

# Keeping Boilerplate Coupled to the Transaction: The Ongoing Struggles with ‘Wrap’ Arbitration Provisions

To get around the unilateral character of adhesive contracting, U.S. courts have, over the past five decades, refocused contract formation on constructive notice, points out Henry Allen Blair in **Arbitration Nation**.

“If a reasonable person in the position of the recipient of boilerplate should have seen the terms, the recipient will be bound by those terms, regardless of whether she ever actually read or understood the them. Constructive awareness coupled with an individual purchasing something from a commercial party amounts to assent,” he adds.

The article discusses *Starke v. SquareTrade, Inc.*, in which the Second Circuit concluded that the a purchaser of a consumer product protection plan did not have reasonable notice of an arbitration provision contained in the terms and conditions communicated via a hyperlink in a post-sale email.

**Read the article.**