RETHINKING REMOVAL AND "RELATES TO": INTERNATIONAL ARBITRATION DISPUTES AND THE N.Y. CONVENTION

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INTRODUCTION

To most, "The New York Convention" may sound like a gigantic conference center filled with people wearing "I heart NY" shirts and eating thin crust pizza, but for a small group of international commercial litigators, it sounds like a trump card to end all trump cards, a ticket into federal court and—eventually—out to arbitration.

The N.Y. Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("Convention") is an obscure and infrequently utilized part of Chapter 2 of the Federal Arbitration Act implementing the United Nation's Convention covering how to enforce and recognize foreign arbitral awards and agreements.[1] One of the marvels of the Convention is that it contains special, extremely defendant-friendly removal provisions.[2] Where these provisions come to life though is in how the courts construe and enforce them. Specifically, the Convention requires that a foreign arbitration agreement "relate to" the subject matter of the case for it to be removable, irrespective of diversity of citizenship or federal question jurisdiction.[3] The Fifth Circuit originally crafted a standard in *Marathon Oil v. Ruhrgas*, *A.G.* interpreting the "relates to" requirement that struck the right balance to allow easy removal

* J.D., 2016, University of Richmond School of Law; B.A., 2013, Denison University. A special thanks to Jamie Adkins, Andrea Mousouris, and Sarah Ashley Barnett for encouraging me in this endeavor. Thank you to my fierce female family tribe for enabling me to embrace my ambition and teaching me that my voice matters.

1. *See* 9 U.S.C. §§ 201–208 (2012).
2. *See id.* § 205.
3. *Id.*

but maintain structure.[4] Now, however, the Fifth Circuit has created a new standard in *Beiser v. Weyler* interpreting "relates to" so broadly that the gate into federal court is blown right off of its hinges.[5] Alarmingly, more and more circuits are picking up the Fifth Circuit's new test.[6] Many circuits though have yet to adopt any test as these cases are very niche and come up only on occasion.

The *Ruhrgas* standard facilitated arbitration of international contract claims without taking an aggressive approach and was careful to allow only those *truly* foreign arbitration cases to proceed into federal court.[7] Conversely, *Beiser* aggressively rips these cases from state courts and immediately ejects them to arbitration.[8] This article explores why the *Ruhrgas* standard is the superior standard and why circuit courts (and district courts in undecided circuits) should refuse to adopt the *Beiser* standard.

To begin, Part I explores the historical roots of the Convention, discusses the evolution of its removal provisions, and explains how it functions in the district courts today. Part II addresses the arguments in favor of reverting to the *Ruhrgas* standard. This article demonstrates that the current judicial interpretation of the Convention's removal provisions under *Beiser* is too broad and that the stricter construction under *Ruhrgas* should be re-adopted. Part II examines three key reasons why the current *Beiser* standard is unworkable: the current standard (1) leads to absurd results, (2) disrespects notions of federalism and strains comity, and (3) in conjunction with the implementing legislation, shapes federal courts into a procedural pass through and degrades the integrity of the judicial system. Simultaneously, Part II explains why *Ruhrgas* cures the ailments imparted by the *Beiser* standard.

Importantly, no opinion is offered on the preferential treatment given to arbitration of international contract cases more generally. Further, this article only addresses one of the many requirements[9] for removal under the Convention—the "relates to" requirement. Jurisdictional challenges are what largely consume the district

4. 115 F.3d 315, 320–21 (5th Cir. 1997).

5. 284 F.3d 665, 669 (5th Cir. 2002).

6. *See, e.g.*, Reid v. Doe Run Res. Corp., 701 F.3d 840, 843–44 (8th Cir. 2012); Infuturia Glob. Ltd. v. Sequus Pharms., Inc. *(Infuturia II)*, 631 F.3d 1133, 1137–38 (9th Cir. 2011); Goel v. Ramachandran, 823 F. Supp. 2d 206, 212 (S.D.N.Y. 2011).

7. *See infra* Part I.C.2.a.

8. *See infra* Part I.C.2.b.

9. *See* 9 U.S.C. § 205 (2012); *infra* Part I.C.2.

courts in their handling of these cases.[10] The "relates to" prong is rightly one of the most litigated requirements for jurisdictional consideration and thus is worth a deeper look.

I. BACKGROUND

Before the Convention's jurisdictional quirks can be analyzed, one must understand where this esoteric piece of legislation came from, how it operates, and how the courts are currently interpreting it. Each is a significant piece of the puzzle in comprehending how foreign parties capitalize on its breadth and why it should be changed.

A. *The History of the New York Convention*

In the wake of World War II, countries around the world were forced to tackle how to enforce foreign arbitral awards.[11] Consequently, in 1953, the International Chamber of Commerce invited the Economic and Social Council of the United Nations to hold a convention to explore possible resolutions.[12] The Council obliged and called a conference to draft the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards[13] ("U.N. Convention") and, further, "[t]o consider, if time permit[ted], other possible measures for increasing the effectiveness of arbitration in the settlement of private law disputes and to make such recommendations as it may deem desirable."[14] The conference met from May 20 to June 10, 1958.[15] The United States and Russia

10. Jurisdiction is so heavily litigated because § 203's grant of original jurisdiction is circumscribed. 9 U.S.C. § 203. Once district courts have jurisdiction, they are limited to compel arbitration or confirm or vacate the award as long as the arbitration agreement is valid. *See* Aggarao v. MOL Ship Mgmt. Co., 675 F.3d 355, 366–67 (4th Cir. 2012) ("When these jurisdictional prerequisites have been satisfied, a district court is obliged to order arbitration 'unless it finds that the [arbitration] agreement is null and void, inoperative or incapable of being performed.'") (alteration in original) (quoting Convention on the Recognition and Enforcement of Foreign Arbitrial Awards, art. II, ¶ 3, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3).

11. Leonard V. Quigley, *Accession by the United States to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, 70 YALE L.J. 1049, 1059 (1961).

12. *Id.*

13. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3 [hereinafter U.N. Convention].

14. Economic and Social Council Res. 604 (XXI), at 6 (May 22, 1956).

15. Quigley, *supra* note 11, at 1059.

attended along with forty-five other nations.[16] The conference formally adopted the U.N. Convention and "also made several recommendations to the Economic and Social Council for further measures needed to increase the effectiveness of arbitration."[17] "Ten nations signed the [U.N.] Convention on June 10, 1958, and [thirteen] more nations signed it within the period open for signature—until December 31, 1958."[18]

Although the U.N. Convention was adopted by the conference in 1959, the United States did not accede to the convention until eleven years later.[19] Ambassador Richard D. Kearney delivered the United States's accession on September 30, 1970, and President Richard Nixon signed its implementing legislation, the Convention, Chapter 2 of the Federal Arbitration Act,[20] into law on July 31, 1970.[21] Together, they were effective on December 29, 1970, in the United States.[22]

> The [U.N.] Convention provides general ground rules that signatory and acceding nations must follow in the adjudication of disputes in international arbitral agreements. It deals with the following principal issues: (1) what are the procedures for the enforcement of the arbitral award; (2) did the court of original judgment have jurisdiction; (3) is the judgment enforceable where entered; (4) when there is a conflict of laws question, was the correct law applied or will the judgment subvert the laws of the contracting state where enforcement proceedings are taking place; and, (5) when will the courts specifically enforce a contract clause calling for arbitration?[23]

The Convention "revers[ed] centuries of judicial hostility to arbitration agreements, was designed to allow parties to avoid 'the costliness and delays of litigation,' and to place arbitration agreements 'upon the same footing as other contracts . . . .'"[24] One of the paramount features of the Convention is that it allows for easy removal and widens subject matter jurisdiction for federal courts.

16. *Id.* at 1059–60.

17. *Id.* at 1060.

18. *Id.*

19. U.N. Convention, *supra* note 13; Federal Arbitration Act, Pub. L. No. 91-368, 84 Stat. 692 (1970) (current version at 9 U.S.C. §§ 201–208 (2012)).

20. 9 U.S.C. §§ 201–208.

21. Pub. L. No. 91-368, 84 Stat. 692 (1970).

22. *Id.*

23. Stanley L. Levine, *United Nations Foreign Arbitral Awards Convention: United States Accession*, 2 CAL. W. INT'L L.J. 67, 68 (1971).

24. Scherk v. Alberto-Culver Co., 417 U.S. 506, 510–11 (1974) (alteration in original) (footnote omitted) (quoting H.R. REP. NO. 68-96, at 1, 2 (1924)).

B. *Removal Under the Convention*

In order for a district court to take on a Convention case, like in all cases, it must have subject matter jurisdiction. For a case that begins in state court, the district court must have original jurisdiction and removal jurisdiction.[25] Under the Convention, federal district courts have original jurisdiction over an action or proceeding "falling under the Convention," regardless of the amount in controversy.[26] While the twists and turns of the meaning of "falling under the Convention" are discussed in more detail below, rest assured that this is a very low standard. Section 205 of the Convention provides for removal where the subject matter "relates to an arbitration agreement or award falling under the Convention."[27] Removal may occur "any time before the trial [of the action or proceeding]."[28] Ordinary removal procedure applies, except that the removal grounds need only be shown in the removal petition, they need not appear on the complaint's face.[29]

The party asserting federal jurisdiction generally bears the burden of proving that the case is properly in federal court.[30] Lucky for the party asserting federal jurisdiction, the burden is quite light—so light, in fact, that the traditional well-pleaded complaint rule[31] does not apply to cases falling under the Convention. Instead, in interpreting the language of § 205, the Fifth Circuit has stated:

> This language does create one difference between the federal question jurisdiction conferred by § 205 and most other forms of federal question jurisdiction: it permits removal on the basis of a federal defense. The language that the ground for removal "need not appear on the

25. 28 U.S.C. §§ 1441(a), 1446(c) (2012).

26. 9 U.S.C. § 203 (2012) ("An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States (including the courts enumerated in section 460 of title 28) shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.").

27. *Id.* § 205.

28. *Id.* Under § 205, the defendant may file its notice of removal "any time before the trial." *Id.* The ordinary rules for timeliness under 28 U.S.C. § 1446 do not apply to cases invoking removal jurisdiction under the Convention. *See* Sheinberg v. Princess Cruise Lines, Ltd., 269 F. Supp. 2d 1349, 1351–52 (S.D. Fla. 2003); Acme Brick Co. v. Agrupacion Exportadora de Maquinaria Ceramica, 855 F. Supp. 163, 166 (N.D. Tex. 1994); Dale Metals Corp. v. Kiwa Chem. Ind. Co., Ltd., 442 F. Supp. 78, 81 n.1 (S.D.N.Y. 1977).

29. 9 U.S.C. § 205.

30. *See* McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178, 189 (1936).

31. *See* Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

> face of the complaint" explicitly abrogates the well-pleaded complaint rule that normally keeps such defenses from serving as the basis for federal question jurisdiction. But at the same time the statute permits a defense based on an arbitration clause to serve as a grounds for removal, it also directs us to treat such defenses the same way that we treat offensive claims. That is, just as we determine whether a plaintiff's claim arises under federal law from the complaint alone, the statute directs us to determine whether a defendant's defense arises under federal law from the "petition for removal" alone.[32]

This abrogation led one district court to redub it as the "'artless' pleading standard."[33] To find out whether the subject matter "relates to an arbitration agreement or award falling under the Convention" the court may now look *through* the complaint to the petition for removal and rest removal jurisdiction on a federal defense.[34] This severely weakens the respondent's ability to keep a case out of federal court.

Abrogation of the well-pleaded complaint rule is just one of the symptoms of Congress's initial motivation for enacting the Convention. The Supreme Court has stated, "The goal of the Convention . . . was to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries."[35] The Supreme Court has recognized "the emphatic federal policy in favor of arbitral dispute resolution" and "that federal policy applies with special force in the field of international commerce."[36] "[E]asy removal is exactly what Congress intended in § 205."[37] The U.N. Convention and its implementing legislation "articulate a uniform policy in favor of enforcing agreements to arbitrate internationally" and "demand that courts 'subordinate domestic notions of arbitrability to the international policy favoring commercial arbitration.'"[38]

32. Beiser v. Weyler, 284 F.3d 665, 671 (5th Cir. 2002) (quoting 9 U.S.C. § 205).

33. Shilmann Rocbit, LLC v. Am. Blasting Consumables, Inc., No. 2:16-cv-06745, 2016 U.S. Dist. LEXIS 137412, at *17 (S.D. W. Va. Oct. 4, 2016) ("As a result, we are left with more of an 'artless' pleading standard than the 'artful' pleading standard required by *Twombly* and *Iqbal*.").

34. 9 U.S.C. § 205.

35. Scherk v. Alberto-Culver Co., 417 U.S. 506, 520 n.15 (1974).

36. Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 631 (1985).

37. *Beiser*, 284 F.3d at 674 (citing McDermott Int'l, Inc. v. Lloyds Underwriters of London, 944 F.2d 1199, 1209 (1991)).

38. ESAB Grp., Inc. v. Zurich Ins. PLC, 685 F.3d 376, 390 (4th Cir. 2012) (quoting

Usually, "[b]ecause removal jurisdiction raises significant federalism concerns, [the court] must strictly construe removal jurisdiction."[39] However, Congress intended § 205 to provide for "easy removal" and to "confer jurisdiction liberally."[40] Thus, § 205 is not subject to the same strict construction.[41] The Fifth Circuit has described § 205 as "one of the broadest removal provisions" and "emphasized that the general rule of construing removal statutes strictly against removal 'cannot apply to Convention Act cases because in these instances, Congress created special removal rights to channel cases into federal court.'"[42]

C. *Current State of the Law*

Given Congress's backdrop heavily favoring arbitration, one would think that utilizing the Convention to get into federal court[43] would be clear-cut—and it generally is in a majority of cases. The confusion now is actually how to *stay out* of federal court. The courts have widened the (already broad) policy so much that it seems almost impossible to keep a case in state court.[44] For proper removal under the Convention the *removing party* must prove two statutory requisites, (1) that the agreement "falls under the Convention" by way of § 203 and (2) that the subject matter "relates to" such an agreement by way of § 205.[45] When one peels back the curtain on these two requirements, a sweeping policy favoring arbitration is revealed. Prior to 2002, these requirements were interpreted much more narrowly, but the Fifth Circuit's decision in

Mitsubishi, 473 U.S. at 639).

39. Mulcahey v. Columbia Organic Chems. Co., 29 F.3d 148, 151 (4th Cir. 1994) (citing Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100 (1941)); *see Shamrock Oil & Gas Corp*., 313 U.S. at 108 (noting that federalism concerns call for "the strict construction" of the removal statute).

40. *Beiser*, 284 F.3d at 674.

41. *See id.*

42. Acosta v. Master Maint. & Constr. Inc., 452 F.3d 373, 377 (5th Cir. 2006) (quoting *McDermott*, 944 F.2d at 1213).

43. Getting "into federal court" really is not the most precise language because once the case is in federal court, it is immediately ushered into arbitration or remanded to state court. However, because the legal principles directing a case into federal court are duplicative of those guiding it into arbitration, if a party manages to successfully remove, they almost guarantee a dismissal in favor of arbitration. This is discussed *infra* Part I.C.

44. *See Beiser*, 284 F.3d at 674; *see also infra*, Part I.C.2.b (explaining the current standard under *Beiser*).

45. 9 U.S.C. §§ 203, 205 (2012).

Beiser v. Weyler opened the floodgates.[46] The following sections will review the current state of the law on these two requirements.

1. The "Falling Under the Convention" Requirement

An agreement "falls under" the Convention when "(1) there is an agreement in writing to arbitrate the dispute, (2) the agreement provides for arbitration in the territory of a Convention signatory, (3) the agreement arises out of a commercial legal relationship, and (4) a party to the agreement is not an American citizen."[47] Because courts generally interpret these requirements by looking to the plain meaning, the "falls under" prong of the test is easily satisfied.[48] Over 120 countries have signed the Convention;[49] this emphasizes a global policy favoring arbitration and broadens the scope of agreements covered by the Convention. The only occasionally misunderstood requirement is that "a party to the agreement is not an American citizen."[50] The term "party" is used in reference to the agreement—*not the litigation*.[51] Thus, the requirement is *not* that the party to the agreement currently involved in the litigation is not an American citizen, the requirement is only that *a* party to the agreement is not an American citizen.[52] However, it seems that this has only come up in a handful of cases because, commonly, the party to the litigation is also a party to the agreement and therefore not an American citizen.

46. *Compare* Marathon Oil Co. v. Ruhrgas, A.G., 115 F.3d 315 (5th Cir. 1997), *vacated on other grounds en banc*, 145 F.3d 211 (5th Cir. 1998), *rev'd*, 526 U.S. 574 (1999) (requiring a relevant arbitration agreement between the parties to the litigation for § 205 jurisdiction), *with Beiser*, 284 F.3d at 674 (holding that removal is permissible if an arbitration agreement "could *conceivably* impact the disposition of the case" (emphasis added)).

47. Francisco v. Stolt Achievement MT, 293 F.3d 270, 273 (5th Cir. 2002); *see also* 9 U.S.C. § 202.

48. *See, e.g.*, *Francisco*, 293 F.3d at 274–76. Admittedly, the test is very straightforward. Most parties removing under § 205 do not have to think twice about these requirements. As long as there is one foreign party to the agreement and it is in writing, these requirements are usually satisfied. *See* 9 U.S.C. §§ 202, 205.

49. U.N. Convention, *supra* note 13.

50. *Francisco*, 293 F.3d at 270, 273 (interpreting 9 U.S.C § 202). *See, e.g.*, Shilmann Rocbit, LLC v. Am. Blasting Consumables, Inc., No. 2:16-cv-06745, 2016 U.S. Dist. LEXIS 137412, at *19–20 (S.D. W. Va. Oct. 4, 2016) (examining the contractual parties' citizenship); Memorandum of Law in Support of Shilmann Rocbit, LLC's Motion to Remand at 14, *Shilmann*, 2016 U.S. Dist. 137412, at *10 (confusing parties to the litigation and parties to the contract).

51. *See Shilmann*, 2016 U.S. Dist. LEXIS 137412, at *10.

52. *See id.* at *9–11.

2. The "Relates To" Requirement

Of more significance, and the focus of this article, is the "relates to" requirement. The removing party must show that the arbitration agreement "relates to" the subject matter of the litigation. Prior to 2002, the court used a standard just shy of requiring privity, focusing on the plaintiff's relationship to the arbitration agreement. In other words, if the plaintiff had nothing to do with the arbitration agreement, the arbitration agreement did not "relate to" the subject matter of the litigation. In 2002, however, the court shifted gears and created a broader standard.

a. *Marathon Oil Co. v. Ruhrgas, A.G.*—The Old Standard

In *Marathon Oil Co. v. Ruhrgas*, *A.G.*, the Fifth Circuit articulated the standard for "relates to" under the Convention.[53] In sum, the "relates to" prong required that the plaintiffs either be a signatory to the agreement or have some other tangible, commercial legal relationship to the defendant, harm, or agreement.

The test of *Ruhrgas* depends on the relationship of the parties and the plaintiffs' claim to the arbitration agreement.

> The *Ruhrgas* factors have been summarized as follows: (1) whether the plaintiffs signed the arbitration agreement; (2) whether the plaintiffs sought damages under the contract that contains the arbitration agreement; (3) whether the plaintiffs and the defendant had any contractual relationship; and (4) whether the plaintiffs sought a remedy for wrongs done to a signatory of the agreement.[54]

The plaintiffs sued a German gas supplier, Ruhrgas, in Texas state court in connection with the plaintiffs' construction and drilling operations in the Heimdal field in the North Sea.[55] Ruhrgas removed the action to federal court under § 205.[56] "Ruhrgas acknowledge[d] that none of the Marathon plaintiffs ha[d] any contractual relationship with Ruhrgas and that none of the plaintiffs

53. 115 F.3d 315 (5th Cir. 1997), *vacated on other grounds en banc*, 145 F.3d 211 (5th Cir. 1998), *rev'd*, 526 U.S. 574 (1999). The Supreme Court decision in *Ruhrgas* did not discuss the issue of removal under the Convention. *See generally Ruhrgas AG*, 526 U.S. at 574. Instead, the Supreme Court reversed on a personal jurisdiction issue. *See id.* at 588.

54. Susan L. Karamanian, *The Road to the International Tribunal and Beyond: International Commercial Arbitration and United States Courts*, 34 GEO. WASH. INT'L L. REV. 17, 83 (2002).

55. *Ruhrgas, A.G.*, 115 F.3d at 317.

56. *Id.*

ever signed an arbitration agreement."[57] Nevertheless, as part of its attempt to remove, Ruhrgas asserted that the subject matter related to an arbitration agreement falling under the Convention because the plaintiffs' claims were "attempt[s] to enforce provisions of the Heimdal Gas Agreement, an agreement to which [the plaintiffs were] not parties."[58] Further, Ruhrgas argued that one of the plaintiffs, Marathon Petroleum Norway ("MPN"), had an obligation to arbitrate all disputes connected to the Heimdal Gas Agreement, and that the suit at hand was an "attempt to circumvent" that obligation.[59] The Fifth Circuit noted that the real inquiry was whether any *relevant* arbitration agreement existed and decided that in this case, there was not one.[60] In reaching this conclusion, the Fifth Circuit found compelling (1) that redress was not being sought for MPN, and (2) that the suit was not one for breach of contract.[61]

The *Ruhrgas* test made the plaintiff the epicenter of the inquiry and required that some contractual connection between the plaintiff and the defendant exist. While not formally implementing a privity requirement, the strictness of the *Ruhrgas* test comes close to such an interpretation. *Ruhrgas* was ultimately vacated on other grounds by the Supreme Court.[62] When the question arose later in *Beiser v. Weyler*, the Fifth Circuit abandoned its previous common sense approach and took a different, more lenient route.[63]

b. *Beiser v. Weyler*—The New Standard

The Court of Appeals for the Fifth Circuit's decision in *Beiser* primarily affected the "relates to" prong by destroying the semi-signatory requirement set up in *Ruhrgas*.[64] The Fifth Circuit all but did a 180-degree turn and opened the door to the federal courts in this arena—wide.[65] After *Beiser*, the courts' approach to inter-

57. *Id.* at 321 n.25.
58. *Id.* at 321.
59. *Id.*
60. *Id.*
61. *Id.*
62. *See* Marathon Oil Co. v. A.G. Ruhrgas, 145 F.3d 211 (5th Cir. 1998) (en banc), *rev'd*, 526 U.S. 574 (1999).
63. *See* 284 F.3d 665, 667, 669–70 (5th Cir. 2002).
64. *See id.* at 669–70.
65. *See generally id.*

national arbitration cases can only be characterized as aggressively dismissive. The Fifth Circuit held that "whenever an arbitration agreement 'falling under the Convention' could *conceivably* affect the outcome of the plaintiff's case, the agreement 'relates to'" an arbitration agreement that falls under the Convention and can be removed from state to federal court.[66]

In *Beiser*, the plaintiff, Fred Beiser, was the director and sole employee of an LLC, Horizon Energy.[67] Horizon Energy contracted with Roy M. Huffington, Inc., to acquire development rights to an oil and gas field in Hungary.[68] Beiser signed this agreement on behalf of Horizon Energy in his official capacity.[69] Simultaneously, Horizon Energy entered into a line of credit agreement with Hungarian Horizon Energy Limited ("Hungarian Horizon"), which provided financing for the project.[70] Beiser also signed this agreement in his official capacity, on behalf of Horizon Energy.[71] "Both agreements contained clauses providing for the arbitration of any dispute in London."[72]

Beiser filed suit against Roy M. Huffington, Inc., Hungarian Horizon, Horizon Energy, and other individual parties, claiming that he was "wrongfully deprived . . . of his financial interest in the Hungary field."[73] He filed suit in state court alleging various state law claims.[74] The defendants removed the case to federal court and moved to compel arbitration, and Beiser moved to remand to state court on the grounds that he was a nonsignatory to the agreements and that those agreements therefore did not "relate to" the subject matter of his suit.[75] The district court denied Beiser's motion and

66. *Id.* at 669.
67. *Id.* at 666.
68. *Id.* at 667.
69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.* The agreements at issue clearly met the "falling under the Convention" prong. This was undisputed. *Id.* "[Beiser] did not contest that the arbitration agreements 'fall[] under the Convention' within the meaning of § 205." *Id.* (alteration in original).
73. *Id.* at 666–67.
74. *Id.* at 667.
75. *Id.*

granted the motion to compel arbitration.[76] Beiser appealed, challenging the court's subject-matter jurisdiction under 9 U.S.C. § 205 removal jurisdiction.[77]

The Fifth Circuit concluded that Beiser's claims were related to the arbitration agreement because "[d]eveloping [his] case [would] necessarily involve explaining the scope and operation" of the agreement, and the "suit at least has a 'connection with' the contracts governing the transaction out of which his claims arise."[78] It was conceivable that a court could pierce the corporate veil and hold Beiser personally responsible for the contracts.[79] Thus, the court held that "[b]ecause the arbitration agreements could conceivably affect the disposition of Beiser's claims, those agreements 'relate to' his claims, and the district court had removal jurisdiction under § 205."[80] Underscoring the broad scope of § 205 removal, the Fifth Circuit stated that "absent the rare frivolous petition for removal, as long as the defendant claims in its petition that an arbitration clause provides a defense, the district court will have jurisdiction to decide the merits of that claim."[81] Moreover, the Fifth Circuit referred to the "relates to" requirement as a "low bar."[82]

The *Beiser* Court rested its conclusion on two practical grounds. First, the court believed that a signatory requirement would "require a court to front-load a merits inquiry into an examination of jurisdiction."[83] Specifically, the court was concerned about requiring the district court to determine whether Beiser would definitely be bound to the agreements.[84] Next, the court noted that because "a district court's [decision to] remand for lack of subject matter jurisdiction cannot be reviewed by an appellate court under 28 U.S.C. § 1447(d), remanding the case to state court would effectively remove the matter from the federal court system for good."[85]

76. *Id.*
77. *Id.* at 667–68.
78. *Id.* at 669.
79. *Id.* at 670.
80. *Id.*
81. *Id.* at 671–72.
82. *Id.* at 669.
83. William W. Park et al., *International Commercial Dispute Resolution*, 37 INT'L LAW. 445, 449 (2003).
84. *Beiser*, 284 F.3d at 670.
85. Park, *supra* note 83, at 450 (citing *Beiser*, 284 F.3d at 672).

This would be counter to the aims of the Convention and would strain federal-state court relations.

The standard set forth in *Beiser* has become the model other circuits are slowly adopting.[86] Its broad interpretation of "relates to" ushers in a large class of cases where the relationship of a party to an agreement "falling under the Convention" is tangential and circumstantial. Indeed, a party's status as a signatory is no longer relevant to the analysis at all. As long as the agreement "falling under the Convention" could conceivably affect the disposition of the plaintiff's claims, removal gets the green light.

c. *Infuturia Global Ltd. v. Sequus Pharmaceuticals, Inc.*

Since *Beiser*, the Ninth Circuit has agreed with the Fifth Circuit and adopted wholesale *Beiser*'s interpretation of "relates to."[87] In *Infuturia Global Ltd. v. Sequus Pharmaceuticals, Inc.*, the Ninth Circuit proclaimed: "The phrase 'relates to' is plainly broad, and has been interpreted to convey sweeping removal jurisdiction in analogous statutes" and "[n]othing in § 205 urges a narrower construction."[88] The court expressly rejected the proposition that § 205 required the parties to be in privity of contract, finding that the language of § 205 "focuses only on the relatedness of the '*subject matter* of [the] action . . . to an arbitration agreement,'" not "on the relatedness of the *parties*."[89]

In this case, the plaintiff, Infuturia, a British Virgin Islands citizen, entered into a license agreement with Yissum Research and Development Company, an Israeli company, giving Infuturia an exclusive license for a pharmaceutical product developed by Professor Yechezkel Barenholtz, an Israeli citizen.[90] The license agreement contained an arbitration clause mandating "arbitration of any dispute 'connected in any way to the implementation of [the license] [a]greement.'"[91] Later, Yissum Research and Development

86. *See, e.g.*, Reid v. Doe Run Res. Corp., 701 F.3d 840, 843–44 (8th Cir. 2012) (applying the *Beiser* standard in holding that "a case may be removed under § 205 if the arbitration could conceivably affect the outcome of the case"); *Infuturia II*, 631 F.3d 1133, 1138 (9th Cir. 2011) (applying the *Beiser* standard in holding that "[t]he phrase 'relates to' is plainly broad, and has been interpreted to convey sweeping removal jurisdiction in analogous statutes").

87. *See Infuturia II*, 631 F.3d at 1137–38.

88. *Id.* at 1138.

89. *Id.* (alterations in original).

90. *Id.* at 1135.

91. *Id.*

Company entered into another license agreement with Sequus Pharmaceuticals, a U.S. citizen, for the same pharmaceutical product.[92]

Infuturia sued all other parties in California state court alleging tortious interference with its original license agreement.[93] The case was stayed and the parties went to arbitration where Yissum ultimately prevailed.[94] An Israeli court confirmed the award, and after the stay was lifted in California state court, Infuturia requested confirmation of the award and asserted new claims against the defendants.[95] The defendants defended on the grounds of collateral estoppel, an affirmative defense. Borrowing from *Beiser*, the *Infuturia* court held that "where the defendant relies on the affirmative defense of collateral estoppel regarding issues already resolved against the plaintiff in arbitration, the arbitral award 'could conceivably affect the outcome' of the case" and so removal was proper.[96]

II. DISCUSSION

The *Beiser* standard, although picking up steam with circuits around the country, should be abandoned in favor of the old *Ruhrgas* standard. The breadth of the *Beiser* standard leads to absurd results, destroys any balance between the state and federal judiciaries, and too widely refers disputes to arbitration—converting the federal court into a mere procedural pass through. The *Ruhrgas* standard avoids these problems and maintains the integrity of the federal and state judiciaries. Each of the above arguments are addressed, in turn, below.

A. *Absurdity*

It is easy to see how the pillars of the *Beiser* decision may lead to absurd results. One of the most concerning results is that two

92. *Id.* at 1135–36.

93. *Id.* at 1135.

94. *Id.* at 1136.

95. Infuturia Glob. Ltd. v. Sequus Pharms., Inc. *(Infuturia I)*, No. C 08-4871 SBA, 2009 U.S. Dist. LEXIS 13570, at *5 (N.D. Cal. Feb. 23, 2009).

96. *Infuturia II*, 631 F.3d at 1138–39 (quoting Beiser v. Weyler, 284 F.3d 665, 669 (5th Cir. 2002)).

American companies could potentially be sent to arbitration in a foreign country. In *Shilmann Rocbit, LLC v. American Blasting Consumables, Inc.*, this exact scenario occurred.[97]

In *Shilmann*, the plaintiff, Shilmann Rocbit, LLC, a West Virginia citizen, and Riplog Pty Ltd., a South African citizen, entered into an Exclusive Distribution Agreement under which the plaintiff was to be the exclusive distributor for Riplog's "hole plugs."[98] Of course, this contract contained "a dispute resolution clause requiring all claims 'aris[ing] out of or . . . connect[ed] with' the [a]greement to be arbitrated in South Africa under South African law."[99] Riplog saw an opportunity, got crafty, and sold its hole plugs to its own affiliated company, American Blasting Consumables, a West Virginia citizen, in violation of the agreement.[100] Shilmann, in turn, got crafty. Instead of suing Riplog, with whom Shilmann would have to arbitrate the dispute in South Africa, Shilmann sued Riplog's West Virginia affiliate, American Blasting, for tortious interference.[101] After Shilmann filed the state court complaint, but before the action was removed, Riplog made a partial assignment of rights to payment under the agreement to American Blasting, and American Blasting brought counterclaims for Shilmann's account delinquencies.[102] This partial assignment was made, presumably, in hopes of securing federal subject matter jurisdiction under the Convention based on the counterclaims. Riplog's efforts, however, were unnecessary at best and collusive at worst. The court correctly disregarded the counterclaims in its determination of subject matter jurisdiction.[103] Regardless, American Blasting was able to force Shilmann into federal court.[104]

The court in *Shilmann* determined that the agreement plainly fell under the Convention because "[t]he agreement [was] in writing, South Africa [was] a signatory to the Convention, South Africa [was] the seat of arbitration, . . . the parties [had] a commercial legal relationship," and "Riplog, a citizen of South Africa, was still

97. No. 2:16-cv-06745, 2016 U.S. Dist. LEXIS 137412, at *2 (S.D. W. Va. Oct. 4, 2016).
98. *Id.*
99. *Id.* (alterations in original).
100. *Id.*
101. *Id.* at *3–4.
102. *Id.*
103. *Id.* at *4 n.2.
104. *Id.* at *9–10.

a party to the Agreement."[105] The court then applied the *Beiser* standard to conclude that the agreement "related to" the subject matter of the case.[106] The court reasoned,

> The Complaint in this case gives no grounds for removal jurisdiction, whether under the Convention or otherwise. . . . Thus, removal, if proper, must be based on a federal defense. *See Beiser*, 284 F.3d at 671. Accordingly, "the statute directs us to determine whether a defendant's defense arises under federal law from the 'petition for removal' alone." *Id.*
>
> . . . [D]espite the defendant's argument and irrespective of the partial assignment, it is at least *conceivable* that the arbitration clause in the Agreement could affect the outcome of plaintiff's claim based on statements in the Notice of Removal. Here, as in *Beiser*, "[d]eveloping [plaintiff's] case [would] necessarily involve explaining the scope and operation" of the Agreement and the "suit at least has a 'connection with' the contracts governing the transaction out of which his claims arise." *Beiser*, 284 F.3d at 669. In order to determine whether the defendant tortiously interfered with the Agreement, the court would have to delve into the depths of the terms of the Agreement, especially because the crux of both the Agreement and the plaintiff's tortious interference claim is the plaintiff's exclusivity rights. Notably, unlike the plaintiff in *Beiser*, the plaintiff in this case is a signatory to the Agreement—making the connection between the Agreement and the subject matter of this case undeniably stronger than that in *Beiser*.[107]

From this, two domestic, non-diverse companies landed in federal court and were ultimately sent to South Africa to arbitrate their dispute—an absurd result.[108]

Had the court applied the *Ruhrgas* standard, it could have avoided this absurdity. Just as in *Ruhrgas*, the plaintiff's claim was not one for breach of contract, a fact the *Ruhrgas* court found compelling.[109] Further, the court would have looked to see if any relevant arbitration agreement existed and likely would have concluded that the arbitration agreement between Riplog and Shilmann was not relevant to the dispute between American Blasting and Shilmann, especially because American Blasting and Shilmann were only contractually related by way of a partial assignment of collection rights.[110] More directly, the court would have

105. *Id.* at *10.
106. *Id.* at *10–12.
107. *Id.* at *15–16 (fourth, fifth, and sixth alterations in original) (footnote omitted).
108. *Id.* at *21–22.
109. Marathon Oil Co. v. Ruhrgas, A.G., 115 F.3d 315, 321 (5th Cir. 1997).
110. *Shilmann*, 2016 U.S. Dist. LEXIS 137412, at *3, *15.

looked to the distilled factors of *Ruhrgas*: "(1) whether the plaintiffs signed the arbitration agreement; (2) whether the plaintiffs sought damages under the contract that contains the arbitration agreement; (3) whether the plaintiffs and the defendant had any contractual relationship; and (4) whether the plaintiffs sought a remedy for wrongs done to a signatory of the agreement."[111] In *Shilmann*, the plaintiff signed the arbitration agreement and sought a remedy for the wrongs done by a signatory.[112] However, factors two and three cut against a finding of "relates to" because Shilmann's claim was not for damages "under the contract" and the contractual relationship between the parties was not relevant to its claim.[113]

Shilmann's determination is an absurdity because the parties were not playing in the *international* arena. As domestic parties, Congress's policy favoring arbitration of commercial disputes, which "applies with special force in the field of international commerce," loses its momentum when neither party is a foreign citizen.[114] In a *Ruhrgas* analysis, it would be extremely difficult for domestic parties to duck under the protection of the Convention because either (1) they would be directly, contractually related and thus the agreement would not "fall under" the Convention; or (2) they would be somehow tangentially related but not able to bring a breach of contract claim (as was the case in *Shilmann*).

Shilmann presents a unique case study because it involves the opposite of the problem presented in *Ruhrgas*. In *Ruhrgas*, significantly, two of the plaintiffs were not signatories.[115] In *Shilmann*, the defendant was not a signatory.[116] Demonstrably, *Ruhrgas*, at the very least, gives courts more "wiggle room" to avoid absurd results, such as allowing two domestic, non-diverse companies to land in federal court by virtue of legislation focused on *international* disputes.

111. Karamanian, *supra* note 54, at 83.

112. *Shilmann*, 2016 U.S. Dist. LEXIS 137412, at *2–3, *16.

113. *Id.* at *3–5.

114. *See* Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 631 (1985).

115. *Ruhrgas, A.G.*, 115 F.3d at 321.

116. *Shilmann*, 2016 U.S. Dist. LEXIS 137412, at *16 ("Notably, unlike the plaintiff in *Beiser*, the plaintiff in this case is a signatory to the Agreement—making the connection between the Agreement and the subject matter of this case undeniably stronger than that in *Beiser*.").

Indeed, the *Ruhrgas* standard, with a focus on the relationship of the parties and the relationship of the plaintiff and his claim to the arbitration agreement, is a more holistic, common-sense approach to jurisdiction under the Convention and is much more consistent with the purpose of the Convention and tenants of the Federal Rules of Civil Procedure. *Ruhrgas*'s definition of "relates to"

> preclude[s] removal merely due to the presence of an arbitration clause in a contract not having a direct bearing on the plaintiff's claim. At the same time, it recognize[s] that a claim not based solely on the contract containing the arbitration clause, but which would implicate the clause in a meaningful manner, could give grounds for removal.[117]

Ruhrgas comes close to a privity requirement but leaves room to uphold the aims of Congress while also avoiding absurd results.

Beiser's greatest departure, which tends to make its results more absurd, is its abrogation of the well-pleaded complaint rule.[118] By allowing the district court to now look through the complaint to the notice of removal for grounds to remove, absurd results are more readily reached as more power is handed to the removing party.[119] Removal now turns on how well the removing party can spin the arbitration agreement's relation to the case.[120] With *Ruhrgas*, the well-pleaded complaint rule, which kept the court's focus rightly on the complaint in question, had not been expressly abrogated, thereby avoiding a power imbalance and a heavy-handed approach to Convention cases.[121] For the same reasons, the *Ruhrgas* standard better serves the principles of comity and federalism, as discussed below.

B. *Comity*

Next, *Ruhrgas* manages to strike the right balance so that the federal courts do not compromise the principles of comity. The *Beiser* standard opens the door to federal court so wide that it disrupts fundamental notions of federalism and runs counter to the principles of comity, stealing cases traditionally left to the states—contract disputes.

117. Karamanian, *supra* note 54, at 84.

118. *See* Beiser v. Weyler, 284 F.3d 665, 671 (5th Cir. 2002).

119. *Id.*

120. *See generally Ruhrgas, A.G.*, 115 F.3d 315 (stating that "the issue is whether any *relevant* arbitration agreement exists").

121. *Id.* at 320–21.

Comity is an age-old principle congruent with the ideals of federalism where courts strive to maintain a friendly and respectful relationship while acting efficiently and without conflict.[122] One usually encounters the concept of comity in the international arena when considering the question of whether United States laws, policies, or practices are in conflict with another country's comparable laws, policies, or practices. In this specific context, however, we consider comity between the state and federal courts in deciding contractual disputes, albeit international ones. "Comity . . . serves to ensure that 'the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.'"[123] In sum, "[t]he principle [of comity] is that a court should not assume to disturb another court's disposition of a controversy unless there are good reasons for doing so."[124]

Indeed, the *Beiser* court was concerned about comity, but believed that a more lenient standard would facilitate federal-state court relations rather than hinder them.[125] The court believed it

122. *See* Levin v. Commerce Energy, Inc., 560 U.S. 413, 417 (2010); Rhines v. Weber, 544 U.S. 269, 273–74 (2005); Doe v. Va. Dept. of State Police, 713 F.3d 745, 753 (4th Cir. 2013), *cert. denied*, 134 S. Ct. 1538 (2014); O'Sullivan v. City of Chicago, 396 F.3d 843, 868 (7th Cir. 2005); Penn-America Ins. Co. v. Coffey, 368 F.3d 409, 412 (4th Cir. 2004); Gilbertson v. Albright, 381 F.3d 965, 970 (9th Cir. 2004).

123. *Levin*, 560 U.S. at 431 (quoting Younger v. Harris, 401 U.S. 37, 44 (1971)).

124. *In re* Gen. Adjudication of All Rights to Use Water in Gila River Sys. & Source, 127 P.3d 882, 899 (Ariz. 2006) (second alteration in original) (quoting RESTATEMENT (SECOND) OF JUDGMENTS § 78 cmt. a (AM. LAW INST. 1982)).

125. Beiser v. Weyler, 284 F.3d 665, 674–75 (5th Cir. 2002). Specifically, the court reasoned:

> Moreover, § 205 does not interfere with state courts as much as ordinary removal under the general removal statute, 28 U.S.C. § 1441. When a case is removed under § 1441, it will often remain in federal court until its conclusion. Under § 205, however, the federal issue in cases will often be resolved early enough to permit remand to the state court for a decision on the merits. The arbitrability of a dispute will ordinarily be the first issue the district court decides after removal under § 205. If the district court decides that the arbitration clause does not provide a defense, and no other grounds for federal jurisdiction exist, the court must ordinarily remand the case back to state court. *See* 28 U.S.C. § 1441(c) (granting district court discretion to remand all claims in which state law predominates); *Parker & Parsley Petroleum Co. v. Dresser Indus.*, 972 F.2d 580, 585 (5th Cir. 1992) (noting that when all federal claims are resolved early in a lawsuit and only state law claims remain, the district court almost always should remand to the state court); *Wong v. Stripling*, 881 F.2d 200, 204 (5th Cir. 1989) (same). Except for state law claims that turn out to be subject to arbitration, § 205 will rarely permanently deprive a state court of the power to decide claims properly brought before it. The district court will ordinarily remand those cases that turn out not to be subject to arbitration,

should be easier to keep a Convention case in federal court because a remand order is unreviewable.[126] Thus, once remanded, the case would have to stay in state court.[127] This, the court believed, would strain federal-state court relations and be counter to the aims of the Convention.[128] The position taken by the Fifth Circuit is an idealistic one. It assumes that there will be cases left to remand to state court. The standard the Fifth Circuit created, however, almost never allows for remand because of its overbreadth. Thus, its reasoning is faulty, and this standard actually serves federalism in an opposite way than intended.

If one ascribes to the belief that federal courts should have the sole power to decide international arbitration agreement cases, then it is simple to understand that federal courts would not be happy about remanding cases to state court. The Fifth Circuit, however, failed to examine the other side of the coin. Making it easier to stay in federal court could just as easily anger state courts that are intimately familiar with common law state court contract claims. Ultimately, the Fifth Circuit had a good thing going under *Ruhrgas* and tinkered with a standard that struck the right balance.

Under *Ruhrgas*, the state courts have a sliver of jurisdiction, where the plaintiff has no relation to the arbitration agreement.[129] This tiny corner of Convention cases hands state courts a piece of the pie without really handing them anything at all. In other words, federal courts get to keep the meat of the Convention cases while creating the so-called cohesive body of federal law and state courts get to keep some modicum of their precious state court claims and self-respect. Under *Beiser*, there is no more pretending. State courts essentially have *no* jurisdiction[130]—case in point, *Shilmann*.[131] The Fifth Circuit clearly did not critically contemplate the

> such that the state court will be able to resolve the merits of the dispute. Section 205 therefore raises fewer federalism problems than the general removal statute, § 1441: except in arbitrable cases, it will ordinary [sic] permit state courts to resolve the ultimate issues in a case.

Id.

126. *Id.* at 672.

127. *Id.*

128. *Id.* at 672–73.

129. Marathon Oil Co. v. Ruhrgas, A.G., 115 F.3d 315, 320–21 (5th Cir. 1997).

130. *But see* Samsun Logix Corp. v. Bank of China, 740 F. Supp. 2d 484, 489 (S.D.N.Y. 2010) (applying *Beiser* and concluding that "[t]he incantation of the word 'arbitration' somewhere in the record of a case does not convey federal jurisdiction").

131. *See supra* Part II.A.

extent of disruption to the state courts when crafting the *Beiser* standard. As a result, federalism suffers for the price of creating a cohesive body of federal law.

Moreover, the Supreme Court has proclaimed that ordinary removal is to be strictly construed due to federalism concerns.[132] Specifically, the Supreme Court has stated,

> [T]he policy of the successive acts of Congress regulating the jurisdiction of federal courts is one calling for the strict construction of such legislation [defining removal]. The power reserved to the states under the Constitution to provide for the determination of controversies in their courts, may be restricted only by the action of Congress in conformity to the Judiciary Articles of the Constitution. "Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined."[133]

Of course, following this logic, a liberal construction would be counter to federalism concerns and aggravate the long-standing notions of comity. Confusingly though, the Fifth Circuit adopted an extremely liberal standard under *Beiser*, yet concluded that it best served federalism concerns. Although the court in *Beiser* loosened the requirements for removal in this context in the name of federalism, it ultimately placed more strain on comity and rebuffed Supreme Court precedent. The *Ruhrgas* standard would be the right compromise, a stricter standard than *Beiser* but respectful of the aims of the Convention.

C. *Procedural Pass Through Counter to Aims of the Convention*

The *Beiser* standard may have been straightforward at its inception, but the courts have transformed the path "to" federal court into more of a winding, thorny path "through" federal court. By demolishing the chance for a case to stay in state court, the Fifth Circuit foreclosed the ability of *any* court to decide the merits of these cases as long as an enforceable arbitration agreement exists. Although *Ruhrgas* would also be subject to the Convention's automatic referral to arbitration provision, its more remand-able standard preserves the ability of courts to decide the merits of Convention cases.

132. Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108–09 (1941).
133. *Id.* (quoting Healy v. Ratta, 292 U.S. 263, 270 (1934)).

Section 203's grant of original jurisdiction ultimately turns out to be fleeting. Once the district court obtains original jurisdiction under § 203 and removal jurisdiction under § 205, its hands are tied to one of three options: to compel, confirm, or vacate an arbitral award.[134] Astoundingly counter to the lauded priority to create a "federal body of law," the district court has no authority to decide the merits of the dispute.[135] Even more interesting is that the inquiry to determine whether an arbitration agreement is enforceable is duplicative of the inquiry into whether the agreement "falls under" the Convention as required by § 202.[136] Specifically, the test is whether:

> (1) there is an agreement in writing within the meaning of the Convention; (2) the agreement provides for arbitration in the territory of a signatory of the Convention; (3) the agreement arises out of a legal relationship, whether contractual or not, which is considered commercial; and (4) a party to the agreement is not an American citizen, or that the commercial relationship has some reasonable relation with one or more foreign states.[137]

"When these jurisdictional prerequisites have been satisfied, a district court is obliged to order arbitration 'unless it finds that the [arbitration] agreement is null and void, inoperative or incapable of being performed.'"[138]

The interplay between the *Beiser* standard and § 202 is concerning because it transforms the federal courts into a procedural pass through—an express ride out of federal court and into arbitration. The two inquiries, removal jurisdiction and enforceability of the arbitration agreement, are collapsed on top of each other, making a merits-based decision in the United States impossible. The *Ruhrgas* standard would not cure this problem completely, but it would certainly help. By reserving some jurisdiction to the state courts, the possibility of a merits-based decision remains.

134. Holzer v. Mondadori, No. 12 Civ. 5234, 2013 U.S. Dist. LEXIS 37168, at *19 (S.D.N.Y. Mar. 14, 2013) (citing Scandinavian Reinsurance Co. Ltd. v. Saint Paul Fire & Marine Ins. Co., 668 F.3d 60, 71 (2d Cir. 2012)); *see* Aggarao v. MOL Ship Mgmt. Co., 675 F.3d 355, 366–67 (4th Cir. 2012); Beiser v. Weyler, 284 F.3d 665, 675 (5th Cir. 2002) ("The district court will ordinarily remand those cases that turn out not to be subject to arbitration, such that the state court will be able to resolve the merits of the dispute."); *see, e.g.*, Goel v. Ramachandran, 823 F. Supp. 2d 206, 216–20 (S.D.N.Y. 2011) (remanding action to state court when party who had removed under § 205 did not seek to compel arbitration).

135. *See Goel*, 823 F. Supp. 2d at 213 (citing *Beiser*, 284 F.3d at 675).

136. *Aggarao*, 675 F.3d at 369.

137. *Id.* at 366 (quoting Balen v. Holland Am. Line Inc., 583 F.3d 647, 654–55 (9th Cir. 2009)).

138. *Id.* at 366–67 (alteration in original) (quoting U.N. Convention, *supra* note 13, at art. II, ¶ 3).

CONCLUSION

The current judicial interpretation of the Convention's removal provisions under *Beiser* is, simply too broad, and the stricter construction under *Ruhrgas* should be re-adopted. This is so because the *Beiser* standard: (1) leads to absurd results; (2) disrespects notions of federalism and strains comity; and (3) in conjunction with the implementing legislation, shapes federal courts into a procedural pass through and degrades the integrity of the judicial system. In rethinking removal under the *Ruhrgas* standard, the Fifth Circuit power-played the state courts and tied the district courts' hands. Further, because this small piece of legislation is not commonly utilized, the law created when it is utilized is even more important. To this end, circuit courts that have yet to address this issue should think carefully about the distinction between the *Ruhrgas* and *Beiser* standards and should opt to take on the *Ruhrgas* standard.