Why Connecticut Should Adopt the Revised Uniform Arbitration Act

By Stewart I. Edelstein

Cars whiz by on I-91 headed toward Hartford, as you putter along in a rusted out 1949 Studebaker.[1] No classic beauty, this jalopy has bald tires, an inefficient engine, and blinkers that don't work. It has none of the modern safety features or amenities. No electronics. Not even one cup holder. You will eventually get to Hartford, most likely, but this antiquated heap struggles to make it over 40 miles an hour, especially on hills. And forget about fuel efficiency.

Connecticut's laws regarding domestic arbitration[2] have not been updated, except for some minor tinkering, since 1949. To extend the car analogy just a bit further, you are a passenger in this Studebaker driven by an arbitrator. You represent the claimant. The other passenger represents the respondent. You need to be in a 2011 car. A visit to the car dealership is long past due. Connecticut should finally join 14 other states and the District of Columbia in adopting the Revised Uniform Arbitration Act (RUAA), which brings arbitration practice into the twenty-first century.[3] This article tells you why.

The fundamental goals of arbitration—efficient, expeditious, and economical resolution of disputes fairly and with finality—have not changed for more than 60 years.[4] However, because our antiquated statutes fail to address so many issues that cause the arbitration process to bog down and to be more expensive and time consuming, arbitration today looks and feels too much like litigation. As a result, the very benefits of arbitration are being thwarted by this troubling transformation that can be rectified by this legislation. In addition, there is too much uncertainty about how to deal with issues that frequently arise in arbitration, which the RUAA addresses.

The RUAA makes arbitration an even more desirable alternative to litigation, codifies case law as it has developed over the past six decades, and provides clear, balanced, and reasonable rules that promote this valuable form of alternate dispute resolution. The Connecticut legislature considered the RUAA this session, as Raised Bill No. 6608, but it was not reported out of the Judiciary Committee.

Here is a summary of the most salient provisions of the RUAA that improve on our arbitration statutes.[5]

Initiating Arbitration (Sec. 9)

A party initiates an arbitration proceeding by giving notice in a "record"[6] to the other parties to the arbitration agreement in the agreed manner. If the arbitration agreement does not specify the manner of initiating an arbitration proceeding, certified or registered mail (return receipt requested and obtained) or service as authorized to commence a civil action is sufficient. The notice must describe the nature of the controversy and the remedy sought.

The word "record" is defined, in Sec. 1(6) to mean information inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Unless a party objects for lack or insufficiency of notice before the beginning of the arbitration hearing, the party waives any objection to notice by appearing at the hearing. This is common sense and good practice.

COMMENT: Connecticut statutes have no provisions analogous to Sec. 9 of the RUAA.

Arbitrability (Sec. 6)

An arbitration agreement in a record is valid, enforceable, and irrevocable, except upon a ground that exists at law or in equity for the revocation of a contract. The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate, but an arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled, and whether a contract containing a valid agreement to arbitrate is enforceable.

If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue, pending final resolution of the issue by the court, unless the court orders otherwise.

COMMENT: Conn. Gen. Stat. Sec. 52-408 provides that an ar-

bitration agreement is valid, irrevocable, and enforceable, except when there exists sufficient cause at law or in equity for the avoidance of written contracts generally, but does not have any provision for electronic arbitration agreements, or any of the other provisions in Sec. 6 of the RUAA.

Compelling Arbitration (Secs. 7 and 26) If a party to an arbitration agreement files a court motion when another refuses to arbitrate pursuant to that agreement, if the refusing party does not appear or does not oppose that motion, the court shall order the parties to arbitrate. If the refusing party opposes the motion, the court shall proceed summarily to decide the issue, and order the parties to arbitrate unless it finds there is no enforceable arbitration agreement.

When a party files a court motion alleging that an arbitration proceeding has been initiated or threatened with no valid arbitration agreement, the court shall proceed summarily to decide the issue. If the court finds an enforceable arbitration agreement, it shall order the parties to arbitrate.

COMMENT: Conn. Gen. Stat. Sec. 52-409 provides for a stay of court proceedings if the court is satisfied that any issue involved in the court proceeding is within an arbitration agreement, so long as the party applying for the stay is ready and willing to proceed to arbitration. Sec. 52-410 provides the procedure to obtain a court order to proceed with arbitration.

Our statutes have no provision for a court to enjoin an arbitration proceeding improperly commenced.

Disclosures by Arbitrator Candidates (Sec. 12)

Before accepting appointment as an arbitrator, the proposed arbitrator, after making a reasonable inquiry, shall disclose to all parties to the arbitration agreement and arbitration proceedings, and to any other arbitrators, any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding. The RUAA lists the specific subjects of the required disclosure, and makes this obligation continuing throughout the arbitration process. It also sets forth the consequences of failing to make this required disclosure, including the possible basis to vacate an arbitration award.

COMMENT: Connecticut statutes have no provisions analogous to this, except for Conn. Gen. Stat. Sec. 52-418(2), which provides for vacating an arbitration award for "evident partiality or corruption on the part of any arbitrator."

Provisional Remedies by Court and Arbitrator (Sec. 8)

After an arbitrator is appointed and authorized to act, the arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action. This includes prejudgment remedies.

Before an arbitrator is appointed and is authorized to act, the court, upon motion of a party to an arbitration proceeding, and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action. Once the matter is in arbitration, a party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

A party to an arbitration agreement does not waive a right to arbitrate as a result of filing a court motion as referenced above.

COMMENT: Conn. Gen. Stat. Sec. 52-422 authorizes the court, before an arbitration award is rendered, to make an order or decree, issue such process, and direct such proceedings as may be necessary to protect the rights of the parties pending the rendering of the award and to secure the satisfaction thereof when rendered and confirmed. Connecticut statutes otherwise do not include analogous provisions to Sec. 8 of the RUAA. Some Connecticut courts have taken this statute as an authorization to issue prejudgment remedies in aid of an anticipated arbitration award.

Arbitrator's Manner of Performance (Sec. 15)

An arbitrator may conduct the arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding, including holding conferences with the parties before the hearing and, among other matters, the admissibility, relevance, materiality, and weight of any evidence.

This section further provides for an arbitrator's summary disposition of a claim or a particular issue, notice of an arbitration hearing, adjournment of an arbitration hearing, the procedure if one of the parties does not appear at the arbitration hearing, the rights of the parties at the arbitration hearing, and the authority of the court to direct the arbitrator to conduct the hearing promptly and render a timely decision.

COMMENT: Conn. Gen. Stat. Sec. 52-413 provides generally for (1) notice to the parties of the time and place for the hearing, (2) the postponement of the hearing for good cause shown, and (3) adjournment of any hearing as may be necessary, if it does not extend the time, if any, fixed in the arbitration agreement for rendering the award. Conn. Gen. Stat. Sec. 52-415(b) provides that if a party fails to appear after reasonable notice of an arbitration hearing, the hearing can proceed to hear and determine the controversy upon the evidenced produced. Our statutes do not include any other provisions analogous to Sec. 15 of the RUAA.

Immunity of Arbitrator and Arbitration Organization (Sec. 14)

An arbitrator or arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a Connecticut court acting in a judicial capacity. This immunity supplements any immunity under other law. The court shall award reasonable attorney's fees and other reasonable expenses of litigation to the immune party if the court determines that immunity applies and (1) a party brings a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from their services, or (2) if a party seeks to compel any of them to testify or produce records in violation of this provision.

In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the ar-

bitration proceeding, to the same extent as a judge of a Connecticut court acting in a judicial capacity. However, that provision does not apply (1) to the extent necessary to determine the claim of an arbitrator, arbitration organization or representative of the arbitration organization against a party to the arbitration proceeding; or (2) to a hearing on a motion to vacate an award based on a claim of corruption, fraud, or other undue means, or evident partiality of a neutral arbitrator, corruption by an arbitrator, or misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceedings.

COMMENT: Connecticut statutes have no provisions analogous to Sec. 14 of the RUAA.

Right to Counsel (Sec. 16)

A party to an arbitration proceeding may be represented by a lawyer.

COMMENT: Connecticut statutes have no provisions analogous to Sec. 16 of the RUAA.

Form and Timing of the Award (Secs. 2 and 19)

An arbitrator shall make a record (which may be electronic) of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or arbitrator organization shall give notice of the award, including a copy of it, to each party to the arbitration proceeding. A party has notice if the party has knowledge of the notice or has received notice. A party receives notice (1) when it comes to the party's attention or (2) it is delivered at the party's place of residence or place of business, or at another location held out by the party as a place of delivery of such communications.

An award must be made within the time specified in the arbitration agreement. If none is specified, then the award must be made within the time ordered by the court. The court may extend that time, or the parties may agree in a record to extend it. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

COMMENT: Conn. Gen. Stat. Sec. 52-416(a) imposes a deadline for making the award, in the absence of agreement between the parties in the arbitration agreement, to be within 30 days from the date the arbitration hearing or hearings are completed, or, if the parties are to submit additional material after the hearing or hearings, 30 days from that date. That thirty-day period can be extended if the parties expressly extend that time by an extension or ratification in writing. Sec. 52-416(b) provides that the award shall be in writing, signed by the arbitrator or a majority of them, or by the umpire, and that written notice of the award shall be given to each party. These statutes are not as specific as Sec. 19 of the RUAA, except as to the deadline for making the award.

Award of Exemplary Relief (Sec. 21)

An arbitrator may award punitive damages or other exemplary relief if authorized by law in a civil action involving the same claim, and the evidence produced at the hearing justifies such an award under the legal standards otherwise applicable to the claim. An arbitrator may award reasonable attorney's fees, and reasonable expenses of arbitration, if authorized by law in a civil action involving the same claim, or by the agreement of the parties. If the arbitrator awards punitive damages or other exemplary relief, the arbitrator shall specify in the award the factual basis justifying and the basis in law authorizing that award, and state separately the amount of the punitive damages or other exemplary relief.

As to all other remedies, the arbitrator may order such remedies as the arbitrator considers just and appropriate. The arbitrator's fees and expenses, and any other expenses, must be paid as provided in the award.

COMMENT: Connecticut statutes have no provision analogous to Sec. 21 of the RUAA.

Motions in Court Related to Arbitration (Secs. 5 and 27)

These sections provide for venue when filing a court motion related to arbitration.

COMMENT: Connecticut's applicable venue provisions are as follows: Conn. Gen. Stat. Secs. 52-409 (stay of proceedings in court), 52-410 (application for court order to proceed with arbitration), 52-411 (appointment of arbitrator or umpire), 52-412 (subpoenas and depositions), and 52-417 (application for order confirming award), and 52-422 (order *pendente lite*). These statutes do not provide for the proper venue for all arbitration-related court pleadings.

Modifying or Correcting the Award (Secs. 20 and 24)

An arbitrator may modify or correct an award (1) if there was evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award, or if the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted; (2) because the arbitrator has not made a final and definite award upon a claim submitted for arbitration; or (3) to clarify the award.

Any motion to modify or correct an award must be made, and notice given to all parties, within 20 days after the movant receives notice of the award, and objection to that motion must be made within ten days after it is filed.

COMMENT: Conn. Gen. Stat. Sec. 52-420(b) provides that no motion to modify or correct an award may be made after 30 days from notice of the award to the moving party. Sec. 52-420(c) provides that, upon the granting of an order modifying or correcting an award, a judgment or decree shall be entered in conformity therewith. Connecticut statutes do not provide the substantive basis for moving to confirm or modify an award.

Confirming the Award (Secs. 18 and 22)

After a party to an arbitration proceeding receives notice of an award, that party may make a motion to the court for an order confirming it. The court shall confirm the award unless it is modified, corrected, or vacated. No time limit is specified for filing a motion to confirm the award.

COMMENT: Conn. Gen. Stat. Sec. 52-417 provides that a party can move to confirm an arbitration award within one year after it has been rendered and the parties have notice of it, and that the court shall confirm it unless the award is vacated, modified, or corrected. This creates a problem if a motion is not filed timely but the arbitration has taken place. The effectiveness of such an arbitration award is uncertain. This is more restrictive than the RUAA's absence of any time limit for confirming an award.

Vacating the Award (Sec. 23)

Upon motion to the court by a party to an arbitration proceeding filed within 30 days of notice of the award, the court shall vacate the award if (1) the award was procured by corruption, fraud, or other undue means; (2) there was evident partiality by an arbitrator appointed as a neutral, corruption by an arbitrator, or misconduct by an arbitrator prejudicing the rights of a party to the arbitration; (3) an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to the provisions of the RUAA so as to prejudice substantially the rights of a party to the arbitration; (4) an arbitrator exceeded the arbitrator's powers; (5) there was no agreement to arbitrate, unless no objection was raised on that ground before the beginning of the arbitration hearing; or (6) the arbitration was conducted without proper notice so as to prejudice substantially the rights of a party to the arbitration proceeding.

COMMENT: Conn. Gen. Stat. Sec. 52-418 has an analogous provision, which is not as specific as Sec. 23 of the RUAA in many respects.

Appeal from Judgment Regarding an Award (Sec. 28)

An appeal may be taken from (1) an order denying a motion to compel arbitration, (2) an order granting a motion to stay arbitration, (3) an order confirming or denying confirmation of an award, 4) an order modifying or correcting an award, 5) an order vacating an award without directing a rehearing, or 6) a final judgment related to an arbitration proceeding.

COMMENT: Connecticut statutes have no provision analogous to Sec. 28 of the RUAA.

Effective Date (Secs. 3 and 31)

The RUAA applies only to arbitration agreements made on or after a set date, with certain exceptions set forth in Section 3. It applies to arbitration agreements before that date by agreement of all parties to the arbitration agreement. The RUAA does not affect any action or proceeding commenced before that date. In Raised Bill No. 6608, that date was October 1, 2011, but that date will change in the next RUAA bill.

Miscellaneous (Secs. 1, 4, 10, 29, 30, and 32)

These sections set forth definitions of terms (Sec. 1), waiver of certain provisions of the RUAA (Sec. 4), consolidation of arbitration proceedings (Sec. 10), statement of purpose (Sec. 29), applicability of the Electronic Signatures in Global and National Commerce Act (Sec. 30), and the recovery of interest (Sec. 32).

Returning to the car analogy, this is 2011, not 1949. Connecticut needs the statutory equivalent of a modern car with all the improvements today's society requires, with the benefit of arbitration experience over the past 60 years. Arbitration is an increasingly utilized mechanism for resolving disputes. We need updated statutes to enhance arbitration and to make it more effective. That's why Connecticut should adopt the RUAA.

As detailed above, the RUAA's improvements include provisions for electronic transmittals of documents, the determination of arbitrability as between the arbitrator and the court, when it is permissible to proceed with arbitration during the pendency of a challenge in court to the validity of the arbitration proceedings, enjoining arbitration proceedings improperly commenced, mandatory disclosures by arbitrators, provisional remedies in aid of arbitration, detailed arbitration procedures, arbitrators' immunity, right to counsel in arbitration, award of punitive damages and other exemplary relief, entry of judgment upon confirming an award, and appeals from court orders pertaining to arbitration. **CL**

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Notes

1. Assume it is not rush hour.
2. Connecticut adopted the UNCITRAL Model Law on International Commercial Arbitration, Connecticut General Statutes §50a-100, et seq., in 1989.
3. For a copy of the RUAA, go to http://www.law.upenn.edu/bll/archives/ulc/uarba/arbitrat1213.htm.
4. See, for example, a 1954 Connecticut Supreme Court case, *Local 63, Textile Workers Union of America, C.I.O. v. Cheney Brothers*, 141 Conn. 606: "Early in our judicial history we expressed the view that, since arbitration is designed to prevent litigation, it commands much favor from the law… Especially is it to be encouraged as a means of promoting tranquility and the prompt and equitable settlement of disputes in the field of labor relations." *Id*., at 612–13. The court in that case relied on an 1864 case, *Parmelee v. Allen*, 32 Conn. 115, in which Judge Dutton somewhat wryly noted that "as arbitrations are designed to prevent litigation, although they often as in this case promote it, they are regarded in law with much favor." *Id*., at 116.
5. This article does not discuss the following sections of the RUAA, for which Connecticut statutes have analogous provisions: Sec. 11 (choosing arbitrators, analogous to Conn. Gen. Stat. Sec. 52-409); Sec. 17(a) (arbitrator's issuance of subpoenas, analogous to Conn. Gen. Stat. Sec. 52-412(a) and (b)); Sec. 17(b) (depositions to preserve testimony, analogous to Conn. Gen. Stat. Sec. 52-52-412(c)); Sec. 13 (procedure where more than one arbitrator, analogous to Conn. Gen. Stat. Sec. 52-414); and Sec. 25 (entry of judgment regarding an award, analogous to Conn. Gen. Stat. Sec. 52-421(b)).
6. This includes electronic communications so an arbitration can be started by e-mail or uploading a document to a Web site. The American Arbitration Association and the National Arbitration Forum can administer cases entirely electronically.