

# NEWSLETTERS

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## THE PASCHOS LAW UPDATE NEWSLETTER

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## June, 2016

### I. EMPLOYMENT LAW

#### Private Agreement that Frustrates the LAD's Public-Purpose Imperative by Shortening the Two-Year Limitations Period for Private LAD Claims Cannot be Enforced

In *Rodriguez v. Raymours Furniture Co., Inc.*, 2016 N.J. LEXIS 566, \_\_\_ N.J. \_\_\_ (2016). plaintiff Sergio Rodriguez, applied for a job with defendant Raymours Furniture Company, Inc., t/a Raymour & Flanigan. The employment application that he signed read, in bolded capital letters, "I agree that any claim or lawsuit relating to my service with Raymour & Flanigan must be filed no more than six (6) months after the date of the employment action that is the subject of the claim or lawsuit. I waive any statute of limitations to the contrary."

In mid-September 2007, plaintiff was hired as a Helper, an at-will position. In November 2008, he was transferred to another location and promoted to Driver. Early in April 2010, plaintiff injured his knee in a work-related accident, requiring surgery and physical therapy. On October 1, 2010, two days after he returned to full-duty work, plaintiff was terminated. Although informed that his termination was due to a company-wide reduction in force, plaintiff asserted that others with less seniority or distinguishing features were retained.

On July 5, 2011, nearly seven months after his termination, plaintiff filed a complaint against defendant in Superior Court, alleging, in part, illegal employment discrimination based on actual or perceived disability, in violation of the LAD. Defendant moved for summary judgment based on the waiver provision, asserting that plaintiff's complaint was filed beyond the agreed-upon six-month limitations period. Plaintiff contended, in part, that the provision was unconscionable and unenforceable. The trial court granted summary judgment to defendant, finding that the provision was clear and unambiguous, and that the contractual shortening of the limitations period was neither unreasonable nor against public policy.

Plaintiff appealed, and the Appellate Division affirmed. Although the panel found that the employment application amounted to a contract of adhesion, it determined that it was enforceable in light of its clear, unambiguous language and the ample time plaintiff had to review it. The panel further held that, absent a controlling prohibitory statute, parties may modify a statute of limitations if, as here, the shortened time period is reasonable and does not violate public policy.

The Supreme Court reversed in a unanimous decision. The Court observed that the Appellate Division "had available to it, and cited, only cases that generally dealt with private agreements to shorten statutes of limitations pertaining to common law actions and cases that did not engage in any searching analysis of whether public policy was contravened by the shortening of a limitations period for a public interest statute." The Court noted that the LAD, however, involves "intertwined" private and public interests. Notwithstanding the private interests involved in the LAD, "[i]f allowed to shorten the time for filing plaintiff's LAD action, this contractual provision would curtail a claim designed to also further a public interest."

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The Court held that:

shortening of that period undermines and thwarts the legislative scheme by effectively divesting the aggrieved party of the right to pursue an administrative remedy." Additionally, since claimants may not immediately be aware of their cognizable claims, shortening of the period will effectively eliminate claims and frustrate the public policy of uniformity and certainty. Conversely, the shortened period may also compel attorneys to file premature LAD actions. Finally, the two-year period also allows an employer the opportunity to protect itself and promote the eradication of discrimination by investigating and resolving complaints before an LAD claim is filed.

## **II. GENERAL LITIGATION**

### **The Court, Not the Arbitrator, Should Determine the Arbitrability of Claims**

In *Morgan v. Sanford Brown Institute*, 2016 NJ Lexis 563 (June 14, 2016), plaintiffs filed a lawsuit asserting that misrepresentations and deceptive business practices by defendant Sanford Brown Institute and certain administrators caused them to enroll in Sanford Brown's ultrasound technician program. Plaintiffs claimed that they sustained financial loss and other injury as a result of defendants' wrongful conduct.

Defendants filed a motion to compel arbitration of plaintiffs' claims, but did not make it clear that they wanted the arbitrator, rather than the court, to decide whether the parties agreed to arbitration. The trial court declined to enforce the arbitration provision, finding it unenforceable because it did not inform plaintiffs that they were waiving statutory remedies, and the provision conflicted with the remedies available under the New Jersey Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -195.

The Appellate Division reversed, dismissed the complaint, and ordered arbitration. The panel held that the trial court improperly failed to enforce the arbitration agreement's delegation clause. The panel found that the parties had clearly and unmistakably agreed that an arbitrator would determine whether the parties agreed to arbitration, and that plaintiffs failed to specifically attack the delegation clause. The Appellate Division remanded the matter for arbitration to enable the arbitrator to decide whether the claims asserted were subject to arbitration under the agreement. However, the panel also made findings on the enforceability of certain provisions in the arbitration clause. The panel concluded that the arbitration agreement is sufficiently clear and unambiguous to provide plaintiffs with reasonable notice of the requirement to arbitrate all claims related to their enrollment agreements, including the CFA claim.

The Court granted certification limited to the issue of "whether plaintiffs can be compelled to arbitrate all claims related to their enrollment agreements, including their Consumer Fraud Act claims, under the terms of this arbitration agreement." The Court provided that "the law presumes that a court, not an arbitrator, decides any issue concerning arbitrability. To overcome the presumption of judicial resolution, there must be clear and unmistakable evidence that the parties have agreed that the arbitrator will decide the question of arbitrability. Silence or ambiguity in an agreement does not overcome the presumption that a court will decide arbitrability." The Court noted that the arbitration provision in this case did not contain a clearly identifiable delegation clause. The provision failed to explain that an arbitrator will decide whether the parties agreed to arbitrate legal claims, including statutory violations, and it did not explain that arbitration is a substitute for bringing a claim before a court or jury.

The Court held that the arbitration provision and purported delegation clause in the enrollment agreement fail to comply with the requirements of *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995), and *Atalese v. U.S.*

Legal Servs. Grp., L.P., 219 N.J. 430, 99 A.3d 306 (2014), cert. denied, 135 S. Ct. 2804, 192 L. Ed. 2d 847 (2015). They also failed to satisfy the elements necessary for the formation of a contract. As such, the court held that whether the parties agreed to arbitrate their dispute is an issue for determination by the court and the arbitration and delegation provisions of the agreement are unenforceable.

### **III. INSURANCE LAW**

#### **Bad Faith Claim Based on Legal Conclusions Dismissed by District Court**

In *Canizares v. Hartford Ins. Co.*, 2016 U.S. Dist. LEXIS (E.D.Pa. May 27, 2016), plaintiffs were insured by Hartford under a comprehensive homeowners policy. The policy covered damages to the premises as well as damages to personal property. The plaintiffs paid all premiums when due and had satisfied all conditions of their policy. In February 2015, the plaintiffs discovered that frozen pipes within their home had burst and caused extensive water damage to their home as well as to their personal property. These damages were fully covered under the plaintiffs' insurance policy. Following discovery of the damages, the plaintiffs appropriately notified Hartford of their claim and requested compensation for their losses. Hartford agreed to pay part of the claimed losses but declined to provide all of the demanded compensation.

Plaintiffs sued Hartford in state court, alleging two counts. Count I alleged breach of contract, asserting that Hartford failed to fulfill their contractual obligations by fully compensating the plaintiffs for damage caused to their home by a burst water pipe. Count II alleged a claim for bad faith under 42 Pa.C.S. § 8371. After removing the case to Federal Court on the basis of diversity jurisdiction, Hartford moved to dismiss the plaintiffs' bad-faith claim. Plaintiffs opposed the Motion.

Hartford argued that the plaintiffs' bad-faith claim should be dismissed for failing to allege sufficient facts entitling them to relief. To establish a claim for bad faith under 42 Pa.C.S. 8371, a plaintiff must demonstrate that the insurer (1) lacked a reasonable basis for denying benefits and (2) knew or recklessly disregarded its lack of a reasonable basis. Allegations of mere negligence or bad judgment will not suffice, but rather, a plaintiff is required to show that the insurer breached its duty of good faith through some motive of self-interest or ill will. Any claim for bad faith must be supported by clear and convincing evidence.

The court reviewed the federal court threshold for pleadings under the Iqbal/Twombly standard which requires a Plaintiff to plead sufficient factual content to allow a court to draw a reasonable inference that the Defendant is allegedly liable for the misconduct pled. The court observed that the insured's "rudimentary allegations" all contained legal conclusions, "which are not entitled to the assumption of truth." On the one claim coming closest to being adequate, that the insurer failed to respond to the benefits claim in a reasonable time, the court found this inadequate because the complaint failed "to include any specific dates detailing when the claim was submitted and when [the insurer] responded." As such, the court found that because Plaintiff's allegations primarily consisted of legal conclusions, the federal court threshold for pleadings was not met. However, the court dismissed the bad faith claim without prejudice in the event the Plaintiff later discovered information sufficient to factually plead such a claim.

***Copies of the full text of any of the cases discussed in this Newsletter may be obtained by calling our office. The articles contained in this Newsletter are for informational purposes only and do not constitute legal advice.***

