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Is This An Agreement to Arbitrate?



*Hon. Abraham Gafni
(Ret.)*

Generally, determining whether contracting parties have agreed to arbitrate future disputes provides little difficulty. Typically, the agreement will employ the word arbitration; moreover, it will often identify a specific dispute resolution provider, and state what procedures (whether those of the provider or otherwise) are to be employed.

But if the dispute resolution provision does not specifically mention arbitration or refer to a specific provider or arbitration procedures, how does a court decide whether the parties intended the conflict to be resolved through court litigation or arbitration?

This issue was confronted most recently by the Special Superior Court for Complex Business Cases of North Carolina in two cases in which the disputing parties had agreed to the appointment of independent accountants to resolve certain issues.

In the first, *Post v. Avita Drugs* (Sept. 1, 2017, CVS 798), the parties' stock purchase agreement, (SPA) provided a formula, based upon a calculation of "Adjusted EBIDTA" for determining Avita's payment obligation to Post. Any dispute relating to the calculation of the Adjusted EBIDTA was to be resolved by submitting the matter to an independent accountant. [READ MORE](#)

Board of Governors Election

Just a reminder that Doug Sisk, Esq., an ADR Options mediator and arbitrator, is running for the Board of Governors of the **Philadelphia Bar Association**. Online voting is open from November 20th to December 5th at 5:30 p.m. If you didn't receive your email invitation to vote

online or have any questions regarding the Philadelphia Bar Association online election, contact Chief Financial Officer/Director of Administration Susan Knight at 215-238-6325 or sknight@philabar.org



*P. Douglas Sisk,
Esquire*

To schedule a mediation or arbitration with any of our [neutrals](#), please email mcarney@adroptions.com or click below:

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