

## New Jersey High Court Enforces Arbitration Agreement with Independent Contractors under State Law

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Companies in the transportation industry in New Jersey can enforce arbitration agreements with employees and independent contractors under the New Jersey Arbitration Act (NJAA), the New Jersey Supreme Court has held. *Arafa v. Health Express Corp.*, No. 083174 (July 14, 2020); *Colon v. Strategic Delivery Solutions, LLC*, No. 083154 (July 14, 2020).

### Federal Arbitration Act

The U.S. Supreme Court, in *New Prime, Inc. v. Oliveira*, 139 S. Ct. 532 (2019), had ruled the Federal Arbitration Act's (FAA) transportation employee exemption applied to agreements with independent contractors. This appeared to call into question enforceability of arbitration agreements between companies and independent contractors.

### New Jersey Arbitration Act Cases

On successive days in June 2019, the New Jersey Appellate Division issued two divergent opinions on the enforceability of arbitration clauses between companies and independent contractors in the transportation industry. (See our article, [Arbitration Agreement for Company's Transport Workers Enforceable under New Jersey Law, Court Rules.](#)) The rulings resulted in an appeal to the New Jersey Supreme Court asking it to determine whether the NJAA may be a basis to compel arbitration with an independent contractor, given the FAA's transportation worker exemption.

### New Jersey Supreme Court Decision

The state Supreme Court found that arbitration agreements may be enforceable under the NJAA even if they are exempt under the FAA, and that the plaintiffs knowingly and voluntarily waived their ability to proceed as a class.

In their appeal, the plaintiffs had argued their arbitration agreements do not mention the NJAA, while expressly stating they are governed by the FAA. The plaintiffs argued that there was no "meeting of the minds" to arbitrate the claims under the NJAA if the agreements were exempt from the FAA.

The Supreme Court, however, noted the FAA does not "occupy the entire field of arbitration" and the NJAA has applied automatically to any non-exempt arbitration agreement since 2003. Therefore, the Court rejected the plaintiff's argument that the "absence of an express invocation of the NJAA means that it cannot apply." The Court reasoned that "no express mention of the NJAA is required to establish a meeting of the minds that it will apply inasmuch as its application is automatic."

The Court explained that enforcement of such agreements was consistent with well-established policy and the state's interest in favoring arbitration. Moreover, the Court noted the plaintiffs knowingly and voluntarily agreed to arbitrate statutory claims arising out of their employment relationship and the arbitration agreements did not have to "list every imaginable statute by name ...."

Finally, the Court enforced the class action waiver provision in the agreement, noting the plaintiffs had "knowingly and voluntarily waived their ability to proceed as a class."

### Implications

The New Jersey Supreme Court's decision will be welcomed by companies in the transportation industry in New Jersey, particularly those that engage independent contractors. The ability to enforce waivers (e.g., jury trial, class action, and so on) and arbitration provisions is important to protecting companies against costly litigation. The Court's holding that the NJAA may serve as a basis to compel arbitration in the apparent absence of such authority under the FAA will enable companies to continue or modify existing arbitration programs.

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