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July 2003

New Law Advances Arbitration as an Attractive Alternative to Litigation

By Timothy D. Lyons, Esq.

The New Jersey Legislature has recently revised New Jersey's Arbitration Act. The Legislature has enacted the Revised Uniform Arbitration Act (hereinafter referred to as "the Act"). The Act is a modified version of the Uniform Arbitration Act of 2000 which has previously been enacted by a host of sister states. The new law serves to update New Jersey's antiquated arbitration statute, which was 75 years old, to be more consistent with recent developments in both arbitration law and alternative dispute procedures. The Act is to govern all arbitration agreements entered into as of January 1, 2003. For agreements entered prior to that date the parties may now mutually agree to be governed by the provisions of the Act. However, as of January 1, 2005 the Act shall govern all arbitration agreements irrespective of their date.

The Arbitration Process

Arbitration generally serves as a method to refer disputed legal controversies to an arbitrator, who acts as an independent, neutral person mutually agreed upon by the parties to adjudicate the issues in the controversy. Typically, this process leads to a more expeditious resolution at lower costs than traditional litigation and permits the parties to dictate and consent to essential issues for any disputes and to select the venue and substantive law that will apply. Generally parties to an arbitration must agree to be bound by the decision of the arbitrator, commonly referred to as an "award", which is entered after a plenary hearing. At the hearing each party is afforded the opportunity to present evidence and testimony in support of their factual assertions and legal positions, as well as the right to cross-examine adversarial witnesses.

The Provisions of the New Act

Within the parameters of the arbitration process, the Act provides an expansion of the powers granted to the arbitrator(s) and enhances the type of relief which may be awarded to a successful party. The revisions incorporated in the Act include the following provisions:

1. The arbitration process and procedure are to be exclusively governed by the New Jersey Civil Court Rules.
2. A court may order provisional and intermediary remedies, such as injunctive relief, before an arbitrator is selected and the arbitration process initiated.
3. An arbitrator is required to disclose all existing or potential conflicts of interests which may lead to the appearance of unduly influencing an arbitrator's neutrality in adjudicating the dispute and rendering an award. Such disclosures necessarily include any personal or professional relationships with any party litigants, counsel or witnesses.
4. An arbitrator is to be afforded immunity for any civil liability regarding the claims emanating from the arbitrator's participation in the arbitration process similar to the immunity afforded to judges with regard to litigation.
5. An arbitrator may hold pre-hearing conferences or preliminary hearings to determine discovery disputes as well as issues on the admissibility, relevance, materiality and the weight of any evidence for purposes of the plenary hearing.
6. An arbitrator may use applicable civil discovery procedures including subpoenas, orders to compel or limit discovery, and/or sanctions throughout the course of the arbitration process. This empowerment includes the arbitrator's ability to issue subpoenas for the production of documents and witnesses, even beyond state borders.
7. An arbitrator may grant punitive damages and/or attorneys fees as an element of an award if punitive damages and/or attorneys fees would be recoverable by the successful party under the same legal theories had those causes of action been tried in civil litigation.
8. An arbitrator is granted the discretion to enter post-award relief of attorneys fees to a prevailing party where an award is unsuccessfully challenged by a non-prevailing party.
9. Arbitrators are empowered to grant summary judgment at pre-hearing stage in order to avoid the delays and expenses of proceeding to a plenary hearing.

Other ancillary provisions to the Act include the court's discretion to appoint an arbitrator where the parties do not, or have failed to, mutually agree on the selection of an arbitrator.

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Similarly, separate arbitration(s) may be consolidated by a court to proceed as one arbitration hearing unless the underlying arbitration agreements expressly prohibit such consolidation.

There are limited genres of claims which are excluded from the scope of the Act. These exclusions are employer-employee contractual disputes otherwise governed by a collateral bargaining agreement; court ordered arbitration of personal injury claims under \$20,000; and, disputes regarding auto accidents for personal injury insurance coverage.

In sum, the Act empowers an arbitrator to have a more comprehensive and forceful role in controlling and adjudicating the merits of the parties' claims and the issues brought to the dispute process. This, in turn, is intended to make the arbitration process itself more complete and rewarding to litigants as an alternative dispute process, specifically for contract claims as well as professional and complex business disputes. The expansion of the scope of the Act as well as the enhancement of the authority of the arbitrator is also designed to help counter the typical excess of time and high costs usually incurred by parties through traditional litigation.

The Litigation Department of Giordano Halleran & Ciesla counsels and advises corporate, business and individual clients on the benefits of the arbitration process as an effective alternative dispute procedure and a viable choice to civil litigation. The scope of legal counsel provided includes the preparation and/or review of arbitration agreements or contractual terms providing for the resolution of business disputes through arbitration, as well as the prosecution or defense of a client's interests in arbitration hearings.

If you wish to discuss or explore any issues regarding the arbitration process, the preparation or review of any arbitration agreements, or any other litigation matter, please contact TIMOTHY D. LYONS, ESQ., a partner and shareholder in the Litigation Department of Giordano Halleran & Ciesla, P.C., at 732-741-3900.

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