

To: New Jersey Law Revision Commission
From: Adrian Altunkara
Re: Filing Time Frame for Applications to Modify or Clarify an Arbitration Award under N.J.S. 2A:23A-13(a)
Date: April 10, 2017

MEMORANDUM

Executive Summary

Staff seeks authorization to conduct additional research regarding the New Jersey Alternative Procedure for Dispute Resolution Act (APDRA) and outreach in order to determine if amendments to the Act may be proper.

The court in *Citizens United Reciprocal Exch. v. N. NJ Orthopedic Specialists* recognized the language in N.J.S. 2A:23A-13(a) to be ambiguous regarding: (1) the time a party has to commence a summary action where a party files a 12(d) application, but the umpire issues an order denying modification of the award; and (2) the amount of time a party has to challenge an award when the application to modify is made pursuant to the rules adopted by the arbitrating organization and not pursuant to N.J.S. 2A:23A-12(d).¹

Staff would like to research whether it would be appropriate to expressly modify the statute to reflect a 30-day filing time limit for a summary action when an application to modify has been filed and denied, or when the application to modify is made pursuant to the rules of the arbitrating organization and not pursuant to N.J.S. 2A:23A-12(d).

Statute

N.J. Stat. Ann. § 2A:23A-13(a)

A party to an alternative resolution proceeding shall commence a summary application in the Superior Court for its vacation, modification or correction within 45 days after the award is delivered to the applicant, or within 30 days after receipt of an award modified pursuant to subsection d. of section 12 of this act, unless the parties shall extend the time in writing. The award of the umpire shall become final unless the action is commenced as required by this subsection.

Background

The Alternative Procedure for Dispute Resolution Act was enacted in 1987 to create a new procedure for dispute resolution alternative to the present civil justice system and arbitration

¹ *Citizens United Reciprocal Exch. v. N. NJ Orthopedic Specialists*, 445 N.J. Super. 371, 378 (App. Div. 2016).

system of settling disputes.² Pursuant to the APDRA, a party to arbitration may commence a summary application in the Superior Court to seek a vacation, modification, or correction of an arbitration award.³ Upon the granting of an order confirming, modifying, or correcting an award, a judgment or decree shall be entered by the trial court and there will be no further appeal or review of the judgment or decree, except in rare circumstances that may compel limited appellate review.⁴ Specifically, N.J.S. 2A:23A-13(a) provides:

A party to an alternative resolution proceeding shall commence a summary application in the Superior Court for its vacation, modification or correction within 45 days after the award is delivered to the applicant, or within 30 days after receipt of an award modified pursuant to subsection (d) of section 12 of this act, unless the parties shall extend the time in writing. The award of the umpire shall become final unless the action is commenced as required by this subsection.

Thus, N.J.S. 2A:23A-13(a) mandates that the parties have 45 days after delivery of the award by the umpire to commence a summary action in the Chancery Division of the Superior if they seek to vacate, correct, or modify the award. If the award is modified by an umpire, parties have 30 days after delivery of the award. However, the Appellate Division in *Citizens United Reciprocal Exch.* recognized that: (1) the statute does not reveal the amount of time a party has to challenge an award when the application to modify has been denied; and (2) it does not reveal an amount of time a party has to challenge an award when the application to modify is made not pursuant to N.J.S. 2A:23A-12(d), but pursuant to the rules adopted by the arbitrating organization.⁵

In 2009, a passenger sustained personal injuries in a vehicle insured by Citizens United Reciprocal Exchange (“CURE”).⁶ Defendant, Northern NJ Orthopedic Specialists (“Orthopedic”), performed spinal surgery on the passenger in 2011.⁷ Orthopedic subsequently submitted a bill for \$89,266 to CURE, and the claim was denied.⁸ Orthopedic sought PIP arbitration to be conducted by dispute resolution professionals, Forthright Solutions (“Forthright”).⁹ Orthopedic claimed \$55,410.29 of PIP benefits.¹⁰ On April 8, 2013, Forthright granted Orthopedic \$16,433.05, together with counsel fees, costs, and interest.¹¹ In response,

² N.J. Stat. Ann § 2A:23A-1

³ N.J. Stat. Ann § 2A:23A-13(a)

⁴ *Citizens United Reciprocal Exch. v. N. NJ Orthopedic Specialists*, 445 N.J. Super. 371, 375-76 (App. Div. 2016).

⁵ *Id.* at 378.

⁶ *Id.* at 374.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Citizens United Reciprocal Exch. v. N. NJ Orthopedic Specialists*, 445 N.J. Super. 371, 374 (App. Div. 2016).

Orthopedic filed a summary action in the Law Division challenging the award.¹² The Court entered a consent judgment vacating the award and remanding back to Forthright for further consideration of evidence, pursuant to N.J.S. 2A:23-13(c)(5).¹³ After the second hearing, Forthright awarded \$31,939.99 plus counsel fees to Orthopedic in a letter dated March 31, 2014.¹⁴

In accordance with Rule 24(a) of Forthright's governing rules, CURE made an application seeking clarification of the award.¹⁵ Rule 24(a) provides that a party seeking to clarify an Award must submit a written application to Forthright "within 35 days after the date of Forthright's letter sending the award to the parties."¹⁶ On June 20, 2014, Forthright denied CURE's application for clarification, finding that the issues were "sufficiently addressed."¹⁷ Forty-five days later, on August 4, 2014, CURE filed a complaint and request for an Order to Show Cause demanding that the DRP's award be vacated pursuant to N.J.S.A. 2A:23A-13.¹⁸

On September 11, 2014, Judge Thomas F. Brogan dismissed CURE's filings with prejudice, finding that N.J.S. 2A:23A-13(a) required CURE to file the complaint within 30 days of receiving the Modification/Clarification denied order instead of 45 days.¹⁹ Accordingly, CURE filed an appeal to the Appellate Division arguing that N.J.S. 2A:23A-13(a) allowed it to file its summary action within 45 days of its receipt of Forthright's Clarification Denied Order, but that the Order is not "the award."²⁰ Orthopedic argued that the statute mandates a 30-day time limit applies, and that the order is not an award modified pursuant to N.J.S. 2A:23A-12(d).²¹

The plain language of N.J.S. 2A:23A-13(a) clearly addresses two scenarios. First, if a 12(d) application is not filed, a party must file a summary action challenging the award within 45 days after delivery of the award to the applicant.²² Second, if a party files a 12(d) application, and the umpire issues a modified award, a party must file a summary action challenging the modified award within 30 days after receipt of an award modified pursuant to N.J.S. 2A:23A-12(d).²³ However, statutory language is silent on the filing time restrictions for when a party files a 12(d) application but the umpire denies modification of the award.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 375.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 379.

²³ *Id.*

Although the language of the APDRA clearly restricts parties' rights to appeal beyond the trial court, case law has recognized that in limited circumstances – including the dismissal of an action on timeliness grounds – an appeal is permissible.²⁴ In this case, the Appellate Division found that it had the authority to consider the appeal, noting that “[s]uch review is particularly appropriate here because “[t]he unsettled questions of statutory interpretation” here have “yet to be resolved in a published opinion,” and “[t]he repeat players in the PIP system—claimants, insurers, DRPs, lawyers, and trial judges—all can benefit from definitive precedential guidance.”²⁵ In its decision, the Appellate Division identified two unsettled issues in the construction of the relevant statute, and found guidance from the general purpose of the APDRA and its emphasis on “the expeditious resolution of...alternative resolution proceedings.” The Appellate Division recognized the purpose of APDRA is to establish “an efficient and expeditious procedure for resolution of civil disputes.”²⁶

Accordingly, the Appellate Division in *Citizens United* considered the guidance provided by the existing statutory language and its purposes, and held that if an application to modify is filed under N.J.S. 2A:23A-12(d) or an application to modify or clarify is made under the rules of the PIP dispute organization, a party must file any summary action “within 30 days after receipt” of the order granting or denying the application.²⁷

Conclusion

Staff seeks authorization to conduct additional research and outreach regarding this issue in order to determine whether modifying the language of N.J.S. 2A:23A-12(a) to expressly include the 30-day time limit identified by the Appellate Division for summary actions after an application to modify is made (1) under N.J.S. 2A:23A-12(d) and denied; or (2) made under the rules of the PIP dispute organization would be of assistance in addressing any procedural uncertainty around the APDRA.

²⁴ *Id.* at 376-377.

²⁵ *Id.* citing *Kimba Med. Supply v. Allstate Ins. Co.*, 431 N.J.Super. 463, 482–83 (App.Div.2013), *certif. granted*, 217 N.J. 286, *certif. dism'd as improvidently granted*, 223 N.J. 347 (2014).

²⁶ *Id.* citing *Sponsor's Statement Appended to Assemb. B. No. A296*, at 12–13 (Jan. 14, 1986); *Assemb. Judiciary Comm. Statement to Assemb. B. No. A296*, at 1–2 (June 16, 1986); *Senate Judiciary Comm. Statement to Assemb. B. No. A296*, at 1–2 (Oct. 27, 1986); *see also Draftsman's Legis. History*, reprinted before N.J.S. 2A:23A–1.

²⁷ *Citizens United Reciprocal Exch.*, 445 N.J. Super. at 382-83 (“[W]e hold that the thirty-day deadline under N.J.S. 2A:23A-13(a) and N.J.A.C. 11:3-5.6(g) for filing a summary action in a PIP arbitration also applies when a party has filed an application for modification or clarification under the rules of the organization.”)