

## Indiana Recognizes Arbitral Immunity

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On August 3, 2010, the Indiana Court of Appeals held that litigants cannot bring an action against an arbitrator that challenges the exercise of an arbitrator's official decision-making function. In *Droscha v. Shepherd*, Case No. 52A02-1001-PL-26, the Court held that the proper form of redress of such a complaint is in the action against the opposing party.

In *Droscha*, an action arose out of a dispute regarding the manner in which real estate brokers should split the commission from the sale of real estate. One broker (Shepherd) filed a grievance against the other (Droscha) and the matter was referred to arbitration. The arbitration panel ultimately entered an award for Shepherd.

After the adverse decision in arbitration, Droscha filed an action against Shepherd and the local board of realtors, seeking to have the arbitration award set aside. After a trial, the trial court vacated the arbitration award and ordered a new arbitration, appointed by a realtor association. The new arbitration panel also decided in favor of Shepherd. Droscha petitioned the trial court to vacate the new arbitration award, naming both Shepherd and the realtor association as parties. The trial court dismissed the action pursuant to Trial Rule 12(B)(6).

On appeal, the Court reached two interesting conclusions. First, it rejected an invitation to apply the standard announced in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), "rely[ing] upon the Indiana standard" instead. The Court then extended quasi-judicial immunity to arbitrators.

While judicial and/or quasi-judicial immunity in Indiana has not previously been extended to arbitrators and their sponsors, we see no reason why it should not be. ... The underlying purpose of the immunity is to preserve judicial independence in the decision-making process. The same policies that underlie the grant of absolute judicial immunity to judges justify the grant of immunity to non-judicial officers who perform quasi-judicial functions. ... Droscha's claims are ultimately challenges to the Association's decision-making function with respect to the overall arbitration process and are therefore akin to judicial or quasi-judicial functions subject to immunity.



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The Court also found it was "significant" that the redress being sought could "be achieved through his action against Shepherd alone." The Court then went on to address the substantive arguments related to the dismissal of the action against Shepherd.

This case is significant for two reasons. First, it is the first time (that this author has been able to discover) that the Indiana Court of Appeals specifically addressed *Twombly*'s application to cases in Indiana state court. Second, it limits the manner in which one can challenge an adverse arbitration award. Although the Court left open the possibility that the doctrine of arbitral immunity should not always apply, the case leaves little room for avoiding its application.

### Lessons:

1. It does not appear that Indiana's courts will apply the pleading standard announced in *Twombly* until instructed to do otherwise by the Indiana Supreme Court.
2. Do not file an action against an arbitrator based on the arbitrator's decision-making process if there is an alternative way to challenge that process.



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