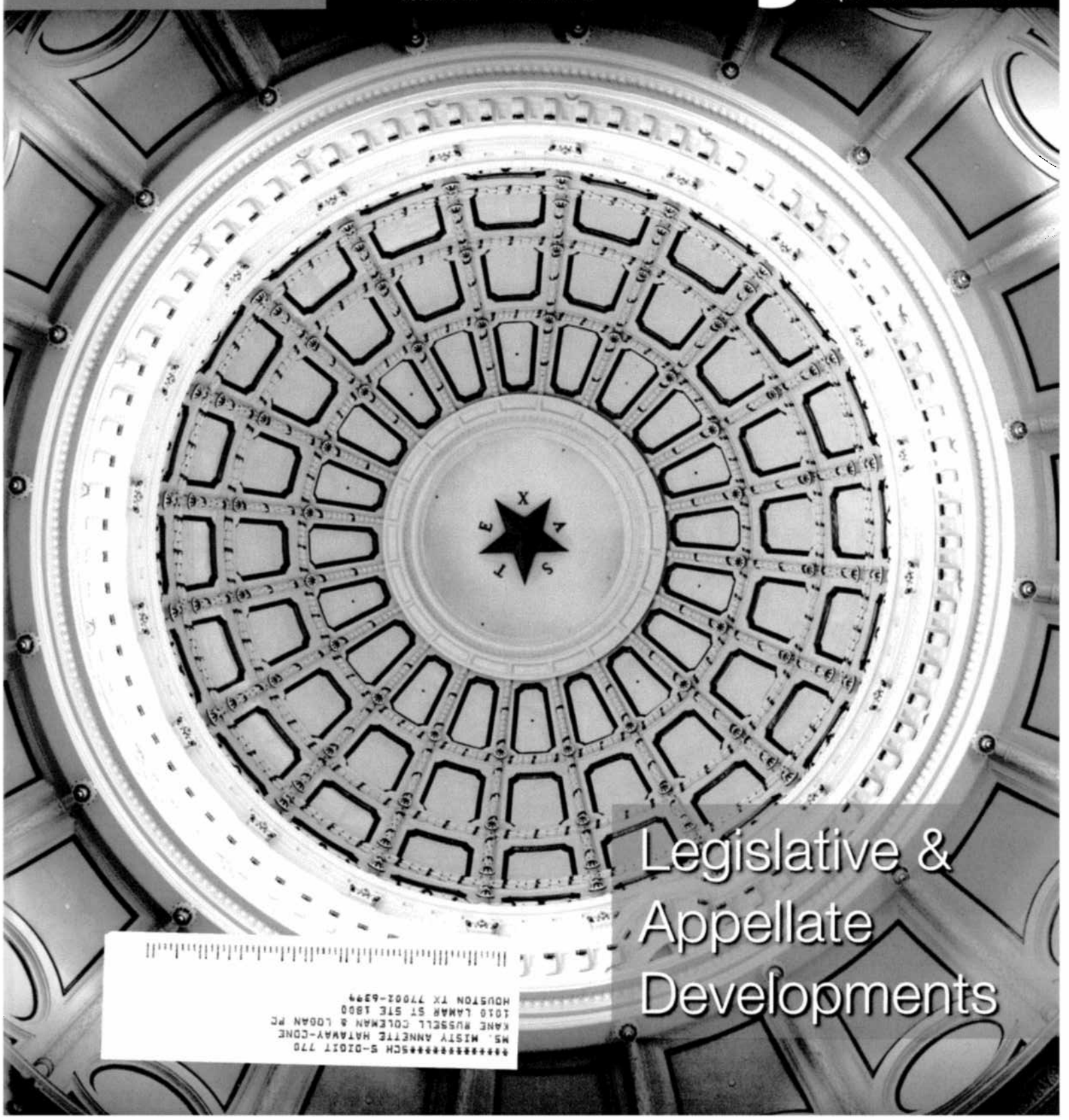
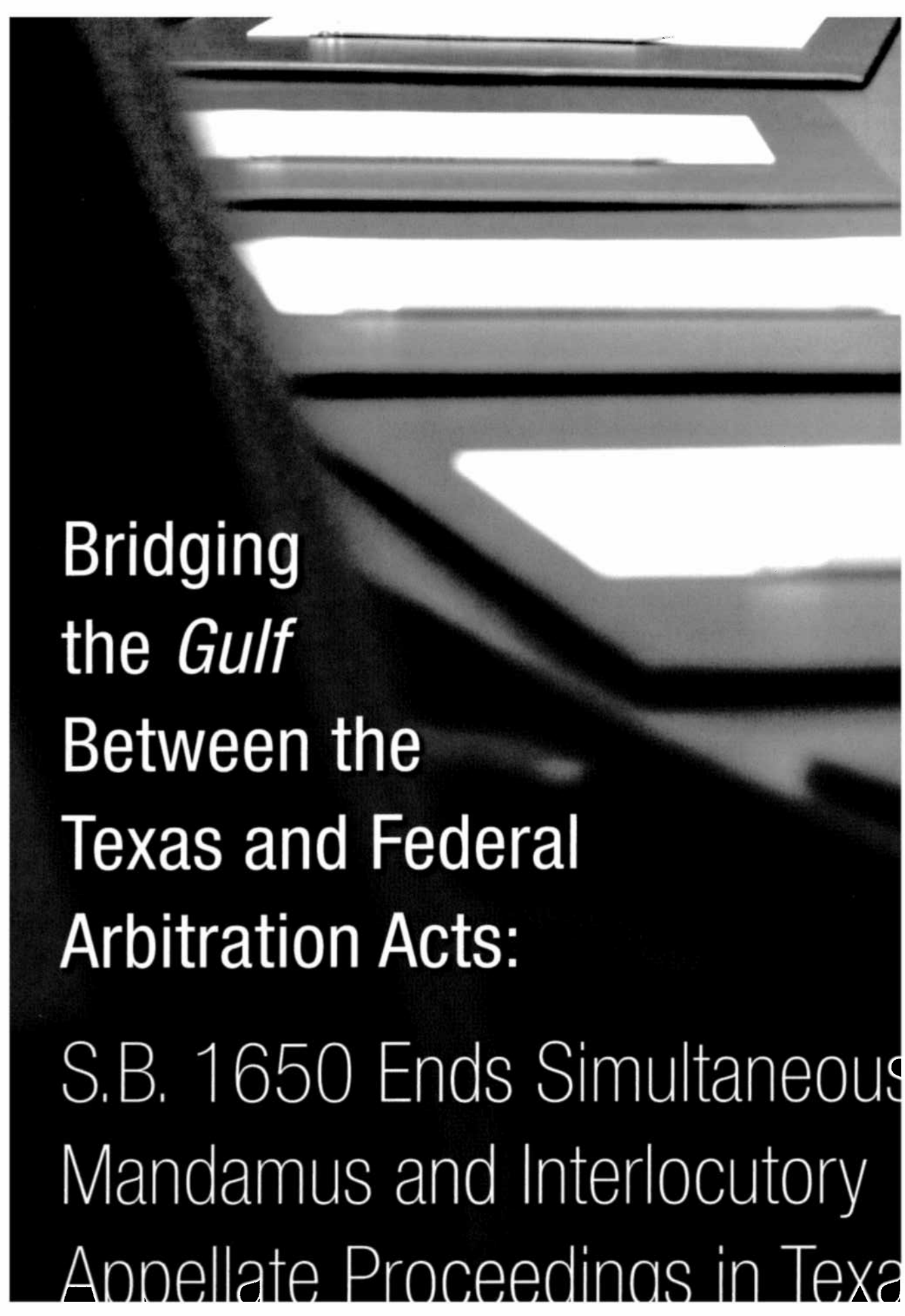


# Legislative & Appellate Developments



# Bridging the *Gulf* Between the Texas and Federal Arbitration Acts:

## S.B. 1650 Ends Simultaneous Mandamus and Interlocutory Appellate Proceedings in Texa

By DYLAN O. DRUMMOND

The death of mandamus review of orders granting or denying arbitration came swiftly this year. First, the Texas Supreme Court gave notice that litigants would rarely—if ever—be able to meet the "inadequate remedy by appeal" requirement of mandamus review for orders compelling arbitration under the Federal Arbitration Act (FAA).[1] Two months later, the 81st Legislature finished the job by enacting S.B. 1650, which eliminated the need for mandamus review by making Texas law mirror the FAA's interlocutory appellate provisions.[2] The end result is a sea change in arbitration appellate practice in Texas.

## I. The Headwaters of Dual-Track Appellate Proceedings Under the TAA and FAA

### A. *Jack B. Anglin Co. v. Tipps*

In 1992, the Texas Supreme Court granted review in *Jack B. Anglin Co. v. Tipps*, in part to settle the debate among the intermediate courts of appeal regarding the methods of appellate review available to litigants seeking to challenge a denial of arbitration under the FAA.[3] Prior to *Anglin*, the intermediate courts of appeal had "variously permitted appeal under the T[AA], and mandamus or appeal under the F[AA]."[4]

In determining whether "a party that has been wrongfully denied the benefits of its agreement to arbitrate [under the FAA] is entitled to the extraordinary remedy of the writ of mandamus," the Court specifically looked at the two prongs of mandamus review as established in *Walker v. Packer*: (1) clear abuse of discretion; and (2) inadequate remedy by appeal.[5] Writing for a unanimous court, then-Justice Cornyn found the trial court's failure to correctly apply the tenets of the FAA constituted a clear abuse of discretion.[6] It is interesting to note—particularly in light of the Court's most recent evaluation in April 2009[7]—that the Court's analysis turned on the "inadequate remedy by appeal" prong of the *Walker* test.[8]

The Court began its analysis by famously and incorrectly[9] citing to the TAA[10] and FAA[11] as permitting a "party to appeal from an interlocutory order *granting* or denying a request to compel arbitration."[12] In reality, the TAA has never provided for interlocutory review of orders compelling arbitration, and the FAA specifically forbids such review in certain circumstances.[13] Instead, both statutes expressly provide only for an interlocutory appeal of an order *denying* arbitration.[14] Regardless, this errant language has since been considered dicta by intermediate appellate courts because the crux of the decision hinged on other grounds.[15]

Reasoning that because "federal procedure does not apply in Texas courts, even when Texas courts apply the F[AA]," [16] and no Texas statute or rule permitted interlocutory review of orders denying mandamus under the FAA, the Court held there "was no right to an interlocutory appeal from a state court's order denying a motion to compel arbitration under the FAA."[17] Put simply, because "Texas law makes no provision for an interlocutory appeal of an order made pursuant to the FAA," and "Texas law only allows appeals from a non-final order as permitted by statute," an aggrieved party is barred from pursuing an interlocutory appeal in Texas courts "to challenge an order made under the FAA."[18]

The Court further concluded that, while an inadequate remedy by appeal is not demonstrated "merely because an appellate remedy may be more expensive and time-consuming than mandamus," it may indeed be shown "when the failure to do so would vitiate and render illusory the subject matter of an appeal."[19] Because the "fundamental purpose of arbitration is to provide a rapid, less expensive alternative to traditional litigation, a party who is erroneously denied arbitration and ordered to proceed to trial has been deprived of the benefits of the contractual arbitration provision for which it bargained."[20] In essence, an "appellate remedy is illusory [when] it comes too late to rectify th[e] injury."[21]

Following *Tipps*, parties wishing to challenge orders denying arbitration agreements were forced to pursue parallel appellate tracks: (1) an interlocutory appeal of the denial order under the TAA; and (2) a petition for writ of mandamus under the FAA.[22] While the Court may have recognized the potential detriment to litigants adhering from "such an unnecessarily expensive and cumbersome rule," it reiterated that it was not free to "enlarge appellate jurisdiction absent legislative mandate."[23]

### B. *Freis v. Canales*

Even though the Court may have been mistaken in its original characterization of the TAA and FAA's provisions regarding appeal from orders compelling arbitration, it remedied its initial oversight—in part—two years later in its 1994 opinion in *Freis v. Canales*.[24] Therein the Court in a per curiam decision,[25] reasoned that, if a "party ... required to resolve its dispute by litigation ... has lost its bargained-for right to arbitration," then surely a "party who is compelled to arbitrate without having agreed to do so will have lost its right to have the dispute resolved by litigation."[26] Accordingly, the Court recognized that a party erroneously compelled to arbitrate was just as deprived of an adequate remedy by appeal as was a party erroneously denied its bargained-for right to arbitrate.[27]

Despite the FAA's specific bar to interlocutory appeal from orders compelling arbitration in certain circumstances,[28] and due to the use of Texas procedural rules by Texas courts when applying the FAA,[29] the Court felt free to reinterpret the "inadequate remedy by appeal" prong of Texas mandamus review to include orders compelling FAA arbitration,[30] as well as those disallowing it.[31]

## II. The FAA Mandamus Waters Begin to Recede

During the years following the Court's initial flurry of arbitration decisions in the early 1990s and its second era of substantive decisions in the mid 2000s, the Court

seemed to begin to retreat from its initial exuberance for mandamus review of trial court orders either granting or denying arbitration under the FAA.[32]

### A. *In re Palacios*

By way of another per curiam opinion,[33] the Texas Supreme Court was prompted to readdress "whether an order granting arbitration under the FAA can be reviewed by mandamus,"[34] by the U.S. Supreme Court's intervening 2000 decision in *Green Tree Finance Corp. v. Randolph*.[35] In *Green Tree*, the late Chief Justice Rehnquist wrote for the majority and observed that the FAA "generally permits immediate appeal of orders hostile to arbitration ... but bars appeal of interlocutory orders favorable to arbitration."[36] Significantly, the U.S. Supreme Court construed the FAA to disallow an "immediate appeal of an order compelling arbitration if it *stays* the underlying case, but permit "an appeal if the underlying case is *dismissed*."[37] This holding effectively overruled *Freis* to the extent *Freis* allowed mandamus review of orders compelling arbitration while merely staying the underlying litigation.[38]

Heeding its mandate to "be as consistent as possible in this area ... because federal and state courts have concurrent jurisdiction to enforce the FAA,"[39] and adjudging *Green Tree*'s impact as preventing federal courts from reviewing Texas mandamus proceedings, the Texas Supreme Court declined to "create tension with the legislative intent of the FAA" by issuing a writ of mandamus where arbitration below was compelled and the underlying litigation was stayed.[40] In almost a direct rebuke of its earlier statement in *Anglin*, the Court added that "[w]e recognize there is some one-sidedness in reviewing only orders that deny arbitration, but not orders that compel it ... [y]et both the Federal and Texas acts leave little uncertainty that this is precisely what the respective legislatures intended."[41]

The Court left for another day "whether mandamus review of an order staying a case for arbitration is entirely precluded," but noted the Fifth Circuit's 2003 decision in *Apache Bohai Corp., LDC v. Texaco China, B.V.* intimated "mandamus review of an order staying a case for arbitration may still be available if a party can meet the 'particularly heavy' mandamus burden to show 'clearly and indisputably that the district court did not have the discretion to stay the proceedings pending arbitration.'"[42]

### B. *Perry Homes v. Cull*

In *Perry Homes*, the Court continued to revise its arbitration mandamus jurisprudence in light of the U.S. Supreme Court's holding in *Green Tree*.[43] Specifically, the Court rejected the respondents' claim that "an order compelling arbitration can only be reviewed *before* arbitration occurs."[44] In so doing, Justice Brister, writing for the majority, relied upon the several instances where both the Texas and U.S. Supreme Courts—including in *Green Tree*—"have reviewed such orders *after* arbitration."[45] The Court reiterated the holding from *Green Tree* that "[c]ourts may review an order compelling arbitration if the order also dismisses the underlying litigation so it is final rather than interlocutory."[46]

The Court also acknowledged that "reviewing the trial court's initial referral to arbitration is not the same as reviewing the arbitrator's final award ... [because] courts conduct ordinary review of the former and deferential review only of the latter."[47] Nevertheless, it held "[f]requent pre-arbitration review would inevitably frustrate Congress's intent 'to move the parties to an attritubable dispute out of court and into arbitration as quickly and easily as possible.'"[48]

## III. The FAA Mandamus Tides Dry Up

Recently within the span of just two months this year, the decades-long practice of mandamus review of orders denying arbitration under the FAA came to an abrupt end with the Texas Supreme Court's issuance of its opinion in *In re Gulf Exploration, LLC* and the 81st Legislature's enactment of S.B. 1650.[49]

### A. *In re Gulf Exploration, LLC*

The day to which the *Palacios* Court foreshadowed when opining whether "mandamus review of orders compelling arbitration should be entirely precluded," arrived earlier this year on April 17, 2009, when the Supreme Court issued its decision in *In re Gulf Exploration, LLC*.[50] *In re Gulf Exploration* sounded the death knell for mandamus review of orders compelling arbitration.[51]

Once again writing for the majority, Justice Brister recounted the Court's progression from *Freis* to *Palacios* to *Perry Homes*.[52] Just as the Court hinged its analysis in *Anglin* on the inadequate remedy by appeal prong of mandamus review, so did the Court in *Gulf Exploration*.[53] However this time the Court was somewhat less moved by the risk to litigants of vitiating or rendering illusory the subject matter of their appeal by the delay and expense associated with denial of mandamus relief.[54] The Court explained that, because "arbitration clauses are usually contractual and cover contractual claims," and a "party that prevails on a contractual claim can recover its fees and expenses," any expense incurred by parties waiting until final appeal could likely be recouped.[55] In addition, the Court reiterated its earlier framing of the TAA and FAA in *Palacios*[56]—as evidence of legislative intent the Court must respect as part of a "government of separated powers."[57] Ultimately, the Court explained that, "[in] the context of orders compelling arbitration, even if a petitioner can meet the first requirement (clear abuse of discretion), *mandamus is generally unavailable because it can rarely meet the second*" (inadequate remedy by appeal).[58]

The Court also clarified the lingering confusion[59] generated by its discussion in *Palacios* of the so-called "*Apache* exception."[60] If the Fifth Circuit's decision in *Apache* created an exception in Texas jurisprudence at all, the exception applied only "to the question whether the case should have been dismissed rather than stayed," but not as to "whether an order compelling arbitration was correct."[61]

The import of *Gulf Exploration* is that it completed the Court's near-full retreat from *Freis*. While *Freis* opened the floodgates to

mandamus review of orders compelling arbitration under the FAA,[62] *Gulf Exploration* made clear that mandamus relief from orders compelling arbitration would thereafter "rarely"—if ever—issue.[63]

### B. *S.B. 1650*

During the fourth special session of the 72nd Legislature in 1992,[64] the Texas Supreme Court called upon the Legislature to "consider amending the T[AA] to permit interlocutory appeals of orders issued pursuant to the F[AA]."[65] A scant 17 years and nearly ten legislative sessions later, the 81st Legislature has now complied.[66]

On March 10, 2009, Senator Robert Duncan filed S.B. 1650,[67] which proposed a simple solution to the decades-old problem faced by litigants of simultaneously pursuing petitions for writ of mandamus and interlocutory appellate proceedings in Texas.[68] The legislative solution was to add section 51.016 to the Civil Practice and Remedies Code, which—in matters subject to the FAA—allows litigants to seek appeal of interlocutory orders "under the same circumstances that an appeal from a federal district court's order ... would be permitted by 9 U.S.C. Section 16."[69] S.B. 1650 adopts the precise appellate provisions, interlocutory or otherwise, codified in section 16 since 1988.[70]

After passing both houses at the end of May, Governor Perry signed S.B. 1650 on June 19, 2009,[71] and it took effect September 1, 2009.[72] While S.B. 1650 "applies to an action filed on or after [September 1, 2009] or pending on [September 1, 2009]," it "does not apply to the appeal of an interlocutory order in an action pending on [September 1, 2009] if the appeal of the order is initiated before [September 1, 2009]."[73]

The effect of this bill is to finally eliminate—as the *Anglin* Court fervently urged almost 20 years ago—the "unnecessarily expensive and cumbersome" burden on litigants to "pursue parallel proceedings-an interlocutory appeal of the trial court's denial under the T[AA], and a writ of mandamus from the denial under the F[AA]."[74] In its place, the TAA now incorporates the exact appellate scheme by which the FAA is governed.[75]

### IV. Conclusion

Because the need to "to rel[y] on the writ of mandamus to fill th[e] gap in appellate jurisdiction" created by the remedial gulf between the TAA and FAA has been obviated,[76] legal seafarers now have a much simpler jurisprudential track to follow in the appellate review of orders issued pursuant to either the TAA or FAA.

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## Endnotes

**1.** *In re Gulf Exploration, LLC*, No. 07-0055, 52 Tex. Sup. Ct. J. 612, 2009 WL 1028049 (Tex. Apr. 17, 2009) (org. proceeding). **2.** *Compare In re Gulf Exploration, LLC*, No. 07-0055, 52 Tex. Sup. Ct. J. 612, 2009 WL 1028049 at *3 (Tex. Apr. 17, 2009) (issued April 17, 2009), *with* history of Tex. S.B. 1650, 81st Leg., R.S., *available at* http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=SB1650 (last visited Aug. 1, 2009) (enrolled version) (signed by Governor Perry on June 19, 2009). **3.** *Jack B. Anglin Co. v. Tipps*, 842 S.W.2d 266, 272 & n.11 (Tex. 1992) (orig. proceeding) ("When a Texas court enforces or refuses to enforce an arbitration agreement pursuant to the Federal Act, we must determine whether that decision should be reviewed by interlocutory appeal or mandamus."). **4.** *Id.* at 272 n.11. **5.** *Id.* at 271; *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992). **6.** *Anglin*, 842 S.W.2d at 271. **7.** *In re Gulf Exploration, LLC*, No. 07-0055, 52 Tex. Sup. Ct. J. 612, 2009 WL 1028049 at *3 (Tex. Apr. 17, 2009). **8.** *Anglin*, 842 S.W.2d at 271-73. **9.** *Compare* TEX. CIV. PRAC. & REM. CODE ANN. § 171.098(a)(1) (Vernon 2005) (providing for appeal only of an order "*denying* an application to compel arbitration" (emphasis added)), *with* 9 U.S.C. § 16(b)(2), (3) (2009) (expressly prohibiting an interlocutory appeal of an order compelling arbitration); *see also, e.g.*, Hon. William G. ("Bud") Arnot & Karl W. Seelbach, *Erroneously Compelled to Arbitration? Interlocutory and Mandamus Review Post-*Palacios, APP. ADVOC., at 5 (Fall 2007) ("Actually, neither the TAA nor the ... FAA ... authorizes interlocutory review of trial court orders compelling arbitration."); AlmaLee P. "Lisa" Guttshall, *Appealing Orders Denying Enforcement of a Right of Arbitration*, 62 TEX. B.J. 118, 121 (Feb. 1999) ("that statement does not track the old or the new [TAA] or the rule governing interlocutory appeals"). **10.** TEX. REV. CIV. STAT. ANN. art. 238-2(A) (now codified at TEX. CIV. PRAC. & REM. CODE ANN. § 171.098(a)(1) (Vernon 2005)); SEN. COMM. ON JURISPRUDENCE, BILL ANALYSIS, Tex. S.B. 1439, 75th Leg., R.S. (1994) (stating that "SB 1439 nonsubstantively codifies the General Arbitration Statutes from Title 10, V.T.C.S., into Chapters 171 and 172, Title 7, Civil Practice and Remedies Code."). **11.** 9 U.S.C. § 16 (first enacted without substantive revision on Nov. 19, 1988); *Perry Homes v. Cull*, 258 S.W.3d 580, 586 (Tex. 2008) (noting that "[t]his ban on interlocutory appeals of orders compelling arbitration was added by Congress in 1988"). **12.** *Anglin*, 842 S.W.2d at 271-72 (emphasis added). **13.** Cit to FAA and TAA Ø note 9. **14.** *Compare* TEX. CIV. PRAC. & REM. CODE ANN. § 171.098(a)(1) (Vernon 2005), *with* 9 U.S.C. § 16(a)(1)(B), (C) (2009). **15.** *See, e.g.*, *Mohamed v. Auto Nation USA Corp.*, 89 S.W.3d 830, 833 n.7 (Tex. App.—Houston [1st Dist.] 2002, no pet.); *Lipshy Motorcars, Inc. v. Sovereign Associates, Inc.*, 944 S.W.2d 68, 69-70 (Tex. App.—Dallas 1997, no writ). **16.** *Anglin*, 842 S.W.2d at 272. **17.** Richard E. Flint, *The Evolving Standard for Granting Mandamus Relief in the Texas Supreme Court: One More "Mile Marker Down the Road of No Return,"* 39 ST. MARY'S L.J. 3, 101 (2007)citing *Anglin*, 842 S.W.2d at 272. **18.** Tom Leatherbury & Jeanne Sourgens, *Enforcement of Arbitration Clauses, in* State Bar of Tex. Prof. Dev. Program, Practice Before the Texas Supreme Court, ch. 12.1, p. 9 (2007) citing *Anglin*, 8425 S.W.2d at ____. **19.** *Anglin*, 842 S.W.2d at 272. **20.** Charles W. ("Rocky") Rhodes, *Demystifying the Extraordinary Writ: Substantive and Procedural Requirements for the Issuance of Mandamus*, 29 ST. MARY'S L.J. 525, 555 (1998); citing *Anglin*, 842 S.W.2d at 272-73. **21.** Rhodes, *supra* note 20, at 555. **22.** Elizabeth G. ("Heidi") Bloch, *Arbitration and Appeals, in* State Bar of Tex. Prof. Dev. Program, Advanced Civil Appellate Practice Course, ch. 7, p. 12 (2002). **23.** *Anglin*, 842 S.W.2d at 272. **24.** 877 S.W.2d 283, 284 (Tex. 1994) (per curiam). **25.** It is curious that the Court would use a per curiam opinion—usually reserved for straightforward and unremarkable error correction—to radically expand the use of the extraordinary writ of mandamus to include review of orders specifically disallowed in some instances by the FAA, and omitted entirely from the TAA. *See* Hon. Robert H. Pemberton, *One Year Under the New TRAP: Improvements, Problems and Unresolved Issues in Texas Supreme Court Proceedings*, in State Bar of Tex. Prof'l Dev. Program, Advanced Civil Appellate Practice Course, ch. B, p. B-18 (1998) (associating per curiam opinions with "cases requiring relatively straightforward error correction"). **26.** *Freis*, 877 S.W.2d at 284. **27.** *Id.* **28.** 9 U.S.C. § 16(b) (2009). **29.** *In re Palacios*, 221 S.W.3d 564, 565 (Tex. 2006 orig. proceeding) (per curiam); *Anglin*, 842 S.W.2d at 272. **30.** *Freis*, 877 S.W.2d at 284. **31.** *Anglin*, 842 S.W.2d at 272-73. **32.** *Compare Anglin*, 842 S.W.2d at 272-73 and *Freis*, 877 S.W.2d at 284, *with In re Palacios*, 221 S.W.3d 564, 565 (Tex. 2006) (orig. proceeding) (per curiam) and *Perry Homes v. Cull*, 258 S.W.3d 580, 587 (Tex. 2008) (orig. proceeding). **33.** *See generally supra* note 25. **34.** *Palacios*, 221 S.W.3d at 565. **35.** 531 U.S. 79, 86-87 (2000). **36.** *Id.* at 86. **37.** *In re Gulf Exploration, LLC*, No. 07-0055, 52 Tex. Sup. Ct. J. 612, 2009 WL 1028049 at *1 (Tex. Apr. 17, 2009) (citing *Green Tree*, 531 U.S. at 86). **38.** Arnot & Seelbach, *supra* note 9, at 6. **39.** *In re Kellogg Brown & Root, Inc.*, 166 S.W.3d 732, 739 (Tex. 2005) (orig. proceeding). **40.** *Palacios*, 221 S.W.3d at 565-566. **41.** *Id.* at 566. **42.** *Id.* at 565-66 (quoting *Apache Bohai*, 330 F3d at 310-11). **43.** *See Perry Homes v. Cull*, 258 S.W.3d 580, 586 (Tex. 2008). **44.** *Id.* **45.** *Id.* n.9. **46.** *Id.* at 586 n.13. **47.** *Id.* at 587. **48.** *Id.* (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983)). **49.** *Compare In re Gulf Exploration, LLC*, No. 07-0055, 52 Tex. Sup. Ct. J. 612, 2009 WL 1028049 at *3 (Tex. Apr. 17, 2009) (orig. Proceeding) (issued April 17, 2009), *with* history of Tex. S.B. 1650, 81st Leg., R.S., *available at* http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=SB1650 (last visited Aug. 1, 2009) (signed by Governor Perry on June 19, 2009). **50.** *Gulf Exploration*, 2009 WL 1028049 at *3. **51.** *Id.* at *3-4. **52.** *Id.* at *3. **53.** *Compare Jack B. Anglin Co. v. Tipps*, 842 S.W.2d 266, 271-73 (Tex. 1992), *with Gulf Exploration*, 2009 WL 1028049 at *3-4. **54.** *Compare Anglin*, 842 S.W.2d at 272 ("Although mandamus relief will not issue merely because an appellate remedy may be more expensive and time-consuming than mandamus, it will issue when the failure to do so would vitiate and render illusory the subject matter of an appeal."), *with Gulf Exploration*, 2009 WL 1028049 at *3 ("But standing alone, delay and expense generally do not render a final appeal inadequate."). **55.** *Gulf Exploration*, 2009 WL 1028049 at *3. **56.** *In re Palacios*, 221 S.W.3d 564, 566 (Tex. 2006) (per curiam). **57.** *Gulf Exploration*, 2009 WL 1028049 at *3. **58.** *Id.* (emphasis added). **59.** *Id.* at *2-3. **60.** Arnot & Seelbach, *supra* note 9, at 7. **61.** *Gulf Exploration*, 2009 WL 1028049 at *2. **62.** *Palacios*, 221 S.W.3d at 566. **63.** *Gulf Exploration*, 2009 WL 1028049 at *3. It is ironic that an opinion effectively eliminating mandamus review of most, if not all, orders compelling arbitration itself conditionally granted a petition for writ of mandamus (albeit directing the intermediate appellate court below to vacate its judgment granting mandamus relief from an order compelling arbitration and staying the underlying litigation). *Id.* at *4. **64.** *Compare Jack B. Anglin Co. v. Tipps*, 842 S.W.2d 266, 272 (Tex. 1992) (issued Nov. 18, 1992), *with* LEGISLATIVE REFERENCE LIBRARY, TEXAS LEGISLATIVE SESSIONS AND YEARS, *available at* http://www.lrl.state.tx.us/legis/sessionYears.html (last visited Aug. 1, 2009) (noting the fourth called session of the 72d Legislature convened on Nov. 10, 1992 and gaveled to a close on Dec. 03, 1992). **65.** *Anglin*, 842 S.W.2d at 272. **66.** Tex. S.B. 1650, 81st Leg., R.S. (2009), *available at* http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/SB01650F.pdf (last visited Aug. 1, 2009) (enrolled version). **67.** *See* history of Tex. S.B. 1650, 81st Leg., R.S., *available at* http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=SB1650 (last visited Aug. 1, 2009). **68.** *See* Tex. S.B. 1650, 81st Leg., R.S. (2009), *available at* http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/SB01650F.pdf (last visited Aug. 1, 2009) (enrolled version). **69.** *Id.* **70.** *See* HOUSE COMM. ON JUDICIARY AND CIVIL JURISPRUDENCE, BILL ANALYSIS, Tex. S.B. 1650, 81st Leg., R.S. (2009), *available at* http://www.capitol.state.tx.us/tlodocs/81R/analysis/pdf/SB01650H.pdf (last visited Aug.. 1, 2009). **71.** *See* history of Tex. S.B. 1650, 81st Leg., R.S., *available at* http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=SB1650 (last visited Aug. 1, 2009). **72.** Tex. S.B. 1650, 81st Leg., R.S., § 3 (2009), *available at* http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/SB01650F.pdf (last visited Aug. 1, 2009) (enrolled version). **73.** *Id.* at § 2. **74.** *Jack B. Anglin Co. v. Tipps*, 842 S.W.2d 266, 272 (Tex. 1992). **75.** *See* HOUSE COMM. ON JUDICIARY AND CIVIL JURISPRUDENCE, BILL ANALYSIS, Tex. S.B. 1650, 81st Leg., R.S. (2009), *available at* http://www.capitol.state.tx.us/tlodocs/81R/analysis/pdf/SB01650H.pdf (last visited Aug.. 1, 2009). **76.** *Anglin*, 842 S.W.2d at 272.