

# **ALTERNATIVE DISPUTE RESOLUTION COMMITTEE OF THE PENNSYLVANIA BAR ASSOCIATION**

## **SUBCOMMITTEE TO STUDY THE REVISED UNIFORM ARBITRATION ACT AS APPROVED AND RECOMMENDED IN AUGUST, 2000 BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS FOR ENACTMENT IN ALL THE STATES**

### **FINAL REPORT**

#### **BACKGROUND**

The Uniform Arbitration Act (UAA) was promulgated in 1955 by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Of the forty-nine (49) jurisdictions that have arbitration statutes, thirty-five (35) have adopted the UAA and fourteen (14) have adopted substantially similar legislation. Pennsylvania adopted UAA in 1980 (42 Pa. C.S.A. § § 7301-7320).

A primary purpose of UAA was to insure the enforceability of agreements to arbitrate, sometimes in the face of resistance to the concept in state law. Since that time, arbitration has become a widely accepted procedure for resolving disputes. Such growth caused NCCUSL to appoint a Drafting Committee to revise UAA in light of the increase in the use of arbitration, the complexity of disputes being resolved and developments in the law.

UAA did not address some issues which arise in arbitration. It does not address (1) who decides the arbitrability of a dispute and by what criteria; (2) whether a court or arbitrators may issue provisional remedies; (3) how a party can initiate an arbitration proceeding; (4) whether arbitration proceedings may be consolidated; (5) whether arbitrators are required to disclose facts reasonably likely to affect impartiality; (6) what extent arbitrators or an arbitration organization are immune from civil actions; (7) whether arbitrators or representatives of arbitration organizations may be required to testify in another proceeding; (8) whether arbitrators have the discretion to order discovery, issue protective orders, decide motions for summary dispositions, hold pre-hearing conferences and otherwise manage the arbitration process; (9) when a court may enforce a pre-award ruling by an arbitrator; (10) what remedies an arbitrator may award, especially in regard to attorney's fees, punitive damages or other exemplary relief; (11) when a court can award attorney's fees and costs to arbitrators and arbitration organizations; (12) when a court can award attorney's fees and costs to a prevailing party in an appeal of an arbitrator's award; and (13) which sections of UAA would not be waivable, an important matter to insure fundamental fairness to the parties will be preserved, particularly in those instances where one party may have significantly less bargaining power than another; and (14) the use of electronic information and other modern means of technology in the arbitration process. RUAA

deals with all of the above issues and provides a more up-to-date process to resolve disputes through arbitration. (See Prefatory Note to RUAA.)

The NCCUSL Drafting Committee agreed on two (2) guiding principles in drafting RUAA. First, arbitration is a consensual process in which autonomy of the parties should be given primary consideration, so long as their agreements conform to notions of fundamental fairness. RUAA provides parties the opportunity in most instances to shape the arbitration process to their own particular needs. In most instances RUAA provides a default mechanism if the parties do not have a specific agreement on a particular issue. Second, the underlying reason many parties choose arbitration is the relative speed, lower cost, and greater efficiency of the process. In addition, RUAA insulates arbitrators from unwarranted litigation to insure their independence by providing them with immunity. RUAA also recognizes the body of case law developed by the Supreme Court of the United States holding that the pro-arbitration policy of the Federal Arbitration Act (FAA) preempts state law on issues that would moot or limit contractual agreements to arbitrate. RUAA does not expressly deal with international arbitration because, according to the Drafting Committee, few international cases are dealt with in state courts and state laws inconsistent with the New York Convention (9 U.S.C. § 201) or with Chapter 2 of Title 9 of the United States Code are preempted. (See Prefatory Note to RUAA.)

### **ENACTMENT; INTRODUCTION; ENDORSEMENT**

RUAA has been enacted in New Mexico, with a number of changes, in Nevada, where the punitive damages provisions were deleted and in Hawaii, intact. RUAA has been introduced in Connecticut, the District of Columbia, Iowa, Illinois, Indiana, Minnesota, Missouri, Oklahoma and West Virginia. RUAA has been endorsed by the American Arbitration Association, National Arbitration Forum, JamsEndispute, the National Academy of Arbitrators, the Dispute Resolution Committees of the American College of Real Estate Lawyers and the Association of the Bar of the city of New York and by the following ABA Sections: Dispute Resolution; Litigation; Business Law; Torts and Insurance Practice; Real Property, Trusts and Probate; Labor and Employment Law; and Senior Lawyers. (See Prefatory Note to RUAA.)

### **THE SUBCOMMITTEE**

The Subcommittee met \_\_ times. A list of the members is attached as Appendix A. The Subcommittee is comprised of experienced full and part time arbitrators, law school professors, a former Common Pleas Judge, the Chief Administrative Judge of the PA. P.U.C and a regional vice-president of the American Arbitration Association. In addition, the Subcommittee sought and received input from the PA. Trial Lawyers Association and the Government Lawyers Committee of the PA. Bar Association. Members of the Subcommittee submitted special reports to the Subcommittee on specific aspects of RUAA. Copies of the Special Reports are attached as Appendices B, C, D and E. A copy of the November 27, 2001 comment letter of Charles E. Schmidt, Jr., Esquire, on behalf of the PA. Trial Lawyers Association is attached as Appendix F. Three law students of Professor Robert Ackerman submitted recommendations, attached as

Appendices G, H and I. Talking Points in Support of RUAA, dated February 5, 2001, by Carroll E. Neesemann are attached as Appendix J.

## RECOMMENDATIONS

The Subcommittee recommends the following:

1. that RUAA be enacted in Pennsylvania with one change; Section 23(b) (VACATING AWARD), provides that motions to vacate an award be filed within 90 days of three (3) possible triggering events; we recommend that in each of the three (3) triggering events that the time period be shortened to 30 days to file a motion to vacate an award;

2. that it be the expressed intention of the Legislature that Section 28(b) (APPEALS), includes, *inter alia*, the time within which an appeal from an award must be taken; and that that period be expressly stated to be 30 days;

3. upon the effective date of RUAA, § 7302(a) (General rule), of UAA should be amended to reverse the existing presumption that all arbitrations are conclusively presumed to be governed by common law, unless the parties have expressly provided in writing to the contrary, to provide, instead, that all arbitrations shall be conclusively presumed to be governed by RUAA, unless the parties have expressly provided in writing to the contrary.

4. upon the effective date of RUAA, § 7302(d)(1)(i) and (ii) (Special application), of UAA should be repealed; § 7302(d) provides for broad judicial review of arbitration awards where: i) the Commonwealth is a party; ii) any political subdivision arbitrates with an employee or employee representatives; or iii) any person has been required by law to submit or agree to submit a controversy to arbitration pursuant to UAA; the provision is highly protective of the Commonwealth and its subdivisions; it was enacted at a time when there was little experience with the government being party to arbitration proceedings; with the proliferation of arbitration and the favorable experience with the process, there is no longer a need for such protections; further, they are inconsistent with one of the major goals of arbitration, that is, finality and avoidance of the costly and time consuming judicial process.

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5. § 7307(b) Record, of UAA should be allowed to lapse with the rest of UAA in accordance with the schedule established in Section 3(c) of RUAA; RUAA is silent on the issue of the creation and use of a stenographic record; the parties are free to agree on whether or not to create a record and, if created, how it may be used; further, Section 15 of RUAA may give the arbitrator the right to cause a record to be made; and

6. the delayed date in Section 3(c) of RUAA, by which all agreements to arbitrate, whenever made, are to be governed by RUAA (unless expressly agreed to the contrary by the parties) should be the second anniversary of the effective date of RUAA.

## READINGS

Copies of RUAA are available on line at <http://www.law.upenn.edu/bll>. It runs 77 pages, with comments. For additional reading see Pavetti, F.J., Why States Should Not Tamper with RUAA, *ADR Currents*, Vol. 6, No 2, June-Aug. 2001 (American Arbitration Association); Cole, S.R., Uniform Arbitration: "One Size Fits All" Does Not Fit, *Ohio State Journal on Dispute Resolution*, Vol. 16 2001 Number 3; and Heinsz, T.J., The Revised Uniform Arbitration Act: Modernizing, Revising, and Clarifying Arbitration Law, *Journal of Dispute Resolution*, Vol. 2001, Number 1.

Respectfully submitted,

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