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requested a determination of deficiencies and additions to tax, and petitions under 26 U.S.C. § 6611, which Ms. Fox did not file before the Tax Court. The court determined that the petitions were frivolous and the proceedings were instituted primarily for purposes of delay.

Accordingly, the court affirmed the Commissioner's determination of deficiencies and additions to tax, and denied the petition for a refund.

Ms. Fox urges on appeal that she should be granted a "second chance" by one of the circuit courts. She argues that the Tax Court's determination of her petition for a refund was based on a misunderstanding of the error of the Tax Court. She argues that she has documentation to refute the Commissioner's calculations of deficiencies and additions to tax, if only given a second chance to produce such documentation to the Tax Court. Although we sympathize with Ms. Fox's regrettable mistake, we cannot grant Ms. Fox a second chance to produce such documentation to the Tax Court.

Ms. Fox argues de novo the Tax Court's determination of her petition for a refund was based on a misunderstanding of the error of the Tax Court. She argues that she has documentation to refute the Commissioner's calculations of deficiencies and additions to tax, if only given a second chance to produce such documentation to the Tax Court. Although we sympathize with Ms. Fox's regrettable mistake, we cannot grant Ms. Fox a second chance to produce such documentation to the Tax Court.

RILEY v. KINGSLEY UNDERWRITING AGENCIES, LTD.

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Cite as 969 F.2d 953 (10th Cir. 1992)

lettered statements of the facts on which petitioner bases the assignments of error."

[3] In addition, by choosing not to appear at the April 8, 1991, hearing before the Tax Court, Ms. Fox waived her opportunity to present documentation to substantiate her claimed tax deductions. Indeed, Ms. Fox never claimed until now to have documentation to refute the Commissioner's calculations of deficiencies and additions to tax—she claimed, rather, that she was not a taxpayer and not liable for any tax at all. The Tax Court did not err in dismissing Ms. Fox's petitions or in sustaining the Commissioner's determinations of deficiencies or additions to tax. See Tax Court Rule 123(b), 26 U.S.C. § 7453.

II

[4-6] We review the Tax Court's imposition of sanctions for abuse of discretion. *Grimes v. Commissioner*, 806 F.2d 1451, 1454 (9th Cir.1986). Under 26 U.S.C. § 6673(a)(1), the Tax Court has discretion to impose sanctions not to exceed \$25,000 when it appears to the court that proceedings before it have been instituted or maintained by the taxpayer primarily for delay, and the taxpayer's position in the proceeding is frivolous or groundless. Because Ms. Fox's materials in the Tax Court were clearly frivolous and groundless, the Tax Court did not abuse its discretion in imposing sanctions of \$5,000 in one case and \$4,500 in the other.

III

The Commissioner asks this court to impose additional sanctions against Ms. Fox for bringing these appeals. See generally, *Casper v. Commissioner*, 805 F.2d 902, 906 (10th Cir.1986). Although Ms. Fox's position is frivolous, we decline to impose additional sanctions.

CONCLUSION

The judgments of the United States Tax Court are AFFIRMED.

Ronald H. RILEY, Individually,
Plaintiff-Appellant,

KINGSLEY UNDERWRITING AGENCIES, LTD., a British corporation, Lime Street Underwriting Agencies, Ltd., a British corporation, Bankside Syndicate Limited, a British corporation, FirstBank of Vail, N.A., Robin C. Kingsley, Robert Hallam, Society and Council of Lloyd's and John Does I Through X, Defendants-Appellees.

No. 91-1311.

United States Court of Appeals,
Tenth Circuit.

July 17, 1992.

American agent which was member of British underwriting group brought action against group and others claiming that defendants violated securities laws. The United States District Court for the District of Colorado, Jim R. Carrigan, J., dismissed claims. Agent appealed. The Court of Appeals, Paul Kelly, Jr., Circuit Judge, held that: (1) forum selection clause in agreement between underwriting group and American agent was valid and enforceable, and (2) null and void exception to Convention on Recognition and Enforcement of Foreign Arbitral Awards did not apply.

Affirmed.

1. Federal Courts ⇐776

Enforceability of forum selection, choice of law and arbitration provisions are questions of law which Court of Appeals reviews de novo.

2. Contracts ⇐127(4)

Forum selection clause in contract between British underwriters and one of its agents, requiring resolution of disputes in England, either



arbitrator, was enforceable; undertaking was truly international in character, all parties other than agent and bank which had provided letter of credit to agent were British, and virtually all activities giving rise to suggested claims occurred in England.

3. Contracts ⇐141(1)

Forum selection provisions are prima facie valid and party resisting enforcement carries heavy burden of showing that provision is invalid due to fraud or overreaching or that enforcement would be unreasonable and unjust under the circumstances.

4. Contracts ⇐141(3)

Only a showing of inconvenience so serious as to foreclose a remedy, perhaps coupled with showing of bad faith, overreaching or lack of notice, would be sufficient to defeat contractual forum selection clause.

5. Contracts ⇐127(4)

Fact that international transaction involving British underwriters and its American agent may have been subject to laws and remedies different or less favorable to those of the United States under agreement which provided for resolution of disputes in Britain was not a valid basis to deny enforcement of forum selection clause since law of the chosen forum was not inherently unfair.

6. Insurance ⇐569

Agreement between British underwriters and American agent to arbitrate any dispute was not null and void under Convention on Recognition and Enforcement of Foreign Arbitral Awards; agent never pleaded that specific choice provisions at issue were obtained by fraud, claim of fraud in inducement could be resolved by arbitration, and at no time did agent offer any evidence on stipulated issues tending to show that arbitration provision was product of fraud or coercion. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Art. II, subd. 3, 9 U.S.C.A. § 201 note.

7. Treaties ⇐8

The "null and void" exclusion in Convention on Recognition and Enforcement of Foreign Arbitral Awards is to be narrowly construed. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Art. II, subd. 3, 9 U.S.C.A. § 201 note.

8. Contracts ⇐333(8)

Plaintiff seeking to avoid forum choice provision on fraud theory must plead fraud going to specific provision. Fed.Rules Civ. Proc.Rule 9(b), 28 U.S.C.A.

Richard G. Sander (George G. Ventura, with him on the brief), both of Popham, Haik, Schnobrich & Kaufman, Ltd., Denver, Colo., for plaintiff-appellant.

Neil Peck (and Thomas S. Nichols & Linda Wackwitz, all of Davis, Graham & Stubbs, Denver, Colo., and Taylor R. Briggs, Sheila H. Marshall & Mary L.B. Betts, of LeBoeuf, Lamb, Leiby & MacRae, New York City, with him on the brief), for defendants-appellees.

Before McKAY, Chief Judge, LOGAN and KELLY, Circuit Judges.

PAUL KELLY, Jr., Circuit Judge.

Plaintiff-Appellant, Ronald H. Riley (Riley) filed suit in federal district court asserting claims under federal and state securities laws, as well as state tort law. Named defendants were Society and Council of Lloyd's, a British entity (Lloyd's); Kingsley Underwriting Agencies, Ltd. (Kingsley Underwriting), Lime Street Underwriting Agencies, Ltd. (Lime Street Underwriting), and Bankside Syndicate, all British corporations (Underwriting Defendants); Robin C. Kingsley (Kingsley) and Robert Hallam (Hallam), both British citizens, and FirstBank of Vail, N.A. (FirstBank). Defendants, other than FirstBank, purported to enter a special appearance to raise the following questions: (1) whether choice of forum and law provisions in Riley's contract with Lloyd's were valid and enforceable, and (2) whether arbitration and choice of law provisions in Riley's con-

Riley's underwriting began in January 1980 with a premium income limit of 150,000 pounds. He remained a member of Lloyd's through 1990, and each year increased the amount of premium income underwritten. By 1989, Riley was underwriting premium income in excess of a million pounds.

In connection with his underwriting, Riley was required to meet Lloyd's deposit requirements. Riley obtained letters of credit from FirstBank. FirstBank in turn issued letters of credit to First National Bank of Boston (Guernsey) Ltd. as security for a letter of credit to be issued by the London branch of the Guernsey Bank in favor of Lloyd's. Lloyd's holds these letters of credit as trustee of a trust for the benefit of Riley's insured policy holders. In the event a member fails or refuses to cover his pro rata share of underwriting liability, then Lloyd's may draw on the letter of credit to cover the obligation. In the event the letter of credit is insufficient, Lloyd's will look to a member's assets to satisfy any remaining underwriting liability.

The syndicates in which Riley participated have experienced large losses, resulting in calls in excess of 300,000 pounds. Riley has been notified that, if he does not satisfy the calls, Lloyd's will draw against the letter of credit issued by Guernsey Bank. Guernsey Bank would then draw on the FirstBank letters of credit.

Proceeding apparently on the theory that the best defense is a good offense, Riley filed this action seeking declaratory judgment, rescission and damages against Defendants other than FirstBank. Riley claimed that these Defendants engaged in the offer and sale of unregistered securities and made untrue statements of material fact and material omissions in connection with the sale of securities, violating the Securities Act of 1933 (1933 Act), §§ 12(1) & 12(2), 15 U.S.C. §§ 771(1) & 771(2), the Securities Exchange Act of 1934 (1934 Act), § 10, 15 U.S.C. § 78j(b) and Rule 10b-5, 17 C.F.R. 240.10b-5. Additionally, Riley made similar allegations under state securities law, see Colo.Rev.Stat. §§ 11-51-107 & 11-

51-125 (1987), and alleged common law fraud. Riley sought a writ of attachment against Lloyd's and an injunction to prevent Defendants from drawing on the letters of credit.

Riley obtained a temporary restraining order from the district court ex parte. Prior to a preliminary injunction hearing, Riley, Lloyd's, the Underwriting Defendants, Kingsley and Hallam entered into a court-approved stipulation that the hearing would be limited to the threshold issues of the applicability and effect of the forum selection clause and the arbitration clause discussed above. Defendants specifically reserved their lack of in personam jurisdiction defense.

Discussion

[1, 2] A motion to dismiss based on a forum selection clause frequently is analyzed as a motion to dismiss for improper venue under Fed.R.Civ.P. 12(b)(3). *Spradlin v. Lear Siegler Mgmt. Servs.*, 926 F.2d 865, 866 (9th Cir.1991); *Commerce Consultants Int'l, Inc. v. Vettrerie Riunite, S.p.A.*, 867 F.2d 697, 698 (D.C. Cir.1989); *Medoil Corp. v. Citicorp*, 729 F.Supp. 1456, 1457 n. 1 (S.D.N.Y.1990). *But see David L. Threlkeld & Co. v. Metallgesellschaft Ltd.*, 923 F.2d 245, 253 n. 2 (2d Cir.) (arbitration provision; motion to dismiss for lack of subject matter jurisdiction), *cert. dismissed*, — U.S. —, 112 S.Ct. 17, 115 L.Ed.2d 1094 (1991). The enforceability of forum selection, choice of law and arbitration provisions are questions of law which we review de novo. *See Milk 'N' More v. Beavert*, 963 F.2d 1342, 1345 (10th Cir.1992). We hold that the parties must abide by their agreement and resolve their disputes in England, either before an English court or arbitrator, as the case may be. Three reasons persuade us: (1) the parties' undertaking is truly international in character, (2) all parties other than Riley and FirstBank are British, and (3) virtually all activities giving rise to the suggested claims occurred in England.

A. Forum Selection and Choice of Law Provisions.

Riley concedes, as he must, that "the enforcement of choice of forum and choice

alleged common law writ of attachment, an injunction to prevent drawing on the let-

temporary restraining order court ex parte. Pre-injunction hearing. Relying on Defendants' motion entered into a court that the hearing on the threshold issues of effect of the forum selection arbitration clause. Defendants specifically in personam jurisdic-

Discussion

to dismiss based on a use frequently is and to dismiss for improper Civ.P. 12(b)(3). *Sprad Mgmt. Servs.*, 926 F.2d 11; *Commerce Consol. v. Vetriere Riuniti*, 37, 698 (D.C. Cir.1989); *Citicorp*, 729 F.Supp. (D.N.Y.1990). *But see* *W. & Co. v. Metallgesellschaft*, 245, 253 n. 2 (2d Cir. 1991). The enforceability, choice of law and issues are questions of law de novo. *See Milk*, 63 F.2d 1342, 1345. We find that the parties' consent and resolve their dispute, either before an arbitrator, as the case may be persuade us: (1) the dispute is truly international; (2) parties other than Riley are British, and (3) virtually no rise to the suggested in England.

Forum Selection and Choice of Law

as he must, that "the choice of forum and choice

of law clauses is consistent with recent U.S. Supreme Court decisions." However, he relies on an isolated sentence in a footnote in *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 387 n. 19, 105 S.Ct. 3346, 3359 n. 19, 87 L.Ed.2d 444 (1985), which stated that forum selection and choice of law provisions which operate as prospective waivers of statutory antitrust claims would not be enforced as against public policy. Riley suggests that he is being deprived of all substantive rights under the federal securities laws and therefore should be relieved of his agreements on public policy grounds.⁴ On these facts, we do not read *Mitsubishi* as restrictively as Riley when *Mitsubishi* is viewed against the backdrop of Supreme Court decisions in the area.

When an agreement is truly international, as here, and reflects numerous contacts with the foreign forum, the Supreme Court has quite clearly held that the parties' choice of law and forum selection provisions will be given effect. *See Carnival Cruise Lines, Inc. v. Shute*, — U.S. —, ——— 111 S.Ct. 1522, 1527-28, 113 L.Ed.2d 622 (1991); *Mitsubishi*, 473 U.S. at 611, 105 S.Ct. at 3356; *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519-20, 94 S.Ct. 2149, 2457-58, 41 L.Ed.2d 270 (1974); *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 9, 92 S.Ct. 1907, 1912, 32 L.Ed.2d 513 (1972). We review these authorities briefly.

[3] In *M/S Bremen*, the Court identified an important rationale for the rule that such provisions should be enforced.

The expansion of American business and industry will hardly be encouraged if, notwithstanding solemn contracts, we insist on a parochial concept that all disputes must be resolved under our laws and in our courts. . . . We cannot have trade and commerce in world markets and international waters exclusively on our terms, governed by our laws, and resolved in our courts.

⁴ We need not decide whether Riley's participation as a Name constitutes a security, or whether Lloyd's or the Defendant Underwriters

Id., 407 U.S. at 9, 92 S.Ct. at 1912. The Court concluded:

Thus, in the light of present day commercial realities and expanding international trade we conclude that the forum clause should control absent a strong showing that it should be set aside.

Id. at 15, 92 S.Ct. at 1916. Forum selection provisions are "prima facie valid" and a party resisting enforcement carries a heavy burden of showing that the provision itself is invalid due to fraud or overreaching or that enforcement would be unreasonable and unjust under the circumstances. *See Id.* at 10, 15, 92 S.Ct. at 1913, 1916; *Seaward v. Devine*, 888 F.2d 957, 962 (2d Cir. 1989).

The Court adhered to this position in *Scherk*, which dealt with the applicability of an arbitration provision requiring that any disputes be referred to arbitration before the International Chamber of Commerce in Paris, France, applying Illinois law. Although an arbitration provision was involved, the Court characterized it as "a specialized kind of forum-selection clause that posits not only the situs of suit but also the procedure to be used in resolving the dispute." *Scherk*, 417 U.S. at 519, 94 S.Ct. at 2457. The Court characterized the agreement at issue as "a truly international agreement" and discussed why these types of provisions are so important in the context of international transactions.

A contractual provision specifying in advance the forum in which disputes shall be litigated and the law to be applied is, therefore, an almost indispensable precondition to achievement of the orderliness and predictability essential to any international business transaction. Furthermore, such a provision obviates the danger that a dispute under the agreement might be submitted to a forum hostile to the interests of one of the parties or unfamiliar with the problem area involved.

Scherk, 417 U.S. at 516, 94 S.Ct. at 2455-56. In passing, the Court noted that disig-

are subject to the provisions of the 1933 or 1934 securities acts.

nating a particular place for arbitration might, under some circumstances, be viewed as an implicit choice of law selection. *Id.* at 519 n. 13, 94 S.Ct. at 2457 n. 13.

In *Mitsubishi*, the Court upheld a provision that would result in antitrust claims being subject to arbitration in Japan on the basis

that concerns of international comity, respect for the capacities of foreign and transnational tribunals, and sensitivity to the need of the international commercial system for predictability in the resolution of disputes require that we enforce the parties' agreement, even assuming that a contrary result would be forthcoming in a domestic context.

Mitsubishi, 473 U.S. at 629, 105 S.Ct. at 3355 (emphasis supplied).

[4] Finally, in *Carnival Cruise Lines*, the Court relied on *M/S Bremen* in enforcing a domestic forum selection clause, despite inconvenience to the plaintiffs. *Carnival Cruise Lines*, 111 S.Ct. at 1528. Only a showing of inconvenience so serious as to foreclose a remedy, perhaps coupled with a showing of bad faith, overreaching or lack of notice, would be sufficient to defeat a contractual forum selection clause. *Id.*

[5] Riley suggests that enforcement of the choice of forum and law provisions is unreasonable because he effectively will be deprived of his day in court. The basis underlying this contention is his perception that recovery will be more difficult under English law than under American law. Riley will not be deprived of his day in court. He may, though, have to structure his case differently than if proceeding in federal district court. The fact that an international transaction may be subject to laws and remedies different or less favorable than those of the United States is not a valid basis to deny enforcement, provided that the law of the chosen forum is not inherently unfair. See *Carnival Cruise Lines*, 111 S.Ct. at 1528; *AVC Nederland B.V. v. Atrium Inv. Ptrshp.*, 740 F.2d 148, 158-59

(2d Cir.1984); *Medoil Corp.*, 729 F.Supp. at 1460; *Karlberg European Tanspa, Inc. v. Jk-Josef Kratz Vertriebsgesellschaft mbH*, 618 F.Supp. 344, 348 (N.D.Ill.1985); *Dukane Fabrics Int'l Inc. v. M.V. Hreljin*, 600 F.Supp. 202, 203-04 (S.D.N.Y.1985). English law does not preclude Riley from pursuing an action for fraud and we agree with the Defendants that the Lloyd's Act does not grant statutory immunity for such claims. See Lloyd's Act, § 14(3), Aplt.App. at 286 & Aple.Add. at 307-08. We have been shown nothing to suggest that an English court would not be fair, and in fact, our courts have long recognized that the courts of England are fair and neutral forums. See *M/S Bremen*, 407 U.S. at 12, 92 S.Ct. at 1914; *Syndicate 420 at Lloyd's London v. Early American Ins. Co.*, 796 F.2d 821, 829 (5th Cir.1986); *Bonny v. Society of Lloyd's*, 784 F.Supp. 1350, 1353 (N.D.Ill.1992). Given the international nature of the insurance underwriting transaction, the parties' forum selection and choice of law provisions contained in the agreements should be given effect.

B. The Arbitration Agreement.

[6] Any discussion regarding the efficacy of an agreement to arbitrate in a foreign country between citizens or entities of different countries must begin with a review of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Convention), 9 U.S.C. § 201 note. The Convention was ratified by the United States for differences arising out of commercial legal relationships and it became effective on December 29, 1970. The United Kingdom and the United States are Contracting States to the Convention. Of course, the ratification of the Convention makes it part of the supreme law of the land, as enforceable as Congressional enactments. See U.S. Const. art. VI, cl. 2. See also *Sedco, Inc. v. Petroleos Mexicanos Mexican Nat'l Oil Co.*, 767 F.2d 1140, 1145 (5th Cir.1985); *Filanto, S.p.A. v. Chilewich Int'l Corp.*, 789 F.Supp. 1229, 1231 (S.D.N.Y.1992) The Convention plainly applies to this commercial transaction.

Medoil Corp., 729 F.Supp. at 1; *European Tanspa, Inc. v. Vertriebsgesellschaft mbH*, 14, 348 (N.D.Ill.1985); *Du-Int'l Inc. v. M.V. Hreljin*, 02, 203-04 (S.D.N.Y.1985). It does not preclude Riley from pleading fraud and we agree that the Lloyd's Act statutory immunity for such fraud, § 14(3), *Aplt.App. Add.* at 307-08. We have nothing to suggest than an award would not be fair, and in *Long* recognized that awards are fair and neutral. *S Bremen*, 407 U.S. at 12. *Syndicate 420 at Lloyd's v. American Ins. Co.*, 706 F.2d 1141 (1st Cir.1986); *Bonny v. So-*, 784 F.Supp. 1350, 1351. Given the international nature of the underwriting transaction and choice of forum contained in the agreement, we give it the effect.

Arbitration Agreement.

Our discussion regarding the effect of the agreement to arbitrate in a foreign jurisdiction involves citizens or entities of different nations. It must begin with a review of the Recognition and Enforcement of Arbitral Awards Act, 9 U.S.C. § 201 note. The Convention was ratified by the United States on August 11, 1970. The United States is a Contracting State to the Convention. The Convention is the supreme law of the United States as Congressional enactments. 3. Const. art. VI, cl. 2. *McCoy v. Petroleos Mexicanos*, 767 F.2d 1140 (1st Cir.1985). *Filanto, S.p.A. v. Citibank*, 789 F.Supp. 1229, 1231. The Convention plainly applies to a commercial transaction.

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Article II of the Convention⁵ imposes a mandatory duty on the courts of a Contracting State to recognize, and enforce an agreement to arbitrate unless the agreement is "null and void, inoperative or incapable of being performed." 9 U.S.C. § 201 note, art. II(3). Following the plain language of the Convention, the First Circuit has framed the very limited inquiry a court should perform when presented with a request to refer an international dispute to arbitration:

- (1) Is there an agreement in writing to arbitrate the subject of the dispute?
- (2) Does the agreement provide for arbitration in the territory of the signatory of the Convention?
- (3) Does the agreement arise out of a legal relationship whether contractual or not, which is considered as commercial?
- (4) Is a party to the agreement not an American citizen or does the commercial relationship have some reasonable relation with one or more foreign states?

Ledes v. Cemniche Ragna, 684 F.2d 184, 185-87 (1st Cir.1982) (citations omitted). If these questions are answered in the affirmative, a court is required to order arbitration. *Id.* at 187. That is the situation in this case. Only if a court finds that the agreement "null and void, inoperative or incapable of being performed," Convention, art. II(3), may it act to the contrary. *Id.*

Riley argues that the "null and void" exception applies. His argument is that the agreement requiring arbitration should be held void as against public policy because several of his claims are grounded in the 1933 and 1934 securities acts, and the application of English law would result in a

waiver of certain provisions of those acts. We disagree. As stated by the Court:

A parochial refusal by the courts of one country to enforce an international arbitration agreement would not only frustrate these purposes, but would invite unseemly and mutually destructive jockeying by the parties to secure tactical litigation advantages. . . . [T]he dicey atmosphere of such a legal no-man's-land would surely damage the fabric of international commerce and trade, and imperil the willingness and ability of businessmen to enter into international commercial agreements.

Scherk, 417 U.S. at 516-17, 94 S.Ct. at 2455-56 (footnote omitted). *Scherk* is persuasive authority in this case because it involved a claimed waiver of a 1934 Act provision. The Court did not reach whether the Convention would require enforcement of the arbitration provision, see 417 U.S. at 520 n. 15, 94 S.Ct. at 2457 n. 15, but nonetheless in the securities context held: that the agreement of the parties in this case to arbitrate any dispute arising out of their international commercial transaction is to be respected and enforced by the federal courts in accord with the explicit provisions of the Arbitration Act. 417 U.S. at 519-20, 94 S.Ct. at 2457 (footnote omitted).

Likewise, in *Mitsubishi*, the Court relied on the strong federal policy favoring arbitration:

"questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration. . . . The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. . . ."

arbitration agreement, signed by the parties or contained in an exchange or letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

5. Article II provides:

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an

473 U.S. at 626, 105 S.Ct. at 3353 (quoting *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25, 103 S.Ct. 927, 942, 74 L.Ed.2d 765 (1983)).

[7] Given this policy and the policy of signatory nations to the Convention which presumes the enforceability of arbitration agreements, we agree with the Third Circuit and its reasoning to the effect that the "null and void" exception in the Convention is to be narrowly construed. *Rhone Mediterranee Compagnia v. Laura*, 712 F.2d 50, 53 (3rd Cir.1983). See also *Ledee*, 684 F.2d at 187; *Meadows Indem. Co. v. Bacala & Shoop Ins. Serv., Inc.*, 760 F.Supp. 1036, 1043 (E.D.N.Y.1991). *Scherk* also leads to the same conclusion, a conclusion further reinforced by Article V(2) of the Convention, which specifically provides for relief when enforcement of an award in violation of public policy is sought.

[8] Riley also suggests, in argument before the district court and on appeal, that all of the choice provisions were induced by fraud, including the arbitration provision. Riley's argument does not persuade us. First, Riley's complaint alleges that he was induced generally to enter the contracts in question as a result of fraud. Aplt.App. at 18 (complaint ¶¶ 118-122). However, Riley never pleaded that the specific choice provisions at issue were obtained by fraud. A plaintiff seeking to avoid a choice provision on a fraud theory must, within the confines of Fed.R.Civ.P. 9(b) and 11, plead fraud going to the specific provision; the teachings of *Scherk*, interpreting *M/S Bremen*, require no less. See *Scherk*, 417 U.S. at 519 n. 14, 94 S.Ct. at 2457 n. 14 (the fraud exception "means that an arbitration or forum-selection clause in a contract is not enforceable if the inclusion of that clause in the contract was the product of fraud or coercion"); *M/S Bremen*, 407 U.S. at 15, 92 S.Ct. at 1916 (clause must be invalid due to fraud or overreaching). Second, a claim of fraud in the inducement may be resolved

by arbitration. See *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 39, 404, 87 S.Ct. 1801, 1806, 18 L.Ed.2d 127 (1967). Third, at no time did Riley offer any evidence on the stipulated issues tending to show that the arbitration provision (or any other choice provision, for that matter) was a product of fraud or coercion. See *Carnival Cruise Lines*, 111 S.Ct. at 1528 ("there is no evidence that petitioner obtained respondents' accession to the forum clause by fraud or overreaching") *Spradlin*, 926 F.2d at 868 (broad and conclusory allegations of fraud without specific factual allegations or evidentiary support are insufficient to invalidate forum selection clauses); *Pelleport Investors, Inc. v. Budco Quality Theatres, Inc.*, 741 F.2d 273, 280 (9th Cir.1984) (party seeking to avoid forum selection clause "submitted no significant probative evidence tending to support a claim of adhesion").

Finally, Riley's suggestion that everyone in England will be biased against him has no basis in the record and we will not assume that Riley would get anything other than a full and fair hearing. See *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 479, 109 S.Ct. 1917, 1920, 104 L.Ed.2d 526 (1989); *Mitsubishi*, 473 U.S. at 634, 105 S.Ct. at 3357; *Manetti-Farrow, Inc. v. Gucci America, Inc.*, 858 F.2d 509, 515 (9th Cir.1988); *Syndicate 420*, 796 F.2d at 829.

The district court's order is AFFIRMED.



6. Article V(2) of the Convention provides:

Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country [sic]; or

(b) the recognition or enforcement of the award would be contrary to the public policy of that country.