

ARBITRATION—PROVISIONAL REMEDIES (OMNIBUS— BUT ONLY FROM COURT)

- Either party may, consistent with this Arbitration Agreement, seek from a court any provisional relief, pending

[either]

(a) the establishment of the arbitral tribunal,

[or]

(b) the arbitrator's determination of the merits of the dispute.

Comment by Ed Costello: Subclause (b) seems preferable, since parties choosing (a) might find themselves having to *reapply* to the newly constituted tribunal for the same relief which they had already obtained from a court. In addition to the extra expense involved in such a procedure, there is no guarantee that the outcome before the arbitral tribunal will be the same as it was before the court. In addition, there exists the possibility that parties subject to the court-granted provisional relief could use the "window of opportunity" between establishment of the tribunal and *its granting* provisional relief to do the otherwise prohibited acts. The phrase "consistently with this Arbitration Agreement" is added to prevent either party from claiming that the other had *waived* its right to arbitrate the dispute by going to court for preliminary relief. Please keep in mind that these clauses are used in conjunction with other provisions which govern *how the entire dispute will ultimately be resolved*.