

So, Who Has To File For Arbitration? Court Of Appeal Rules That Party Which
Successfully Petitions To Compel Arbitration Is Not Required To Initiate Arbitration
Even If The Arbitral Contract Calls For The Party Initiating Arbitration To Be The Filing
Party

By: Edward F. Morrison, Jr., Esq.
Larry A. Schwartz, Esq.

An interesting issue that has arisen over time involving arbitrations is a situation where plaintiffs have pursued their former employer for wage claims; the employer then Petitions to Compel Arbitration; and the Trial Court Grants the Petition to Compel Arbitration. In that situation, there is some uncertainty as to who is to file for arbitration once arbitration has been ordered by the Court.

This issue was addressed in Arzate v. Ace American Insurance Company (2025) WL 546179 ("Arzate case"). In Arzate, a wage and hour lawsuit, plaintiffs Michelle Arzate, Anthony Esquivel, Charleston Princeton, James Kang and David Block filed an action against their former employer, Ace American Insurance Company, alleging that Ace American Insurance Company failed to provide them with benefits required for non-exempt employees. In an amended Complaint, the plaintiffs added claims on an individual and representative basis. Ace American Insurance Company Petitioned to Compel Arbitration of the case on the basis that the Arbitration Agreement signed by the plaintiffs, as a condition of employment, mandated arbitration. The Trial Court granted the Petition to Compel Arbitration and Ordered that Arbitration be filed within 30 days.

After Ace American Insurance Company did not file for arbitration (following the Trial Court's Order Ordering Arbitration), the plaintiffs filed a Motion in the Trial Court to lift the Stay in the case, arguing that Ace American Insurance Company was required to initiate the arbitration process, and that by failing to do so within the employment agreement's 30-day time period, Ace American Insurance Company waived its rights to arbitration. The Trial Court agreed with the plaintiffs and granted their Motion finding that Ace American Insurance Company's inaction "was inconsistent with its right to arbitrate."

On appeal, and as relevant to this article, the Court of Appeal ruled that the Trial Court erred by finding that Ace American Insurance Company breached its arbitration agreements, and waived its rights to arbitrate. In its opinion, the Court of Appeal expressed that the key question before them was, "Under the arbitration agreements, which party was required to initiate arbitration?" In that regard, the plaintiffs argued that Ace American Insurance Company was the only party seeking arbitration and that when Ace American Insurance Company failed to file for arbitration, it breached the Arbitration Agreement and waived any right to arbitrate. After considering that, the Court

of Appeal rejected the plaintiffs' arguments, ruling that the Arbitration Agreements had to be read as a whole, and that the language in the contracts regarding the party that "wants" or "demands" arbitration is the party to file for arbitration, does not apply and, instead, the party that initiated the claim in the first place should be the filing party even if that party had argued against arbitration.

The Arzate case is certainly helpful in expressing that, when a court grants a Petition to Compel Arbitration, the party petitioning for arbitration is not necessarily required to actually issue the Request for Arbitration with the arbitral entity.

About the Authors: Edward F. Morrison, Jr. is the founding partner and Larry A. Schwartz is Of Counsel to The Morrison Law Group, a professional corporation. Their biographies can be viewed at morrisonlawgroup.com.

Publication Note: The Morrison Law Group wishes to disseminate this publication to all clients and colleagues of the Firm who wish to receive it. Should any recipient desire to be removed from the distribution list, or wishes to have a colleague added, please contact Jim Van Dusen at The Morrison Law Group at 213 356-5504 .

Disclaimer Note: The legal article presented above is intended to provide general information which may be of interest or use to clients and colleagues of The Morrison Law Group and should not be construed as legal advice on any matter.