

February 16, 1994 LR 2

because the conduct of the arbitration was in violation of the contract, you can have it because the agreement is itself arrived at through duress,...

SENATOR CHAMBERS: Okay, now, just some things are in...

SENATOR LANDIS: ...undue influence, equitable offenses.

SENATOR CHAMBERS: Okay, now if a person challenges this, can the person challenging it, and I'm saying now the person who I described as the weak party, counter claim, cross claim, countersue, or whatever term you want to use to indicate that in this action being brought there is an attempt by the weak party to obtain some satisfaction against the other party rather than just have the arbitration decision set aside?

SENATOR LANDIS: I think I've got the hypothetical right, but if I get off point get me back on, because I didn't exactly hear the question. Let's say that there's been an arbitration and now the question is, how is it going to come up in an appeal of that arbitration? The arbitration is going to occur, there will be an award, and let's say the party who doesn't want to pay refuses to pay. At that point you go into court to enforce an award as you would enforce a trial court award. You go to court to enforce an arbitration award, that arbitration award request, or case is subject to a defense, and the defense by the weaker party would be that the arbitration was conducted in some unfair or unconscionable manner. That's the way the issue could get before the court. You could do it as a defense to the powerful party having won and therefore trying to get the court to force the award of the arbitration, the weaker party could then use that attempt to enforce the award as an opportunity to raising a defense.

PRESIDENT ROBAK: One minute.

SENATOR CHAMBERS: But that's all that could be done is to raise a defense. And if the award were set aside, then you'd have to go to court. Is that right, or you'd go back to arbitration again?

SENATOR LANDIS: No, it would vacate the arbitration. The parties, I think, would probably be in the situation of havin' to pursue litigation rather than arbitration.