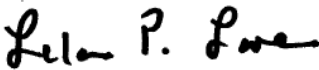


May 5, 2009

To: Members of the ABA Section of Dispute Resolution

From: Lela P. Love, Chair   
ABA Section of Dispute Resolution

Re: Update on Arbitration Fairness Act Issues

At its April 15, 2009 meeting, the Council of the Section of Dispute Resolution voted to support a recommendation that addressed several aspects of the proposed Arbitration Fairness Act (AFA). The Council's objective was to find a solution to some of the concerns raised by the AFA in a manner that preserved voluntariness and fairness in arbitration, while maintaining an accessible and efficient forum for claimants.

The recommendation adopted by the Council did not propose a ban on pre-dispute agreements, but rather required a pre-dispute opt-out provision in favor of the consumer, employee or civil rights claimant, as well as fairness protections in all arbitrations covered by the Act. The April 15 vote was the first of several steps necessary to submitting a proposed resolution for consideration by the ABA House of Delegates at the ABA Annual Meeting in July, 2009. Following the April 15 vote, further refinements to the recommendation were made, partly because Senator Feingold revised the AFA bill. The Council has not finalized its recommendation, nor has a recommendation been submitted to the ABA House of Delegates. Importantly, the Section has received comments from numerous individuals expressing a variety of viewpoints on the issues addressed by the April 15 vote.

On Monday, May 4, the Section's Executive Committee met by telephone to discuss some of the revisions and feedback, and determine what recommendation it would make to the Council on how to proceed. The Executive Committee decided to recommend to the Council that our Section not go forward with the April 15 recommendation that dealt with enforceability of pre-dispute arbitration clauses in consumer, employment and civil rights cases. By the end of this week, the Section's Council will act on the Executive Committee's suggestion and consider other options.

*The American Bar Association has not adopted policy on this matter. As a result, this statement reflects only what the Section of Dispute Resolution has considered, and should not be interpreted as ABA policy.*