



Appellate Division Rules that Arbitration Agreement Signed

Client Advisories

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On May 20, 2021, the New Jersey Appellate Division in *Cottrell v. Holtzberg*, __ N.J. Super. __, __ (App. Div. 2021) (slip. op. at 14-16), added to the wealth of New Jersey court opinions analyzing arbitration agreements when it ruled that an arbitration agreement from the decedent's prior admission to the defendant nursing home did not apply to the decedent's later admission and therefore would not be enforced. Although the decedent had signed an arbitration agreement when signing her 2017 admission documents for her stay in 2017, she did not sign a similar arbitration agreement when signing her 2018 admission documents for her stay in 2018.

The Appellate Division highlighted that the arbitration agreement from the decedent's 2017 admission to the nursing home included no language to suggest that it would "apply to subsequent admissions" – even while it did reference and incorporate "all prior stays" – and that all claims arose from the subsequent (2018) admission. *Cottrell*, __ N.J. Super. __ (slip. op. at 7, 14). The Appellate Division therefore concluded there was no factual support that the decedent had assented to arbitration for future admissions, such as her 2018 admission. *Cottrell*, __ N.J. Super. __ (slip. op. at 16).

In light of this guidance from the Appellate Division (which has been approved for publication), if the parties desire arbitration to apply to their future interactions, arbitration agreements should include language that references past *and future* interactions between the parties. In addition, either past arbitration agreements should be explicitly incorporated in, or a new arbitration agreement should be entered at the same time as, any later contract documents entered into by the parties if the parties prefer to arbitrate any disputes rather than resolve them in court.

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