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**NEW RULES IMPROVE ARBITRATION HEARINGS**

By Hunter Emerick

Arbitration has become a familiar alternative to trials for resolving disputes. As a system of dispute resolution, arbitration has many benefits. Arbitration is private. The proceedings are limited to their parties and their attorneys. The presentation of evidence in arbitration is much more relaxed than in court. Usually, the arbitration hearing can be scheduled much sooner than can a court hearing.

Arbitration, however, has some shortcomings. Usually, an arbitrator cannot issue interim or summary determinations like a Judge can in a case filed in court. Oftentimes, the method of gathering discovery is uncertain. In some cases, the lack of interim or summary determinations and the uncertainty in discovery procedures may convince parties not to arbitrate their disputes.

The Oregon Legislature, however, resolved several of the questions surrounding arbitration procedure. By answering a few key questions on arbitration procedure, the Oregon Legislature has made this dispute resolution process more appropriate in a number of cases.

The Legislature specifically granted arbitrators the ability to issue provisional process. This grant of authority allows arbitrators to issue temporary restraining orders and preliminary injunctions. Process such as this is extremely important in non-competition or trade secret cases. Temporary restraining orders and preliminary injunctions are used to stop an ongoing violation of a non competition covenant for the duration of the case. Without the ability to stop ongoing violations, arbitration simply wasn't a practical process to resolve these types of disputes.

Also, arbitrators can now issue provisional process to allow creditors with security interests to seize collateral during the pendency of a collection action. Without this power, the collateral could easily disappear during the pendency of the collection action. With these powers, arbitration is now a much more attractive process for collection, noncompetition, and trade secret cases.

The new Arbitration Act specifically allows an arbitrator to issue a summary determination, which is similar to a summary judgment that can be requested from a trial court. Under former arbitration statutes, arbitrators could only render a decision after a full hearing. The requirement of a full hearing barred the ability to reach a summary determination. The ability to obtain summary determination makes arbitration more attractive for defendants who can prove, without a full hearing, that the plaintiff has no substance to its case.

Discovery has also been made much more predictable. Generally speaking, parties in arbitration now have the same tools to discover information from the opposing party as they did in a court case. The attorneys can even issue subpoenas, rather than submitting the subpoena to the arbitrator for signature.

The Oregon Legislature also addressed economic concerns in the revisions to the arbitration act. Under the new act, almost any type of business entity can be represented in arbitration by one of its principals or an employee. Attorneys are not required to represent business entities. As you might expect, I can not recommend this practice to any of our clients!

A final noteworthy provision for our clients and friends engaged in the health care industry, is a requirement that all cases filed against health care professionals (doctors, dentists, chiropractors, psychologists, LCSWs, nurses, hygienists, pharmacists, etc.) must be submitted to arbitration, mediation, or a judicial settlement conference within 270 days after filing the complaint. The court may impose sanctions

on the attorney or party that refuses to participate in ADR in good faith or fails to have a person with authority to settle available at arbitrations or settlement conferences.

These changes became effective on the first of this year. If you haven't included arbitration provisions in your contracts, you ought to reconsider the practicality of this dispute resolution process in light of the recent revisions adopted by the Oregon Legislature. If you would like some more background on arbitration procedures please call the attorneys in our Litigation Group or read more about the process at our website. [www.sglaw.com](http://www.sglaw.com).

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