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RECENT DEVELOPMENTS: THE UNIFORM ARBITRATION ACT¹

I. INTRODUCTION

Arbitration, once viewed as an undesirable alternative to litigation, has become widely accepted as a viable and often superior cost-effective approach to resolving disputes. In 1955, the national Conference of Commissioners on Uniform State Laws proposed a Uniform Arbitration Act.² Currently, 35 jurisdictions have arbitration statutes patterned after the U.A.A.³

What began as an article in the *Missouri Law Review* entitled *Recent Developments: The Uniform Arbitration Act*, has evolved into an annual survey of recent developments in case law interpreting state versions of the U.A.A.⁴ This detailed update monitors the underlying principles and rationales that develop from recent decisions.⁵ The goal of this analysis of recent developments is promotion of uniformity in interpreting the U.A.A. and providing a framework for analyzing similar cases.

1. This project was written and prepared by *Journal of Dispute Resolution* Members and Candidates under the direction of Associate Editor in Chief Scott E. Blair and Note and Comment Editor Cynthia C. Hardie.

2. UNIF. ARBITRATION ACT §§ 1-25, 7 U.L.A. 4 (1978) [hereinafter U.A.A.].

3. Jurisdictions which have adopted arbitration statutes patterned after the U.A.A. are Alaska, Arizona, Arkansas, Colorado, Delaware, District of Columbia, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, and Wyoming.

4. See *Recent Developments: The Uniform Arbitration Act*, 1991 J. DISP. RESOL. 417; *Recent Developments: The Uniform Arbitration Act*, 1990 J. DISP. RESOL. 471; *Recent Developments: The Uniform Arbitration Act*, 1989 J. DISP. RESOL. 237; *Recent Developments: The Uniform Arbitration Act*, 1988 J. DISP. RESOL. 247; *Recent Developments: The Uniform Arbitration Act*, 1987 Mo. J. DISP. RESOL. 177; *Recent Developments: The Uniform Arbitration Act*, 1986 Mo. J. DISP. RESOL. 169; *Recent Developments: The Uniform Arbitration Act*, 1985 Mo. J. DISP. RESOL. 173; *Recent Developments: The Uniform Arbitration Act*, 1984 Mo. J. DISP. RESOL. 207; *Recent Developments: The Uniform Arbitration Act*, 48 Mo. L. REV. 137 (1983).

5. This Article surveys cases decided between September 1990 and September 1991.

II. VALIDITY OF ARBITRATION AGREEMENTS

Section 1 of the U.A.A. provides that:

[a] written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.⁶

The judiciary has been called upon to resolve a variety of issues arising under this first section. Courts are being asked whether the parties intended to submit their controversies to arbitration, whether the parties' actions constitute a waiver of their arbitration agreement, whether the conditions precedent to the agreement have been met, and whether arbitration agreements found in insurance contracts are enforceable.

A. Intent to Submit Controversy to Arbitration

Determination of which issues are intended to be covered in an arbitration agreement is an area where the courts show a preference for arbitrability. Unless the language of the arbitration clause clearly states otherwise, courts will generally find that the parties intended that the controversy be submitted to arbitration.

In *Johnson v. Baumgardt*,⁷ the Appellate Court of Illinois stated that an arbitration clause providing that all claims arising out of or "relating to" the agreement are subject to arbitration is a generic arbitration clause.⁸ Therefore, any dispute between the parties falls within that clause if the dispute arises out of the subject matter of the contract and is, therefore, subject to arbitration.⁹

In another case interpreting Section 1 of the U.A.A., the Court of Appeals of Texas held that an agreement to submit to arbitration all controversies arising out of the contract may also encompass some tort claims.¹⁰ The court in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Wilson*¹¹ also held that the issue of whether a valid arbitration agreement existed is separate from the issue of whether the contract was repudiated or breached.¹² The former issue is to be

6. U.A.A. § 1.

7. 576 N.E.2d 515 (Ill. App. Ct. 1991).

8. *Id.* at 521.

9. *Id.*

10. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Wilson*, 805 S.W.2d 38, 39 (Tex. Ct. App. 1991).

11. 805 S.W.2d 38.

12. *Id.* at 40.

decided by the trial court; the second is to be decided by arbitration.¹³ Since the court in this case noted that fraud or misrepresentation was not averred, it sent the case back to arbitration for further proceedings.¹⁴

The Superior Court of Pennsylvania also exemplifies the liberal approach courts take in deciding whether a claim should be decided in arbitration.¹⁵ In *Erie Insurance Exchange v. Mason*,¹⁶ the parties' agreement stated that "[d]isagreement over the legal rights to recover damages will be settled by arbitration."¹⁷ The court here held that a dispute over whether benefits were available under an insurance contract was encompassed within the arbitration agreement.¹⁸

However, in *Capital City Lodge 12 v. Harrisburg*,¹⁹ another Pennsylvania case, the court placed a caveat on application of the U.A.A..²⁰ The Commonwealth Court found that under Pennsylvania law, the common law of arbitration, not Pennsylvania's version of the U.A.A., applied to the arbitration agreement.²¹ The court's discussion of the issue can be read to suggest that the U.A.A. did not apply because the parties' agreement did not specifically state that the U.A.A. would control the parties' arbitration.²²

In *Paine Webber, Inc. v. Hartmann*,²³ the Third Circuit affirmed the district court's finding that parties may place a time limit on their obligation to arbitrate.²⁴ The court stated that Rule 603 of the NYSE Department of Arbitration Rules, if incorporated in an arbitration agreement, constituted a bar to arbitration disputes raised more than six years after the events giving rise to them, since parties to an arbitration agreement may place a time limit on their obligation to arbitrate.²⁵

Finally, in a case arising in the Fifth Circuit Court of Appeals, plaintiffs wanted to sue defendants in civil court but first had to overcome an agreement to submit disputes to arbitration in *Storey v. Shearson-American Express*.²⁶ Plaintiffs entered into two contracts with defendants, and, in the interim, an amendment was enacted which required certain procedures to ensure arbitration agreements were voluntary.²⁷ Plaintiffs argued that the amendments should be

13. *Id.*

14. *Id.*

15. *See Erie Ins. Exch. v. Mason*, 594 A.2d 741 (Pa. Super. Ct. 1991).

16. 594 A.2d 741.

17. *Id.* at 741.

18. *Id.* at 743.

19. 588 A.2d 584 (Pa. Commw. Ct. 1991).

20. *Id.* at 587.

21. *Id.* n.7.

22. *See id.*

23. 921 F.2d 507 (3d Cir. 1990).

24. *Id.* at 511, 515.

25. *Id.* at 513.

26. 928 F.2d 159, 160 (5th Cir. 1991).

27. *Id.* nn.1-2.

applied retroactively.²⁸ However, they did not allege that they would have acted any differently with further knowledge.²⁹ Thus, the court held that the amendment would not be applied retroactively, and did not support the plaintiffs' attempt to avoid arbitration based on a technicality.³⁰

B. Waiver

Parties may also waive their right to arbitration.³¹ In *Tjeerdsma v. Global Steel Buildings, Inc.*,³² the Supreme Court of South Dakota held that arbitration can be waived by conduct or activity inconsistent with the right to arbitrate if the party claiming waiver can also show prejudice.³³ In this case, Global Steel requested arbitration after it had filed an answer to Tjeerdsma's complaint and after it had engaged in "extensive pretrial discovery."³⁴ The court denied this request and failed even to address the question of whether South Dakota's version of the U.A.A. applied because the court found that Global Steel had waived its right to arbitration.³⁵

C. Conditions Precedent

In order for an arbitration agreement to be valid, it must first be established that the agreement is in writing and not revocable upon legal or equitable contractual grounds.³⁶

The Indiana Court of Appeals provides an example of the availability of arbitration where a party fails to satisfy a condition precedent.³⁷ In *Freiburger v. Bishop Dwenger High School*,³⁸ the Third District Court of Appeals of Indiana held that an employee was not entitled to have her case remanded for arbitration if the record did not show that she had availed herself of the contractual conditions precedent to binding arbitration or that the employer refused to arbitrate.³⁹

In *City of Blaine v. John Coleman Hayes*,⁴⁰ the Tennessee Court of Appeals addressed the issue of the ability to arbitrate rescission claims when an arbitration clause is included in the parties' contract. The court held that the arbitration

28. *Id.* at 161.

29. *Id.* at 162 n.4.

30. *Id.* at 161-62.

31. *See generally* 17A C.J.S. *Contracts* § 515(6) (1963).

32. 466 N.W.2d 643 (S.D. 1991).

33. *Id.* at 645.

34. *Id.* at 644.

35. *Id.* at 645.

36. *See, e.g.*, TENN. CODE ANN. § 29-5-302 (Supp. 1992).

37. *See* *Freiburger v. Bishop Dwenger High Sch.*, 569 N.E.2d 755 (Ind. Ct. App. 1991).

38. 569 N.E.2d 755.

39. *Id.* at 759.

40. 818 S.W.2d 33 (Tenn. Ct. App. 1991).

clause of a contract did not apply to a rescission claim brought by the city, and the court reasoned that the city had been fraudulently induced to enter into the contract.⁴¹ Tennessee's version of the U.A.A. establishes the validity of an arbitration agreement, "save upon such grounds as exist at law or in equity."⁴² The court found, contrary to the result reached by the United States Supreme Court construing a similar statute in *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*,⁴³ that because of the long-established right to seek a rescission of a contract procured by fraud, the Tennessee legislature must have intended that rescission claims be excepted from arbitration.⁴⁴

In *Anderson v. Federated Mutual Insurance Co.*,⁴⁵ the Court of Appeals of Minnesota held that Minnesota's adoption of the U.A.A. superseded its common law arbitration.⁴⁶ Therefore, oral arbitration agreements are now unenforceable under Minnesota law.⁴⁷ Under the Minnesota U.A.A., the agreement must be in writing as a condition precedent to its validity.⁴⁸

In *Reicks v. Farmers Commodities Corp.*,⁴⁹ the Supreme Court of Iowa held that Reicks could not compel arbitration of a tort claim under Iowa's version of the U.A.A.⁵⁰ The court so held because Iowa's version of Section 1 of the U.A.A. contains an exemption for "any claim sounding in tort whether or not involving a breach of contract."⁵¹ The court held, therefore, that the dispute must be resolved under Iowa's common law of arbitration.⁵²

D. Insurance Contracts

Yet another important area where Section 1 of the U.A.A. has important ramifications is in the area of insurance contracts. In *Mutual Reinsurance Bureau v. Great Plains Mutual Insurance Co.*,⁵³ the United States District Court for Kansas found that a Kansas state law which invalidates arbitration agreements contained in "contracts of insurance" was inapplicable.⁵⁴ The court reasoned that because the agreement between Mutual Reinsurance Bureau and Great Plains

41. *Id.* at 38.

42. *Id.* at 37; *see also* TENN. CODE ANN. § 29-5-302.

43. 388 U.S. 395 (1967).

44. *John Coleman Hayes*, 818 S.W.2d at 36-38.

45. 465 N.W.2d 68 (Minn. Ct. App. 1991).

46. *Id.* at 70.

47. *Id.*

48. *Id.* at 72; *see also* MINN. CODE ANN. § 572.08 (1988).

49. 474 N.W.2d 809 (Iowa 1991).

50. *Id.* at 810.; *see* IOWA CODE § 679A 1(2)(c) (1981).

51. *Reicks*, 474 N.W.2d at 810.

52. *Id.*

53. 750 F. Supp. 455 (D. Kan. 1990).

54. *Id.* at 461; *see* KAN. STAT. ANN. § 5-401 (1991).

Mutual was a contract for reinsurance, rather than a contract of insurance the arbitration agreement contained in the contract was valid and enforceable.⁵⁵

The Supreme Court of Delaware found that a portion of the parties' arbitration agreement was void due to unconscionability.⁵⁶ In *Fritz v. Nationwide Mutual Insurance Co.*,⁵⁷ an unreported opinion, the plaintiff was a party to an automobile insurance contract which required arbitration.⁵⁸ Fritz was a passenger in a vehicle driven by defendant's insured that was struck from behind by an uninsured motorist.⁵⁹ Plaintiff's claims were covered under the "uninsured motorist" provision in the insured's contract, thus making her a third-party beneficiary.⁶⁰ Her claims were submitted to arbitration pursuant to the compulsory clause in the contract.⁶¹ Fritz alleged the arbitration clause was void as against public policy because the agreement could only be invoked by the insurance company.⁶²

The court found that the arbitration mechanism was unfairly structured in favor of the insurance company and rendered that portion void due to unconscionability.⁶³ However, the most important factor rendering the arbitration portion of the contract unconscionable was that the insureds were automatically bound by arbitration awards, but the company was only bound if it consented in writing.⁶⁴

Another case addressing uninsured motorists provisions is *Worldwide Insurance Group v. Klopp*.⁶⁵ The provision in question dictated that any awards which exceeded state financial responsibility limits could be appealed by either party to the contract;⁶⁶ any award falling below the limits was not appealable.⁶⁷ This provision operated in the insurer's favor because the company would likely appeal an award higher than the policy limit while the insured party could not appeal any award below the policy limit.⁶⁸ The court ruled that the provision promoted litigation and was void as against public policy.⁶⁹

55. *Mutual Reinsurance*, 750 F. Supp. at 461.

56. *Fritz v. Nationwide Mut. Ins. Co.*, Civ. A. No. 1369, 1990 WL 186448, at *4 (Del. Ch. Nov. 26, 1990).

57. Civ. A. No. 1369, 1990 WL 186448.

58. *Id.* at *1.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* at *6.

64. *Id.*

65. 603 A.2d 788 (Del. 1992).

66. *Id.* at 789.

67. *Id.*

68. *Id.* at 790.

69. *Id.* at 791-92.

In *Warranty Underwriters Insurance Co. v. Lara*,⁷⁰ the Texas Court of Appeals addressed the question of whether a court must compel arbitration where the contract does not properly state that disputes arising out of the agreement are subject to arbitration.⁷¹ The court held that it had no jurisdiction to compel arbitration because the arbitration provision in the contract was unenforceable.⁷² When the parties entered the contract, Texas law required that contracts subject to arbitration must state those terms either in typed, underlined capital letters or by a stamped notice on the first page of the agreement.⁷³ The insurance contract in question did not meet the requirements, and the appellate court therefore had no jurisdiction to compel arbitration because the arbitration clause was unenforceable.⁷⁴

In *Meyer v. State Farm Fire & Casualty Co.*,⁷⁵ the Maryland Court of Special Appeals held that arbitration agreements or appraisal requirements in an insurance contract of cohesion are valid and will be enforced by the Maryland courts.⁷⁶ Although insurance contracts are generally cohesive, the court held that the terms of the agreement are not invalid or unenforceable.⁷⁷

III. PROCEEDINGS TO COMPEL OR STAY ARBITRATION

When in conflict, the question of whether or not an agreement to arbitrate actually exists is to be summarily decided by the court, according to the *Meyer* court.⁷⁸ If the court decides that a written arbitration agreement exists, the U.A.A. states that the court "shall order the parties to proceed with arbitration,"⁷⁹ without considering the merits of the claim underlying the arbitration agreement.⁸⁰ If, on the other hand, the court finds that there is no agreement to arbitrate, it may stay the arbitration proceeding.⁸¹ The U.A.A. also provides that an application to stay arbitration may be made to the court with respect to those issues that are severable from the dispute being arbitrated.⁸²

70. 805 S.W.2d 894 (Tex. Ct. App. 1991).

71. *See id.* at 895.

72. *Id.* at 897.

73. *Id.* at 896.

74. *Id.* at 897.

75. 582 A.2d 275 (Md. Ct. Spec. App. 1990).

76. *Id.* at 278.

77. *Id.*

78. *See id.*

79. U.A.A. § 2(a) (emphasis in original).

80. *Id.* § 2(e).

81. *Id.* § 2(b).

82. *Id.* § 2(d).

A. Compel or Stay

The Arizona Court of Appeals faced the issue of whether a trial court's order compelling arbitration under an Arizona statute similar to U.A.A. Section 2 is interlocutory and therefore not immediately appealable.⁸³ In *Dusold v. Porta-John Corp.*,⁸⁴ the plaintiff claimed injury resulting from exposure to chemicals supplied by defendant for the cleaning and servicing of portable toilets.⁸⁵ The chemicals had been supplied by defendant under a contract which included a provision requiring arbitration of "any claim or controversy arising out of, or relating to this agreement, or the breach thereof."⁸⁶ The trial court granted defendant's request to dismiss judicial proceedings and to compel arbitration pursuant to Arizona Revised Statute Section 12-1502.⁸⁷ The appellate court held that the trial court's order was a dismissal of the plaintiff's claims and that the order to compel arbitration was a final judgment and, therefore, was immediately appealable.⁸⁸

An Illinois case in accord with *Dusold* is *Robert A. Besner & Co. v. LIT America, Inc.*⁸⁹ The court stated that an order of a circuit court granting a motion to stay arbitration is immediately appealable as an interlocutory order because it is injunctive in nature.⁹⁰ To comply with Illinois Supreme Court rules governing interlocutory appeals, the appeal must be perfected within 30 days from the entry of the order by filing a "Notice of Interlocutory Appeal."⁹¹ In addition, the court ruled that under Section 2 of the Illinois Arbitration Act⁹² a party was not entitled to a new application or hearing to determine whether an agreement to arbitrate existed when, on motion to compel or stay arbitration, the issue had already been decided.⁹³

In a result conflicting with *Dusold*,⁹⁴ the Court of Appeals of Colorado held that an order compelling the parties to arbitrate is interlocutory in nature and not immediately appealable.⁹⁵ In *Associated Natural Gas, Inc. v. Nordic Petroleums*,⁹⁶ the defendant filed a motion with the court to compel arbitration

83. *Dusold v. Porta-John Corp.*, 807 P.2d 526, 528-29 (Ariz. Ct. App. 1990).

84. 807 P.2d 526.

85. *Id.* at 527.

86. *Id.*

87. *Id.*

88. *Id.* at 529.

89. 574 N.E.2d 703 (Ill. App. Ct. 1991).

90. *Id.* at 705.

91. *Id.* (citing ILL. SUP. CT. R. 307(a)(1)).

92. Section 2 of the Illinois Arbitration Act is almost identical to Section 2 of the U.A.A. Compare ILL. REV. STAT. ch. 10, para. 102(a) (1987) with U.A.A. § 2.

93. *Robert A. Besner & Co.*, 574 N.E.2d at 706.

94. See *supra* notes 83-88 and accompanying text.

95. *Associated Natural Gas, Inc. v. Nordic Petroleums*, 807 P.2d 1195, 1196 (Colo. Ct. App. 1990).

96. 807 P.2d 1195.

pursuant to an arbitration clause in the parties' contract.⁹⁷ The plaintiff then filed a motion to stay arbitration pending an evidentiary hearing to determine whether or not the arbitration clause applied to the parties' dispute.⁹⁸ At the defendant's request, the court determined that all issues between the parties were subject to arbitration.⁹⁹ The plaintiff asked for clarification of the court's order, and the court determined that "its sole function in the dispute was to determine whether [the contract between the parties] would permit arbitration."¹⁰⁰ The issues were submitted to arbitration, and the defendant appealed, contending that the plaintiff waived its rights to clarification by requesting a stay of arbitration and that the trial court lacked jurisdiction to clarify its order relative to the scope of the arbitration.¹⁰¹

The court of appeals ruled that: (1) a party seeking a stay of arbitration under the Colorado statute does not waive its rights to clarification of the issues involved;¹⁰² and (2) an "order compelling parties to arbitrate is not appealable, thus interlocutory in nature."¹⁰³ Thus, the trial court retains its jurisdiction prior to the commencement of the arbitration proceeding to resolve any issues relative to the arbitration.¹⁰⁴

The issues presented in a Pennsylvania case, *Baverso v. State Farm Insurance Co.*,¹⁰⁵ were (1) whether a passenger in an automobile was the "insured" as represented under an insurance agreement and (2) whether this issue was arbitrable.¹⁰⁶ The court found that there was no limit on the types of issues that could be decided by an arbitrator.¹⁰⁷ The court also found that a trial court could compel arbitration of any of these issues if both parties had agreed to submit their difficulties to arbitration in the insurance agreement.¹⁰⁸

In a Nevada case, the issue facing the court was whether to compel arbitration based on labor agreements.¹⁰⁹ In *Clark County Public Employee*

97. *Id.* at 1196.

98. *Id.* Plaintiff's motion to stay arbitration was filed pursuant to COLO. REV. STAT. § 13-22-204(2), which is similar in wording and effect to U.A.A. § 2(b). Compare COLO. REV. STAT. § 13-22-204(2) (1987) with U.A.A. § 2(b).

99. *Associated Natural Gas*, 807 P.2d at 1196. Although the reported decision of the court makes no mention of it, the Colorado Uniform Arbitration Act contains a provision with language identical to that of U.A.A. § 2(d), which allows the court to determine which issues are arbitrable and which are severable from the arbitrable issues. Compare COLO. REV. STAT. § 13-22-204(4) (1987) with U.A.A. §2(d).

100. *Associated Natural Gas*, 807 P.2d at 1196.

101. *Id.*

102. *Id.* The court based its reasoning on language found in COLO. REV. STAT. § 13-22-204(2). See *id.*

103. *Id.*

104. *Id.* at 1197.

105. 595 A.2d 176 (Pa. Super. Ct. 1991).

106. *Id.* at 177.

107. *Id.* at 178.

108. *Id.* at 178-79.

109. See *Clark County Pub. Employee Ass'n v. Pearson*, 798 P.2d 136 (Nev. 1990).

Ass'n v. Pearson,¹¹⁰ the nurses for the University Medical Center of Southern Nevada were covered under a "clinical ladder program" by which nurses could receive added proficiency pay for fulfilling certain proficiency requirements.¹¹¹ In 1988, the hospital and the Clark County Public Employee Association entered into a collective bargaining agreement which covered the nurses but did not expressly address the clinical ladder program.¹¹² Shortly thereafter, the hospital terminated the clinical program.¹¹³

The employee association filed a formal demand for arbitration to decide whether the clinical program was incorporated into the collective bargaining agreement and whether the hospital had failed to compensate nurses with proficiency pay and reimbursement of expenses for activities undertaken pursuant to the program;¹¹⁴ the hospital refused to arbitrate.¹¹⁵ The Supreme Court of Nevada stated that the Nevada courts resolve all doubts concerning arbitrability of the subject matter of a dispute in favor of arbitration, "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute."¹¹⁶ The court found that the disputes were, at least, arguably specifically incorporated in the collective bargaining agreement and therefore ordered the dispute to arbitration.¹¹⁷

Another recent Pennsylvania case dealing with the level of compulsion involved in arbitration is *In re Glover*.¹¹⁸ This case, decided by the Commonwealth Court of Pennsylvania, addressed the issue of whether a physical education teacher's dismissal was arbitrable under the Public Employee Relations Act of 1970 (PERA).¹¹⁹ The court ruled that (1) since PERA was silent on the issue of who has the right to interpret whether a dispute arising under it is arbitrable and (2) since Section 7304(b) of the Pennsylvania Uniform Arbitration Act expressly allows the trial court to decide the issue,¹²⁰ the specific language of the Pennsylvania U.A.A. controlled on the issue.¹²¹

In *Batton v. Green*,¹²² a Texas case arising out of a dispute regarding a licensing agreement, the Texas Court of Appeals held that a denial of a motion

110. 798 P.2d 136.

111. *Id.* at 137.

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* at 138 (quoting *AT & T Technologies v. Communications Workers of Am.*, 475 U.S. 643, 650 (1986)).

117. *Id.* at 142.

118. 587 A.2d 25 (Pa. Commw. Ct. 1991).

119. *Id.* at 26.

120. *Id.* at 27. The language of the Pennsylvania statute, while not identical, is nearly the same as the language of the U.A.A. § 2(b). Compare 42 PA. CONS. STAT. § 7304(b) (1982) with U.A.A. §2(b).

121. *Glover*, 587 A.2d at 27.

122. 801 S.W.2d 923 (Tex. Ct. App. 1990).

to stay an action pending arbitration is not made appealable by the Texas equivalent of U.A.A. Section 2.¹²³ The court held that an order granting an application to stay arbitration is, however, made appealable by the statute.¹²⁴ Also, the court held that the plaintiffs could not contend that the Texas statute applicable to interlocutory orders interferes with the "liberal federal policy favoring arbitration agreements."¹²⁵ The statute specifically allows a party insisting upon arbitration an interlocutory appeal from an order denying arbitration or from an order granting an application to stay arbitration.¹²⁶

*David L. Threlkeld & Co. v. Metallgesellschaft Ltd.*¹²⁷ is a Vermont case in which the United States Court of Appeals for the Second Circuit ruled on the issue of whether parties to a dispute may be compelled to arbitrate under the Vermont arbitration statute similar to U.A.A. Section 2.¹²⁸ The court ruled that parties to a commercial dispute may not be compelled to submit the dispute to arbitration unless they have contracted to do so,¹²⁹ but that if there is any doubt about whether the parties actually had done so, federal policy greatly favors the arbitration of any issues that are arbitrable.¹³⁰ This policy is even stronger in the context of international business, the court said, citing a need for business to proceed as smoothly as possible.¹³¹ In those cases, there is a "presumption of arbitrability."¹³²

In *Champaign Police Benevolent & Protective Ass'n v. City of Champaign*,¹³³ a police officer and the police officers' association brought an action to compel arbitration under the grievance procedure in a collective bargaining agreement.¹³⁴ The court affirmed the lower court's determination that the dispute was subject to arbitration, stating that the argument on the merits of the dispute should not be a factor in the determination of the arbitrability of the dispute.¹³⁵

123. *Id.* at 926.

124. *Id.*

125. *Id.* at 929.

126. *Id.*

127. 923 F.2d 245 (2d Cir. 1991).

128. *Id.* at 248.

129. *Id.* (citing *Necchi S.p.A. v. Necchi Sewing Machine Sales Corp.*, 348 F.2d 693, 696 (2d Cir. 1965)).

130. *Id.* (citing *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983)).

131. *Id.*

132. *Id.*

133. 569 N.E.2d 275 (Ill. App. Ct. 1991).

134. *Id.* at 276.

135. *Id.* at 278. *But see John Coleman Hayes*, 818 S.W.2d at 38 (deciding to take the minority position and allowing the trial court to determine whether the arbitration clause and the contract were procured by fraud before determining whether to compel or to stay arbitration).

B. Waiver

In *D.M. Ward Construction Co. v. Electric Corp.*,¹³⁶ the plaintiff in a contract dispute filed a motion to compel arbitration under Kansas Statute 5-402(a).¹³⁷ The court found that the plaintiff failed to file the motion until 10 months after the actual litigation of the claim had begun and at a time when discovery was essentially complete.¹³⁸ The court believed this tardy request for arbitration greatly prejudiced the other party to the action and ruled that the plaintiff had waived his right to compel arbitration.¹³⁹

Similarly, a Delaware court in *Wilshire Restaurant Group v. Ramada, Inc.*,¹⁴⁰ an unreported opinion, stated that although there is a strong public policy favoring arbitration, waiver may be found if the party seeking arbitration has actively participated in a lawsuit or has taken other action inconsistent with its right to arbitrate.¹⁴¹ The court found Wilshire waived any right to arbitrate because it had abandoned its initial effort to seek arbitration, filed suit, and participated in discovery, all without logical explanation.¹⁴²

IV. HEARING

Section 5 of the U.A.A. deals with the procedural aspects of an arbitration proceeding.¹⁴³ Section 5(a) governs the power of the arbitrator in serving notice and choosing a forum.¹⁴⁴ Section 5(b) provides parties to an arbitration proceeding the right to present their evidence.¹⁴⁵ Finally, section 5(c) allows the majority of arbitrators to decide an issue if an arbitrator "ceases to act."¹⁴⁶

In *Integrated Resources Equity Corp. v. Fairbanks North Star Borough*,¹⁴⁷ the appellant stated that the arbitrator engaged in *ex parte* activity because he consulted with a third party and then improperly used this evidence at the arbitration proceeding.¹⁴⁸ The court stated that it was not necessary to reach the issue of the prejudicial effect of the arbitrator's activity because the appellant failed to object when the evidence was presented at the arbitration

136. 803 P.2d. 593 (Kan. Ct. App. 1990).

137. *Id.* at 596. The Kansas statute in question is substantially similar to U.A.A. § 2(a). *See id.*

138. *Id.* at 595-97.

139. *Id.* at 597.

140. C.A. No. 11506, 1990 WL 195910 (Del. Ch. Dec. 5, 1990).

141. *Id.* at *2.

142. *Id.* at *4.

143. *See* U.A.A. § 5.

144. U.A.A. § 5(a).

145. U.A.A. § 5(b).

146. U.A.A. § 5(c).

147. 799 P.2d 295 (Alaska 1990).

148. *Id.* at 297-98.

proceeding.¹⁴⁹ This failure to object resulted in a waiver of the right to raise the issue on appeal.¹⁵⁰ The court noted if the proper objection had been made, the arbitration panel could have remedied the situation.¹⁵¹

In *International Ass'n of Firefighters v. City of East St. Louis*,¹⁵² the court held that the city waived its right to seek arbitration under the U.A.A. when it failed to object to the circuit court's interpretation of the agreement.¹⁵³

As the above cases indicate, it is important to follow the procedural rules in an arbitration proceeding. As with a judicial proceeding, failure to follow these rules may expose the parties to a different outcome than they expected.

V. CHANGE OF AWARD BY ARBITRATORS

Pursuant to Section 9 of the U.A.A.,¹⁵⁴ an arbitrator may change an award to modify, to clarify, or to correct an existing award. This Section allows a party to file for correction of an award within twenty days of the delivery.¹⁵⁵ The grounds for modification are miscalculation or mistake pursuant to Section 13.¹⁵⁶ A party may also file for clarification of the existing award.¹⁵⁷ The majority of cases which fall under this Section have been appealed and remanded with orders for the arbitrator to clarify the award.¹⁵⁸

In *IBEW, Local 1547 v. City of Ketchikan*,¹⁵⁹ the city fired all of its full-time telephone operators.¹⁶⁰ The operators were union members,¹⁶¹ and the

149. *Id.* at 298.

150. *Id.*

151. *Id.* at 299. The court was relying on an Alaska statute which permits an arbitration panel to continue if "an arbitrator for any reason ceases to act." See *Integrated Resources Equity Corp.*, 799 P.2d at 299 n.3 (quoting ALASKA STAT. § 09.43.050(3) (1983)).

152. 571 N.E.2d 1198 (Ill. App. Ct. 1991).

153. *Id.* at 1202.

154. Section 9 of the U.A.A. concerns the change of award by arbitrators and provides:

On application of a party or, if an application to the court is pending under Sections 11, 12, or 13, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in paragraphs (1) and (3) of subdivision (a) of Section 13, or for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within ten days from the notice. The award so modified or corrected is subject to the provisions of Sections 11, 12, and 13.

U.A.A. § 9.

155. *Id.*

156. *Id.*

157. *Id.*

158. See *infra* notes 159-84 and accompanying text.

159. 805 P.2d 340 (Alaska 1991).

160. *Id.* at 341.

161. *Id.* The operators were members of the International Brotherhood of Electrical Workers (IBEW). *Id.*

union appealed to the arbitrator pursuant to a collective bargaining agreement.¹⁶² The arbitrator ordered the city to reinstate the operators but did not state the extent or duration of the operators' rights.¹⁶³ The city wanted the arbitrator to clarify his award, but the union opposed clarification.¹⁶⁴ Without both parties' assent, the arbitrator had no power to clarify his award.¹⁶⁵ A declaratory judgment entered a year later by the superior court interpreted the award as not requiring reinstatement.¹⁶⁶ The union appealed this interpretation, and the case was heard by the Supreme Court of Alaska.¹⁶⁷ The supreme court noted that the lower courts should not interpret arbitration awards.¹⁶⁸ The Alaska Supreme Court held that a lower court's role with respect to arbitration is only to discern if the award is ambiguous or unclear.¹⁶⁹ If either is true, then the issue should be remanded to the arbitrator for clarification.¹⁷⁰

Similarly, the Maine Supreme Court held, in *Maine State Employees Ass'n v. State Department of Corrections*,¹⁷¹ that an unclear arbitration award cannot be enforced by the courts until the award is clarified by the arbitrator upon remand.¹⁷² In this case, a state employee was terminated,¹⁷³ and the union moved to arbitrate pursuant to a collective bargaining agreement.¹⁷⁴ The arbitration award ordered that the employee be reinstated and receive payment for full back-pay.¹⁷⁵ The trial court modified the award by adding the language "with no offset for workers' compensation benefits."¹⁷⁶ The supreme court held that, although the original award was ambiguous, the trial court should have remanded to the arbitrator for clarification instead of trying to interpret its meaning.¹⁷⁷ Finally, the Maine Supreme Court remanded the case back to the arbitrator for clarification.¹⁷⁸

When a dispute erupted between lessee and lessor in *Hearst Corp. v. Swiss Bank Corp.*,¹⁷⁹ the parties entered arbitration.¹⁸⁰ The issues revolved around

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.* at 343.

169. *Id.* & n.7.

170. *Id.* at 343.

171. 593 A.2d 650 (Me. 1991).

172. *Id.* at 653.

173. *Id.* at 651.

174. *Id.*

175. *Id.* The arbitrator specifically stated that the plaintiff should be "made whole" for losses and expenses as well as lost earnings and benefits. *Id.*

176. *Id.* at 652.

177. *Id.* at 652-53.

178. *Id.* at 653.

179. 584 A.2d 655 (Me. 1991).

180. *Id.* at 656.

the lessee's rights to lease its mineral rights to a third party.¹⁸¹ The original award assigned only legal rights to the parties without mentioning monetary rights.¹⁸² The lower court entered an award for damages to the lessee, and the lessor appealed.¹⁸³ The Maine Supreme Court ruled that the award was incomplete and ambiguous and that it therefore could not be enforced until the arbitrator clarified it on remand.¹⁸⁴

VI. CONFIRMATION OF AN AWARD

Public policy strongly favors the confirmation of arbitration awards. A court will not overturn an arbitrator's decision "[a]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of this authority."¹⁸⁵ Furthermore, an award will be confirmed unless grounds for vacating¹⁸⁶ or modifying¹⁸⁷ are presented within 90 days.¹⁸⁸ The confirmation of arbitration awards is controlled by Section 11 of the U.A.A.¹⁸⁹

A. Discussion of Recent Cases

A court may confirm an arbitration award only if the award is "unambiguous and enforceable by its terms."¹⁹⁰ In *Maine State Employees Ass'n*,¹⁹¹ an arbitrator ordered that the employee "be made whole for all losses and expenses incurred as a result of her improper termination."¹⁹² The trial court confirmed the award and entered judgment entitling the employee to reinstatement and "back pay with no offset for workers' compensation benefits."¹⁹³ The Maine Supreme Judicial Court held that the determination of whether an arbitration award contains ambiguous language is a question of law for the trial court.¹⁹⁴ The court went on to find the phrase "made whole" inherently ambiguous.¹⁹⁵ As a result, the

181. *Id.*

182. *Id.*

183. *Id.* at 657.

184. *Id.* at 659.

185. *Osceola County Rural Water Sys. v. Subsurfco*, 914 F.2d 1072, 1075 (8th Cir. 1990).

186. U.A.A. § 12 (vacating an award).

187. U.A.A. § 13 (modification or correction of award).

188. U.A.A. § 11 (confirmation of an award) (referring to U.A.A. §§ 12-13).

189. U.A.A. § 11 provides: "Upon application of a party, the Court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 12 and 13." U.A.A. § 11.

190. *Maine State Employees Ass'n*, 593 A.2d at 652.

191. 593 A.2d 650.

192. *Id.* at 651.

193. *Id.* at 651-52.

194. *Id.* at 653.

195. *Id.* The court also noted that the trial court's efforts to redefine the phrase "made whole" confirmed its ambiguity. *Id.*

court remanded the case to the trial court and stated that an arbitration award containing ambiguous language must be submitted to the arbitrator for clarification before it can be confirmed.¹⁹⁶

The standard of review of an arbitration award provides a difficult road for parties attempting to have the arbitrator's decision overturned.¹⁹⁷ A court may not overturn an arbitration award if the arbitrator acted within the scope of authority and arguably applied the terms of the contract.¹⁹⁸ However, in *Osceola County Rural Water System v. Subsurfco*,¹⁹⁹ the district court vacated an arbitration award.²⁰⁰ The district court found that the arbitrators exceeded their authority by ignoring the plain language of the contract and of Iowa case law.²⁰¹ In addition, the district court found that the arbitration award was against public policy because the arbitrators ignored evidence.²⁰² On appeal, the Eighth Circuit Court of Appeals reversed, and the arbitrator's award was reinstated.²⁰³ The appellate court stated that the district court erred by substituting its interpretation of the contract for that of the arbitrators.²⁰⁴ In addition, the appellate court noted that arbitrators are not obligated to state the reasoning behind an award.²⁰⁵ Therefore, the court held that the district court erred in assuming that the arbitrators ignored evidence.²⁰⁶

Although courts are generally prohibited from reviewing the underlying merits of an arbitration award,²⁰⁷ some exceptions have emerged. In *Principal Financial Group v. Allstate Insurance Co.*,²⁰⁸ the trial court was asked to confirm an arbitration award involving subrogation rights in a no-fault automobile insurance dispute.²⁰⁹ The Minnesota Supreme Court has previously held that, in no-fault insurance cases involving automobile reparation, arbiters are limited

196. *Id.* at 652.

197. See *Osceola County Rural Water Sys.*, 914 F.2d at 1075.

198. *Id.*

199. 914 F.2d 1072.

200. *Id.* at 1075. The district court applied the Federal Arbitration Act, 9 U.S.C. § 10 (1988 & Supp. 1990) (amended 1992), which is modeled after U.A.A. § 12. See *Osceola County Rural Water Sys.*, 914 F.2d at 1075. Under the Federal Arbitration Act, an arbitration award may be vacated only under specific circumstances, such as when arbitrators refused to hear pertinent evidence or when they "exceeded their powers." 9 U.S.C. § 10(a)(3)-(4).

201. *Osceola County Rural Water Sys.*, 914 F.2d at 1074.

202. *Id.*

203. *Id.* at 1075.

204. *Id.* The appellate court noted that the parties sought the arbitrator's interpretation of the contract; the district court may not overturn the arbitration award just because its interpretation of the contract is different. *Id.* (citing *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 599 (1960)).

205. *Id.*

206. *Id.*

207. *Id.*

208. 472 N.W.2d 338 (Minn. Ct. App. 1991).

209. *Id.* at 338.

to finding issues of fact.²¹⁰ Thus, the trial court first had to decide the issue concerning subrogation rights under the no-fault act before it could determine whether the arbiters acted within their authority.²¹¹ The appellate court here stated that the trial court had jurisdiction to decide this issue.²¹²

Under the U.A.A., a court must confirm an arbitration award unless an action to modify, to correct, or to vacate the award is filed within 90 days after the delivery of the award.²¹³ However, a problem can arise when arbitration is authorized under a statute other than the U.A.A. Alaska's Public Employment Relations Act²¹⁴ (PERA) requires disputes that have reached an impasse to be submitted to arbitration when they involve public safety employees whose "service may not be given up for the shortest time."²¹⁵ In *State v. Public Safety Employees Ass'n*,²¹⁶ the court was asked to confirm an award where arbitration was authorized under PERA.²¹⁷ The Public Safety Employees Association (PSEA) claimed that the State was precluded from challenging the arbitration award because it failed to file an objection within 90 days.²¹⁸ The Alaska Supreme Court held that the U.A.A. 90-day time limit did not apply to arbitration awards authorized under the PERA.²¹⁹ Although the PERA referred to a section of the U.A.A. indicating the method for appointing arbitrators, the legislature did not specifically state its desire to implicate the entire U.A.A.²²⁰ Because the legislature failed to define a time limit or implicate the U.A.A.'s limitations for challenging an arbitration award authorized under PERA, the parties to the dispute are never immune from collateral attacks and are denied the right to finality.²²¹ As the supreme court noted, this issue demands legislative action.²²²

210. *Id.* at 340; *see also* *Johnson v. American Family Mut. Ins. Co.*, 426 N.W.2d 419, 421 (Minn. 1988).

211. *Principal Financial Group*, 472 N.W.2d at 340.

212. *Id.*

213. *State v. Public Safety Employees Ass'n*, 798 F.2d 1281, 1284 (Alaska 1990); *see also* U.A.A. §§ 11-13.

214. ALASKA STAT. §§ 23.40.070-.260 (1972).

215. *Public Safety Employees Ass'n*, 798 P.2d at 1284 n.5; *see also* ALASKA STAT. § 23.40.200(b).

216. 798 P.2d 1281.

217. *Id.* at 1283-84.

218. *Id.* at 1284.

219. *Id.* at 1284-85.

220. *Id.* ALASKA STAT. § 23.40.200(b) refers to ALASKA STAT. § 09.43.030, which models U.A.A. § 3 (appointment of arbitrators by the court). *Compare* ALASKA STAT. § 09.43.030 (1983) with U.A.A. § 3.

221. *Public Safety Employees Ass'n*, 798 P.2d at 1285 n.7.

222. *Id.*

In *Carlyle Joint Venture v. H.B. Zachry Co.*,²²³ the court confirmed an arbitration award against a joint venture²²⁴ and ordered enforcement against the individual partners.²²⁵ The appellants claimed that the individual partners must be parties to the arbitration before an award can be enforced against them.²²⁶ However, the court held that partners of a joint venture are individually and severally liable for an award against the joint venture.²²⁷

B. Conclusion

Under the U.A.A., courts have given great deference to arbitrators when asked to confirm an arbitration award. Since it is the arbitrator's decision for which the parties bargained, general principles preclude courts from clarifying ambiguities in an award²²⁸ or reviewing the underlying issues.²²⁹ However, some state statutes authorizing arbitration limit the arbitrator's authority in certain situations²³⁰ or selectively incorporate the U.A.A.²³¹ In these cases, courts must deviate from the general principles to fill the voids created by law.

VII. VACATION OF AWARDS

In certain limited circumstances, a court may grant judicial review of a case decided by an arbitrator. Because of the deference courts give to the finality of arbitration awards, a reviewing court is very limited in the scope of review of an arbitration award. This deference is necessary in order to perpetuate arbitration as an alternative form of dispute resolution. Section 12 of the U.A.A. addresses the issue of when a court should confirm or vacate a decision by an arbitrator.²³²

223. 802 S.W.2d 814 (Tex. Ct. App. 1990).

224. *Id.* at 816 ("A joint venture is a special combination of persons in the nature of a partnership engaged in the joint involvement of a particular transaction for mutual benefit or profit.").

225. *Id.*

226. *Id.*

227. *Id.*

228. See *Maine State Employees Ass'n*, 593 A.2d at 652.

229. See *Osceola County Rural Water Sys.*, 914 F.2d at 1075.

230. See *Principal Fin. Group*, 472 N.W.2d at 340.

231. See *Public Safety Employees Ass'n*, 798 P.2d at 1284.

232. Section 12 of the U.A.A. concerns vacating an award, and the section reads as follows:

- (a) Upon application of a party, the court shall vacate an award where:
 - (1) The award was procured by corruption, fraud or other undue means;
 - (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
 - (3) The arbitrators exceeded their powers;
 - (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefore or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 5, as to prejudice substantially the rights of a party; or

A. Arbitrator's Scope of Authority

A court is empowered to set aside an award if it determines that the arbitrator exceeded his power.²³³ Because of the goal of promoting alternative dispute resolution, a reviewing court is extremely limited in its review of such award.²³⁴

In *City of Lenexa, Kansas v. C.L. Fairley Construction Co.*,²³⁵ the contract stated that if a dispute arose between the parties, then the project engineer must decide the dispute.²³⁶ If the parties disagreed with the project engineer's decision, then they had 30 days to request arbitration.²³⁷ In *C.L. Farley*, there was disagreement over whether the request for arbitration was timely filed and whether the court or an arbitrator should decide the issue.²³⁸ The court, relying on persuasive authority from other jurisdictions, stated that whether a party has complied with notice and time requirements of a contract are procedural matters that are to be decided by an arbitrator, not the courts.²³⁹

prejudice substantially the rights of a party; or

(5) There was no arbitration agreement and the issue was not adversely determined in proceedings under Section 2 and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(b) An application under this Section shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in clause (5) of Subsection (a) the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with Section 3, or if the award is vacated on grounds set forth in clauses (3) and (4) of Subsection (a) the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with Section 3. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

U.A.A. § 12.

233. U.A.A. § 12(a)(3).

234. *See Ethyl Corp. v. United Steelworkers of Am.*, 768 F.2d 180, 186 (7th Cir. 1985).

235. 805 P.2d 507 (Kan. Ct. App. 1991).

236. *Id.* at 508.

237. *Id.*

238. *Id.* at 509.

239. *Id.* at 510; *see also Denhardt v. Trailways, Inc.*, 767 F.2d 687 (10th Cir. 1985); *United Nations Dev. Corp. v. Norkin*, 380 N.E.2d 253 (N.Y. 1978); *In re Saranac Lake, Inc.*, 546 N.Y.S.2d 713 (App. Div. 1989).

In *Baltimore Barn Builders v. Jacobs*,²⁴⁰ the issue was whether the arbitrator exceeded his authority by awarding the plaintiff \$1,550 rather than \$1,050, which was the amount of the plaintiff's final bill to defendant.²⁴¹ The court stated that the party seeking to vacate an award has a heavy burden of proof and must show by clear and convincing evidence that the arbitrator exceeded his authority.²⁴² The court stated that the defendant did not meet this burden and that a mere allegation that the arbitrator awarded more than a claimant requested is not grounds for vacating under the relevant Delaware statute.²⁴³ The court also stated that if the arbitrator believed that a larger amount should be awarded than originally sought, then it was within the arbitrator's authority to award the higher amount.²⁴⁴

In *Fort Wayne Education Ass'n v. Board of School Trustees*,²⁴⁵ the arbitrator was found to have exceeded his authority when he determined an issue that the master contract gave to the sole discretion of the school principal and school board.²⁴⁶ The court stated that an award may be subject to collateral attack when an arbitrator grants relief that is not permitted by public policy.²⁴⁷

In *Falcon Steel Co. v. HCB Contractors, Inc.*,²⁴⁸ the arbitrator awarded a lump sum to one of the parties without stating the rationale for the award.²⁴⁹ The plaintiff then commenced an action to vacate the award pursuant to title 10, section 5714(a)(3) of the Delaware Code.²⁵⁰ The Delaware Arbitration Act²⁵¹ is modeled after the Uniform Arbitration Act;²⁵² however, Section 5714(a)(3) is modeled after the Federal Arbitration Act.²⁵³ Thus, the court looked to federal cases for interpretation of this issue.²⁵⁴ The court reasoned that the award provided an exact amount on its face and stated that it was in "full

240. Civ. A. No. 1424, 1990 WL 237094 (Del. Ch. Dec. 17, 1990) (unreported opinion).

241. *Id.* at *2.

242. *Id.*

243. *Id.* The relevant statute was DEL. CODE ANN. tit. 10, § 5714(a)(3) (1974).

244. *Baltimore Barn Builders*, 1990 WL 237094, at *3.

245. 569 N.E.2d 672 (Ind. Ct. App. 1991).

246. *Id.* at 680.

247. *Id.* at 678. The court stated that the arbitration of issues between a school and its employees are limited by the Certified Educational Bargaining Act and the legislature expressed that the arbitrator cannot prioritize certain contract provisions. *Id.* at 679.

248. Civ. A. No. 11557, 1991 WL 50139 (Del. Ch. April 4, 1991) (unreported opinion).

249. *Id.* at *1.

250. This statute states: "(a) upon complaint or application of a party in an existing case, the court shall vacate an award where . . . (3) The arbitrators exceeded their authority, or so imperfectly executed them that a final and definitive award upon the subject matter was not made" DEL. CODE ANN. tit. 10, § 5714(a)(3).

251. DEL. CODE ANN. tit. 10, §§ 5701-5725 (1974).

252. U.A.A. § 12(a)(3) states that an award may be vacated only where "[t]he arbitrators exceeded their powers." U.A.A. § 12(a)(3).

253. See *Falcon Steel*, 1991 WL 50139, at *3. Compare 9 U.S.C. § 10(d) with DEL. CODE ANN. § 5714(a)(3).

254. *Falcon Steel*, 1991 WL 50139, at *3.

settlement of all claims submitted to this arbitration."²⁵⁵ The court further found that the plaintiff did not dispute that the fact that the evidence on the claims was not submitted to the arbitrator but disputed only that the award appeared not to include its largest claim.²⁵⁶ As a result, the court found that the plaintiff failed to meet his burden of proof.²⁵⁷

B. Tardiness of Arbitrator's Award

Section 8 of the U.A.A. provides that an award "shall be made within the time fixed thereof by the agreement."²⁵⁸ In *Allstate Insurance Co. v. Fisher*,²⁵⁹ a case of first impression in Illinois, an arbiter failed to make the award within 30 days after the close of the arbitration proceedings as provided by the terms of the insurance policy.²⁶⁰ The plaintiff sought to vacate the award based upon this misnomer.²⁶¹ The court stated that arbitration rules do not fashion a remedy for failure of the arbitrator to submit the award in a timely manner.²⁶² Thus, the court looked to ordinary contract rules and found that in the absence of a time-of-essence clause, the late filing of an award by an arbitrator will not render the award invalid unless the objecting party can show that it will somehow be prejudiced by the delay.²⁶³ The court stated that a contrary rule would deter individuals from becoming arbiters because of the increased possibility of litigation against the arbiter.²⁶⁴ Furthermore, the court stated that Illinois seeks to foster the arbitration process as an alternative means of dispute resolution.²⁶⁵

C. Vacation Based on Nonstatutory Grounds

Sometimes, a court will vacate an award based upon a reason not found in the U.A.A. This often results when a award is found to be against public policy.

In *Azpell v. Old Republic Insurance Co.*,²⁶⁶ the Pennsylvania Supreme Court held that the trial court's review of an arbitration award dealing with uninsured motorist benefits was not within its scope of review.²⁶⁷ The trial

255. *Id.*

256. *Id.*

257. *Id.* at *4.

258. U.A.A. § 8(b).

259. 571 N.E.2d 792 (Ill. App. Ct. 1991).

260. *Id.* at 793.

261. *Id.*

262. *Id.* at 794.

263. *Id.*

264. *Id.* at 795.

265. *Id.*

266. 584 A.2d 950 (Pa. 1991).

267. *Id.* at 951.

a modified version of the U.A.A.²⁶⁹ The court stated that a court should take jurisdiction only when a claimant disputes an uninsured motorist clause as being contrary to a "constitutional, legislative, or administrative mandate, or against public policy or [when to award such would be] unconscionable."²⁷⁰ The court found that there was no contract provision in dispute; only the award itself was claimed to be against public policy.²⁷¹ The court held that this is the type of review the legislature intended to avoid when it adopted the U.A.A.²⁷²

In *Baith v. CNA Insurance Cos.*,²⁷³ a Pennsylvania trial court had applied Section 7314(a)(1)(i).²⁷⁴ The Pennsylvania Superior Court affirmed the trial court, which had vacated the arbiter's decision in an insurance dispute.²⁷⁵ In this case, the insurer had withheld its consent to settle for the full policy limits, had refused to tender to the insured party the settlement offer in order to protect its subrogation rights, and then had defended against the insured's claim for underinsured motorist benefits.²⁷⁶ The superior court held that the insurer's conduct was a violation of the public policy of the state.²⁷⁷

D. Refusal to Hear Evidence Material to the Controversy

A court is empowered to vacate an arbitration award if it can be shown that the arbitrators "refused to hear evidence material to the controversy" or held the arbitration proceeding in such a way as to prejudice substantially the rights of a party to arbitration.²⁷⁸

Recent cases have addressed this issue. In *Johnson v. Baumgardt*,²⁷⁹ the issue was whether an arbitration award can be vacated where the arbiters excluded evidence relevant to the defendant's defenses during the arbitration proceeding.²⁸⁰ The court stated that an award cannot be vacated absent statutory grounds for doing so.²⁸¹ The court also stated that errors of law or fact are not sufficient grounds to vacate an award unless the mistakes appear on

269. See *Azpell*, 584 A.2d at 951. Section 7314(a)(1)(i) permits a court to vacate an arbitration based on common law arbitration. See 42 PA. CONS. STAT. ANN. § 7314(a)(1)(i). Under Section 7341, a court may vacate an award only if the party was denied a hearing or if there is fraud, misconduct, corruption, or other irregularity which caused an unjust award. See *id.* § 7341 (1982). The U.A.A. version simply states that "a court shall vacate an award where (1) the award was procured by corruption, fraud or other undue means . . ." U.A.A. § 12(a)(1).

270. *Azpell*, 584 A.2d at 952.

271. *Id.*

272. *Id.*

273. 593 A.2d 881 (Pa. Super. Ct. 1991).

274. *Id.* at 882-83; see *supra* note 269 (discussing 42 PA. CONS. STAT. ANN. § 7314(a)(1)(i)).

275. *Id.* at 885.

276. *Id.* at 882.

277. *Id.*

278. U.A.A. § 12(a)(4).

279. 576 N.E.2d 515 (Ill. App. Ct. 1991).

280. *Id.* at 518.

281. *Id.* at 519; see also *Rauh v. Rockford Prods. Corp.*, 574 N.E.2d 636 (Ill. 1991).

statutory grounds for doing so.²⁸¹ The court also stated that errors of law or fact are not sufficient grounds to vacate an award unless the mistakes appear on the face of the award.²⁸² The court found the alleged error at hand to be apparent on the face of the award.²⁸³ Because the arbiters refused to hear evidence which was related to the dispute, they did not make an award which fully settled the dispute.²⁸⁴ Therefore, under Section 112(a)(4), the court held that a court can vacate the award.²⁸⁵

Generally, a court will not overturn an arbiter's decision. However, occasionally a party may succeed in having an award overturned. If an award is based on fraud, bias, corruption, failure to hear all relevant evidence, a ruling contrary to public policy, or if the arbitrator exceeded his authority, then a court will vacate such an award.

VIII. MODIFICATION OR CORRECTION OF AN AWARD

The U.A.A. gives a court authority to modify or to correct an arbitration award with limited review.²⁸⁶ The modification or correction of an award is controlled by Section 13 of the U.A.A.²⁸⁷ A court may modify or correct an award containing an evident miscalculation or mistake.²⁸⁸ In addition, a court may correct an award with respect to issues not submitted to arbitration if the correction will not affect the rest of the award.²⁸⁹ Finally, a court may correct

281. *Id.* at 519; *see also* Rauh v. Rockford Prods. Corp., 574 N.E.2d 636 (Ill. 1991).

282. *Johnson*, 576 N.E.2d at 519.

283. *Id.* The court relied on ILL. REV. STAT. ch. 10, para. 112(a)(4), which is identical to U.A.A. § 12(a)(4). *Compare* ILL. REV. STAT. ch. 10, para. 112(a)(4) (1989) with U.A.A. § 12(a)(4).

284. *Johnson*, 576 N.E.2d at 519.

285. *Id.*

286. U.A.A. § 13 (modification or correction of an award).

287. U.A.A. § 13 provides:

(a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

(2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

U.A.A. § 13.

288. U.A.A. § 13(a)(1).

289. U.A.A. § 13(a)(2).

an award imperfect in form without "affecting the merits of the controversy."²⁹⁰ In any case, the application for modification or correction must be made within 90 days of delivery of the award.²⁹¹ The following recent cases address the issue of modification and correction of arbitral awards pursuant to U.A.A. Section 13.

A. Discussion of Recent Cases

In determining whether an arbitration award should be modified or corrected, the scope of review is limited.²⁹² A court should not rule on the underlying issues of the case, but should rather limit its examination to determining whether the award falls into one of the specific statutory provisions for modification or correction.²⁹³ In *Baltimore Barn Builders*,²⁹⁴ the defendant sought to modify an arbitration award based upon evidence of a miscalculation.²⁹⁵ The defendant objected to an award for the sum of \$1550 rather than the sum of \$1050, which reflected plaintiff's expenses.²⁹⁶ The court denied modification, stating that defendant failed to meet the burden of proof.²⁹⁷ The court noted that the arbiter had authority to grant a larger award than that which the plaintiff sought.²⁹⁸

A court may modify an arbitration award if it is necessary to correct "a formal or jurisdictional deficiency" and if the modification will not affect the merits of the dispute.²⁹⁹ In *Maine State Employees Ass'n*,³⁰⁰ an arbiter ordered that the employee "be made whole for all losses and expenses incurred as a result of her improper termination."³⁰¹ The trial court confirmed the award and entered judgment entitling employee to reinstatement and "back pay with no offset for workers' compensation benefits."³⁰² The appellate court found that the trial court's interpretation of the arbitration award was a substantive modification.³⁰³ The test the appellate court applied is whether the additional

290. U.A.A. § 13(a)(3).

291. U.A.A. § 13(a).

292. *Baltimore Barn Builders*, 1990 WL 237094, at *1. See *supra* notes 240-44 and accompanying text for discussion of the arbitrator's scope of authority in this case.

293. *Baltimore Barn Builders*, 1990 WL 237094, at *1.

294. Civ. A. No. 1424, 1990 WL 237094.

295. *Id.* at *3. The applicable Delaware statute provides in part for modification of an award when "there was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award." *Id.* at *1 (citing DEL. CODE ANN. tit. 10, § 5715(a)).

296. *Id.* at *2.

297. *Id.* at *3.

298. *Id.*

299. *Maine State Employees Ass'n*, 593 A.2d at 652.

300. 593 A.2d 650. See *supra* notes 171-78, 190-96 and accompanying text for further discussion of this case.

301. *Maine State Employees Ass'n*, 593 A.2d at 651.

302. *Id.* at 651-52.

303. *Id.* at 653.

judgment language affects the merits of the award.³⁰⁴ Since it is the arbiter's decision that the parties sought, a court may not modify the award but must submit ambiguous awards to the arbiter for clarification.³⁰⁵

A court may also modify an arbitration award if the arbitrator acted beyond the scope of his authority and if the award can be corrected without affecting the merits of the dispute.³⁰⁶ *Fort Wayne Education Ass'n*³⁰⁷ presented two issues concerning the ability of courts to find that an arbitrator exceeded the scope of his authority.

In *Fort Wayne Education Ass'n*, a dispute concerning the reassignment of a teacher was sent to arbitration.³⁰⁸ In a motion to modify the arbitration award, the Association tried to present evidence purporting that the arbitrator exceeded the scope of his authority.³⁰⁹ The trial court excluded the evidence stating that "the pleadings and transcript . . . of the actual arbitration hearing, together with the arbitrator's findings and award" are the proper evidence to be considered.³¹⁰ On appeal, the Indiana Court of Appeals reversed and stated that extrinsic evidence is admissible for the purpose of showing that the arbiter exceeded his scope of authority.³¹¹ However, the court did not find this to be reversible error under the circumstances of the case.³¹²

The Association also sought to have the language concerning the prioritization of factors and reassignment to be excised from the arbitration award.³¹³ Indiana's Certified Educational Employee Bargaining Act³¹⁴ expressly forbids an arbitrator from prioritizing contract provisions.³¹⁵ In addition, the contract in question delegated to the principal and the school board the discretion to consider and prioritize factors in its assignment of the faculty.³¹⁶ Thus, the Indiana Court of Appeals found that the arbitrator exceeded the scope of his authority by stating that the "building needs outweigh

304. *Id.* at 652.

305. *Id.* at 652-53.

306. U.A.A. § 13(a)(2).

307. 569 N.E.2d 672.

308. *Id.* at 673.

309. *Id.* at 676. The Association submitted to the trial court transcriptions of the opening and closing arguments made from tape recordings of the hearings, copies of the post-arbitration hearing briefs, and an affidavit of an eyewitness authenticating the documents. *Id.*

310. *Id.*

311. *Id.*

312. *Id.* at 677.

313. *Id.* at 678. Although the contract in this situation expired by the time the case reached the appellate court and thus raised a moot point, the court decided to rule on this issue, citing public concern that violations of statutes concerning collective bargaining in the education system would be detrimental to the system. *Id.* at 675 n.1.

314. IND. CODE §§ 20-7.5-1-1 to 20-7.5-1-14 (1992).

315. *Fort Wayne Educ. Ass'n*, 569 N.E.2d at 679.

316. *Id.* at 678-79. The contract also stated that "the arbitrator shall have no authority to add to, subtract from or modify the terms of the Master Contract." *Id.* at 678.

seniority.³¹⁷ Furthermore, the court found that this language could be excised without affecting the merits of the dispute.³¹⁸ On this issue, the court reversed and remanded with instructions for the trial court to excise this language.³¹⁹

Jarosz v. Principal Financial Group,³²⁰ an unpublished Minnesota Court of Appeals opinion, presents another example where a court was asked to modify an arbitration award when the arbitrator exceeded the scope of his authority. Under the U.A.A., an arbitrator may modify an arbitration award when the arbitrator decides issues that were not properly submitted to arbitration if the award can be modified without affecting the merits of the dispute.³²¹ In *Jarosz*, the arbitrator issued an award for medical expense benefits and stated that the insurer "shall have no further obligation for future chiropractic care."³²² Under Minnesota law, the plaintiff was only entitled to recover past medical expenses, and the insurer was under no obligation to pay until the expenses were incurred.³²³ By relieving the insurer of the obligation to pay future medical expenses, the arbitrator exceeded the scope of his authority.³²⁴ The appellate court held that the arbitration award could be modified by deleting the portion of the award relating to the obligation to pay future medical expenses without affecting the merits of the case.³²⁵ In addition, the court found that the arbitration award did not provide for interest payments as required by Minnesota law.³²⁶ However, the court refused to modify the award in order to account for interest payments because it was unable to determine what the arbitrator intended without further speculation.³²⁷

The Maryland courts addressed the issue of modification and correction of awards in the area of medical malpractice.³²⁸ In *Central Collection v. Gettes*,³²⁹ the State of Maryland brought an action seeking to recover arbitration costs from the defendant.³³⁰ In a medical malpractice case pursuant to the Maryland Health Care Malpractice Claims Act,³³¹ the arbitration panel found in favor of the defendant and ordered that the costs of arbitration be split between

317. *Id.* at 680.

318. *Id.*

319. *Id.*

320. C07-90-2409, 1991 WL 70303 (Minn. Ct. App. May 7, 1991).

321. *Id.* at *1 (citing MINN. STAT. § 572.20, subd. 1(2) (1990)); *see also* U.A.A. § 13(a)(2).

322. *Jarosz*, 1991 WL 70303, at *1 (quoting the arbitration award).

323. *Id.* at *2 (citing MINN. STAT. § 65B.44, subd. 1 (1990)).

324. *Id.*

325. *Id.*

326. *Id.*; *see* MINN. STAT. § 65B.54, subd. 2 (1990) (requiring interest to be paid on overdue payments); *see also* MINN. STAT. § 65B.54, subd. 1 (1990) (stating that payments are overdue if not paid within 30 days after the insurer receives proof of loss).

327. *Jarosz*, 1991 WL 70303, at *2.

328. *See* *Central Collection v. Gettes*, 584 A.2d 689, 693 (Md. 1991).

329. 584 A.2d 689.

330. *Id.* at 690.

331. MD. CODE ANN., CTS. & JUD. PROC. §§ 3-2A-01 to -09 (1989 & Supp. 1990).

the claimant and the defendant.³³² The claimant brought a timely action to vacate the arbitration award.³³³ The case was presented to a jury, which returned a verdict in favor of the defendant with a judgment for costs.³³⁴ Eight years later, the State of Maryland brought an action seeking arbitration costs from the defendant.³³⁵ The defendant claimed that the verdict award "for costs of the law suit" reallocated the arbitration costs so that the claimant was responsible for the full costs.³³⁶ The circuit court ruled in favor of the defendant, stating that the State of Maryland should not be allowed to bring an action after so many years.³³⁷ In effect, the circuit court reallocated the costs detailed in the arbitration award.³³⁸

On appeal, the court recognized that the statute of limitations and laches does not apply to a state suing in its sovereign capacity in its own court system.³³⁹ The appellate court also noted that the standard of review of arbitration awards is narrow and that modification is available only in limited situations specified by statute.³⁴⁰ Essentially, these grounds are "limited to corruption, miscalculation, or exceeding the arbitrator's authority."³⁴¹ Furthermore, the appellate court stated that review and modification of arbitration awards require judicial determination and cannot be submitted to the jury.³⁴² The court continued, holding that an arbitration award for the cost of arbitration should be treated separately from the determination of the merits of the claim.³⁴³

As a result, the jury's allocation of costs of the lawsuit did not act as a modification of the arbitration award.³⁴⁴ In addition, the defendant waived the right to object to the award of arbitration costs by failing to file grounds for vacating or modifying the arbitration award within the appropriate time period.³⁴⁵

The concurrence objected to the majority's premise that an arbitration award for costs should be treated individually from the arbitration award for the underlying claim.³⁴⁶ The concurrence continued, rejecting the statutory

332. *Central Collection*, 584 A.2d at 690.

333. *Id.*

334. *Id.*

335. *Id.*

336. *Id.* at 691.

337. *Id.* at 690-91.

338. *Id.*

339. *Id.* at 691.

340. *Id.* at 693; *see also* MD. CODE ANN., CTS. & JUD. PROC. §§ 3-223 & 3-224 (1989).

341. *Central Collection*, 584 A.2d at 693.

342. *Id.*

343. *Id.*

344. *Id.*

345. *Id.* at 696.

346. *Id.* at 697 (Chasanow, J., concurring).

limitations placed on judicial review of arbitration awards in medical malpractice cases.³⁴⁷

B. Conclusion

Under the U.A.A, a court's ability to modify an arbitration award is very limited. A court may modify an award only in specific situations detailed by statute and when the modification will not affect the underlying merits of the arbitration award.³⁴⁸ This limited review emphasizes the deference given to arbitrators by respecting the parties' desire to have their dispute resolved through arbitration. However, this restriction severely limits a court's ability to correct an arbitration award that is inequitable.³⁴⁹

IX. JUDGMENT OR DECREE ON AWARD

The U.A.A. provides that all judgments or decrees entered by the court be in conformity with the arbitrator's ruling.³⁵⁰ U.A.A. Section 14 states that "upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree."³⁵¹

According to the Maine Supreme Court in *Hearst Corp. v. Swiss Bank Corp.*,³⁵² "an arbitration award must provide the basis for an enforceable judgment under Section 5940 of the Act."³⁵³ This requires the award to be "sufficiently clear and definite" to be enforceable.³⁵⁴ Similarly, the court in *Sargent v. Town of Millinocket*³⁵⁵ held that an arbitration decision must be unambiguous to be enforceable.³⁵⁶

In *Hearst Corp.*, a lessor (Hearst Corporation) and lessee (St. Raymond) agreed to arbitration after a dispute arose concerning the lessor's leasing mineral rights to a third party.³⁵⁷ However, the arbitrator failed to specify a monetary

347. *Id.* at 699-700. The concurrence expressed the concern that a court should be able to review arbitration awards that may have been decided arbitrarily or based upon factors such as ability to pay or insurance coverage. *Id.*

348. U.A.A. § 13.

349. *See Central Collection*, 584 A.2d at 693.

350. U.A.A. § 14.

351. *Id.*

352. 584 A.2d 655 (Me. 1991).

353. *Id.* at 658; *see* ME. REV. STAT. ANN. tit. 14, § 5840 (West 1980). Maine's statutory provision Section 5940 is identical to U.A.A. Section 14. *Compare* MAINE REV. STAT. ANN. tit. 14, § 5940 *with* U.A.A. § 14.

354. *Hearst Corp.*, 584 A.2d at 658 (quoting *Lisbon School Comm. v. Lisbon Educ. Ass'n*, 438 A.2d 239, 245 (Me. 1981)).

355. 478 A.2d 683 (Me. 1984).

356. *Id.* at 686.

357. *Hearst Corp.*, 584 A.2d at 656.

award to the injured party, St. Raymond, as required in the arbitration agreement.³⁵⁸ The court held that this did not provide the standard of clarity and definiteness necessary for the lower court to confirm and to enter judgment.³⁵⁹ Therefore, when the court granted monetary benefits to St. Raymond in its judgment, it was not in conformity with the arbitrator's award as required under Maine's Arbitration Act,³⁶⁰ and the Maine Supreme Court remanded for clarification.³⁶¹

The Supreme Court of Maine again addressed the issue of a court granting an order confirming an arbitrator's ambiguous award.³⁶² In *Maine State Employees Ass'n*,³⁶³ the arbitrator ruled in favor of a union employee who, while employed at the Maine State Prison, suffered a work-related injury and was later terminated in violation of the collective bargaining agreement.³⁶⁴ The court held the arbitrator's award ambiguous because the award contained the phrase shall be "made whole" in regard to all losses and expenses she incurred, as well as lost earnings she suffered.³⁶⁵ However, the award was unclear whether workers' compensation benefits were to offset the backpay she was to receive for her improper termination.³⁶⁶ Therefore, when the lower court interpreted the phrase "made whole" not to include offsetting backpay, it was error because the term was ambiguous and thus was not in conformity with the arbitration award.³⁶⁷

Thus, for judgment to be in conformity with the award, the court cannot place its own interpretation on terms in the arbitration decision. The arbitrator must insure that its award is clear and definite for the court to grant judgment.

At issue in *Dickler v. Shearson Lehman Hutton, Inc.*³⁶⁸ is whether an arbitrator granting equitable relief may have this remedy enforced by state courts. A recent Pennsylvania court, interpreting the 1927 Pennsylvania Arbitration Act,³⁶⁹ held that a court could not enforce injunctive relief declared by an arbitrator because the Act only allowed for enforcement of judgments.³⁷⁰

358. *Id.* at 658.

359. *Id.*

360. *Id.* at 659.

361. *Id.* The court noted "the statutory remedy prescribed by the Uniform Arbitration Act for such an ambiguous award would normally have been either an application for clarification under Section 5937 of the Act [U.A.A. Section 11] or a motion to vacate and a request for rehearing under Section 5938 of the Act [U.A.A. Section 12]." *Id.* at 657-58. However, neither party in *Hearst* sought such remedies. *Id.* at 658.

362. See *Maine State Employees Ass'n*, 593 A.2d at 650.

363. 593 A.2d 650. See *supra* notes 171-78, 190-96 and accompanying text for further discussion of the case.

364. *Maine State Employees Ass'n*, 593 A.2d at 651.

365. *Id.* at 653.

366. *Id.*

367. *Id.*

368. 596 A.2d 860 (Pa. Super. Ct. 1991).

369. PA. STAT. ANN. tit. 5, §§ 161-181 (1927) (repealed 1980).

370. *Dover v. Philadelphia Hous. Auth.*, 465 A.2d 644, 648-49 (Pa. Super. Ct. 1983).

However, with the adoption of the U.A.A. in 1980, the Pennsylvania courts may now "enforce the ruling of an arbitrator, by entering either a judgment or decree in conformity with the arbitrator's holding."³⁷¹ Thus, according to the Pennsylvania Supreme Court, the arbitral forum is appropriate for deciding issues of equity.³⁷²

The *Dickler* court not only looked at both state and federal law but also at the arbitration agreement itself to determine if the scope of the agreement encompassed equitable relief.³⁷³ Since the court found no such prohibition expressly stated in the agreement, and the intent of the parties was unclear, the court held arbitration encompassing equitable relief proper.³⁷⁴

X. JURISDICTION

Jurisdiction is governed by Section 17 of the U.A.A. According to Section 17, "the making of an agreement described in section 1 [of the U.A.A.] providing for arbitration in this State confers jurisdiction on the court to enforce the agreement under this Act and to enter judgment on an award thereunder."³⁷⁵

In *Eastman Kodak Co. v. Cetus Corp.*,³⁷⁶ Kodak was seeking injunctive relief to prevent Cetus from transferring or disclosing certain technologies the two companies had developed in a joint research and development effort.³⁷⁷ The defendant Cetus "argue[d] that this Court lack[ed] subject matter jurisdiction because Delaware's arbitration statute [did] not apply to arbitrations pending in other jurisdictions."³⁷⁸ The Court of Chancery of Delaware rejected Cetus' argument, holding that Kodak's claim for injunctive relief was within the court's subject matter jurisdiction.³⁷⁹

The court based its reasoning on the fundamental power of a court of chancery to provide injunctive relief to prevent irreparable harm.³⁸⁰ The court stated that, even though the power of the court with respect to compelling arbitration may be limited,³⁸¹ "it does not necessarily follow that this Court lack[s] jurisdiction to enter an injunction in aid of a foreign arbitration."³⁸²

371. *Dickler*, 596 A.2d at 864.

372. *Id.*

373. *Id.*

374. *Id.*

375. U.A.A. § 17.

376. Civ. A. No. 12249, 1991 WL 202184 (Del. Ch. Oct. 4, 1991) (unreported opinion).

377. *Id.* at *1. The parties were engaged in arbitration in California when Kodak sought relief in the court of Chancery. *Id.*

378. *Id.*

379. *Id.*

380. *Id.* at *2.

381. See U.A.A. § 17 (conferring jurisdiction to arbitration occurring "in this State").

382. *Eastman Kodak*, 1991 WL 202184, at *2.

The court focused on the power of Chancery (both in England, as well as the colonies) at the time of the American Revolution to confer equitable relief.³⁸³

The Maryland Court of Special Appeals also addressed the jurisdiction of the court in an arbitration proceeding in *Marousek v. Sapro*.³⁸⁴ In *Marousek*, there was a dispute as to whether it was the court or the Health Claims Arbitration Board which had jurisdiction to rule on a motion for reconsideration.³⁸⁵ The *Marousek* court held that jurisdiction is not yet granted to the court where the Health Claims Arbitration Board has not completed its initial work.³⁸⁶ The court stated "there can be no review until all of the actions required of the first tribunal have been taken."³⁸⁷ Thus, "until the arbitration panel has issued a final award, there is nothing for the circuit court to review."³⁸⁸

XI. APPEALS

The U.A.A. provides an appeal process whereby an appeal may be taken from an order: (1) denying an application to compel arbitration; (2) granting an application to stay arbitration; (3) confirming or denying confirmation of an award; (4) modifying an award; (5) vacating an award without directing a rehearing; or (6) of judgment of decree entered.³⁸⁹

In *Maine Department of Transportation v. Maine State Employees Ass'n*,³⁹⁰ the Supreme Judicial Court of Maine held that an appeal cannot be taken to a court of law from an arbitration award without an intervening action by a court of law.³⁹¹ An appeal is allowed only after an order, judgment, or decree has been entered by a court of law.³⁹² The court also held that a court order vacating an original arbitration award and remanding the case for a rehearing is not immediately appealable but is reviewable only after the second arbitration.³⁹³

The Pennsylvania courts have also recently addressed the issue of the appealability of arbitration awards. In *Kester v. Erie Insurance Exchange*,³⁹⁴ the Superior Court of Pennsylvania held that when there is an agreement to arbitrate according to the provisions of the U.A.A., a court order denying a judgment on the pleadings and referring the matter to arbitration is final and appealable.³⁹⁵

383. *Id.*

384. 589 A.2d 529 (Md. Ct. Spec. App. 1991).

385. *Id.* at 532.

386. *Id.* at 533.

387. *Id.*

388. *Id.*

389. U.A.A. § 19.

390. 581 A.2d 813 (Me. 1990).

391. *Id.* at 814.

392. *Id.*

393. *Id.* at 814-15.

394. 582 A.2d 17 (Pa. Super. Ct. 1990).

395. *Id.* at 19.

In *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Hughes*,³⁹⁶ the Texas Court of Appeals held that the Federal Arbitration Act does not provide authorization for an interlocutory appeal from a state court order denying a motion to stay or compel arbitration brought under the federal act.³⁹⁷ Stating that it lacked jurisdiction under the Act, the court dismissed the appeal.³⁹⁸

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396. 809 S.W.2d 679 (Tex. Ct. App. 1991).

397. *Id.* at 680.

398. *Id.* at 681.