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Recent Developments: The Uniform Arbitration Act

Benjamin K. Byrd

Mondonna L. Ghasedi

Robert J. Steintjes

Michelle Trant

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I. INTRODUCTION

This Article is an overview of recent court decisions that interpret state versions of the Uniform Arbitration Act ("U.A.A.").[1] Arbitration statutes patterned after the U.A.A. have been adopted by thirty-four states and the District of Columbia.[2] The goal of this project is to promote uniformity in the interpretation of the U.A.A. by articulating the underlying policies and rationales of recent court decisions interpreting the U.A.A.[3]

II. SECTION 1: VALIDITY OF ARBITRATION AGREEMENTS

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

> [a] written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon 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].[4]

When resolving a case concerning an arbitration clause, a court must first determine if the parties have consummated a valid agreement. If the court finds that the agreement is valid, it next must decide whether the parties' dispute falls within the scope of the clause.

A. The Existence of an Agreement to Arbitrate

The U.A.A. does not require the use of particular terminology, such as "arbitrators," in order to create a valid arbitration agreement.[5] In *Society of*

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1. UNIF. ARBITRATION ACT §§ 1-25, 7 U.L.A. 5 (1985).

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

3. This Article surveys cases decided between January 1, 1997 and December 31, 1997.

4. UNIF. ARBITRATION ACT § 1.

5. Society of Am. Foresters v. Renewable Natural Resources Found., 689 A.2d 662 (Md. Ct. Spec. App. 1997); *see* Northern Indiana Commuter Transp. Dist. v. Chicago Southshore & South Bend R.R., 685 N.E.2d 680, 695 (Ind. 1997) (agreements described in Section 1 are written agreements and control

American Foresters v. Renewable Natural Resources Foundation, the owner of development rights sought a declaratory judgment to determine whether a special zoning exception for development had lapsed.[6] In affirming the trial court's dismissal of the SAF's complaint, the court held that the parties' settlement agreement contained a valid arbitration clause and that the zoning dispute was arbitrable.[7]

Formalized in their settlement agreement, the parties reached an accommodation of their respective positions after experiencing disagreements that led to litigation.[8] Under the settlement agreement, SAF received fee title to a parcel of the Center. However, SAF was prevented from selling any part of their parcel unless RNRF failed to exercise due diligence or the Center was no longer a viable project.[9] The settlement agreement specified a three-member panel to determine whether RNRF satisfied the due diligence and viability tests.[10] To ensure these and other restrictions would not be eternal, the parties agreed to conduct a joint review at ten-year intervals.[11] RNRF and SAF each selected a panel member of their choosing; however, the parties' designated panel members could not initially agree as to the third member.[12] At the hearing on RNRF's motion to dismiss, SAF noted the absence of the term "arbitration" or the implication of binding arbitration in the settlement agreement and argued that the controversy surrounding the legitimacy of RNRF's special exception should by resolved by a court.[13]

The Maryland Court of Special Appeals stated that it must first determine whether an agreement to arbitrate existed between the parties.[14] Although the "panel" members were not referred to as arbitrators in the settlement agreement, the court noted the settlement agreement stated that "disagreement" on the issues of due diligence and viability "will be settled by" the three person panel.[15] Moreover, despite SAF's contentions to the contrary, the court also found that the language of the agreement plainly provided that the panel's findings were binding.[16] In finding a valid arbitration clause, the court articulated that no particular form of words is indispensable to the making of a valid agreement to adjust and mediate a dispute

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where the arbitration proceedings are to be conducted).

6. *Society of Am. Foresters*, 689 A.2d at 663. Subsequent to this complaint filed by the Society of American Foresters (SAF), the Renewable Resources Foundation (RNRF) submitted a motion to dismiss. *Id.*

7. *Id.* at 668. SAF was a non-profit corporation organized to advance science, technology, education, and professional forestry while using the knowledge and skills of the profession to benefit society in general. *Id.* at 663. Originally created by SAF, RNRF was a non-profit corporation established to develop the Wild Acres property into the Renewable Natural Resources Center ("Center"). *Id.* The Wild Acres site was zoned for residential use, hence a special exception to construct office buildings had to be obtained before RNRF could develop the Center. *Id.*

8. *Id.* at 664. The Settlement Agreement was premised on the validity of the Special Exception granted to RNRF. *Id.*

9. *Id.* at 665.

10. *Id.*

11. *Id.*

12. *Id.* The third member was chosen while this was case pending. *Id.*

13. *Id.* at 667.

14. *Id.* at 666.

15. *Id.*

16. *Id.* at 667.

without resort to litigation.[17] Indeed, the language need not include "arbitrate" nor "arbitration"; only some reliable evidence from the language employed that the parties intended the contested issue to be subject to arbitration.[18]

In *Friday v. Trinity Universal of Kansas*,[19] the Supreme Court of Kansas was charged to assess whether an "appraisal clause" constitutes a valid and enforceable arbitration clause.[20] Friday's house was insured by Trinity Universal ("Trinity").[21] Following fire damage to the house, the parties could not agree on the amount of loss.[22] Trinity offered payment to Friday and stated that if Friday did not accept, it would invoke the appraisal provision of the insurance policy.[23] However, Friday rejected the offer and subsequently filed suit against Trinity.[24] In so doing, Friday argued that the appraisal provision constituted an arbitration agreement by another name and thus violated Kansas' version of Section 1 of the U.A.A.[25]

Although the court determined that the Kansas statute at issue barred enforcement of arbitration clauses in insurance contracts, the court failed to perceive a meaningful distinction between appraisal and arbitration and ruled that appraisal clauses were in fact agreements to arbitrate.[26] The court did observe that "arbitration is a more adversarial proceeding than a normal appraisal."[27] However, in the end, the court noted "the . . . result is the same [in that] a controversy is settled."[28]

The decision in *Scherer v. Scherer*[29] illustrates the principal that in order to invoke the U.A.A. to suppress the opposing party's ability to appeal, the contract

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17. *Id.*

18. *Id.*; *see also,* City of Denver v. District Court of Denver, 939 P.2d 1353 (Colo. 1997) (use of official related to one of the parties as arbitrator does not render a dispute resolution clause invalid so long as the clause provides for judicial review of the official's determination).

19. 939 P.2d 869 (Kan. 1997).

20. *Id.* at 870.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* The court decided that the McCarran-Ferguson Act controlled the issue. The McCarran-Ferguson Act provides in part: "No act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating insurance." 15 U.S.C. § 1012(b) (1994). The court held that because the Kansas version of the U.A.A. regulated the business of insurance, the McCarran-Ferguson Act precluded application of the F.A.A. and the arbitration clause was unenforceable based on Section § 5-401(c)(1) of the Kansas U.A.A. which bars enforcement of arbitration clauses in insurance contracts. *Id.* at 872; *see also* Transit Cas. Co. v. Certain Underwriters at Lloyd's of London, 119 F.3d 619, 621 (8th Cir. 1997) (Missouri's Uniform Arbitration Act provides that written agreements to arbitrate disputes are valid, enforceable, and irrevocable, except in contracts of insurance and contracts of adhesion).

26. *Friday*, 939 P.2d at 871-72. The court stated that the determinative question was whether the Kansas legislature intended to include appraisals as a form of arbitration when it precluded arbitration clauses in insurance contracts or whether it intended for appraisals to be of separate nature and allowable in insurance contracts. *Id.* See KAN. STAT. ANN. § 5-401(b) (1996) which provides that a written contract may provide for arbitration of future controversies between the parties and that such a provision is "valid, enforceable, and irrevocable, except upon such grounds as exist at law or equity for the revocation of any contract." The provision in question, 5-401(c), states: "The provisions of subsection (b) shall not apply to: (1) Contracts of insurance." *Id.*

27. *Friday*, 939 P.2d at 871.

28. *Id.*

29. 931 P.2d 251 (Wyo. 1997).

language must legally define whether the issues involved are appealable.[30] In *Scherer*, Mrs. Scherer filed for divorce and requested primary care, custody and control of the parties' two minor children, as well as distribution of the parties' assets and liabilities.[31] Subsequent to the initial complaint, the parties notified the court of their stipulation "to submit the case to the court pursuant to an informal hearing in lieu of a formal trial."[32] The trial court henceforth granted divorce, distributed marital property, and ordered joint custody of the parties' two minor children, with primary care and custody to Mrs. Scherer subject to liberal visitation by Mr. Scherer.[33]

Following the trial court ruling, Mrs. Scherer appealed the property distribution and custody arrangements.[34] In response, Mr. Scherer contended that the "informal proceeding was binding arbitration governed by the U.A.A." and therefore was not subject to appeal.[35] The proceedings were described in the record as "hybrid," "binding mediation," "binding arbitration," "binding mediation arbitration."[36] The record, however, further disclosed that the parties agreed and stipulated to an informal hearing, not arbitration.[37] The Supreme Court of Wyoming held that it "must treat the informal proceeding as if it were a formal trial proceeding and endorse the appeal based upon an abuse of discretion standard."[38] Also, because Wyoming defines arbitration as a contractual right,[39] the absence of an arbitration agreement in the record further precludes the possibility of invoking binding arbitration.[40]

B. The Scope of the Agreement to Arbitrate

If such an agreement exists, the court next must determine whether the subject matter of the dispute is within the ambit of the arbitration clause.[41] There must be some reliable evidence from the language of the contract that the parties intended the disputed issue to be subject to arbitration, the intent of the parties being the controlling factor.[42]

In accordance with the strong public policy favoring arbitration of disputes, courts usually interpret arbitration provisions as broadly "as the words and intentions

30. *Id.* at 253.
31. *Id.*
32. *Id.*
33. *Id.*
34. *Id.* at 252.
35. *Id.* at 253.
36. *Id.*
37. *Id.*
38. *Id.*
39. *Id.* WYO. STAT. ANN. § 1-36-103 (Michie 1977).
40. *Id.* The court noted that the trial court acknowledged at an earlier hearing that the issues were appealable when it stated: "Either party is welcome, of course, to subject my rulings, the record in this case, any of my decisions to any appellate scrutiny they wish, represented by whomever they wish, but this portion of litigation, in my mind, is over." *Id.*
41. *Society of Am. Foresters*, 689 A.2d at 666.
42. *Id.*

of the parties will warrant."[43] Although the U.A.A. mandates that the agreement to arbitrate must be valid, courts may enforce an arbitration provision following termination of the parties' contract. In *Samson, M.D. v. Hartsville Hospital, Inc.*, Samson agreed to a one-year Physician Agreement with Hartsville Hospital ("Hartsville") on October 8, 1993 whereby Samson would establish a practice in the city of Hartsville.[44] Upon the written consent of both parties, the contract could be renewed for one additional year.[45] To enable Samson to meet his operating expenses and guarantee a floor under his income, the hospital provided assistance in the form of advancements.[46] Pursuant to a provision within the agreement, repayment of the advancements was to be completed following termination of the contract.[47] Termination was provided for as follows: "In the event that either party notifies the other of intent to terminate the agreement, either party to this agreement may request binding arbitration to resolve any disagreements, with the cost of such arbitration being equally shared."[48]

Despite neither party notifying the other of any intent to renew, the parties maintained performance after October 8, 1994.[49] Following an August 14, 1995 sale of the hospital, the new owners sent Samson a notice of their intent to terminate the agreement while also requesting reimbursement of the advancements.[50] Samson denied the request and argued that the termination was without cause, thus "extinguishing his obligation to repay the advancements."[51] Due to the parties' inability to resolve their differences, "the hospital invoked the arbitration provisions of the contract."[52]

After the trial court enjoined the hospital from pursuing arbitration, Samson argued on appeal that the "parties' failure to renew the contract eliminated all his obligations under that contract, including the obligation to submit disputes to arbitration."[53] Additionally, he asserted that his duties under the contract expired the date the hospital was sold "because the sale rendered the signatories unable to perform in accordance with its provisions."[54] Hartsville responded that the contract

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43. Samson, M.D. v. Hartsville Hosp., Inc., No. 01-A-01-9609-CH-00430, 1997 WL 107167 at *4 (Tenn. Ct. App. Mar. 12, 1997) (citing DeWitt v. Al-Haddad, Appeal No. 89-394-II (filed Apr. 25, 1990)).

44. *Id.* at *1.

45. *Id.*

46. *Id.* A provision within the agreement required repayment of the advancements after the contract came to an end, and also for forgiveness of that obligation on a prorated basis if Samson continued to maintain a practice in Hartsville. *Id.*

47. *Id.*

48. *Id.* The termination section also allowed the parties to terminate the contract without cause upon sixty days notice, or to terminate it for cause without notice, upon certain specified happenings or upon the "failure of either party to faithfully and diligently carry out the provisions of this agreement. Termination of the agreement by Samson without cause, or termination by the hospital with cause would result in all the advancements to Samson becoming due and payable within thirty days." *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.* at *2.

54. *Id.*

remained in effect after October 8, 1994, because both parties continued to perform under it.[55]

In reversing the trial court's finding that the arbitration clause no longer applied to Samson, the Tennessee Court of Appeals stated that the refund Hartsville demanded was based upon advancements that arose under the contract, and that the arbitration clause, which provides for binding arbitration to resolve "any disagreement," must of necessity include disagreements about those advancements.[56] The court further noted that the contract "apparently anticipated that such arbitration may occur" after the expiration of its initial one-year term in light of the clause "that compels the hospital to reduce the doctor's obligation of repayment . . . for every year that the physician remains in active practice in the service area following the expiration of the term of this agreement."[57] As a result of the clear evidence that the parties intended for disagreements involving the remuneration of advancements be resolved by arbitration and the "uncertainties surrounding the legal effects of the hospital's purported termination of the contract, the court held that the dispute should be resolved using arbitration.[58] The court expressed that its decision was reinforced by the policy that courts generally construe arbitration clauses liberally and resolve any doubts in favor of arbitration.[59]

In *Metro Construction Co. v. Cogun Industries*, the parties entered into an agreement in which Cogun Industries ("Cogun") subcontracted a portion of a church construction contract to Metro Construction ("Metro").[60] As part of this construction, Metro "installed plywood onto the exterior of the church building."[61] Metro maintained that Cogun inspected and approved the plywood prior to installment, which Cogun summarily denied.[62] Following the owner's contention that the materials employed by Metro failed to comply with the contract, the owner withheld payment to Cogun, who in turn refused to compensate Metro.[63] In response, Metro then filed suit seeking payment due under the contract.[64]

The Tennessee Court of Appeals held that because the contract contained a written agreement to "settle all controversies and claims arising out of or related to the contract by arbitration," the trial court erred in granting summary judgment for plaintiff.[65] The court indicated that the "plain language" of the contract made it explicit that the parties had intended that any controversy regarding the contract was to be resolved by arbitration.[66] The court stated that "where the contract between the parties contains an arbitration clause, the court should apply a presumption of

55. *Id.* Further, Hartsville contended that Samson's complaint contained a binding judicial admission and that arbitration was appropriate due to the clear legislative and public policy favoring that mode of dispute resolution. *Id.* at *3.
56. *Id.* at *3.
57. *Id.*
58. *Id.* at *4.
59. *Id.*
60. No. 02A01-9608-CH-00207, 1997 WL 538914, at *1 (Tenn. Ct. App. Sept. 4, 1997).
61. *Id.*
62. *Id.* at *1-2.
63. *Id.* at *2.
64. *Id.*
65. *Id.* at *3.
66. *Id.*

arbitrability, resolve any doubts in favor of arbitration, and should not deny an order to arbitrate unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute."[67]

In *B.L. Hodge Company v. Roxco, Ltd.*, the Tennessee Court of Appeals was asked to decide whether a claim for rescission was to be resolved through arbitration pursuant to the parties' contract or adjudicated in court.[68] The initial dispute arose regarding the provisions of a construction subcontract.[69] Under the subcontract, B.L. Hodge ("Hodge") was to complete, among other duties, handrail work.[70] A disagreement ensued regarding the amount of handrail that was to be assembled, however, which ultimately led Hodge to seek rescission of the contract.[71] Roxco urged that Hodge should be bound by the arbitration provision in the contract that Hodge had signed.[72]

At trial, Hodge maintained that the contract should be rescinded due to fraudulent inducement on the part of Roxco.[73] However, the trial court ruled that the parties had not agreed on the amount of the handrail, and that the contract was subject to rescission.[74] The implicit result of this finding was that the contract, including the arbitration clause, was declared invalid.[75]

The Tennessee Court of Appeals noted that rescission is available only under the most demanding circumstances and is appropriate when a party has been induced to enter into a contract by fraud, duress, or undue influence.[76] The court further noted that claims for rescission of the whole contract are exempted from arbitration proceedings.[77] Notwithstanding this declaration, the court did not find that Roxco was guilty of fraudulent inducement, nor did they locate evidence in the record or other circumstances to support such a claim.[78] The court held that the parties signed a contract with an arbitration clause and that the arbitrator must decide the legal obligations of the parties.[79] The court noted its obligation "to resolve any doubts in favor of arbitration."[80]

III. SECTION 2: PROCEEDINGS TO COMPEL OR STAY ARBITRATION

Section 2 of the U.A.A. governs proceedings to compel or stay arbitration.[81] In such a proceeding, the party seeking to compel or stay arbitration must show that

67. *Id.* (citing United Steelworkers of Am. v. Mead Corp., 21 F.3d 128, 131 (6th Cir. 1994)).
68. No. 03A01-9704-CH-00144, 1997 WL 64490, at *3 (Tenn. Ct. App. Oct. 16, 1997).
69. *Id.* at *1.
70. *Id.*
71. *Id.* at *2.
72. *Id.*
73. *Id.*
74. *Id.*
75. *Id.*
76. *Id.* at *3.
77. *Id.*
78. *Id.*
79. *Id.* at *4.
80. *Id.*
81. UNIF. ARBITRATION ACT § 2.

an agreement to arbitrate exists and that the other party refuses to participate in the arbitration process.[82] Upon a party's motion to compel or stay arbitration, a court must determine two things: (1) whether there is a valid, written agreement to arbitrate and (2) whether the agreement covers the disputed issue.[83] The courts have also been called upon to decide other issues, such as whether the parties can proceed to discovery pending a motion to compel arbitration.

A. The Existence of an Agreement to Arbitrate Between the Parties

A court may ascertain that a valid arbitration agreement exists between parties not privy to the original agreement.[84] In *Smith v. Cumberland Group, Ltd.*, an arbitration clause incorporated within a contract between an owner and general contractor was assigned to another contractor.[85] The Superior Court of Pennsylvania resolved the question of whether the arbitration clause remained effective when a dispute arose between the owner and assignee-contractor.[86]

In *Smith*, Cumberland, as the original general contractor, and Smith, the owner, formulated a contract for renovations and improvements to a restaurant.[87] The parties' contract contained an arbitration clause wherein the parties agreed to arbitrate any disputes arising out of or relating to the contract documents.[88] Cumberland assigned the contract to Mass Construction Group ("Mass") as part of the sale of Cumberland's assets to Mass.[89] Following the sale and during construction, Mass conducted weekly job conferences at the job site which were attended by Smith representatives.[90] Notes from these conferences on Mass letterhead were sent to Smith.[91] In turn, Smith corresponded directly to Mass concerning construction progress, and Smith signed five progress payment checks made payable to Mass.[92] When a dispute ensued over the substantial completion date for the venture, Smith withheld payment of the balance from Mass.[93] Shortly thereafter, Mass filed a demand for arbitration against Smith pursuant to the assigned contract.[94] In addition to instigating a civil complaint against Cumberland, Smith filed an application to stay arbitration under Pennsylvania's version of Section 2

82. *Id.* § 2(a).
83. Smith v. Cumberland Group, Ltd., 687 A.2d 1167, 1171 (Pa. Super. Ct. 1997).
84. *Id.* at 1172.
85. *Id.* at 1169.
86. *Id.*
87. *Id.*
88. *Id.* Article 15.8 of the contract provided: "All claims or disputes between the Contractor and the Owner arising out of or relating to the Contract documents, or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise and subject to an initial presentation of the claim or dispute to the Architect as required under Paragraph 15.5." *Id.* at 1169 n.2.
89. *Id.* at 1169-70. The assignment agreement furnished in pertinent part as follows: "This shall be a binding Agreement between all assigns and nominees of the parties and is confirmed by execution below by their duly authorized representatives." *Id.* at 1170 n.3.
90. *Id.* at 1170.
91. *Id.*
92. *Id.*
93. *Id.*
94. *Id.*

claiming that Mass was not a party to the contract and that Smith never agreed to arbitrate any claim or dispute with Mass.[95] Cumberland and Mass appealed following the trial court's decision to stay arbitration pending resolution of Smith's civil claim.[96]

Smith's sole assertion on appeal was that the agreement to arbitrate was not assignable without his consent.[97] Specifically, Smith stated that he would have withheld consent considering that performance under the contract was already in default when the contract was assigned.[98] Smith's theory was that an arbitration clause is personal and that the non-consenting party relinquishes constitutional and procedural rights by waiving a jury trial and agreeing to arbitrate.[99] Cumberland and Mass countered by arguing that the contract as a whole, including the arbitration provision, was assignable without Smith's consent and that Smith's subsequent actions ratified the assignment.[100]

The Superior Court of Pennsylvania began its analysis by noting that when one party to an agreement seeks to prevent another from proceeding to arbitration, judicial inquiry is limited to determining (1) whether a valid agreement to arbitrate exists between the parties and, if so, (2) whether the dispute involved is within the scope of the arbitration provision.[101] The court further noted that absent an express provision against assignment, the rights and duties under an executory bilateral contract which does not involve personal skill, trust, or confidence may be assigned without the consent of the other party.[102] The court explained that such an assignment is valid so long as it does not materially alter the other party's duties and responsibilities.[103] The obligor may also adopt an otherwise invalid or ineffective assignment by his conduct.[104] In light of the foregoing, the court held that Cumberland's assignment to Mass was effective, and that Mass could enforce the arbitration provision against Smith to settle any controversies within the scope of the arbitration provision.[105] Any question as to the assignment's validity were moot in light of Smith's subsequent conduct toward Mass.[106]

In support of its decision, the court noted that an obligation to arbitrate is not necessarily limited only to those who personally signed the agreement, as ordinary contract principles determine who is bound.[107] The court declared that when parties of equal bargaining power design a contract without restrictions on assignability and mutually agree that the resolution of any future disputes should be determined by arbitration, they must be bound by that provision instead of being allowed to avoid

95. *Id.*; *see* 42 PA. CONS. STAT. ANN. § 7304(b) (West 1998).
96. *Smith*, 687 A.2d. at 1170.
97. *Id.* at 1171-72.
98. *Id.*
99. *Id.* at 1173.
100. *Id.* at 1172.
101. *Id.* at 1171.
102. *Id.* at 1172.
103. *Id.*
104. *Id.*
105. *Id.* at 1173.
106. *Id.*
107. *Id.* at 1173-74.

its consequences using specious challenges.[108] The court concluded that Smith was not prejudiced by the assignment from Cumberland to Mass because "Smith was free to limit or restrict [the contract] but did not."[109]

B. The Scope of the Agreement to Arbitrate

After finding an arbitration agreement to be valid and binding, a court must decide whether the parties intended for the dispute to fall within the scope of the arbitration clause.[110]

In *City of Denver v. District Court of Denver*, the city of Denver entered into a series of contracts with PCL-Habert ("PCL"), a general contractor, to construct the terminal building at Denver International Airport ("DIA").[111] Under the terms of the contract, PCL was to perform all of the work relating to the construction of the terminal.[112] PCL subcontracted Corradini Corporation ("Corradini") to install terrazzo flooring in the terminal building.[113] Thereafter, the city decided to change the flooring material from terrazzo to a unique granite product which could only be installed by Technomaiera SRL ("Technomaiera"), the exclusive producer of the product.[114] Upon this action, PCL was forced to cancel its subcontract with Corradini and to enter into an agreement with Technomaiera.[115]

Soon thereafter, the city, PCL, and Corradini consummated a verbal settlement agreement whereby the city would compensate Corradini and PCL for termination of the Corradini subcontract.[116] Technomaiera was unable to perform a portion of the subcontract with PCL and appeared to be insolvent.[117] In meeting to discuss Technomaiera's performance problems, the city urged PCL to continue working with Technomaiera.[118] To make this suggestion feasible, the city authorized PCL to advance funds so that Technomaiera could fulfill its obligation.[119] The city verbally agreed to reimburse PCL.[120] Other disputes arose between the parties, including a disagreement in which the city contended that it was overbilled by PCL.[121] Negotiations over these issues were ineffective, leading PCL to file a lawsuit and request an administrative hearing pursuant to the arbitration clauses in the contract.[122]

In determining whether a specific dispute falls within the scope of the arbitration clause, the Supreme Court of Colorado stated that courts must ascertain

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108. *Id.* at 1173.
109. *Id.* at 1174.
110. City of Denver v. District Court of Denver, 939 P.2d 1353, 1363 (Colo. 1997).
111. *Id.* at 1357.
112. *Id.*
113. *Id.* at 1358.
114. *Id.*
115. *Id.*
116. *Id.*
117. *Id.*
118. *Id.* At this time, Denver was still committed to meeting the airport's initially scheduled opening date. *Id.*
119. *Id.*
120. *Id.* Denver denied the existence of this verbal agreement but the court accepted as true the material facts as stated by PCL for the purposes of the opinion. *Id.* at n.3.
121. *Id.* at 1358.
122. *Id.* at 1358-59.

the reasonable expectations of the parties by applying the language chosen by the parties to the factual nature of the dispute.[123] When broad or unrestricted arbitration clauses are used, there is even a stronger presumption favoring arbitration.[124] The court noted that the basis of the claim asserted rather than the legal cause of action pled should guide courts in making the determination as to the scope of the arbitration clause.[125] The court further noted that creative legal theories should not be permitted to undermine the presumption favoring alternative means of dispute resolution.[126] In reversing and remanding the trial court's denial of arbitration, the court held that arbitration must be compelled unless the arbitration clause is in no way susceptible to an interpretation that encompasses the subject matter of the dispute.[127]

The court acknowledged that parties may select alternatives to litigation which amounts to parties choosing their own forum of dispute resolution.[128] The parties' endeavor is usually for a nonjudicial adjudicator to make a private and practical determination with maximum dispatch and at minimum expense.[129] In this vein, the court noted that "it has long been the policy of the law to interfere as little as possible with the freedom of consenting parties to achieve this objective."[130] In so doing, the court additionally held that the trial court must accord the parties a presumption in favor of alternative dispute resolution and must resolve doubts about the arbitration clause in favor of arbitration.[131]

In *Cecala v. Moore*, the United States District Court for the Northern District of Illinois resolved whether an Illinois statute preempted application of the U.A.A.[132] In *Cecala,* prior to closing on a home purchase, the Moores executed and delivered to the Cecalas a Residential Real Property Disclosure Report ("Disclosure Report") as required by the Illinois Residential Real Property Disclosure Act.[133] In that report, the Moores' recorded that they were unaware of any flooding problems in the crawlspace or basement or of any material defects in the basement or foundation.[134] Nine days following the Cecalas occupation of the home, flooding occurred that forced the Cecalas to pay for repairs and prevent recurring flooding.[135]

The Cecalas claimed that the Moores violated the Disclosure Act by (1) failing to disclose a material defect, (2) knowingly submitting false information in the Disclosure Report, and (3) as a result of their reliance on the Moores' false and untrue statements, they suffered injury.[136] The Moores moved to stay the judicial proceeding pursuant to the mediation provision in the parties' contract and Section

123. *Id.* at 1363-64.
124. *Id.* at 1364.
125. *Id.*
126. *Id.*
127. *Id.*
128. *Id.* at 1362-63.
129. *Id.* at 1363.
130. *Id.*
131. *Id.*
132. 982 F. Supp. 609 (N.D. Ill. 1997).
133. *Id.* at 611; *see* 765 ILL. COMP. STAT. 77/1-99 (West 1998).
134. *Cecala*, 982 F. Supp. at 611.
135. *Id.*
136. *Id.*

3 of the F.A.A.[137] Alternatively, the Cecala's argued that their complaint was based on the Disclosure Report and the Moores' alleged violation of the Disclosure Act.[138] In particular, the Cecala's argued that completion and delivery of the allegedly false Disclosure Report constituted a violation of the Illinois Disclosure Act which provides its own remedy.[139] The Cecala's thus asserted that their claim was outside the scope of the mediation clause because the it stemmed from Illinois statutory law, not from the parties' contract.[140] In considering the potential conflict between the F.A.A. and the U.A.A., the court noted that the F.A.A. did not apply to the parties' contract for the sale of real estate because it did not evidence a transaction involving interstate commerce.[141] Consequently, the dispute was governed by state arbitration law whereby the Illinois U.A.A. applied to the parties' contract.[142]

The court stated that its job was to determine whether the contract dispute fell within the scope of the mediation clause.[143] In so doing, the court noted that parties are bound to arbitrate only those issues that the clear language of the agreement, unextended by construction or implication, shows they have agreed to arbitrate.[144] The court further noted that generic clauses are those which state that they cover all claims "arising out of" or "relating to" a contract.[145] Generic arbitration clauses are regarded as being very broad and compel arbitration of issues not specifically enumerated in a particular contract.[146] The court went on to hold that the complaint clearly "arises out of the subject matter of the contract" and was within the scope of the broad mediation clause.[147] In support of its holding, the court remarked that without the contract, the Cecalas would not have purchased and occupied the home, and there would be no damages upon which to base a statutory claim.[148]

In *Samson v. Hartsville Hospital, Inc.*, the Tennessee Court of Appeals granted a stay of further court proceedings pending arbitration of an employment dispute that centered around a hospital's contract with one of its physicians.[149] The court stated that the parties' contract clearly indicated their dispute was to be resolved by arbitration.[150] In reinforcing its decision, the court noted that the strong public policy favoring arbitration of disputes is reflected in the U.A.A., whereby courts generally construe arbitration clauses liberally and resolve doubts in favor of arbitration.[151]

In *Metro Construction Co., Inc. v. Cogun Industries, Inc.*, the Tennessee Court of Appeals granted a motion to stay proceedings pending arbitration in a

137. *Id.* Under the mediation clause, the parties agreed that "any and all disputes or claims . . . arising out of or relating to" the contract would be submitted to mediation. *Id.*; *see* 9 U.S.C. § 3 (West 1998).
138. *Cecala*, 982 F. Supp at 611.
139. *Id.* at 613.
140. *Id.*
141. *Id.* at 612.
142. *Id.*
143. *Id.*
144. *Id.* at 613.
145. *Id.*
146. *Id.* at 614.
147. *Id.*
148. *Id.*
149. No. 01-A-01-9609-CH-00430, 1997 WL 107167, at *1, *4 (Tenn. Ct. App. Mar. 12, 1997).
150. *Id.* at *4.
151. *Id.*

construction contract dispute.[152] Although the court acknowledged that a party cannot be required to submit a dispute to arbitration without the party's consent, the court stated that the parties undoubtedly agreed to settle any controversies or claims arising out of or related to the contract by arbitration.[153]

C. Discovery and the Motion to Compel Arbitration

In *Southeast Drilling & Blasting Services, Inc. v. BRS Construction Co.*, the Tennessee Court of Appeals decided that discovery should be stayed pending resolution of a motion to compel arbitration.[154] The court stated that Tennessee's version of the U.A.A. establishes that the normal course of proceedings is to first resolve the issue of whether the parties should be required to arbitrate.[155] "All other proceedings involving the merits, including discovery, should be stayed pending this determination."[156] The court recognized that some discovery may be necessary to enable the trial court to properly determine if the motion to compel arbitration should be granted, but such discovery should be limited to matters relevant to the motion to compel.[157]

D. Scope of the Agreement to Arbitrate involving Multiple Parties

To maximize the advantages typically associated with alternative dispute resolution, courts in multiparty litigation often will refuse to enforce arbitration clauses that create delay while also amplifying complexity and costs.[158] The Illinois Court of Appeals emphasized in *Iko* that arbitration should not be compelled where it would hinder judicial economy or afford no benefit in the underlying lawsuit.[159] In *Iko*, the Board was charged with the maintenance of the common elements of a multi-unit condominium development, which included upkeep of the roof.[160] The Board commenced the underlying action against four developers, including Zale, seeking damages for alleged roof defects in the design and construction of the condominium development.[161] Zale then filed a third-party complaint against seven other contractors who performed portions of the roof work, including Johnston Associates ("Johnston").[162]

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152. No. 02A01-9608-CH-00207, 1997 WL 538914, at *3 (Tenn. Ct. App. Sept. 4, 1997).
153. *Id.*
154. No. 01A01-9706-CH-00272, 1997 WL 399387, at *1 (Tenn. Ct. App. July 16, 1997).
155. *Id.* at *2.
156. *Id.*
157. *Id.*
158. Board of Managers of the Courtyards v. Iko Mfg., Inc., 681 N.E.2d 102 (Ill. App. Ct. 1997).
159. *Id.* at 106.
160. *Id.* at 103-04.
161. *Id.* at 104. The Board advanced theories against Zale based on express and implied warranties. *Id.*
162. *Id.* Zale premised their third-party action solely on theories of conditional contribution or indemnification, predicating each third-party defendant's liability on Zale's first being found liable to the Board. *Id.*

Based upon the arbitration provision contained in its contract with Zale, Johnston filed a written demand for arbitration along with a motion to compel arbitration and stay the third-party claims against it pursuant to Section 2(a) of Illinois Arbitration Act.[163] Zale argued that the motion should be denied because the issues were inextricably intertwined such that the issues could not be severed.[164] Zale further asserted that because it did not create the multiplicity of parties in the litigation, its claim against Johnston could not proceed without a prior determination of its liability to the Board, and the public policy favoring joinder of claims in a single proceeding outweighed the policy favoring arbitration.[165] In response, Johnston simply insisted that since no dispute existed regarding the existence of an arbitration agreement, the Illinois Uniform Arbitration Act mandated that a court order arbitration.[166]

The Illinois Court of Appeals held that Zale's claims against Johnston were expressly contingent on and derivative of the Board's claims against Zale.[167] The court noted that all of the first and third party claims arose out of the same construction project, related to the same alleged defects, and involved the design of Johnston.[168] The court further observed that there were inextricable interrelationships between the issues and parties, thus Johnston's claims should not be severed from the underlying lawsuit pending arbitration.[169] The court concluded that a separate arbitration proceeding would create increased cost and inefficiencies.[170] In so doing, the court noted that the purpose of a third-party action is to determine the rights and liabilities of all parties before a single tribunal and upon the same evidence.[171]

E. Scope of the Agreement to Arbitrate and Contracts with Reference to Insurance

In *Towe, Hester & Erwin, Inc., v. Kansas City Fire & Marine Insurance Co.,* a licensed insurance agency sued a group of affiliated non-resident insurance companies ("Continental") connected with Towe, Hester, & Erwin, Inc. ("THE") through an agency relationship.[172] THE alleged that it was forced to sign a "Rehabilitation Program" agreement under threat of immediate termination of their agency agreement.[173] THE further alleged that the Rehabilitation Program Agreement was not part of, or subject to, the arbitration clause in the agency

163. *Id.;* 710 ILL. COMP. STAT. 5/1 (West 1994).
164. *Id.*
165. *Id.*
166. *Id.* at 105.
167. *Id.* at 106.
168. *Id.*
169. *Id.*
170. *Id.*
171. *Id.*
172. 947 P.2d 594, 595 (Ok. Ct. App. 1997).
173. *Id.*

agreement.[174] Continental answered the lawsuit by denying any wrongdoing and argued that the parties had agreed that unresolved disputes arising in connection with the agency agreements would be submitted to arbitration.[175] Continental then filed two applications to stay the proceedings and compel arbitration, the first grounded on the Oklahoma Uniform Arbitration Act, and the second filed pursuant to the Federal Arbitration Act.[176]

In reversing the trial court's denial of Continental's motions, the Oklahoma Court of Civil Appeals held that because the Federal Arbitration Act applied directly, there was no need to examine Oklahoma's Uniform Arbitration Act.[177] THE argued that the F.A.A. was inapplicable because its claims were sufficient for revocation of a contract on legal or equitable grounds.[178] The court countered by pointing out that the federal scheme allows adjudication only if the claim is fraud in the inducement of the arbitration clause itself, an issue which goes to the making of the agreement.[179]

THE's primary argument, however, was that arbitration was precluded by the McCarran-Ferguson Act in that the F.A.A. may not be interpreted to allow arbitration of insurance disputes if a state law specifically prohibits such arbitration.[180] The Oklahoma Uniform Arbitration Act regulating the business of insurance provides as follows: "This act shall not apply to collective bargaining agreements or contracts with reference to insurance except for those contracts between insurance companies."[181] The court acknowledged that the McCarran-Ferguson Act granted Oklahoma the exclusive right to regulate "the business of insurance" in Oklahoma.[182] If the state attempts, however, to regulate subjects tangential to "the business of insurance," the state moves outside of its exclusive arena.[183] Furthermore, if the regulation becomes one relating to commerce, the F.A.A. will preempt state law.[184]

In arriving at its decision, the court adopted the reasoning promulgated by the United States Supreme Court in *Union Labor Life Insurance Company v. Pireno*.[185] In cases construing the term "contracts with reference to insurance," the court requires (1) the subject matter of the regulation to transfer or spread a policyholder's risk, (2) deal with an integral part of the policy relationship between the insurer and

174. *Id.* The agency agreements between the parties contained prominent and detailed arbitration provisions. Section IX included the following language: "If any dispute or disagreement shall arise in connection with this Agreement that cannot be resolved by the parties, the matter shall be submitted to arbitration." *Id.* at 596.

175. *Id.* at 595.

176. *Id.* at 596; *see* 9 U.S.C. § 1 (West 1998).

177. *Towe, Hester & Erwin, Inc.*, 947 P.2d at 596.

178. *Id.*

179. *Id.*

180. *Id.* at 597. The McCarran-Ferguson Act generally governs the regulation of insurance to the states and prohibits Congress from passing laws which supersede any state law "regulating the business of insurance." *Id.*

181. *Towe, Hester & Erwin, Inc.*, 947 P.2d at 597; *see* OKLA. STAT. tit. 15, § 802 (1997).

182. *Id.* at 598. A state may decide in its arbitration statute what insurance matters are subject to arbitration. *Id.* at 598-99.

183. *Id.* at 599.

184. *Id.*

185. *Id.* 458 U.S. 119 (1982).

the insured, and (3) be limited to entities within the insurance industry.[186] Using these factors, the Oklahoma Court of Civil Appeals reasoned that contracts between an insurer and its employees or independent contractors are not "contracts with reference to insurance," and arbitration provisions in such contracts are not excluded from application of the F.A.A.[187]

IV. SECTION 7: WITNESSES, SUBPOENAS, DEPOSITIONS

Section 7 of the U.A.A. sets forth the powers of the arbitrator with regard to procuring a witness or evidence for a hearing.[188] These powers are identical to the powers a judge would have if the case were being heard in a court of law instead of by an independent tribunal. They include (1) the ability to subpoena witnesses, books, records, documents, and the power to administer oaths; (2) the ability to permit depositions; (3) the power to invoke laws compelling a witness to testify; and (4) the power to allow fees for an expert witness.[189]

One consequence of Section 7 is that an arbitration hearing may be privileged against defamatory liability. In *Bushell v. Caterpillar, Inc.* the Illinois Court of Appeals used the adjudicative nature of the arbitration hearing to label it a quasi-judicial proceeding.[190] Employee Bushell and employer Caterpillar submitted their wrongful termination dispute to arbitration.[191] At the hearing, representatives of Caterpillar testified that "plaintiff [Bushell] slept on the job and falsified employment records."[192] In response, Bushell filed a separate action in Illinois state court claiming that these remarks were defamatory and had injured him.[193] He did so despite the fact that Illinois law privileges statements made in judicial or quasi-judicial proceedings.[194]

The appellate court held that the arbitration hearing was a quasi-judicial proceeding because Section 7 of the U.A.A. allows presentation of evidence, cross examination of witnesses, and the power to issue subpoenas and administer oaths.[195] Therefore, statements made within the hearing were privileged against liability for defamation.[196] The court was quick to point out that an arbitration proceeding not governed by the Section 7 of the U.A.A. could fail to qualify as a quasi-judicial proceeding.[197]

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186. *Id.*
187. *Id.*
188. UNIF. ARBITRATION ACT § 7.
189. *Id.*
190. 683 N.E.2d 1286 (Ill. Ct. App. 1997). For Illinois' version of § 7 see 710 ILL. COMP. STAT. 5/7 (West 1961).
191. *Bushell*, 683 N.E.2d at 1287.
192. *Id.*
193. *Id.*
194. Parrillo, Weiss & Moss v. Cashion, 537 N.E.2d 851, 854 (Ill. Ct. App. 1989).
195. *Bushell*, 683 N.E.2d at 1288-89.
196. *Id.* at 1289.
197. *Id.* at 1288.

V. SECTION 9: CHANGE OF AWARD BY ARBITRATORS

Section 9 of the U.A.A. sets forth the process by which a party or a reviewing court can request a clarification of an award by the arbitrators.[198] It provides a twenty day deadline after delivery of the initial award by which a party must submit its application for clarification.[199] No such time limit exists for a reviewing court.

When a court finds that an arbitrator's award is ambiguous, the correct action is to request a clarification under Section 9 from the original arbitrator. The reviewing court shall not review the merits of the case.[200] In *Menahga Education Association v. Menahga Independent School District No. 821*, the Minnesota Court of Appeals reversed and remanded a lower court decision that looked at the merits of a case in interpreting an ambiguous arbitration award.[201] The dispute between the Menahga Education Association ("Union") and Menahga Independent School District ("School District") centered on whether their contract allowed the School District to withhold salary increases from teachers.[202] The arbitrator issued a three part decision: (1) the School District had the right to modify the salary schedule of teachers, (2) the School District did not have the right to withhold advancement of teachers as a group on the salary schedule, and (3) the School District had the right to withhold advancement of teachers on the salary schedule on an individual basis for just cause.[203] The School District interpreted this decision to allow for modification of all teachers' salaries.[204] The Union contested the interpretation in district court.[205] After review, the district court confirmed the arbitration award in favor of the Union and found on the merits that the School District did not have the right to withhold teachers' salary increases.[206]

Upon review, the appellate court found that the arbitration award was ambiguous in that there were two reasonable and conflicting interpretations of the award.[207] Therefore, under Section 9 of the U.A.A. the district court should have remanded the award to the arbitrator for clarification instead of issuing its own finding based on what it perceived the agreement to allow.[208]

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198. UNIF. ARBITRATION ACT § 9.
199. *Id.*
200. United Steelworkers of Am. v. Enterprise Wheel & Car Corp., 363 U.S. 593, 596-99 (1960).
201. 568 N.W.2d 863 (Minn. Ct. App. 1997). The court applied MINN. STAT. § 572.16, subd. 2 (1986), which reads:

> If an application to the court is pending under section 572.18, 572.19, or 572.20, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in section 572.20, subdivision 1, or for the purpose of clarifying the award.

202. *Id.* at 865.
203. *Id.* at 867.
204. *Id.* at 868.
205. *Id.* at 865.
206. *Id.* at 866.
207. *Id.* at 868.
208. *Id.* at 870.

VI. SECTION 11: CONFIRMATION OF AN AWARD

Section 11 of the U.A.A. provides that a court shall confirm an award unless a timely motion to vacate, modify, or correct is made.[209] Confirmation turns the arbitrator's award into a judicial ruling, thus giving the victor all the judicial remedies available to enforce the award. In *Chicago Southshore & South Bend Railroad v. Northern Indiana Commuter Transportation District*, the Appellate Court of Illinois held that by agreeing to submit disputes to arbitration, a party that normally enjoys sovereign immunity has agreed to be sued in court to confirm the arbitration award under Section 11.[210]

In *Chicago Southshore,* the Northern Indiana Commuter Transportation District ("NICTD") was found liable by an arbitration panel for damages resulting from the exercise of its proprietary and governmental functions.[211] When Chicago Southshore and South Bend Railroad attempted to have the award confirmed in Illinois state court pursuant to Section 11, however, the NICTD asserted that as a state agency of Indiana, it is immune from suit outside the state of Indiana under Article 4 of the Constitution of the State of Indiana.[212] The appellate court affirmed the trial court's dismissal of the motion under Section 11.[213] It held that by agreeing to settle disputes in the arbitration forum, NICTD had agreed to be sued in any court of law for confirmation of the arbitration award and had thereby waived its immunity.[214]

VII. SECTION 12: VACATING AN AWARD

Arbitration is meant to provide parties with a reliable, expeditious, and fair alternative to litigation.[215] In an effort to "facilitate this purpose, judicial review of arbitration awards is very narrow in scope."[216] The goal of the U.A.A. and the courts in interpreting the U.A.A. is to "prevent arbitration [from] becoming another layer in the litigation process."[217] Accordingly, Section 12 of the U.A.A. "restricts courts from vacating an arbitration award under any circumstances unless there are 'allegations of fraud, partiality, misconduct, excess of powers, or technical problems in making the award.'"[218]

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209. UNIF. ARBITRATION ACT § 11.

210. 682 N.E.2d 156 (Ill. Ct. App. 1997), *rev'd on other grounds,* 703 N.E.2d 7 (Ill. 1998). For Illinois' version of § 11 see 710 ILL. COMP. STAT. 5/11 (West 1991).

211. *Chicago Southshore*, 682 N.E.2d at 158.

212. *Id.* at 162. Article 4, section 24 of the Constitution of the State of Indiana provides as follows: "Provisions may be made, by general law, for bringing suit against the State; but no special law authorizing such suit to be brought, or making compensation to any person claiming damages against the State shall ever be passed." IND. CONST. art. IV, § 24 (1984).

213. *Chicago Southshore,* 682 N.E.2d at 161-62.

214. *Id.*

215. Bopp v. Brames, 677 N.E.2d 629 (Ind. Ct. App. 1997).

216. *Id.* at 631.

217. Springfield Teachers Ass'n v. Springfield Sch. Dirs., 705 A.2d 541, 546 (Vt. 1997).

218. Medina v. Found. Reserve Ins. Co., Inc., 940 P.2d 1175, 1178 (N.M. 1997).

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

Section 12 of the U.A.A. requires a court to vacate an award that was "procured by corruption, fraud or other undue means."[219] Courts exercise "[e]very reasonable presumption . . . in favor of the finality and validity of the arbitration award."[220]

In *Medina v. Foundation Reserve Insurance Co., Inc.* the Supreme Court of New Mexico vacated an arbitration award and ordered a rehearing before a new panel of arbitrators on the ground that the award was procured by Medina's fraud, corruption, and undue means.[221] In reviewing an arbitration award, a court must determine whether:

> [S]ubstantial evidence in the record supports the district court's findings of fact and application of law, taking all evidence in the light most favorable to upholding the arbitration award . . . . Substantial evidence is that evidence which is relevant and which a reasonable mind could accept as adequate to support a conclusion.[222]

In examining the evidence, it is the duty of the party moving to vacate to show why the evidence, presented in the light most favorable to the arbitrator's finding, does not support that finding.[223]

The *Medina* court disagreed with the district court's determination that Medina's conduct did constitute fraud[224] and held that there was substantial evidence in the record to support the district court's determination that Medina concealed and withheld material documents and information and, thereby, "obtained the award through false and perjured testimony and by concealing and withholding material documents and information."[225] Therefore, the court held that Medina's actions were sufficient to constitute fraud.[226]

In *International Union of Operating Engineers v. Independent School District*, the Minnesota Court of Appeals reiterated that "[e]very reasonable presumption must be exercised in favor of the finality and validity of the arbitration award."[227] According to the court, an arbitration award is subject to "extremely narrow" scrutiny.[228] Orville McCormick, a member of the International Union of Operating Engineers, was dismissed as a custodial engineer for the Independent School District

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219. UNIF. ARBITRATION ACT § 12.

220. International Union of Operating Eng'rs v. Independent Sch. Dist., No. C5-97-536, 1997 WL 527250, at *2 (Minn. Ct. App. Aug. 26, 1997).

221. 940 P.2d 1175, 1179 (N.M. 1997). See N.M. STAT. ANN. § 44-7-12 (Michie 1978) for New Mexico's adoption of Section 12 of the U.A.A.

222. 940 P.2d at 1178.

223. *Id.*

224. *Id.* at 1177.

225. *Id.* at 1179. In claiming uninsured motorist benefits, Medina misrepresented his ability to work, his psychological and physical condition, and lied about his work history. *Id.* at 1176, 1179.

226. *Id.* at 1179.

227. No. C5-97-536, 1997 WL 527250, at *2 (Minn. Ct. App. Aug. 26, 1997). See MINN. STAT. § 572.19 (1996) for Minnesota's adoption of Section 12 of the U.A.A.

228. *International Union of Operating Eng'rs*, 1997 WL 527250, at *2.

after he was convicted of a felony.[229] In the arbitration proceeding following his termination, McCormick testified that his felony conviction would be reduced to a misdemeanor and that he would be discharged from probation. The effectiveness of the arbitration award was contingent upon the promised reduction.[230] In January 1996, the arbitrator upheld McCormick's termination because his felony conviction had not been reduced and McCormick was still on probation.[231] In April 1996, the union moved to have the award confirmed after McCormick's conviction was finally reduced and he was discharged from probation.[232] The school district claimed that McCormick committed fraud by representing that the "discharge from probation and reduction in sentence would occur in June 1995".[233] Although the school district claimed not to have discovered the alleged fraud until after the ninety day time limit to apply for a vacatur of the award expired, the court held that the time limit still governed because the school district did not apply for vacatur within ninety days after the discovery of the alleged fraud.[234]

B. Partiality, Corruption, or Misconduct of the Arbitrator

In an effort to ensure that all parties receive a fair hearing, arbitrators are required to maintain impartiality.[235] Courts must vacate an award if there is "evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any of the parties."[236]

In *Bopp v. Brames*, Bopp argued that the arbitration award itself demonstrated that the arbitrators were partial and biased against him.[237] Since "evident partiality" is not defined in the statute,[238] the Indiana Court of Appeals construed Section 12 "to effectuate [the U.A.A.'s] general purpose to make uniform the law of those states which enact similar arbitration statutes."[239] The court adopted the following test for partiality sufficient for vacatur:

> a party must show interest or bias that is direct, definite and capable of demonstration; proof of partiality may not be remote, uncertain or speculative. . . . Stated another way, when [the court] review[s] an arbitration award for evident partiality, [the court] decide[s] whether the arbitration proceedings were fundamentally unfair.[240]

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229. *Id.* at *1.
230. *Id.*
231. *Id.*
232. *Id.*
233. *Id.* at *2.
234. *Id.*
235. *See* UNIF. ARBITRATION ACT § 12.
236. UNIF. ARBITRATION ACT § 12.
237. 677 N.E.2d 629, 633 (Ind. Ct. App. 1997).
238. See IND. CODE § 34-4-2-21 (1997) for Indiana's adoption of Section 12 of the U.A.A.
239. *Bopp*, 677 N.E.2d at 633.
240. *Id.* Indiana's alternative dispute resolution rules help define partiality by providing that: A neutral may not have an interest in the outcome of the dispute, may not be an employee of any of the parties or attorneys involved in the dispute, and may not be related to any of the parties or attorneys in the dispute. *Id.* at 633; *see* IND. CODE § 34-4-2-21 (1997).

The court concluded that the findings of fact or the size of the award alone did not raise an inference of partiality.[241] Further, the fact that the relief granted was within the scope of the arbitration agreement cut against the assertion of partiality.[242] Ultimately the court concluded that the assertion of partiality was unfounded and stated that Bopp was entitled to a fair proceeding, not a favorable result.[243]

C. Arbitrator Exceeding the Scope of Authority

Section 12 provides that courts must vacate an award if the "arbitrators exceeded their powers."[244] Parties frequently contend that the arbitrators exceeded the scope of their authority in formulating a remedy or in deciding an issue. The courts often look to the agreement to arbitrate to determine the proper scope of the arbitrator's authority.[245]

1. Arbitrator Did Not Exceed Scope of Authority

In *Heatherly v. Rodman & Renshaw*, Heatherly asserted that the arbitrator exceeded the scope of her authority by not awarding him attorney fees, even though he conceded that the arbitrator had authority to decide the issue.[246] In reaching its decision, the court stated, "It follows that, because [Heatherly] disputes only the result reached by the arbitrator, not her authority to act, we must reject his contention that the arbitrator exceeded her authority in deciding his claim for attorney fees."[247]

In *Bopp v. Brames*, the Indiana Court of Appeals considered whether the arbitrators exceeded the scope of their authority and whether the arbitrators exhibited "evident partiality."[248] The court adopted the approach that arbitration awards should be reviewed narrowly and that the party seeking vacatur bears the burden of proving the grounds asserted.[249] In this case Bopp contended that the arbitrators exceeded their scope of authority when they issued relief outside the scope of the arbitration agreement.[250] When an award is attacked under the U.A.A. on the ground that the arbitrators exceeded their powers through erroneous interpretation of contract, the reviewing court determines whether the arbitrators' construction of the contract "is a reasonably possible one that can seriously be made in the context in which the contract was made."[251] The court determined that the arbitrators'

241. *Bopp*, 677 N.E.2d at 633-34.
242. *Id.* at 634.
243. *Id.*
244. UNIF. ARBITRATION ACT § 12.
245. *See* Roosa v. Tillotson, 695 A.2d 1196 (Me. 1997).
246. 678 N.E.2d 59, 61 (Ill. App. Ct. 1997). See 170 ILL COMP. STAT. 5/12 (West 1994) for Illinois' adoption of Section 12 of the U.A.A.
247. *Id.*
248. 667 N.E.2d 629, 630 (Ind. Ct. App. 1997).
249. *Id.* at 631.
250. *Id.*
251. *Id.* at 632 (quoting University of Alaska v. Modern Constr., Inc., 522 P.2d 1132, 1137 (Alaska 1974)).

interpretation of the agreement was reasonable, and that Bopp failed to demonstrate that the arbitrators exceeded their authority.[252]

In *Padilla v. D.E. Frey & Co., Inc.*, the Colorado Court of Appeals held that the arbitrators' award of punitive damages did not exceed their scope of authority.[253] A Colorado statute provides that arbitrators are prohibited from awarding punitive damages "unless otherwise provided by law."[254] The court held that statutory rights, including the right not to have an issue arbitrated, may be waived.[255] By agreeing to arbitrate under the rules of the NASD ("National Association of Securities Dealers"), D.E. Frey granted the arbitrators the ability to award "damages and other relief."[256] After Padilla filed his statement requesting punitive damages, D.E. Frey "did not challenge his right to recover punitive damages through arbitration proceedings or seek to bring the proceedings within the Colorado Arbitration Act."[257]

In *Stahulak v. City of Chicago*, the Illinois Court of Appeals held that despite the extremely narrow review of an arbitrator's award and the limited scope of authority to grant relief based on the arbitration agreement, "the arbitrator must have flexibility in formulating a remedy to meet a wide variety of situations [that] the drafters of [a collective bargaining agreement] never . . . [contemplated]."[258] In this case, the arbitrator's reinstatement of the plaintiff was proper because it met the standard of contract law which requires that the injured party be put into a position that she "would have occupied if the contract had been performed, not a better position."[259]

The Supreme Court of Iowa, in *LCI, Inc. v. Chipman*, affirmed an award on the ground that the arbitrators did not exceed their scope of authority by addressing the breach of covenant issue and relying on insufficient evidence to support the award.[260] The court first addressed whether breach of covenant was beyond the scope of arbitration.[261] If so, the arbitrators exceeded their powers by addressing it.[262] The court refused to vacate the award because the arbitrator did not exceed his powers and properly decided the issue.[263] In coming to its decision, the court relied on the evidence presented as well as a "broad view of the scope of arbitration."[264] The court then considered whether the "penalty" award was properly within the scope of arbitration.[265] The court determined that the award was compensatory, not punitive, and therefore fell within the scope of arbitration.[266]

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252. *Id.* at 632-33.
253. 939 P.2d 474, 477 (Colo. Ct. App. 1997). See COLO. REV. STAT. § 13-22-214 (1987) for Colorado's adoption of Section 12 of the U.A.A.
254. *Id.*
255. *Id.* at 478.
256. *Id.*
257. *Id.*
258. 684 N.E.2d 907, 912 (Ill. App. Ct. 1997).
259. *Id.* at 913.
260. 572 N.W. 2d 158, 160-62 (Iowa 1997). See IOWA CODE § 679A.12 (1997) for Iowa's adoption of Section 12 of the U.A.A.
261. *LCI, Inc.*, 572 N.W.2d at 159-60.
262. *Id.*
263. *Id.* at 160.
264. *Id.*
265. *Id.* at 160-61.
266. *Id.* at 161.

LCI further argued that the arbitrators exceeded their powers by rendering an award without sufficient supporting evidence.[267] At common law, and under the U.A.A., insufficient evidence is not grounds for vacatur of an award.[268] The Iowa legislature, however, has modified this rule by providing that if "[s]ubstantial evidence on the record as a whole does not support the award" the award must be vacated.[269] According to the court, "evidence is substantial if a reasonable person would accept it as sufficient to reach a conclusion."[270] Under such a standard the review of an arbitration award is like judicial review of a jury verdict.[271] After reviewing the evidence the court concluded that it was of sufficient weight to support the award.[272]

The court made an additional observation and commented that a high degree of scrutiny of arbitration awards would be "inconsistent with the rationale underlying the concept of arbitration."[273] The court stated that "[a] refined quality of justice is not the goal in arbitration matters. Indeed such a goal is deliberately sacrificed in favor of a sure and speedy resolution."[274]

2. Arbitrator Did Exceed Scope of Authority

In *Roosa v. Tillotson*, the Supreme Court of Maine determined that the arbitrator exceeded the scope of her authority because the parties did not agree to arbitrate.[275] The court stated that for a dispute to be subject to arbitration, both parties must generally agree to arbitrate and present a claim that appears to be encompassed by the arbitration agreement.[276] The court determined that there was no agreement to arbitrate between Roosa and Tillotson and vacated the award.[277]

In *Pittman Mortgage Co., Inc. v. Edwards*, the Supreme Court of South Carolina vacated a portion of an award because the arbitrators exceeded their powers by resolving an issue not within the scope of the agreement to arbitrate.[278] According to the court, an award must be supported if the grounds "can be inferred from the facts [and if the] factual inferences and legal conclusions supporting the award are barely colorable."[279] In this case the pleadings represented the arbitration agreement and limited the arbitrators authority to render relief.[280] The requested relief was the issuance of stock, but the arbitrators awarded Edwards the value of the

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267. *Id.*
268. *Id.*
269. *Id.* See IOWA CODE § 679A.12 (1997) for Iowa's adoption of Section 12 of the U.A.A.
270. *LCI, Inc.*, 572 N.W.2d at 161.
271. *Id.* at 162 (quoting 6 C.J.S. *Arbitration* § 162, at 430 (1975)).
272. *Id.*
273. *Id.*
274. *Id.* (quoting Reicks v. Farmers Commodities Corp., 474 N.W.2d 809, 811 (Iowa 1991)).
275. 695 A.2d, 1196, 1198 (Me. 1997). See ME. REV. STAT. ANN. tit. 14 § 5938 (West 1980) for Maine's adoption of Section 12 of the U.A.A.
276. *Id.* at 1197.
277. *Id.* at 1198.
278. 488 S.E. 2d 335, 338 (S.C. 1997). See S.C. CODE ANN. § 15-48-130 (Law Co-op. 1996) for South Carolina's adoption of Section 12 of the U.A.A.
279. *Id.*
280. *Id.*

stock, thereby exceeding their powers.[281] The court also held that the arbitrators further exceeded their authority by holding Pittman Mortgage Company personally liable for the value of the stock, but not the unpaid income.[282]

In *Smith v. Waller*, the Tennessee Court of Appeals held that despite the fact that an arbitration award "is not subject to the preponderant evidence standard of review, and moreover, that it is not subject to vacatur for a mere mistake of fact or law," the arbitrator in this case exceeded the scope of her authority by awarding attorney fees.[283] The court held that "[a]rbitrators do not have carte blanch powers" and are bound by the arbitration agreement when rendering an award.[284] Since neither the lease nor the U.A.A. provided for an award of attorney fees, the arbitrator exceeded her scope of authority by awarding them.[285]

In *MGA Insurance Co. v. Bakos*, the Superior Court of Pennsylvania vacated an arbitration award on the grounds that the trial court applied an overly narrow common law arbitration standard of review.[286] Under Pennsylvania common law arbitration, an award "'is binding and may not be vacated or modified unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award.'"[287] The Superior Court found that such a narrow application constituted an error as a matter of law.[288] The court remanded the case for review in accordance with statutory arbitration principles, rather than those of common law arbitration.[289]

In *Geissler v. Sanem*, the Montana Supreme Court addressed an issue of first impression: what type of arbitrator misconduct constitutes exceeding the scope of authority and justifies vacatur of an award?[290] The court began by restating the principle that the judiciary's power of review is limited and does not permit scrutiny that would rise to the level of review of the merits of the case.[291] The court, however, held that despite any case law to the contrary, the appropriate standard of review in future cases included the power to review awards for manifest disregard of the law.[292] "[A]s a matter of public policy and based upon a court's independent responsibility, a court cannot have such limited authority in its review that it is forced to ignore an arbitrator's manifest disregard of Montana law."[293] Manifest

281. *Id.*
282. *Id.*
283. No. 03A01-9704-CH-00127, 1997 WL 412537, at *1-2 (Tenn. Ct. App. July 24, 1997). See TENN. CODE ANN. § 29-5-313 (1983) for Tennessee's adoption of Section 12 of the U.A.A. *But see* discussion *infra* Part E (Heatherly v. Rodman & Renshaw, Inc., 678 N.E.2d 59 (Ill. App. Ct. 1997) (failure to award attorney fees does not violate public policy)).
284. *Smith*, 1997 WL 412537, at *2.
285. *Id.* at *1-2.
286. 699 A.2d 751, 753 (Pa. 1997). See 42 PA. CONS. STAT. § 7317 (1985) for Pennsylvania's adoption of Section 12 of the U.A.A.
287. *MGA Ins. Co.*, 699 A.2d at 753 n.5 (quoting 42 PA. CONS. STAT. § 7341 (1982)).
288. *Id.* at 753.
289. *Id.* at 753-55. Pennsylvania's statutory arbitration principles are the same as those found in Section 12 of the U.A.A. *Id.*
290. 949 P.2d 234, 236 (Mont. 1997). See MONT. CODE ANN. § 27-5-312 (1997) for Montana's adoption of Section 12 of the U.A.A.
291. *Geissler*, 949 P.2d at 236.
292. *Id.* at 237-38.
293. *Id.* at 237.

disregard of the law, according to the court, consists of more than simple misapplication of the law, and requires a blatant refusal to follow it.[294] The court adopted the second circuit test for manifest disregard of the law, stating that vacatur requires that the "arbitrator [appreciate] the existence of a clearly governing legal principle but . . . ignore[s] or pay[s] no attention to it."[295] Under the facts of the case, the court was unable to conclude that the arbitrators clearly ignored applicable law.[296]

In *Crawford County v. AFSCME District Council*, the Commonwealth Court of Pennsylvania applied the "'essence test'" to determine whether the arbitrator exceeded the scope of his authority by reinstating a correctional officer once the arbitrator found just cause for disciplining the officer.[297] Under the "essence test," a court can "only reverse an arbitrator if, after viewing all the evidence, and reasonable inferences drawn therefrom, in the light most favorable to the prevailing party, there is insufficient evidence to support the elements of the claim or defense as a matter of law."[298] The arbitrator has the authority to determine if just cause exists for the disciplining of a public employee under a collective bargaining agreement if the agreement does not define the meaning of just cause and there are no published rules or regulations.[299] Once the arbitrator determines that just cause exists, the discipline imposed cannot be overturned by a reviewing court.[300] In this case, once the arbitrator determined that just cause existed, "the inquiry had to end and the disciplinary action of the County had to be accepted."[301] The arbitrator, therefore, acted in a manifestly unreasonable manner by modifying the disciplinary action taken, and the court vacated the arbitration award.[302]

D. Application for Vacatur of Award Within Ninety Days

In order to facilitate the finality and reliability of arbitration awards, the U.A.A. imposes a ninety day time limit to file an application for vacatur.[303] This provision is strictly construed to effectuate the U.A.A.'s purpose.[304]

In *Medina v. Foundation Reserve Ins. Co.*, Inc., the Supreme Court of New Mexico held that where the Rules of Civil Procedure and the Arbitration Act conflict with regard to the time limit for filing for vacatur, the Arbitration Act provision governs.[305] The court viewed the Arbitration Act as a "special statutory proceeding

294. *Id.* at 237-38.
295. *Id.* at 238-39 (citing Merrill Lynch, Pierce, Fenner & Smith v. Bobker, 808 F.2d 930, 933-34 (2d Cir. 1986)).
296. *Id.* at 239.
297. 693 A.2d 1385, 1393 (Pa. Commw. Ct. 1997), *appeal denied*, 704 A.2d 1383 (Pa. 1997).
298. *Id.* at 1389.
299. *Id.* at 1391-92.
300. *Id.*
301. *Id.* at 1393.
302. *Id.* at 1393-94.
303. UNIF. ARBITRATION ACT § 12. Some states have reduced the time limit to thirty days. *See* Springfield Teachers Ass'n v. Springfield Sch. Dirs., 705 A.2d 541 (Vt. 1997).
304. *See Springfield Teachers Ass'n*, 705 A.2d at 541.
305. 940 P.2d 1175, 1178 (N.M. 1997). The Rules of Civil Procedure allow the court to set aside a judgment within one year after its entry. *Id.*; *see* FED. R. CIV. P. 60(b).

which requires finality of an award in order to achieve the purpose behind the Act."[306] In order to effectuate the Act's purpose, the court should have applied the Arbitration Act and vacated the award instead of applying the Rules of Civil Procedure and determining that Foundation Reserve Insurance Co. did not file a timely application for vacatur.[307]

In *Chicago Southshore v. Northern Indiana Commuter Transportation District*, the Illinois Court of Appeals refused to consider Northern Indiana's substantive arguments in favor of vacating the award because they were not raised within the ninety day time limit of Section 12(b) of the U.A.A.[308] According to the court, the filing of a petition to confirm an award does not effect the rule that the petition for vacatur must be filed within ninety days after the delivery of the copy of the award.[309] Therefore, any arguments to vacate an award must be raised within ninety days after delivery of the award to be considered timely regardless of when the petition to confirm was filed.[310] Since Northern Indiana did not abide by the ninety day time limit, the petition for vacatur was time-barred.[311]

In *Caron v. Reliance Insurance Co.*, the Superior Court of Pennsylvania reviewed the trial court's decision to deny Reliance Insurance's request to file a petition to vacate an arbitration award after the statutory thirty day time limit.[312] The trial court denied the petition after determining that the failure to file a timely motion for vacatur was the result of negligence on the part of Reliance Insurance's counsel.[313] The court articulated that "[e]xtensions of time will only be granted in cases where there is fraud or some breakdown in the court's operation."[314] The court upheld the trial court's decision on the grounds that the trial court had discretion to determine whether to grant an extension and that no other basis for reversal existed.[315] As a result, Reliance Insurance waived any issue related to the decision of the arbitrator by failing to file a motion to vacate within the thirty day time limit.[316]

In *Springfield Teachers Association v. Springfield School Directors*, the Springfield School Directors argued that affirmative defenses and claims that an arbitrator exceeded her jurisdiction were not subject to the thirty day time limit for motions to vacate imposed by the Vermont Arbitration Act ("V.A.A.").[317] In order to effectuate the purpose of the V.A.A., the Vermont Supreme Court refused to construe the statute as exempting affirmative defenses to a motion to confirm an

306. *Medina*, 940 P.2d at 1178.
307. *Id.*
308. 682 N.E.2d 156, 162 (Ill. App. Ct. 1997), *rev'd on other grounds*, 703 N.E.2d 7 (Ill. 1998).
309. *Id.*
310. *Id.*
311. *Id.* at 163.
312. 703 A.2d 63, 64 (Pa. 1997). Pennsylvania adopted a thirty day time limit rather than the U.A.A.'s ninety day time limit. *Id.*; *see* 42 PA.CONS. STAT. § 7314(b) (1982).
313. *Caron*, 703 A.2d at 64.
314. *Id.* at 65.
315. *Id.*
316. *Id.*
317. 705 A.2d 541, 546 (Vt. 1997). Unlike the U.A.A., Vermont has chosen a thirty day time limit for motions to vacate in VT. STAT. ANN. tit. 12, § 5677 (1995).

award and jurisdictional claims from the thirty day time limit.[318] The court stated that "the usefulness of arbitration is undermined if issues can be withheld from the arbitrator and raised for the first time in court long after the arbitration is over."[319]

1. Public Policy

Courts will depart from the U.A.A.'s articulated grounds for vacatur only when an arbitration award is contrary to what the court determines to be a "well-defined and dominant" public policy.[320] In determining if such a public policy violation exists, the courts narrowly construe what is to be considered a "well-defined and dominant" public policy.[321]

In *Heatherly v. Rodman & Renshaw, Inc.*, the Illinois Court of Appeals held that the "failure to award attorney fees in an action for wages due [did] not arise to the level of the sort of immoral or illegal acts that are so repugnant to public policy that an arbitration award based upon them must be vacated."[322] The court recognized that the public policy exception is extremely narrow and should only be applied when a public policy violation is clearly demonstrated.[323] The court applied a two-step analysis to determine whether the arbitration award violated public policy.[324] The court first determined whether a "'well-defined and dominant' public policy [could] be identified," and if so, "whether the award violated the policy."[325] The court held that the mere existence of public policy considerations in a statute is not sufficient to define the policy as well-defined and dominant because doing so would permit too broad of a judicial review.[326] Such a construction would permit a vacatur where the arbitrator simply misapplied the statute and would violate the principle that a mistake of law is not sufficient grounds to vacate an award.[327] In applying the test the court determined that Heatherly's appeal failed to identify the well-defined and dominant public policy but argued instead that the arbitrator misinterpreted the statute.[328] Therefore, further inquiry under the second prong was unnecessary.[329]

VIII. SECTION 13: MODIFICATION OR CORRECTION OF AWARD

Section 13 of the Uniform Arbitration Act sets forth three situations in which a confirming court shall modify or correct an arbitrator's award: (1) where it is clear that the arbitrator miscalculated figures, or incorrectly described a person, property or thing referred to in the award; (2) the arbitrator awarded upon a matter not

318. *Springfield Teachers Ass'n*, 705 A.2d at 546.
319. *Id.* at 547.
320. *See Heatherly v. Rodman & Renshaw*, 678 N.E.2d 59 (Ill. App. Ct. 1997).
321. *See Id.*
322. 678 N.E.2d 59, 63 (Ill. App. Ct. 1997).
323. *Id.* at 62.
324. *Id.*
325. *Id.*
326. *Id.* at 62-63.
327. *Id.* at 63.
328. *Id.* at 64.
329. *Id.*

submitted to arbitration; or (3) the award is somehow imperfect as a matter of form.[330] A party's application for modification is subject to a ninety day statute of limitations.[331]

At least one court has applied situation (2) very loosely. In *Kutch v. State Farm Mutual Insurance Company,* the Colorado Court of Appeals held that after the statute of limitations runs, an insurer may still allege as a defense in a confirmation hearing that maximum insurance policy limits were exceeded by the award.[332] This is true despite the fact that the policy limits were not brought up as an issue during the arbitration proceeding.[333] The court concluded that Section 13 did not provide grounds upon which State Farm could bring its objection regarding the extent of coverage, and therefore did not apply.[334]

This holding seems to be in direct conflict with other courts' interpretations of Section 13. In *Smith v. Waller*[335] and *Chicago Southshore*,[336] courts held that the statute of limitations is inflexible based on the plain meaning of the words. The plain language states that a court can modify within ninety days "if the arbitrators have awarded on a matter not submitted to them."[337] One could argue that in *Kutch* the maximum amount allowable under the policy was a matter not submitted to the arbitrator, and, therefore, the insurance company's argument falls under the statute and is subject to the statute of limitations. One could also argue that if the matter does not fall under the statute, then the court could never modify such an award, because Section 13 sets out the only three situations in which a court can properly modify an award. The spirit of Section 13 seems to suggest that the parties have a specified time to notify the court of technical errors before such defenses are lost. Nevertheless, the court held that parties' rights may never turn on the technicalities of arbitration law.[338]

IX. SECTION 16: APPLICATIONS TO COURT

Section 16 of the U.A.A. provides that an application to the court under the U.A.A. shall be by motion and shall be heard in the manner and upon the notice provided by local law or rule for the making and hearing of motions.[339] It also states that notice shall be served in the manner provided by local law for the service of a summons in an action, unless the parties have agreed otherwise.[340] The practical

330. UNIF. ARBITRATION ACT § 13. In any of the three situations, the court cannot act if modifying will affect the merits of the controversy.

331. *Id.*

332. 944 P.2d 623 (Colo. Ct. App. 1997), *rev'd on other grounds,* 960. P.2d 93 (Colo. 1998). Colorado has shortened the statute of limitations to thirty days. For Colorado's version of § 13 see COLO. REV. STAT. § 13-22-215 (1993).

333. *Kutch,* 944 P.2d. at 624.

334. *Id.* at 625.

335. No. 03A01-9704-CH-00127, 1997 WL 412537 (Tenn. Ct. App. 1997).

336. 682 N.E.2d 156, 163 (Ill. Ct. App. 1997), *rev'd on other grounds,* 703 N.E.2d 7 (Ill. 1998)).

337. UNIF. ARBITRATION ACT § 13.

338. *Kutch,* 944 P.2d at 625.

339. UNIF. ARBITRATION ACT § 16.

340. *Id.*

effect is to make states' rules of civil procedure applicable to court proceedings based on the arbitration agreement, just like any other court proceeding.[341]

In *MGA Insurance Co. v. Bakos*, a party asserted that the court erred when it rendered a decision on a petition to vacate an award without permitting the parties to conduct discovery pursuant to Pennsylvania Rules of Civil Procedure 206.7.[342] The Pennsylvania Superior Court determined that under Section 16 applications to court shall be determined in the manner prescribed by Pennsylvania civil law; and because Pennsylvania law allows parties to conduct discovery whenever there is a disputed issue of material fact, the parties were entitled to discovery.[343]

X. SECTION 17: JURISDICTION OF THE COURT

Once an agreement to arbitrate under Section 1 of the U.A.A. is made, Section 17 vests the power to review the arbitration award in the court.[344] This section provides that an agreement to submit to arbitration confers jurisdiction on any competent court to enforce the agreement and to enter judgment on any award thereunder.[345]

A. Enforcing the Arbitration Agreement

In *Samson v. Hartsville Hospital Inc.*, the Tennessee Court of Appeals considered a complaint requesting a declaratory judgment that the court had jurisdiction to rule on the merits of a dispute.[346] The complaint alleged that the termination of the parties' Physician Agreement and the hospital's subsequent failure to execute a written renewal of the contract resulted in the elimination of all obligations under the contact, including the arbitration agreement.[347] The court noted that under Section 1 of Tennessee's U.A.A. a written agreement to submit a controversy to arbitration is "valid, enforceable, and irrevocable save upon such grounds as exist [at] law or in equity for the revocation of any contract."[348] Section 17(b) further directs that jurisdiction is conferred on the court to enforce the making of the arbitration agreement and to enter judgment on the award thereunder.[349] If a party can show the kind of agreement described by Section 1 and a refusal by the other party to arbitrate, the court is authorized by Section 17 to make a summary determination as to whether the party is entitled to arbitration.[350] In the present case the action was initially filed by the party refusing to arbitrate rather than as specified

341. *Id.*
342. 699 A.2d 751, 754 (Pa. 1997); *see* PA. R. CIV. P. 206.7.
343. *MGA Ins. Co.*, 699 A.2d at 754. For Pennsylvania's version of § 16 see 42 PA. CONS. STAT. § 7315 (1980).
344. UNIF. ARBITRATION ACT § 17.
345. *Id.* The U.A.A. defines "court" under this section as any court of competent jurisdiction of this state.
346. No. 01-A-01-9609-CH-00430, 1997 WL 107167, at *1 (Tenn. App. Mar. 12, 1997).
347. *Id.*
348. *Id.* at 2; *see* TENN. CODE ANN. § 29-5-301(a) (1983).
349. *Id.* § 29-5-301(b).
350. *Id.* § 29-5-303.

under Section 17, but the court felt that the minor deviation would not impair the hospital's rights under the U.A.A.[351] After considering the intent of the parties and the strong public policy reflected by the U.A.A. in favor of arbitration, the court construed the arbitration clause liberally in favor of arbitration.[352]

In *Nationwide General Insurance v. Estate of Truitt*, the parties, pursuant to policy provisions, submitted their dispute over insurance coverage to arbitration.[353] Before the arbitration hearing could take place, however, Nationwide filed a declaratory judgment action in court maintaining that a General Release which the Estate had previously signed with another insurance company precluded her from pursuing the present claim.[354] The arbitrators, in fear of usurping the court's authority, refused to consider the general release issue on the grounds that the declaratory judgment proceeding prevented the exercise of their jurisdiction.[355] The Estate then filed a motion to dismiss, arguing that the court lacked jurisdiction over her legal right to pursue the claim.[356]

In reviewing the general law concerning arbitration, the court noted that Delaware has adopted the U.A.A., which effects a public policy to enforce arbitration agreements.[357] The court stated "it is no longer of any consequence that a court, otherwise competent to hear the dispute, is ousted of its jurisdiction by the arbitration process."[358] The court held that it did not have jurisdiction over the declaratory judgment action once the arbitration process began because the parties by contract had deprived it of jurisdiction of the matter.[359]

B. Acceptance of Jurisdiction Between Eligible Forums

Two cases, *Chicago Southshore v. Northern Indiana Commuter Transportation District*[360] and *Northern Indiana Commuter Transportation District v. Chicago Southshore*,[361] involve parties who had seen substantial litigation over the jurisdiction of a state court to enter judgment on an arbitration award. Chicago Southshore, an Indiana partnership, entered into a service contract with the Northern Indiana Commuter Transportation District (NICTD), an Indiana state agency.[362] The contract provided that any disputes were to be resolved through arbitration proceedings in Indiana and all provisions of the agreement to be interpreted using Indiana law.[363] It stated "if either party claims that the arbitrator's decision is based

351. *Samson*, 1997 WL 107167, at *2; *See* TENN. CODE ANN. § 29-5-319 (creating a rare exception to the general rule that a party is not entitled to appeal a judgment or order unless it is a final one).
352. *Samson*, 1997 WL 107167, at *4.
353. No. 96C-01-035, 1997 WL 524068, at *1 (Del. Super. Ct. 1997).
354. *Id.*
355. *Id.*
356. *Id.* at *2.
357. *Truitt*, 1997 WL 524068, at *2 (citing Pettinaro Constr. Co. V. Harry C. Partridge, Jr. & Sons, 408 A.2d 957, 961 (1979)); *see* DEL. CODE ANN. tit. 10, § 5701-25 (1972).
358. *Truitt*, 1997 WL 524068, at *2.
359. *Id.*
360. 682 N.E.2d 156 (Ill. App. Ct. 1997), *rev'd on other grounds*, 703 N.E.2d 7 (Ill. 1998).
361. 685 N.E.2d 680 (Ind. 1997).
362. *Chicago Southshore*, 682 N.E.2d at 157.
363. *Id.* at 158.

upon an error of law, it may . . . institute an action at law within the state of Indiana to determine such legal issue."[364] Upon a disagreement over the interpretation of certain contractual provisions, the parties submitted their dispute to arbitration.[365] The parties agreed to conduct the arbitration hearings in Illinois for the convenience of the arbitrators who lived there.[366] Following the hearings, an award was granted to Southshore.[367]

The arbitration award was subsequently challenged in a declaratory judgment action brought by NICTD in Indiana.[368] Chicago Southshore moved to dismiss the action, claiming the Indiana court did not have jurisdiction under Sections 1 and 17 of the Indiana U.A.A.[369] The court held that because the arbitration hearings took place in Illinois, it lacked subject matter jurisdiction over the dispute and dismissed the complaint.[370]

Chicago Southshore then filed a motion for confirmation of the arbitration award in Illinois under its U.A.A., and NICTD responded by filing a limited appearance to contest the court's subject matter jurisdiction over the dispute.[371] The Illinois court determined it had jurisdiction to review and confirm the arbitrator's award because it was the situs of the hearings and also because Indiana had already refused to hear the case.[372] NICTD asked the court to stay any confirmation, pending a complete adjudication of the complaint for declaratory judgment which was then before the Indiana Court of Appeals.[373] Illinois refused to stay the proceedings and entered judgment confirming the award, leading NICTD to file an appeal.[374]

Meanwhile, the Indiana Court of Appeals found that the Indiana trial court did have jurisdiction.[375] It held that the agreement and not the place of arbitration, controlled the location of judicial review and that the arbitrators' interpretation of the contract was contrary to law.[376] The court then proceeded to rule on the merits of the complaint.[377] Following this decision, NICTD returned to Illinois and filed a petition to vacate or modify the Illinois order which was subsequently denied by the Illinois trial court and appealed by NICTD.[378]

In analyzing the jurisdiction issue the Illinois court in *Chicago Southshore* noted that the subject matter jurisdiction of the trial court to review an arbitration award was limited and circumscribed by statute, and that parties could not expand

364. *Id.*
365. *Id.*
366. *Id.*
367. *Id.*
368. *Id.*
369. *Northern Indiana*, 685 N.E.2d at 683; *see* IND. CODE ANN. § 34-4-2-1 to -22 (West 1969).
370. *Chicago Southshore*, 682 N.E.2d at 158.
371. *Id.*, 682 N.E.2d at 158; *see* 710 ILL. COMP. STAT. ANN. 5/1 to 5/23 (West 1992).
372. *Chicago Southshore*, 682 N.E.2d at 158.
373. *Id.* at 158-59.
374. *Id.* at 159.
375. *Northern Indiana*, 685 N.E.2d at 684.
376. *Id.*
377. *Id.*
378. *Id.*

that limited jurisdiction.[379] The court disagreed with the holding by the Indiana Court of Appeals that an agreement to waive the situs of the arbitration did not alter the contract provisions conferring subject matter jurisdiction to Indiana.[380] It observed that an arbitration agreement was to be construed in the same manner as any other agreement, that a contractual right to arbitration could be waived as with any other contract right, and that when a party conducted itself in a manner inconsistent with the subject clause it was an indication of an abandonment of the contractual right.[381]

The court held that the statutory language of the U.A.A., combined with the circumstances present, determined jurisdiction of the award.[382] It noted that at the time the Illinois trial court was asked to confirm the award there were no binding Indiana decisions regarding jurisdiction, and if the Illinois court had not accepted jurisdiction there would have been no forum for enforcing the arbitration.[383] The Illinois court found it had jurisdiction of the arbitration award based upon the statutory language of the Act, the Act's direction that it be construed uniformly, and the common sense application of the Act to meet the needs of the parties.[384]

In *Northern Indiana,* the Indiana Supreme Court ordered that the Indiana proceedings be stayed for a reasonable time pending the outcome of the Illinois proceedings.[385] It found the case largely turned on the Full Faith and Credit Clause; however, before it was bound by another state's judgment, it could first inquire into the jurisdictional basis to determine if full faith and credit need be given.[386] The court noted that Illinois had decided NICTD's parol agreement to arbitrate conferred jurisdiction on it, notwithstanding the general requirement under its U.A.A. for a written agreement.[387] In criticizing the decision, the Indiana court raised the possibility that the Illinois court had placed excessive weight on the physical presence of the arbitrators and ignored the intent which the parties expressed in the agreement.[388] Despite its criticism, the court stated that because the jurisdictional issue had been fully litigated in Illinois it would stand.[389] Finally, the court focused on whether the Indiana courts had subject matter jurisdiction over the case.[390] It noted that under Section 17 of the Indiana U.A.A. the making of an arbitration agreement providing for arbitration in the state conferred jurisdiction on an Indiana court to enforce the agreement and to enter judgment on an award.[391]

379. *Chicago Southshore,* 682 N.E.2d at 159. The court reasoned it had limited judicial review because the parties had chosen the forum and must therefore be content with the informalities and possible eccentricities of their choice. *Id.*
380. *Id.* at 160.
381. *Id.*
382. *Id.*
383. *Id.* at 161.
384. *Id.*
385. *Northern Indiana,* 685 N.E.2d at 685.
386. *Id.*
387. *Id.* at 688.
388. *Id.*
389. *Id.*
390. *Id.* at 694.
391. *Id.* at 695.

In considering whether the arbitration provisions could be waived, the court held the existence of waiver depended upon the circumstances of each case.[392] It found that the facts were "too murky" in the present case to constitute a basis for finding waiver of the original agreement to arbitrate in Indiana because waiver of a contractual right required an intentional relinquishment of a known right.[393] At best the parol agreement was found sufficient for jurisdiction in Illinois as a matter of Illinois law and, although NICTD had waived the requirement that all arbitration proceedings occur in Indiana, the written agreement remained intact. Indiana had jurisdiction over the subject matter even if it was bound by full faith and credit to enter a judgment of dismissal upon final resolution of the matter in Illinois.[394]

C. Standing Among the Parties

In *Stahulak v. Chicago*, Stahulak, a firefighter, was discharged during his probationary period of employment. His Union subsequently filed a grievance on his behalf which proceeded to arbitration.[395] The arbitrator found that under the contract, the employer must first conduct an investigation and hold a review meeting with the employee before it could discharge a probationary employee.[396] Stahulak was reinstated for the sole purpose of complying with the arbitrator's orders.[397] After an investigation and the required meeting, he was once again discharged by his employer.[398] Stahulak filed a complaint in court, seeking to vacate the arbitration award because the arbitrator had exceeded his powers in fashioning the remedy.[399] The employer argued that Stahulak lacked standing to bring suit based on the Illinois Public Labor Relations Act. This act provides that suits brought after an arbitration which allege breach of the collective bargaining agreement (CBA) can be brought by the parties to the CBA. It also provides that the arbitration procedures of a CBA under the Act are subject to the Illinois U.A.A.[400]

The court took notice of federal cases interpreting the Labor Management Relations Act, holding that "individual union members generally lack[ed] standing to collaterally attack their union's resolution of a grievance."[401] It also found that the CBA itself set forth a grievance procedure which clearly contemplated that any subsequent steps, including the invocation of arbitration, were to be initiated by the Union.[402] The court stated that allowing individual unionized employees to collaterally attack their union's resolution of a grievance without showing that the union breached its duty of fair representation would substantially undermine the

392. *Id.*
393. *Id.*
394. *Id.* at 695-96.
395. 684 N.E.2d 907, 909 (Ill. App. Ct. 1997).
396. *Id.*
397. *Id.*
398. *Id.*
399. *Id.*
400. *Id.* at 910. See 5 ILL. COMP. STAT. 315/8-16 (West 1996) for the Illinois Public Labor Relations Act.
401. *Stahulak*, 684 N.E.2d at 911; *see* 29 U.S.C. § 159(a) (1996).
402. *Stahulak*, 684 N.E.2d at 911.

settlement machinery provided by a CBA. Therefore, it required a showing of discrimination or bad faith.[403]

A similar case was handed down by the Minnesota Court of Appeals in *Willis v. Veterans Home Board,* which involved Willis, a probationary employee who was not reinstated by her employer.[404] The Veterans Homes Board informed Willis that it could not deal with her directly because the union was her exclusive representative.[405] The union subsequently pursued formal grievance procedures which were denied by the Board.[406] The appellate court stated that review of an administrative decision by certiorari is limited in scope.[407] The court found it could only consider whether (a) the administrative proceedings were regular and fair, (b) the decision was made under an erroneous theory of law, (c) the decision was arbitrary, oppressive, unreasonable or fraudulent, and (d) there was evidence to support the decision.[408] The court found that nothing in the collective bargaining agreement (CBA) altered Willis's status as a purely at-will probationary employee and that she had no protected property interest in continued employment.[409] The court found that not only was there no basis for extending direct judicial review for an alleged breach of the CBA, but also that the U.A.A. listed the orders in an arbitration proceeding under a public sector CBA from which an appeal could be taken.[410] The court held that the noncertification decision did not trigger appellate review and that unless the CBA provided for an appeal process different from that provided by the Act, the scope and method of judicial review was limited by the statute.[411]

D. Absolute Immunity

In *Bushell v. Caterpillar, Inc.*, testimony was given during an arbitration proceeding which stated that Bushell, an employee of Caterpillar, "slept on the job and falsified employment records."[412] Bushell filed a defamation action in court against Caterpillar, which the trial court subsequently dismissed, holding that statements given in quasi-judicial proceedings are absolutely privileged.[413] In affirming the decision, the appellate court found that all proceedings in which an officer or tribunal exercises judicial functions, including arbitration proceedings, are judicial proceedings.[414] It noted that arbitration proceedings in Illinois are governed by the U.A.A.[415] The court found that arbitration proceedings involve the presentation of evidence and the cross-examination of witnesses, arbitrators are

403. *Id.* at 912.
404. No. C5-96-2289, 1997 WL 193894, at *1 (Minn. Ct. App. 1997).
405. *Id.*
406. *Id.*
407. *Id.*
408. *Id.*
409. *Id.* at 2.
410. *See* MINN. STAT. ANN. § 572.26 (West 1996).
411. *Willis,* 1997 WL 193894, at *2.
412. 683 N.E.2d 1286, 1287 (Ill. Ct. App. 1997).
413. *Id.*
414. *Id.* at 1288 (citing RESTATEMENT (SECOND) OF TORTS § 587 cmt. b, f (1977)).
415. *Id.* (citing 710 ILL. COMP. STAT. 5/1-23 (West. 1994)).

empowered to issue subpoenas and administer oaths, and that arbitration orders are judicially enforceable and appealable in the same manner as civil cases, making them quasi-judicial in nature.[416]

XI. SECTION 19: APPEALS

Section 19 directs that an appeal is to be taken in the manner and to the same extent in arbitration as from orders or judgments in a civil action.[417] Under this section of the U.A.A., an appeal may be taken from:

(1) An order denying an application to compel arbitration . . . ;
(2) An order granting an application to stay arbitration . . .;
(3) An order confirming or denying confirmation of an award;
(4) An order modifying or correcting an award;
(5) An order vacating an award without directing a rehearing; or
(6) A judgment or decree entered pursuant to the [U.A.A.].[418]

A. Authority of Arbitrator

In *Smith v. Waller,* Smith filed an action in the trial court for breach of a lease, and Waller moved to dismiss based on an arbitration clause in the lease agreement.[419] The matter was subsequently submitted to arbitration, and the arbitrator awarded Smith attorney's fees.[420] Waller filed a motion to vacate and/or modify the award alleging the award was beyond the authority of the arbitrators, since neither the lease nor the U.A.A. of Tennessee provided for attorney's fees.[421] The motion was denied by the trial court.[422]

The appellate court found that review of the trial court decision in an arbitration case requires deferential treatment using a clearly erroneous standard.[423] It noted that the arbitrators in *Smith* exceeded their powers when they went beyond the scope of authority granted by the arbitration agreement, so that the court was allowed to vacate an award under section 12.[424] The court further held that the arbitrators exceeded their powers by awarding attorney fees because the lease did not provide for them and because it was well settled in the jurisdiction that attorney fees could not be awarded in contract disputes unless the contract or applicable statutory or decisional law so provided.[425] The court stated that the award of attorney fees was

416. *Id.* at 1289; *see* 710 ILL. COMP. STAT. 5/1-23 (West. 1994).
417. UNIF. ARBITRATION ACT § 19.
418. *Id.*
419. No. 03A01-9704-CH-00127, 1997 WL 412537, at *1 (Tenn. Ct. App. 1997).
420. *Id.*
421. *Id.*; *see* TENN. CODE ANN. § 29-5-301 to -320 (1983).
422. *Smith,* 1997 WL 412537, at *1.
423. *Id.*
424. *Id.* at *2; *see* TENN. CODE ANN. § 29-5-313(a) (1983)).
425. *Smith,* 1997 WL 412537, at 2.

clearly erroneous and modified the judgment by removing the fees pursuant to section 13.[426]

B. Order to Compel Arbitration

In *Pierman v. Green Tree Financial Servicing Corp.*, the trial court denied Green Tree's alternative motion to stay the proceedings and to compel arbitration.[427] This decision was appealed under Section 817(A)(1) of the Oklahoma U.A.A., which states that an order denying an application to compel arbitration is immediately appealable.[428] Green Tree based its position on the existence of an express provision in the disputed contract which required all disputes to be resolved by arbitration.[429] In response, Pierman argued that insurance coverage was exempt from arbitration under Section 818 of the U.A.A.[430] This section exempts "contracts between insuror and insured, except where both the insured and insuror are insurance companies" from the scope of the U.A.A.[431] The court would not consider the question of whether the Federal Arbitration Act preempted the application of section 818.[432] It found that the dispute arose from a right granted by the contract and not an insurance carrier-insured relationship.[433] Therefore, the "state law governing the arbitrability or nonarbitrability of insurer-insured disputes" was inapplicable.[434]

In *Southeast Drilling & Blasting Services v. BRS Construction Co.*, after an action to enforce a lien was filed in the Chancery court, BRS moved to compel arbitration based on an arbitration agreement in the contract at issue.[435] The trial court reserved judgment on the motion for forty-five days, but directed that the discovery proceedings for the current litigation should continue.[436] The trial court subsequently announced its decision to grant a motion to stay the pending arbitration sought by BRS.[437] BRS filed an application for extraordinary appeal of the trial court's decision to compel discovery while its motion to compel arbitration was pending.[438]

The appellate court noted that by enacting the U.A.A., the General Assembly had embraced a legislative policy favoring enforcement of agreements to arbitrate.[439] Under section 29-5-303, a court can make a summary determination concerning whether a party is entitled to arbitration but shall stay "[a]ny action or proceeding

426. *Id.* The court chose to modify the judgment; however, the court noted that it could have vacated the award under section 12. *Id.* at 2; *see* TENN. CODE ANN. § 29-5-313(a) (1983).
427. 933 P.2d 955, 956 (Okla. Ct. App. 1997).
428. *Id.* at 957; *see* OKLA. STAT. ANN. tit. 15, § 17(A)(1) (West 1991).
429. *Pierman*, 933 P.2d at 956.
430. *Id.* at 957; *see* OKLA. STAT. ANN. tit. 15, § 818 (1991).
431. *Pierman*, 933 P.2d at 957.
432. *Id.*
433. *Id.*
434. *Id.*
435. No. 01A01-9706-CH-00272, 1997 WL 399387, at *1 (Tenn. Ct. App. July 16, 1997); *see* TENN. CODE ANN. § 29-5-302 to -303 (1996).
436. *Southeast*, 1997 WL 399387, at *1.
437. *Id.* Once entered, an order resolving a motion to stay arbitration may be appealable as of right. *Id.* (citing TENN. CODE ANN. § 29-5-319 (West 1996)).
438. *Id.*
439. *Id.* at 2; *see* TENN. CODE ANN. § 29-5-301 to -320 (1983).

involving an issue subject to arbitration . . . if an order for arbitration has been made."[440] The appellate court found that the provisions evidenced a clear statutory intent that courts are to determine if a party was entitled to arbitration "prior to conducting any proceedings related to the merits."[441] The court held that some discovery might be necessary to determine whether a motion to compel arbitration should be granted, but that such discovery is limited to matters relevant to the motion compelling arbitration.[442] Once the trial court had ruled on the motion to compel arbitration, the parties could appeal pursuant to section 29-5-319 of the Tennessee Code.[443]

In *United Services Automobile Association v. Shears,* the court considered whether the trial court's previous order compelling arbitration was appealable.[444] The court noted that the order compelling arbitration was collateral to the declaratory judgment action, which was the main cause of action. It then decided that Rule of Appellate Procedure number 313, which allows a court to take an appeal as of right from a collateral order of a lower court, made the order to compel arbitration appealable even though it was interlocutory.[445]

The next issue which the court considered was whether the court's order compelling arbitration was correct.[446] Although the insurance policy between the parties had no provisions requiring arbitration of an uninsured motorist claim, the trial court found that the public policy of Pennsylvania required arbitration due to its laws on insurance coverage.[447] The court held the insurance policy at issue complied with the laws of Pennsylvania and reversed the trial court's decision.[448]

C. Foreign Judgments

In *Northern Indiana Commuter Transportation District v. Chicago Southshore & South Bend Railroad,* the Supreme Court of Indiana reviewed an Illinois judgment which had found that Illinois had jurisdiction to confirm an arbitration award.[449] The issue before the court was whether the Illinois judgment precluded the court from reviewing an arbitration award.[450] The court found that the answer depended on whether the Illinois court regarded its judgment as final and binding.[451] The court noted that although there were no Illinois decisions regarding the res judicata effect

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440. *Southeast Drilling*, 1997 WL 399387, at *2 (citing TENN. CODE ANN. § 29-5-303(d) (1983)).
441. *Id.* (citing TENN. CODE ANN. § 29-5-303(d) (1983)).
442. *Id.*
443. *Id.* TENN. CODE ANN. § 29-5-319 permits an appeal as of right from an order denying an application to compel arbitration or an order granting an application to stay arbitration. *Southeast Drilling,* 1997 WL 399387, at *2. An order compelling arbitration is not appealable as of right. *Id.*
444. 692 A.2d 161, 162 (Pa. Super. Ct. 1997).
445. *Id.* at 163. 42 PA. CONS. STAT. § 7320(a)(1) (1980) provides that a party may take an appeal from a court order denying an application to compel arbitration; however, there is no corresponding statutory authority in existence that allows a party to take an appeal from an order that compels arbitration. *United Services*, 692 A.2d at 165 (Ford, J., dissenting).
446. *United Services*, 692 A.2d at 163.
447. *Id.*
448. *Id.* at 165.
449. 685 N.E.2d 680, 688 (Ind. 1997).
450. *Id.*
451. *Id.*

to be given a judgment confirming an arbitration award that was on appeal, the preclusive effect of such a judgment appeared to be the same as for any other judgment.[452] It found that the Illinois U.A.A. provides that appeals are to be taken in the same manner, upon the same terms, and with like effect as in civil cases.[453] The Indiana court, unable to find direction from Illinois precedent, held that full faith and credit required a stay of the Indiana proceedings for a reasonable time to permit the resolution of appellate proceedings in Illinois before considering the res judicata effect on the judgment.[454]

BENJAMIN K. BYRD
MONDONNA L. GHASEDI
ROBERT J. STEINTJES
MICHELLE TRANT

452. *Id.* at 689.
453. *Id.*; *see* 710 ILL. COMP. STAT. ANN. 5/18 (West 1992).
454. *Northern Indiana*, 685 N.E.2d at 696.