Incorporation by Reference of an Arbitration Clause Is a Simple Matter … Isn't It?

Drafting an arbitration clause for an agreement may seem like a straightforward matter most of the time, writes **Gilbert A. Samberg** for Mintz, Levin, Cohn, Ferris, Glovsky and Popeo. It may even be as simple as incorporating by reference an arbitration provision in another document or agreement. Or is it?

In **the article**, he discusses a recent federal district court ruling, *Cooperativa Agraria Industrial Naranjillo Ltda. v. Transmar Commodity Group, Ltd.,* that may offer a cautionary lesson before making such assumptions.

"In *Naranjillo*, the decisive principle was that an offeree cannot assent to an offer unless the offeree knows of its existence. The Court found that there had been no showing that Naranjillo *actually knew* of the existence of the arbitration clause terms," Samberg explains.

Read the article.