ARBITRATION IN GENERAL AND U.C.A. § 31A-22-321 ARBITRATIONS IN THIRD PARTY MOTOR VEHICLE ACCIDENT CASES

(UPDATED 7 APRIL 2013)

Tim D. Dunn and W. Lewis Black[1]

U.C.A. § 31A-22-321 provides for arbitration as an alternative to litigation in certain cases involving third party bodily injury claims where the damages are $50,000.00 or less. Many attorneys have traditionally been reticent to encourage their clients to pursue arbitration, citing arbitration's potential disadvantages. In particular, critics of arbitration point to the "Repeat Player Syndrome," in which it is perceived that a potential arbitrator may consistently rule in favor of a particular side, an individual party or a class of parties, in the hopes of further employment opportunities, as a severe limitation. These attorneys often overlook the potential advantages arbitration provides over litigation, such as speed, lower costs, and increased efficiency. Should attorneys be taking more advantage of this statute and these so-called "321 Arbitrations"? In order to address this question, we will first examine the advantages and disadvantages of arbitration generally. Then we will examine the provisions of U.C.A. § 31A-22-321 specifically. Finally we will draw some conclusions regarding the use of 321 Arbitrations.

In our view, in light of the increasingly near cost-prohibitive nature of litigation, 321 Arbitrations have the potential to be effective means of dispute resolution. In cases involving relatively minor bodily injury claims, these arbitrations offer parties a method of resolving the claims in a manner emphasizing speed, efficiency and confidentiality, compared with traditional litigation.

I. Arbitration Is Here to Stay

Long ago, courts in the United States viewed arbitration with skepticism or as unwanted competition, and regularly refused to enforce arbitration agreements. Some viewed arbitration as a "shortcut" method of

[1] Tim Dalton Dunn is the Senior Partner at Dunn & Dunn, P.C. He is a litigator and mediator, having tried over 180 civil jury trials. W. Lewis Black is an Attorney at Dunn & Dunn, P.C. He is a 2010 graduate of the University of Utah S. J. Quinney College of Law.

Originally published in *34 Utah Trial J. 8 (Winter 2011).*

arriving at decisions without the rigorous analysis required by the Rules of Evidence and as an "overview" approach to decision-making. Courts sometimes held that arbitration agreements were executory promises, and were therefore unenforceable.[1] This attitude began to change in the late 1950s and early 1960s, when the United States Supreme Court ruled that arbitration agreements were enforceable in labor contracts under § 301 of the NLRA.[2] In the 1980s, the Supreme Court began to apply the same rationale to commercial disputes in interstate commerce subject to the Federal Arbitration Act.[3] After that, the courts started to see arbitration as a way to reduce their case loads so that they could allocate their time to matters that they were mandated to perform. The current favorable legal framework is one of the potential advantages of arbitration. Arbitration has been favored by the Utah Legislature, and is therefore the case that Utah has a good set of Arbitration Statutes.[4] Each legislative session reviews proposals for the expansion of arbitration.

Utah courts have also demonstrated an increased support for arbitration. In 2001, the Utah Supreme Court examined arbitration agreements in *McCoy v. Blue Cross and Blue Shield of Utah*.[5] In its discussion of prior policy statements regarding the Utah Arbitration Act, the Court stated that "[w] e have observed that '[t]he [Arbitration] Act supports arbitration of both present and future disputes and reflects long-standing public policy favoring speedy and inexpensive methods of adjudicating disputes.' 'It is our policy to interpret arbitration clauses in a manner that favors arbitration.'"[6] That last statement merits repeating: "It is our policy to interpret arbitration clauses in a manner that favors arbitration." This is further supported by UCA § 78B-11-107(1) and (2):

> (1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.
>
> (2) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

And although the Utah Arbitration Act requires arbitration agreements to be enforceable,[7] there is evidence that Utah courts will, in some instances, enforce oral arbitration agreements under the theory of partial performance. In *Jenkins v. Percival*, the Utah Supreme Court held that "an otherwise invalid

Originally published in *34 Utah Trial J. 8 (Winter 2011).*

agreement may be enforced through a court's equitable prerogatives if a party, relying on the oral agreement, partially performs its contractual obligations."[8] The court outlined a three-part test for applying the doctrine of part performance to arbitration agreements: (1) the oral contract and its terms must be clear and definite; (2) the acts done in performing the contract are equally clear and definite; and (3) the acts are in substantial reliance on the oral contract.[9]

It is clear that courts, both nationally and in Utah, are increasingly turning to arbitration as an effective means of dispute resolution. The Utah Supreme Court has held that it favors arbitration. Arbitration is, indeed, here to stay.

Advantages and Disadvantages of Arbitration

Arbitration offers many advantages to litigation. These potential advantages include speed, cost savings, greater efficiency, confidentiality and finality. Leonard Riskin, et al., explains the reasons for these benefits as follows:

> These benefits primarily occur because, unlike trial practice, discovery either does not exist or is much more limited in arbitration. Additionally, most arbitration clauses specify that the arbitrator's decision will be final. As we will see, arbitration statutes provide only limited grounds for a court to overturn an arbitral award. The arbitration process usually is less formal than court proceedings. For instance, in many cases parties represent themselves or are represented by non-lawyers; and the arbitrator need not be a lawyer. Finally, parties often opt for arbitration because they can pick their decision maker, who will likely have expertise in the field in which their dispute arises.[10]

Likewise, James Holbrook, professor at the University Of Utah S. J. Quinney College Of Law specializing in alternative dispute resolution, identifies the following advantages of arbitration:

> Arbitration of disputes can be cheaper, faster, less stressful and more predictable than litigation because:
>
> - Arbitration incentivizes the filing of meritorious, likely-to-win claims;

Originally published in *34 Utah Trial J. 8 (Winter 2011).*

- Disputes often go to a hearing in arbitration, whereas few cases go to trial in court;
- There is less discovery and fewer motions filed in arbitration than in litigation;
- Arbitrators often have expertise in the subject matter of the dispute; and therefore
- Arbitrators are less likely to be swayed by sympathy or prejudice than are jurors.[11]

Another significant advantage of arbitration in cases where the arbitration agreement is entered into after the dispute arises is that the parties by agreement can choose the arbitrator and set the rules.[12] An Arbitration Agreement is essentially a contract. The Arbitration Contract can be negotiated before it is signed and the parties can come to an agreement as to how many arbitrators there will be, or even who they will be. Agreement can be reached about the extent of discovery.[13]

The statute setting out how arbitrations are to proceed (U.C.A. § 78B-11-116) sets out a good process for how arbitrations are to proceed in the absence of an agreement to the contrary. Unless agreed differently, the arbitrator or arbitrators have considerable discretion within the statutory purpose of "a fair and expeditious disposition of the proceeding,"[14] to "make the proceedings fair, expeditious and cost effective,"[15] and "the desirability of making the proceedings fair, expeditious and cost effective."[16]

Some observers remain critical of arbitration. For example, Lewis Maltby and Todd Wahlquist both identify the potential problem of the "repeat player syndrome" in labor arbitration.[17] In Maltby's opinion, in some cases, the arbitrator has a financial incentive to rule in favor of the employer. When combined with the difficulty in overturning arbitration awards, there is the potential for great injustice.

Todd Wahlquist points out a similar problem with mandatory binding arbitration in medical malpractice cases:

> The problem is that while there are dozens and dozens of plaintiffs' attorneys on one side, there are only three major insurers on the other. Where one particular plaintiffs' attorney may participate in one arbitration a year, each insurance company may have one a month. In other words, I cannot make a living being the preferred arbitrator for one plaintiffs' attorney, but I could

Originally published in *34 Utah Trial J. 8 (Winter 2011).*

make a very good living if one insurance company picked me for every panel.[18]

The disadvantages of arbitration are essentially the reverse side of the coin of the advantages of arbitration. In exchange for speed efficiency and cost savings one gives up some of the ability to delve deeply into the facts or background of the case. Limited discovery is, of course, cheaper; but it *is* limited. Less formality in the proceedings eliminates the trappings and impact of a courtroom and its rigorous application of the Rules of Evidence. Greater finality is traded off for the appellate process and all that goes with it.

It is very often to the advantage of both or all parties to a dispute to arbitrate. Sometimes one of the attorneys believes that it is in his interest to go through litigation. But it is clearly the obligation of any attorney to pass along to his client any proposal to submit the claim to arbitration or mediation. A well considered and crafted proposal to arbitrate, with provisions that are fair to both sides has a greater likelihood of being accepted or discussed further.

Arbitration is normally private and confidential. This is usually regarded as a distinct advantage.

We believe that there are many circumstances where a proposal to submit to arbitration should be tendered before suit is filed. The proposal should include an explanation of how the arbitration would proceed to limit expense and discovery and what timetable for resolution is sought. It can also include other proposals of concern to the proposing party or both parties.

In summary, arbitration offers the following potential advantages and disadvantages to conventional litigation:

Advantages

(1) Speed
(2) Cost Savings
(3) Greater Efficiency
(4) Privacy/Confidentiality
(5) Agreement as to the Structure of the Arbitration
(6) Limited Discovery
(7) Less Formal Proceedings

Originally published in *34 Utah Trial J. 8 (Winter 2011).*

(8) Arbitrator(s) with Expertise in Field
(9) Greater Predictability
(10) Greater Finality, as arbitration awards are difficult to overturn

Disadvantages

(1) Potential for Bias Due to "Repeat Player Syndrome"
(2) More limited Punishment for Egregious Misconduct
(3) Difficult to Overturn Awards
(4) Limited Discovery
(5) No Courtroom Judge/Less Formal Proceedings
(6) Absence of Strict Rules of Evidence

II. Provisions of U.C.A. § 31A-22-321

With the discussion above in mind, we now turn to an examination of the provisions of U.C.A. § 31A-22-321 itself. Section 31A-22-321 was adopted by the Utah Legislature in 2005, and became effective on May 2, 2005. The 2010 amendment to the statute, which became effective as of May 11, 2010, altered the terms of the statute as follows: (1) it raised the bodily injury award limit from $25,000.00 to $50,000.00; (2) it raised the allowable reasonable attorney fees and costs in trial de novo situations from $4,000.00 to $6,000.00; and (3) modified the language relating to the verdict in a trial de novo initiated by the defendant to state that "in no event can the total verdict at trial exceed $15,000 above any available limits of insurance coverage and in no event can the total verdict exceed $65,000.00" (prior to this change, the verdict could not exceed $40,000). There have been no further amendments to the statute since 2010, and as of April 7, 2014, there have been no appellate court decisions interpreting the statute.

We focus particular attention on six aspects of Section 321: (1) the Election to Submit Claims to Arbitration; (2) Limits to Recovery in 321 Arbitrations; (3) Procedures for Conducting 321 Arbitrations; (4) Rescinding the Election to Submit Claims to Arbitration; (5) Challenging the Arbitration Award in a Trial de Novo; and (6) Attorney Fees and Costs Authorized by the Statute in Cases of Trial de Novo.

Originally published in *34 Utah Trial J. 8 (Winter 2011).*

Election to Arbitrate

In order to submit a third-party bodily injury claim to arbitration under Section UCA-22-321, a plaintiff must meet the following criteria:

(1) He or she must have previously filed a timely complaint including a third-party bodily injury claim in a district court; and
(2) He or she must have filed a notice to submit the claim to arbitration within fourteen (14) days after the answer to the complaint has been filed, and while the claim is still pending.[19]

This does not prevent the plaintiff and the defendant or its insurance carrier from agreeing to a Binding Arbitration without or before the filing of suit. Serious consideration should be given to proposing an Agreement to Arbitrate in accordance with the provisions of § 31A-22-321 without the necessity of filing suit and incurring the filing fee, service fee and any other associated fees.

Limits to Recovery

Section 321 imposes limits on the recovery available in these arbitrations. Bodily injury awards are limited to $50,000.00 in *addition* to any available personal injury protection (PIP) benefits and any claim for property damage.[20] This recovery is also restricted to the available limits of insurance coverage, and by submitting the claim to arbitration; the plaintiff waives the right to obtain a judgment against the personal assets of the defendant.[21] In addition, plaintiffs may not include claims for punitive damages.[22] Plaintiffs also may not include claims for property damage unless all parties agree to this in writing.[23] The plaintiff is allowed to pursue an underinsured motorist claim in addition to the third-party bodily injury claim submitted for arbitration. This underinsured motorist claim is not subject to the $50,000.00 cap, and the underinsured motorist carrier has no right of subrogation for a claim submitted to arbitration under Section 321.[24]

Arbitration Proceedings

Arbitrations conducted under Section 321 are governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act, unless otherwise provided for in

Originally published in *34 Utah Trial J. 8 (Winter 2011).*

the section or agreed to in writing by the parties.[25] The Utah Rules of Civil Procedure and Evidence apply to these arbitrations; they shall, however, "be applied liberally with the intent of concluding the claim in a timely and cost-efficient manner."[26] In general, the statute calls for arbitrations to be conducted by a single arbitrator.[27] If the parties are unable to agree on a single arbitrator, then the arbitration will be conducted by a panel of three arbitrators. Each party will select one arbitrator, and these two arbitrators will select the third panel member.[28] In arbitrations before a single arbitrator, the arbitration fees are split evenly between the parties.[29] In cases where an arbitration panel is used, each party pays the fees of their own arbitrator; the third arbitrator's fee is split evenly between the parties.[30]

Rescinding Election to Arbitrate

Plaintiffs may elect to rescind the decision to arbitrate, as long as and only if the rescission is made within ninety (90) days of the election to arbitrate, and is no later than thirty (30) days before the scheduled arbitration hearing.[31] Notice of the rescission must be filed with the district court in which the matter is filed, and must be delivered to all counsel of record in the action.[32] If the plaintiff rescinds the election to arbitrate, he or she may not again elect to arbitrate the claim under Section 321.[33]

Trial de Novo

The statute provides that the arbitration award granted in a 321 Arbitration shall be the final resolution of the plaintiff's bodily injury claims, and may be reduced to judgment by the court upon motion and notice.[34] Either party may request a trial de novo by filing a notice with the district court requesting a trial de novo within twenty (20) days after service of the arbitration award, and by serving the nonmoving party with a copy of the notice.[35] Under the statute, if the plaintiff is the moving party in the request for a trial de novo, the verdict at trial may not exceed $50,000.00.[36] If the defendant is the moving party, the verdict cannot exceed $15,000.00 above the insurance policy limits, and in no event can the total verdict exceed $65,000.00.[37] Once the notice for trial de novo is filed with the district court, each party is granted an additional ninety (90) days for further discovery, unless otherwise stipulated by the parties or ordered by the court; in all other respects, the litigation proceeds under the Utah Rules of Civil Procedure and the Utah Rules of Evidence.[38]

Originally published in *34 Utah Trial J. 8 (Winter 2011).*

Attorney Fees and Costs re Trial de Novo

If the plaintiff is the moving party in the request for a trial de novo, he or she will be responsible for all of the defendant's reasonable attorney fees and costs (up to a maximum of $6,000.00) if the verdict at trial is not at least $5,000.00 and is at least 30% greater than the original arbitration award.[39] If the defendant is the moving party in the request for a trial de novo, he or she will be responsible for all of the plaintiff's reasonable attorney fees and costs (again, up to a maximum of $6,000.00) if the verdict at trial is not at least 30% less than the original arbitration award.[40] The statute also provides penalties for the misuse of the trail de novo process, stating that if the court "determines, upon a motion of the nonmoving party, that the moving party's use of the trial de novo process was filed in bad faith as defined in Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party."[41]

III. Conclusions

As Riskin, et al., point out, "Too many lawyers praise or criticize arbitration in general terms instead of asking whether arbitration is appropriate for particular situations and how arbitration can be tailored to maximize its advantages in specific circumstances."[42] It is surprising that many lawyers are reluctant to recommend arbitration to their clients; particularly when the Arbitration Agreement can be drafted to address the concerns of the lawyers or their clients. A blanket condemnation of arbitration ignores its potential value as a means of dispute resolution. Arbitration should be considered as a means to avoid the expense, delays, complexities, stress and continuances of the court process.

The arbitration procedures outlined in U.C.A. § 31A-22-321 are narrowly structured to maximize the advantages of arbitration in certain third-party motor vehicle claims, while at the same time minimizing the potential hazards of arbitration.

321 Arbitrations are not mandatory. Plaintiffs and Defense counsels can work together to structure the arbitration and maximize the potential benefits of electing arbitration. The decision to submit a claim to arbitration under § 321 is at the discretion of the plaintiff. Second, while the discovery

Originally published in *34 Utah Trial J. 8 (Winter 2011).*

and evidentiary rules in 321 Arbitrations are somewhat looser than those used in litigation, they are still based upon the Utah Rules of Civil Procedure and the Utah Rules of Evidence, unless otherwise agreed. This provides adequate "structure" in the arbitration discovery process to satisfy most lawyers. Third, the statute provides a mechanism for appealing the arbitration award by trial de novo, while at the same time penalizing parties who abuse the trial de novo process. This will encourage parties and their counsel to examine the merits of the arbitration awards carefully before resorting to trial de novo. At the same time, the potential for a trial de novo should provide a strong incentive for the arbitrators (and the parties that select them) to ensure fairness and reasonableness in the proceedings.

We encourage the recognition of the fact that Arbitration Agreements can tailor the process to meet the needs and desires of the parties. Do not assume the opposition will always oppose what you consider important. Arbitration's speed of resolution of disputes can benefit many of your clients, on either side of the case.

---

[1] *See, e.g., Home Insurance Co. v. Morse*, 87 U.S. (20 Wall.) 445, 22 L.Ed. 365 (1874); *Red Cross Line v. Atlantic Fruit Co.*, 264 U.S. 109, 44, S.Ct. 274, 68 L.Ed. 582 (1924); *Wilko v. Swan*, 346 U.S. 427, 74 S.Ct. 182, 98 L.Ed. 168 (1953). For a more complete discussion of the growth and development of arbitration, see Leonard L. Riskin, James E. Westbrook, Chris Guthrie, Richard C. Reuben, Jennifer K. Robbennolt, Nancy A. Welsh, *Dispute Resolution and Lawyers*, at 369-487 (Abridged 4th Ed., West 2009).

[2] *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957); *United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed.2d 1403 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960).

[3] *See, e.g., Southland Corp. v. Keating*, 465 U.S. 1, 104 S.Ct. 852, 79 L.Ed.2d 1 (1984); *Moses H. Cone Memorial Hospital v. Mercy Construction Corp.*, 460 U.S. 1, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983); *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 109 S.Ct. 1917, 104 L.Ed.2d 526 (1989).

[4] *See* U.C.A. § 78B-11-101 *et seq.*

[5] 2001 UT 31, ¶¶ 10-18, 20 P.3d 901 (2001).

[6] *Id.* at ¶ 14 (quoting *Allred v. Educators Mut. Ins. Ass'n.*, 909 P.2d 1263, 1265 (Utah 1996) and *Docutel Olivetti v. Dick Brady Sys. Inc.*, 731 P.2d 475, 479 (Utah 1986)). *See also Softsolutions, Inc. v. Brigham Young Univ.*, 2000 UT 46, ¶ 14, 1 P.3d 1095 (2001); *Intermountain Power v. Union Pacific R.R.*, 961 P.2d 320, 323 (Utah 1998); *Buzas Baseball v. Salt Lake Trappers*, 925 P.2d 941, 946 (Utah 1996).

Originally published in *34 Utah Trial J. 8 (Winter 2011).*

[7] U.C.A. § 78B-11-110.

[8] 962 P.2d 796, 801 (Utah 1998).

[9] *Id.* (citing *Martin v. Scholl*, 678 P.2d 274, 275 (Utah 1983); *Randall v. Tracy Collins Trust Co.*, 6 Utah 2d 18, 24, 305 P.2d 480, 484 (1956). The holding in *Jenkins* is somewhat puzzling. On the one hand, the court holds that arbitration agreements must be in writing to be enforceable. It then states that, even if the agreement is not in writing, it might still be enforceable under part performance. The Utah Supreme Court attempted to reconcile this discrepancy in *Pacific Development, L.C. v. Orton*:

> The result in *Jenkins* was somewhat complex. Justice Stewart's lead opinion stated that although an oral agreement could not be enforced under the Act, equity might nonetheless provide a separate ground for enforcement. *See* 962 P.2d at 801-02. Justice Zimmerman concurred separately, stating that the law should not be "hostile to the enforcement of oral arbitration agreements made as part of a larger oral contract." *See id.* at 802. Nonetheless, a majority of the members of the court clearly held that only written agreements were enforceable under the Act. *See id.* at 799-800 (Stewart, J., joined by Durham, J.); *id.* at 803 (Russon, J., joined by Howe, C.J., dissenting from result allowing potential enforcement of oral agreement to arbitrate at equity, but concurring in holding that written agreement is required under the Act).

2001 UT 36, Footnote 4, 23 P.3d 1035 (2001). In a recent decision, the Utah Court of Appeals held that, while modifications to the scope of an arbitration agreement must be in writing, changes to a notice procedure specified in an arbitration agreement can be based on an oral or verbal agreement. *See Createrra, Inc. v. Sundial, L.C.*, 2013 UT App 14, ¶¶ 8-15, 304 P.3d 104 (2013).

[10] Riskin, et al., *Dispute Resolution and Lawyers* at 371.

[11] James R. Holbrook, *Can't We All Just Get Along? Arbitration Instead of Court*, Community (Zions Bank), 68, 69 (July/August 2007).

[12] *See* U.C.A. § 78B-11-105.

[13] U.C.A. § 78B-11-105(3) lists the provisions of the Utah Uniform Arbitration Act that parties to an arbitration may not waive, or vary the effects of. These include the following: (1) U.C.A. § 78B-11-105 itself (stating the effect of the agreement to arbitrate); (2) U.C.A.§ 78B-11-108 (outlining the process and effect of a motion to compel arbitration); (3) U.C.A. § 78B-11-115 (outlining the immunity of arbitrators from civil liability and when an arbitrator or representative of an arbitration organization is and is not competent to testify); (4) U.C.A. § 78B-11-119 (stating that a court shall issue an order confirming a preaward ruling by the arbitrator unless the court vacates, modifies or corrects the award); (5) U.C.A. § 78B-11-123 (outlining the process by which the court confirms an arbitration award); (6) U.C.A. § 78B-11-124 (outlining the conditions under which a court may vacate an arbitration award, and the process of vacating the award); (7) U.C.A. § 78B-11-125 (outlining the conditions under which a court may modify or correct an arbitration award, and the process of modification or correction of the award); (8) U.C.A. § 78B-11-130 (mandating that the provisions of the Utah Uniform Arbitration Act conform with the requirements of the Electronic Signatures in Global and National Commerce Act); (9) U.C.A. § 78B-11-104(1) (stating that the Act applies to all arbitration agreements made on or after May 6, 2002); (10) U.C.A. § 78B-11-121(3) (stating that notice of an objection to a motion to modify or correct an arbitration award must be given to all parties within ten (10) days after receipt of the notice of the motion to modify

Originally published in *34 Utah Trial J. 8 (Winter 2011).*

or correct the award); (11) U.C.A. § 78B-11-121(4) (outlining when a court may submit a motion to modify or correct an arbitration award to the arbitrator to consider whether to modify or correct the award); (12) U.C.A. § 78B-11-126(1) (mandating that the court enter a judgment conforming to the arbitration award once it has granted an order confirming, vacating without directing a rehearing, modifying, or correcting an award); and (12) U.C.A. § 78B-11-126(2) (allowing reasonable costs of the motion and subsequent judicial proceedings).

[14] U.C.A. § 78B-11-116(1).

[15] U.C.A. § 78B-11-118(2).

[16] U.C.A. § 78B-11-118(3).

[17] Lewis Maltby, *Private Justice: Employment Arbitration and Civil Rights*, 30 Colum. Hum. Rts. L. Rev. 29 (1998); Todd Wahlquist, *Curing the Cure: A Proposal for Making Medical Malpractice Arbitration More Fair*, 32 Utah Trial J. 37 (2008).

[18] Wahlquist, *Curing the Cure*, at 39.

[19] U.C.A. § 31A-22-321(1).

[20] *Id.* at § (2)(a).

[21] *Id.* at § (2)(d)(i) and (ii); *see also Allstate Insurance Company v. Wong*, 2004 UT App 193, 93 P.3d 849 (Utah App. 2004) (Arbitration agreements do not modify insurance policy limits).

[22] U.C.A. § 31A-22-321(3).

[23] *Id.* at § (2)(c).

[24] *Id.* at §§ (2)(e)(i) – (iii).

[25] *Id.* at § (8).

[26] *Id.* at § (9).

[27] *Id.* at § (6)(a).

[28] *Id.* at §§ (6)(c) and (d).

[29] *Id.* at § (7)(a).

[30] *Id.* at § (7)(b).

[31] *Id.* at § (4)(a).

[32] *Id.* at § (4)(b).

[33] *Id.* at § (4)(d).

[34] *Id.* at § (11).

[35] *Id.* at § (11)(a).

[36] *Id.* at § (18)(b).

[37] *Id.* at § (18)(a).

[38] *Id.* at §§ 12(a)(i) and (iii).

[39] *Id.* at § (13).

[40] *Id.* at § (14).

[41] *Id.* at § (16)

[42] Riskin, et al., *Dispute Resolution and Lawyers*, 487.

Originally published in *34 Utah Trial J. 8 (Winter 2011).*