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STUDENT PROJECT

Recent Developments: The Uniform Arbitration Act*

I. SECTION 1: VALIDITY OF ARBITRATION AGREEMENTS

Section 1 of the UAA states:

> [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. This act also applies to arbitration agreements between employers and employees or between their respective representatives [unless otherwise provided in the agreement].[1]

Courts are often faced with issues relating to the application of the Uniform Arbitration Act (UAA) to disputes between parties. When a dispute arises, the first inquiry by the court must be whether the parties have entered into a valid agreement to arbitrate. This question must be answered in the affirmative before any other section of the UAA becomes an issue. In determining the validity of an arbitration agreement the court looks for certain factors including: the existence of a written agreement between parties, whether the dispute arose out of a provision within the scope of the arbitration agreement, and whether the agreement itself is within the public interest.

A. Written Agreement Between Parties

In determining whether there is a valid agreement to arbitrate, courts refuse to enforce arbitration agreements unless there is a written agreement between the parties. In *Jones v. Davis*,[2] the Washington Court of Appeals upheld the denial of the motion for a stay pending arbitration because the parties to the dispute did not have a written arbitration agreement.[3] Jones, a prospective home purchaser, authorized her real estate agent to hire an inspector to perform an inspection of the home.[4] The agent contacted an inspector whom she had done business with in the

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*. This project was prepared by *Journal of Dispute Resolution* candidates under the direction of Associate Editor in Chief Earl D. Kraus.

1. U.A.A. § 1 (1997).
2. 2000 WL 628789 at *2 (Wash. App. May 12, 2000).
3. *Id.*
4. *Id.* at *1.

past.[5] In previous dealings between the inspector and the agent, the inspector had written agreements with the agent that included written arbitration provisions.[6] After completion of the inspection, the agent sent Jones the inspection report and a copy of the written agreement that included an arbitration provision.[7] After closing on the house Jones discovered structural problems, and she subsequently filed suit against the inspector.[8] The inspector moved for a stay pending arbitration. In denying the stay, the court rejected the inspector's argument that a valid contract existed with the purchaser through her real estate agent.[9]

However, in *Topolski v. Helena Association of Realtors, Inc.*,[10] the court determined that even though the brokers did not directly enter into any agreement with the clients to arbitrate disputes, the real estate brokers had to arbitrate disputes with clients because the terms of their membership in a trade association required arbitration.[11] The brokers were voluntary members in a trade association whose bylaws contained provisions requiring association members to arbitrate disputes brought by a client arising out of an agency relationship so long as the client agreed to be bound by the arbitration.[12] The brokers claimed that because they had only entered into a contract between them and the association, not any client, the agreement could not extend to anyone who was not a member of the association.[13] The Supreme Court of Montana disagreed, stating that as voluntary members of the association, they agreed to be bound by the provisions and their obligation to arbitrate could not have been more clear.[14] Courts will refuse to confirm arbitration awards if the parties only orally agreed to arbitrate.

The Tennessee Court of Appeals, in *Custom Built Homes by Ed Harris v. McNamara*,[15] affirmed a trial court order to not confirm an arbitration award because the written agreement requirement was not satisfied.[16] The case, which had a bizarre procedural history, arose out of a dispute over a contract for the construction of a home for the McNamaras.[17] Custom Built Homes by Ed Harris (Custom) filed suit against the McNamaras for a breach of contract.[18] The McNamaras subsequently filed a motion for arbitration.[19] Custom filed a response claiming that no binding arbitration agreement existed because the paragraph referring to arbitration in the contract was not individually initialed or signed by the parties.[20] The trial court entered a confusing order to the motions seemingly denying the defendant's efforts

5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.* at *2.
10. 15 P.3d 414 (Mont. 2000).
11. *Id.* at 417.
12. *Id.* at 415.
13. *Id.* at 416.
14. *Id.*
15. 2000 WL 14672 (Tenn. App. Jan. 10, 2000).
16. *Id.* at *3.
17. *Id.* at *1.
18. *Id.*
19. *Id.*
20. *Id.*

to compel arbitration.[21] However, the parties then orally agreed to binding arbitration and participated in arbitration, awarding damages to the McNamaras.[22] The trial court denied the McNamaras' motion to confirm the arbitrator's award.[23] In explaining the denial, the court cited the absence of a written agreement as required by statute and the allegations by Custom that the oral agreement had included a limitation that expert witnesses were allowed in the arbitration which had not been honored by the arbitrator.[24] In affirming the trial court's denial of confirmation, the appellate court stated that no binding agreement to arbitrate existed in the contract because the clause providing for arbitration was not signed or initialed by the parties.[25] The court rejected the McNamaras' argument that the oral arbitration agreement should be enforced.[26] Instead, the court stated that the trial court's order indicated a lack of understanding as to the expert witness limitation specified by the parties, thus the trial court did not err in denying confirmation of the award.[27]

B. Scope of the Agreement

In addition to finding that a written arbitration agreement exists between parties, courts must also determine whether the specific dispute in question falls within the substantive scope of that agreement. In *Long v. Silver*,[28] the United States District Court for the Western District of North Carolina held that an arbitration clause in a written agreement entered into between shareholders did not cover the diverse claims in the complaint.[29] In *Long*, the parties entered into an agreement which contained an arbitration provision stating that parties must submit to arbitration any dispute arising out of the agreement.[30] However, the agreement, which was only between shareholder Long and the company with which his stock would be traded, did nothing more than restrict each shareholder's right to sell stock.[31] The complaint raised by Long against the officers and other shareholders, on the other hand, alleged a breach of contract, fraud, frustration of reasonable expectation, and failure to distribute profits proportionately, among other things.[32] Contrary to the officers' and other shareholders' argument, the court found that in looking at the language of the agreement, the parties could not have intended to bind themselves to the arbitration of the broad range of claims raised in the instant complaint.[33] Therefore, the motion to compel arbitration was denied.[34]

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21. *Id.* at **1-2.
22. *Id.*
23. *Id.* at **2-3.
24. *Id.*
25. *Id.* at *3.
26. *Id.*
27. *Id.*
28. 123 F. Supp. 2d 875 (W.D. N.C. 2000).
29. *Id.* at 880.
30. *Id.* at 877.
31. *Id.* at 878.
32. *Id.* at 879.
33. *Id.* at 881.
34. *Id.* at 883.

In *Schwentker v. A.G. Edwards & Sons, Inc.*,[35] the United States District Court for the Southern District of Indiana analyzed whether the scope of an arbitration clause in an option account agreement extended to disputes arising out of a separate stock account.[36] Ms. Schwentker opened both a stock account and an option account with A.G. Edwards & Sons, Inc. (hereinafter Edwards).[37] Subsequent to the establishment of the option account, Schwentker signed an "Option Account Agreement," which contained an arbitration provision stating that "all controversies between me and Edwards . . . which may arise for any cause whatsoever, shall be determined by arbitration."[38] A dispute arose solely concerning the stock account, and Schwentker filed suit.[39] Schwentker argued that the scope of the arbitration clause was ambiguous and encompassed only issues arising under the option account and not the stock account.[40] Edwards argued that the dispute fell within the "all controversies" wording in the arbitration provision and was thus arbitrable.[41] Further, Edwards contended that the arbitrability of the dispute was also arbitrable.[42] The court agreed with Edwards, stating that the arbitration clause indicated no limitation to the subject matter of what is arbitrable.[43] The court found the only limitation in the arbitration provision to be that of excluding disputes that arose prior to the agreement.[44]

In *Solle v. Western States Insurance Agency, Inc.*,[45] Solle and Western States Insurance Agency, Inc. (Western) entered into a one-year employment contract containing a provision that any dispute arising under the provisions of the contract would be submitted to arbitration.[46] Western failed to renew the contract after one year, and Solle filed suit claiming she had a reasonable expectation that Western would offer such a renewal.[47] Western alleged that the contract governed Solle's employment, and was arbitrable because the claim for wrongful termination arose out of the contract.[48] Conversely, Solle argued that she did not claim a violation of any of the terms of the employment contract, but that she brought a tort claim for failure to renew a contract.[49] The court agreed with Western that the employment contract governed Solle's employment, termination, and post employment relationship, and did not explicitly exclude disputes arising after termination of the contract.[50] The court cited *Nolde Bros., Inc. v. Bakery & Confectionery Workers Union*,[51] stating "there is little reason to construe this contract

35. 2000 WL 988517 (S.D. Ind. June 6, 2000).
36. *Id.* at *2.
37. *Id.*
38. *Id.* at *1.
39. *Id.*
40. *Id.* at *2.
41. *Id.*
42. *Id.*
43. *Id.* at *5.
44. *Id.*
45. 999 P.2d 328 (Mont. 2000).
46. *Id.* at 330.
47. *Id.*
48. *Id.* at 332.
49. *Id.*
50. *Id.* at 333.
51. 430 U.S. 243 (1977).

to mean that the parties intended their contractual duty to submit grievances and claims arising under the contract to terminate immediately on the termination of the contract. . . ."[52] Thus, the Supreme Court of Montana upheld the trial court's ruling granting Western's motion to compel arbitration.[53]

Sometimes the court must resolve ambiguity in the terms of the arbitration provision to determine whether the dispute is arbitrable. An insurance policy in *Allstate Insurance Co. v. Perea*[54] contained an arbitration clause providing that an arbitration award is binding if it does not exceed the limits of the financial responsibility law of New Mexico.[55] The clause went on to state that if an arbitration award exceeds the financial responsibility limits, either party has a right to trial on the issues.[56] After an arbitration panel awarded $52,500 to the defendant, Allstate filed suit in district court.[57] The mandatory financial responsibility limit of New Mexico was $25,000, but the principle of judicial stacking, if applied, would increase the limit from $25,000 to $75,000 because the defendant had three insurance policies.[58] Therefore, the issue became whether "financial responsibility limits" as stated in the policy meant the judicially stacked $75,000 coverage or the single $25,000 mandatory amount.[59] The New Mexico Court of Appeals concluded that the language of the contract plainly referred to the single $25,000.[60] Furthermore, pursuant to the contract, the arbitration award exceeded the allowable limit in the arbitration clause and thus was not an award under a valid arbitration agreement.[61]

In *Lewis v. CEDU Educational Services, Inc.*,[62] a mother and child entered into a contract with CEDU Educational Services, Inc. (CEDU) that provided for the child's enrollment in an educational program offered by CEDU.[63] The enrollment agreement contained a provision compelling arbitration of any controversy between the parties arising out of the contract, and an additional provision providing that no promise was valid or binding on the defendant if it was not contained in the agreement.[64] After a riot took place at an academy of the defendant, an employee of the defendant assured the mother of the child's safety if he were allowed to remain.[65] After choosing to remain, the child was injured by another student.[66] The mother and child subsequently filed suit claiming a breach of an express warranty.[67] The district court ruled that the breach of an express warranty arising out of these events was not subject to arbitration since it did not arise out of the terms of the

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52. *Id.* at 254.
53. *Solle*, 999 P.2d at 333.
54. 8 P.3d 166 (N.M. App. 2000).
55. *Id.* at 167.
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.* at 169.
60. *Id.* at 170.
61. *Id.*
62. 15 P.3d 1147 (Idaho 2000).
63. *Id.* at 1149, 1152.
64. *Id.* at 1149.
65. *Id.* at 1152.
66. *Id.*
67. *Id.* at 1149.

contract.[68] The Supreme Court of Idaho reversed, stating that a claim for breach of an express warranty is normally a contract issue and thus is directly related to the terms and provisions within the contract.[69] Therefore, the claim was subject to arbitration.[70]

The issue in front of the Colorado Court of Appeals in the case *In re the Marriage of Popack*,[71] was the validity and application of an arbitration agreement entered into between a husband and wife providing for the arbitration of marital disputes by a rabbinical council.[72] At the time the parties entered into the agreement, the wife had commenced a legal separation proceeding.[73] The court dismissed the separation action with the parties consent after the council arbitrated and court adopted the temporary orders.[74] Later, the wife requested a decree of dissolution of marriage and requested the court enter temporary orders.[75] The husband moved to strike the wife's motion for temporary orders on the basis that the orders were arbitrable under the agreement.[76] The trial court disagreed with the husband, concluding that the agreement was entered into as part of the earlier legal separation proceedings and had no application to the present proceedings.[77] The Colorado Court of Appeals reversed, finding that because the parties entered into the agreement in the context of a legal separation proceeding and are now engaged in a dissolution proceeding did not affect the validity and application of the agreement.[78] The court explained that the language of the agreement evidenced an intent by the parties to arbitrate all matters related to their marriage, present or future.[79] Therefore, because the dispute fell within the arbitration provision, the appellate court remanded the case for a trial court determination of whether the agreement was conscionable and entered into voluntarily by the parties.[80]

Often the court must determine the proper standard of review in a trial court's confirmation of an arbitration panel's determination. In *DMS Properties-First, Inc. v. P.W. Scott Associates, Inc.*[81] an arbitration panel granted Scott's Motion to Dismiss on the ground that no valid agreement to arbitrate existed between it and DMS.[82] DMS asked the court of chancery to vacate the dismissal by the arbitration panel.[83] In upholding the arbitration panel's dismissal, the court of chancery applied a deferential standard of review to the arbitrators' determinations.[84] In DMS's subsequent appeal, the Supreme Court of Delaware ruled that the court of chancery

68. *Id.* at 1152.
69. *Id.* at 1153.
70. *Id.*
71. 998 P.2d 464 (Colo. App. 2000).
72. *Id.* at 465.
73. *Id.*
74. *Id.*
75. *Id.* at 466.
76. *Id.*
77. *Id.*
78. *Id.* at 467.
79. *Id.*
80. *Id.*
81. 748 A.2d 389 (Del. 2000).
82. *Id.* at 390.
83. *Id.*
84. *Id.*

erred in applying a deferential standard of review.[85] The court noted that there was no request to compel or enjoin arbitration to the court of chancery, thus the threshold question in front of the court of chancery was the question of arbitrability itself.[86] If the parties did not clearly agree to submit the question of arbitrability to arbitration, the reviewing court must decide arbitrability independently and without deference.[87] The Supreme Court of Delaware stated that since the record reflected that the parties did not agree to submit the question of arbitrability to arbitration, the issue was subject to a *de novo* determination by the court of chancery.[88] Because the arbitration panel's decision to grant Scott's Motion to Dismiss was improperly given deference by the court of chancery, the supreme court remanded the judgment for *de novo* review.[89]

In *DDI Architects, P.C., v. Dale*,[90] the court used a broad standard in determining whether the dispute was within the scope of the arbitration agreement.[91] The case arose out of a complaint filed by DDI for copyright infringement and various other claims.[92] After the referral of the case to arbitration, the dispute arose as to whether Dale's counterclaims were within the oral agreement to arbitrate and thus subject to arbitration.[93] The Pennsylvania court stated that when determining whether a dispute falls within the scope of the agreement, the court could not stay arbitration unless it could state "with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute."[94] The court denied DDI's petition to stay arbitration because this standard was not met, and an interpretation of the agreement that covered the counterclaims was reasonable and probable.[95] The court's reasoning stemmed from the ambiguity of the statement by the plaintiff's counsel that the parties had agreed to arbitrate "the disputes set forth in the Complaint."[96] The court noted that this ambiguous language could reasonably be construed to cover the counterclaims and should be construed against DDI, the drafter.[97] Additional evidence noted by the court indicating the parties intent to resolve all claims in arbitration were the fact that the parties had contracted for an arbitrator with architectural fee dispute experience, the parties agreement that the matter be dismissed without prejudice, and that the fact that the counterclaims arose out of the same facts and were "entwined" with Dale's affirmative defenses to DDI's claims.[98] It should be noted that although the agreement to arbitrate was not in writing, it was enforced according to Pennsylvania statute.[99] Recognizing that the agreement was not written, the court refused to apply the Pennsylvania Uniform

85. *Id.* at 393.
86. *Id.* at 391.
87. *Id.*
88. *Id.* at 392-93.
89. *Id.* at 393.
90. 2000 WL 1146616 (E.D. Pa. Aug. 10, 2000).
91. *Id.*
92. *Id.* at *1.
93. *Id.*
94. *Id.* at *2.
95. *Id.* at *4.
96. *Id.* at *3.
97. *Id.*
98. *Id.* at *4.
99. *Id.* at *2.

Arbitration Act.[100] Instead, because the parties only orally agreed to arbitrate their disputes, the arbitration agreement was governed by the state common law.[101] However, under the Pennsylvania common law arbitration statute,[102] the Pennsylvania equivalent of section one of the UAA relating to the validity of the agreement to arbitrate applied to common law arbitration.[103]

C. Public Policy

While courts generally hold that written arbitration agreements are valid and enforceable, the arbitration agreement can be invalidated if it violates public policy. In *Showmethemoney Check Cashers, Inc. v. Williams*,[104] the Supreme Court of Arkansas ruled that an arbitration agreement that lacked mutuality was not valid and enforceable to compel arbitration.[105] Under the terms of the agreement drafted by Showmethemoney Check Cashers, Inc. (Showme), customers of Showme had to submit all disputes to arbitration, while Showme itself could proceed directly to court if it chose.[106] The court explained that while strong policy arguments for encouraging arbitration agreements existed, the agreements should not be "used as a shield against litigation by one party while simultaneously reserving solely to itself the sword of a court action."[107] The court thus held the arbitration agreement invalid because customers of Showme were required to submit all disputes to arbitration while Showme itself could proceed to court.[108]

For a court to find the arbitration agreement invalid, the agreement itself, not the merits of the underlying dispute, must be against public policy. In *Burkhart v. Semitool, Inc.*,[109] the Supreme Court of Montana reversed an order of summary judgment entered by the district court and remanded the claims for arbitration because the arbitration agreement itself was valid.[110] Burkhart, an attorney, had accepted an offer of employment as patent counsel for the defendant, Semitool.[111] This offer included a provision providing that claims arising out of employment termination shall be settled by arbitration pursuant to Montana's Uniform Arbitration Act.[112] After the termination of the attorney's employment, he filed suit for wrongful discharge, among other claims.[113] In its reasoning, the district court stated that the arbitration agreement was not valid and enforceable to the extent that it required the arbitration of issues requiring the violation of the attorney-client privilege and thus prejudiced the public interest.[114] The Supreme Court of Montana, in reversing the

100. *Id.*
101. *Id.*
102. 42 Pa. Consol. Stat. Ann. §§ 7341-7343 (1998).
103. *Id.*
104. 27 S.W.3d 361 (Ark. 2000).
105. *Id.* at 367.
106. *Id.* at 366-67.
107. *Id.* at 367.
108. *Id.*
109. 5 P.3d 1031 (Mont. 2000).
110. *Id.* at 1035.
111. *Id.* at 1033.
112. *Id.*; Mont. Code Ann. § 27-5-211 (2001).
113. *Burkhart*, 5 P.3d at 1033.
114. *Id.* at 1034.

district court, clarified the exception to the validity of arbitration agreements explaining that the violation of public interest exception pertained to the validity of the arbitration agreement itself, not to the merits of the underlying dispute.[115] The court stated that because a valid offer to arbitrate was made and accepted, arbitration was the sole remedy and the district court no longer had jurisdiction to decide the merits of the claim.[116]

D. Preclusion by Other Statutes

Occasionally statutes require the resolution of certain types of claims by a specific procedure, and thus preclude resolution through arbitration. This was precisely the issue in *Correll v. Distinctive Dental Services, P.A.*[117] Under the facts of this Minnesota case, Correl previously accepted employment with Distinctive Dental Services, P.A. (DDS) and entered into an employment agreement which included both a non-competition provision and an arbitration clause.[118] DDS later terminated Correll's employment stating that Correll's wife's position with a competing dentist violated the non-compete clause in the employment contract.[119] Correll thus filed suit alleging marital status discrimination.[120] A dispute arose as to whether the Minnesota Human Rights Act rendered this claim exempt from arbitration since it provides an exclusive method of resolving claims under the Act.[121] The Minnesota Supreme Court held that the exclusive procedure provision of the Minnesota Human Rights Act prevailed over the Minnesota arbitration statute as an exception to the general rule that arbitration agreements are enforceable.[122] In reaching its decision, the court cited previous case law consistent with its opinion and legislative history suggesting that the Arbitration Act was not intended to prevail over the Minnesota Human Rights Act.[123]

II. SECTION 2: PROCEEDINGS TO COMPEL OR STAY ARBITRATION

Section two of the UAA is one of the fundamental provisions in the model statute. In essence, section two provides that where there is a valid agreement to arbitrate, and the dispute falls with in the scope of that agreement, a court "shall order the parties to proceed with arbitration . . . ."[124] If one party challenges the existence of a valid agreement to arbitrate, however, courts are responsible for proceeding "summarily to the determination of the issue so raised . . . ."[125] Section two further provides that a court may stay arbitration proceedings upon a showing

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115. *Id.* at 1035.
116. *Id.*
117. 607 N.W.2d 440 (Minn. 2000).
118. *Id.* at 442.
119. *Id.*
120. *Id.*
121. *Id.*
122. *Id.* at 446.
123. *Id.*
124. U.A.A. § 2(a).
125. *Id.*

that no arbitration agreement exists.[126] The following are a few of the many cases involving the UAA that specifically address section two.

A. The Existence of an Arbitration Agreement

In *Thompson v. Norfolk Southern Railway Compan,*[127] the court had the opportunity to review an alleged arbitration agreement. In this action, Thompson brought suit against Norfolk Southern Railway Company ("Norfolk") and the City of Salisbury ("Salisbury") for damages sustained in a car-to-train collision.[128] After filing his claim, however, Thompson decided to seek arbitration of the dispute based on the theory that he was a third party beneficiary to an insurance agreement between Salisbury and its insurer.[129]

The insurance agreement provided, *inter alia*, that the insurer had the right to defend Salisbury in any "suit" for damages brought against the city.[130] Because the definition of suit in the insurance policy included arbitration proceedings, Thompson claimed that the policy required Salisbury to arbitrate any suit for bodily injury.[131] The trial court disagreed, however, and found that the agreement between Salisbury and the insurer did not contain an agreement to arbitrate as required by the UAA.[132] Thereafter, Thompson appealed the decision to dismiss his motion to compel arbitration to the North Carolina Court of Appeals.[133] The court, relying on the language of the insurance agreement, concluded that Salisbury and its insurer did not agree to submit all claims for damages to arbitration.[134] Instead, the agreement merely stated that the definition of "suit" included any arbitration to which Salisbury "must submit or do[es] submit with [the insurer's] consent."[135] The court, therefore, upheld the lower court's decision to deny Thompson's motion to compel arbitration.[136]

The existence of an arbitration agreement is also an important consideration in a court's decision whether to grant or deny a motion to stay arbitration. For example, in *DDI Architects, P.C. v. Dale,*[137] the United States District Court for the Eastern District of Pennsylvania had to decide the validity of a motion to stay the arbitration of a defendant's counterclaims.[138]

On February 23, 2000, Plaintiff DDI Architects, P.C. ("DDI") filed a complaint and motion for a temporary restraining order ("TRO") seeking to enjoin the defendant's use of DDI's architectural plans for a theme restaurant.[139] The

126. *Id.* § 2(b).
127. 535 S.E.2d 397 (N.C. App. 2000).
128. *Id.* at 398-99.
129. *Id.* at 399.
130. *Id.* The insurance agreement provided that the insurer had "the right and duty to defend any suit seeking . . . [compensatory] damages." *Id.* at 399.
131. *Id.*
132. *Id.* at 400. The North Carolina UAA is located at N.C. Gen. Stat. §§ 1-567.1 - 1-567.20 (1999).
133. *Id.*
134. *Id.* at 400.
135. *Id.*
136. *Id.* at 400-01.
137. *Dale,* 2000 WL 1146616.
138. *Id.* at *1.
139. *Id.*

parties agreed to submit the dispute to arbitration, and Dale filed an answer with the American Arbitration Association that included counterclaims for defamation and breach of fiduciary duty.[140] DDI then filed a motion to stay arbitration in the Court of Common Pleas of Philadelphia County.[141] DDI also requested a TRO that would enjoin Dale from raising the counterclaims in the arbitration proceeding on the ground that the counterclaims lie outside the scope of the parties' agreement to arbitrate.[142] After a series of hearings on the matter, the lower court denied DDI's request for the TRO.[143]

On appeal, the court noted that "[c]ourts may stay an arbitration only upon a showing that no agreement to arbitrate exists."[144] Relying on prior case law, the court determined that its inquiry is limited to the determination of "whether an agreement to arbitrate was entered into and whether the dispute involved falls within the scope of the arbitration provision."[145] In this case, the parties did not dispute the existence of the arbitration agreement.[146] Therefore, the court's only task was to decide if the parties' arbitration clause was susceptible to an interpretation that would allow the arbitration of Dale's counterclaims.[147] Because the agreed upon language of the arbitration agreement did not "inescapably restrict arbitration to the specific legal claims of [DDI],"[148] the court upheld the lower court's decision to deny DDI's motion to stay arbitration of Dale's counterclaims.[149]

B. The Stay of Proceedings in Favor of Arbitration

In *Liberty Mutual Insurance Company v. Ventimiglia*,[150] Liberty Mutual Insurance Company ("Liberty") filed a petition for declaratory judgment asking the court to declare that the company was not obligated to pay uninsured motorist benefits to the defendant.[151] Defendant sought arbitration of the matter, however, and filed a motion to stay the action pending arbitration.[152] The court determined that the defendant's motion should be treated as a motion to dismiss "because declaratory judgment actions may be dismissed under [Federal Rule of Civil

140. *Id.* The complete list of the defendant's counterclaims includes: defamation, breach of fiduciary duty, tortious interference with contract and business relations, and abuse of process. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.* at *2. Because the agreement to arbitrate was an oral agreement, the court determined that Pennsylvania common law governed the dispute at hand. *Id.* However, the court noted that the same legal standard for judging a motion to stay arbitration applies under the Federal Arbitration Act or Pennsylvania law. *Id.* The court then determined that Title 42, sections 7304 and 7342(a) of the Pennsylvania Code prohibit a court from issuing a stay of arbitration except where there is no valid arbitration agreement. *Id.*

145. *Id.*

146. *Id.*

147. *Id.* at *2.

148. *Id.* at *3. The pertinent part of the parties' agreement to arbitrate was summarized by the plaintiff's counsel in the following terms: "the parties have agreed to submit *the disputes set forth in the [c]omplaint* . . . . " *Id.* (emphasis added).

149. *Id.* at *4.

150. 104 F. Supp. 2d 469 (M.D. Pa. 2000).

151. *Id.* at 469.

152. *Id.*

Procedure] 12(b)(6) where the dispute is covered by an arbitration agreement."[153] The court then examined the language of the arbitration agreement and determined that the question of "whether the insured defendant is entitled to recover damages . . . is exactly the type of matter which is discussed in the arbitration clause."[154] Thus, the court dismissed Liberty's declaratory judgment action "to allow the parties to proceed under the appropriate arbitration procedures."[155]

In *M.R. Dillard Construction v. J.P. Realty, II, Inc.*,[156] the Tennessee Court of Appeals reached a different conclusion on the issue of staying arbitration than did the court in *Liberty*. In *M.R. Dillard*, the issue before the court was whether an action to enforce a mechanics' lien should be stayed or dismissed pending arbitration.[157] The case began when M.R. Dillard Construction filed suit in the lower court to enforce a mechanics' lien against J.P. Realty, II, Inc. ("J.P. Realty").[158] In response, J.P. Realty claimed an affirmative defense of arbitrability based on the parties' contract.[159] M.R. Dillard then filed a motion to stay proceedings in favor of arbitration.[160] Instead of issuing a stay, however, the lower court dismissed the action without prejudice.[161] On appeal, the Court of Appeals of Tennessee determined that section two of the UAA,[162] "required the trial court to stay, rather than dismiss, any further proceedings with regard to the issues pending arbitration."[163]

Another issue that may arise under section two is whether the granting of a stay of arbitration amounts to a denial of a motion to compel arbitration. Such was the case in *McCrary v. Byrd*.[164] In that case, plaintiff McCrary brought suit against defendant Byrd for personal injuries stemming from a car accident.[165] Plaintiff's insurance carrier, Nationwide Mutual Insurance Company ("Nationwide"), then filed an answer as a unnamed defendant based on its potential uninsured motorist liability.[166] Limited discovery took place between the parties, but Nationwide soon filed a motion to compel deposition testimony of one of plaintiff's experts and for sanctions for failure to comply with discovery requests.[167] McCrary responded by filing a motion to compel arbitration, which Nationwide opposed.[168]

Upon receipt of the various discovery and arbitration motions, the trial court issued an order declaring that all motions with respect to arbitration "shall be reserved by this court to be heard at a later time and date after proper notice and after

153. *Id.* at 470.
154. *Id.* at 470-71.
155. *Id.* at 471.
156. 2000 WL 48497 (Tenn. App. Jan. 21, 2000).
157. *Id.* at *1.
158. *Id.*
159. *Id.*
160. *Id.*
161. *Id.*
162. Tenn. Code. Ann. § 29-5-303(d) (2000).
163. *M. R. Dillard*, 2000 WL 48497 at *1.
164. 524 S.E.2d 817 (N.C. App. 2000).
165. *Id.* at 818.
166. *Id.* at 819.
167. *Id.*
168. *Id.*

all depositions . . . have been completed."[169] Despite this order, the American Arbitration Association sent notice to the court that it intended to proceed with arbitration of the matter at hand.[170] Nationwide submitted a motion to stay arbitration pending the completion of discovery, however, and the trial court granted this request.[171] McCrary then appealed the grant of the stay to the North Carolina Court of Appeals.[172] Nationwide argued, and the court of appeals agreed, that the appeal was interlocutory and should be dismissed.[173]

The court of appeals first noted the general rule that there is no right to an immediate appeal from interlocutory orders and judgments.[174] On the other hand, an "order denying arbitration, although interlocutory, is immediately appealable because it involves a substantial right which might be lost if appeal is delayed."[175] The issue thus presented was whether the trial court's stay was "an order denying arbitration."[176]

In determining that plaintiff's appeal was interlocutory and should be dismissed, the court denied McCrary's arguments that the effect of the trial court's ruling was to deny her request for arbitration and cause her additional delay and expense.[177] The court stated that under the circumstances, it was not an abuse of discretion for the trial court to briefly delay ruling on plaintiff's motion to compel arbitration so that discovery may be completed.[178] Therefore, the court dismissed McCrary's appeal.[179]

C. Waiver of the Right to Arbitrate

In *Smith v. Young Moving and Storage, Inc.*,[180] plaintiff Kay Smith filed suit against Young Moving and Storage ("Young") alleging that Young lost Smith's personal property stored under contract at Young's facility.[181] Pursuant to local rules, the trial court entered a scheduling order setting June 30, 1999, as the deadline for filing dispositive motions.[182] Because Young's original counsel withdrew from the case on June 12, 1999, however, Young did not file a motion to compel arbitration until July 2, 1999.[183] The trial court subsequently denied the motion to compel arbitration and Young filed an interlocutory appeal with the North Carolina Court of Appeals.[184] The court of appeals found that although a confirmed arbitration award is conclusive of all issues in a case and a bar to subsequent action,

169. *Id.*
170. *Id.*
171. *Id.*
172. *Id.*
173. *Id.*
174. *Id.*
175. *Id.* at 819 (citing *Burke v. Wilkins*, 507 S.E.2d 913, 914 (N.C. App. 1998)).
176. *See generally id.*
177. *Id.* at 820-21.
178. *Id.* at 821.
179. *Id.*
180. 540 S.E.2d 383 (N.C. App. 2000).
181. *Id.* at 385.
182. *Id.*
183. *Id.*
184. *Id.*

a party has the right to ask a court to modify, correct or vacate an award.[185] This finding, coupled with North Carolina's strong policy favoring arbitration, led the court to conclude that the motion to compel arbitration was not a "dispositive" motion precluded by the trial court's scheduling order.[186] The court further noted that defendant's failure to file an affirmative defense of arbitrability did not manifest a waiver of the contractual right to arbitrate.[187]

Although the presumption in favor of arbitration is strong, courts have not been entirely unwilling to find a waiver of the right to arbitrate where circumstances demand such a finding. For instance, in *Thomas v. Desire Community Housing Corporation*,[188] the Fourth Circuit Court of Appeals of Louisiana found that Desire Community Housing Corporation ("Desire") waived the right to arbitrate because of its actions in a lawsuit with the Thomas' ("Thomas").[189]

The suit began when Thomas filed a petition to recover damages caused by the defective construction of their home by Desire.[190] Desire then filed an exception of prematurity seeking arbitration pursuant to the construction contract.[191] Shortly thereafter, plaintiffs' counsel wrote a letter to Desire addressing matters prior to arbitration, but Desire responded by "stonewalling" Thomas.[192] As a result, no arbitration took place between the parties and Thomas once again filed suit.[193] Desire again filed an exception of prematurity, but this time the trial court overruled the exception and the matter proceeded to trial.[194] In the midst of the trial, Desire requested a stay of proceedings in favor of arbitration, but the court also denied this request and entered judgment in favor of Thomas.[195]

The issue on appeal was whether Desire waived the right to arbitrate by requesting arbitration, participating in litigation, and then appealing the result of the litigation based on arbitrability.[196] The court responded to the question presented by examining the mandatory character of the UAA stay of proceedings provision in section two.[197] The court found that a party who asserts an arbitration defense must file a motion to stay proceedings and compel arbitration.[198] Furthermore, the court stated that a party must appeal the denial of such a motion immediately.[199] Finally, the court concluded that if the party claiming the right to arbitrate further participates in litigation without making such an appeal, the party will be deemed to have waived the right to arbitrate.[200] Because Desire knew of its right to arbitrate, acted

185. *Id.* at 386.
186. *Id.*
187. *Id.*
188. 773 So.2d 755 (La. App. 2000).
189. *See generally id.*
190. *Id.* at 756-57.
191. *Id.* at 757.
192. *Id.* at 577, 579.
193. *Id.*
194. *Id.*
195. *Id.*
196. *Id.* at 759.
197. Louisiana's version of the UAA § 2 is found at La. Stat. Ann. § 9:4202 (2000).
198. *Thomas*, 773 S.2d at 759.
199. *Id.*
200. *Id.*

inconsistent with that right, and consequently prejudiced Thomas, the court held that Desire waived the right to arbitrate and affirmed the lower court's judgment.[201]

III. SECTION 7: WITNESSES, SUBPOENAS, DEPOSITIONS

While section seven outlines broad discovery powers of an arbitrator, courts recognize some limits to these powers. In *BJC Health Systems, Inc. v. Group Health Plan, Inc*,[202] the Missouri Court of Appeals exercised its jurisdiction to interfere with an arbitrator's discovery order when the order effectively abrogated the decision of an arbitration panel in a prior dispute. The parties entered arbitration proceedings pursuant to an agreement whereby BJC was to provide health care services to persons enrolled in Group Health's health care plans.[203] Group Health previously arbitrated an unrelated dispute with another health care corporation in which the court issued a protective order due to the highly confidential information involved in the arbitration.[204] This protective order, which was signed by the arbitration panel, provided that materials related to the arbitration were confidential and could only be disclosed to certain involved parties.[205] In the present suit, BJC requested the arbitrator to issue a "Subpoena for Taking Deposition" directed at the party who opposed Group health in the previous arbitration.[206] The arbitrator granted the subpoena, and Group Health filed an injunction to enjoin BJC from discovery of the confidential information.[207] The trial court granted Group Health's permanent injunction, and BJC appealed arguing that the trial court did not have jurisdiction to interfere with the enforcement of the arbitrator's subpoena.[208] In upholding the trial court's judgment, the court gave great deference to the protective order issued the previous arbitration.[209] The court reasoned that since BJC had not demonstrated that any intervening circumstances had diminished or eliminated the reasons for the protective order, it should be honored.[210] The court went on to state that arbitrators do not have latitude to abrogate the decisions made previously by an arbitration panel in an unrelated dispute.[211]

201. *Id.* at 761.
202. 30 S.W.3d 198 (Mo. App. 2000).
203. *Id.* at 205.
204. *Id.* at 200.
205. *Id.*
206. *Id.* at 204.
207. *Id.* at 200.
208. *Id.*
209. *Id.* at 201.
210. *Id.* at 204.
211. *Id.* at 205.

IV. SECTION 11: CONFIRMATION OF AN AWARD

Section eleven of the UAA gives courts the power to confirm arbitration awards, provided the award is not invalid for any of the specified reasons under the statute.[213] The following cases address some of the issues that courts face when asked to confirm an arbitration award.

A. The Basic Principles of Section Eleven

The application of section eleven is not always straightforward. States and localities are beginning to adopt new approaches to alternative dispute resolution, and these approaches may affect the manner in which courts view arbitration awards.

For instance, in *Turgeon v. City of Bedford*,[214] plaintiff Henry Turgeon filed a discrimination complaint against the City of Bedford ("Bedford") with the Massachusetts Commission Against Discrimination ("MCAD") rather than a state or federal court.[215] Turgeon and Bedford agreed to arbitrate their dispute pursuant to MCAD Policy 96-1,[216] and the arbitrator entered an award in favor of Turgeon.[217] Bedford filed a notice of appeal asking the MCAD to set aside the award, but the commission declined to grant the appeal.[218] Because the MCAD refused to set aside the award, Turgeon felt that, pursuant to Policy 96-1, the MCAD lacked authority to keep jurisdiction over the case.[219] As such, Turgeon filed a motion to confirm the arbitration award pursuant to section eleven of the UAA.[220]

In response to Turgeon's motion to confirm, Bedford filed a motion to dismiss for failure to state a claim under the Massachusetts Rule of Civil Procedure 12(b)(6).[221] Bedford asserted that section eleven was not the appropriate vehicle for enforcing the arbitration award because Turgeon filed suit with the MCAD and not the Massachusetts' courts.[222] In its decision, the Superior Court agreed with Bedford and dismissed Turgeon's motion to confirm.[223] The court reasoned that Chapter 151B of the Massachusetts General Laws, through which an individual may file a complaint with the MCAD, established a "comprehensive and exclusive" scheme for addressing unlawful discrimination claims in the employment context.[224] In other words, awards rendered pursuant to Policy 96-1 are not subject to review under section 11 of the UAA because "the Legislature has decreed that Chapter 151B shall trump any law inconsistent with [that Chapter]."[225]

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213. U.A.A. § 11.
214. 2000 WL 1804627 (Mass. Super. Nov. 30, 2000).
215. *Id.* at *1.
216. The court labels Policy 96-1, the "Program on Alternative Dispute Resolution." *Id.* For a detailed description of this policy, *see id.* at **1-2.
217. *Id.*
218. *Id.* at *2.
219. *Id.*
220. *Id.* Massachusetts' version of UAA section eleven can be found at Mass. Gen. Laws. ch. 251 (2000).
221. *Turgeon*, 2000 WL 1804627 at *2.
222. *Id.*
223. *Id.* at **3, 7.
224. *Id.* at *3.
225. *Id.* at *4.

B. The Procedural Effects of a Motion to Confirm an Arbitration Award

Removal is one example of a procedure that may be affected by a motion to confirm an arbitration award. In *CAP of MB, Inc. v. Champion Rock Products, Inc.*,[226] the dispute arose because the Vice President of Champion Rock Products, Inc. ("Champion") wrote a letter to the manager of CAP of MB, Inc. ("CAP") demanding over $700,000 in payments and declaring CAP to be in breach of the parties' mining contract.[227] After receiving the demand letter from Champion, CAP filed a demand for arbitration with the American Arbitration Association on August 18, 1999.[228] Five days later, on August 23, 1999, CAP also filed a complaint for injunctive and declaratory relief in the South Carolina Court of Common Pleas.[229] In December 1999, the arbitrator entered an award in favor of CAP, who subsequently filed a motion to confirm the award under the same case number as the complaint for injunctive and declaratory relief.[230] In response, Champion filed a petition for removal to the United States District Court for the District of South Carolina.[231] The issue before the district court was whether it should grant CAP's motion to remand, which alleged that Champion failed to comply with the time requirements of the removal statute.[232]

In the district court decision, the judges first turned to the removal statute for guidance on the issue.[233] According to the court, section 1441 requires notice of removal to a federal court with original jurisdiction "within thirty (30) days after the receipt . . . of . . . the initial pleading setting forth the claim of relief upon which . . . [the] proceeding is based."[234] Champion argued the petition to remove was timely because the motion for confirmation of the arbitration award was the "initial pleading" that triggered the thirty day notice period.[235] CAP, on the other hand, argued the thirty day period ran from the filing date of the complaint for injunctive and declaratory relief.[236]

Because this was an issue of first impression before the district court, the judges examined cases from other jurisdictions[237] to reach their conclusion.[238] According to the court, "[t]hese cases all focus on the nature of the 'initial proceeding' and whether it is so related to the arbitration as to make all subsequent filings part of the same action."[239] Applying the facts at hand to this rule, the court

226. 111 F. Supp. 2d 728 (D.S.C. 2000).
227. *Id.* at 729.
228. *Id.*
229. *Id.* at 730.
230. *Id.*
231. *Id.*
232. *Id.* at 730-731.
233. *Id.* at 731.
234. *Id.*
235. *Id.* at 731-32.
236. *Id.* at 732.
237. The court cited the following cases in support of its conclusion: *Marchant v. Mead-Morrison Mfg. Co.*, 29 F.2d 40 (2d Cir. 1928); *Hetherington & Berner, Inc. v. Melvin Pine & Co.*, 256 F.2d 103 (2d Cir. 1958); *Manze v. State Farm Ins. Co.*, 817 F.2d 1062 (3d Cir. 1987).
238. *CAP*, 111 F. Supp. 2d at 732-33.
239. *Id.* at 733-34.

implied the thirty day period began to run with the filing of the initial complaint for injunctive and declaratory relief.[240] The court, therefore, granted CAP's motion to remand.[241]

V. SECTION 12: VACATING AN AWARD

Judicial review of arbitration awards is limited by statute.[242] When parties submit a matter to arbitration, courts may only confirm, vacate, modify or correct the award and are not permitted to review the merits of the decision.[243] There are, however, a host of reasons why a court might choose to vacate an award.[244]

A. Procurement of Award by Corruption, Fraud or Other Undue Means

In *Nasca v. State Farm Mutual Automobile Insurance Company*,[245] plaintiff ("Nasca") brought an action in state court to vacate an arbitration award rejecting his claim for benefits under the underinsured/uninsured motorist coverage provision of his auto insurance policy.[246] As part of the arbitration process, the policy required that each party appoint an impartial arbitrator.[247] The arbitration panel unanimously rejected his claim, and found in favor of the insurer ("State Farm").[248] Four years after the award, Nasca discovered that State Farm had previously established a business relationship with the arbitrator it had appointed in the case and he sought to have the award vacated.[249] The trial court granted summary judgment on the claim, vacated the award, and State Farm appealed.[250]

On appeal, the Colorado Court of Appeals reversed the part of the summary judgment that vacated the award.[251] In so doing, the court emphasized that for summary judgment purposes, Nasca must establish a connection between the undisclosed business relationship with State Farm and its influence on the award.[252] The court explained how, under the Colorado statute, the plaintiff had the burden of showing that the award was actually obtained by "undue means."[253] In the present case, however, affidavits from the other two arbitrators showed that they agreed that

240. *Id.* at 734.

241. *Id.* In the final paragraph of the opinion, the court mentioned Champion's argument that the FAA controlled the dispute at hand. *Id.* at 734. The court decided that no matter which law applied, the FAA or the UAA, the removal analysis remained the same. *Id.* The court's conclusion, however, did leave open the possibility of removal based on diversity of citizenship. *Id.* at 731.

242. *Terra West Townhomes, L.L.C. v. Stu Henkel Realty*, 996 P.2d 866, 870 (Mont. 2000).

243. *Id.*

244. U.A.A. § 12

245. 12 P.3d 346 (Colo. App. 2000).

246. *Id.* at 348.

247. *Id.*

248. *Id.*

249. *Id.*

250. *Id.*

251. *Id.*

252. *Id.* at 348.

253. *Id.* at 349.

State Farm's arbitrator was completely fair and unbiased.[254] Because of these affidavits, the court of appeals ruled that the plaintiff failed to establish that the award was procured in violation of the statute.[255]

Conversely, the court of appeals affirmed the part of the summary judgment which found that State Farm was obligated to disclose its close business relationship with its arbitrator.[256] The court initially noted that the question of whether disclosure was proper was a question of law for the court to decide, not a question of fact.[257] It explained that arbitrators must maintain the highest degree of impartiality when deciding disputes, without the slightest degree of friendship or favor towards the parties.[258] In this vein, the arbitrator has a duty to disclose to the parties any dealings that might create an impression of possible bias, such as a business relationship.[259] A close business relationship was found to exist in the present case because State Farm had hired its arbitrator's law firm 72 times in a previous year and paid them more than $70,000 in fees.[260] As such, the court affirmed the grant of summary judgment with regard to this matter.[261]

B. Arbitrator Partiality, Misconduct and Bias

In *Hart v. McChristian*,[262] plaintiff ("McChristian") and defendants ("Hart") were part of a limited partnership that owned and operated a radio station.[263] As part of the partnership agreement, plaintiff owned eighteen percent of the partnership interest and defendants owned ten percent.[264] A third party owned the remaining seventy-two percent of the partnership interest.[265] The parties' agreement gave defendants exclusive discretion in the management and control of the business, but also provided that the general partners could be removed if the limited partners holding fifty percent of the partnership interest so proposed.[266] Following such a proposal, removal would be accomplished by agreement of the limited partners holding seventy-five percent of the partnership interest.[267] If the general partners objected to their removal, the matter would be submitted to arbitration.[268] McChristian later acquired the third party's seventy-two percent interest in the partnership, giving him ninety percent ownership in the radio station.[269]

McChristian then voted for removal of the Harts from their position as general partners, alleging they had mismanaged the radio station, misappropriated

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254. *Id.*
255. *Id.*
256. *Id* at 351.
257. *Id.* at 350.
258. *Id.*
259. *Id.*
260. *Id.*
261. *Id.*
262. 36 S.W.3d 357 (Ark. App. 2000).
263. *Id.* at 359.
264. *Id.*
265. *Id.*
266. *Id.* at 360.
267. *Id.*
268. *Id.*
269. *Id.*

partnership funds and operated the company for their personal benefit.[270] McChristian also filed a complaint in state court with these same allegations, along with an order requiring arbitration should defendants object to their removal.[271] The parties held an arbitration hearing, and the arbitrator issued an award in favor of McChristian.[272] The Harts objected to the award because they claimed McChristian was the true owner of only eighteen partnership shares at the time they were removed from their position.[273] The state court confirmed the arbitrator's award and the Harts appealed to have the trial court's decision overturned and have the award vacated.[274]

The Arkansas Court of Appeals reviewed the state arbitration statute and looked at the relevant portions of section twelve that would allow for vacating the award.[275] The Harts alleged the award should be vacated because the arbitrator failed to grant a continuance that was reasonably requested and failed to include the Harts' appointed arbitrator in a post-arbitration conference.[276] The appellate court first noted that the only grounds for vacating the award based on this would come from subsection (a)(2) (misconduct by arbitrator) or (a)(4) (refusal to postpone hearing upon good cause shown) of section twelve of the UAA.[277] The court further noted that no Arkansas court had ever reviewed an arbitration award on the ground of procedural irregularities, and therefore looked to the Alaska case of *Ebasco Constructors, Inc. v. Ahtna, Inc.*, ("Ebasco"),[278] for guidance.[279]

In *Ebasco*, the Alaska Supreme Court held that arbitrators' procedural decisions are entitled to a "deferential review" and that a litigant should be required to show "gross error" to obtain reversal on procedural grounds.[280] Although the Arkansas court declined to adopt the "gross error" standard, it did make clear that arbitrators' procedural decisions should be given deference.[281] As such, the court ruled it could not hold that the trial court erred in refusing to vacate the award and could not find any misconduct.[282]

In *Greenway Cooperative Service Co. v. Frontier Commodities, Inc.*,[283] respondent ("Frontier") alleged that appellant ("Greenway") was responsible for the poor quality of alfalfa hay harvested from Frontier's field.[284] The parties agreed to arbitrate their dispute without counsel.[285] On the day of the arbitration, Frontier's arbitration representative realized he would be late and telephoned the arbitrator.[286]

270. *Id.*
271. *Id.*
272. *Id.*
273. *Id.*
274. *Id.*
275. *Id.* at 363.
276. *Id.*
277. *Id. See* Ark. Code Ann. § 16-108-212(a) (1987).
278. 932 P.2d 1312 (Alaska 1997).
279. *Dale*, 36 S.W. 3d 357.
280. *Id.* at 363 (citing *Ebasco*, 36 S.W.3d 357).
281. *Id.*
282. *Id.* at 364.
283. 2000 WL 665387 (Minn. App. May 23, 2000).
284. *Id.*
285. *Id.*
286. *Id.*

Nonetheless, the arbitrator went forward with the arbitration and heard Greenway's evidence.[287] When Frontier's representative arrived, the arbitrator summarized Greenway's evidence for him, and then heard Frontier's evidence.[288] During the course of the arbitration, the arbitrator personally gathered evidence and presented it to the parties at other hearings.[289] The arbitrator eventually issued an award stating that Greenway was not liable for the damage to Frontier's crop.[290] Greenway then sued Frontier in court for damages, and Frontier counter-claimed and moved to vacate the award.[291] The trial court vacated the award based on UAA[292] section twelve, which provides for vacating an award upon the showing of an arbitrator's partiality.[293]

On appeal, the Minnesota Court of Appeals affirmed the trial court's decision.[294] The court started its analysis by noting that whether challenged conduct constitutes "evident partiality" or prejudicial misconduct is a legal question reviewed *de novo*.[295] The court emphasized that an arbitrator is not only to avoid such conduct, but must also avoid the appearance of partiality of prejudice.[296] The court relied on Minnesota case law which holds that contacts between an arbitrator and a party, or between arbitrators, that might create an impression of possible bias, require that the arbitration award be vacated.[297] In the present case, the court found undisputed evidence that the arbitrator and Greenway's representative engaged in informal, friendly conversation relevant to the case before Frontier's representative arrived at the arbitration hearing.[298] Because this conversation could have created an impression of possible bias, it provided a basis for vacating the award.[299] The court also found that Frontier's rights had been substantially prejudiced when the arbitrator allowed Greenway to present evidence at the hearing before Frontier's representative arrived.[300] Because of these acts of bias by the arbitrator, the appellate court affirmed the trial court's decision to vacate the award.[301]

In *Umana v. Swidler & Berlin, Chartered*,[302] former employee ("Umana") sued his former law firm (the "Firm") and eleven firm members, claiming that he had been an equity partner in the firm.[303] Umana's employment contract included an arbitration provision, and an arbitration panel issued an award in favor of the Firm.[304] Umana sought to have the award vacated because Umana's former law firm

287. *Id.*
288. *Id.*
289. *Id.*
290. *Id.*
291. *Id.*
292. Minn. Stat. § 572.19 (1998).
293. *Greenway*, 2000 WL 665387.
294. *Id.* at *4.
295. *Id.* at *3.
296. *Id.*
297. *Id.* (citing *Pirsig v. Pleasant Mound Mutual Fire Ins.*, 512 N.W.2d 342 (Minn. App. 1994)).
298. *Id.*
299. *Id.*
300. *Id.*
301. *Id.*
302. 745 A.2d 334 (D.C. App. 2000).
303. *Id.* at 336.
304. *Id.*

had also previously employed the third, neutral arbitrator.[305] Also, the neutral arbitrator previously worked at the FTC several years earlier with a current partner at the Firm.[306] The trial court confirmed the award, ruling that Umana waived his claim of arbitrator bias when he failed to object to the arbitrator's appointment.[307] The trial court noted that it found "nothing in the record that comes even close to demonstrating partiality, much less 'evident partiality,' on [the arbitrator's] part."[308] Umana failed to show that the arbitrator's partiality had been "direct, definite, and capable of demonstration, rather than remote, uncertain or speculative."[309]

On appeal, the District of Columbia Court of Appeals affirmed the trial court's decision.[310] The standard for vacating an award based on evident partiality of the arbitrator, the court stated, is that "specific facts which indicate improper motives on the part of the arbitrator" must be shown.[311] Here, the court held Umana's showing that the arbitrator did not disclose his relationship with Umana's previous firm did not automatically translate into evident partiality.[312] The court quoted a prior case that held that in vacating an award due to bias, the bias "must be due to some financial interest or other loyalty owed to one side of the dispute."[313] In the *Umana* case, in contrast, the arbitrator's relationship with Swidler & Berlin amounted to little more than triviality.[314]

C. Arbitrator Exceeding the Scope of Authority

In *Water Pipe Extension, Bureau of Engr. Laborers' Loc. 1092 v. City of Chicago*,[315] the city employees union ("Union") brought suit against the City of Chicago ("City") for violating their collective bargaining agreement.[316] The City's Department of Water wanted to hire outside subcontractors to help increase the rate at which the City replaced its water mains.[317] Part of the collective bargaining agreement between City and the union stated that before City hired subcontractors for any work, City would attempt to have City's employees perform the work.[318] City decided to hire subcontractors to conduct a three-year study to compare the performance of work done by subcontractors and City's employees.[319]

Union alleged City violated the subcontracting provisions of the agreement when it hired outside contractors to perform some of its water main construction

305. *Id.* at 337.
306. *Id.*
307. *Id.*
308. *Id.*
309. *Id.*
310. *Id.* at 345.
311. *Id.* at 340.
312. *Id.*
313. *Id.* at 340-41 (citing *Cellular Radio Corp. v. OKI Am. Inc.*, 664 A.2d 357, 360-361 (D.C. 1995) (quoting *Celtech, Inc. v. Broumand*, 584 A.2d 1257, 1259 (D.C. 1991))).
314. *Id.* at 341.
315. 741 N.E.2d 1093 (Ill. App. 2000).
316. *Id.* at 1097.
317. *Id.* at 1095.
318. *Id.* at 1096.
319. *Id.*

projects.[320] Union also filed a grievance three months later related to subcontracting in the Department of Sewers.[321] Following an arbitration hearing, both arbitrators issued decisions in favor of City.[322] Union then filed a petition in state court to have the awards of both arbitrators vacated.[323] The trial judge vacated both awards, and remanded the case for re-arbitration.[324] On re-arbitration, the original arbitrators were used and both issued supplemental awards which refused to make any modifications to the original awards.[325]

This time, Union moved to have both supplemental awards vacated and asked that the grievances be remanded to a different arbitrator.[326] The trial court agreed to remand the case and the two parties agreed the issue on remand would be limited to damages.[327] In its orders vacating the arbitration awards, the trial court recognized a contractual violation by City.[328] Upon remand, the new arbitrator found a specific amount of damages.[329] City moved to vacate the award, but the trial court refused to do so.[330] City appealed, and the Illinois Court of Appeals reversed the trial court's decision.[331]

The appellate court held that generally, under the Illinois arbitration statute, an arbitration award may only be vacated based on one of the specific criteria listed in the Act.[332] However, the court pointed to section 12(e) of the Act, pertaining to awards given based upon arbitration agreements that are part of collective bargaining agreements.[333] The court also looked to Illinois case law for direction.[334] Illinois case law holds that a court must enforce a labor-arbitration award if the arbitrator acts within the scope of his or her authority and the award draws its essence from the parties' collective bargaining agreement.[335]

A court must first decide the issue of whether an arbitrator has, in fact, overstepped its bounds.[336] To decide this, a reviewing court "determines whether the arbitrator limited himself to interpreting the collective bargaining agreement; if not, the award violated the agreement to arbitrate."[337] Here, the appellate court found that

320. *Id.*
321. *Id.* at 1097.
322. *Id.*
323. *Id.*
324. *Id.*
325. *Id.* at 1098.
326. *Id.*
327. *Id.*
328. *Id.*
329. *Id.*
330. *Id.*
331. *Id.* at 1103.
332. *Id.* at 1099.
333. *Id.* Section 12(e) of the Illinois act states that the grounds for vacating such an award shall be those which existed prior to the enactment of the UAA. *See* Title 710 Ill. Comp. Stat. §§ 5/1 - 5/23 (1999). Thus, the court held that the only bases for vacating such an award are fraud, corruption, partiality, misconduct, mistake or failure to submit the question to arbitration. *City of Chicago*, 741 N.E.2d at 1099.
334. *City of Chicago*, 741 N.E.2d at 1100.
335. *Id.*
336. *Id.*
337. *Id.* (quoting *Bd. of Educ. of Community High School Dist. No. 155 v. IL Educ. Lab. Rel. Bd.*, 617 N.E.2d 269, 275 (Ill.App. 1993)).

the original arbitrators' awards did draw its essence from the parties' Collective Bargaining Agreement ("CBA").[338] The arbitrators did not negate any provision of the collective bargaining agreement, and specifically, did not negate any portion of the article which the Union alleges was violated.[339] Therefore, the arbitrators did not act outside the scope of their authority because their award was based on the CBA.[340]

In *BEM I, L.L.C. v. Anthropologie, Inc.*,[341] the plaintiff lessor ("BEM") filed a claim for forcible entry and detainer against defendant lessee ("Anthropologie"), seeking possession of the leased space and $48,197.23 in rent allegedly due.[342] Anthropologie signed a lease to rent space from BEM in BEM's shopping mall upon the completion of the building's construction.[343] Rent was due 90 days after "substantial completion" of the building and the building's architect certified the building as substantially complete on June 20, 1997.[344] Nonetheless, Anthropologie did not open for business until August 20, 1997, claiming that was the date of substantial completion of the building.[345] As such, Anthropologie refused to pay rent under the lease in September although duly demanded by BEM, who then filed suit.[346]

Anthropologie filed an answer and a counterclaim.[347] The trial judge concluded that the entire counterclaim and two of Anthropologie's affirmative defenses were arbitrable.[348] The case was arbitrated, and Anthropologie was awarded $185,767 for construction delays caused by BEM.[349] Anthropologie was also awarded $48,964.30 in damages for sprinkler modification and fire safety installation.[350] Further, the arbitrators found that the date of substantial completion was August 19, 1997.[351] Anthropologie subsequently filed a motion in the United States District Court for the Northern District of Illinois to confirm the award, and BEM filed a motion to vacate the award.[352]

The court first held that the Federal Arbitration Act ("FAA"), not the Illinois arbitration statute, would govern the case because the choice-of-law provision in the lease did not extend to the arbitration clause.[353] Therefore, the court stated that the F.A.A. applied to the case because it deals with transactions involving commerce.[354] The present case involved a Pennsylvania company leasing land from an Illinois corporation and, reading the commerce clause broadly, invoked the

338. *Id.*
339. *Id.*
340. *Id.*
341. 2000 WL 1849574 (N.D. Ill. Dec. 15, 2000).
342. *Id.* at *3.
343. *Id.*
344. *Id.*
345. *Id.*
346. *Id.*
347. *Id.* at *4.
348. *Id.*
349. *Id.* at *5.
350. *Id.*
351. *Id.*
352. *Id.*
353. *Id.* at *6.
354. *Id.*

FAA.[355] Nonetheless, the court noted that its decision to review the vacatur argument under the FAA, as opposed to the Illinois statute, had no bearing on the ultimate outcome of the case, in that the "exceeded their powers" standards in both acts are nearly the same.[356]

BEM asked the court to vacate the arbitration awards because the arbitrators had exceeded their powers under the Illinois statute.[357] In particular, BEM alleged the arbitrators ignored an exclusive remedy provision in the lease, that the arbitrators' award of lost profits to a new store at a new location was entirely speculative, and that the arbitrators incorrectly awarded prejudgment interest on unliquidated sums and then set an illegal interest rate.[358] At the outset, the court noted that as long as an arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, the fact that "a court is convinced there was serious error committed does not suffice to overturn the decision."[359] The court then reviewed the arbitration panel's record and held that the arbitrators' analysis of the word "may" in the exclusive remedy provision of the lease was such that the court could not overturn that portion of the award, as there was no gross legal error.[360] The court also held that there was no gross legal error in the panel's award of lost profits to a new business, as the Seventh Circuit Court of Appeals had awarded such damages in a strikingly similar case.[361] Therefore, the court ruled that as to the exclusive remedy provision in the lease, and the lost profits award, the arbitration panel had not exceeded its powers.[362] The court also instructed both parties to submit additional briefs to the court on the subject of the 8.5% interest rate awarded by the panel, when Illinois statute limits creditors' interest to 5%.[363] Lastly, the court dismissed all but one of Anthropologie's third-party claims against the Nagle Firm and dismissed BEM's Forcible Entry and Detainer complaint.[364]

In *North Miami Educ. Assn. v. North Miami Community Schools*,[365] North Miami community schools ("School") decided not to renew the contract of a non-permanent teacher, and the North Miami Education Association ("Association") filed a grievance.[366] Following arbitration, the arbitrator decided that the School violated four sections of the Master Contract between the parties.[367] However, the arbitrator ruled that while in most circumstances such violations would warrant the teacher's reinstatement, the power to reinstate non-permanent teachers in Indiana is reserved by statute.[368] As such, the arbitrator lacked the authority to reinstate the teacher.[369]

355. *Id.* at *5.
356. *Id.* at *7.
357. *Id.*
358. *Id.*
359. *Id.* (quoting *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 38 (1987).
360. *Id.* at *8.
361. *Id.* at **8-9.
362. *Id.*
363. *Id.* at *10.
364. *Id.* at **10-13.
365. 736 N.E.2d 749 (Ind. App. 2000).
366. *Id.* at 751-52.
367. *Id.* at 752-53.
368. *Id.* at 753.
369. *Id.*

Association then filed suit in state court to vacate the award, alleging the arbitrator's decision was in manifest disregard of Indiana state law and the arbitrator thus exceeded his authority.[370] Association specifically pointed to the fact that because Indiana state law allows schools and exclusive representatives to agree that teacher dismissals are subject to binding arbitration and the law provides arbitrators the power to reinstate teachers, the arbitrator should have granted the reinstatement.[371] In response, the School filed a motion to dismiss the Association's complaint for failure to state a claim upon which relief could be granted and for lack of subject matter jurisdiction.[372] The trial court dismissed Association's complaint, and Association appealed.[373]

The court held that while Indiana law does *allow* school employers and exclusive representatives to mutually agree to arbitration, the statute does not contain any language with respect to an arbitrator's authority to renew a nonpermanent teacher's contract.[374] As such, the statute does *not require* a school employer to collectively bargain with regard to the retention of the employee.[375] The court thus held that Indiana law precluded the arbitrator from reinstating a non-permanent teacher because the law allowed collective bargaining with regard to such matters, but did not require it and did not expressly give an arbitrator the power of reinstatement.[376] The court ruled that the arbitrator did not exceed his power.[377]

In *Custom Decorative Moldings, Inc. v. Innovative Plastics Technology, Inc.*,[378] the dispute arose over a contract between Custom Decorative Moldings ("CDM") and Innovative Plastics Technology ("IPT") which dealt with a special molding process that CDM purchased from IPT.[379] Disputes arose and CDM submitted a demand for arbitration, as called for in their contract, and the arbitrator eventually found in favor of CDM.[380] CDM then had the award confirmed in state court on summary judgment.[381]

The court stated that it must confirm the award unless grounds existed for modifying or vacating or correcting the award.[382] In its suggestions for summary judgment, IPT asked the court to vacate the award and not modify or correct it, in part because the arbitrator exceeded his power by awarding damages greater than the recovery permitted by law and contract, and by finding one individual jointly and/or severally liable.[383] As a basis for this allegation, IPT claimed that no damages could be awarded for breaches of the agreement between it and CDM.[384] IPT claimed there were no facts presented in the arbitration proceeding from which the arbitrator could

370. *Id.*
371. *Id.* at 752.
372. *Id.*
373. *Id.*
374. *Id.* at 754.
375. *Id.*
376. *Id.* at 755-56.
377. *Id.* at 756.
378. 2000 WL 1273301 (Del. Ch. Aug. 30, 2000).
379. *Id.* at *1.
380. *Id.* at *2.
381. *Id.* at *8.
382. *Id.* at *3.
383. *Id.* at **3-4.
384. *Id.* at *7.

have found a breach of that agreement.[385] The court disagreed and determined that there was, in fact, evidence in the arbitration record from which the arbitrator could find one or more breaches by IPT.[386] Further, the court emphasized that IPT did not cite to a single place in the record, a single authority, or even put forth a reasoned argument as to why the arbitrator should not have found one of the parties to the arbitration jointly and severally liable.[387] As to both points, the court held that the arbitrator did not exceed his authority in issuing the award.[388]

In *Chicago Fire Fighters Union Local No. 2 v. City of Chicago*,[389] the plaintiff ("Union") filed a petition to enforce an arbitration award that vacated the discharges and suspensions of twenty-eight firefighters who participated in an unauthorized retirement party at a firehouse.[390] The defendant ("City") filed a counter-claim to have the award vacated.[391] City had previously engaged in arbitration with Union over the incident, as set out in a collective bargaining agreement between the parties.[392] In their motion for summary judgment before the trial court City alleged that the arbitrator exceeded his authority and that the award violated public policy.[393] The trial court denied City's counter-petition to vacate the award.[394] It found that City was could not raise public policy as a ground for vacating the award because it previously agreed to submit the question of timeliness[395] and the issue of remedy to the arbitrator.[396]

On appeal, the appellate court reversed the decision of the trial court, vacated Union's arbitration award and remanded to the arbitrator.[397] The appellate court stressed that if the arbitrator makes the award within the scope of authority and the award is based on the arbitrator's interpretation of the agreement, the court will normally not vacate the award.[398] Despite this, the court held that in unique situations where the award is made within the scope of the arbitrator's authority and the award is based on the agreement, the court would still vacate the award if it is repugnant to established norms of public policy.[399] Public policy, the court emphasized, is to ultimately be determined and protected by the court system.[400] An agreement to submit to arbitration does not, according to the court, operate as a device or structure to circumvent questions of public policy, "especially where, as here, Union initiated an action in a court to enforce the arbitration award."[401] The

385. *Id.*
386. *Id.*
387. *Id.* at *8.
388. *Id.*
389. 735 N.E.2d 108 (Ill. App. 2000).
390. *Id.* at 109.
391. *Id.* at 109-10.
392. *Id.* at 110.
393. *Id.* at 112.
394. *Id.*
395. *Id.* The city's disciplinary actions were brought nearly eight years after the incident occurred, and the city failed to bring such actions until six months after it learned of the incident.
396. *Id.*
397. *Id.* at 118.
398. *Id.* at 113.
399. *Id.*
400. *Id.* at 118.
401. *Id.* at 114.

court therefore found erroneous the trial court's determination that City was foreclosed from challenging the award as against public policy.

In cases such as this where public policy exceptions exist, the appellate court held that they must perform a two-step analysis.[402] The first step is to determine if "well-defined and dominant public policy" can be identified.[403] The second step is to determine if the arbitrator's award, as reflected in the interpretation of the agreement, violated the public policy.[404] The court found a strong public policy in favor of protecting the health, safety and welfare of the citizens of Illinois through safe and effective fire protection services.[405] The court then found the arbitrator based the award not on watching the video tape that was part of the evidence used against the fire fighters, but rather, based on his own assumptions that these fire fighters would not act this way again in the future.[406] Because of this, the arbitrator was unable to fashion an appropriate award.[407] Rather, the arbitrator placed the fire fighters back into a situation where they might again pose a danger to the public.[408] The court thus found that the award should be vacated because the arbitrator exceeded the scope of his authority.[409] Specifically, the arbitrator failed to consider the merits of the case when rendering his award.[410]

In *O&K Glass Co. v. Innes Construction Co., Inc.*,[411] a dispute arose between contractor ("Innes") and subcontractor ("O&K") over time delays in building a skyway at the University of North Dakota in Grand Forks.[412] Both sides demanded arbitration as provided in the parties' contract.[413] The arbitrator found in favor of O&K, concluding that Innes waived its original schedule by accepting goods from Skytech, the company that O&K had subcontracted with to manufacture the glass panels.[414] The arbitrator also found that Innes waived its original schedule by asking the university for time extensions.[415] The arbitrator concluded that O&K was therefore entitled to a new start date for performance of its installation work, and that Innes substantially interfered with O&K's ability to work by hiring a second subcontractor to help install the glass panels.[416] The arbitrator awarded $47,500 to O&K representing the unpaid balance owed to them under their contract with Innes, and awarded $400 to Innes for site cleanup costs.[417] O&K moved to confirm the

402. *Id.*
403. *Id.*
404. *Id.*
405. *Id.*
406. *Id.* at 117.
407. *Id.*
408. *Id.* at 116.
409. *Id.* at 117.
410. *Id.*
411. 608 N.W.2d 236 (N.D. 2000).
412. *Id.* at 237-38.
413. *Id.* at 238.
414. *Id.* (O&K was to install the glass panels for Innes).
415. *Id.* (The panels from Skytech had been late because of manufacturing problems).
416. *Id.*
417. *Id.*

award in court and Innes moved to vacate the award, alleging the arbitrator exceeded his powers.[418] The trial court confirmed the award.[419]

On appeal, the North Dakota Supreme Court affirmed the trial court's decision.[420] The court stated that it would only vacate an award if it is "completely irrational," which means it must be "mistaken on its face or so mistaken as to result in real injustice or constructive fraud."[421] The court pointed out that an arbitrator's mistake of law or fact is not a sufficient ground for vacating the award.[422] The court then examined the record of the arbitration hearing.[423] It found that it was not irrational to believe that Innes and O&K were being held jointly and severally liable by Skytech when examining their contract, and that Innes' decision to accept late goods from Skytech gave O&K a new starting point for performance.[424] As such, the court affirmed the decision of the trial court to confirm the award because the arbitrator had not acted irrationally and not exceeded his power as alleged.[425]

In *Terra West Townhomes*,[426] a real estate development limited liability company ("Terra") brought action against one of its partners ("Henkel").[427] Henkel counter-claimed and brought third party claims against other partners, claiming a right to compensation for duties performed.[428] Following an arbitration hearing, the arbitrator awarded compensation to Henkel for duties performed.[429] Henkel moved to confirm the award, while Terra, along with the third parties, sought to vacate the award on the ground that the arbitrator had exceeded his power and disregarded Montana law.[430] The trial court confirmed the award.[431]

On appeal, the Montana Supreme Court affirmed the trial court's decision.[432] Terra alleged that the arbitrator exceeded her powers by making an award for Henkel based on the theory of equitable estoppel.[433] The supreme court stated its rule for judging when arbitrators exceed their powers: "an arbitrator's authority is limited by the bounds of the arbitration agreement, and courts may vacate awards that extend beyond the contractual scope of the arbitration. An arbitrator exceeds his powers when he decides matters which were not submitted to him."[434] Further, the court emphasized that if the remedy is rationally derived from the arbitration agreement, it will not vacate the award.[435] The court agreed with the trial court's assessment that principles of equitable estoppel are clearly available to

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418. *Id.*
419. *Id.*
420. *Id.* at 240.
421. *Id.* at 238.
422. *Id.* at 239.
423. *Id.*
424. *Id.*
425. *Id.*
426. *Terra West*, 996 P.2d 866.
427. *Id.* at 867.
428. *Id.* at 869.
429. *Id.*
430. *Id.* at 870.
431. *Id.*
432. *Id.* at 873.
433. Id. at 870.
434. *Id.* at 871 (quoting *JBC of Wyoming Corp. v. City of Cheyenne*, 843 P.2d 1190 (Wyo. 1992)).
435. *Id.*

arbitrators and that the power of arbitrators concerning every body of law is broader than the power of courts concerning those same bodies of law.[436] Thus, the trial court properly refused to vacate the arbitration award.[437]

D. Refusal to Postpone Hearing or Hear Relevant Evidence

In *Harper v. Providence Washington Insurance Company*,[438] the plaintiff ("Harper") was injured in an auto accident during the course of his employment.[439] The driver at fault in the accident had liability insurance policy limits of $100,000.[440] Harper's injuries resulted in damages in excess of that amount and Harper made a claim for uninsured motorist/underinsured motorist ("UM/UIM") coverage through his employer.[441] Defendant ("Providence") was the insurance carrier for the employer.[442]

The tortfeasor against whom Harper filed a third-party action offered to settle the case for $50,000, but Harper refused this offer and had the matter set for trial.[443] Providence contested the nature and extent of Harper's injuries and the matter of the UM/UIM coverage was set for arbitration.[444] However, Providence requested a continuance of the arbitration, pending resolution of the third-party action against the tortfeasor.[445] The arbitrator refused and the matter proceeded to arbitration.[446] The arbitration panel awarded Harper $350,000, but allowed a credit to Providence of $100,000 in the third-party case, and the net award was entered as $250,000.[447] Providence claimed that the arbitrators' refusal to postpone the hearing until resolution of the third-party action prejudiced Providence, and Providence sought to have the award vacated.[448] The trial court refused to vacate the award and Providence appealed that decision.[449]

The Pennsylvania Superior Court affirmed the decision of the trial court and refused to vacate the award.[450] The court agreed with Providence that the Uniform Arbitration Act governed the matter, but relied on Pennsylvania precedent to dispose of the issue.[451] The court explained that an exhaustion clause that requires the limits of bodily insurance coverage to be exhausted prior to any claim for underinsured motorist coverage is against Pennsylvania public policy.[452] Such exhaustion clauses therefore do not preclude recovery by the insured from underinsured motorist

436. *Id.*
437. *Id.*
438. 753 A.2d 282 (Pa. Super. 2000).
439. *Id.* at 283.
440. *Id.*
441. *Id.*
442. *Id.*
443. *Id.*
444. *Id.*
445. *Id.*
446. *Id.*
447. *Id.*
448. *Id.*
449. *Id.*
450. *Id.* at 286.
451. *Id.* at 284-85.
452. *Id.* at 284.

coverage.[453] The court stated that a credit did, nonetheless, have to be given to the insured's insurance for any such settlement and the ultimate damage award.[454] Here, the court said Providence was not prejudiced by the panel's refusal to postpone the hearing because Providence received credit for the entire limits of the tortfeasor's policy of $100,000 and that entire amount was used to find the net underinsured award.[455]

E. Time Limit Bar to Vacating an Award

In *United States Postal Service v. National Postal Professional Nurses*,[456] the Postal Nurses Union ("Union") filed a grievance involving the Postal Service's use of contract nurses.[457] The matter was arbitrated, and an award was issued in favor of Union.[458] The Postal Service filed a complaint in district court, seeking to have the award vacated on the ground that the arbitrator exceeded the scope of his authority.[459] It later filed an amended complaint which sought both to vacate and to modify the arbitration award.[460] Union then filed a motion to dismiss the Postal Service's complaint because it was filed more than 30 days after the award was delivered to Postal Service, a violation of the Maryland Uniform Arbitration Act.[461] The Postal Service noted that it not only sought that the award be vacated, but also that it be modified, and that they had ninety days to seek to have an award modified.[462]

The district court granted Union's motion to dismiss because the Postal Service's petition originally sought only to vacate the award and was not filed within the thirty day time period.[463] With respect to the amended complaint, the court held that it did not relate back to the original filing date because relation back applies only when "permitted by the law that provides the statute of limitations applicable to the action."[464] The court granted the Union's motion to dismiss because the statute of limitations borrowed from Maryland for reviewing arbitrators' awards is mandatory.[465] The fourth circuit affirmed the decision of the district court, and held that the Postal Service's challenge to the arbitrator's award in both complaints could only be rectified by vacation, not modification, of the award.[466]

In *School District of the City of Monessen v. Apostolou Associates, Inc.*,[467] the school district ("District") hired Apostolou Associates ("Apostolou") to provide

453. *Id.*
454. *Id.*
455. *Id.* at 285.
456. 232 F.3d 892 (4th Cir. Oct. 25, 2000) (unpublished opinion).
457. *Id.*
458. *Id.*
459. *Id.*
460. *Id.*
461. *Id.* *See* Md. Cts. & Jud. Proc. Code Ann. § 3-224(a) (2000).
462. *Id.*
463. *Id.*
464. *Id.*
465. *Id.*
466. *Id.*
467. 761 A.2d 597 (Pa. Super. 2000).

architectural services for the design of a new school building, and the contract included an arbitration clause that would apply to claims or disputes that might potentially arise between the parties.[468] The clause stated that any amount in dispute less than $100,000 would be arbitrated, but the parties would need to mutually agree in the future to arbitrate any dispute greater than that amount.[469] District later incurred damages allegedly caused by Apostolou's deficient workmanship, and District sought indemnification from it.[470] District also refused to pay any more under their contract with Apostolou, to which they objected.[471]

Apostolou demanded arbitration of the matter, but District filed a court complaint praying for damages in excess of one million dollars arising from Apostolou's alleged contract breach.[472] The district also requested that the American Arbitration Asssociation ("AAA") end the arbitration because the dispute was in excess of $100,000.[473] The arbitrator, however, found the two disputes to be unrelated and, because Apostolou's claim was for less than $100,000, the arbitrator had authority to hear both matters under the contract.[474] In response, District filed for a stay of arbitration, which was granted.[475]

On appeal, the Pennsylvania Superior Court affirmed the decision of the lower court.[476] The appellate court rejected Apostolou's argument that the arbitrator's decision to hear both cases was actually an "award" under the Uniform Arbitration Act, and as such, the District had only thirty days to move to vacate the award.[477] The court held that the arbitrator's decision regarding its own authority to hear the cases was not an "award" under the Act.[478] Rather, the court stated, the arbitration had not yet begun, and there was no "award" to be made at that point in the proceedings.[479]

Apostolou also argued that District waived its objection to the arbitrability of the claim when it argued the issue with the arbitrator.[480] However, the superior court also rejected this argument,[481] pointing to the case *First Options of Chicago, Inc. v. Kaplan*.[482] In *First Options*, the United States Supreme Court held that merely arguing the arbitrability issue to an arbitrator does not indicate a clear willingness to arbitrate the issue itself.[483]

468. *Id.* at 598.
469. *Id.*
470. *Id.* at 599.
471. *Id.*
472. *Id.*
473. *Id.*
474. *Id.*
475. *Id.*
476. *Id.* at 601.
477. *Id.* at 600.
478. *Id.*
479. *Id.*
480. *Id.*
481. *Id.*
482. 514 U.S. 938 (1995).
483. *Id.* at 944.

F. No Arbitration Agreement and Issue Not Adversely Determined

In *Allstate Insurance Company v. Perea,*[484] defendant ("Perea") was injured in a car wreck and plaintiff ("Allstate") was defendant's insurer.[485] The other driver's insurance paid Perea its policy limits, and Perea sought additional compensation from Allstate under his underinsured motorist coverage.[486] Because Perea had one Allstate policy that covered three different vehicles, he sought $75,000 under the principle of judicial stacking because each individual policy provided for $25,000 in UIM coverage.[487] The parties arbitrated the issue of the extent of defendant's damages under an arbitration clause in the policy.[488] The clause stated that if an arbitration award greater than the financial responsibility limits of the state were awarded, which is $25,000 in the state of New Mexico, then either party would have the right to trial on all issues.[489] The arbitration panel awarded Perea $52,500 and Allstate filed an action in the trial court to determine the extent of Perea's damages in a trial *de novo*.[490] Perea filed a motion with the court to confirm the award, which the trial court granted.[491]

On appeal, the New Mexico Court of Appeals reversed the trial court's decision.[492] The Court first determined that, based upon a prior New Mexico Supreme Court case, the arbitration provision in this insurance policy was not repugnant to public policy and was not ambiguous.[493] The court then held that the principle of judicial stacking did not apply to the arbitration provision, and that the New Mexico statutory financial responsibility requirement of $25,000 was the proper interpretation of the parties' arbitration provision.[494] Finally, the court held that no arbitration agreement existed between the parties such that Allstate could be bound to pay an arbitration award in excess of $25,000.[495] The court thus vacated the arbitration award, according to section twelve of the state's arbitration statute, and remanded the case to the trial court to try, de novo, the extent of Perea's damages.[496]

484. *Allstate*, 8 P.3d 166.
485. *Id.*
486. *Id.*
487. *Id.*
488. *Id.* at 167.
489. *Id.*
490. *Id.*
491. *Id.*
492. *Id.* at 170.
493. *Id.* at 169 (citing *Bruch v. CNA Ins. Co.*, 870 P.2d 749 (N.M. 1994)).
494. *Id.* at 170.
495. *Id.*
496. *Id.*

VI. SECTION 13: MODIFICATION OR CORRECTION OF AWARD

Under the UAA "upon application made within ninety days after delivery of a copy of the award to the applicant,"[497] a court reviewing an arbitration award should confirm the award unless certain conditions call for modification or correction.[498] Under section thirteen, these conditions are:

> (1) [t]here 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) [t]he 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) [t]he award is imperfect in a matter of form, not affecting the merits of the controversy.[499]

Section thirteen also provides that "an application to modify or correct an award may be joined in the alternative with an application to vacate the award."[500]

A. Time Limit Bar to Modify or Correct an Award

When a party seeks to raise a defense to the confirmation of an arbitration award, the failure to make a timely request to modify or correct the award will bar such a defense.[501] In *Swan v. American Family Mutual Insurance Company*,[502] the arbitrators entered the initial award of $150,000 plus interest and costs for the plaintiff ("Swan") on April 17, 1998.[503] On April 28, 1998, the defendant ("American Family") "filed an application with the arbitrators requesting modification of the award."[504] On May 13, 1998, in response to American Family's application, the arbitrators amended the award and declared that the maximum amount recoverable under law and the insurance contract was $100,000.[505] "Within thirty days following entry of the amended award but more than thirty days after the initial award, American Family asked the trial court to vacate and modify the arbitration award."[506] "[The] [p]laintiff filed a motion requesting that the trial court confirm the initial award."[507] "After a hearing, the trial court modified the arbitration award to $100,000 plus interest and costs, and entered judgment in favor of [Swan] . . . ."[508]

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497. U.A.A. § 13(a).
498. U.A.A. § 13(b).
499. U.A.A. § 13(a).
500. U.A.A. § 13(c).
501. *Kutch v. State Farm Mut. Auto. Ins. Co.*, 960 P.2d 93, 97 (Colo. 1998) (en banc).
502. *Swan v. American Family Mutual Insurance Company*, 8 P.3d 546, 547 (Colo. App. 2000).
503. *Id.*
504. *Id.*
505. *Id.*
506. *Id.*
507. *Id.*
508. *Id.*

On appeal, Swan asserted that "the initial award became final when American Family failed to ask the court to vacate or modify the award within thirty days of delivery to the parties."[509] The court held that the applicable statutory provisions were included in Colorado's version of the UAA,[510] which provides a time limit from delivery of an arbitration award to file a motion to vacate or a motion to modify or correct.[511] Relying on *Kutch*, the plaintiff asserted that American Family's application to the arbitrators to modify their award did not toll the time limits.[512] In *Kutch*, the Colorado Supreme Court held that failure to apply to the court for vacation or modification of an arbitration award within the time period mandated by Colorado law acts as a bar to modification.[513] The court of appeals distinguished *Kutch* because there was no application to the arbitrators for modification of the award.[514] Therefore, the court determined that *Kutch* did not consider the tolling issue raised by American Family.[515]

The Colorado Court of Appeals agreed with American Family's argument that the application filed with the arbitrators to modify the initial award in effect tolled the thirty-day requirement.[516] The relevant section of the Colorado statute, section 13-22-211, provides that, on application of a party within twenty days after delivery of the award, the arbitrators may modify or correct the award "upon the grounds stated in section 13-22-215(1)(a) and (1)(c) . . . for the purpose of clarifying the award."[517]

The court of appeals also stated that the effect the statute has upon the other time limits in the UAA is a matter of first impression in Colorado.[518] The court of appeals referenced other jurisdictions that had addressed the issue.[519] The court first reffered to *Konicki v. Oak Brook Racquet Club, Inc.*[520] The court in *Konicki* dealt with similar statutes and held that application to the arbitrator tolled the time for seeking review in the trial court "until the petition is finally disposed of by the arbitrator, regardless of whether the relief requested is granted or denied."[521] The court in *Swan* also recognized that other jurisdictions have reached a contrary result.[522] The *Swan* court found the reasoning in *Konicki* more persuasive "because it gives effect to all the provisions of the statutes involved and reflects due concern for the efficiency of the arbitration process and for judicial economy."[523]

509. *Id.*
510. *Id.*
511. *See* Colo. Rev. Stat. Ann. §§ 13-22-211, 13-22-214, 13-22-215.
512. *Swan*, 8 P.3d at 547.
513. *Kutch*, 960 P.2d at 97.
514. *Swan*, 8 P.3d at 547.
515. *Id.*
516. *Id.*
517. *Id* at 548. *See* Colo. Rev. Stat. Ann. §13-22-211.
518. *Id.*
519. *Id.*
520. *Id.*; *Konicki v. Oak Brook Racquet Club, Inc.*, 441 N.E.2d 1333 (Ill. App. 1982).
521. *Konicki*, 441 N.E.2d at 222.
522. *Id.* The Court cited to *Groves v. Groves*, 704 N.E.2d 1072 (Ind. Ct. App. 1999) and *Teleometrics Intl, Inc. v. Hall*, 922 S.W.2d 189 (Tex. App. 1995).
523. *Swan*, 8 P.3d at 548.

The Court in *Swan* ultimately held that an application to the arbitrators tolls the time limits for an action to vacate or modify an arbitration award.[524] According to the court, the time limits "begin to run anew upon delivery of the arbitrators' order to the parties."[525] The court also cited the legislative intent of section 13-22-202, which was to make the arbitration process effective and efficient while promoting judicial economy as another basis for their decision.[526]

B. Grounds to Modify or Correct: What Type of 'Miscalculation' or 'Mistake' is Sufficient?

In *North Blvd. Plaza v. North Blvd. Assoc.*,[527] the plaintiff ("Plaza") appealed a trial court order in favor of defendants ("Associates") denying the plaintiff's motion to confirm a modified arbitration award.[528]

Plaza leased a parcel of real estate to the Associates.[529] Subsequently, Plaza filed an action against the defendants to recover rent due under the parties' lease agreement.[530] The dispute was submitted to binding arbitration under the terms of North Carolina's arbitration statute as required by the lease agreement.[531] The arbitrators issued a finding that defendants, based on a rent formula in the lease, "were entitled to an 8.5% return on certain investments made for capital improvements to the property" plus interest totaling $80,712.[532]

After the initial order, Plaza submitted an application to the arbitrators to modify or correct the arbitration award.[533] "[Plaza] argued that the arbitrators used an improper method to calculate the amount of rent due."[534] Plaza wanted the award to be increased to $166,123.[535] In response to Plaza's application, the Associates objected to any modification arguing that the arbitrators had no authority under the UAA to award Plaza the desired relief.[536]

After a hearing, the arbitrators issued the modified award, which increased Plaza's award to $154,532.[537] The modified award stated, in part:

524. *Id.*
525. *Id.*
526. *Id. See* Colo. Rev. Stat. Ann. § 13-22-202 (1999).
527. 526 S.E.2d 203 (N.C. App. 2000).
528. *Id.* at 204.
529. *Id.*
530. *Id.*
531. *Id. See* N.C. Gen. Stat. §§ 1-567.14(a)(1)-(a)(3) (1999).
532. *North Blvd. Plaza*, 526 S.E.2d at 204.
533. *Id.*
534. *Id.*
535. *Id.*
536. *Id.*
537. *Id.* at 205.

> 1. The [a]rbitrators have determined that they committed an evident miscalculation of figures when they included all interest deductions through the date of arbitration for the year in which the investment was made. Instead, the [a]rbitrators should have allowed a deduction or credit for each year from the year in which the investment was made through the date of arbitration.[538]

The Associates then filed a motion in the superior court to set aside the modified award on the ground the arbitrators "exceeded their authority under [North Carolina law]."[539] At the same time, Plaza filed a motion in the superior court to confirm the modified award.[540]

In an affidavit, one of the arbitrators stated that the arbitration award was modified because "he had 'inserted the wrong formula [when determining the amount due plaintiff in the arbitration award] which did not achieve the intent of the [a]rbitrators.'"[541] The "trial court entered an order setting aside the [m]odified [a]ward and confirming the [a]rbitration [a]ward on the ground that the arbitrators did not have the authority to modify [it]."[542]

The dispositive issue on appeal was whether the arbitrators had based their determination of the award due to Plaza on an "evident miscalculation of figures," pursuant to section 1-567.14(a)(1).[543]

The powers of arbitrators in North Carolina are set forth in the statute.[544] "The act provides that an arbitrator may, upon the application of a party made within twenty days of the delivery of an arbitration award or upon a court order, modify or correct the award based on the grounds stated in the act."[545] The North Carolina act states an award may be modified or corrected where "[t]here was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award."[546] The North Carolina Court of Appeals has defined an evident miscalculation of figures as "mathematical errors committed by arbitrators which would be patently clear."[547]

The court of appeals determined that the arbitrators statement that they had committed an evident miscalculation of figures was not controlling.[548] The court stated that "the record show[ed] the [a]rbitration [a]ward was modified because the arbitrators used the wrong formula to calculate the amount due to Plaintiff."[549] The court concluded "[t]hat the use of an incorrect formula to determine an award is not an evident miscalculation of figures."[550] Therefore, according to the court, the

538. *Id.*
539. *Id.*
540. *Id.*
541. *Id.* (quoting Aff. Richard E. Proctor (Oct. 29, 1998)).
542. *Id.*
543. *Id. See* N.C. Gen. Stat. § 1-567.14(a)(1).
544. *Id.*
545. *Swan*, 8 P.3d at 548.
546. N.C. Gen. Stat. § 1-567.14(a)(1).
547. *North Blvd. Plaza*, 526 S.E.2d at 205 (quoting *Fashion Exhibitors v. Gunter*, 255 S.E.2d 414, 419 (N.C. App. 1979)).
548. *Id.*
549. *Id.*
550. *Id.*

arbitrators did not have the authority under North Carolina law to modify the arbitration award.[551]

C. An Order Under Section Thirteen of the UAA Does Not Provide for an Award of Attorney Fees

In *Terra West Townhomes*,[552] the respondent ("Stu Henkel") argued that Montana's version of the UAA[553] 'allows for the recovery of attorney fees incurred in confirming an arbitration award.'[554] The appellants ("Terra") argued that the UAA "does not authorize a court to award attorney fees incurred in confirming an arbitration award."[555] The trial court concluded that, under Montana law, "attorney fees are not allowed unless specifically provided by statute or agreement except under extraordinary circumstances . . ."[556] The court ultimately concluded that Stu Henkel was not entitled to recover its attorneys fees because this was not such a circumstance.[557]

The Montana Supreme Court state that traditionally Montana courts have not awarded attorney fees absent statutory or contractual authority.[558] However, the court also stated that "under limited circumstances 'a district court may award attorney fees to make an injured party whole under its equity powers.'"[559] In addition, the court acknowledged it had granted an equitable award of attorney fees in instances where bad faith or malicious behavior were involved in the past.[560] The court also referred to the narrow exception to the traditional rule it had created "for the award of attorney fees to compensate a party who, through no fault of her own, was forced to hire an attorney to write and argue a motion to dismiss."[561] This exception has been narrowly drawn and is applicable only where the action is utterly without merit or frivolous.[562]

The court recognized that Montana law "allows a district court to award the costs and disbursements incurred in pursuing an order confirming, modifying, or correcting an arbitration award."[563] But the Montana Supreme Court held that the relevant statute "did not provide for an award of attorney fees."[564] Thus, the court concluded that there was "no statutory or contractual basis for an award of attorney fees."[565]

551. *Id.*
552. *Terra West*, 996 P.2d 866.
553. Mont. Code Ann. § 27-5-314 (1997).
554. *Terra West*, 996 P.2d at 873.
555. *Id.*
556. *Id.*
557. *Id.*
558. *Id.* (citing *Tanner v. Dream Island, Inc.*, 913 P.2d 641 (Mont. 1996)).
559. *Id.* (quoting *Tanner*, 913 P.2d at 650).
560. *Id.*
561. *Id.* (citing *Foy v. Anderson*, 580 P.2d 114 (Mont. 1978)).
562. *Id.* (citing *Tanner*, 913 P.2d at 650-51)
563. *Id. See* Mont. Code Ann. § 27-5-314 (1997).
564. *Terra West*, 996 P.2d 866 at 873.
565. *Id.*

The court also noted that the instant case did not "fit within any of the narrow exceptions to the traditional rule for the award of attorney fees."[566] The court then determined that Stu Henkel was not "an injured party would, require the use of the court's equitable powers to be made whole."[567] In addition, the court concluded that "Terra West's action against Stu Henkel was [not] without merit or frivolous, in light of the arbitrator's finding that Stu Henkel Realty improperly filed a construction lien..."[568] Therefore, the Court ultimately concluded that the trial court had not abused its discretion "when it refused to award Stu Henkel Realty, its attorney fees incurred in confirming the arbitration award."[569]

VII. SECTION 14: JUDGMENT OR DECREE ON AWARD

Section fourteen of the UAA is just one of the provisions of the statute that gives arbitrators the authority to award costs or expenses to parties in an arbitration proceeding.[570] While section nine of the Act specifically forbids the award of attorney fees, section fourteen is less specific. The following case addresses the issue of whether an arbitrator may award attorney fees pursuant to section fourteen.

In *Goldstein v. 91st Street Joint Venture*,[571] the Court of Special Appeals of Maryland had to decide, *inter alia*, if courts may award attorney fees under section fourteen of the UAA.[572] According to section 14(b), "[a] court may award costs of the petition, the subsequent proceedings, and disbursements" upon entry of a judgment or decree confirming, modifying or correcting an arbitration award.[573] In its analysis of section fourteen, the court first noted that the term "disbursements" includes reasonable attorney fees at both the trial and appellate level.[574] The court then determined that the use of the term "may" in the statute indicated that courts have discretion in deciding whether to award attorney fees.[575] Applying these principles to the case at hand, the court determined that on remand the lower court should exercise its discretion with regard to awarding attorney fees.[576]

566. *Id.*
567. *Id.*
568. *Id.*
569. *Id.*
570. *See* U.A.A. §§ 9, 14.
571. 750 A.2d 602 (Md. Spec. App. 2000).
572. *See id.* at 617-18. Maryland's version of UAA section fourteen is located at Md. Cts. & Jud. Proc. Code Ann. § 3-228 (2000).
573. *Goldstein*, 750 A.2d at 617.
574. *Id.*
575. *Id.*
576. *Id.* at 618.

VIII. SECTION 16: APPLICATIONS TO COURT

Section sixteen of the UAA allows parties to request the review of arbitration awards through motions to the courts.[577] Under this section, the making of an agreement to arbitrate within a state "confers jurisdiction on the [circuit] court [of that state] to enforce the agreement under this Act and to enter judgement on an award thereunder."[578] Furthermore, arbitration awards rendered in a particular district give courts in that jurisdiction the authority to confirm the award.[579]

In *CPM Productions, Inc. v. Mobb Deep, Inc.*,[580] the parties disputed the rights of one party to withdraw from their mutual contractual obligation.[581] The arbitration provision of their agreement stated:

> [a]ny claim or dispute arising out of or relating to this agreement or the breaching thereof shall be governed by the laws of the State of New York and settled by arbitration in New York, New York in accordance with the rules or regulations then obtaining of the American Arbitration Association. The parties hereto agree to be bound by the award in such arbitration and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof.[582]

Upon non-performance by the appellants ("Mobb"), the appellees ("CPM") sent a demand for arbitration notice to the American Arbitration Association ("AAA") in Chicago, requesting an arbitration hearing on the issue of Mobb's breach of the parties' contract.[583] Despite adequate notice, Mobb failed to appear at the arbitration hearing.[584] At the hearing the arbitrator awarded CPM damages plus costs and expenses.[585] A copy of the arbitrator's award was sent to Mobb by the AAA[586]

Mobb failed to comply with CPM's demand for payment.[587] Accordingly, CPM filed a complaint against Mobb in the circuit court of Cook County seeking "to enforce the arbitration award."[588] Mobb failed to appear or otherwise answer and was found in default.[589] The court entered judgment on the award in favor of CPM.[590]

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577. U.A.A. § 16.
578. *Chicago Southshore & South Bend R.R. v. Northern Ind. Commuter Transp. Dist.*, 703 N.E.2d 7, 9 (Ill. 1998) (quoting 710 Ill. Comp. Stat. Ann. § 5/16 (West 1996)).
579. *Maiocco v. Greenway Capital Corp.*, 1998 WL 48557 at *2 (E.D. Pa. Feb. 2, 1998).
580. 742 N.E.2d 393 (Ill. App. 2000).
581. *Id.* at 395
582. *Id.*
583. *Id.*
584. *Id.*
585. *Id.*
586. *Id.*
587. *Id.*
588. *Id.*
589. *Id.*
590. *Id.*

Mobb formally filed a special and limited appearance.[591] Mobb additionally "filed a motion to quash the purported service of process, which was assertedly ineffective, and to vacate the court's entry of default judgment for want of personal jurisdiction."[592] "The circuit court refused to quash service and vacate its judgment, and [Mobb's] timely appeal followed."[593]

"The dispositive issue presented by [the] appeal was whether the circuit court properly exercised its subject-matter jurisdiction to enter judgment on the award of the arbitrator."[594] Mobb's main contention on the appeal was lack of jurisdiction.[595] The court of appeals concluded:

> a party's right to have an arbitration award entered as a judgment by the circuit court, without that party having to institute and prosecute an action at law, is purely a creature of statute and, as such, requires the prevailing party to satisfy all statutory conditions necessary for the circuit court to exercise its constitutionally conferred subject-matter jurisdiction and enter judgment on the award.[596]

Accordingly, the court determined that section sixteen of the UAA "represents a prerequisite to the circuit court's exercise of jurisdiction over an application seeking judgment on an award specifically conditioning the court's jurisdiction on the particular locale of the arbitration proceedings as provided for in the parties' agreement."[597] "The court stated that "only where the parties' arbitration agreement provides for arbitration in Illinois will the Act confer jurisdiction on the Illinois circuit courts to enter judgment."[598] The court then stated that only in such a circumstance will the circuit court be able to properly exercise its authority.[599] Accordingly, the order of the circuit court entering default judgment on the arbitrator's award issued in favor of CPM was vacated.[600]

In *May Construction Company, Inc. v. Thompson*,[601] the petitioner ("May") sought a writ of prohibition which the court treated as a writ of certiorari.[602] May argued on the appeal that the "circuit court had no subject-matter jurisdiction to enter the orders respecting discovery or any other procedures then before the arbitrator."[603] May also argued that arbitration proceedings governed by the Arkansas UAA limit the circuit court to those acts permitted by an appellate court.[604]

591. *Id.*
592. *Id.*
593. *Id.*
594. *Id.*
595. *Id.*
596. *Id.* at 400.
597. *Id.*
598. *Id.* (citing *Chicago Southshore*, 703 N.E.2d 7).
599. *Id.*
600. *Id.* at 401.
601. *Thompson*, 20 S.W.3d 345.
602. *Id.* at 348.
603. *Id.* at 349.
604. *Id.*

The Supreme Court of Arkansas stated that the Arkansas version of the UAA described the proper procedure to pursue arbitration.[605] The court then stated that "[u]nder the [section]16-108-202, a party to a contract containing an arbitration clause may make an initial 'application' to the court for the court to order arbitration."[606] Under the applicable statutes, the court acknowledge that the proper court was "a circuit or chancery court subject to the appropriate venue requirements."[607] "Upon application to the proper court, the party seeking to enforce the 'arbitration' clause in the contract must produce the contract language allowing the arbitration, and the other party may make an "application" to oppose the arbitration if there is a 'substantial and bona fide dispute' as to the validity or existence of an agreement to arbitrate."[608] "The court may determine whether the contract requires arbitration, and then may either order arbitration or refuse it."[609]

The court noted that most important to the issues presented in the case was the section entitled "Applications to court," which describes when applications can be made to the court in arbitration matters.[610] This section states:

> [e]xcept as otherwise provided, an application to the court under this subchapter shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.[611]

The court inferred from the language of the statute that "the legislature anticipated that parties would make both the 'initial application' to refer the matter to arbitration and other 'applications' for additional matters to be heard by the overseeing circuit or chancery court."[612] The court also noted that "applications" may be made "by a party to stay arbitration proceedings, to promptly proceed with the arbitration [or to] enforce subpoenas issued by the arbitrators."[613] Thus, the court determined, based on the language of the statute, that the "legislature anticipated that circuit or chancery court that order arbitration could continue to have jurisdiction and some control in the proceedings in certain circumstances."[614]

May argued that section sixteen of the Arkansas code specifically limits the court's jurisdiction "to enforce the agreement under this subchapter and to enter judgment on an award thereunder."[615] The court ultimately disagreed with May's

605. *Id.* at 350.
606. *Id*; Ark. Code Ann. §16-108-202 (1999). *See also* Ark. Code Ann. §§16-108-217, 16-108-218 (1999).
607. *Thompson*, 20 S.W.3d at 350.
608. *Id.*; Ark. Code Ann. §16-108-202(b).
609. *Thompson*, 20 S.W.3d at 350; Ark. Code Ann. §16-108-202(b).
610. *Thompson*, 20 S.W.3d at 350; Ark. Code Ann. §16-108-216 (1999).
611. Ark. Code Ann. § 16-108-216.
612. *Thompson*, 20 S.W.3d at 350.
613. *Id* at 351.
614. *Id.*
615. *Id.*

argument and concluded that the circuit court did not exceed its jurisdiction by issuing orders to enforce the arbitrator's discovery orders.[616]

IX. SECTION 17: COURT AND JURISDICTION

Section seventeen of the UAA refers to a court's jurisdiction to enforce an arbitration agreement and enter judgment on an arbitration award.[617] The UAA defines court as "any court of competent jurisdiction in this State."[618]

Prior to the *May* case, the Arkansas UAA had been the subject of little or no review in the Arkansas state appellate courts.[619] According to the court, the existing case law did not address the appellate court's role "in these sorts of 'motion' or 'application' disputes."[620] The court also noted, "[i]f there is no case law and no compelling policy on an issue, provisions of the UAA should be construed consistent with the decisional law of other states which have adopted the Act."[621]

Accordingly, because the Arkansas courts had not addressed the issue, the Court held that it was proper for the Court in this case "to look to similar proceedings in other courts for guidance."[622] The Court determined that the relevant federal statutes and case law offer persuasive authority for the proposition that courts retain jurisdiction to enforce orders already issued by the arbitrator, as in the instant case.[623] Noting the language in the Arkansas act conferring continuing jurisdiction on the overseeing court through the application process, and the presence of federal case law allowing a court to enforce an arbitrator's order, the court concluded that: if is not apparent here that there was a lack of jurisdiction [from the circuit court], an act in excess of jurisdiction on the face of the record, or that the proceedings are erroneous on the face of the record.[624]

616. *Id* at 352.
617. U.A.A. § 17.
618. *Id.*
619. *Thompson*, 20 S.W.2d at 351.
620. *Id.*
621. *Id.* (citing *Heineman v. Charno*, 877 S.W.2d 224 (Mo. App. 1994)).
622. *Id.*
623. *Id.*
624. *Id.* at 351-52.

X. SECTION 18: VENUE

Section eighteen of the UAA directs the venue in which an arbitration hearing must be held. Section eighteen states:

> [a]n initial application shall be made to the court of the [county] in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise the application shall be made in the [county] where the adverse party resides or has a place of business or, if he has no residence or place of business in this State, to the court of any [county]. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.[625]

In *Municipal Authority of the City of Monongahela v. Carroll Township Authority*,[626] the Carroll Township Authority ("CTA") and the Township of Carroll ("Township") appealed from an order of the Court of Common Pleas of Allegheny County ("Allegheny CCP") that modified an arbitrator's award adversely to CTA and the Township.[627] The dispute in *Municipal* arose out of a contract where the Municipal Authority of the City of Monongahela ("MACM") agreed to accept sewage water from CTA for treatment at MACM's water treatment facilities.[628] The agreement provided that MACM would be compensated based on a per gallon rate which was determined by a method specified in the agreement.[629] The agreement also provided that any dispute over the rates charged were to be resolved by arbitration.[630]

Beginning in 1981, conflicts arose between the parties and the parties were involved in various suits and arbitration against each other.[631] Ultimately, a dispute arose over the 1997 rates MACM charged CTA and CTA sought to arbitration.[632] After some disagreement regarding the arbitration, CTA turned to the Washington County CCP seeking to compel arbitration.[633] The instant case regarding compulsory arbitration of the 1997 rates was assigned to Judge Gilmore of the Washington County CCP seeking to compel arbitration.[634] All of the parties are located in Washington County.[635]

Aditionally, the parties disputed whether the 1998 rate dispute was properly the subject of arbitration.[636] The parties again turned to the Washington County CCP

625. U.A.A. § 18.
626. 761 A.2d 194 (Pa. Cmmw. Ct. 2000).
627. *Id.* at 195.
628. *Id.*
629. *Id.*
630. *Id.*
631. *Id.*
632. *Id.* at 196.
633. *Id.*
634. *Id.*
635. *Id* at 195.
636. *Id* at 196.

wherein Judge Terputac ordered compulsory arbitration.[637] Subsequently, compulsory arbitration was ordered by Judge Gilmore concerning the dispute over the 1997 rate schedule.[638] Judge Gilmore further ordered that the arbitration be conducted before the same arbitrator who had heard the parties' dispute over the 1998 rate schedule.[639] The arbitrator had an office in Allegheny County where the arbitration took place.[640]

MACM appealed the arbitrator's initial decision, regarding the 1998 dispute, to the Allegheny County CCP.[641] After MACM appealed, CTA requested that the Allegheny County CCP transfer venue to the Washington County CCP.[642] The Allegheny County CCP declined CTA's request and modified the arbitrator's award by increasing the rates charged to CTA.[643] CTA appealed the Allegheny County CCP order to the Commonwealth Court of Pennsylvania.[644] CTA asserted that the Allegheny County CCP abused its discretion in not transferring the appeal of the arbitrator's award to the Washington County CCP.[645]

The parties disagreed as to which statutory provision regarding venue governed the proceeding.[646] MACM asserted that the Arbitration Act of 1927 governed the case because the Agreement was signed in 1971, prior to the effective date of the UAA, therefore superceding the UAA[647] Ultimately, the court determined that MACM lost under either the Arbitration Act or the UAA and did not decide which statutory provision controlled.[648]

The court also concluded that the Pennsylvania Rules of Civil Procedure governed the arbitration award, rather that the UAA, even though the rule states "except as otherwise prescribed by the general rules" the initial application to a court shall be made to the county in which the arbitration hearing was conducted and the statute states that the action shall be brought against a political subdivision only in the county in which the political subdivision is located unless "otherwise provided by an Act of the Assembly."[649] The court stated that the Rules of Civil Procedure are "general rules" within the meaning of the UAA governing venue, "[e]xcept as otherwise proscribed by the general rules" and within the meaning of a statute which provides for the venue of the court of common pleas as prescribed by the general rule.[650] Therefore, if the arbitration agreement does not prescribe a county in which the arbitration must be brought, the Rules of Civil Procedure permit an action against a political subdivision to be brought only in the county in which the political

637. *Id.*
638. *Id.*
639. *Id.*
640. *Id.* at 196.
641. *Id.*
642. *Id.*
643. *Id.*
644. *Id.*
645. *Id.*
646. *Id.* at 196.
647. *Id.*
648. *Id.* at 197 n. 2.
649. *Id* at 199-200.
650. *Id.* at 199.

subdivision is located.[651] In the instant case, proper venue was the county where the township was located, not the county where the arbitrator made his report.[652]

XI. SECTION 19: APPEALS

Section nineteen of the UAA lists the judgment and orders relating to arbitration that may be appealed.[653] Under section 19(a), the following decisions or rulings are appealable:

> (1) [a]n order denying an application to compel arbitration made under Section 2; (2) [a]n order granting an application to stay arbitration made under Section 2(b); (3) [A]n order confirming or denying confirmation of an award; (4) [a]n order modifying or correcting an award, (5) [a]n order vacating an award without directing a rehearing; or (6) a judgment of decree entered pursuant to the provisions of this act.[654]

Section 19(b) provides that appeals from these judgments and orders "shall be taken in the manner and to the same extent as from orders or judgments in a civil action."[655]

In *Suffolk County Sheriff's Department v. AFSCME Council*,[656] the county sheriff's department filed application to vacate an arbitration award ordering reinstatement of a previously discharged jail officer with back pay.[657] The Superior Court of Suffolk County vacated the award and ordered rehearing before a new arbitrator within sixty days.[658] The officer's union appealed and the appellate court held that "an order vacating the award of an arbitration ordering a rehearing is not appealable under [Massachusetts law].[659]

The appellate court determined that the trial court's "order for a rehearing [before a labor arbitrator] is not an act finally adjudicating the rights of the parties affected" and, thus, is not appealable.[660] Final adjudication occurs "when the court acts after the arbitration proceeding is terminated."[661]

651. *Id.* at 200.
652. *Id.*
653. U.A.A. § 19.
654. U.A.A. § 19(a)(1)-(6).
655. U.A.A. § 19(b).
656. 737 N.E.2d 1276 (Mass. App. 2000).
657. *Id.* at 1277.
658. *Id.*
659. *Id.*
660. *Id.* at 1278 (quoting *School Comm. of Agawam v. Agawam Educ. Assn.*, 359 N.E.2d 956 (Mass. 1977)).
661. *Id.*

XII. SECTION 21: UNIFORMITY OF INTERPRETATION

Section twenty-one of the U.A.A. states that the "act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it."[662]

In *Group Health Plan, Inc. v. BJC Health Systems, Inc.*,[663] the appellate court stated that according to section 435.450 (Missouri's arbitration statute), the Act should be "construed as to effectuate the general purpose to make uniform the law of those states that enact it."[664] Consequently, the court referenced Missouri statutory law and concluded that "opinions of the courts of other jurisdictions which have adopted the UAA are shown greater than usual deference."[665] Therefore, if there is no Missouri authority and no compelling policy to overcome the need for uniformity, provisions of the UAA should be construed as consistent with the decisional law of other signatory states.[666]

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662. U.A.A. § 21.
663. 30 S.W.3d 198 (Mo. App. 2000).
664. *Id.* at 202. *See* Mo. Rev. Stat. § 435.450 (1992).
665. *Group Health Plan*, 30 S.W.2d at 202 (quoting *Westridge Inv. Group, L.P. v. McAtee*, 968 S.W.2d 288, 291 (Mo. App. 1983)).
666. *Id.*