

**NEW JERSEY APPELLATE COURT ISSUES BROAD  
OPINION REFUSING TO ENFORCE ARBITRATION  
AGREEMENT AGAINST DISCRIMINATION CLAIM**

**May 2000**

## **New Jersey Appellate Court Issues Broad Opinion Refusing to Enforce Arbitration Agreement Against Discrimination Claim**

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In an April 25, 2000 opinion, the Superior Court of New Jersey, Appellate Division refused to enforce an arbitration agreement in the context of an employee's claim of discrimination under the New Jersey Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1 *et seq.* *Quigley v. KPMG Peat Marwick, LLP*, No. A-2900-98T1, 2000 WL 485825 (N.J. Super. Ct. App. Div. Apr. 25, 2000). Although the appellate court generally reaffirmed the permissibility of requiring non-union employees to submit their discrimination claims to binding arbitration, the court refused to compel arbitration on the specific facts presented in the case on terms that will have wide-ranging implications upon the enforceability of arbitration agreements in New Jersey.

In *Quigley*, KPMG Peat Marwick ("KPMG") terminated the plaintiff after 18 years of employment. The plaintiff sued in state court, alleging age discrimination in violation of the LAD. When KPMG sought to compel arbitration pursuant to the plaintiff's arbitration agreement, the plaintiff argued that KPMG had coerced him into signing the agreement. In addition, the plaintiff argued that he had not knowingly and voluntarily waived his right to a jury trial under the LAD when he executed his arbitration agreement. The trial court rejected his claim and directed the parties to proceed with arbitration. The plaintiff appealed.

The appellate court's opinion initially reads as a victory for the enforceability of arbitration agreements. In this regard, the court firmly rejected the plaintiff's contention that he executed the arbitration agreement "under duress" because KPMG allegedly had conditioned his employment on his signing the agreement. Specifically, the court, in terms very helpful for employers, stated: "Courts that have considered this issue have consistently determined that the economic coercion of obtaining or keeping a job, without more, is insufficient to overcome an agreement to arbitrate statutory claims."

Unfortunately for employers, however, the appellate court proceeded to reverse the trial court's order compelling arbitration based on two conclusions that plaintiffs undoubtedly will cite when opposing efforts to force their claims into binding arbitration. Specifically, the court held as follows:

The New Jersey legislature did not expressly provide for the right to a jury trial under the LAD until 1990. Since the plaintiff had signed his arbitration agreement prior to 1990, the appellate court held that the plaintiff could not have "knowingly" waived his right to a jury trial under the LAD when he signed his agreement. Interpreting the arbitration agreement as a waiver — as opposed to a standard contract — the court held that it could not enforce an unknowing waiver. Importantly, however, the court did suggest that an

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arbitration agreement that expressly contemplates future changes to the law might be enforceable.

The arbitration clause in question in *Quigley* broadly extended to “[a]ny claim or controversy . . . arising out of or relating to this Agreement or the breach thereof, or in any way related to the terms and conditions” of the plaintiff’s employment. Nonetheless, the appellate court found such language ambiguous. Specifically, the court found ambiguity because the arbitration agreement did not expressly refer to disputes arising out of the “termination” of employment. The court found further ambiguity in the lack of any express reference to its applicability to statutory claims such as the LAD.

The court’s decision in *Quigley* is troubling, especially insofar as it very narrowly construes what otherwise appears to be very expansive language. Accordingly, employers would be well served by reviewing their arbitration agreements with New Jersey employees to assess whether a court might find them to be afflicted by facial or latent ambiguity. For example, do the agreements expressly extend to statutory rights or are they arguably limited to disputes arising out of the enforceability of an underlying employment agreement? Do the agreements expressly state that they apply to laws as those laws are amended from time to time? In addition, employers might consider requiring their more long-term employees to sign new, more state-of-the-art arbitration agreements, especially if those employees have not signed such agreements since before 1991 the year Congress amended Title VII of the Civil Rights Act of 1964 to provide a right to jury trial in most federal discrimination cases.

*Quigley* illustrates the importance of careful drafting of arbitration agreements. Labor and Employment Law attorneys at Morgan, Lewis & Bockius LLP have had substantial experience in drafting such agreements, as well as litigating disputes concerning their enforceability. In the event that you have any questions with respect to *Quigley* or its ramifications, please do not hesitate to contact Richard G. Rosenblatt at (609) 919-6609 or (215) 963-5511 or by e-mail at [RGRosenblatt@mlb.com](mailto:RGRosenblatt@mlb.com).

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