

**Who Decides whether Claims Are Arbitrable:
Courts or Arbitrators?
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Alan C. Friedberg, Esq. and Michelle R. Kestler, Esq.

More and more agreements, both in commercial and consumer transactions, contain arbitration provisions. Disputes sometimes arise over whether the arbitration clauses are binding on the parties and, if so, whether the specific disagreements between the parties are within the scope of the arbitration agreement. In general, courts, rather than arbitrators, will decide whether or not a valid, binding arbitration agreement exists and whether it covers the matters in dispute.

However, arbitration clauses can provide that arbitrators, rather than courts, will decide what issues are within the scope of the arbitration agreement. In addition, assuming a valid arbitration agreement exists, arbitrators rather than courts will generally decide whether parties initiating arbitration claims have met procedural preconditions or time limitations even where failure to do so might bar certain claims.

Despite the strong federal and state presumption in favor of arbitration, pre-dispute arbitration agreements have generated a great deal of litigation, much of it relating to the issue of who decides whether a particular dispute is arbitrable. Even though arbitration is touted as a speedy and inexpensive alternative to litigation, one party can impose expensive and lengthy litigation on the other before the arbitration begins.

A Brief History

Private arbitration has existed as a means of resolving disputes since ancient Greece, Rome and Israel.¹ Initially, in the United States, however, there was widespread judicial mistrust of arbitration. Many courts refused to enforce mandatory arbitration clauses because they believed that arbitration took jurisdiction away from the courts.² In response to the judicial hostility towards arbitration, in 1925, Congress passed the Federal Arbitration Act (FAA).

In passing the FAA, Congress sought to “place arbitration agreements on equal ground with other, more accepted contractual arrangements” and to overcome judicial disapproval of arbitration.³ According to the House Report accompanying the FAA:

The need for the law arises from an anachronism of our American law. Some centuries ago, because of the jealousy of the English courts for their own jurisdiction, they refused to enforce specific agreements to arbitrate upon the ground that the courts were thereby ousted from their jurisdiction. This jealousy survived for so long a period that the principle became firmly embedded in the English common law and was adopted with it by the American courts. The courts have felt that the precedent was too strongly fixed to be overturned without legislative enactment, although they have frequently criticized the rule and recognized its illogical nature and the injustice which results from it. This bill declares simply that such agreements for arbitration shall be enforced and provides a procedure in the federal courts for their enforcement.⁴

Section 2 of the FAA, which is the primary substantive provision of the FAA,⁵ provides:

A written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction or the refusal to perform the whole or any part thereof, or 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.⁶

This language mandates that arbitration agreements be enforced “as a matter of contract law” by both federal and state courts. Accordingly, the FAA transformed arbitration into a judicially approved method of dispute resolution.⁷

In the U.S. Supreme Court case of *Moses H. Cone Mem’l Hosp.*, the Court confirmed that the FAA demonstrates a strong federal policy in favor of arbitration, applicable both in state and federal courts.⁸ The opinion additionally instructs that any doubts concerning the arbitrability of an issue should be resolved in favor of arbitration. In frequently cited language, the Court stated:

Federal law in terms of the Arbitration Act governs [the issue of whether the dispute was arbitrable] in either state or federal court Section 2 is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary. The effect of the section is to create a body of federal substantive law of arbitrability, applicable to any arbitration agreement within the coverage of the Act The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.⁹

In 1975, Colorado adopted the Uniform Arbitration Act (UAA).¹⁰ The explicit purpose of the UAA is to validate voluntary written arbitration agreements and to make the arbitration process effective. Like its federal counterpart, the UAA mandates that any issues of whether a dispute is subject to arbitration are to be resolved in favor of arbitration.¹¹

The Colorado Supreme Court has noted that the General Assembly determined that the public policy of Colorado encourages resolution of disputes through arbitration.¹² A written arbitration agreement “is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.”¹³ However, the grounds existing at law or in equity are pretty narrow. For instance, even where one party claims that a contract was induced by fraud, so long as that party is not specifically contesting the validity of the arbitration clause, the issue of whether the contract was fraudulently induced is for the arbitrator to decide.¹⁴ Colorado courts have also held that “termination of a contract does not terminate the effect of an arbitration clause when a dispute arises under the contract.”¹⁵

Federal Law on Who Decides

In 1986, in *AT&T Technologies, Inc. v. Communications Workers of America*,¹⁶ the U.S. Supreme Court set forth the current standard used to determine the issue of who, the courts or the arbitrators, will determine whether a dispute is arbitrable under the terms of a pre-dispute arbitration agreement. In formulating its opinion, the Court relied on a series of cases, decided some 25 years prior, known as the *Steelworkers Trilogy*.¹⁷ The *Trilogy* established the following four principles:

First, “arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.”¹⁸ This premise recognizes that arbitrators have authority to resolve disputes only because the parties agreed in advance to submit them to arbitration.

Second, “the question of arbitrability . . . is undeniably an issue for judicial determination. Unless the parties clearly and unmistakably provide otherwise, the question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator.”¹⁹

Third, a court has “no business weighing the merits of the” underlying claim when it reviews the arbitrability issue.²⁰

Fourth, where the contract contains an arbitration clause, there is a presumption of arbitrability in the sense that “[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.”²¹

With these principles in mind, the Court determined that it is for the court, not the arbitrators, to decide in the first instance whether the parties intended the dispute to be resolved through arbitration. Any intent of the parties to have arbitrators decide whether or not a dispute is arbitrable must be demonstrated by “clear and unmistakable” evidence. Once it is determined that the parties intended to submit the subject matter of the dispute to arbitration, the arbitrator, and not the court, then determines all procedural questions which grow out of the dispute and bear on its final disposition.²²

Several years later, in *First Options of Chicago, Inc. v. Kaplan*,²³ the U.S. Supreme Court confirmed the standard for who determines arbitrability in the context of a pre-dispute securities arbitration agreement. In doing so, the Court applied the “clear and unmistakable” standard laid out in *AT&T Technologies*, explaining that “arbitration is simply a matter of contract between the parties,” a way to resolve disputes, but only those disputes the parties have agreed to arbitrate.²⁴ The Court further explained that “the law treats silence or ambiguity about the question ‘who (primarily) should decide arbitrability’ differently from the way it treats silence or

ambiguity about the question ‘whether a particular merits-related dispute is arbitrable because it is within the scope of a valid arbitration agreement.’”²⁵

The latter question arises when the parties have a contract that provides for arbitration of some issues. In such circumstances, the parties likely gave at least some thought to the scope of arbitration. And, given the law’s permissive policies in respect to arbitration, [citation omitted], one can understand why the law would insist upon clarity before concluding that the parties did *not* want to arbitrate a related matter. [Citation omitted.] On the other hand, the former question -- the ‘who (primarily) should decide arbitrability’ question -- is rather arcane. A party often might not focus upon that question or upon the significance of having arbitrators decide the scope of their own powers. [Citations omitted.] And, given the principle that a party can be forced to arbitrate only those issues it specifically has agreed to submit to arbitration, one can understand why courts might hesitate to interpret silence or ambiguity on the ‘who should decide arbitrability’ point as giving the arbitrators that power, for doing so might too often force unwilling parties to arbitrate a matter they reasonably would have thought a judge, not an arbitrator, would decide.²⁶

Neither *AT&T Technologies* nor *First Options* clearly defines what constitutes an issue of arbitrability. However, those and other U.S. Supreme Court opinions indicate that the issue of arbitrability is limited to two questions: (1) whether the parties are bound by a valid arbitration agreement, and (2) whether the subject matter of their underlying dispute falls within that agreement. However, arbitrability does not include procedural issues, such as contractual or statutory time limitations. Such issues are instead subject to the general presumption in favor of resolution by the arbitrator.²⁷

The “clear and unmistakable” standard for determining the parties’ intent that the arbitrators decide issues of arbitrability has caused more difficulty for courts than might at first be imagined. In cases involving securities arbitration, the U.S. Courts of Appeal and state appellate courts have split almost evenly over whether brokerage firm clauses requiring arbitration of “all controversies,” including “the construction” of the agreement itself, show clear and unmistakable evidence of intent that arbitrators decide arbitrability under certain time limitations contained in applicable arbitration codes.²⁸ A reasonable conclusion from reading some of the cases is that only the most explicit written intention to have arbitrators decide arbitrability will suffice.

On the other hand, a recent Second Circuit case, *Bell v. Cendant Corporation*,²⁹ applying Connecticut law, held that a clause in an “adviser agreement” which provided for arbitration of claims arising out of the agreement as well as “any other matter or thing,” provided evidence that the parties “clearly agreed” to submit arbitrability questions to the arbitrators. In that case, the Second Circuit did not require an explicit statement that arbitrability issues were for the arbitrators to decide. It cited a Connecticut case for the proposition that “‘all inclusive’ language clearly demonstrated the parties’ intention to submit the question of arbitrability to the arbitrator.”³⁰

For a while, it appeared that in Colorado, arbitrators would be given more leeway to decide the scope of arbitration agreements. In 1979, in *Youmans v. District Court*,³¹ the Colorado Supreme Court stated that “arguments regarding which claims are properly subject to arbitration are inappropriate because the scope of the arbitration provision is, in the first instance, for the arbitrators.”³² The Colorado Court of Appeals followed *Youmans* in *Cohen v. Quiat*,³³ a 1987 case. Cohen involved a challenge to an arbitration award on the basis that the arbitrators had “exceeded their powers,” making the award appealable under the UAA.³⁴ The Court of Appeals reversed the district court’s conclusion that the arbitrators had exceeded their powers, primarily on the ground that the arbitration clause was broad enough to encompass the matter decided by the arbitrators.

In *Lawrence Street Partners, Ltd. v. Lawrence Street Venturers*,³⁵ a 1989 case, the Colorado Court of Appeals distinguished *Youmans*, stating that “[t]he *Youmans* line of cases does indicate that the scope of arbitration must be resolved initially by the arbitrator and not the court; however, those cases do not concern situations in which the arbitration agreement expressly prohibits arbitration of certain claims.”³⁶ Similarly, the Court of Appeals, in *State Farm Mut. Auto Ins. Co. v. Stein*,³⁷ distinguished *Youmans* and *Cohen* because those cases involved “unlimited arbitration clauses.” The implication was that a broadly written arbitration agreement clause would allow the arbitrators to determine arbitrability.

In *Eychner v. Van Vleet*,³⁸ the Colorado Court of Appeals held that “[i]n resolving a motion to compel arbitration, a court must inquire whether there exists a valid agreement to arbitrate between the parties to the action . . . and whether the issues being disputed are within the scope of that agreement.”³⁹

Not long after the U.S. Supreme Court decided *First Options*, the Colorado Supreme Court decided *City & County of Denver v. District Court*.⁴⁰ *City & County of Denver* involved a dispute between Denver and a general contractor hired to construct the terminal building at the new airport. The general contractor subcontracted with another company for installation of flooring. Disputes arose over the work performed and, soon after, the general contractor brought suit against Denver, claiming, inter alia, breach of contract. The subcontractor also filed a claim against Denver. Denver moved to dismiss, arguing that any disputes were required to be submitted to alternative dispute resolution (ADR) procedures set forth in the contract.⁴¹ The district court denied Denver’s motion on the grounds that the subcontractor’s claims were not governed by the contract and fell outside the scope of the ADR clause, did not trigger the administrative process, or were inextricably intertwined with claims not subject to the administrative process.⁴² Denver sought a writ of prohibition and the Colorado Supreme Court ordered all claims to be heard under the ADR procedures. The Court’s opinion provides guidelines, consistent with the U.S. Supreme Court’s opinions in *AT&T Technologies* and *First Options*, for addressing ADR provisions.

The first inquiry for the district court is whether the agreement contains a valid and binding ADR clause.⁴³ If a valid ADR clause is found, the court must then decide who determines whether a particular dispute falls within its scope. Relying on *First Options*, the Court stated that “[i]f the

agreement is silent or ambiguous on this question, then the determination should be made by the court, not the ADR decision-maker; otherwise, ‘unwilling parties [might be forced] to arbitrate a matter they reasonably thought a judge, not an arbitrator would decide.’”⁴⁴ Interestingly, Justice Bender, writing for the Colorado Supreme Court, did not reiterate the *First Options* “clear and unmistakable” standard for evidence of the parties’ intent to have arbitrators decide arbitrability of an issue.

The Court stated that factual allegations, rather than the legal cause of action asserted, should determine whether a dispute is covered by the ADR agreement. Thus, “[c]reative legal theories asserted in complaints should not be permitted to undermine the presumption favoring alternative means to resolve disputes.”⁴⁵

A valid, enforceable arbitration agreement divests a court of jurisdiction over all issues within the scope of the agreement. Thus, although not specifically addressed by the Colorado Supreme Court in *City & County of Denver*, it is clear that once the court establishes that the arbitrators have jurisdiction of the subject matter, leaving procedural issues such as timeliness or other conditions precedent to filing an arbitration to the arbitrators to decide raises no cause for concern that arbitration is being imposed on a non-consenting party. An example is found in *Rains v. Found. Health Sys. Life & Health*,⁴⁶ where the Court of Appeals rejected an argument that the court, rather than arbitrators, should decide whether an insurer should have to pay certain medical expenses because it failed to meet statutory preconditions for coordinating benefits with another carrier. It cited *City & County of Denver* for the proposition that the “court must compel alternative dispute resolution (ADR) unless it can say with positive assurance that [the] ADR clause is not susceptible of any interpretation that encompasses [the] subject matter of [the] dispute.”⁴⁷

Miscellaneous Grounds for Avoiding Arbitration

Cecil E. Morris wrote an informative article entitled “A Breach in the Wall of Mandatory Arbitration,”⁴⁸ in which he discussed cases in which courts had refused to compel arbitration. Among the grounds relied upon by courts to excuse parties from arbitration even where valid arbitration agreements exist and the subject matter falls within the scope of the agreements are: (1) certain statutory claims are exempt from arbitration, (2) costs of arbitration imposed by the arbitration agreement deny some claimants meaningful redress, (3) an arbitration agreement may improperly limit remedies otherwise available, and (4) an arbitration agreement may be unconscionable and/or an unenforceable contract of adhesion. While Colorado courts have recognized those issues, it appears that only in extreme cases will parties be relieved of an obligation to arbitrate if a court finds a valid arbitration agreement and claims within its scope.

In *Rains*, the Court of Appeals discussed the potentially chilling effect on consumer claims where the agreement provided that the claimant would be responsible for an equal share of the arbitration cost. Citing the U.S. Supreme Court decision in *Green Tree Fin. Corp.-Alabama v. Randolph*,⁴⁹ the Court of Appeals did not find sufficient evidence in the record to establish that the costs of arbitration would prevent the claimant from pursuing her claims. The plaintiff in

Rains attempted to bring her claims in court as a class action, which of course would have made pursuit of smaller claims more viable. The Court of Appeals held that “arbitration clauses are not unenforceable simply because they might render a class action unavailable.”⁵⁰

The *Rains* opinion also rejected arguments that the arbitration clause was unconscionable because (1) it did not assure adequate document discovery, (2) it gave the defendant the initial right to select the slate of arbitrators from which the claimant was allowed to choose one, and (3) the arbitration obligation was not mutual. With respect to the choice of arbitrators, the agreement provided that the health insurance company would give the insured a list of three potential arbitrators from which to choose, obviously giving itself the opportunity to stack the deck. The Court was unmoved, pointing out that the arbitration provision required that the arbitrator be “neutral.”

In *Lambdin v. District Court*,⁵¹ the Colorado Supreme Court, in an original proceeding under C.A.R. 21, reversed the trial court’s order compelling arbitration of a former Sun Microsystems employee’s claims for compensation. The Sun compensation plan required arbitration of claims in California, applying California law. Despite the facts that the compensation plan had been given to *Lambdin* after he began work and had never been signed by him, the trial court apparently found a valid and binding arbitration agreement. In his petition for a writ of prohibition, *Lambdin* did not pursue arguments that the agreement was a contract of adhesion or no agreement at all. Instead, he based his petition on arguments involving the Colorado Wage Claim Act, which the district court held precluded arbitration because it provided for civil actions in court for wages and penalties and contained a non-waiver clause.

In a case decided July 5, 2002, *Gergel v. High View Homes, LLC*,⁵² the Court of Appeals dismissed for lack of jurisdiction an appeal of an order compelling arbitration. C.R.S. § 13-22-221 allows interlocutory appeals only of orders denying a motion to compel arbitration or granting a motion to stay arbitration. In this case, the appellant sought to void the arbitration agreement as unconscionable because of unreasonable and excessive fees. The Court indicated that the only remedy would be an appeal after an arbitration award of default for a failure to advance fees.

In another relatively recent case, however, the Court of Appeals did impose some limits on the obligation to arbitrate. In *In Re Marriage of Popack*,⁵³ while generally holding enforceable an agreement to arbitrate dissolution of marriage issues in front of a rabbinical counsel, the Court instructed the trial court to determine whether or not the agreement was conscionable and entered into voluntarily after full disclosure. It also held that, while issues of child custody and support and visitation are arbitrable, the trial court retains jurisdiction to decide de novo all issues relating to children. The *Popack* opinion relies heavily on standards set out in the Uniform Dissolution of Marriage Act, rather than principles of contract law.

An area currently ripe for judicial consideration is the inclusion of arbitration clauses precluding participation in class action lawsuits by consumers. In *Szetela v. Discover Bank*,⁵⁴ a Discover credit card customer attempted to bring a class action relating to late charges and over-limit fees.

He was compelled by the court to take his \$29 claim to arbitration, where he won. He then returned to court, challenging the arbitration agreement as unconscionable and unenforceable and appealed the original order which compelled the arbitration. The California Court of Appeals found both procedural and substantive unconscionability. The agreement was procedurally unconscionable because the consumer had no opportunity for meaningful negotiation and had to “take it or leave it.” It was substantially unconscionable because it was “clearly meant to prevent customers . . . from seeking redress for relatively small amounts of money . . .” and was fundamentally unfair and contrary to public policy.⁵⁵ In a similar action, *Ting v. AT&T*,⁵⁶ a California federal court disapproved AT&T’s mandatory arbitration clause requiring its long distance customers to waive class action participation. The California decisions run contrary to the rejection of the class action argument in *Rains*, but involve different circumstances.

Conclusion

In both federal and Colorado cases, there is no question that the courts will decide initially whether or not an enforceable arbitration agreement exists. Courts will also decide whether the claims being asserted fall within the scope of the arbitration agreement, unless the parties “clearly and unmistakably” intended that the arbitrators decide arbitrability. Under *City & County of Denver*, courts will determine arbitrability if the agreement between the parties is “silent or ambiguous” regarding who decides. It remains to be seen if Colorado courts will find broad arbitration clauses encompassing “any” or “all” disputes or “all other matters,” including interpretation of the agreement itself, show intent to have arbitrators decide arbitrability.

Because arbitration is based on agreement by the parties, it is only fair and reasonable that the courts be available to decide whether or not an enforceable arbitration agreement exists in the first place. It also makes sense for courts to decide whether the parties intended specific claims to be covered by their arbitration agreement, rather than to let arbitrators decide the extent of their own authority, unless the parties have agreed otherwise. Unfortunately, resort to the courts over these issues frequently will undermine the intended arbitration benefits of speedy and inexpensive resolution of disputes.⁵⁷

Alan C. Friedberg is a shareholder and trial lawyer with Pendleton, Friedberg, Wilson & Hennessey, P.C., with a practice emphasizing commercial disputes, securities, and real estate litigation. He is the commercial litigation editor of Trial Talk. He is a dead ringer for a younger Robert Redford. Michelle R. Kestler is an associate of the firm, working primarily in commercial litigation.

Endnotes

1. C. Edward Fletcher, *Arbitrating Securities Disputes*, 12 (PLI, 1990).
2. *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 511 n.4 (1974).
3. H.R. Rep. No. 96, 68th Cong., 1st Sess., 1 (1924).
4. *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 221 n.6 (1985).
5. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983).
6. 9 U.S.C. § 2 (1994).
7. Dennis O'Leary, *PaineWebber v. Elahi: The First Circuit Provides a Return for Investors and Allows Them Their Day in Arbitration*, 32 NEW ENG. L. REV. 553, 560 (Winter 1998).
8. *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24.
9. *Id.* at 24-25.
10. C.R.S. §§ 13-22-201, *et. seq.*
11. *Wales v. State Farm Mut. Auto Ins. Co.*, 559 P.2d 255, 257 (Colo. App. 1976).
12. *Hughley v. Rocky Mtn. HMO*, 927 P.2d 1325, 1330 (Colo. 1996) and cases cited therein.
13. C.R.S. § 13-22-203.
14. *National Camera v. Love*, 644 P.2d 94, 95 (Colo. App. 1982).
15. *Christensen v. Flaregas Corp.*, 710 P.2d 6, 8 (Colo. App. 1985).
16. *AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643 (1986).
17. *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); and *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).
18. *Warrior & Gulf*, 363 U.S. at 582; *American Mfg. Co.*, 363 U.S. at 570-571.
19. *AT&T Technologies*, 475 U.S. at 649, *citing Warrior & Gulf*, 363 U.S. at 582-583.
20. *American Mfg. Co.*, 363 U.S. at 568.

21. Such a presumption is particularly applicable where the clause is as broad as the one utilized in *AT&T Technologies*, which provides for arbitration of “any differences arising with respect to the interpretation of this contract or the performance of any obligation hereunder’ In such cases, ‘[in] the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail.’” *AT&T Technologies*, 475 U.S. at 650, citing *Warrior & Gulf*, 363 U.S. at 584-585.
22. *AT&T Technologies*, 475 U.S. at 651.
23. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995).
24. *Id.* at 943.
25. *Id.* at 944-945.
26. *Id.* at 945 (emphasis in the original).
27. *John Wiley & Sons v. Livingston*, 376 U.S. 543, 555-559 (1964).
28. *Cogswell v. Merrill Lynch, Pierce, Fenner & Smith*, 78 F.3d 474 (10th Cir. 1996); *Dean Witter Reynolds, Inc. v. Howsam*, 261 F.3d 956 (10th Cir. 2001), cert. granted, 152 L. Ed. 2d 115, 122 S. Ct. 1171, 70 U.S.L.W. 3533 (U.S. Feb. 25, 2002) (No. 01-800).
29. *Bell v. Cendant Corporation*, 2002 U.S. App. LEXIS 11100 (2d Cir. 2002).
30. *Id.* at *15, citing *City of Bridgeport v. Bridgeport Police Local 1159*, 438 A.2d 1171, 1173 (Conn. 1981).
31. *Youmans v. District Court*, 589 P.2d 487 (Colo. 1979).
32. *Id.* at 489.
33. *Youmans in Cohen v. Quiat*, 749 P.2d 453 (Colo. App. 1987).
34. *Id.* at 455; C.R.S. § 13-22-214(1)(a)(III).
35. *Lawrence Street Partners, Ltd. v. Lawrence Street Venturers*, 786 P.2d 508 (Colo. App. 1989).
36. *Id.* at 510.
37. *State Farm Mut. Auto Ins. Co. v. Stein*, 886 P.2d 326, 329 (Colo. App. 1994).
38. *Eychner v. Van Vleet*, 870 P.2d 486 (Colo. App. 1993).
39. *Id.* at 489.

40. *City & County of Denver v. District Court*, 939 P.2d 1353 (Colo. 1997).
41. The ADR clause required submission of claims to an administrative hearing under certain Denver Municipal Code procedures.
42. *City & County of Denver*, 939 P.2d at 1360.
43. *Id.* at 1363.
44. *Id.*, citing *First Options*, 514 U.S. at 945.
45. *Id.* at 1364. See also *Austin v. U S West, Inc.*, 926 P.2d 181 (Colo. App. 1996) (factual allegations rather than “legal label” will govern result).
46. *Rains v. Found. Health Sys. Life & Health*, 23 P.3d 1249 (Colo. App. 2001).
47. *Id.* at 1251.
48. Cecil E. Morris, Jr., *A Breach in the Wall of Mandatory Arbitration*, TRIAL TALK, April/May, 2000, at 6.
49. *Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79 (2000).
50. *Rains*, 23 P.3d at 1253.
51. *Lambdin v. District Court*, 903 P.2d 1126 (Colo. 1995).
52. *Gergel v. High View Homes, LLC*, Case No. 01-CA-1321 (Colo. App. July 5, 2002).
53. *In Re Marriage of Popack*, 998 P.2d 464 (Colo. App. 2000).
54. *Szetela v. Discover Bank*, 118 Cal. Rptr. 2d 862 (Cal. App. 4th Dist. 2002).
55. *Id.* at 867-868.
56. *Ting v. AT&T*, 182 F. Supp. 2d 902 (N.D. Cal. 2002).
57. Whether arbitration is actually faster or less expensive than litigation is a question beyond the scope of this article.