ARBITRATION IN PENNSYLVANIA

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Introduction

The arbitration of claims can take several different forms in Pennsylvania, but can be generally categorized as either **compulsory judicial arbitration** (mandated by court rules with respect to civil suits in which the damages allegedly at issue are less than a prescribed dollar amount) or **contractual arbitration** (in which the parties have previously agreed to arbitrate their disputes outside of the judicial system).

Compulsory judicial arbitration was created as a means of efficiently disposing of smaller civil cases and conserving judicial resources by requiring as a first step that such cases be tried before a panel of three local court-appointed attorneys, with the understanding that any party can later appeal from the decision and obtain a new trial.

Contractual arbitration is a means of bypassing the judicial system and is voluntary in the sense that the parties have entered into an agreement to resolve some or all their disputes in that fashion. Where claims are subject to contractual arbitration, there is generally no right to a new trial before the courts and the extent to which judicial review is available to set aside legal errors by the arbitrators depends upon whether the terms of the contract call for common law arbitration, for arbitration under the Act of 1980, or for arbitration under the Act of 1927.

Compulsory Judicial Arbitration

The Pennsylvania Judicial Code contains provisions authorizing each Judicial District in the Commonwealth to adopt rules calling for the compulsory arbitration of civil cases at 42 Pa.C.S. § 7361, and most, if not all state courts have now adopted such programs, which have proven very successful in expediting the trial and disposition of civil cases. The Judicial Code language is essentially only an “enabling” statute, leaving it to the Supreme Court of Pennsylvania to adopt appropriate Rules of Civil Procedure and the local Common Pleas courts to adopt their own consistent Local Rules. The statute does, however, set the basic parameters with respect to the types of cases to be submitted to arbitration based upon the amount of damages claimed. The Code also establishes the automatic right of any dissatisfied party to appeal from the arbitration award and to demand
a trial *de novo*, after which the case will ultimately be assigned for trial to a judge (and a jury where requested) thus avoiding any claim that such compulsory arbitration proceedings would violate a litigant’s Constitutional right to a trial by jury. The outcome of a judicial arbitration proceeding is, in that sense, non-binding provided a timely appeal is filed.

In that regard, the enabling language of the Judicial Code indicates that, where prescribed by general rule or rule of court, “civil matters or issues therein as shall be specified by rule shall first be submitted to and heard by a board of three members of the bar of the court”, after which the statute states that arbitration is not permitted with respect to any action involving title to real property and then establishes the basic guidelines as to the jurisdictional limits for arbitration, stating that no matter may be referred to arbitration where the amount in controversy, exclusive of interest and costs, exceeds either $50,000 (in larger judicial districts embracing first, second or third class counties, or home rule counties) or $35,000 (in any other judicial district.) The jurisdictional limits of compulsory arbitration in the Pennsylvania state courts vary considerably with, for example, all cases involving up to $50,000 being referred to arbitration in Philadelphia, Montgomery, Lehigh, Bucks, and Lancaster Counties, whereas the limit is set at $35,000 in Dauphin County, $30,000 in York and Lackawanna Counties and surprisingly only $25,000 in Allegheny County despite the size of that judicial district based in Pittsburgh.

**Qualifications of Arbitrators**

The Pennsylvania Rules of Civil Procedure governing compulsory arbitration generally provide for a list of available arbitrators to be compiled in a manner to be prescribed by local county rule from attorneys actively engaged in the practice of law primarily in the judicial district in which the court is located, that the board of arbitrators is to consist of a panel of three such attorneys chaired by one having at least 3 years experience at the bar. The Rules also require that each arbitrator take an oath of office, state that no board shall contain more than one attorney from the same firm, and call for the withdrawal of any arbitrator where the circumstances are such that a judge would be disqualified from hearing the case [Pa.R.C.P. No. 1302].
Scheduling of Hearings

The state rules leave it to the local rule making power of the county Common Pleas courts to establish procedures for fixing the date, time and place of arbitration hearings, provided that no less than 30 days written notice is given to the parties or their attorneys of record [Pa.R.C.P. No. 1303].

Procedures for setting hearing dates do vary widely in Pennsylvania by local practice, with some judicial districts, such as Philadelphia, automatically assigning an arbitration hearing date on the date any suit identified as an arbitration matter is filed, either by complaint, or writ of summons, setting the hearing to take place approximately 9 months later and stamping the hearing date on the suit papers themselves. In Pittsburgh (Allegheny County) no date is assigned if the suit is filed by writ of summons only, but a hearing date will be assigned automatically upon the filing of the plaintiff’s complaint.

Under the local rules of some counties, the courts do not automatically fix a date for arbitration and generally do not set hearing dates until they are asked to do so. For example, arbitration hearings in Bucks, Lancaster and York Counties are not scheduled until a party files a praecipe to place the case on the arbitration list or a judge orders that a case be referred to arbitration. In Lehigh County, the local rules provide for cases to be listed for arbitration hearings upon the filing of a praecipe by any party, but also allow adverse parties to demand an additional 120 days in which to complete discovery unless the case has been pending one year or more. In Montgomery County, the local rules provide for the scheduling of hearings upon the filing of a praecipe for arbitration, but require that an arbitration praecipe be signed by all counsel and unrepresented parties and that a court conference be scheduled to address the issue if anyone refuses to sign. In Harrisburg (Dauphin County) no hearing date is set until one of the parties files a certificate of readiness and that party must give the other parties 30 days notice of his intent to do so, after which a hearing date is set by the chairman of the panel, rather than by the court.

The consequence of local rules such as those in Philadelphia and Pittsburgh where hearing dates are assigned automatically by the courts either immediately when a lawsuit is filed, or soon after, is that the parties are allowed only a limited period of time in which to complete discovery prior to arbitration and that period can become even more limited when there are delays in effectuating service of
the suit papers upon the defendants. To ensure that adequate time is available for the completion of necessary discovery in such cases, it is imperative that suits be promptly assigned to defense counsel.

**Conduct of Hearings**

With regard to procedure at hearings, Rule 1304 states that, except as otherwise provided, the arbitrators shall conduct the hearing in conformity with Rule 1038, governing non-jury trials.

However, consistent with the purpose of providing a quick and cost-effective means of disposing of smaller cases, Rule 1305 then relaxes evidentiary standards in order to permit the parties to present certain evidence in documentary form which would ordinarily require live testimony. *Probably the most significant procedural aspect of the arbitration rules is that they allow for the introduction such things as damage estimates, lost earnings documentation, bills, and expert testimony in the form of written reports, rather than forcing parties to incur the expense of presenting witnesses to authenticate such documents or live expert testimony, provided notice of the intent to offer the reports and copies of the reports are provided to opposing counsel at least 20 days prior to the hearing.* Specifically, Rule 1305 permits the following documents to be admitted:

- bills or other documents evidencing charges incurred;

- records of businesses, government departments, agencies or offices, subject to statutory restrictions, provided they would be admissible in evidence if authenticated by a records custodian;

- records and reports of hospitals and licensed health care providers;

- expert reports and c.v.’s;

- written estimates of value, damage to, cost of repair of or loss of property (if accompanied by a statement of the party offering it as to whether the property was repaired and, if so, whether repairs were made in full or in part and by whom, with a copy of the bill);
• documentation of lost earnings in the form of written reports prepared by employers of earning rates, lost time from work or lost compensation.

Consistent with the parties’ right to appeal for a trial de novo if unhappy with the award, the Rules state that no hearing transcript will be prepared unless a party does so at his own expense. Where a transcript of an arbitration hearing is prepared and an appeal is later filed, the testimony can be utilized at trial subject to the Rules of Evidence and the Rules of Civil Procedure. Among other things, any party can offer the prior testimony of an adverse party as substantive evidence. The testimony taken at an arbitration hearing should also be admissible for purposes of impeachment with respect to any witness at trial.

**Delay Damages**

One procedural issue which may arise in actions for bodily injury, death or property damage involves the manner in which an arbitration panel is to receive evidence with respect to claims for “delay damages” under Rule 238. Briefly, delay damages (consisting of interest added to any compensatory damage award at the rate of prime plus one percent) may be added to any award or verdict under certain circumstances where a defendant failed to make a written settlement offer to the plaintiff, or the plaintiff’s recovery was more than 125% of the amount of such an offer. While this is an oversimplification of the Rule, the important thing for purposes of this discussion is that a plaintiff’s entitlement to delay damages is dependent upon whether a written settlement offer was made by the defendant, when it was made and how the offer compares mathematically to the amount of damages awarded. Because an arbitration panel should otherwise not be made privy to information regarding the parties’ pre-trial settlement negotiations, this presents some procedural problems.

The Explanatory Notes to Rule 1306 indicate that the arbitration panel clearly should not have any knowledge regarding prior settlement negotiations when arriving at its basic award since this would be prejudicial to the defense and suggest two alternatives, one being for the panel to conduct a second hearing on delay damages, while the other would be for the parties to submit the relevant information regarding any offer of settlement in a sealed envelope which is not to be opened by the panel until after its basic award has been reached.
Although the Explanatory Notes indicate that this procedure is left to local rule, Rule 238(d)(1) itself now contains language outlining what should be the controlling procedure with respect to delay damages at arbitration in all judicial districts, indicating that a party seeking such damages must provide at least 20 days advance written notice of his intent to do so prior to the hearing, that a party opposing that request must state his objections in writing at least 10 days prior to the hearing and that each party is to submit a sealed envelope containing the plaintiff’s request and the defendant’s statement to the arbitration panel at the time of the hearing, to be reviewed by the panel immediately upon making its award. Rule 238 further provides that, if a defendant opposes a request for delay damages, the board may hold a hearing on the issue.

**Failure to Appear**

If a plaintiff fails to appear for an arbitration hearing either in person or by counsel, Rule 1304(a) provides that the panel “shall” enter an award for the defendant. The same rule permits a plaintiff to avoid that result by instead taking a voluntary non-suit in the case, but this would not be an attractive option in any case where the statute of limitations has already expired.

Rule 1303(a)(2) also permits trial courts to adopt by local rule a provision to be included in the arbitration hearing notice to the effect that, if one or more parties are not present at the time set for an arbitration hearing, the matter may be heard at the same time and date by a judge without the absent party, or parties and stating that there is no right to a trial de novo on appeal from a decision entered by a judge. This rule would appear to be aimed at litigants or attorneys who are not inclined to participate in the arbitration process in good faith and would otherwise simply fail to appear and then file an appeal for a new trial. To discourage such behavior, it would permit a judge to enter a judgment against the absent party such as a non-suit against the plaintiff, or a default against the defendant from which no appeal for a trial de novo would exist. The party against whom such action is taken would then be required to petition to set aside the non-suit or open the default. Arbitration panels do not have the power to enter compulsory non-suits or default judgments themselves.

Some courts have addressed this issue by other means through local rules. In Philadelphia, for example, in addition to adopting the language set forth above, the local rules provide that if all parties fail to appear for a hearing without having
previously obtained a continuance or advised the manager of the arbitration center that the case has been settled, a judgment of non pros (failure to prosecute) will be entered against the plaintiff.

The Award

Rule 1306 provides that an arbitration panel shall make an award “promptly” after a hearing, disposing of all claims for relief and separately stating any award of delay damages. The award is to be signed by all or a majority of the arbitrators and a dissenting vote can be noted on the award, but with no further comment.

Awards are to be docketed immediately, notice is to be mailed to all parties or their attorneys and any monetary damage award is also to be entered on the judgment index, creating a lien on any real property titled to the defendant in the county and the Rules provide that the judgment lien shall continue during the pendency of any appeal [Rule 1307(b)].

If no appeal is filed within 30 days of the docketing of the award, the court is to enter judgment on the award upon the filing of a praecipe to enter judgment [Rule 1307(c)]. It has been held that an unappealed arbitration award can have a collateral estoppel effect. Ottaviano v. SEPTA, 361 A.2d 810 (Pa.Super. 1976).

If there is an “obvious and unambiguous” error in mathematics or in the language of an award, a party may make application to the court within the 30 days permitted for filing an appeal to “mold” the award to correct such errors, as it would mold a jury verdict. The filing of such an application stays all proceedings including the running of the appeal period. Once the application is decided, any party may appeal for a new trial within either 30 days from the docketing of the award, or 10 days of the disposition of the application, whichever is later [Rule 1307(d)]. It should be noted that the court’s ability to mold an award is limited. As stated in the Explanatory Notes to Rule 1307, this remedy is a rare one which is confined to obvious and unambiguous errors in language or mathematics - if an award is “unintelligible or ambiguous or subject to alternative interpretations, an aggrieved party can only appeal.”
An appeal is accomplished by filing a notice of appeal and payment of the fee prescribed by the local rules within 30 days from the entry of the award on the docket [Rule 1308] and an appeal by one party is deemed an appeal by all parties as to all issues [Rule 1309].

Because both the Judicial Code and the Rules of Civil Procedure call for a trial de novo on appeal from arbitration, any local rule which purports to limit the scope of a subsequent trial is invalid. See, e.g., Weber v. Lynch, 346 A.2d 363 (Pa.Super. 1975), affirmed, 375 A.2d 1278 (Pa. 1977), (holding that local rule prohibiting a party from calling a witness at trial who did not testify at the arbitration hearing did not permit the “full consideration of the case anew” which a trial de novo requires and that the right to a new trial “includes the right to proceed to trial with no evidentiary limitations”).

Although the relaxed evidentiary standards prescribed by the rules with regard to compulsory arbitration matters will not generally apply to a subsequent trial, the current rules allow for the same documents described in Rule 1305 (e.g., expert reports, damage estimates, etc.) to be offered into evidence by any party without further proof if the plaintiff stipulates that the amount of recoverable damages on the appeal will be $15,000 or less (increasing to $25,000 effective July 1, 2006) at least 30 days before the case is listed for trial and serves notice of the intention to offer the documents [Rule 1311.1].

Federal Court Arbitration

Similar compulsory arbitration provisions exist under the Local Rules of the U.S. District Court for the Eastern District of Pennsylvania, though arbitration proceedings are ultimately voluntary in the Western District and no arbitration provisions appear in the Local Rules for the Middle District of Pennsylvania.

In the Eastern District, compulsory arbitration is governed by Local Rule 53.2. In order to maintain a civil action in federal court based upon the diversity of citizenship of the parties at all, there is a minimum amount in controversy requirement of $75,000, which serves to eliminate many small cases from the outset. Therefore, the Eastern District Local Rules set a much higher jurisdictional limit for arbitration matters than that in state court. Specifically, the jurisdictional limit below which cases are assigned to compulsory arbitration is
$150,000, exclusive of interest and costs, though provision is also made for the parties to submit cases involving greater sums to the arbitration program by agreement.

All cases are presumed to involve less than $150,000 unless plaintiff’s counsel files a certification to the contrary within 10 days of the docketing of the suit in federal court, or a defendant asserting a counterclaim or cross-claim files such a certification. A judge may also order a case exempt from arbitration upon finding that the objectives of such a proceeding (providing a speedier and less expensive alternative to a traditional trial) would not be realized due to the complexity of the legal issues, or because legal issues predominate over factual issues, or for other good cause.

Arbitration dates are to be set approximately 120 days from the date an answer is filed. As in state court, the three arbitrators are selected by the court from a list of eligible attorneys and the rules further provide that the Clerk is to select, insofar as reasonably practical, one arbitrator whose practice is primarily for plaintiffs, another for defendants and a third member whose practice does not fit either category.

Unlike state court practice, arbitrators in the Eastern District have the authority to alter the date and time of hearings provided the new date is within 30 days of that set by the court. Any continuance beyond 30 days must be approved by the assigned judge.

Also unlike state court practice in some counties, in which the parties are not told who the arbitrators will be prior to appearing at the hearing, the District Court judge issues an order prior to the arbitration date which identifies the arbitrators before whom the case will be tried.

If a party fails to appear, the arbitrators may proceed in his absence. However, if a party fails to participate in the arbitration “in a meaningful manner”, the rule states that the court may impose appropriate sanctions including the striking of any demand for a trial de novo by that party.

The Federal Rules of Evidence control the admissibility of evidence at arbitration and there is no express provision in the Eastern District Local Rules as there is in state court for any exceptions with respect to the introduction of
evidence such as damage estimates or expert witness reports.

A demand for a trial *de novo* must be filed within 30 days of the docketing of the arbitration award, after which the case is to be placed on the trial calendar, and if it does not appear that it will be reached for trial within 90 days, the judge is to request that the matter be reassigned to a judge whose calendar would allow the case to be tried within 90 days. Rule 53.2 provides that, at the new trial, the court shall not admit any evidence to indicate that there was a previous arbitration hearing unless otherwise admissible under the Rules of Evidence.

Although arbitration is ultimately voluntary in the Western District of Pennsylvania, it should be noted that Local Rule 16.2.4 initially directs nearly all civil actions for damages in which jurisdiction is based upon the diversity of citizenship of the parties (with the exception of civil rights cases, prisoner cases and Social Security matters) to the court’s arbitration program, though it allows any party to withdraw or “opt-out” of the program by filing a notice that the party does not consent to arbitration with the clerk within 10 days after the filing of the answer of the defendant, or that of any third-party defendant. As in the Eastern District, the rule also provides that a judge may order that a case be exempted from arbitration due to complex legal issues, a predominance of legal over factual issues, or for other good cause.

Western District Local Rule 16.2.5 indicates that the clerk will establish an arbitration hearing date after an answer has been filed which is to be approximately 150 days after the date the answer was filed. The hearing notice will also advise the parties that they have only 120 days from the date the answer was filed in which to complete discovery unless the assigned judge orders otherwise. Where a third-party defendant is involved, the hearing notice is not to be sent until it has filed an answer.

After completion of discovery, the Western District rules provide for the filing of pretrial statements, after which the judge to whom the case is assigned is to issue an order setting the date and time of the hearing. If a party has already filed a motion for summary judgment, a motion to dismiss, a motion for judgment on the pleadings, a motion to join necessary parties or “other motion”, Rule 16.2.5 provides that the order setting the hearing date shall not be issued until the court has ruled on the motion.
Although the rules generally call for the arbitrators to be randomly selected by the clerk of court, they also contain provision for the parties to select the arbitrators by agreement from the court’s approved list.

The Western District local rules are similar to those of the Eastern District with regard to the conduct of hearings, the failure of parties to participate in a “meaningful manner”, the award and the right to demand a trial de novo within 30 days of the date on which the award is entered on the docket.

**Contractual Arbitration**

While there are many forms of contractual arbitration, that which claims personnel are most likely to encounter in Pennsylvania outside of the context of inter-company arbitration (and the only sort addressed in this article) can be found in the context of uninsured (UM) and underinsured (UIM) motorist claims, with respect to which automobile insurance policies ordinarily contain clauses calling for arbitration when the parties are unable to agree upon the liability of the uninsured or underinsured motorist, or the amount of damages recoverable. In fact, for some years, the Pennsylvania Insurance Department effectively mandated that such clauses be included in auto insurance policies by refusing to approve of policy forms which did not contain them, however, it should be noted that the courts have now held that the Department lacks legal authority for that position, with the result that arbitration clauses should now be optional. *Insurance Federation of Pa. v. Department of Insurance,* 889 A.2d 550 (Pa. 2005).

There is considerable variation in UM/UIM arbitration clauses and the terms of the policy can have a significant impact upon both the scope of the issues subject to arbitration (some of them expressly excluding insurance coverage issues, for example) and the extent to which arbitration award is subject to judicial review (ranging from no meaningful judicial review absent fraud on the part of the arbitrators to full judicial review with regard to errors of law).

It should be noted that very few arbitration agreements provide for any party to demand a trial de novo if dissatisfied with the outcome of the proceedings, though it has been held in Pennsylvania that a UM/UIM arbitration clause which permits an appeal for a trial de novo when an arbitration award exceeds the minimum compulsory coverage limits of $15,000 is void as being

Instead, the primary distinction between the various forms of arbitration involves the extent to which the arbitration provisions of the policy permit a party to turn to the courts for relief in modifying, correcting or vacating an award.

Most UM/UIM arbitration clauses contain language allowing either party to appoint an arbitrator and to demand arbitration, after which the other party must appoint its arbitrator within a period of 30 days, after which those two arbitrators are to select a third. Unlike the situation with compulsory judicial arbitration proceedings in which a panel is appointed entirely and somewhat randomly by the court, the arbitrators selected by each party in the context of UM/UIM claims, while required to be impartial, sometimes tend to be more partisan in practice.

If the parties, through their arbitrators, are unable to agree upon a third arbitrator, or if one of the parties (typically the insurer) fails to appoint its own arbitrator in a timely fashion, either may be appointed on petition by the court, a result which is generally to be avoided in at least some counties, where the talent pool from which the judges appoint UM/UIM arbitrators often seems to consist primarily of underemployed attorneys who, by and large, are more likely than not to be plaintiff-oriented. There are times, however, when the list of third arbitrators proposed by the claimant’s arbitrator is so horrendous that it is better to take one’s chances on a court appointed neutral if compromise proves impossible.

**Scope and Effect of Contractual Arbitration Clauses**

While it has been held that arbitration agreements do not divest a court of jurisdiction, such agreements are binding upon the parties and will be enforced absent proof of duress, fraud or unconscionability.  *Lytle v. CitiFinancial Services, Inc.*, 810 A.2d 643 (*Pa. Super.* 2002); *Reinhart v. State Auto. Ins. Ass’n.*, 363 A.2d 1138 (*Pa. Super.* 1976). Orders compelling a party to submit to arbitration are considered interlocutory and are not immediately subject to appeal.  *Erie Insurance Exchange v. Midili*, 675 A.2d 1267 (*Pa. Super.* 1996). It should also be noted that UM/UIM arbitration provisions are binding not only upon the carrier and named insureds, but are also binding upon other parties claiming benefits by virtue of their insured status under the policy.  *Johnson v. Pennsylvania National Ins. Cos.*, 594 A.2d 296 (*Pa.* 1991).
Any ambiguity as to the scope of an arbitration agreement appearing in an insurance contract will be construed against the insurer as the party which drafted the policy. *National Grange Mutual Ins. Co. v. Kuhn*, 236 A.2d 758 (Pa. 1968).

Thus, where a UM/UIM arbitration clause calls for the arbitration of all disputes regarding the liability of an uninsured or underinsured motorist or the amount of damages recoverable without further elaboration, the courts have held that such provisions also require that issues of insurance coverage be submitted to the arbitrators. *Brennan v. General Accident Fire and Life Assurance Corp.*, 574 A.2d 580 (Pa. 1990). It is only where the policy language expressly removes insurance coverage issues from the scope of the arbitration agreement, or clearly states that the arbitrators are to decide only tort liability and damages issues that an insurer or claimant can successfully litigate such issues in the courts. *Henning v. State Farm*, 795 A.2d 994 (Pa.Super. 2002); *Nationwide v. Cosenza*, 258 F.3d 197 (3d Cir. 2001).

Arbitration of disputes with respect to UM or UIM claims can also be avoided where it is claimed that a particular policy provision is contrary to legislative intent, administrative intent, or public policy. *Davis v. GEICO Ins. Co.*, 454 A.2d 973 (Pa. 1982).


**Common Law vs. Statutory Arbitration**

The scope of judicial review of arbitration decisions is dependent upon whether the arbitration clause calls for common law or statutory arbitration, and if statutory arbitration is specified, whether the agreement provides for arbitration pursuant to the former Act of 1927 or the Act of 1980. Those three types of arbitration are subject to widely varying standards of finality and judicial review.

**Common Law Arbitration**

This is effectively the “default setting” in the sense that it will apply if the agreement is silent as to which form of arbitration is appropriate, unless the parties subsequently agree, expressly or by implication, that some form of statutory arbitration will apply. *Brennan, supra*.

Common law arbitration is the most restrictive form in that awards are fully binding upon the parties. The arbitrators are the final judges of law and fact and their award will not be disturbed for mistake of either. *Runewicz v. Keystone Insurance Co.*, 383 A.2d 189 (Pa. 1978).

The only basis for a court to disturb such an award is where it can be shown that a party was denied a fair hearing or that there was fraud, misconduct or corruption on the part of the arbitrators, or some other irregularity which caused the arbitrators to issue an unjust, inequitable, and unconscionable award. *Brennan, supra*; 42 Pa.C.S. §7341.

A party seeking to establish that it was denied a fair hearing, or that there was fraud, corruption, or misconduct must do so by “clear, precise and indubitable evidence”. *Allstate Insurance Co. v. Fioravanti*, 299 A.2d 585 (Pa. 1973).

To establish fraud, misconduct, or corruption on the part of the arbitrators, it must be shown that there was actual fraud, involving collusion with one of the parties, or misconduct intended to create a fraudulent result. It is not enough to argue that the arbitrators were prejudiced or partial, or that they reached an award so unjust that it constitutes constructive fraud. Nor can an irregularity be found simply upon a showing that an incorrect result was reached. *Mellon v. Travelers Ins. Co.*, 406 A.2d 759 (Pa.Super. 1979). Merely showing that an award was “blatantly at odds with the contract involved”, without more, cannot support a finding of misconduct sufficient to set an award aside. *Runewicz v. Keystone Ins. Co.*, 383 A.2d 189 (Pa. 1978).
Somewhat less restrictive in terms of judicial review is statutory arbitration under the Act of 1980, also known as the Uniform Arbitration Act, 42 Pa.C.S. § 7301, *et seq.*, which applies whenever it is specifically referenced in the arbitration clause, when the policy simply makes reference to “statutory arbitration” without specifically referencing the Act of 1927, or in the unusual circumstance where an arbitration clause mentions both statutes. *Cotterman v. Allstate Ins. Co.*, 666 A.2d 695 (Pa.Sup. 1995).

The Act of 1980 provides for limited judicial review of arbitrators’ decisions upon application of any party only for fraud or misconduct as at common law, or where:

- There was “evident partiality” on the part of a neutral arbitrator;
- There was “corruption or misconduct” on the part of any arbitrator;
- The arbitrators exceeded their powers;
- The arbitrators refused to postpone a hearing upon good cause being shown, or refused to hear material evidence, or otherwise so conducted the hearing as to substantially prejudice the rights of a party; or
- There was no agreement to arbitrate.

42 Pa.C.S. § 7314(1).

Most significantly, as is the case with common law arbitration, it should be noted that alleged errors of law on the part of the arbitrators cannot be cited as a basis for challenging their decision in the courts under the Act of 1980. In that regard, the statute provides that, “*The fact that the relief awarded by the arbitrators was such that it could not or would not be granted by a court of law or equity is not a ground for vacating or refusing to confirm the award.*” 42 Pa.C.S. § 7314(2). If an arbitration panel disregards or misinterprets insurance
policy or statutory language, fails to adhere to judicial precedent, or commits any other legal error in reaching its decision, the parties are essentially stuck with the result.

**Act of 1927**

Although the Act of 1927 was repealed and replaced in 1980 by the Uniform Arbitration Act, it has been held that parties remain free to agree to arbitrate disputes according to the former Act of 1927, which provides the broadest scope of judicial review. *Nationwide Mutual Ins. Co. v. Heintz*, 804 A.2d 1209 (Pa. Super. 2002), appeal denied, 818 A.2d 505 (Pa. 2003); *Pantelis v. Erie Ins. Exchange*, 890 A.2d 1063 (Pa. Super. 2006). Under the terms of the current statute, the Act of 1927 will apply whenever the agreement was made prior to the effective date of the Uniform Act and provided for statutory arbitration (not something which is likely to happen at this point) or when the arbitration agreement expressly provides for arbitration pursuant to the former provisions of the Act of 1927. 42 Pa.C.S. § 7302(d).

While the Act of 1927 contained provisions for vacating awards in cases of fraud, corruption, misconduct, partiality, and the like, by far the most significant aspect of agreements calling for arbitration in accordance with that former statute is that arbitrators’ decisions are subject to full judicial review with respect to errors of law.

In that regard, the Act of 1980 provides that a court which is asked to review an arbitration award made under the Act of 1927 may “modify or correct” the award where it is “contrary to law and is such that had it been the verdict of a jury the court would have entered a different judgment or a judgment notwithstanding the verdict.” *Heintz*, supra, citing *Krakower v. Nationwide Mutual Ins. Co.*, 790 A.2d 1039 (Pa. Super. 2001); 42 Pa.C.S. § 7302.

As noted in *Heintz*, parties seeking relief from erroneous arbitration awards should be careful to caption their petitions as petitions to “modify or correct” the award, rather than as petitions to “vacate” the award, since the current statute authorizes only modification or correction for legal errors. Under the former Act of 1927, courts “vacated” awards where they were the result of corruption, fraud, partiality, misconduct or abuse of power, but “modified or corrected” awards where they resulted from legal error.
While grounds for “vacating” an award are limited under the Act of 1927, the Superior Court recently did so and ordered a full de novo hearing when a UM arbitration panel improperly excluded evidence regarding the amount paid by the claimant’s workers’ compensation carrier, which had a subrogation right under recent amendments to the Pennsylvania Motor Vehicle Financial Responsibility Law. It appears that the court was unable to modify or correct the award because it was unable to determine how the arbitrators arrived at their damages figure and whether it would have differed had they received the evidence of the workers’ compensation payments. *Ricks v. Nationwide Insurance Co.*, 879 A.2d 796 (Pa.Super. 2005), appeal denied, 2006 Pa. LEXIS 222 (March 15, 2006).

**Qualifications of Arbitrators**

Regardless of which form of UM/UIM arbitration is called for under the policy, the arbitrators must, at least in theory, be impartial.

Where the arbitration clause refers to “disinterested” arbitrators, it has been held that an arbitrator must recuse himself if he has an ongoing attorney-client relationship with one of the parties, or has previously represented one of the parties at any time, with no showing of actual bias being required. *Bole v. Nationwide Ins. Co.*, 379 A.2d 1346 (Pa. 1977), *(holding that, because a common law arbitration award cannot be reversed for either a mistake of law or fact, it is “best to avoid even a hint of impropriety where a contract calls for a ‘disinterested’ arbitrator”)*; *Donegal Insurance Co. v. Longo*, 610 A.2d 466 (Pa.Super. 1992).

However, at least in cases where the arbitration agreement refers only to “competent” arbitrators, it has been held that prior representation of a party (in that case 23 years previously) will not by itself result in an arbitrator’s disqualification, or support a petition to vacate an award. *Sheehan v. Nationwide Ins. Co.*, 779 A.2d 582 (Pa.Super. 2001), appeal denied, 792 A.2d 1254 (Pa. 2001).

It has been held that an arbitrator is not disqualified from serving merely because he has provided services to a party as an arbitrator on other occasions. To disturb an arbitration award on the basis of partiality, a more direct relationship between a party to an arbitration proceeding and the arbitrator must be shown, such as the existence of a prior employer-employee or attorney-client
Conduct of Hearings

Arbitration agreements rarely address the procedures governing arbitration hearings in any significant way and while some arbitration clauses state that local rules of procedure and evidence will apply, there are technically no “local” procedural rules applicable to contractual arbitration proceedings, the Uniform Arbitration Act contains few provisions relating to the manner in which statutory arbitration proceedings are to be conducted and the Judicial Code has even less to say regarding procedures in common law arbitration matters. This lack of procedural rules, coupled with the limited scope of judicial review discussed previously, provides wide latitude to arbitration panels, with the result that the procedures governing contractual arbitration hearings are in large measure those which the arbitrators choose to adopt.

Where statutory arbitration is involved, the Uniform Arbitration Act does contain language indicating that a party has the right to be represented by counsel (42 Pa.C.S. § 7308) and providing that the powers of arbitrators shall be exercised by a majority of the panel unless otherwise prescribed by the agreement (§ 7306).

The Act also contains limited provisions pertaining to the conduct of hearings, indicating that the arbitrators shall determine the time and place of the hearing and provide not less than 10 days prior written notice to the parties either personally, or by registered or certified mail; that the arbitrators may adjourn the hearing from time to time as necessary, and may postpone the hearing on their own motion, or at the request of a party for good cause shown; that the arbitrators may hear and decide the case notwithstanding a party’s failure to appear; that the parties have the right to be heard, to present material evidence and to cross-examine witnesses; that all arbitrators shall conduct the hearing, but only a majority is required to determine any issue or render a final award, and that any party may arrange for obtaining a stenographic transcript of the hearing to serve as part of the “record” at its own expense (§ 7307).

The arbitrators are afforded power to issue subpoenas for the attendance of witnesses and production of documents or other evidence (which are enforceable by the courts) and “may” permit depositions to be taken for use as evidence of witnesses who cannot be served with subpoenas or are unable to attend a hearing,
in addition to being given the power to administer oaths (§ 7309). Although the provisions of the Judicial Code pertaining to statutory arbitration proceedings are not generally applicable to common law arbitration matters, this particular section of the Code governing statutory arbitration is incorporated as being applicable to common law arbitration matters at 42 Pa.C.S. §7342. Beyond that, the Subchapter of the Judicial Code dealing with common law arbitration is silent with regard to the procedures governing arbitration hearings.

The lack of provisions for formal discovery in such matters and the scope of the discretion afforded to arbitrators with respect to procedural issues is illustrated by the Supreme Court’s decision in Harleysville Mutual Casualty Co. v. Adair, 218 A.2d 791 (Pa. 1966), in which an insurer sought to enjoin an arbitration hearing from proceeding because the arbitrator refused to direct the claimant to respond to discovery in the form of interrogatories citing the “cooperation clause” of its policy and a provision requiring an insured to submit to examinations under oath. The Court held that such pretrial or prehearing discovery was not available under the terms of the arbitration agreement (which provided for arbitration under the rules of the American Arbitration Association), or under the terms of the Act of 1927, which only provided for depositions with the approval of the arbitrator. The Court stated that the insurer, through its own arbitration agreement, had voluntarily surrendered the right to invoke the procedures available in an action at law and that the right to pretrial discovery is not obligatory as an essential of due process to a valid arbitration proceeding, adding that the Act of 1927 provided a complete method of obtaining relief by appeal to the court to vacate, modify or correct an award.

The Superior Court has also held that the question of whether UM claimants must appear for depositions fell within the exclusive jurisdiction of the arbitrators in Savage v. Commercial Union Ins. Co., 473 A.2d 1052 (Pa.Super. 1984), citing Adair for the proposition that the discovery procedures indigenous to an action at law cannot be equated to those applicable to arbitration proceedings. The question of whether an insured must submit to depositions or examinations under oath as a condition precedent to pursuing claims for UM benefits was one for the arbitrators to decide, and if the insurer believed that it had been denied a fair hearing as a result of an adverse ruling from the arbitrators on that issue, it could later appeal to the court to vacate or modify the award.

Still more recently, it was held by the Superior Court that arbitrators have
exclusive jurisdiction to either grant or deny an insurer’s request for an examination under oath of a UIM claimant in \textit{Cotterman v. Allstate Ins. Co.}, 666 A.2d 695 (Pa.Sup. 1995). The insurer in that case sought to modify, correct or vacate an award of UIM benefits in excess of its policy limits, basing its request in part on the refusal of the arbitrators to direct the claimant to appear for an examination under oath, to which it claimed entitlement under the terms of its policy. The court rejected the insurer’s contention that the refusal of the arbitrators to allow the claimant’s deposition was “contrary to law” and warranted an order vacating the award since the arbitration proceeding was subject to the Act of 1980, rather than the Act of 1927. The court also held that the arbitrators’ refusal to permit the deposition did not amount to “misconduct” on the part of the arbitrators which would warrant vacating the award on that basis. The court also held that, under the standards of judicial review of awards under the Act of 1980, it could not “modify” the award to conform to the liability limits of the policy since modification of awards is confined to situations in which the complaining party can demonstrate that the award was miscalculated, the arbitrators based the award on a matter which was not submitted to them, or the award was deficient in form.

\section*{The Award}

The Uniform Arbitration Act also provides that the award is to be in writing and signed by all arbitrators joining in the award (§ 7310) and it has been held that an award signed by only one arbitrator is invalid and a nullity. \textit{Jackson v. GEICO Ins. Co.}, 612 A.2d 1071 (Pa.Sup. 1992), appeal denied, 636 A.2d 634 (Pa. 1993); \textit{Goeller v. Liberty Mutual Ins. Co.}, 568 A.2d 176 (Pa. 1990). The same section of the statute indicates that the award is to be delivered to each party personally, or by registered or certified mail, or as prescribed in the arbitration agreement and shall be made within the time fixed by the agreement, or by order from a court should one of the parties petition for such relief.

The Act also allows the arbitrators to make modifications or corrections to an award for any “evident miscalculation of figures”, any “evident mistake in the description of any person, thing or property referred to in the award”, or where the panel “awarded on a matter not submitted to them and the award may be corrected without affecting the merits of the decision”, or for the purpose of clarification either (1) upon application of any party, or (2) at the direction of a court where a petition to confirm, vacate or modify an award has been filed (§
It has also been held that a court, when deciding whether to enforce an arbitration award, can resubmit an award to the arbitrators for clarification despite the fact that no party had filed a petition to modify the award. McIntosh v. State Farm Fire & Casualty Co., 625 A.2d 63 (Pa. Super. 1993).

To the extent that awards are subject to judicial review, the Act contains provisions regarding the filing of petitions for the modification, correction or vacating of awards (§§ 1715, 1717, 1719) and also provides for the entry of orders confirming arbitration awards, as well as for the entry and enforcement of judgments on awards (§§ 7313, 7316).

Briefly, any petition to modify, correct or vacate an award must be filed within 30 days after delivery of the award to the petitioner and such petitions are generally to be filed with the court of the county in which the arbitration was held. This is true with regard to common law arbitration awards as well. 42 Pa. C.S. §7342(b). If neither party moves to challenge an award by means of filing a petition to modify, correct or vacate the award within 30 days, it is final and a trial court can properly confirm the award and enter judgment upon application of the prevailing party. Hall v. Nationwide Mutual Ins. Co., 629 A.2d 954 (Pa. Super. 1993), appeal denied, 641 A.2d 588 (Pa. 1994). In fact, if a party fails to file a petition challenging an award within the prescribed 30 days, a court is required to enter judgment pursuant to the award. Sage v. Greenspan, 765 A.2d 1139 (Pa. Super. 2000). Notwithstanding the 30 day period permitted for challenging an arbitration award, it should be noted that the Pennsylvania courts have held that post-judgment interest runs from the date of the arbitration award, not from the date on which the award is confirmed and judgment is entered by a court. Cotterman v. Allstate Ins. Co., 666 A.2d 695 (Pa. Super. 1995).