Commercial Litigation Briefs - January 2015

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Be Careful When Accepting Less than Agreed

By C. John DeSimone, III

In a recent unpublished decision by the United States District Court for the District of New Jersey, Khafagy v. Jersey Girls Gentlemen's Club et al., Magistrate Judge Joseph A. Dickson addressed what results when parties to a settlement agreement deviate from the payment terms reflected in that agreement. The opinion makes rulings concerning claimed modification, waiver, estoppel, and laches.

Arbitration Language Should Be Plain And Understandable

By Eliyahu S. Scheiman

Companies must reassess the adequacy of their arbitration agreements in light of the New Jersey Supreme Court's recent decision in Atalese v. U.S. Legal Services Group, L.P., 219 N.J. 430 (2014), which held that such agreements must do more than simply state that disputes shall be submitted to final and binding arbitration, but must plainly explain that arbitration is a substitute for the right to litigate in court. Although a consumer contract case - where courts traditionally have been concerned with the sophistication of the average member of the public - Atalese has already been extended beyond the consumer context.