Three Appellate Courts Remand for Trial on Existence of Agreement to Arbitrate

Most questions of arbitrability can be resolved on motion, using a summary judgment-like standard, writes **Liz Kramer** in Stinson Leonard Street's **ArbitrationNation.com**. "However, just like summary judgment, if there are genuine disputes of material fact about whether a claim must be arbitrated – like competing evidence about whether the parties ever formed an arbitration agreement – those should be determined by a trial. That is the lesson of three recent cases from the Third Circuit, the Ninth Circuit, and the Supreme Court of Alabama."

She **writes** that the very existence of an arbitration agreement can be hotly disputed. "For contract negotiators, that means it is critical to obtain (and retain) a signed copy of the final agreement including the arbitration clause. For advocates trying to enforce agreements, that means it is critical to recognize when to give up on motion practice and ask for a trial on the issue, so that you don't waste years on appeal, only to get sent back to square one."

Read the article.