

## New Jersey Appellate Division Ruling Profoundly Changes Interpretation of Arbitration Clauses

### What You Need to Know:

On February 8, 2023, the New Jersey Appellate Division issued a published decision that fundamentally reshapes the interpretation of arbitration clauses in commercial contracts. In *County of Passaic v. Horizon Healthcare Services, Inc.*, the court held that where a contract is between two sophisticated parties, or where the contracting parties have equal bargaining power, an arbitration clause does not need to articulate that the parties are giving up their right to go to court in order for the clause to be enforceable. The ruling represents a significant divergence from the New Jersey Supreme Court's 2014 landmark holding in *Atalese v. U.S. Legal Services Group, L.P.*, which required arbitration clauses to include an explicit waiver of the parties' rights to seek relief in a court of law as a prerequisite to enforceability.

In *County of Passaic*, the plaintiff county contracted with the defendant healthcare organization to manage its self-funded health benefit plan. Two years after the contract expired, the county filed a lawsuit alleging the defendant had breached the contract by failing to implement certain reimbursement rates. The defendant successfully moved to compel arbitration based on language in their agreement that simply stated that all disputes between the parties would be submitted to binding arbitration with the American Arbitration Association. Conspicuously absent from the clause was any explanation that the parties were waiving their rights to seek relief in court or an explanation of how arbitration differs from a judicial proceeding.

In affirming the trial court's decision to compel arbitration, the Appellate Division opined that the holding of *Atalese* focused on the unequal relationship between the contracting parties and the "adhesion nature" of the agreement and was therefore only applicable to consumer contracts and employment contracts. Since the plaintiff county was a sophisticated commercial litigant represented by counsel during the course of contract negotiations, and its multi-year relationship with the defendant, the consumer protection concerns underlying the *Atalese* requirements were irrelevant.

In its practical application, the new rule declared by the Appellate Division in *County of Passaic* will result in the inconsistent enforcement of arbitration provisions in different contexts. For instance, an individual who signs an employment contract with an employer, or a consumer contract with a cable provider, will enjoy the protections of *Atalese*. However, if that same individual signs a commercial contract in their capacity as the member of a limited liability company, or as a board member of a condominium association, the vulnerability to arbitration set forth in *County of Passaic* will likely apply.

Moving forward, parties to commercial contracts must closely review with their counsel the precise terms of arbitration clauses, and the relationship between the parties, when interpreting the enforceability of arbitration provisions.

Please contact the author of this alert with questions or to discuss your specific circumstances.



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