A Multiplicity of Procedures for Enforcing or Challenging an Award

By Robert E. Bartkus

A few months ago, a colleague asked what was the proper procedure to challenge a merits decision when the arbitrator was to issue a further decision allocating attorneys' fees to the prevailing party. The safe answer in New Jersey, where I practice, was straightforward: commence a summary action within 120 days after receiving notice of the merits decision if the arbitration is governed by state law in state court, or take similar action under the Federal Arbitration Act (FAA),[1] without waiting for the decision on fees. To wait until the final decision on fees risks waiving the ability to challenge the merits decision, at least in New Jersey and the Third Circuit.

However, the "safe" answer – regarding orders for provisional relief, bifurcation, class findings and other matters, as well as fees – does not reconcile the competing issues, statutes, rules, and cases to consider in other states as well as New Jersey. It does not help that there may be a circuit split regarding some of the issues under the FAA, that not all states have the same arbitration act, or that state case law may be decided under a prior state arbitration act or reflect policy and statutory differences in labor, reinsurance, international, and other matters. Nor does it consider the additional time and fees that might be required to litigate that safe course, even if a court might, for example, eventually consolidate motions on merits and damages or fees. Nevertheless, I hope this overview[2] helps.

IS THE RULING AN AWARD?

The archetype "award" is the final decision of the arbitral panel on all claims submitted, such that the panel has nothing more to do and is discharged pursuant to the common law doctrine *functus officio* – a task performed.[3] The drafter may signify finality by using the term "Final Award" and language such as "This award is in full and final settlement of all claims and counterclaims submitted to this arbitration; all claims not expressly granted herein are denied." Some courts say that the term award may not be necessary to indicate finality – one must look at substance rather than form.[4]

Generally, only such final "awards" are subject to judicial review.[5] Thus, as a matter of statutory or rule text or structure and policy, courts should not interject themselves into the arbitration process; orders regarding jurisdiction, discovery, or the conduct of a hearing (generally) are not reviewable during the course of the arbitration. However, there also are a number of exceptions, both in the governing statutes or rules and case law (*see* below), for rulings that finally determine a separate and independent issue, for partial rulings the parties had agreed to have submitted and decided seriatim, and when intervention is said to be "in aid of" the arbitration. As noted below, the arbitrator may use a variety of words, such as interim, partial, or partial final, that may encompass these exceptions; although there are no absolute definitions of the different terms, some have suggested that "interim" may denote an interlocutory decision and be more applicable to early rulings such as a TRO or jurisdiction, whereas "partial" may be more applicable to bifurcated or separate and independent claims, [6] though there is no definitive consensus. The terminology should be discussed with the parties so as not to affect their agreement or intentions regarding finality and court review.

Federal Arbitration Act

The FAA permits court review of "awards"[7] but does not define the term "award." Nevertheless, federal courts have sometimes looked beyond the wording to permit review of an "interim order of security" or "interim final order" or, just, "interim order,"[8] not only "awards" whether final, interim or partial. Oddly, Section 16 of the FAA permits appeals of district court orders "confirming or denying confirmation of final or partial awards," adding a certain level of mystery to the different terminology.

The variations of what awards are reviewable by the district court are almost endless, as are the justifications (including analogies to the Federal Rules of Civil Procedure and Title 28 of the U.S. Code).[9] The FAA has specific provision for appointment of an arbitrator or enforcement of a subpoena,[10] but no express exception for other interlocutory action. Such exceptions to, or relaxation of, "finality" have been based on agreement, necessity, or practicality.

The Supreme Court has permitted appeal of a court's review of a class interim order where the parties had agreed to the American Arbitration Association (AAA) Supplementary Rules for Class Arbitrations anticipating court review of interlocutory awards.[11] Similarly, the First Circuit has permitted review of an initial partial award on liability where the parties had specifically agreed to bifurcated proceedings and awards,[12] but this does not apply where they had agreed to bifurcation without also indicating that the separate decisions, involving overlapping proofs, were final and *functus officio*.[13]

Courts often find that interim awards that finally decide a separate and independent claim are considered final for purposes of review.[14] Courts may order injunctive relief "in aid of" arbitration[15] or confirm an interim award of a preliminary injunction,[16] or other provisional relief (such as attachment)[17] on grounds that such is a separate and independent "claim" or that review is necessary because awards are not self-enforcing, and without district court review (and court order) a party may suffer irreparable harm or the asset maybe dissipated. Issues also may arise regarding posting a bond.[18]

In some cases, the arbitrators have specifically included in their partial award that the parties may seek review.[19] By the same token, where they indicate the order is preliminary, tentative, or subject to revision, a court normally should not accept review. When a court is confronted with petitions for review of both an interim and final award, it may consolidate them.[20]

Not all circuits permit review of a liability award before damages or attorneys' fees have been determined on that claim.[21] The lack of uniformity among the circuits and district courts is discussed in a 2019 district court case in the context of an interim award on the merits with the final award, including attorneys' fees, still open.[22] Although the court characterized the merits decision as a "non-final award" and bemoaned the lack of clear guidance from the Supreme Court, it denied a motion to dismiss the case and, in effect, confirmed the award and entered judgment. Both the parties' agreement to this bifurcation and the length of time already consumed by the case weighed, it said, in favor of pressing forward despite its normal proclivity

to stay the case until the attorneys' fees award had been rendered. It also noted the Fifth Circuit's reading of the three-month deadline to challenge an award as "absolute, and not subject to a 'discovery rule' or 'equitable tolling'"[23] (which could have barred a later challenge to the award at issue).

A number of instances in which review was denied are worth noting. The existence of an unresolved set off may be grounds for declining review.[24] An arbitrator's decision not to permit a claim to be withdrawn pending a decision in another case, without prejudice, without its adversary's consent, has been held not final.[25] Whereas Section 5 of the FAA permits a court to appoint an arbitrator, that does not necessarily extend to authorize a court's removal of an arbitrator.[26] An arbitrator's finding on the issue of arbitrability or jurisdiction may not be immediately reviewable.[27]

Even where an award is termed "final," and might actually seem so, there are additional complications. An easy case is where the parties have agreed; thus, an otherwise final award that has been appealed to the AAA's appeals panel is not "final" under the AAA rules[28] and, therefore, not subject to review.[29] A "final" award may not be reviewable where it has been followed by subsequent motions and additional awards,[30] though an untimely motion to the arbitrator to modify or clarify the final award has precluded review.[31] Where an engineer's report on liability was deemed final, the court undertook to determine damages.[32]

Post-award submissions to the arbitration panel may not be proper and do not render the "final award" not final for purposed of review.[33] On the other hand, retaining jurisdiction after a final award, in order to adjudicate disputes that may arise, has not rendered the award not final.[34]

As discussed below, courts have had difficulty with parties not seeking review of an interim award that would be subject to review, where review was not sought within the three-months required by the FAA.

State Statutes

Many arbitration awards are litigated in state courts under their internal statutes rather than the FAA. In New Jersey, that could give the parties the choice among three statutes besides the FAA.[35] Looking more broadly to other jurisdictions, not all have enacted the same arbitration law. As of 2020, only 22 states have adopted the Revised Uniform Arbitration Act. Even then, the time limits and other terms in each may not be consistent.[36] Fourteen states have in place a version of the older Uniform Arbitration Act. Significantly, key states such as New York, California, Texas, and Illinois have not adopted the RUAA; although they may have adopted the earlier (1956) uniform act or a variant, there may be significant modifications from the original version of that uniform act.[37] Some states (*i.e.*, Alabama, Georgia, Mississippi, and Nevada) have not adopted either the 1956 or the 2000 uniform act. Pennsylvania adopted the RUAA only in 2019; Massachusetts and Vermont may be in process.

As with the FAA, the RUAA explicitly permits court intervention to appoint an arbitrator and enforce subpoenas.[38] The Texas UAA contains an extensive provision allowing a party to

apply to a court to enforce a variety of arbitration orders for, among other things, "compliance" with an arbitrator's order or subpoena, "in aid of arbitration," for attachment, or for security.[39]

The terms of the statutes and rules are not necessarily helpful. Oddly, neither the UAA nor the RUAA contain a definition of award; indeed, the language in the RUAA is entirely circular: An "arbitrator" is defined in section 1 as a person appointed "to render an award." Section 19 of the RUAA merely says that an arbitrator "shall make a record of an award." Given the derivation of the FAA and the uniform acts, they do have fairly familiar notions of *functus officio* and award finality, but there are variations in the statutes and the cases. For example, Oregon requires support for the award.[40] A Texas court says, under the UAA, that even though an award may be final, the court may retain jurisdiction to perform ministerial acts.[41] California, not strictly a uniform law state, includes the requirement that an award "shall include a determination of all the questions submitted to the arbitrators the decision of which is necessary in order to determine the controversy."[42] New York's CPLR § 7507 is silent on the issue.

Section 18 of the RUAA resolves some of the anxiety in some states, noted above regarding the FAA, whether an interim award is subject to court review: "If an arbitrator makes a pre-award ruling in favor of a party …., the party may request the arbitrator to incorporate the ruling into an award pursuant to Section 19 …." The prevailing party may then seek confirmation, and, then, a non-prevailing may seek to vacate, modify or correct the award. The RUAA, though, does not grant the non-prevailing party the right to commence the process – although Florida's RUAA permits court intervention to confirm *or* vacate an arbitrator's injunction or equitable award.[43] Section 18 may be applied to an interim award for a TRO or a partial award regarding the initial decision in bifurcated proceeding; it is not limited to any given type of pre-award ruling.

The UAA did not have such a provision. Nor does the New York CPLR (which sometimes is said to be similar to the UAA), though the New York cases cited by the RUAA Commission permit court intervention in matters of privilege, confidentiality and subpoenas.[44] As noted above, Texas provides that a party may "file" for interlocutory relief. Nevertheless, the RUAA Commission viewed the addition of Section 18 to be consistent with what courts had done.[45] California's CCP § 1283.4, discussed above, has been interpreted to limit interlocutory review.

The innovation in Section 18 of the RUAA may be less than satisfactory: the terms of the RUAA do not grant the non-prevailing party – such as a claimant that has sought a temporary restraining order or preliminary injunction – access to the courts in order to challenge the decision (as does Florida, *see* above). The Commissioners' report thought this would "lead to delay … without corresponding benefit …." Of course, the non-prevailing party *seeking* the injunction might feel differently; since the party that successfully opposed the requested relief would not have a reason to move to confirm that victory, the losing party seeking the relief would not have the opportunity to defend against a motion to "confirm" under the section.[46] In that case, a party may look to the body of caselaw under the FAA, noted above, or prior state law, and courts that have allowed motions to challenge *or* confirm a decision denying a provisional remedy.

In New Jersey, courts have held that moving to vacate a New Jersey award in New York was not authorized by the NJRUAA and did not toll the 120 days limit of Section 23(b); the failure to appeal a court order compelling arbitration, which order is immediately appealable, may constitute a waiver of the right to challenge that order where the party has then participated in the arbitration without further objection.[47] Under Section 18, the losing party cannot move to vacate, so there can be no waiver unless the "award" was *functus officio* and final without regard to Section 18.

As with cases under the FAA, post-award action by an arbitrator, such as a "supplemental" award, may run afoul of *functus officio* and not alter the nature of a prior "final" award.[48]

INITIAL PROCEDURE

What triggers the need or ability (assuming jurisdiction over interim awards) to apply to a court? Under the RUAA, an award first must be made and noticed to the parties in accordance with the terms of the relevant statutes.[49] Section 2 of the RUAA specifies how "notice" is to be given and what constitutes notice.[50] Section 9 of the UAA provides that the arbitrator should deliver a copy of the award and describes how delivery is to be made. The NY CPLR, § 7507, uses similar terminology. The FAA tends to rely on the Federal Rules of Civil Procedure for such issues. One of the advantages of arbitrating under the aegis of an established tribunal is that its rules constitute part of the parties' agreement, *see, e.g.*, AAA Commercial Arbitration Rules, R-1(a), to the means of notice and various time limits.

MODIFICATION OF AWARD BY ARBITRATOR

Even before a party seeks judicial relief (or while such application is pending), the party may request that the *arbitrator* (as opposed to the court) modify or correct the award where, as specified in Section 20 of the RUAA and some forum rules: there is an evident mathematical or typographic error; the award is not final, in that it has not decided a claim submitted; the award is "imperfect in a matter of form;" or to "clarify" the award.

The UAA has more narrow grounds for modification (omitting that an award is not final and definite); the broader NY CPLR, § 7509, specifies the same grounds on which a court may modify an award. The FAA does not have a similar provision, but the FAA does not prohibit such motions, and they may be made pursuant to various forum rules or case-made exceptions to *functus officio*.

These exceptions to *functus officio* are not an opportunity to reargue the merits of the decision. An application to the arbitrator under Section 20 of the RUAA[51] must be made within 20 days after the "aggrieved party" receives "notice" of the award; Section 9 the UAA specifies 20 days after delivery; the NY CPLR, § 7509 says 20 after delivery. The language in each state may be slightly different, consistent with the section of each statute on awards.

Given the tight limits to file an application to a court to vacate, modify, or change an award, any application under Section 20 of the RUAA or other applicable statute or tribunal rule must be presented and decided on an expedited schedule. The time limit to move to vacate or modify the award, once the arbitrator has resolved the application under Section 20 starts once

the revised award is "modified or corrected."[52] California's CCP, § 1288.6 also tolls the time to move. The UAA does not address this issue. The NY CPLR, § 7509 says the arbitrators must rule within 30 days unless the parties agree to extend.

The major arbitration forums also permit the parties to agree to an arbitral appeal and provide access to an appellate panel of senior arbitrators, to review a final award. This agreement may be part of the parties' contract or an agreed term in a preliminary scheduling order.[53]

APPLICATIONS TO A COURT

What Court/Vicinage?

Once the parties have been provided notice of the award (or have been served, as may be required), assuming no forum appeal or application to modify has been made to the arbitrator (as above), the parties must decide whether to comply with the award or to apply to a court for relief.[54] If the latter, the first question is where to apply?

Most courts have held that, even where the parties have not explicitly agreed to the jurisdiction of a given state ("the parties agree to the personal jurisdiction of the courts of [state] to enforce any rights hereunder"), the parties' agreeing to arbitrate in a specific state – or their actually participating in an arbitration in a state – satisfies the constitutional due process or state long-arm basis for personal jurisdiction in that state. In some cases, the decision is based on a consent or waiver argument.[55] As noted in several, the agreement to arbitrate in a state necessarily includes an expectation to litigate any arbitration-related disputes in that state's courts; any other reading would render the arbitration agreement "a nullity."[56] In some situations, the language of the governing statute makes this explicit.[57] For example, Section 9 of the FAA says, where the court has not been specified in the parties' agreement: "Notice of the application [to confirm] shall be served upon the adverse party, and thereupon the court [in which the award was made] shall have jurisdiction of such party as though he had appeared generally in the proceeding." In at least one case, a court has deemed this evidence sufficient to find personal jurisdiction, but not conclusive.[58]

The state statutes are more ambiguous regarding in personam or personal jurisdiction. Many refer to the court's authority to enter judgment,[59] while others also have included authority to enforce the agreement.[60] California's CCP, § 1293 provides, additionally, that agreeing to arbitrate in California "shall be deemed a consent of the parties … to the jurisdiction of the courts of this state …." A further wrinkle: some (but not all) provide that the indicated state court has exclusive jurisdiction, which can mean that a motion in the wrong state must be denied.[61] In at least one, the state court applied state procedural law, though the case was governed by the FAA, and concurred with the Second Circuit that Section 9 granted jurisdiction.[62]

If the parties had been compelled to arbitrate by a state or federal court, which court would have had personal jurisdiction over the parties and which action typically would be stayed pending arbitration, the parties logically would return to that court.

Otherwise, they may have a choice (assuming personal jurisdiction). Section 26 of the NJRUAA says that agreeing to arbitrate in New Jersey "confers exclusive jurisdiction on the

[Superior Court] to enter judgment on an award pursuant to this act,"[63] in a county specified in Section 27: where the New Jersey Court Rules would locate venue, as agreed in the parties' arbitration contract, or where the arbitration was held. The NJRUAA does not specify Law Division or Chancery. Other state statutes may have slight variations in scope or the proper court; for example, Colorado confers jurisdiction generally rather than exclusive jurisdiction.[64]

New Jersey provides that the normal state procedural rules apply.[65] Section 17 of the UAA does not address this issue; Section 7502 of the NY CPLR addresses court proceedings broadly and is roughly consistent with the RUAA.

Federal district court also may be possible. If the parties satisfy the requirements of personal jurisdiction (as noted regarding Section 9, above) and subject matter jurisdiction over the controversy to be in federal court, then sections 9, 10 and 11 of the FAA provide they may go to the district where the award "was made," *i.e*., the District of New Jersey for arbitrations seated in New Jersey. On a motion to confirm and enter judgment pursuant to Section 9, the prevailing party also may go to the court specified in the parties' contract.

If permitted, given the forum defendant rule in cases arising under diversity jurisdiction, a party responding to a summary action in state court may remove to federal court if there is subject-matter jurisdiction and case law indicates a federal court might provide a more favorable forum on the motion.

The Process

If the application for relief is made in state court, whether a new action or to reopen the prior action, generally an expedited process is required. *See, e.g*., NY CPLR § 7502 ("summary action"). Section 5 of the NJRUAA requires that an application is made in New Jersey Superior Court by commencing a summary action pursuant to *R*. 4:46-1, by filing a proposed order to show cause, verified complaint and certification. Although the rules permit *ex parte* submission of the proposed order to show cause, since it does not yet contain a schedule for opposition and the return date and does not provide for any relief, good practice suggests that the papers be served by email on all counsel contemporaneously with being filed with the court. In practice, the proceedings will be expedited, though the "return date" may evolve into a settlement conference and adjournment for a plenary or other hearing.

The moving party must serve the other parties with the signed order, which then constitutes process – which would be set out in the applicable form of order to show cause. As noted above, personal jurisdiction may be based on consent or participation in the arbitration, but personal or substitute service must still be accomplished according to the applicable court rules, unless waived as, for example, permitting service on the attorney of record.

An application for relief made in federal district court is made by "motion," not by filing a complaint (although that may be accepted by the court).[66] The papers must be filed and served in accordance with Section 9 of the FAA and federal procedure for electronic filing and Fed. R. Civ. P. 4 and 5. Because the FAA does not provide for federal subject-matter jurisdiction for domestic arbitrations, any application not relying on a prior action to compel or stay arbitration

must independently satisfy the standards for diversity of citizenship or other basis for subject-matter jurisdiction.[67] The Third Circuit has held that a court may not "look through" the arbitration on a post-award motion to find federal question subject-matter jurisdiction.[68] If the responding party on the motion does not answer, a summary judgment standard may be appropriate – showing that all elements of the statute have been met -- rather than a default judgment.[69]

The papers required in federal court on a motion to confirm or modify are identified in Section 13 of the FAA: the arbitration agreement; the award; and the papers and order filed on the application to confirm. Failure to comply may result in dismissal of the motion.[70] Parties must be aware that the confidentiality of an arbitration award is not to be presumed once court intervention is sought.[71]

Timing

The RUAA, UAA, other state statutes and FAA have different time limits for making an application – and different time limits, still, for whether the application is to confirm an award or to modify, correct, or vacate an award.

a. Confirm

Section 22 of the RUAA does not provide a time limit within which a party must apply to confirm and enter judgment on the award. Section 10 of the UAA also is silent; the NY CPLR 7510 is one year from delivery; the FAA is one year after the award is made. The language of the FAA, the UAA and the RUAA mandates confirmation unless the award is vacated or modified. In some states, parties may still seek confirmation under common law or be bound by a general statute of limitations.

b. Vacate, Modify, or Correct

The time to apply to vacate, modify or correct may be different. The RUAA is 90 days after notice, except in New Jersey, where it is 120 days, and Colorado and Oregon. In Colorado a motion to vacate must be "filed within ninety-one days" after notice of the award or a corrected award; tolling is permitted up to 91 days if the basis for the application is corruption, fraud or undue means.[72] In Oregon, a petition to vacate, modify, or correct must be filed within 20 days after service of a motion to confirm.[73] The UAA is 90 days after delivery of the award;[74] NY CPLR § 7511(a) is 90 days; California CCP, § 1288 is 100 days after service. Each may have a tolling period until the basis of vacating on specified grounds is known or discovered or should have been known.

Because Sections 23 and 24 of the RUAA specify that any application to vacate, modify or correct the award must be "*filed* within 90 days [120 days in New Jersey and 91 days in Colorado] after the aggrieved party receives notice of the award," or a modified or corrected award, the aggrieved party may not be able to wait until the prevailing party moves to confirm – and then raise the grounds for vacatur in a counterclaim or affirmative defense. The application must be filed (and served) within the required time. This is not necessarily the rule in some

states, which have allowed for relaxation either in the rule or in the cases. As noted, Oregon allows a petition to vacate or modify 20 days after a petition to confirm has been served. New Jersey and New York may allow tolling,[75] and lawyers more familiar with the CPLR (and its different language) may be caught unawares expecting that a similar leniency applies in another state.

The times under the FAA are different in minor but important respects – and also raise the problem of an aggrieved party not moving quickly enough. Section 9 of the FAA provides that the prevailing party may move to confirm the award "within one year after the award is made." Note that it is when the award is *made*, not when it is filed, served, or received. An aggrieved party must file and serve the notice of motion to modify or vacate the award pursuant to Section 12 "within three months" after the award is "filed or delivered." Problems can arise in calculating the three months.[76] As with the NJRUAA, an aggrieved party cannot necessarily wait until a motion to confirm has been filed.

The choice of law governing the arbitration may be important in this circumstance. There may be a choice of which of a state's arbitration laws to apply.[77] The parties may have agreed to apply federal or state law; and a court may have to determine whether a labor case is bound by the FAA or by the applicable state law – since Section 301 of the LMRA may use the state limitations period.[78]

The standards for vacating or modifying an award may differ from state to state, and from the FAA, and are discussed in part in Tom Hanrahan's article entitled "The (Dubious) Rise and (Sort of) Demise of 'Manifest Disregard of the Law,'" which is included in this same issue of *Just Resolutions* newsletter.

Remand/Rehearing

In many instances, the court may make the mathematical or other ministerial correction required by its decision on a motion, as required under Section 24(b) of the RUAA and Section 13(b) of the UAA and permitted in Section 10(b) of the FAA, without remanding to the arbitrator.

However, where the arbitrator has omitted to decide a matter, or the award is incomplete or ambiguous, the court may remand for correction of the errors on the exception to *functus officio* that the arbitrator had not completely exercised his or her authority.[79] Some arbitration forum rules provide for such a ruling. Where the award is vacated because of bias, partiality, or arbitrator misconduct, the court may order a new arbitration with a different arbitrator as per Section 23(c) of the RUAA. Both the UAA and NY CPLR have similar provisions, as does Section 7511(d) and (e) of the NY CPLR.

Remember: once you have a confirmed award, it must be entered as a judgment. The statutes and rules differ slightly on this. The statutes' provisions for appeals of court decisions regarding interim and final awards, a topic beyond the scope of this article, also vary.

CONCLUSION

As illustrated by cases, reported and unreported, the steps required once an interim, partial, or final award is issued have caught more than a few parties in their intricacies. Attention to their details, the law applicable in your state, and the cases that have interpreted and applied them, is important. Steps not taken timely may be costly.

Robert E. Bartkus *is of counsel to McCusker, Anselmi, Rosen & Carvelli, P.C. in New York City and Florham Park, N.J., where he now concentrates his practice on arbitrating commercial and other business disputes. He is co-author, with Hon. William A. Dreier (P.J.A.D.)(ret.), of New Jersey Arbitration Handbook (2020 ed.). This article is an expanded version of a N.J.-focused article published in the New Jersey Lawyer in April 2020. Patricia A. Nolan, a Dallas-based arbitrator and mediator, contributed information on Texas law. Edward Lozowicki, a San Francisco-based arbitrator and mediator, contributed information on California law. The author also appreciates comments from Harout J. Samra, based in Miami. All are Fellows of the College of Commercial Arbitrators.*

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[1] 9 U.S.C. § 1, *et seq*. Not to introduce complications too early in this article, the FAA may apply in state court, *see, e.g., Southland Corp. v. Keating*, 465 U.S. 1 (1984), and a federal court may apply certain state arbitration law, *see, e.g., Volt Information Sciences, Inc. v Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468 (1989). Whether the FAA's procedural provisions apply in state court, preempting the RUAA or other state law selected by the parties to govern the arbitration, is not an easy question. Some state courts have suggested the FAA's time limits may apply, *e.g., Seldin v. Estate of Silverman,* 305 Neb. 185, __ N.W.2d __ (Mar. 6, 2020); *Matter of Ames v. Garfield*, 11 Misc. 3d 1051 (A) (S. Ct., N.Y. Co. 2006), others say not, *e.g., Moscatiello v. Hilliard*, 595 Pa. 596, 604-05. 939 A.2d 325 (2007). The California Supreme Court addressed the question of jury trials in *Rosenthal v. Great W. Fin. Sec. Corp*., 14 Cal. 4th 394, 58 Cal. Rptr. 2d 875, 926 P.2d 1061 (1996)In an unpublished opinion, the New Jersey Appellate Division held that there was no preemption. *Chakrala v. Bansal*, No. A-78-11, 2013 N.J. Super. Unpub. LEXIS 2337 (N.J. Super. Ct. App. Div. Sept. 24, 2013) ("partial final award" as to merits followed by "final award" as to attorneys' fees), *certif. denied*, 217 N.J. 293 (2014). Courts have distinguished between state and federal rules regarding filing and service. *See Levy v. Wells Fargo Advisors, LLC*, No. Misc. 16-171, 2016 U.S. Dist. LEXIS 144642 (E.D. Pa. Oct. 18, 2016), citing *Hakala v. J.P.Morgan Sec. Inc*., 186 Fed. Appx. 131 (2d Cir. 2006). Some consequences of these complications – including whether to apply in state or federal court (if available) – are explored below.

[2] This article is not intended to be comprehensive or a 50-state survey.

[3] In New Jersey federal and state courts, the principle is set out in *Colonial Penn Ins. Co. v. Omaha Indemnity Co*., 943 F.2d 347 (3d Cir. 1991), and *Kimm v. Blisset, LLC*, 388 N.J. Super. 14 (App. Div. 2001). *Union Switch & Signal Div. Am. Std. Inc. v. United Elec., Radio & Mach. Workers of Am*, 900 F.2d 608, 608, 612 (3d Cir. 1990), also refers to the prudential "complete arbitration rule," counseling against interlocutory court intervention in arbitrations, except in the "most extreme situations."

[4] *See Publicis Commun. v. True North Communs., Inc*., 206 F.3d 725, 729 & 730 (7th Cir. 2000). *Cf. Maignan v. Autoworks,* No. 13-3735, 2020 U.S. Dist. LEXIS 37803 (D.N.J. Mar. 4, 2020) (series of expert-like "opinions").

[5] *E.g., Hart Surgical, Inc. v UltraCision*, 244 F.3d 231, 233 (1st Cir. 2001); *Michaels v. Mariforum Shipping, S.A*., 624 F.2d 411, 414 (2d Cir. 1980); *Travelers Ins. Co. v. Davis*, 490 F.2d 536, 541-42 & n. 12 (3d Cir. 1974); *Gulf Guar. Life Ins. Co. v. Conn. Gen. Life Ins. Co*., 304 F.3d 476, 488 (5th Cir. 2002); *Savers Prop. & Cas. Ins. Co. v. Nat'l Union Fire Ins. Co*., 748 F.3d 708, 718 (6th Cir. 2014); *Quixtar, Inc. v. Brady,* 328 Fed. Appx. 317, 320 (6th Cir. 2009) ("[C]ourts generally should not entertain interlocutory appeals from ongoing arbitration proceedings.");

Blue Cross Blue Shield of Mass., Inc. v. BCS Ins. Co., 671 F.3d 635, 638 (7th Cir. 2011) ("judges must not intervene in pending arbitrations," and noting that "[r]eview comes at the beginning or the end, but not in the middle" of arbitration); *Millmen's Local 550 v. Wells Exterior Trim*, 828 F.2d 1373, 1374 (9th Cir. 1987); *Schatt v. Aventura Limousine & Transportation Serv., Inc.*, 603 Fed. Appx. 881, 887 (11th Cir 2015); *Mobil Oil Indonesia Inc. v. Asamera Oil (Indonesia) Ltd*., 43 N.Y. 2d 276, 281, 372 N.E. 2d 21, 23, 401 N.Y.S. 2d 186, 188 (1977); *Harleysville Mutual Cas. Co. v. Adair*, 431 Pa. 111, 141, 218 A.2d 791, 794 (Pa. 1966) (interlocutory review "unthinkable"); *Cavanaugh v. McDonnell & Co*., 357 Mass. 452, 457, 258 N.E.2d 561, 564 (Mass. 1970) (criticizing interlocutory review); *SM Architects, PLLC v. AMX Veteran Specialty Servs., LLC*, 564 S.W.3d 902, 905-06 (Tex. App. Dallas 2018) (the term award cannot be read so broadly to encompass interlocutory orders; "award" contemplates finality); *Kaiser Foundation Health Plan, Inc. v. Superior Court*, 13 Cal App. 5th 1125, 221 Cal. Rptr. 3d 278 (Ct. App. 2d Dist. 2017) (threshold order not an award under Cal. C.C.P. § 1283.4); *Maplebear, Inc. v. Busick*, 26 Cal. App. 5th 394, 237 Cal. Rptr. 3d 98 (Ct. App. 1st Dist. 2018) (class arbitration relief).

[6] *See, e.g*., Amirfar, Reid & Popova*, Int'l Handbook on Comm. Arb. Supplement* 103 at US 55 (Dec. 2018); College of Commercial Arbitrators, *Guide to Best Practices in Commercial Arbitration,* at 296-300 (4th ed. 2017); Gary B. Born, *International Arbitration: Law and Practice*, at 294-95 (2014 ed.). The rules of an arbitration forum may provide assistance.

[7] 9 U.S.C. §§ 9-13. As noted earlier, the FAA may apply in state courts, but most of the issues here discussed under the FAA have been reported in federal cases. Black's Law Dictionary, at 147 (8th ed.), at least provides that an award is "[a] final judgment or decision, esp. one by an arbitrator …."

[8] *See Publicis Commun. v. True North Communs., Inc*., 206 F.3d 725, 729 & 730 (7th Cir. 2000). *Accord, Robinson v. Littlefield*, 626 Fed. Appx. 370, 374 (3d Cir. 2015) (approving *Publicis*). As noted below, an arbitrator can indicate finality by words or actions; likewise, lack of finality can be indicated by words such a "preliminary" or "tentative".

[9] Courts also may look to sections of federal labor laws or jurisdictional concepts such as "ripeness," though some courts have considered that the issue under the FAA may not strictly be a jurisdictional one. *E.g*., *Union Switch & Signal Div. Am. Std. Inc. v. United Elec., Radio & Mach. Workers of Am*, 900 F.2d 608, 608, 612 (3d Cir. 1990).

[10] *See Lloyd v. Hovensa, LLC*, 369 F.3d 263, 270 (2d Cir. 2004).

[11] *Stolt-Nielson S.A. v. AnimalFeeds Int'l Corp*., 559 U.S. 662 (2010).

[12] *Hart Surgical, Inc. v UltraCision*, 244 F.3d 231, 233 (1st Cir. 2001). *See also Trade & Transport, Inc. v. Natural Petroleum Charterers, Inc.* 931 F.2d 191, 192-93 (2d Cir. 1991); *Egan Jones Ratings Co. v. Pruette*, 2017 U.S. Dist. LEXIS 9388 (E.D. Pa. Jan. 24, 2017) (agreement on bifurcated proceedings; interim awards separately reviewable), *aff'd*, 765 Fed. Appx. 659 d Cir. 2019) (reviewing interim award not questioned). In *Phillips 66 v. Int'l Bhd. of Teamsters, Local 877*, No. 13-4910, 2014 U.S. Dist. LEXIS 10802 (D.N.J. Jan. 29, 2014), the court found that the parties' explicit agreement limited more general applicability of *Hart*.

[13] *E.g., Halliburton Energy Servs. v. NL Indus*., 553 F. Supp. 2d 733, 778 (S.D. Tex. 2008) (discussing contrasting cases).

[14] *E.g., Metallgesellschaft A.G. v. M/V Capitan Constante*, 790 F.2d 280, 282-83 (2d Cir. 1986) (separate invoices), distinguishing *Michaels v. Mariforum Shipping, S.A.*, 624 F.2d 411 (2d Cir. 1980) (damages not awarded yet). *Cf. Moyer v. Van-Dye-Way Corp.,* 126 F.2d 339 (3d Cir. 1942) (incomplete award, confirmed in part, citing N.Y. cases).

[15] *See Ortho Pharm. Corp. v. Amgen, Inc*., 882 F.2d 806, 813-14 (3d Cir.), *modified*, 887 F.2d 460, 464 (3d Cir. 1989).

[16] *E.g., Island Creek Coal Sales Co. v. Gainesville*, 729 F.2d 1046 (6th Cir. 1984). *See also Sperry Int'l Trade, Inc. v. Gov't of Israel,* 670 F.2d 8 (2d Cir. 1982) (injunction). An interim injunction award by an AAA emergency arbitrator was confirmed in *Yahoo! Inc. v. Microsoft Corp*., 983 F. Supp. 2d 310 (S.D.N.Y. 2013). However, the injunction award by an emergency arbitrator may not be reviewable where indicated to be preliminary and not final. *See Al Reha Grp. For Tech. Servs. v. PKL Servs., Inc.*, 18-4194, 2019 U.S. Dist. LEXIS 156249 (N.D. Ga. Sept. 6, 2019).

[17] *Sperry Int'l Trade, Inc. v. Gov't of Israel,* 689 F.2d 301 (2d Cir. 1982) (attachment). *Accord Banco de Seguros del Estado v. Mutual Marine Office, Inc.*, 344 F.3d 255 (2d Cir. 2003) (security), *aff'g*, 230 F. Supp. 2d 362, 368-70 (S.D.N.Y. 2002) (discussing cases on interim awards); *Yahoo! Inc. v. Microsoft Corp*., 983 F. Supp. 2d 310 (S.D.N.Y. 2013) (preserving evidence).

[18] *See Everest Nat'l Ins. Co. v. Sutton*, 321 Fed. Appx. 192 (3d Cir. 2009).

[19] *See Sperry Int'l Trade, Inc. v. Gov't of Israel,* 532 F.2d 901, 904 (S.D.N.Y. 1982), *aff'd*, 689 F.2d 301 (2d Cir. 1982).

[20] *See Sabre GLBH, Inc. v. Shan*, No. 15-8900, 2018 U.S. Dist. LEXIS 68010, at *1 n.2 (D.N.J. Apr. 23, 2018), *rev'd and remanded on other grounds,*779 Fed. Appx. 843 (3d Cir. 2019). *See also Seldin v. Estate of Silverman,* 305 Neb. 185, __ N.W.2d __ (Mar. 6, 2020) (series of motions on "interim awards").
[21] *See Judicial Review of Partial Arbitral Awards under Section 10(a)(4) of the Federal Arbitration Act*, 70 U. Chi. L. Rev. 663 (2003) (describing greater "flexibility" as a recent development).
[22] *Mitchell v. Franchise Servs. of N. Am., Inc*., No. 18-723, 2019 U.S. Dist. LEXIS 200248 (S.D. Miss. Nov. 19, 2019). Other recent reviews of conflicting circuit cases include *Egan Jones Ratings Co. v. Pruette*, 2017 U.S. Dist. LEXIS 9388 (E.D. Pa. Jan. 24, 2017), *aff'd*, 765 Fed. Appx. 659 d Cir. 2019); *Phillips 66 v. Int'l Bhd. of Teamsters, Local 877*, No. 13-4910, 2014 U.S. Dist. LEXIS 10802 (D.N.J. Jan. 29, 2014); and *New United Motor Mfg., Inc. v. United Auto Workers Local 2244*, 617 F. Supp. 2d 948 (N.D. Ca. 2008).
[23] *Mitchell v. Franchise Servs. of N. Am., Inc*., No. 18-723, 2019 U.S. Dist. LEXIS 200248, at *8 (S.D. Miss. Nov. 19, 2019), citing *Cigna Ins. Co. v. Huddleston*, No. 92-1252, 1993 U.S. App. LEXIS 40575 (5th Cir. Feb. 16, 1993) (not precedential). The Ninth Circuit has held that the FAA is subject to equitable tolling. *Move, Inc. v. Citigroup Global Mkts*., 840 F.3d 1152, 1159 (9th Cir. 2016). But it noted a division within the circuits and district courts. *See, e.g., Hessong v. Cape Sec., Inc*., No. 18-0500, 2018 U.S. Dist. LEXIS 117715 (D. Md. July 16, 2018), citing *Taylor v. Nelson*. 788 F.2d 220, 225 (4th Cir. 1986) ("intimating" no tolling under FAA), citing *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 177 (2d Cir. 1984). *Accord, Reading Joint Apprentice & Elec. Comm. v. Hiester*, 2016 U.S. Dist. LEXIS 163328 (E.D. Pa. Nov. 28, 2016); *Doctor's Assoc., Inc. v. Desai*, 2016 Bankr. LEXIS 1139 (N.J. Bankr. Apr. 7, 2016). *Service Employees Int'l Union v. Office Center Servcs., Inc*., 670 F.2d 404, 412 (3d Cir. 1982) (relying on 7th Circuit); *Prassad v. Investors Assocs., Inc*., 82 F. Supp. 2d 365 (D.N.J. 2000). Note, however, that some of these cases may be directly limited by section 301 of the LMRA, 29 U.S.C. § 185. *See, e.g., Burns Int'l Sec. Servs., Inc. v. United Plant Guard Workers, Local 538*, 989 F. Supp. 2d 102, 105 (D. Conn. 1996).
[24] *E.g., On Time Staffing, LLC v. Coast to Coast Installations, Inc*., No. 09-4158, 2009 U.S. Dist. LEXIS 94626 (D.N.J. Oct. 8, 2009).
[25] *Bailey Shipping Ltd. v. Am. Bureau of Shipping*, No. 12-5959, 2014 U.S. Dist. LEXIS 42530 (S.D.N.Y. Mar. 14, 2014). Relying on Fed. R. Civ. P 41, which required consent, the court may have sensed a bit of gamesmanship. The final award eventually was confirmed. 2019 U.S. Dist. LEXIS 73394 (S.D.N.Y. May 1, 2019).
[26] *See, e.g., Aviall, Inc. v Ryder Sys., Inc*., 110 F.3d 892, 895 (2d Cir. 1997); *Gulf Guar. Life Ins. Co. v. Conn. Gen. Life Ins. Co*., 304 F.3d 476, 488 (5th Cir. 2002) ("We find no authority under the FAA for a court to entertain such challenges [to the arbitrator selection process or the unfairness of an arbitration] prior to [the] issuance of the arbitral award.").
[27] *E.g., Phillips 66 v. Int'l Bhd. of Teamsters, Local 877*, No. 13-4910, 2014 U.S. Dist. LEXIS 10802 (D.N.J. Jan. 29, 2014). *See also Berkowitz v. Republic of Costa Rica*, 288 F. Supp. 3d 166 (D.D.C. 2018) (international).
[28] American Arbitration Association, Optional Appellate Arbitration Rules, A-2; *see Demuth v. Navient Sols., LLC*, No. 17-675, 2017 U.S. Dist. LEXIS 129461 (E.D. Pa. Aug. 15, 2017).
[29] *See Demuth v. Navient Sols., LLCI,* No. 17-675, 2017 U.S. Dist. LEXIS 129461 (D.N.J. Aug. 15, 2017).
[30] *Vento v. Crithfield*, 2014 U.S. Dist. LEXIS 200498, at * 17-18 (D. V.I. Sept. 30, 2014) (bifurcation; FAA case analogized to LMRA cases). Where a lay arbitrator issues a series of expert-like letter "opinions", the court confirmed as the practical solution. *Maignan v. Autoworks,* No. 13-3735, 2020 U.S. Dist. LEXIS 37803 (D.N.J. Mar. 4, 2020).
[31] *Robinson v. Littlefield*, 626 Fed. Appx. 370, 374 (3d Cir. 2015).
[32] *Whitlock Packaging Corp. v. Precision Diversified Sys., Inc*., 59 F. Supp. 2d 384 (D.N.J. 1998) (parties' agreement had required court determination of damages).
[33] *Robinson v. Littlefield*, 626 Fed. Appx. 370, 374 (3d Cir. 2015).
[34] *See Fradella v. Petricca,* 183 F.3d 17, 19 (1st Cir. 1999).
[35] In addition to the 1925 FAA, of course, and the 2003 New Jersey Revised Uniform Arbitration Act, N.J.S.A. 2A:23B-1*, et seq*. (the NJRUAA), which is New Jersey's version of the Uniform Law Commission's 2000 Revised Model Arbitration Act, New Jersey also has an Alternative Procedures for Dispute Resolution Act, N.J.S.A. 2A:23A-1, *et seq*. (the 1957 APDRA), now applicable mainly to certain regulatory procedures (and also adoptable by commercial parties). The 1951 Arbitration Act, N.J.S.A., 2A:24-1, *et seq*., was largely replaced by the NJRUAA except for certain labor agreements. Other states may have similar alternatives. But also, the rules may be entirely different in a case governed by the New York Convention or other international/foreign arbitration.
[36] A report of the Louisiana State Law Institute identifies some of these differences as of 2013-14. http://www.lsli.org/files%2Fadr%2F2013.9.11%20Cmte%20Mtg%2FRUAA%20-%20Deviations%20by%20Section%20and%20State%20-%20UPDATED%20(BH%20HO%20I).pdf

[37] An excellent summary of the variations of enactments is Bruce Meyerson, *The Revised Uniform Arbitration Act: 15 Years Later,* 71 Dispute Resolution J., No. 1 at 1 (2016). Since 2016, additional states have adopted the RUAA. *See* Uniform Law Commission, 2019-2020 Guide to Uniform and Model Acts, at 42 and 50 (2020); the chart on page 50 lists California, Connecticut, Michigan, Missouri, New Hampshire, New York, Ohio, Puerto Rico, Texas, U.S. Virgin Islands, Vermont, and Wisconsin as having adopted the 1956 UAA but with variations. https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=01c556bd-ec9b-0fab-3805-7715f0eb9344&forceDialog=0 last visited 2-13-20.

[38] *E.g.*, N.J.S.A. 2A:23B-11 & -17(g). The remedy for an arbitrator not making complete disclosure may be vacatur of the award, *see* N.J.S.A. 2A:23B-12, not court removal.

[39] Texas Civ. Prac. & Rem. Code § 171.086(b). Nevertheless*, Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 416-20 (Tex. App. – Fort Worth 2009, no pet.), declined to issue an order for a lis pendens, distinguishing between the statute's language and the court's authority to confirm a partial award: "While section 171.086(b) may contain language that permits a party to 'file an application for a court order' confirming partial award … that language is purely procedural and does not grant a trial court the power to conduct judicial review of partial awards before the arbitrator's decision becomes final." Other states are not so expansive re aiding an arbitrator's order. See, e.g., *Matter of Capital Enters. Co. v. Dworman,* 178 A.D.3d 507, 111 N.Y.S.3d 850 (App. Div. 1st Dept. 2019) (orders re sale process).

[40] Or. Rev. Stat. § 36.385.

[41] *See Peacock v. Wave Tec Pools, Inc.*, 107 S.W.3d 631, 637 (Tex. App. – Waco, 2003) (pet. denied). The court noted that Texas case law requires that an "award must determine all matters submitted or it will be unenforceable for lack of finality." *Id.* (citations omitted). Further, while the award may not "reserve judicial authority to be exercised in the future ... under certain circumstances [the arbitrator] may reserve a ministerial authority to be thereafter exercised without vitiating the award." *Id.* (citations omitted).

[42] Cal. Code of Civil Pro. § 1283.4. This has been held as meaning that "an award must resolve the parties' controversy, not a question within the controversy." *Kaiser Foundation Health Plan, Inc. v. Superior Court*, 13 Cal. App. 5th 1125, 1146, 221 Cal. Rptr. 3d 278, 294 (Ct. App. 2d Dist. 2017); *accord, Maplebear, Inc. v. Busick*, 26 Cal. App. 5th 394, 237 Cal. Rptr. 3d 98 (Ct. App. 1st Dist. 2018).

[43] Fla. Stat. Ann. 682.081(2). North Carolina makes explicit that the losing party may not seek review (other than as a response to a motion to confirm), N.C. Gen. Stat. § 1-569(b), and precludes appeal of the trial court's ruling a restriction, not in the RUAA, against appeals of court orders on pre-award rulings.

[44] In New York, a court may intervene regarding an arbitrator evidencing bias. *See Morris v. New York Football Giants, Inc*., 150 Misc. 2d 271, 575 N.Y.S.2d 1013 (Sup. Ct. N.Y. County 1991) (reformed contract). Confidentiality and privilege also may give rise to court review in New York. *See, e.g., Minerals & Chem. Philipp Corp. v. Panamerican Commodities , S.A*., 15 A.D.2d 432, 224 N.Y.S.2d 763 (1st Dept. 1962) (appointing referee to conduct confidentiality review of subpoenaed documents); *Civil Serv. Employees Ass'n v. Soper*, 105 Misc. 2d 230, 431 N.Y.S.2d 909 (N.Y. Co. 1980). *But see Matter of Capital Enters. Co. v. Dworman*, 178 A.D.3d 507, 111 N.Y.S.3d 850 (1st Dept. 2019) (interim orders re property sale not reviewable); *Muller v. Wertzberger*, 39 Misc. 3d 1237(A), 972 N.Y.S.2d 144 (Sup. St. Kings Co. 2013) (incomplete determination of amount owed); *Cotugno v. Bartkowski*, 37 Misc. 3d 1206(A) (Spr. Ct. Suffolk Co. 2012) (compensation award reviewable and confirmed; fees award not reviewable).

[45] The cases did not support that assertion, though. The UAA case cited has no reference to any interim awards being brought to state court. The other cases were under the FAA, not the UAA.

[46] Courts presumably still must satisfy themselves that the "converted" award still satisfies their jurisdictional mandate; the arbitrator cannot create jurisdiction for a court. *Cf. Collins v. Tex Mall, L.P.,* 297 S.W.3d 409 (Ct. App. Fort Worth, 2009) (noted above). This same problem arises when a party is successful in defeating a claim in a final award and may have no reason to move to confirm. The losing party cannot wait for a motion to confirm to move to vacate.

[47] *Golf Lucky Partners v. PGG, LLC*, No. A-4428-12T2, 2014 N.J. Super. Unpub. LEXIS 2366 (N.J. Super. Ct. App. Div. Oct. 2, 2014) (not precedential). *See also The Port Auth. of N.Y. & N.J. Police Benevolent Ass'n, Inc*., 459 N.J. Super. 278 (App. Div. 2019) (party missed three-months deadline under the1951 Act); *Prassad v. Investors Assocs., Inc*., 82 F. Supp. 2d 365 (D.N.J. 2000).

[48] *See, e.g.*, *Kimm v. Blisset, LLC*, 388 N.J. Super. 14 (App. Div. 2001) (supplemental award for post-arbitration fees held a "nullity"; none of the grounds for modifying an award under NJRUAA existed).

[49] *E.g.*, N.J.S.A. 2A:23B-19 (Award).

[50] *E.g.*, N.J.S.A. 2A:23B-2. Minnesota's section 2 allows the parties to agree to other methods of notice. Oregon, D.C. and Colorado have related variations from the model act.

[51] Tribunal rules may have different time limits. *E.g.*, AAA Commercial Arbitration Rules, R-50 (20 calendar days); ICDR Arbitration Rules, Article 33 (30 calendar days); JAMS Comprehensive Arbitration Rules & Procedures, Rule 25 (award is final after 14 days unless an application is made for a "correction").
[52] N.J.S.A. 2A:23B-23(b) & 24(a).
[53] *See, e.g.*, American Arbitration Association Optional Appellate Rules, A-1; JAMS Optional Arbitration Appeal Procedures. During the pendency of the appeal, the award may not be final for statutory purposes. *See also*, *Demuth v. Navient Sols., LLC*, No. 17-675, 2017 U.S. Dist. LEXIS 129461 (D.N.J. Aug. 15, 2017) (dismissing federal complaint when AAA appeals process not complete).
[54] A motion to confirm and enter judgment on the award may be appropriate, even with mutual compliance, for purposes of estoppel or claim preclusion. *See Mikelson v. United Servs. Auto. Ass'n*, 227 P.3d 559, 565 (Haw. Ct. App. 2010).
[55] *See, e.g., Mutual Fire, Marine & Inland Ins. Co. v. Armour*, No. 86-3562, 1987 U..S. Dist. LEXIS 3012 (E.D. Pa. Apr. 16, 1987), citing *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Lecopulos*, 553 F.2d 842, 844 (2d Cir. 1977).
[56] *Doctor's Assoc., Inc. v. Stuart,* 85 F.3d 975 979 (2d Cir. 1996).
[57] *E.g., Calavito v. Hockmeyer Eqpt. Corp*., 605 F. Supp. 1482 (S.D.N.Y. 1985).
[58] *Ace Am. Ins. Co. v. Hallier*, No. 14-703, 2015 U.S. Dist. LEXIS 37824 (D. Nev. Mar. 25, 2015) (enforcing judgment on award entered on default in Pennsylvania).
[59] *E.g.*, N.J.S.A. 2A:23B-26(b), but only grants authority to enforce the agreement if the court has personal jurisdiction, *id*. at 26(b).
[60] Section 9 of the UAA refers to both. *See also* N.Y. CPLR, § 7501.
[61] *See, e.g., Tru Green Corp. v. Sampson*, 802 S.W.2d 951 (Ct. App. Ky. 1991) (looking to definition of "court" in statute).
[62] *Doctor's Assoc., Inc. v. Keating*, 72 Conn. App. 310, 311 n.1, 805 A.2d 120 (App. Ct. 2002).
[63] The RUAA Commission considered entering judgment to include the process of confirmation. *See* Bruce Meyerson, *supra*, at 43 n.211.
[64] Colo. Rev. Stat. § 13-22-226(2). A review of state statutes, as of 2007, focusing on "court" is found in *Abraham – Coply Square, L.P. v. Badaoui,* 2007 Mass. App. Div. 83 (Jun. 6, 2007) (Appendix A).
[65] N.J.S.A. 2A:23B-26(c).
[66] *See Interior Finish Contractors Ass'n of Del. Cty. V. Drywall Finishers Local Union No. 1955,* 625 F. Supp. 1233 (E.D. Pa. 1985); *Doctor's Assocs., Inc. v. Singh-Loodn,* No. 13-3030, 2014 U.S. Dist. LEXIS 142208 (D.N.J. Oct. 6, 2014).
[67] 28 U.S.C. § 1332. *See* Bartkus, Sher & Chewning, New Jersey Federal Civil Procedure, Chapter 1 (jurisdiction) (2020 ed.).
[68] *See Goldman v. Citigroup Glob, Mkts, Inc*., 834 F.3d 242 (3d Cir. 2016), *cert. denied*, 137 S. Ct. 2159 (2017). Other circuits have held otherwise. *See*, *e.g., Landau v. Eisenberg*, 922 F.3d 495, 498 (2d Cir. 2019).
[69] *E.g., D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95 (2d Cir. 2006); *accord, e.g., Teverbaugh v. Lima One Capital, LLC*, No. 19-ms-157, 2020 U.S. Dist. LEXIS 14871 (E.D. Miss. Jan. 28, 2020).
[70] *Teverbaugh v. Lima One Capital, LLC*, No. 19-ms-157, 2020 U.S. Dist. LEXIS 14871 (E.D. Miss. Jan. 28, 2020).
[71] *See, e.g., AT&T Corp. v. Public Serv. Enters. of Pa*., No. 99-4975, 2000 U.S. Dist. LEXIS 44649 (E.D. Pa. Apr. 12, 2000); *Lederman v. Prudential Life Ins. Co. of Am., Inc*., 385 N.J. Super. 307 (App. Div. 2006) (noting public access issues). Parties must take appropriate action to remove any personal identifiers and to file the award under seal.
[72] Colo. Rev. Stat. Ann. §§ 13-22-223(2) & 13-22-224(1).
[73] Or. Rev. Stat. §§ 36-710 & 36-705.
[74] *See, e.g.,* Tex. Civ. Prac. & Rem. Code § 171.088(4)(b).
[75] *See, e.g., Matter of Wendt v. Bondfactor Co., LLC*, 169 A.D.3d 808, 94 N.Y.S.3d 134 (App. Div. 2d Dept. 2019); *Brentnall v. Nationwide Mut. Ins. Co*., 194 A.D.2d 537, 598 NY.S.2d 315 (2d Dept. 1993); *State Farm Mut. Auto. Ins. Co. v. Fireman's Fund Ins. Co*., 121 A.D.2d 529, 504 N.Y.S.2d 24 (2d Dept. 1986). The cases appear not to be uniform in this regard. In New Jersey, *Policeman's Benevolent Ass'n, Local 292 v. Borough of N. Haledon*, 158 N.J. 392, 403 (1999), states: "A party may seek to vacate or modify an award either in response to an action to confirm or in an independent action. In either case, the action must be instituted within three months [the then-applicable act's time] of the award's delivery. …. For the party seeking to vacate or modify an arbitration award, the failure to act results in both the right to institute a summary vacation action and the right to counterclaim in a in a plenary confirmation." However, as recognized in *The Port Auth. of N.Y. & N.J. Police Benevolent Ass'n, Inc*., 459 N.J. Super. 278 (App. Div. 2019), the Supreme Court went on to say that the party wishing to vacate may still file an answer to a motion to confirm asserting its affirmative defenses.

[76] *See* Fed. R. Civ. P. 6(a); *Stevens v. Jiffy Lube Int'l, LP v. Black Fire Energy, Inc*., 911 F.3d 1249 (9th Cir. 2019) (motion a day late). *See also Nichols v. U.S. Bank, Nat'l Ass'*n, No. 19-MC-162, 2020 U.S. Dist. LEXIS 1332 (S.D. Miss. Jan. 6, 2020).
[77] *See Policeman's Benevolent Ass'n, Local 292 v. Borough of N. Haledon*, 158 N.J. 392, 403 (1999) (right to vacate or for summary action lost, applying the then current act); *The Port Auth. of N.Y. & N.J. Police Benevolent Ass'n, Inc*., 459 N.J. Super. 278 (App. Div. 2019) (party missed three-months deadline under the1951 Act).

[78] *See, e.g., Prospect CCMC LLC v. Crozer-Chester Nurses Assn.,* No. 19-1439, 2020 U.S. App. LEXIS 5841, ___ Fed. Appx. __ (3d Cir. Feb. 26, 2020) (Pennsylvania limitations applied to time to apply for review).
[79] *See, e.g., Trentina Printing, Inc. v. Fitzpatrick & Assocs., Inc.,* 125 N.J. 349, 363 (1994).