NEW JERSEY APPELLATE COURT REFUSES TO ENFORCE AN ARBITRATION PROVISION IN EMPLOYMENT AGREEMENT



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In Little v. American Income Home Life Ins. Co., 2025 WL 1550016, the Appellate Division of New Jersey's Superior Court recently struck an arbitration provision appearing in General Agent agreements. The employer was a New Jersey-based general agent of a Texas life insurance company. The plaintiffs commenced actions in New Jersey courts alleging violation of their rights under New Jersey's Law Against Discrimination ("LAD"). The agreements stated the enforceability of the arbitration agreement shall be governed by the Federal Arbitration Act ("FAA"); all other issues shall be decided and governed by Texas law.

The Appellate Division held that although the FAA favors arbitration, under the FAA, agreements to arbitrate are subject to invalidation by applicable generally applicable contract defenses. After undertaking a detailed analysis of choice-of-law rules (New Jersey vs. Texas), the panel determined that New Jersey law controls the "validity and enforceability" of the parties' agreements to arbitrate. Under New Jersey's seminal decision, Atalese v. U.S. Legal Services Gp., 219 N.J. 430 (2014), waiver-of-rights provisions, such as in employment agreements, will be enforceable only if they clearly and unambiguously state that a party's right to a trial, including before a jury, is being waived. As a result, the plaintiffs are permitted to seek redress for their claims in court, as opposed to in arbitration. That is, the Court found the arbitration provision of the plaintiffs' agreements with defendants not enforceable.

The Little opinion is the latest judicial decision sending a message to New Jersey employers that if they wish to have enforceable arbitration agreements, the agreements must be clear, direct and express as to a jury trial waiver. It is for this reason that employers need to consult with knowledgeable counsel to both assess the need for a trial waiver in favor of mandatory, binding

arbitration and whether to include an enforceable jury trial waiver (i.e., a mandatory arbitration provision) in an employment contract.

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