# New York's Highest Court Resolves Two Issues in Favor of Arbitration

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The Court of Appeals of New York recently resolved two issues squarely in favor of the arbitrability of disputes. First, the Federal Arbitration Act (FAA) applies to construction contracts where "numerous out-of-state entities" are involved as suppliers even if both parties to the contract are New York residents.

Second, statute of limitations questions are reserved for the arbitrator unless the agreement specifically states that the ***enforcement*** of the arbitration agreement-- and not just resolution of the underlying dispute--is governed by New York law.

In Diamond Waterproofing Systems, Inc. v. 55 Liberty Owners Corp., 2005 WL 673581, Diamond reconstructed the façade of the building owned by Liberty. After the September 11, 2001 World Trade Center attacks, an inspection revealed cracks in the façade and Liberty demanded to arbitrate breach of contract and negligent claims. Diamond argued the claims were barred by a six-year statute of limitations.

Reasoning that "numerous out-of-state entities were involved with the transaction," the Court pointed to project meetings in New Jersey, an engineering firm headquartered in Illinois, and materials and equipment suppliers from several different states. The Court held that this level of out-of-state involvement triggered application of the FAA.

The agreement at issue here required "any controversy or Claim arising out of or related to the Contract" to be arbitrated and elected "the law of the place where the Project is located." As a result, the Court held that the parties "did not express an intent" to have New York law govern the ***enforcement*** of their agreement and sent the timeliness issue to arbitration.