alert
Consumer Financial Services Practice
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New Jersey Supreme Court Rules Certain Arbitration Clauses Unenforceable

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SUMMARY

A recent New Jersey Supreme Court decision held that an arbitration clause was not enforceable because it did not inform the consumer that acceptance of the clause operated as a waiver of the right to obtain relief in court. It also reinforced the presumption that courts decide whether a dispute is subject to arbitration.

In *Morgan v. Sanford Brown Institute*, No. A-31-14 (June 14, 2016), the New Jersey Supreme Court held that an arbitration clause is not enforceable when it does not inform the consumer that acceptance of the clause works as a waiver of the right to obtain relief in court. The court made clear that arbitration agreements must clearly explain that arbitration is a substitute for having disputes and legal claims resolved before a judge or jury, in simple and understandable terms. Accordingly, the court rejected the enforceability of Sanford Brown Institute's arbitration clause because, although it said that certain disputes must be submitted to arbitration, it did not explain that by agreeing to arbitration, students waived their right to judicial relief.

The court also reinforced the presumption that unless an arbitration agreement states otherwise, courts decide whether a dispute is subject to arbitration. To overcome that presumption, the agreement must "clearly and unambiguously" state that the parties want an arbitrator, not a court, to decide whether their dispute is arbitrable.

To ensure their arbitration agreements are enforceable, companies should explain to consumers that they can settle disputes only in arbitration and waive their right to bring an action in court before a judge or jury. The agreement should also be clear that only an arbitrator, and not a court, can decide disputes related to the agreement, including the interpretation, applicability, enforceability, or formation of the agreement. Without these additional provisions, in New Jersey, arbitration clauses are subject to being challenged.

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