

## Litigation Alert: Securing Harmonized Effects of Arbitration Agreements

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A new Third Circuit decision underlines the necessity for companies to carefully consider the arbitration clauses they include in their contracts, with significant attention to how an arbitration might play out in the event a dispute arises. Key provisions in a contract of where an arbitration should take place and under what law the dispute will be resolved should be scrutinized and made parallel where possible.

In business transactions involving multiple agreements, companies contemplating arbitration as the preferred method of dispute resolution should consider if and how an arbitration will move forward between all potentially relevant parties in a dispute. If civil litigation is the contractual method of dispute resolution, all interested parties can be joined and included in one single lawsuit. Arbitrations do not have the same mechanism. The last thing a company wants to deal with when problems arise in their business is having to litigate in a piecemeal fashion in multiple proceedings to reach a resolution. However, that is exactly what will happen, if parties elect arbitration over civil litigation and are not careful to ensure that each contract contains the same method, place, and law for arbitration, as well as providing for joint arbitration of related disputes.

As an example, in the absence of parallel and joint arbitration provisions in all relevant contracts to a transaction, a company can find itself having to arbitrate one portion of the dispute in New York, before the AAA, under New York law, and another part in the Superior Court of New Jersey. The expense, time, and potential for conflicting judgments arising from separate actions can be avoided by careful drafting of dispute resolution clauses.

The Third Circuit's decision in *P&A Construction Inc., v. International Union of Operating Engineers Local 825, et al.*, No. 2:2019cv18247 (3d Cir. Nov. 18, 2021), highlights the danger of failing to harmonize relevant arbitration clauses. In this case, the Third Circuit found that the companies seeking to force a joint arbitration between themselves and two different unions could not succeed because they were, at least nominally, separate employers and thus the two unions had not consented to arbitration with the same employer. The outcome could have been avoided if the arbitration provisions of the separate contracts had explicitly called for joint arbitration.

Although *P&A Construction Inc., v. International Union of Operating Engineers Local 825* dealt with Union contracts, the outcome will be the same in any multi-party dispute where the contracts governing the relationship do not have consistent arbitration provisions.

Legal counsel is necessary to review contracts to ensure that necessary and consistent provisions are included through the transaction documents to protect your company from duplication, unnecessary costs, and varying outcomes. Brach Eichler is available to review your company's contracts to ensure that your company is protected, as well as provide guidance on the appropriate dispute resolution clauses that meet your company's needs.

If you have any questions about this alert, please contact:

**Rose A. Suriano, Esq.**, Member and Co-Chair, [Litigation Practice](#), at [rsuriano@bracheichler.com](mailto:rsuriano@bracheichler.com) or 973-403-3129

**Rebecca Kinburn, Esq.**, Associate, [Litigation Practice](#), at [rkidburn@bracheichler.com](mailto:rkidburn@bracheichler.com) or 973-364-5208