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Recent Developments: The Uniform Arbitration Act

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STUDENT PROJECT

Recent Developments: The Uniform Arbitration Act*

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 analyzing the various 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:

> [a] written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This act also applies to arbitration agreements between employers and employees or between their respective representative [unless otherwise provided in the agreement].[4]

A. Existence of Agreement

Typically, courts construe arbitration agreements as contractual matters.[5] They are therefore governed by the ordinary principles of contract interpretation.[6] For instance, in the case of *Abrams v. Four Seasons Lakesites/Chase Resorts, Inc.*,[7] the Missouri Court of Appeals examined an exchange of letters to determine whether a

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

2. Jurisdictions which 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 1996 and December 1996.

4. U.A.A. § 1.

5. Austin v. U.S. West, Inc., 926 P.2d 181, 183 (Colo. App. 1996).

6. *Id.*

7. 925 S.W.2d 932 (Mo. App. 1996).

valid arbitration agreement had been negotiated between two parties.[8] The court assumed *arguendo* that a "written agreement" to arbitrate could consist of more than one document.[9] However, this issue was not determinative of the court's holding because the court found there had been no "meeting of the minds" as to the formation of the arbitration agreement.[10]

The *Abrams* court cited an earlier case stating "[t]he obligation to arbitrate... rests on free assent and agreement . . . the subsistence and validity of an arbitration clause is governed by usual rules and canons of contract interpretation."[11] In examining the issue of "mutuality of agreement" (or "meeting of the minds"), the court noted there must be a mutuality of assent by the parties to the contractual terms.[12] The court also found that when it came to essential contractual terms, the extent and nature of the parties' mutual assent must be certain.[13] Because the parties' correspondence specifically left open the issues of whether the agreement was "binding on the parties without the possibility of appeal," and a final piece of correspondence expressed one party's willingness to arbitrate "subject to our agreement of the terms," the court held that the letters reserved essential terms for future determination.[14] Furthermore, there was a provision in the correspondence that called for the parties to "have to decide" what fees would be paid under the administrative fee schedule.[15] Because these items were never determined conclusively, the court held the parties' correspondence were only negotiations toward the formation of a contract, and not a valid contract.[16]

B. Enforceability

Under Section 1, courts are required to void arbitration agreements if "such grounds . . . exist at law or in equity for the revocation of any contract."[17] Likewise, if "such grounds" do not exist, the agreement is enforceable and the parties must submit their disputes to arbitration.[18] In recent decisions, courts have examined numerous substantive legal issues in order to determine whether "such grounds exist" to void an agreement to arbitrate.

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8. *Id.* at 935.

9. *Id.* at 936 (interpreting MO. REV. STAT. § 435.350 (1994)). The court found no Missouri case that had resolved the issue, but noted that this was consistent with Missouri cases finding that a written contract need not consist of only one document. *Id.*

10. *Id.* at 937.

11. *Id.* (citing Village of Cairo v. Bodine Contracting Co., 685 S.W.2d 253 (Mo. App. 1985)).

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at 938.

16. *Id.*

17. U.A.A. § 1.

18. *Id.*

1. The "Severability Doctrine"

In *Shaffer v. Jeffery*,[19] the Oklahoma Supreme Court examined whether fraud in the inducement of a contract voids an arbitration agreement set out in the document. The plaintiffs in the action were six couples who claimed they had been assured by an attorney (Jeffery) that if they paid him a small fee, they would soon be able to adopt a child.[20] In order to pull off his scheme, Jeffery fabricated promises from non-existent birth mothers and status reports on imaginary pregnancies.[21] As soon as it became clear that they were being misled, the parents filed suit against Jeffery and his law firm in Oklahoma state court seeking damages for breach of contract, conversion, the tort of outrage, fraud and legal malpractice.[22] Jeffery failed to respond to the petition and was adjudicated in default.[23] However, the law firm successfully moved for the trial court to dismiss the plaintiffs' claims because the attorney-client contracts contained a clause that future disputes would be resolved by arbitration.[24] The Oklahoma Supreme Court reversed.[25]

In *Shaffer*, the main point of contention addressed by the state supreme court was whether Oklahoma should subscribe to the "separability doctrine."[26] The "separability doctrine" is based on the premise that if fraud only exists in the inducement of the arbitration clause itself (an issue going to the "making" of the arbitration agreement), then the matter may be adjudicated in a judicial forum.[27] If the alleged fraud is in the inducement of the entire contract and not in the arbitration clause in particular, then the issue of whether there is fraud will be determined in arbitration.[28] "Thus where there are allegations of fraud in the making of the specific agreement to arbitrate, that agreement to arbitrate is separable and stands apart from a llegations of infirmities with the other provisions of the agreement."[29] Although the separability doctrine is widely accepted, the Oklahoma Supreme Court chose instead to follow the rationale set out in Justice Black's dissent in *Prima Paint v. Flood & Conklin*.[30]

Justice Black's dissent contended that the separability doctrine should be rejected because "if the contract was procured by fraud, then, unless the defrauded party elects to affirm it, there is absolutely no contract, nothing to be arbitrated."[31] The Oklahoma Supreme Court noted that this was the nature of its state contract law in general and concluded that an agreement to arbitrate is voidable when the

19. 915 P.2d 910 (Okla. 1996).
20. *Id.* at 912.
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.* at 918.
26. *Id.* at 916.
27. *Id.*
28. *Id.* at 915.
29. *Id.* at 916. (citing Holmes v. Coverall North Am., Inc., 649 A.2d 365, 369-70 (Md. 1994)).
30. *Id.* at 917. (citing 388 U.S. 395 (1967)).
31. *Prima Paint*, 388 U.S. at 412. Black was joined by Justices Douglas and Stewart in his dissent.

arbitration provision or the contract containing the arbitration agreement is fraudulently induced.[32]

2. Adhesion Contracts

Courts are reluctant to enforce an agreement to arbitrate when the agreement is part of an adhesion contract.[33] Adhesion contracts are typically:

> standardized form[s] offered to consumers of goods and services on essentially a "take it or leave it" basis, without affording the consumer a realistic opportunity to bargain and under such conditions that the consumer cannot obtain the desired product or service except by acquiescing to the form of the contract.[34]

In *Buraczynski v. Eyring*,[35] the Tennessee Supreme Court determined that arbitration agreements contained in adhesion contracts were enforceable and not void *per se* against public policy.[36] In *Buraczynski*, a patient received knee replacement surgery and two months later voluntarily signed a "Physician-Patient Arbitration Agreement" with the doctor. In this agreement, the patient initialed a provision making it "effective as of the date of first medical services."[37] The agreement was presented to the patient on a "take it or leave it basis", and retroactively applied to the earlier knee replacement surgery.[38] Soon after signing the agreement, the patient began experiencing complications with the artificial knee joint.[39] After diminished employment capacity, instability and pain, the patient consulted with another doctor.[40] During this second consultation, the new physician informed the patient that the prosthesis was improperly applied.[41] The patient was forced to undergo a second knee replacement surgery, and brought suit against the physician.[42]

The Tennessee Supreme Court first considered whether private physician-patient arbitration agreements were *per se* void as against public policy.[43] The court noted first that no court has ever reached the "broad conclusion" that public policy precludes using a private arbitration agreement in the area of doctor-patient

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32. *Shaffer* at 917-918. The Oklahoma Supreme Court noted that Minnesota, Tennessee, and Louisiana also subscribe to the minority rule favoring non-separability. *Id.* at 916. *See* George Engine Co., Inc. v. Southern Shipbuilding Corp., 350 So.2d 881, 886 (La. 1977); City of Blaine v. John Coleman Hayes & Associates, Inc., 818 S.W.2d 33, 37-38 (Tenn. App. 1991); Fouquette v. First American National Securities, Inc., 464 N.W.2d 760, 762-763 (Minn. App. 1991).

33. *Id.* (citing Wheeler v. St Joseph Hosp., 63 Cal. App.2d 345, 356 (Cal. Ct. App. 1976)).

34. Broemmer v. Abortion Services of Phoenix, Ltd., 840 P.2d 1013, 1015 (Ariz. 1992).

35. 919 S.W.2d 314 (Tenn. 1996).

36. *Id.*

37. *Id.* at 317.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* at 318.

relations.[44] The court concluded that because the Tennessee Legislature has embraced a legislative policy favoring arbitration agreements,[45] the court would not interfere to make private patient-physician relationships void *per se*.[46]

The *Buraczynski* court did find this particular physician-patient contract to be an adhesion contract.[47] The court explained, however, that this conclusion was not determinative of the contract's enforceability.[48] In fact, the court examined the arbitration agreement and found no "oppressive provisions"[49] or "buried terms."[50] Thus, because the arbitration agreement gave no unfair advantage to the physician, hid no terms, and did not mislead the patient, it was upheld as a valid agreement to arbitrate.[51]

Through its decision in *Buraczynski*, the Tennessee Supreme Court has established a policy of looking at individual physician-patient agreements to see whether they are executed in good faith and afford the patient the opportunity to take an active role. No particular issue was controlling in the Court's *Buraczynski* opinion, but all of the above issues appeared to be important factors in the Court's decision.

3. Appraisal Clauses

An appraisal clause is defined as a "clause in [an] insurance policy providing that the insurer has the right to demand an appraisal for loss or damage."[52] In the case of *Friday v. Trinity Universal of Kansas*,[53] a Kansas appellate court interpreted an appraisal clause in a homeowner's insurance policy to be an arbitration clause.[54] In *Friday*, the plaintiff suffered extensive damage after his house caught fire.[55] Plaintiff and his insurance company could not agree on the total amount of loss.[56] The insurance company finally told the plaintiff that if they could not agree on the

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44. *Id.*
45. *See* TENN. CODE ANN. § 29-5-301 (1996 Supp.).
46. *Id.* at 318-319.
47. *Id.* at 320.
48. *Id.*
49. *Id.* at 321.
50. *Id.* The court stated that "[a]ll terms were laid out clearly" including the arbitration agreement "which binds the spouse and heirs of the patient to the arbitration agreement." Also, the retroactive provision was addressed in a distinct clause and required a separate patient initial, making it "more obvious than any other portion of the agreement." Finally, the court noted that patients could revoke the agreement without cause for thirty days and still retain the right to go to court, offering further protection to plaintiffs. *Id.*
51. *Id.* The court discussed the fact that courts are reluctant to enforce arbitration agreements between patients and health-care providers when the agreements are hidden in other types of contracts and do not give a patient the opportunity to question the agreement. The court made a specific note of the fact that the document encouraged the patient to discuss questions about the agreement with the physician. Also, the agreement stated that "by signing this contract you are *giving up your right to a jury or court trial.*" *Id.*
52. BLACK'S LAW DICTIONARY 100 (6th ed. 1990).
53. 924 P.2d 1284 (Kan. App. 1996).
54. *Id.* at 1287.
55. *Id.* at 1286.
56. *Id.* at 1285.

correct amount of loss, the insurance company would invoke the appraisal clause in the agreement.[57] The insurance policy also stated that no suit could be brought against the insurance company absent compliance with the policy provisions.[58] Thus, after the plaintiff filed suit, the defendant insurance company filed a motion to dismiss asserting that the plaintiff had failed to comply with the appraisal provisions in the policy agreement.[59] The plaintiff's case hinged on whether the appraisal provision in the insurance policy was an arbitration agreement.

The Kansas equivalent of Section 1 contains a provision that a written agreement mandating arbitration shall not apply to insurance contracts.[60] Thus, if the appraisal clause was construed to be an arbitration agreement, it would not be enforceable, and the plaintiff's suit would be allowed.

The *Friday* court first stated that the issue of whether appraisal clauses in insurance agreements were arbitration agreements had not yet been determined in the state of Kansas.[61] In its analysis, the court examined the bargaining positions of the parties, legal definitions, and decisions from other jurisdictions.[62] The *Friday* court distinguished an earlier Kansas case holding that a voluntary land appraisal clause negotiated in a contract between a seller and purchaser was not an arbitration clause.[63] Unlike the first case, where the insurance policy was freely negotiated, the insurance policy in the instant case was provided by the insurance company and the terms were already stated.[64]

Finally, the *Friday* court relied on cases from other jurisdictions to support its conclusion that an insurance policy appraisal clause requiring parties to submit the determination of the amount of loss to appraisers is an arbitration clause.[65] One Illinois case contained a court holding that an appraisal provision in an insurance contract was "analogous" to an arbitration clause, and would therefore be

57. *Id.* This appraisal clause provided: "Appraisal. If you and we fail to agree on the amount of loss, either may demand appraisal of the loss. In this event, each party will choose a competent appraiser . . . The two appraisers will choose an umpire; the appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of the loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of the loss." *Id.*

58. *Id.* at 1286.

59. *Id.* at 1285.

60. *Id.* at 1287 (citing KAN. STAT. ANN. § 5-401(c)(1) (West 1996)).

61. *Id.* at 1286. The court found that two earlier Kansas cases involving fire insurance policies had used the words "appraisal" and "arbitration" interchangeably. Yet, the court determined that neither case had determined whether the appraisal process was synonymous with binding arbitration. *Id.* (discussing McKenzie v. Fidelity-Phenix Fire Ins. Co., 3 P.2d 477 (1931), and Syndicate Co. v. Insurance Co., 116 P. 620 (1911)). However, it is important to note that at the time of these decisions, binding arbitration was not yet a favored mechanism in American Jurisprudence. *Id.*

62. *Friday*, 924 P.2d at 1286.

63. *Id.* (distinguishing Guild v. Railroad Co., 45 P. 82 (1896)).

64. *Id.* The court also found that the Guild case was decided over 100 years ago, almost 80 years before the first version of the Kansas U.A.A. was enacted. But, the court did not state whether the parties could have actually negotiated this particular agreement. All that was said was that the terms were "not negotiated." *Id.*

65. *Id.* at 1286-87 (citing U.S. Fire Ins. Co. v. Franko, 443 So.2d 170 (Fla. Dist. App. 1983) and Beard v. Mount Carroll Mut. Fire Ins. Co., 561 N.E.2d 116 (Ill. App. 1990)).

enforceable as an arbitration clause.[66] The Illinois court also noted that although appraisal does not follow the same procedure, it serves the same purpose as arbitration in that it provides for settling future disputes without a judicial proceeding.[67] Examining all of these factors, the Kansas court concluded that the appraisal clause in the insurance contract was an arbitration clause, and therefore void.[68]

C. Scope of the Agreement

In interpreting the scope of arbitration agreements, courts again note that arbitration is a matter of contract, and thus contract interpretation rules apply.[69] In *Austin v. U.S. West, Inc.*,[70] the Colorado Court of Appeals held that the issue sought to be arbitrated must be within the scope of the language of the agreement for the court to have power to compel arbitration.[71] The court noted, however, that arbitration was a favored means of dispute resolution in Colorado courts and found that any doubts about the scope of an arbitration clause should be resolved in favor of arbitration.[72] An interesting issue decided in *Austin* involved claims of employees' wives in an employment contract with a comprehensive arbitration clause.[73] The court faced the question of whether the wives were parties to the agreement and were therefore forced to arbitrate their claims.[74] The argument for compelling arbitration was based on a theory that the wives were necessarily third-party beneficiaries of the employment agreements and thus subject to the arbitration clause.[75] Important in its balancing approach, the court noted that the alleged fraudulent misrepresentations to the wives were made directly to them by the employer, and they suffered damages separate from those of the actual employees.[76] Because the wives' claims did not rely on the employment agreements, the court concluded that these claims were not subject to the arbitration clause contained in the employment agreements.[77]

66. *Id.* at 1286-87 (citing Beard v. Mount Carroll Mut. Fire Ins. Co., 561 N.E.2d 116 (Ill. App. 1990)).
67. *Id.* at 1287 (citing Beard v. Mount Carroll Mut. Fire Ins. Co., 561 N.E.2d 116 (Ill. App. 1990)).
68. *Id.* at 1287.
69. Eychner v. Van Vleet, 870 P.2d 486, 489 (Colo. App. 1993).
70. 926 P.2d 181 (Colo. App. 1996).
71. *Id.* at 183.
72. *Id.*
73. *Id.* at 185.
74. *Id.*
75. *Id.*
76. *Id.*
77. *Id.* at 184.

D. Modifications of State Statute

1. Exclusion of Tort Claims

In *Beeson v. Erickson*,[78] a Kansas appellate court considered whether an action arising out of poor performance of a contract could be framed in tort law in order to avoid an arbitration clause set out in the parties' agreement.[79] The court noted that the term "uniform" was a misnomer when applied to the Kansas Uniform Arbitration Act, because it was not uniform with other acts in place in other states.[80] In particular, the Kansas Act contains an addendum to Section 1 stating that the provisions shall not apply to "any provision of a contract providing for arbitration of a claim in tort."[81] The instant case involved the plaintiffs contracting with the defendants to construct a driveway to their house.[82] One of the provisions in the agreement was that the defendants would put in the driveway in such a way as to direct water away from the house.[83] Two years after the defendants finished the work, the plaintiffs' basement was flooded with water which ruined the carpet, linoleum, paneling, and sheet rock in a renovated room.[84] The contract between the plaintiffs and the defendants contained an arbitration clause stating all claims for breach of contract would be adjudicated in an arbitration process.[85] The plaintiffs brought their action in tort law, however, claiming that defendants failed to slope the driveway properly and therefore negligently crushed an underground drain tile when pouring the concrete for the driveway.[86] This led to the flooding of the plaintiffs' basement.[87] The trial court found for the plaintiffs.[88]

The Kansas Court of Appeals reversed, finding that the defendants' actions which caused damage to the plaintiffs breached their agreement or, in the alternative, the implied covenants to that agreement.[89] In fact, the appellate court stated "that plaintiffs may not plead their contract action as a tort action and thereby escape the provisions of a bargain with which they are unhappy."[90] The appellate court held that the plaintiffs' action was merely framed as a tort to take advantage of the Kansas Uniform Arbitration Act and to avoid compulsory arbitration set out in the parties' agreement.[91] The court thus concluded that because there were specific provisions

78. 917 P.2d 901 (Kan. Ct. App. 1996).
79. *Id.* at 904.
80. *Id.* at 904.
82. *Id.* (citing KAN. STAT. ANN. § 5-401(b) and (c) (West 1996)). The court noted that under the standard Uniform Arbitration Act, a contractual provision to arbitrate applies regardless of whether the action is in tort or in contract. *See* R.J. Palmer Constr. Co. Inc. v. Wichita Band Instrument Co. Inc., 642 P.2d 127 (1982).
82. *Beeson*, 917 P.2d at 903.
83. *Id.*
84. *Id.* at 903.
85. *Id.* at 902.
86. *Id.* at 905.
87. *Id.*
88. *Id.*
89. *Id.*
90. *Id.*
91. *Id.* at 908.

in the contract dealing with mistakes by the contractor, the only claims the plaintiffs had against the defendants were based upon a possible breach of their contractual obligations, and not in tort.[92] The matter was therefore subject to compelled arbitration.[93]

2. Exclusion of Federal Preemption

In *Friday v. Trinity Universal of Kansas*,[94] the Kansas Court of Appeals was also presented with the issue of whether federal law preempted the Kansas Uniform Arbitration Act in the area of an insurance contract.[95] The court discussed a special provision under Section 1 of the Kansas Uniform Arbitration Act that exempts written arbitration agreements in insurance contracts from application of the U.A.A.[96] One of the parties tried to block the court's enforcement of that statute by stating that the matter was controlled by the Federal Arbitration Act, which contained no such exception.[97] The court concluded, however, that due to the federal McCarran-Ferguson Act, the Kansas Act was applicable to the present situation.[98] Because the McCarran-Ferguson Act provides that no Congressional act shall interfere with any state law enacted to regulate the business of insurance, the federal laws (namely the F.A.A.) did not apply to this area.[99] As a result, the court held that state law was controlling in this area.[100]

III. SECTION 2: PROCEEDINGS TO COMPEL OR STAY ARBITRATION

When a party refuses to arbitrate a claim, Section 2 requires a court to compel arbitration when an arbitration agreement exists.[101] The decision to compel is an issue to be summarily decided by the court.[102] In making this decision, the court

93. "Where the parties contemplate a remedy in the event of breach, and the provisions of the contract cover the consequences of default, the bargained-for existence of a contractual remedy displaces the imposition of tort duties." *Id.* (citing *Atchison Casting Corp. v. Dofasco, Inc.* 889 F.Supp 1445, 1461 (D. Kan. 1995).

93. *Id.* at 908.

94. 924 P.2d 1284 (Kan. Ct. App. 1996).

95. *Id.* at 1284.

96. KAN. STAT. ANN. § 5-401(c)(1) (West 1996).

97. *Friday*, 924 P.2d at 1287.

98. *Id.* Part of the McCarran-Ferguson Act states that "[n]o Act of Congress shall be construed to invalidate, impair, or supercede any law enacted by any State for the purpose of regulating the business of insurance." McCarran-Ferguson Act, §§ 1-5, 15 U.S.C.A. §§ 1011-1015 (West 1997). The court relied on the Tenth Circuit's statement that the Kansas Uniform Arbitration Act was enacted for regulating the business of insurance. *Id.* (relying on Mutual Reinsurance Bureau v. Great Plains Mut., 969 F.2d 931 (10th Cir. 1992), *cert. denied* 506 U.S. 1001 (1992)).

99. *Id.* (relying on Mutual Reinsurance Bureau v. Great Plains Mut., 969 F.2d 931 (10th Cir. 1992)).

100. *Id.* at 1287.

101. U.A.A. § 2(a).

102. *Id.*

must consider if the dispute is within the scope of the arbitration agreement[103] and if waiver has occurred.[104] Finally, although Section 2 allows for a stay of judicial proceedings if the dispute should be arbitrated,[105] Section 2 does not deprive a court of jurisdiction to issue a status quo injunction.[106]

A. Within the Scope of the Agreement

When considering a motion to compel arbitration under Section 2(a), courts apply a two-prong test. First, the court must determine if there was, in fact, an agreement to arbitrate the dispute.[107] In so doing, the court, as directed by the language of U.A.A. Section 2, looks to Section 1 to determine if this prong is satisfied. This is the easiest of the two prongs to meet, and is generally satisfied by the showing of a signed arbitration agreement.[108]

The second prong of the test requires the court to determine whether the dispute was within the scope of the arbitration agreement.[109] In *Hazelton Area School District v. Bosak*,[110] the court, finding language that limited the scope of the arbitratration agreement, relied on the intent of the parties to make this determination. The contractor in this case ("Bosak") entered into two different arbitration agreements with the Hazelton area school district ("Hazelton") for the design, engineering and construction of a new high school. After its construction, the roof of the high school collapsed, and Hazelton filed suit to recover damages under claims of negligence and tort liability.[111] In denying Bosak's motion to compel arbitration, the court found that professional negligence was not within the scope of the arbitration agreements.[112]

In reaching this holding, the Commonwealth Court of Pennsylvania first stated that, even in light of the favorable treatment courts must give arbitration agreements, the court will not "extend an arbitration agreement . . . beyond the clear, express and unequivocal intent of the parties."[113] To discern this intent, a court is forced to rely upon the "four corners" of the documents before it.[114] As the agreements were silent

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103. *See infra* notes 108 through 122 and accompanying text.
104. *See infra* notes 131 through 154 and accompanying text.
105. U.A.A. § 2(d).
106. *See infra* notes 155 through 165 and accompanying text.
107. City of Lubbock v. Hancock, 940 S.W.2d 123 (Tex. Ct. App. 1996).
108. *See supra* notes 5 through 17 and accompanying text.
109. *Hancock*, 940 S.W.2d at 127.
110. 671 A.2d 277 (Pa. Commw. Ct. 1996).
111. *Id.* at 279.
112. *Id.* at 281.
113. *Id.* at 282.
114. The first arbitration agreement, drafted in 1988, stated that "[any c]laims, disputes or other matters in question between the parties... arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration." *Id.* at 279. The second arbitration agreement, necessitated by additional funding for the school by the State Public School Building Authority, provided that "[s]hould any dispute concerning the subject matter of this AGREEMENT arise between the parties thereto, such dispute shall be referred to the American Arbitration Association and shall be settled in accordance with the American Arbitration Association's Rules and Regulations." *Id.* The court dismissed Bosak's assertion that the silence in the arbitration agreements should be broadly interpreted to "be given the most expansive construction possible," claiming a lack of authority for this position.

as to the issue of professional negligence, the *Bosak* court carried the inquiry to the parties' intent as well as to various policy considerations.[115]

The court found that the expectations of the parties in relation to the agreements were singularly focused upon payment of the cost of construction of the high school; thus, the additional amount required to repair the roof was not contemplated in the drafting of the agreements.[116] Furthermore, the *Bosak* court determined that Hazelton's claim was not based on a loss contemplated at the execution of the agreement (which would have been characterized as a contract claim), but rather "harm above and beyond disappointed expectations."[117] Therefore, the court concluded that the claim should be characterized as an action in tort, and, absent explicit language, could not be governed by the law of contracts.[118]

The union in *Jupiter Mechanical Industries, Inc. v. Sprinkler Fitters & Apprentices Local Union No. 281*,[119] however, argued that when a "collective bargaining agreement" is silent as to the issue of discharging employees "for cause," such intent should be implied. Therefore, the union asked the court to find the issue of a "for cause" dismissal to be within the scope of the arbitration clause.[120] The court found that the arbitration clause contained no limiting language, and held that questions regarding determination of the scope of the agreement must be decided by the arbitrator.[121]

B. Stay of a Judicial Proceeding

The U.A.A. provides in Section 2(d) that "[a]ny action or proceeding involving an issue subject to arbitration shall be stayed" if an order for arbitration has been issued. However, in cases in which the issue may be severed into arbitrable and non-arbitrable components, the court is given the discretion to stay the entire judicial proceeding or discrete issues directly concerning arbitration.[122] In applying this grant of discretion, the court in *Salzman v. Canaan Capital Partners, L.P.*,[123] while

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Id. at 283.

115. *Id.*

116. *Id.*

117. *Id.* The *Bosak* court identified a fundamental distinction between tort and contract law which narrowed the scope of the arbitration agreement. The court found the underlying consideration of the law of contracts to be characterized as "the protection of expectations which had been bargained for by the parties to a contract," and as such, it was necessary for the court to determine if the losses were "contemplated by the parties at the time that the contract was executed." *Id.* Conversely, the court found that tort law protects parties from losses resulting from injury to that party, which required a showing of harm above and beyond disappointed expectations.

118. *Id.* The dissent strongly criticized this opinion, asserting that, as the law favors resolution of disputes through arbitration, courts must "give liberal construction to the scope of the arbitration agreement." *Id.* at 285 (Pellegrini, J., dissenting) (citing Chester City School Authority v. Aberthaw Constr. Co., 333 A.2d 758 (Pa. 1975)). The dissent went on to state that, as the claim arose out of the agreements between the parties, the claim should be subject to arbitration.

119. 666 N.E.2d 781 (Ill. App. Ct. 1996), *cert. denied*, 671 N.E.2d 732 (1996).

120. *Id.* at 784.

121. *Id.* at 785.

122. U.A.A. § 2(d).

123. No. CIV.A 14687, 1996 WL 422341 (Del. Ch., July 23, 1996).

noting the potential to sever the issues,[124] chose to stay the entire judicial proceeding until the conclusion of arbitration in light of concerns regarding judicial economy.[125] In addressing the possibility for severance, the Court of Chancery of Delaware determined that those issues already before the arbitrator[126] were sufficiently separate from the instant claim before the court.[127]

The court went on to state that if the issues were severed, the same parties currently involved in arbitration would become embroiled in a concurrent judicial proceeding, placing a "great and unnecessary burden" on those parties.[128] Additionally, the court noted that if both arbitration and litigation were allowed to proceed concurrently, the two findings affecting the rights of the parties might not be consistent. In light of these concerns, the court found that to allow judicial proceedings to proceed would be "inefficient and contrary to the judicial interest in expeditious resolution of controversies," and therefore issued a stay of the judicial proceedings.[129]

C. Waiver of the Agreement

As expressed above, parties generally have the right to mandatory enforcement of their arbitral agreements.[130] In spite of this, courts have consistently found that parties have waived their rights to arbitration when parties: do not timely file a motion to arbitrate, contest the merits of the claims, fail to inform opponents of their intention to seek arbitration, file procedural motions, assent to the trial court's pretrial orders, or extensively engage in discovery.[131]

1. Need to primarily rely on arbitration

In *State Farm Mutual Automobile Insurance Company v. Cahill*,[132] the court found that the right to enforce the provisions of an arbitration agreement had been waived due to the party's reliance upon litigation instead of arbitration. The underlying facts began when Cahill, an insured motorist suing in an individual capacity, found his damages were statutorily limited[133] because he was an out-of-

124. Of the three parties contesting the judicial proceedings, only one had entered into an agreement that required arbitration. *Id.* at *1.

125. *Id.* at *5.

126. These issues were breach of fiduciary duty and breach of contract. *Id.* at *2.

127. The claim before the court asked for the dissolution of a partnership. *Id.* at *5.

128. *Id.*

129. *Id.*

130. *See supra* notes 17 through 18 and 101 through 102.

131. State Farm Mut. Auto. Ins. Co. v. Cahill, No. CIV.A 94-CV-3136, 1996 WL 50614, at *5 (E.D. Pa., Jan. 31, 1996).

132. *Id.*

133. The State of New Jersey, the situs of the accident, had enacted a statute that precluded drivers insured under "verbal tort threshold" from recovery for damages resulting from non-economic losses from another party. These non-economic losses are defined as "pain, suffering and inconvenience." N.J. STAT. ANN. § 39:6A-8 (West 1987). The policy behind the "verbal tort threshold," so called because it was defined on the legislative floor by words instead of dollar amount, is that, as the individual is paying less than the "full coverage" option, the individual forgoes the unlimited right to sue. Oswin v.

state driver in the situs of the accident.[134] In response to this reduced recovery, Cahill filed a claim with the State Farm Mutual Automobile Insurance Company ("State Farm") contending that he was entitled to full coverage under his insurance policy, effectively asking for damages Cahill would have received absent statutory preclusion. State Farm rejected Cahill's claim, and filed a declaratory action to prevent Cahill from collecting from them.[135] Under the insurance agreement between Cahill and State Farm, if the two parties disagreed as to the legal entitlement of Cahill to collect damages or the amount of said damages, then, at the request of either party, the issues were to go to arbitration.[136]

During the entire pleading stage, Cahill asserted his right to arbitration as a secondary alternative, while primarily requesting that the court rule on the merits of his claim.[137] In taking this action, the court found that Cahill had waived the right to arbitration by "invok[ing] the litigation machinery and forc[ing] [State Farm] to litigate the substantive issues in the case."[138] Similarly, in *Goral v. Fox Ridge, Inc.*,[139] the defendant ("Fox Ridge") primarily relied upon the statute of limitations to avoid liability for "problems in the foundation of the house" which Fox Ridge had constructed.[140] Fox Ridge only asked that arbitration be compelled for "any claims that [were] not dismissed" by the applicable statute of limitations.[141] The Superior Court of Pennsylvania found that "[o]nce it has been determined that the substantive dispute is arbitrable, 'all matters necessary to dispose of the claim' are normally arbitrable as well."[142] Therefore, if the substantive claim was arbitrable, then ancillary matters, such as the statute of limitations, were also arbitrable. Because Fox Ridge did not primarily rely upon the arbitration agreement, the Superior Court of Pennsylvania found that Fox Ridge had waived its right to arbitration.[143]

Shaw, 609 A.2d 415, 418 (N.J. 1992).

134. Although Cahill was, in fact, fully insured under his policy, it is statutorily provided that a non-resident driving in the State of New Jersey "whose automobile is covered by an insurance company licensed to do business in New Jersey *is deemed* to have elected the verbal tort threshold option, even if the non-resident has purchased full coverage under the non-resident's home state insurance policy." *Cahill*, 1996 WL 50614, at *1 (emphasis added). *See* N.J. STAT. ANN. § 17:28:1.4 (West 1987). *See also* Dyszel v. Marks, 6 F.3d 116 (3d. Cir. 1993)(discussing the constitutionality of New Jersey's "deemer" statute). Therefore, even though Cahill was fully covered under his insurance policy, he was statutorily precluded from fully benefitting from the insurance premiums he had paid.

135. *Cahill*, 1996 WL 50614, at *2.

136. The Pennsylvania Arbitration Act was to govern said arbitration. *Id.* *See* 42 PA. CONS. STAT. ANN. §§ 7301 - 7325 (West 1982).

137. In both his Answer to State Farm's complaint and in his Motion for Summary Judgement after the close of discovery, Cahill asked for both a declaration that he was entitled to uninsured motorist benefits and mandatory arbitration of the dispute. In an error that appears to have decided the case, Cahill was the victim of poorly written and unclear pleadings. 1996 WL 50614, at *6.

138. *Id.* at *5 (quoting Avena v. Franco, No. CIV.A 92-0640, 1992 WL 392619 (E.D. Pa., Dec. 15, 1992)).

139. 683 A.2d 931 (Pa. Super. Ct. 1996).

140. *Id.* at 932.

141. *Id.*

142. *Id.* at 934 (quoting Giant Markets, Inc. v. Sigma Marketing Systems, Inc., 459 A.2d 765, 769 (Pa. Super. Ct. 1983)).

143. *Id.*

Cahill and *Goral* illustrate the need for parties to embrace the language of an arbitration agreement when one exists. Neither court was receptive to parties that sought to use a "shotgun" approach by bringing numerous defenses.

2. Undue Prejudice or Delay

If a party does not promptly notify its adversary that it intends to compel arbitration, the party may risk waiving all arbitral rights. In *Goral*, this principle is illustrated by the fact that Fox Ridge did not affirmatively seek arbitration until nineteen months after receipt of Goral's complaint.[144] As Fox Ridge could have sought to compel arbitration by means of a preliminary objection[145] at the initiation of the pleadings, the Superior Court of Pennsylvania determined that to compel arbitration at such a late date would unfairly prejudice Goral. The Court found that such an outcome would force Goral to bear the costs of litigation for the previous nineteen months as well as the additional costs of arbitrating the issue.[146]

The *Beeson* court has illustrated that a motion to compel arbitration is timely when it is filed in the defendant's answer.[147] Interestingly, in *Cahill*, even though one year had passed since the initiation of the proceedings, the United States District Court for the Eastern District of Pennsylvania intimated that, had Cahill asked the court to compel arbitration after discovery instead of moving for declaratory relief, the court would have been bound to grant the request.[148]

3. Satisfying Procedural Requirements

It was previously asserted by courts and commentators that if a party failed to fulfill conditions precedent to the arbitration process, that party was deemed to have waived its right to arbitration.[149] This view was firmly rejected in *City of Lubbock v. Hancock*.[150] In reaching this conclusion, the *Hancock* court relied on the United States Supreme Court's differentiation between substantive arbitrability[151] and procedural arbitrability.[152]

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144. *Id.*

145. Allowed when arbitration is at issue under PA. R. CIV. P. 1028(a)(6) (West 1987).

146. *See Goral*, 683 A.2d at 934.

147. Beeson v. Erickson, 917 P.2d 901, 904 (Kan. Ct. App. 1996).

148. The court sought to compare the instant case to Nationwide Ins. Co. v. Paterson, 953 F.2d 44, 48 (3d. Cir. 1991), in which the party was granted arbitration even though the party had previously sought a declaratory judgement. *Cahill*, 1996 WL 50614, at *6.

149. *See* Scott Blair et al., *Recent Developments: The Uniform Arbitration Act*, 1991 J. DISP. RESOL. 417 (1991) (discussing Burgess v. Lewis & Clark City-County Board of Health, 796 P.2d 1079 (Mont. 1990)).

150. 940 S.W.2d 123 (Tex. Ct. App. 1996). The issue also arose in *Hughley v. Rocky Mountain Health Maintenance Organization, Inc.*, 927 P.2d 1325, 1331 n.10 (Colo. 1996), but was left undecided by the court.

151. Substantive arbitrability is defined as whether the issue in dispute is within the scope of the arbitration agreement. *Lubbock*, 940 S.W.2d at 126 (discussing John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543 (1964)).

152. Procedural arbitrability is defined as whether the conditions precedent within the agreement were satisfied. *Id.*

Following the Court's interpretation of the aforementioned terms, the Court of Appeals of Amarillo, Texas stated that questions of procedural arbitrability should be left to the arbitrator in light of the "close relationship between the merits of a dispute and procedural arbitrability."[153]

D. Status Quo Injunction

A "status quo injunction" may be issued by a court prior to the initiation of arbitration in an effort to preserve the issues that are to be submitted to arbitration and keep them from becoming moot.[154] Its purpose is to provide a temporary remedy until the arbitrator can make a decision on the merits, and, as such, the injunction must expire when the arbitrator exercises jurisdiction over the dispute.[155] This is a very important power of the judiciary for, even if civil action must be stayed pending the decision of the arbitrator, a court still possesses the authority to enjoin the parties.[156]

In *Hughley v. Rocky Mountain Health Maintenance Organization, Inc.*, the plaintiff, diagnosed with breast cancer, sought to receive a special type of chemotherapy[157] that required financing exceeding her current liquid assets. Therefore, Hughley applied to her health maintenance organization, the Rocky Mountain Health Maintenance Organization ("RMHMO"), for the requisite letter of credit.[158] Claiming that the special treatment was not covered within the health maintenance contract, RMHMO refused to grant this letter of credit.

In response Hughley filed suit, asking for an injunction in order to preserve the status quo prior to arbitration.[159] The court responded by granting a temporary restraining order requiring RMHMO to pay the requisite amount for the amount of the special chemotherapy and requiring Hughley to post a bond in the same amount.[160]

In issuing the injunction, the *Hughley* court provided various policy reasons behind the status quo injunction. First, the court asserted that if no status quo injunctions were allowed, this would impede and frustrate the policy of promotion

153. *Id.* The court also provided a comprehensive list of prior cases agreeing with the instant decision, and made the additional assertion that the majority of cases allowing the court to determine if procedural aspects of the arbitration agreement have been followed have not adopted the U.A.A. *Id.* at 127.

154. *Hughley*, 927 P.2d at 1329-30.

155. *Id.* at 1332.

156. *Id.* at 1330.

157. A treatment called "high dose chemotherapy with autologous hematopoietic stem cell rescue." *Id.* at 1327.

158. RMHMO had paid for prior standard chemotherapy treatments. *Id.*

159. At this time, Hughley's situation had become dire, for her physicians stated that "her life expectancy and probability of ultimate survival[] diminished with each passing day" she did not receive the special chemotherapy treatment. *Id.* at 1328.

160. This application of the status quo injunction was contested by RMHMO, claiming that it granted Hughley relief that she could only obtain after arbitration. The Supreme Court of Colorado noted that, as Hughley was required to post a bond in like amount, RMHMO could be made whole if it received a favorable decision from the arbitrator. *Id.* at 1331.

of the arbitral process.[161] Second, the court noted that if no status quo injunctions were allowed, the "promise of arbitration would ring hollow," because the party may be denied an effective remedy.[162] In the instant case, the court's concern with denying Mrs. Hughley an effective remedy was well grounded. Unfortunately, Mrs. Hughley did not survive to see her case heard before the Supreme Court of Colorado.[163] Finally, the court made clear that, in issuing the injunction, the court may not invade the province of the arbitrator.

IV. SECTION 10: FEES AND EXPENSES OF ARBITRATORS

Section 10 of the U.A.A. states that unless an agreement to arbitrate provides otherwise, arbitrators' fees and expenses incurred during arbitration shall be paid according to the award.[164] Section 10 specifically excludes the payment of attorney's fees incurred in the course of arbitration,[165] however, the payment of attorney's fees incurred prior to the commencement of an arbitration proceeding is not addressed by the U.A.A. This was at issue in *Lucas v. City of Charlotte*.[166]

In *Lucas*, the North Carolina Court of Appeals faced the issue of whether the Uniform Arbitration Act barred an award of attorney's fees for services provided by an attorney before the case was referred to binding arbitration.[167] Previously, the North Carolina Supreme Court held that the North Carolina statute, comparable to Section 10 of the U.A.A., is the only section that refers to attorney's fees.[168] The Supreme Court further held that this section disallowed attorney's fees for work performed in arbitration.[169] The *Lucas* court noted, however, that Section 10 does not expressly forbid a court from awarding attorney's fees prior to the appointment of the arbitrator.[170] The court thus held, that as Section 10 has no application to work performed by an attorney before a case is referred to arbitration,[171] the aggrieved party in this case was properly awarded attorney's fees based on the substantive law underlying the arbitration proceeding.[172]

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161. *Id.* at 1330.

162. *Id.*

163. *Id.*

164. U.A.A. § 10.

165. U.A.A. § 10 states that "the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award." *Id.*

166. 472 S.E.2d 203 (N.C. Ct. App. 1996).

167. *Id.* at 204.

168. Nucor Corp. v. General Bearing Corp., 423 S.E.2d 747, 749 (N.C. 1992)(discussing N.C. GEN. STAT. § 1-567.11 (19865)).

169. *Id.* at 750.

170. *Lucas*, 472 S.E.2d at 205.

171. *Id.*

172. *Id.* at 204. The suit was brought to the trial court under N.C. GEN. STAT. § 6-21.1 (1986) which grants the presiding judge the discretion to award attorney fees where the judgment for recovery of damages is ten thousand dollars or less. *Id.*

In *Fisher v. The Brook Village West Partnership*, the Massachusetts Superior Court also dealt with the issue of whether an arbitrator may award attorney's fees.[173] In this case, the court dealt with a party's request for attorney's fees incurred during the course of the arbitration proceedings.[174] Based on the language of Section 10, which states that an award of attorney's fees is prohibited in the absence of a prior agreement by the parties, the court held that the "arbitrator's award of 'reasonable attorney's fees and costs' must be vacated."[175] The court reasoned that as the parties had not previously agreed to award attorney's fees to the prevailing party, it would be a violation of the law for a court or an arbitrator to award such fees.[176]

The Supreme Court of Utah, in *Buzas Baseball, Inc. v. Salt Lake Trappers, Inc.*,[177] dealt with a perceived conflict between the Federal Arbitration Act, which does not explicitly provide for attorney's fees, and the Utah Arbitration Act, which, unlike the corresponding portion of the Uniform Arbitration Act, explicitly grants the court authority to award reasonable attorney's fees.[178] Relying on a previous United States Supreme Court decision, the *Buzas* court concluded that the F.A.A. did not preempt the Utah Arbitration Act.[179] Upon the Trappers' request for an award of reasonable attorney's fees in defending against Buzas Baseball's motion to vacate or modify the arbitration award[180] and following Utah's Arbitration Act which provides that reasonable attorney's fees may be awarded in certain circumstances,[181] the court held that an award of attorney's fees in this case was "certainly not prohibited."[182] The awarding of these fees was to compensate the aggrieved party for costs incurred, not during the original arbitration proceedings, but instead during an attempt to defend the result of binding arbitration. As such, Section 10 of the U.A.A. is not applicable to the remaining discussion of this case.[183]

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173. No. CIV. A. 96-0035, 1996 WL 490174 (Mass. Super. Aug. 29, 1996).

174. *Id.* at *1.

175. *Id.* at *6.

176. *Id.*

177. 925 P.2d 941 (Utah 1996).

178. *Id.* at 952.

179. *Id.* (citing Volt Information Sciences v. Board of Trustees of Leland Stanford University, 489 U.S. 468, 477 (1989) (recognizing that the FAA preempts state law only to the extent that the state law actually conflicts with federal law)).

180. *Id.* at 951. The Trappers also asked for an award of reasonable attorney's fees for pursuing an appeal. The court held that if the Trappers were entitled to attorney fees in conjunction with defending the motion to vacate or modify, then they would also be entitled to attorney fees in conjunction with the appeal. *Id.* at 952.

181. *Id.* at 952. The section of the Utah Arbitration Act which is modeled after U.A.A. § 14 provides: "Costs incurred incident to any motion authorized by this chapter, including a reasonable attorney's fee, unless precluded by the arbitration agreement, may be awarded by the court." UTAH CODE ANN. §78-31a-16 (1953).

182. *Id.* at 954.

183. For further discussion, *see infra* notes 273 through 290 and accompanying text.

V. SECTION 11: CONFIRMATION OF AN AWARD

Unless a party urges the court to vacate, modify, or correct an arbitration award within set time limits, Section 11 of the U.A.A. provides that upon the application of a party, the award shall be confirmed by the court.[184] With such a high level of deference toward confirming arbitration awards, trial courts do not have substantial discretion to decide whether to confirm such awards. In fact, the Illinois Court of Appeals, in *Hayes v. Ennis*, stated that wherever possible, arbitration awards should be construed to uphold their validity.[185] The court further stated that there exists a presumption that the arbitrator did not exceed his or her authority.[186]

The *Hayes* court also noted that judicial review of an arbitrator's award is more limited than appellate review of a trial court's decision, and that an award will only be set aside if gross errors in judgment of law or gross mistakes of fact by the arbitrator are apparent on the face of the award.[187] To explain the reasoning behind affirming the circuit court's order confirming the arbitrator's award, the *Hayes* court stated that a quotation from an 1854 United States Supreme Court decision was "as relevant today as it was then."[188] The United States Supreme Court held:

> [A]rbitrators are judges chosen by the parties to decide the matters submitted to them, finally and without appeal. If the award is within the submission, and contains the honest decision of the arbitrators, after a full and fair hearing of the parties, a court of equity will not set it aside for error either in law or fact.[189]

If the arbitrator's decision was set aside, the Supreme Court reasoned that an arbitration award would be "the commencement, not the end, of litigation."[190]

An appellate court in Massachusetts held that given the specific circumstances before the probate court, the judge was not required to make an evidentiary hearing before confirming the arbitration award.[191] In *Whitman*, the probate court confirmed an award regarding alimony and child support.[192] The appellant stated his belief that since the probate judge failed to conduct an evidentiary hearing before confirming the award, he had "failed to make an independent determination of the fairness and reasonableness of the award."[193] The court of appeals, upon review of the transcripts

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184. Section 11 of the U.A.A. states that "upon application of a party, the Court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 12, Vacating an Award, and 13, Modification or Correction of Award." U.A.A. § 11.

185. 662 N.E.2d 910, 913 (Ill. App. Ct. 1996).

186. *Id.* (citing Rauh v. Rockford Products Corp., 574 N.E.2d 636, 641 (Ill. App. Ct. 1991)).

187. *Id.* (citing Garver v. Ferguson, 389 N.E.2d 1181, 1183-84 (Ill. App. Ct. 1979)).

188. *Id.* at 915.

189. *Id.* (quoting Burchell v. March, 58 U.S. 344, 349 (1854)).

190. *Id.*

191. Reynolds v. Whitman, 663 N.E.2d 867 (Mass. App. Ct. 1996).

192. *Id.* The arbitration agreement incorporated the provisions of the Uniform Arbitration Act. *Id.* at 869.

193. *Id.* at 871.

from the probate court, held that the probate judge gave the appellant ample opportunity to address the issue of reasonableness.[194] Further, the court of appeals noted that the probate judge had before him all of the financial statements and other written materials applicable to the financial issues which had been decided upon by the arbitrator.[195] Given these circumstances, the court of appeals held that there was no need for an evidentiary hearing in this case.[196]

In *Wolfe v. Farm Bureau Insurance Co.*,[197] the Supreme Court of Idaho dealt with five issues, one of which was relevant to the confirmation of an award under the U.A.A.: whether the district court erred in determining that it lacked subject matter jurisdiction to confirm Wolfe's arbitration award and award costs, pre-judgment interest, and attorney's fees.[198] The following are relevant facts leading to this point: (1) Wolfe was awarded a sum in arbitration; (2) the insurance company paid the amount of this sum to Wolfe and a Satisfaction of Arbitration Award was signed; (3) Wolfe filed an application for confirmation of an arbitration award and a motion for costs, attorney's fees, and pre-judgment interest in district court; (4) the district court denied the motions for lack of personal and subject matter jurisdiction, and; (5) no appeal was taken from the circuit court's decision to deny the motions, but Wolfe later obtained personal jurisdiction over all parties and filed a second application for confirmation.[199] The district court held the motions in Confirmation II were barred by res judicata, or alternatively, should be denied for lack of subject matter jurisdiction.[200]

The *Wolfe* court concluded that the district court did in fact have subject matter jurisdiction to confirm the arbitration award and to award costs, prejudgment interest, and attorney fees in Confirmation II.[201] The court stated that parties are granted access to the courts to seek confirmation of arbitration awards by Idaho's counterpart to Section 11 of the U.A.A.[202] The court further stated that full payment of the arbitration award did not preclude the other party from seeking confirmation of that award.[203]

The dissent by Justice Trout to this portion of the court's decision states his opinion that there "was nothing for the district court to confirm."[204] Justice Trout concluded that the relevant portions of the U.A.A. were designed to provide a party prevailing in arbitration with the same remedies available to a judgment creditor.[205] Based on this conclusion, he noted that where an award has been fully satisfied, confirmation of that award would give rise to a judgment based solely on a non-

194. *Id.*
195. *Id.*
196. *Id.*
197. 913 P.2d 1168 (Idaho 1996).
198. *Id.* at 1172.
199. *Id.* at 1171.
200. *Id.*
201. *Id.* at 1172.
202. *Id.*
203. *Id.*
204. *Id.* at 1178.
205. *Id.*

existent debt, and in such case, there would be no need to provide any enforcement remedies.[206]

VI. SECTION 12: VACATION OF AWARDS

Courts typically conduct very narrow review of arbitration awards in states that have adopted the U.A.A. Individual jurisdictions employ different standards of review for vacating an arbitration award,[207] however, the common theme is a substantial level of deference to the arbitrators. Section 12 of the U.A.A. provides specific guidelines for vacating an arbitration award beyond the general mandate of a narrow standard of review.[208]

A common justification for the high level of deference given to arbitrators' decisions is that the parties freely chose an informal, speedy and inexpensive process

206. *Id.*

207. *See* Coblentz v. Hotel Employers & Restaurant Employees Union Welfare Fund, 925 P.2d 496 (Nev. 1996) (employing a "manifest disregard of the law" standard for vacating an arbitration award); General Cas. Co. v. Tracer Indus., Inc., 674 N.E.2d 473 (Ill. App. Ct. 1996) (using a "gross errors in judgment or gross mistakes of fact" standard of review); Arnold v. Morgan Keegan & Co., Inc., 914 S.W.2d 445 (Tenn. 1996) (reviewing an arbitration award under a "clearly erroneous standard"); Neov v. Middlesex Ins. Co., No. CIV. A. 95-3748, 1996 WL 655740 (Mass. Super. Sept. 23, 1996) ("[A]bsent fraud, a court cannot vacate an arbitration award, even if the arbitrator reached his or her decision based on errors of law or fact").

208. Section 12:

> (a) Upon application of a party, the court shall vacate an award where:
>
> (1) The award was procured by corruption, fraud or other undue means;
>
> (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
>
> (3) The arbitrators exceeded their powers;
>
> (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefore or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 5, as to prejudice substantially the rights of a party; or
>
> (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under Section 2 and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.
>
> (b) An application under this Section shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety days after such grounds are known or should have been known.
>
> (c) In vacating the award on grounds other than stated in clause (5) of Subsection (a) the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with Section 3, or if the award is vacated on grounds set forth in clauses (3) and (4) of Subsection (a) the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with Section 3. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.
>
> (d) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award. As amended Aug. 1956. U.A.A. § 12.

of settling disputes.[209] This justification fails to explain the narrow standard of review when the parties have not freely agreed, but are compelled to participate in binding arbitration. When forced arbitrations occur, the adequacy of the procedural due process afforded the parties comes into question. This problem of forced arbitration with a narrow standard of review was addressed in Alaska and Pennsylvania with different results. Both cases involve the issue of attorney fee disputes.

Fred Miller Attorneys At Law v. Purvis[210] began with appellant, Miller, representing respondent, Purvis, in a divorce proceeding.[211] A dispute arose over the fees and expenses charged by Miller, and Purvis subsequently invoked the mandatory fee arbitration provisions of the Alaska Bar Rules.[212] The arbitration panel, made up of two attorneys and one member of the public, reduced Miller's fee by 75 percent, holding that the original fee was unreasonable.[213] The trial court denied Miller's petition to vacate and entered judgment on the award.[214]

Miller appealed to the Alaska Supreme Court, arguing that when arbitration is compulsory rather than voluntary, it is a violation of procedural due process rights to disallow a judicial review on the merits.[215] The court noted that under Alaska's version of U.A.A. Section 12, a reviewing court has limited authority to vacate an award.[216] Relying on its power and duty to regulate the legal profession, the court held that the attenuated standard of review for an attorney fee award did not violate Miller's procedural due process rights under Alaska's constitution.[217]

Brown v. D. & P. Willow, Inc.[218] also involved compulsory, binding arbitration of an attorney fee dispute. Attorney William Schaaf, represented plaintiff, Linda Brown, in a suit against defendant, D. & P. Willow, Inc., resulting from an auto accident involving Brown's deceased husband.[219] The representation was secured on a contingent fee basis, with Schaaf to receive one-third of the amount recovered.[220] After settlement negotiations and intervention of the Director of Insurance for the State of Illinois due to the insurer going into receivership, Brown

209. *Arnold*, 914 S.W.2d at 449.

210. 921 P.2d 610 (Alaska 1996).

211. *Id.* at 611.

212. *Id.* Alaska Bar Rules 34-42. The Rules provide for, among other things, disinterested panel members, optional representation of parties by counsel, the right to present witnesses and to cross-examine opposing witnesses, compulsory process to compel the attendance of witnesses, optional pre-hearing discovery, optional recording of the hearing and written awards with findings on essential questions.

213. *Miller*, 921 P.2d at 611.

214. *Id.* The trial court apparently upheld the award without opinion because the Alaska Supreme Court noted no reasoning for the trial court's decision. *Id.*

215. *Id.* at 612. The court defined review "on the merits" as a "clearly erroneous" standard for fact determinations and an "arbitrary and capricious application of the law" standard for determinations of law. *Id.*

216. *Id.* Alaska adopted U.A.A. § 12(a)(1)-(4) with very few changes in the language. ALASKA STAT. § 09.43.120(a)(1)-(4) (Michie 1996).

217. *Id.* at 618.

218. 686 A.2d 14 (Penn. Super. Ct. 1996).

219. *Id.* at 15.

220. *Id.*

was awarded $100,000.[221] Brown then terminated Schaaf's representation and retained new counsel.[222] A dispute arose as to the amount of Schaaf's fee and the trial court ordered the matter to proceed to the Fee Dispute Committee of the Erie County Bar Association, for binding arbitration. The trial court further ordered that the Bar Association's decision would be final.[223] The Superior Court of Pennsylvania held on appeal that it was beyond the scope of the trial court's authority to order binding arbitration without the parties' consent and without providing the U.A.A.'s system of appellate rights.[224] The court ruled that the nature of the fee dispute resolution process was voluntary and non-binding.[225] The court did not mention its role as administrator of the bar in its decision.

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

The highly deferential standard of review applied to an arbitration award requires that the award be construed by reviewing courts to uphold its validity whenever possible.[226] This deference can be overcome and vacatur will be allowed in cases where the award is so egregious that it is considered fraudulent.[227] *General Casualty Co. v. Tracer Industries, Inc.*, held, however, that a disparity between an award and the actual market value of what was lost does not indicate that the award is fraudulent even if the award results in a windfall for the plaintiff.[228]

B. Arbitrator Partiality, Misconduct and Bias

The deference reviewing courts give to arbitrator's decisions does not come without protections against bias and impartiality. *William C. Vick Construction Co. v. North Carolina Farm Bureau Federation*[229] held that the failure of an arbitrator to disclose relationships with parties to the arbitration caused the "evident partiality"[230] for which a reviewing court must vacate an award.[231] A construction contract between the parties required them to bring their dispute to arbitration administered by the American Arbitration Association (A.A.A.).[232] The A.A.A.

221. *Id.*
222. *Id.*
223. *Id.* at 16.
224. *Id.* at 17. The court paraphrased and quoted PA. CONS. STAT. § 7314(a)(1)(v) (West 1982), "On application of a party, the court shall vacate an award where 'there was no agreement to arbitrate . . .'" as support for its ruling.
225. *Miller*, 921 P.2d at 17. The decision concluded, "[O]f the myriad of choices available to the litigants to have their controversy heard, the least acceptable was the one forced upon them by the court: unappealable, binding resolution by a committee of the local bar association." *Id.* at 18.
226. *General Casualty Co. v. Tracer Indus., Inc.*, 674 N.E.2d 473, 474 (Ill. Ct. App. 1996).
227. *Id.*
228. *Id.* at 477.
229. 472 S.E.2d 346 (N.C. Ct. App. 1996).
230. U.A.A. § 12(a)(2).
231. *Vick Constr. Co.*, 472 S.E.2d at 347.
232. *Id.* at 349.

appointed an arbitrator to decide the contract dispute.[233] Prior to the hearing, the arbitrator disclosed some social and working relationships with both parties and, on the basis of those disclosures, Vick objected to the arbitrator's appointment.[234] Vick's objection was overruled by the A.A.A.[235] The arbitrator issued an award in favor of Farm Bureau, and judgment was entered in Farm Bureau's favor.[236] Vick then discovered relationships between the arbitrator and Farm Bureau's counsel which had not previously been disclosed.[237] Vick deposed the arbitrator and moved to open the judgment. His motion was denied.[238] On appeal, the appellate court stated that the arbitrator's failure to disclose personal and professional relationships with attorneys for Farm Bureau created an appearance of partiality and reversed and remanded the trial court's order, holding that the court's refusal to vacate the award was error.[239]

C. Arbitrator Exceeding the Scope of Authority

The scope of an arbitrator's authority is determined by the terms of the arbitration agreement between the parties.[240] That scope of authority extends beyond judicial remedies.[241] The fact that the relief granted by the arbitrator could not have been granted by a court is not a ground for vacating the award.[242] When considering the scope of the arbitrator's authority, reviewing courts will set the decision aside only in very unusual circumstances, because allowing extensive review would render arbitration a mere precursor to litigation rather than an alternative to litigation.[243]

The award of punitive damages presents an exceptional situation where a legitimate issue arises concerning the arbitrator's scope of authority. In *Cerajewski v. Kunkle,*[244] the court ruled that when parties agree to an arbitration procedure that has been judicially interpreted to include authority to assess punitive damages, the arbitrator does not exceed his powers by assessing punitive damages.[245] In *City of Chicago v. American Federation of State, County and Municipal Employees, Council 31,*[246] the court applied a broader common law standard of review requiring the award to "draw its essence from the collective bargaining agreement" and ruled that an arbitrator exceeds his authority when awarding punitive damages if the parties

233. *Id.* at 347.
234. *Id.*
235. *Id.*
236. *Id.*
238. *Id.*
239. *Id.*
240. *Id.* at 349.
241. Motorcarrier Petroleum Group, Inc. v. T.R. Auto Truck Plaza, C.A. No. 02A01-9509-CV-00207, 1996 WL 266652, at *1 (Tenn. Ct. App. May 21, 1996).
241. *Id.* at *2.
242. *Id.*
243. *Id.*
244. 674 N.E.2d 57 (Ill. App. Ct. 1996).
245. *Id.* at 60.
246. 669 N.E.2d 1311 (Ill. App. Ct. 1996).

have not expressly agreed to his authority to award punitive damages.[247] The court applied this standard of review as it existed before the 1961 adoption of the Uniform Arbitration Act by Illinois because collective bargaining agreements are statutorily exempt from the Illinois Act.[248]

In *Arnold v. Morgan Keegan & Co., Inc.*,[249] the Tennessee Supreme Court ruled that the arbitration panel did not exceed its powers in finding that an investor did not rely upon the alleged mistakes or omissions of her broker.[250] Arnold received advice from her broker, an employee of Morgan Keegan, that a certain stock carried a "sinking fund" which would insure her investment against sharp drops in the value of the shares.[251] When the value of the stock plummeted, Arnold realized that there was no such insurance against loss, and she sold her stock at a substantial loss.[252] A dispute arose over Morgan Keegan's responsibility for Arnold's lost capital.[253] The parties took their dispute to arbitration pursuant to an arbitration agreement. The arbitration panel concluded that Arnold was a sophisticated investor who exercised independent judgment at all times and did not rely on the advice of Morgan Keegan's employee. The panel issued an award in favor of Morgan Keegan.[254]

A trial court denied Arnold's motion to vacate and confirmed the award stating that the decision should not be vacated merely because the trial court disagrees with it.[255] The Tennessee Supreme Court reversed a lower appellate court, which had conducted what it said amounted to a de novo review, in vacating the award which the trial court had confirmed.[256] The court stated that, due to the need for finality in arbitration awards, a reviewing court must be highly deferential to the findings of arbitrators.[257] The court continued, stating that an arbitration award may not be vacated merely because it is "irrational."[258] The court reasoned that the Tennessee Uniform Arbitration Act did not specifically provide for the vacation of an award simply because it was irrational, therefore, a vacation on that basis was improper.[259]

Adams TV of Memphis, Inc. v. International Brotherhood of Electrical Workers, AFL-CIO, Local 474[260] held that an arbitrator did not exceed his powers under a collective bargaining agreement by interpreting "just cause" for termination of an employee as requiring a warning prior to discharge.[261] The court reviewed this

247. *Id.* at 1314.

248. *Id.* In adopting § 12 of the U.A.A., the Illinois legislature provided that the grounds for vacating an arbitration award under a collective bargaining agreement shall be the grounds that existed before adoption of the U.A.A. *Id.*

249. 914 S.W.2d 445 (Tenn. 1996).

250. *Id.* at 450.

251. *Id.* at 446.

252. *Id.*

253. *Id.*

254. *Id.* at 447.

255. *Id.*

256. *Id.* at 450.

257. *Id.* at 452.

258. *Id.* at 451.

259. *Id.* TENN. CODE ANN. § 29-5-313(a) (1983) contains language almost identical to the provisions of U.A.A. § 12.

260. 932 S.W.2d 932 (Tenn. Ct. App. 1996).

261. *Id.* at 935.

interpretation of law by the arbitrator using a standard that aimed to "minimize interference with an efficient and economical system of alternative dispute resolution."[262] Under this highly deferential standard of review an arbitrator is allowed wide discretion in interpreting the terms of agreements between parties.

Fisher v. The Brook Village West Partnership[263] held that an arbitrator exceeds his authority when he awards relief that is specifically prohibited by statute.[264] The arbitrator awarded attorney fees even though a statute specifically prohibited the award of attorney fees in the absence of a prior agreement allowing them.[265] While an arbitrator may have wide discretion in interpreting the terms of an agreement,[266] it appears from this case that an arbitrator's discretion in awarding remedies is much more narrow when the legislature has specifically spoken on the issue of remedies.

D. Public Policy

Courts may refuse to enforce an arbitration award which contravenes a well defined and dominant public policy.[267] The public policy must be ascertained by reference to laws and legal precedents and not from general considerations of public interests.[268] The court in *General Casualty Co.*,[269] ruled that an award which provides a windfall to an insured owner of a destroyed building when that owner does not choose to rebuild, does not violate public policy.[270] The court qualified this statement by suggesting that if double recovery was awarded to the insured, the award would violate public policy because it would provide an incentive for arson.[271]

VII. SECTION 14: JUDGMENT OR DECREE ON AWARD

U.A.A. Section 14 provides that once a court confirms, modifies or corrects an award, a judgment to that effect must be entered and enforced as any other judgment.[272] During the past year, courts have dealt with the proper forum for judgment enforcement and the awarding of attorney fees under Section 14.

The agreement to arbitrate which constituted the basis for the dispute in *Pelletier & Flanagan v. Maine Court Facilities Authority,*[273] is governed by the

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262. *Id.* at 934.
263. No. CIV.A. 96-0035, 1996 WL 490174 (Mass. Super. Aug. 29, 1996).
264. *Id.* at *6.
265. *Id.*
266. *See supra* notes 279-281 and accompanying text.
267. *General Casualty Co.*, 674 N.E.2d at 477.
268. *Id.*
269. *Id.*
270. *Id.*
271. *Id.*
272. "[U]pon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursement may be awarded by the court." U.A.A. § 14.
273. 673 A.2d 213 (Me. 1996).

Uniform Arbitration Act, and the result of the dispute depends upon Section 14.[274] The facts of this case are complex, for two arbitration proceedings involving the parties were conducted prior to the initiation of an appeal. The first arbitration award, which was later confirmed, compensated Pelletier for delays in construction caused by the Maine Court Facilities Authority ("MCFA").[275] The second arbitration award, which was also later confirmed, attempted to compensate Pelletier for, among other things, MCFA's delay in paying the first arbitration award.[276] The confirmation of the second award is the subject of the appeal in this case.

The *Pelletier* court stated that a reviewing court's confirmation of an arbitration award must be upheld unless the reviewing court was compelled to vacate the award.[277] The *Pelletier* court noted, however, that when an arbitration award is the subject of a second arbitration proceeding, a difficult question is presented.[278] Citing Section 14 of the U.A.A., the court held that as the first arbitration award had been confirmed by the court, that award was required to be enforced as any other judgment or decree.[279] Consequently, the court concluded that enforcement of what was then a judgment was the exclusive concern of the court.[280] The result of this decision is that a party may not resort to arbitration to resolve a claim for damages caused by an opposing party's failure to promptly pay the prior arbitration award.[281] The court concluded by recognizing the strong policy favoring arbitration, but noted that the U.A.A. specifically provides for judicial enforcement of arbitration awards.[282]

In *Buzas Baseball, Inc. v. Salt Lake Trappers, Inc.*,[283] the court dealt with the awarding of attorney's fees under Section 14. Unlike Utah's correlative section, Section 14 of the U.A.A. makes no reference to attorney's fees, providing only that costs and disbursements may be awarded by the court.[284] Section 10 is the only portion of the U.A.A. that deals with the awarding of attorney's fees, and this section relates only to fees incurred in the conduct of the arbitration.[285]

The *Buzas* court noted that Section 14 of the U.A.A. has been construed by most jurisdictions as permitting an award of attorney's fees.[286] The court explained that this interpretation promotes the public policy of encouraging early payment of valid arbitration awards and discouraging nonmeritorious confirmation challenges.[287] In light of the foregoing, the court held that Utah's statute, which explicitly grants

274. *Id.* at 215.
275. *Id.* at 214.
276. *Id.* at 215.
277. *Id.*
278. *Id.* at 216.
279. *Id.*
280. *Id.*
281. *Id.* at 215.
282. *Id.* at 216.
283. 925 P.2d 941 (Utah 1996).
284. U.A.A. § 14.
285. U.A.A. § 10.
286. *Buzas*, 925 P.2d at 952. *See* Canon Sch. Dist. v. W.E.S. Constr. Co., 882 P.2d 1274, 1279 (1994); County of Clark v. Blanchard Constr. Co., 653 P.2d 1217, 1220 (1982); Wachtel v. Shoney's, Inc., 830 S.W.2d 905 (Tenn. Ct. App. 1991).
287. *Buzas*, 925 P.2d at 953.

the court authority to award reasonable attorney's fees, suggests that Utah's policies favor the enforceability of arbitration awards and discourage relitigation of valid awards.[288] In line with these policies, the court remanded the case to the trial court for reconsideration of the attorney's fees issue.[289]

VIII. SECTION 17: COURT, JURISDICTION

A court's jurisdiction to consider arbitration agreements under U.A.A. Section 1 is granted to courts in the language of Section 17.[290] U.A.A. Section 17 provides that the making of an arbitration agreement under U.A.A. Section 1 confers jurisdiction on state courts to enforce the agreement and enter judgment on awards under the U.A.A.[291]

In *Hardy Construction Co., Inc. v. Arkansas State Highway and Transportation Dept.*,[292] the Arkansas Supreme Court held that under Section 17[293] parties may consent to personal jurisdiction by agreement, but subject matter jurisdiction cannot be conferred merely by agreement by the parties.[294] Consequently, only after subject matter jurisdiction is appropriate may the parties then agree on the appropriate court in which to resolve disputes.[295]

In *General Electric Co., v. Star Technologies, Inc.*,[296] the parties' arbitration agreements did not specify the jurisdiction for arbitration of their disputes.[297] In this appeal, Star Technologies pointed to holdings which found that Section 17 of the Uniform Arbitration Act should be interpreted as providing a court with jurisdiction to hear challenges to arbitration awards only when the parties have agreed to arbitrate in that particular state or have actually submitted to arbitration in that state.[298] Following this reasoning, the court concluded that since the parties' agreement did not provide for arbitration in Delaware and since the arbitration was held in the District of Columbia, the Delaware Court of Chancery did not have subject matter jurisdiction under the Uniform Arbitration Act.[299]

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288. *Id.* at 953-54.
289. *Id.* at 954.
290. U.A.A. § 17.
292. *Id.* According to U.A.A. § 17, "the term 'court' means any court of competent jurisdiction of the State."
292. 922 S.W.2d 705 (Ark. 1996).
293. *See* ARK. CODE ANN. § 16-108-201 (Michie 1987).
294. *Hardy Constr. Co.*, 922 S.W.2d at 707.
295. *Id.*
296. No. CIV. A. 14923, 1996 WL 377028 (Del. Ch. July 1, 1996).
297. *Id.* at *1.
298. *Id.* at *3. *See* Tru Green Corp. v. Sampson, 802 S.W.2d 951 (Ky. Ct. App. 1991).
299. *Gen. Elec. Co.*,1996 WL 377028 at *5-*6.

IX. SECTION 19: APPEALS

Section 19 of the U.A.A. provides that an appeal may be made to a state appellate court when a trial court: (1) denies an application to compel arbitration made under Section 2, (2) grants a stay of arbitration made under Section 2(b), (3) confirms or denies confirmation of an award, (4) modifies or corrects an award, (5) vacates an award without directing a rehearing, or (6) enters a judgment or decree on an award.[300] Such appeals shall be made in the manner and to the same extent as from orders or judgments in civil actions.[301] In the last year, courts have strictly applied the language of this section of the U.A.A.

The parties involved in *Peters v. Commonwealth Associates*[302] had signed a "customer agreement" in which all controversies arising between the parties were to be settled in arbitration.[303] The trial court had entered an order compelling arbitration, Peters appealed to challenge the order, and Commonwealth argued that such an order is not appealable under Tennessee's statutory laws, which replicate the Uniform Arbitration Act.[304] The *Peters* court cited the occasions in which the U.A.A. provides for appeal as of right and noted that an appeal of an order compelling arbitration is not included.[305] The court stated that it could not "read-in" a provision allowing an appeal in a factual pattern not specifically recognized by the Act.[306] Following this reasoning, appeal was premature, and as such, the court was unable to reach a decision as to if the trial court erred in ordering arbitration.[307]

The Supreme Court of Kansas, in *National Education Association--Topeka v. Unified School District No. 501*,[308] held that a trial court's decision ordering the parties to proceed with arbitration is interlocutory and thus, cannot be immediately appealed.[309] The court concluded that if a trial court grants a motion to compel arbitration, the parties must so submit and then challenge the arbitrator's decision before there is a final order which is appealable to an appellate court.[310] Although not decided under the U.A.A., the court based its holding on the decisions of other

300. U.A.A. § 19(a).
301. U.A.A. § 19(b).
302. No. 03A01-9508-CV-00295, 1996 WL 93768 (Tenn. Ct. App. Mar. 5, 1996).
303. *Id.* at *1.
304. *Id.* at *2.
305. *Id.*
306. *Id.* (citing Anderson County v. Architectural Techniques Corp., No. 03A01-9205CH184, 1993 WL 5921 (Tenn. Ct. App. Jan. 14, 1993)).
307. *Id.*
308. 925 P.2d 835 (Kan. 1996).
309. *Id.* at 842-43.
310. *Id.* at 843.

cases decided under Section 19 of the U.A.A.[311] In line with these other court decisions, the *National Education* court held that as this situation was not listed among those orders and judgments from which appeals may be taken, the court could not hear this appeal.[312]

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311. *Id.* at 841. *See* Kansas Gas & Electric Co. v. Kansas Power & Light Co., 751 P.2d 146 (Kan. Ct. App. 1988); Hodes v. Comprehensive Health Associates, 670 P.2d 76 (Kan. Ct. App. 1983).

312. *Nat'l Educ. Assoc.*, 925 P.2d at 842.