

**CASE WATCH – Scope of Emergency Arbitrator’s Power: Yahoo! Inc. v. Microsoft Corp., on Private Appeal to U.S. Second Circuit**

On October 21, 2013, in [\*Yahoo! Inc. v. Microsoft Corp.\*](#), No. 13 CV 7237, 2013 U.S. Dist. LEXIS 151175, at \*1 (S.D.N.Y. October 21, 2013), the US District Court for the Southern District of New York upheld an award of injunctive relief issued by an emergency arbitrator appointed by the American Arbitration Association (AAA). Yahoo argued that the arbitrator had exceeded his authority and acted in manifest disregard of the law pursuant to the Federal Arbitration Act, [9 U.S.C. § 10\(a\)\(4\)](#) (2006), by awarding Microsoft “final permanent relief” rather than “interim, injunctive or emergency relief” as provided in the section of the parties’ 2009 Agreement providing for an emergency arbitrator, *id.*, at \*13-14; see *id.*, note 5.

However, the district court deferred to the emergency arbitrator, finding that, “Yahoo did not meet the heavy burden required to show that the Emergency Arbitrator exceeded his authority under [9 U.S.C. § 10\(a\)\(4\)](#). Citing [\*ReliaStar Life Ins. Co. v. EMC Nat. Life Co.\*](#), 564 F.3d 81, at 86 (2d Cir. 2009), the court articulated a limited standard of review: “If the parties agreed to submit an issue for arbitration, we will uphold a challenged award as long as the arbitrator offers a barely colorable justification for the outcome reached.” 2013 U.S. Dist. LEXIS 151175, at \*23. The court also found that Yahoo had failed to produce enough evidence to show that the arbitrator manifestly disregarded the law, 2013 U.S. Dist. LEXIS 151175, at \*23-24.

The court therefore denied Yahoo’s motion to vacate the arbitral award and granted Microsoft’s cross-petition to confirm the award. The case is on private appeal to the U.S. Second Circuit Court of Appeals where oral arguments were scheduled for November 6, 2013.

- Libbie Richards, CPR Legal Intern