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ARBITRATION AND THE MARCELLUS SHALE

Zach Morahan*

I. INTRODUCTION

The development of the Marcellus Shale in Pennsylvania and some surrounding states has presented many landowners with newfound wealth. But with the good often comes the bad, and litigation surrounding the extraction is not uncommon. The governing document between the landowner and the lessee is the lease. As such, it is important for each party to review the lease to ensure the provisions are acceptable. But many landowners, particularly when the development was in its infancy, did not have their leases reviewed by an attorney. And as a result, the leases sometimes included clauses very unfavorable to the landowner. An arbitration clause, depending on the specific details of the provision, can be the vehicle within which these unfavorable terms may be couched.

This article explores the recent legislation and case law involving arbitration within the Marcellus Shale Play. It then considers which laws apply to the arbitration agreement and concludes with a discussion of relevant considerations for practitioners.

II. THE COAL BED METHANE REVIEW BOARD

Practitioners should be aware of Pennsylvania Senate Bill 1108, which was introduced by Senators White, Wozniak, Scarnati, and Schwank, on June 6, 2011.¹ The introduced legislation modifies Section 6.4(e) of the Coal Refuse Disposal Control Act and expands the authority of the Coal Bed Methane Review Board. The amended section reads:

The purpose of the board shall be to consider objections and attempt to reach agreement on or determine a location for the coal bed methane well or access road. The board shall also have the authority to consider objections and reach agreement on or determine a location for natural gas wells.²

The bill further stated decisions of the board were subject to appeal to the “court of common pleas in the county where the property at issue is located.”³ The bill was referred to the Environmental Resources and Energy Committee. In the past, the Review Board’s authority was limited to coal bed methane wells and access roads. The proposed legislation grants the Review Board authority to settle disputes on the location of natural gas wells. It is very important for practitioners to follow this legislation because it may drastically affect the procedure for some Marcellus disputes.

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¹ S.B. 1108, 2011–2012, Reg. Sess. (Pa. 2011).

² *Id.*

³ *Id.*

III. RECENT CASE LAW DEVELOPMENTS

The Middle District of Pennsylvania recently heard a case involving an arbitration agreement between a landowner and a lessee in *Ulmer v. Chesapeake Appalachia, LLC*.⁴ Ulmer petitioned the court to invalidate his lease, claiming it violated Pennsylvania's Minimum royalty statute.⁵ Chesapeake moved to compel arbitration as stated in the parties' agreement. At issue in the case was whether the court would apply the Federal Arbitration Act or state law.⁶ The court noted the FAA applied to transactions involving interstate commerce.⁷ Ulmer's property subject to the oil and gas lease was located entirely within Pennsylvania and the court held the FAA did not apply.⁸

After determining that Pennsylvania law would apply, the court articulated a two-part standard used to determine whether arbitration is appropriate. The first prong is whether the parties agreed to arbitrate; once this prong is satisfied, a court must then determine whether the arbitration agreement is applicable to the current dispute.⁹ After announcing the standard, the court approached the second prong first.¹⁰ The court found the arbitration provision covered the current dispute.¹¹ It then addressed Ulmer's argument that the lease, including the arbitration provision, was void because it violated Pennsylvania's minimum royalty act.¹² The court noted Ulmer was challenging the contract in its entirety. In reaching its decision, the court relied on *Buckeye Check Cashing, Inc. v. Cardegna*.¹³ In *Buckeye Check Cashing*, the United States Supreme Court held a challenge to the contract as a whole is a matter appropriate for the arbitrator.¹⁴ The court reconciled the decision in *Buckeye Check Cashing* with Pennsylvania law by noting that the two are "functionally equivalent."¹⁵ In reaching its decision, the court stated:

Where a party challenges the contract as a whole, either on a ground that directly affects the entire agreement or on the ground that the illegality of one of the contract's provisions renders the whole contract invalid, the issue is to be considered by the arbitrator in the first instance.¹⁶

Thus, because Ulmer challenged the legality of the entire contract, the Court held the issue was appropriate for arbitration and granted Chesapeake's Motion to Compel Arbitration.¹⁷ Knowledge of this rule is essential for successful challenges to arbitration clauses. If

⁴ *Ulmer v. Chesapeake Appalachia, LLC*, No. 4:08-CV-2062, 2009 U.S. Dist. LEXIS 124650 (M.D. Pa. Jan. 16, 2009).

⁵ *Id.* at *1; 58 P.S. § 33 (stating that oil and gas leases are not valid unless they guarantee the lessor "at least one-eighth royalty of all oil, natural gas, or gas of other designations removed or recovered from the subject real property").

⁶ *Ulmer*, 2009 U.S. Dist. LEXIS 124650, at *2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at *3 (citing *D & H Distrib. Co., Inc v. Nat'l Union Fire Ins. Co.*, 817 A.2d 1164, 1166 (Pa. Super. Ct. 2003)).

¹⁰ *Id.*

¹¹ *Id.* The Court noted that the arbitration provision was broad and expansive. The agreement reads, "In the event of a disagreement between Lessor and Lessee concerning this Lease, performance thereunder, or damages caused by Lessee's operations, the resolution of all such disputes shall be determined by arbitration in accordance with the rules of the American Arbitration Association. All fees and costs associated with the arbitration shall be borne equally by the Lessor and Lessee.

¹² *Id.* at *4.

¹³ *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006).

¹⁴ *Id.* at 444.

¹⁵ *Ulmer*, 2009 U.S. Dist. LEXIS 124650, at *5.

¹⁶ *Id.* at *4.

¹⁷ *Id.* at *7.

practitioners seek to avoid arbitration, their challenge must specifically target the arbitration agreement. Otherwise, any attack to the contract will be decided by an arbitrator.¹⁸

The District Court heard the same issue in *Hayes v. Chesapeake Appalachia, LLC*.¹⁹ Once again, the landowner sought to invalidate the lease because it violated Pennsylvania's minimum royalty requirement.²⁰ Chesapeake moved to compel arbitration.²¹ The defendants argued that the arbitration clause covered the dispute and was appropriate for arbitration because it was a "disagreement concerning the lease" as opposed to just the arbitration clause.²² The court granted Chesapeake's motion to compel and held that the dispute was appropriate for arbitration based on the same reasoning employed in *Ulmer*.²³ Additionally, the Plaintiffs did not persuade the court by arguing that real estate matters are statutorily prohibited from arbitration.²⁴

The Middle District of Pennsylvania once again heard a case involving an arbitration agreement pertaining to a Marcellus Shale lease in *Eisenberger v. Chesapeake Appalachia, LLC*.²⁵ This case concerned whether the parties actually entered into an agreement and, if so, whether the arbitration clause governed their current dispute. The Plaintiffs owned land in Wyoming County, Pennsylvania.²⁶ Premier Land Services, LLC ("Premier") contacted the Plaintiffs about signing an oil and gas lease.²⁷ Following Premier's original contact, the Plaintiffs contacted Premier and expressed an interest in possibly signing a lease with Chesapeake.²⁸ As a result, Premier provided the Plaintiffs with an unsigned lease which listed Mr. Eisenberger as a single man and the only lessor.²⁹ After Mr. Eisenberger signed and returned the lease, Mrs. Eisenberger noticed that the lease did not identify her as a co-owner of the land subject to the lease.³⁰ As a result, Mr. Eisenberger mailed and faxed a letter to Premier requesting that it void the current paperwork and send a new lease for review.³¹ Premier later contacted Mr. Eisenberger and told him Chesapeake's legal department would handle the issue.³² Approximately a week later, Premier contacted Mr. Eisenberger and stated Chesapeake thought the lease was valid.³³ Mr. Eisenberger subsequently notified Premier that he was revoking his

¹⁸ *Id.*

¹⁹ *Hayes v. Chesapeake Appalachia*, No. 3:09-CV-619, 2009 U.S. Dist. LEXIS 124653 (M.D. Pa. May 15, 2009).

²⁰ *Id.*

²¹ *Id.* at *2.

²² *Id.* (relying on *Ulmer*).

²³ *Id.* at *3. The Court also noted Hayes' filings were not consistent with the Local Rules of Court of the Middle District of Pennsylvania. The Court found the Plaintiff's document lacked adequate responsive argument. Practitioners must follow the Local Rules. It was only because of the good nature of the Court that the Plaintiff's issue was heard. The Court could have declared the Defendant's motion unopposed because of the Plaintiff's lack of compliance to the Local Rules.

²⁴ *Id.* at *4 (stating that Pa. C.S. § 7361 did not stand for a broad policy not to sub real estate matters to arbitration).

²⁵ *Eisenberger v. Chesapeake Appalachia, LLC*, No. 3:09-CV-1415, 2010 U.S. Dist. LEXIS 44017 (M.D. Pa. May 5, 2010).

²⁶ *Id.* at *1. The Plaintiff's land was thought to overlie the Marcellus Shale. Many leases contained financially lucrative bonus payments.

²⁷ *Id.* at *2. Premier Land Services, LLC is a leasing agent of the Chesapeake.

²⁸ *Id.*

²⁹ *Id.* Mrs. Eisenberger was not listed as a lessor. Additionally, she did not sign the lease.

³⁰ *Id.*

³¹ *Id.* at *2-3.

³² *Id.* at *3. This correspondence was made by the President of Premier Land Services, LLC, John Corcoran.

³³ *Id.* Chesapeake offered an increase in the bonus payment.

offer.³⁴ The Plaintiffs then filed a complaint seeking a declaratory judgment stating the lease was not an enforceable contract but simply represented an offer.³⁵ The case was removed to the district court and Chesapeake moved to compel arbitration.³⁶

The court articulated a two-part standard to determine whether parties must submit their disputes to arbitration. It explained the dispute would be appropriate for arbitration if the Plaintiffs entered into an agreement to arbitrate with Chesapeake and the current dispute fell within the agreed-upon provision.³⁷ The first prong of the test, whether the parties entered into an agreement to arbitrate, was at issue in this case. The court noted federal law usually preempts state law on arbitral issues, and state law is typically applied in diversity cases.³⁸ It then explained that, within diversity cases, courts should apply federal law in cases affecting interstate commerce and state law in cases that do not.³⁹ Because the lease in question concerned only land within Pennsylvania, the court applied Pennsylvania law.⁴⁰

The court first turned to *Buckeye Check Cashing* and noted that challenges to the arbitration clause exclusively are for the courts to decide and challenges to the contract generally are appropriate for the arbitrator.⁴¹ In *Buckeye Check Cashing*, Justice Scalia created an exception to the general rule. In a footnote he stated: “The issue of the contract’s validity is different from the issue whether any agreement between the alleged obligor and obligee was ever concluded. Our opinion today addresses only the former.”⁴² He later stated, “it is for courts to decide whether the alleged obligor ever signed the contract, ... whether the signor lacked authority to commit the alleged principal, ... and whether the signor lacked the mental capacity to assent.”⁴³ The district court did not find the case analogous to *Ulmer* and *Hayes*; rather, it held the issue fit within the area left unresolved in *Buckeye Check Cashing*.⁴⁴ As a result, the court found the dispute between Eisenberger and Chesapeake was for the court, and not an arbitrator, to decide.⁴⁵

Subsequent to the court’s decision, Chesapeake filed a Motion to Stay and a Renewed Motion to Compel Arbitration.⁴⁶ Chesapeake sought to stay the matter pending the decision in *Granite Rock v. Int’l Brotherhood of Teamsters*.⁴⁷ The court held there was no issue of contract formation before the Supreme Court in *Granite Rock*; therefore, granting a stay was inappropriate because the outcome of that case was unlikely to affect the current matter.⁴⁸ The court also

³⁴ *Id.* Mr. Eisenberger requested Premier return all related documents. Also, Mr. Eisenberger did not cash a bank note representing the increase bonus payment and delay rental payments.

³⁵ *Id.* at *4.

³⁶ *Id.*

³⁷ *Id.* (citing *Messa v. State Farm Ins. Co.*, 433 Pa. Super. 594, 641 A.2d 1167, 1168 (Pa. Super. Ct. 1994)).

³⁸ *Id.* at *5. (citing *H.L. Libby Corp. v. Skelly and Loy, Inc.*, 910 F. Supp. 195, 197 (M.D. Pa. 1995)).

³⁹ *Id.* (citing *Ulmer v. Chesapeake Appalachia, LLC*, No. 4:08-CV-2062, 2009 U.S. Dist. LEXIS 124650 (M.D. Pa. Jan. 16, 2009)).

⁴⁰ *Id.*

⁴¹ *Id.* at *7.

⁴² *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444 n.1 (2006).

⁴³ *Eisenberger*, 2010 U.S. Dist. LEXIS 44017, at *7 (citing *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444 (2006)).

⁴⁴ *Id.* at *9 (finding that, unlike in *Ulmer* and *Hayes*, there was no meeting of the minds between Eisenberger and Chesapeake; the Plaintiffs argued they revoked their offer before the Defendant had an opportunity to accept).

⁴⁵ *Id.* at *10 (stating that compelling arbitration would be unfair if the parties never actually agreed to the terms of the contract).

⁴⁶ *Eisenberger v. Chesapeake Appalachia, LLC*, No. 3:09-CV-1415, 2010 U.S. Dist. LEXIS 44017 (M.D. Pa. May 5, 2010).

⁴⁷ *Id.* at *5.

⁴⁸ *Id.* at *7.

denied the Renewed Motion to Compel Arbitration because Chesapeake did not introduce any evidence for the court to change its position.⁴⁹ This case creates a situation where practitioners may sidestep the enforcement of an arbitration clause and a narrow exception for parties to gain access to the courts. If Eisenberger challenged the legality of the contract, rather than whether a contract was ever formed, it is likely the court would have ordered the matter to proceed to arbitration. *Eisenberger* is a good example of why practitioners must be aware of the *Buckeye Check Cashing* rule.

The future of the proposed legislation amending the Coal Bed Methane Review Board's authority over natural gas well sites may affect subsequent cases such as the aforementioned. Although the proposed legislation is limited to disputes regarding natural gas well sites, no one can be sure where the Board's authority will eventually end. For example, must the well location be at the heart of the dispute, or will any dispute somehow referencing a well location fall under the authority of the Board?

IV. STATE V. FEDERAL LAW: WHICH IS THE CORRECT LAW TO APPLY

Whether state or federal law will apply to a particular case is an important consideration for the practitioners in that case. In some cases, the state and federal laws are very similar.⁵⁰ Even though the laws are sometimes almost identical, the courts must determine which law is applicable. The courts may apply the Federal Arbitration Act or the comparable state statute.⁵¹ In Pennsylvania, the applicable state law is the Pennsylvania Uniform Arbitration Act.⁵² Typically, state law is applied in diversity cases unless the matter involves interstate commerce,⁵³ and the *Ulmer* decision articulated this position.⁵⁴ Because the property at issue was located entirely within Pennsylvania, the court held Pennsylvania law applied.⁵⁵

Although the courts make clear Pennsylvania law applies in cases such as *Ulmer*, practitioners representing clients near state borders must be aware of the possibility of the application of the Federal Arbitration Act. Employing the logic used in *Ulmer*, it appears a dispute involving property located in both Pennsylvania and a neighboring state, such as West Virginia or New York, will apply the Federal Arbitration Act.

⁴⁹ *Id.* at *9. The Court once again stated Pennsylvania law shall govern the case. Additionally, the Court questioned whether the Renewed Motion to Compel Arbitration was the appropriate procedural device to challenge the Court's application of state law. They further stated a Motion for Reconsideration was the appropriate procedural manner to challenge the Court's decision.

⁵⁰ *Eisenberger v. Chesapeake Appalachia, LLC*, No. 3:09-CV-1415, 2010 U.S. Dist. LEXIS 9688 (M.D. Pa. May 5, 2010). The Court noted the Third Circuit's interchangeable use of Federal and Pennsylvania law because the two are essentially identical.

⁵¹ *See H.L. Libby Corp. v. Skelly and Loy, Inc.*, 910 F. Supp. 195, 197 (1995).

⁵² *See* 42 PA. CONS. STAT. § 7301.

⁵³ *Merrill Lynch v. Masland*, 878 F. Supp. 710, 712 (M.D. Pa. 1995).

⁵⁴ *Ulmer*, 2009 U.S. Dist. LEXIS 124650, at *2.

⁵⁵ *Id.*

V. UNCONSCIONABILITY AS A CONTRACT DEFENSE VOIDING ARBITRATION AGREEMENT

Section 2 of the Federal Arbitration Act states, “an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.”⁵⁶ The Supreme Court articulated Section 2 of the Federal Arbitration Act evidences a strong policy towards the enforcement of arbitration agreements.⁵⁷ The comparable Pennsylvania statute has a provision very similar to Section 2 of the Federal Arbitration Act.⁵⁸ Regardless of what statute applies, state contract law defenses may render arbitration agreements invalid.⁵⁹

One such defense, which may render Marcellus leases invalid, is an unconscionability defense.⁶⁰ A contract is unconscionable when there is “a lack of meaningful choice in the acceptance of the challenged provision and the provision unreasonably favors the party asserting it.”⁶¹ Procedural unconscionability is derived from the absence of the “meaningful choice” and substantive unconscionability from the unreasonableness of the terms.⁶² Both must be satisfied in a successful challenge of the contract on an unconscionability ground and the party challenging the provision shoulders the burden of proof.⁶³

The two-part test for the unconscionability test is particularly important for practitioners handling Marcellus leases. For instance, if the lease is extremely unreasonable, but the lessor makes a meaningful choice in agreeing to it, an unconscionability defense will fail. This situation demonstrates the reason landowners should consult an attorney before signing a lease. The attorney should review the lease to identify unfair provisions and attempt to remove them through the negotiation process. At first glance, the gas company holds the higher ground in regards to negotiation; however, landowner coalitions help to balance that inequality.

The distribution of arbitration costs provides practitioners with an argument to render an agreement unconscionable. The arbitration provision in *Ulmer* read in part, “All fees and costs associated with the arbitration shall be borne equally by the Lessor and Lessee.”⁶⁴ This distribution of the costs creates an obstacle for the landowner in pursuing a remedy to an alleged breach. The company essentially insulates itself from minor claims because it will not be worth it for lessors to shoulder half the costs of arbitration in addition to their attorney fees to seek a remedy. Even in more major disputes, the lessor’s expenses incurred through arbitration costs may stop them from pursuing litigation. The distribution of arbitration costs may prove

⁵⁶ 9 U.S.C. § 2.

⁵⁷ *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983).

⁵⁸ 42 PA. CONS. STAT. § 7303 (“A written agreement to subject any existing controversy to arbitration or a provision in a written agreement to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable, and irrevocable, save upon such grounds as exist at law or in equity relating to the validity, enforceability or revocation of any contract.”).

⁵⁹ *Doctor’s Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996) (noting such contract defenses to include fraud, duress, and unconscionability).

⁶⁰ *Salley v. Option One Mortg. Corp.*, 925 A.2d 115, 119 (Pa. 2007) (stating unconscionability defense has both statutory—under 13 Pa. C.S. § 2302—and common-law grounds).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 120.

⁶⁴ *Ulmer*, 2009 U.S. Dist. LEXIS 124650, at *2.

particularly burdensome to those with small amounts of leased acreage. Those with large amounts of leased land will probably be able to afford the arbitration through their bonus payment. Regardless, practitioners should attempt to negotiate the provision to put the costs on the lessee. Additionally, it may be in the lessee's interest to bear the full cost. If they do, they take away any possibility of a lessor's unconscionability claim based upon distribution of costs.

Practitioners should always discuss the effects of an arbitration agreement with their client before the client agrees to a lease. An explanation of the differences between arbitration and the courts is necessary because most landowners are not familiar with the arbitration process.⁶⁵ If the arbitration agreement distributes the costs to the client, an explanation and estimate of the additional costs is warranted so landowners can make an informed decision before agreeing to the contract.

VI. PRACTITIONER CONSIDERATIONS CONCERNING ARBITRATION AGREEMENTS IN MARCELLUS SHALE LEASES

The most important action for a practitioner is a careful reading of the lease before the client signs the lease. If the lease contains an arbitration clause, the practitioner should determine who will arbitrate the dispute and how the arbitrators are selected. For instance, under Pennsylvania's Uniform Arbitration Act, if for some reason the parties fail to appoint an arbitrator, or if the arbitrator is unable to perform his or her duty, the courts will appoint a replacement.⁶⁶ To ensure the client will have an arbitrator they want, the agreement should contain provisions for successor arbitrators. This eliminates the courts from appointing a replacement and creates stability.

Another consideration practitioners must be aware of is the enforceability of the arbitrator's award. The Federal Arbitration Act limits the grounds for vacatur in Section 10.⁶⁷ Pennsylvania's Uniform Arbitration Act has a provision similar to Section 10 of the Federal Arbitration Act.⁶⁸ The grounds in both statutes are limited and narrow. Thus, practitioners must inform their clients that the award will likely be final.

Practitioners should negotiate the lease before agreeing to a lease with an arbitration clause. As the saying goes, "you cannot get what you do not ask for." Thus, it never hurts to ask the company to strike the arbitration clause. The company's willingness to lease the property without an arbitration clause can hinge on factors such as the size of the parcel, the location of the parcel and the overall need of the parcel. For those landowners who do not possess particularly large or attractive parcels there are different ways to negotiate. For example, to gain more bargaining leverage, clients can join a landowner coalition as a form of collective bargaining.

Examination of the details of the arbitration clause is extremely important. For instance, in *Ulmer*, the arbitration provision stated, "all such disputes shall be determined by arbitration in accordance with the rules of the American Arbitration Association."⁶⁹ Practitioners cannot assume the rules of the American Arbitration Association are similar to those they encounter in court. Rather, they must carefully examine the rules to explain their implications to their clients.

⁶⁵ An explanation is warranted even if the client is familiar with the process to protect from potential malpractice.

⁶⁶ 42 PA. CONS. STAT. § 7305.

⁶⁷ 9 U.S.C. § 10.

⁶⁸ 42 PA. CONS. STAT. § 7314.

⁶⁹ *Ulmer*, 2009 U.S. Dist. LEXIS 124650, at *2.

In a situation where the arbitration provision mandates the use of the American Arbitration Association rules, the arbitrator must determine whether the Commercial Rules or Expedited Rules will apply. R-1(b) of the Commercial Rules states, “Unless the parties or the AAA determines otherwise, the Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest and arbitration fees and costs.”⁷⁰ This is significant because under the Expedited Rules, the arbitration can last only one day.⁷¹ This provision merits explanation to the landowner so they understand the differences between arbitration and the court. Additionally, the benefits and consequences of the Expedited Rules should be explained. For instance, the Expedited Rules are beneficial because the dispute will be resolved quickly and at a lower cost. However, the consequence is the lack of time a party has to introduce evidence and present their case. If parties prefer the Expedited Rules, they may contract to them in their arbitration provision. However, they should be aware of potential disputes where the time crunch of the Expedited Rules is harmful.

A practitioner must also determine how the arbitrators are selected. In *Ulmer*'s lease, the arbitration provision failed to state how many arbitrators would hear the dispute.⁷² Under the Commercial Arbitration Rules, when an agreement is silent on the number of arbitrators, “the dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that three arbitrators be appointed.”⁷³ This creates a level of uncertainty for the landowner. If a practitioner encounters a provision which fails to state the amount of arbitrators, they should negotiate the lease to specify how many and how the arbitrators are selected.

VII. CONCLUSION

The Marcellus Shale presents exciting new economic opportunities for Pennsylvania and some of the surrounding states. As exciting as the play can be, it is important for landowners and attorneys to review leases to protect their interests. Although arbitration has advantages, landowners must be cautious when signing leases containing arbitration clauses and practitioners must be proactive in explaining the pros and cons of arbitration to their clients. Failure to do so may end in a malpractice action.

⁷⁰ Am. Arb. Ass'n., Commercial Arb. Rule-1(b) (2009).

⁷¹ Am. Arb. Ass'n. Expedited Arb. Rule-8(a) (2009).

⁷² *Ulmer*, 2009 U.S. Dist. LEXIS 124650, at *2.

⁷³ Am. Arb. Ass'n. Commercial Arb. Rule-15 (2009).