

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
*RESIDENT JUDGE*

SUSSEX COUNTY COURTHOUSE  
ONE THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947

May 20, 2008

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**RE: Unifirst Corporation v. Holloway's Trucking, et al.  
Civil Action No. Below 06-07-003  
Appeal No. 07A-12-006 (THG)**

Dear Counsel:

Before the Court is the appeal of Unifirst Corporation concerning the decision by Judge Kenneth S. Clark, Jr. as to whether the arbitration clause was waived.

Suit was initiated in the Court of Common Pleas. The Answer did not raise the arbitration clause, nor did appellee raise same throughout the pretrial progress of the case. Only on the morning of trial, when parties, witnesses and the Court were ready to proceed to trial, did appellee raise the issue of arbitration.

The Court below, applying Delaware law, found that arbitration had not been waived.

Now the parties argue that it is New York law that is applicable and New York law may not be as stringent on the issue of waiver by inaction.

Whether or not a waiver occurred is fact-intensive. If the Court below was not directed by the parties to the applicable law of New York, then I find it inappropriate to review the ruling below under these circumstances. I therefore am remanding the case to the Court of Common Pleas. It appears that everything has been briefed and the Court can apply the applicable law to the facts concerning waiver.

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The appeal is remanded to the Court of Common Pleas for reconsideration of the waiver issue under the New York law.

**IT IS SO ORDERED.**

Yours very truly,

/s/ T. Henley Graves

T. Henley Graves

baj

cc: Prothonotary  
The Honorable Kenneth S. Clark, Jr.