



# ICLG

The International Comparative Legal Guide to:

## Litigation & Dispute Resolution 2015

**8th Edition**

A practical cross-border insight into litigation and dispute resolution work

Published by Global Legal Group, in association with CDR, with contributions from:

A.G. Erotocritou LLC  
Ahour Law Firm  
Advokatfirman Vinge  
Allen & Overy LLP  
Attorneys at Law Borenus Ltd.  
Bär & Karrer AG  
Blake, Cassels & Graydon LLP  
Boga & Associates  
BON, Advocates  
Brian Kahn Inc. Attorneys  
CAKMAKOVA Advocates  
Casahierro Abogados  
Clayton Utz  
Dechert Kazakhstan Limited  
Dentons  
DLA Piper LLP  
Drinkier Biddle & Reath LLP  
Gleiss Lutz  
Gün + Partners  
International Advocate Legal Services  
Iwata Godo

King & Wood Mallesons LLP  
Kruk & Partners Law Firm  
Latournerie Wolfrom & Associés  
Lennox Paton  
M. & M. Bomchil  
Motieka & Audzevičius  
Oblin Melichar  
Oliveira Ramos, Maia e Advogados Associados  
Ovalle Ugarte & Letelier Abogados  
Pittier, Almandoz y Eliaz, S.C.  
Portilla, Ruy-Diaz y Aguilar, S.C.  
Quinn Emanuel Urquhart & Sullivan, LLP  
Rogério Alves & Associados – Sociedade de Advogados, R.L.  
Sam Okudzeto & Associates  
Shipman & Goodwin LLP  
Sysouev, Bondar, Khrapoutski SBH  
Wolff Gstöhl Bruckschweiger Advokaturbüro  
Zamfirescu Racotj & Partners Attorneys at Law  
Zavadetskyi Advocates Bureau



**GLG**

Global Legal Group

**Contributing Editor**  
Greg Lascelles, King & Wood  
Mallesons LLP

**Head of Business  
Development**  
Dror Levy

**Sales Director**  
Florjan Osmani

**Commercial Director**  
Antony Dine

**Account Directors**  
Oliver Smith, Rory Smith

**Senior Account Manager**  
Maria Lopez

**Sales Support Manager**  
Toni Hayward

**Editor**  
Gemma Bridge

**Senior Editor**  
Suzie Levy

**Group Consulting Editor**  
Alan Falach

**Group Publisher**  
Richard Firth

**Published by**  
Global Legal Group Ltd.  
59 Tanner Street  
London SE1 3PL, UK  
Tel: +44 20 7367 0720  
Fax: +44 20 7407 5255  
Email: info@glgroup.co.uk  
URL: www.glgroup.co.uk

**GLG Cover Design**  
F&F Studio Design

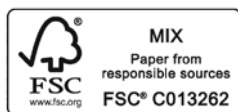
**GLG Cover Image Source**  
iStockphoto

**Printed by**  
Information Press Ltd.  
March 2015

Copyright © 2015  
Global Legal Group Ltd.  
All rights reserved  
No photocopying

**ISBN** 978-1-910083-34-5  
**ISSN** 1755-1889

**Strategic Partners**



**General Chapter:**

1	<b>Freezing Injunctions in Support of Foreign Proceedings &amp; Arbitration</b> – Greg Lascelles & David Thomas, King & Wood Mallesons LLP	1
---	--	---

**Country Question and Answer Chapters:**

2	<b>Albania</b>	Boga & Associates: Gerhard Velaj & Elona Hoxhaj	5
3	<b>Argentina</b>	M. & M. Bomchil: María Inés Corrá	13
4	<b>Australia</b>	Clayton Utz: Colin Loveday & Scott Grahame	21
5	<b>Austria</b>	Oblin Melichar: Dr. Klaus Oblin	30
6	<b>Belarus</b>	Sysouev, Bondar, Khrapoutski SBH: Timour Sysouev & Alexandre Khrapoutski	38
7	<b>Belgium</b>	Allen & Overy LLP: Koen Van den Broeck & Thales Mertens	49
8	<b>Brazil</b>	Oliveira Ramos, Maia e Advogados Associados: Luiz Gustavo de Oliveira Ramos	55
9	<b>British Virgin Islands</b>	Lennox Paton: Scott Cruickshank & David Harby	61
10	<b>Canada</b>	Blake, Cassels & Graydon LLP: Ryder Gilliland	74
11	<b>Chile</b>	Ovalle Ugarte & Letelier Abogados: Esteban Ovalle Andrade & Gianfranco Gazzana Berenguer	82
12	<b>Cyprus</b>	A.G. Erotocritou LLC: Andreas Erotocritou & Antreas Koualis	90
13	<b>England &amp; Wales</b>	King & Wood Mallesons LLP: Greg Lascelles & David Thomas	99
14	<b>Finland</b>	Attorneys at Law Borenium Ltd.: Kristiina Liljedahl & Niki J. Welling	110
15	<b>France</b>	Latournerie Wolfrom & Associés: Julien de Michele & Chantal Cordier-Vasseur	117
16	<b>Germany</b>	Gleiss Lutz: Michael Christ & Claudia Krapfl	128
17	<b>Ghana</b>	Sam Okudzeto & Associates: Nene Amegatcher & Esine Okudzeto	136
18	<b>Japan</b>	Iwata Godo: Atsushi Izumi & Yuya Masamoto	143
19	<b>Kazakhstan</b>	Dechert Kazakhstan Limited: Sergei Vataev & Roman Nurpeissoov	150
20	<b>Liechtenstein</b>	Wolff Gsthöhl Bruckschweiger Advokaturbüro: Christoph Bruckschweiger	158
21	<b>Lithuania</b>	Motieka & Audzevičius: Ramūnas Audzevičius & Mantas Juozaitis	165
22	<b>Macedonia</b>	CAKMAKOVA Advocates: Maja Jakimovska	173
23	<b>Malaysia</b>	BON, <i>Advocates</i> : Edmund Bon Tai Soon & New Sin Yew	181
24	<b>Mexico</b>	Portilla, Ruy-Diaz y Aguilar, S.C.: Carlos Fernando Portilla Robertson & Enrique Valdespino Pastrana	188
25	<b>Peru</b>	Casahierro Abogados: Javier Lozada Paz	196
26	<b>Poland</b>	Kruk & Partners Law Firm: Aleksandra Matwiejko-Demusiak & Jarosław Kruk	204
27	<b>Portugal</b>	Rogério Alves & Associados – Sociedade de Advogados, R.L.: Rogério Alves	214
28	<b>Romania</b>	Zamfirescu Racoți & Partners Attorneys at Law: Cosmin Vasile & Alina Tugearu	222
29	<b>Russia</b>	Quinn Emanuel Urquhart & Sullivan, LLP: Ivan Marisin & Vasily Kuznetsov	230
30	<b>South Africa</b>	Brian Kahn Inc. Attorneys: Brian Kahn & Nicqui Galaktiou	237
31	<b>Spain</b>	Dentons: Julio Parrilla & Arancha Barandiarán	244
32	<b>Sweden</b>	Advokatfirman Vinge: Krister Azelius & Lina Bergqvist	252
33	<b>Switzerland</b>	Bär & Karrer AG: Matthew Reiter & Simone Stebler	259
34	<b>Tunisia</b>	Achour Law Firm: Achour Abdelmonem	267
35	<b>Turkey</b>	Gün + Partners: Beril Yayla Sapan & Asena Aytuğ Keser	275

Continued Overleaf →

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

**Disclaimer**

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

**GLG**

Global Legal Group

Country Question and Answer Chapters:

36	<b>Ukraine</b>	Zavadetskyi Advocates Bureau: Oleksandr Zavadetskyi & Dmytro Chekavskyi	282
37	<b>United Arab Emirates</b>	International Advocate Legal Services: Diana Hamadé Al Ghurair	291
38	<b>USA – California</b>	DLA Piper LLP: Cedric Chao & Kathleen Kizer	299
39	<b>USA – Connecticut</b>	Shipman & Goodwin LLP: Frederick S. Gold & Diane C. Polletta	310
40	<b>USA – Illinois</b>	Drinker Biddle & Reath LLP: Bennett W. Lasko & Alexius Cruz O'Malley	320
41	<b>USA – New Jersey</b>	Drinker Biddle & Reath LLP: Andrew B. Joseph & Andrew C. Egan	327
42	<b>USA – Pennsylvania</b>	Drinker Biddle & Reath LLP: Michael W. McTigue Jr. & Jennifer B. Dempsey	334
43	<b>Venezuela</b>	Pittier, Almandoz y Eliaz, S.C.: Alfredo Almandoz Monterola & Juan Manuel Silva Zapata	341

EDITORIAL

Welcome to the eighth edition of *The International Comparative Legal Guide to: Litigation & Dispute Resolution*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of litigation and dispute resolution.

It is divided into two main sections:

One general chapter titled *Freezing Injunctions in Support of Foreign Proceedings & Arbitration*.

Country question and answer chapters. These provide a broad overview of common issues in litigation and dispute resolution in 42 jurisdictions, with the USA being sub-divided into five separate state-specific chapters.

All chapters are written by leading litigation and dispute resolution lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Greg Lascelles of King & Wood Mallesons LLP, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The International Comparative Legal Guide series is also available online at [www.iclg.co.uk](http://www.iclg.co.uk).

Alan Falach LL.M.  
Group Consulting Editor  
Global Legal Group  
[Alan.Falach@glgroup.co.uk](mailto:Alan.Falach@glgroup.co.uk)

# USA – New Jersey

Andrew B. Joseph



Andrew C. Egan



Drinker Biddle & Reath LLP

## I. LITIGATION

### 1 Preliminaries

#### 1.1 What type of legal system has New Jersey got? Are there any rules that govern civil procedure in New Jersey?

New Jersey is a common law jurisdiction and case law is developed according to the doctrine of *stare decisis*. The Rules Governing the Courts of the State of New Jersey govern proceedings at all levels of New Jersey's court system.

#### 1.2 How is the civil court system in New Jersey structured? What are the various levels of appeal and are there any specialist courts?

New Jersey Courts are organized under a unified judicial system. The Supreme Court of New Jersey, the highest court, hears certain cases as of right and has discretion to hear other cases. The Supreme Court has original jurisdiction in limited instances. The Superior Court is below the Supreme Court, and it is divided into the Appellate Division (New Jersey's intermediate appellate court) and the trial courts. The Appellate Division hears appeals as of right after the final disposition of a trial court matter or an administrative court, and has discretion to hear interlocutory appeals. At the trial court level, the Superior Court is divided broadly into the Law Division, which includes criminal and civil courts, and the Chancery Division, which includes family courts and general equity courts. New Jersey also has an administrative court system, managed through the Office of Administrative Law.

#### 1.3 What are the main stages in civil proceedings in New Jersey? What is their underlying timeframe?

- Pleadings: a civil action is initiated by filing a complaint. New Jersey is a "notice pleading" state. Responsive pleadings or motions to dismiss must ordinarily be filed within 35 days of service of the complaint, but parties have the right to extend the time for response upon consent up to 60 days. R. 4:6-1.
- Discovery: discovery methods include depositions, written interrogatories, requests for admission, and requests for production of documents, electronically stored information or other tangible items.
- Motion Practice: the Superior Court Law Division and the Chancery Division, General Equity Part publish a list of "motion days" upon which civil motions are to be made

returnable, which ordinarily fall on every other Friday. A motion must be filed and served at least 16 days before the listed return date, except for motions for summary judgment, which must be served and filed at least 28 days before the return date. A party must file any opposition at least eight days before the return date (10 days for summary judgment motions), and the moving party must reply, if at all, at least four days before the return date.

- Trial: a civil jury consists of at least six or as many as 12 persons. A party must demand a trial by jury in writing within 10 days after service of the last pleading or it is waived. R. 4:35.
- Judgment: a judgment is the final decision of the court which determines the parties' rights and obligations. Question 9.3 describes how judgments may be enforced.
- Appeal: a party only has a right to appeal where it is given by statute. The scope of appeals is discussed in question 9.4.

#### 1.4 What is New Jersey's local judiciary's approach to exclusive jurisdiction clauses?

New Jersey courts uphold the enforceability of a contract's forum selection clause so long as the contract is freely negotiated and the provision is not "unreasonable and unjust". *YA Global Investments, L.P. v. Cliff*, 419 N.J. Super. 1, 9-10 (App. Div. 2011). A forum selection clause is presumptively valid and will be enforced unless it is the product of fraud, undue influence or overwhelming bargaining power, is unreasonable, or offends a strong public policy. *Id.*

#### 1.5 What are the costs of civil court proceedings in New Jersey? Who bears these costs? Are there any rules on costs budgeting?

The costs of civil court proceedings vary. The fee for filing a complaint is \$250 and the filing fee for a motion is \$50. New Jersey courts follow the American Rule, under which each party assumes responsibility for its attorneys' fees and costs unless a statute, court rule, or other legal obligation provides otherwise.

#### 1.6 Are there any particular rules about funding litigation in New Jersey? Are contingency fee/conditional fee arrangements permissible? What are the rules pertaining to security for costs?

The New Jersey Rules of Professional Conduct permit contingent fees. N.J.R.P.C. 1.5(c). The propriety of the fee is evaluated based on factors including the time and labor involved, the complexity

of the work, and the fee customarily charged. N.J.R.P.C. 1.5(a). Contingent fee arrangements are not permitted in domestic relations matters and criminal cases. N.J.R.P.C. 1.5(d). A lawyer is generally not permitted to provide financial assistance to a client in connection with pending or contemplated litigation, or acquire a proprietary interest in the cause of action, but a lawyer may take a contingent fee as described above and may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter. N.J.R.P.C. 1.8 (e) and (i).

**1.7 Are there any constraints to assigning a claim or cause of action in New Jersey? Is it permissible for a non-party to litigation proceedings to finance those proceedings?**

A tort claim that has not been reduced to judgment may not be assigned in New Jersey. *Cherilus v. Federal Express*, 435 N.J. Super. 172, 178 (App. Div. 2014).

A lawyer shall not provide financial assistance to a client in connection with litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client. N.J.R.P.C. 1.8(e).

**2 Before Commencing Proceedings**

**2.1 Is there any particular formality with which you must comply before you initiate proceedings?**

For most claims, no notice is required prior to instituting a civil action. Certain claims, such as employment discrimination, require exhaustion of administrative remedies. All civil complaints filed in the Law Division must be accompanied by a Civil Case Information Statement, a form that helps the court assign the case to a “track” for discovery purposes. The form is available on the New Jersey Judiciary’s website. In any action based on professional liability, the plaintiff must serve and file an affidavit of merit within 60 days after the answer is filed. N.J.S.A. 2A:53A-26 *et seq.*

**2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?**

A six-year statute of limitations applies to actions arising in contract (four years for contracts involving the sale of goods under the Uniform Commercial Code). Actions in tort arising from personal injuries generally must be brought within two years, or arising from property claims within six years. Actions for fraud, statutory consumer protection claims, breaches of fiduciary duty causing purely economic loss, unjust enrichment, tortious interference with contract rights, trade secret misappropriation, unfair competition or conversion must be brought within six years. Claims for breach of warranty must be brought within four years. Actions to enforce judgments must be brought within 20 years of the date of the judgment.

The statute of limitations begins to run when the plaintiff is able to maintain the elements of a cause of action. The statute of limitations may be tolled for certain claims by the discovery rule, that is, it begins to run when the plaintiff, by the exercise of reasonable diligence, knew or should have known of the injury and its cause.

**3 Commencing Proceedings**

**3.1 How are civil proceedings commenced (issued and served) in New Jersey? What various means of service are there? What is the deemed date of service? How is service effected outside New Jersey? Is there a preferred method of service of foreign proceedings in New Jersey?**

A civil action is commenced by filing a complaint. In a civil case, the complaint is accompanied by either a summons or order to show cause. The plaintiff, plaintiff’s attorney or the clerk of the court may issue the summons. R. 4:4-1. If a summons is not issued within 15 days from the date of the Track Assignment Notice, the action may be dismissed. *Id.* Summonses shall be served together with the complaint by any competent adult not having a direct interest in the litigation. R. 4:4-3. If personal service cannot be effected after a reasonable and good faith attempt, service may be made by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, to the usual place of abode of the defendant or a person authorised by rule or law to accept service for the defendant, or with postal instruction to deliver to the addressee only, to the defendant’s place of business or employment. The party making service may elect to serve via first class mail simultaneously with the certified or registered mail, and if the addressee refuses to claim or accept delivery of the registered or certified mail, and if the ordinary mailing is not returned, the simultaneous mailing shall constitute effective service. R. 4:4-3(a).

New Jersey allows service upon out-of-state defendants using the same methods, i.e. personal service, or certified mail if personal service is not possible, but a party cannot obtain personal jurisdiction over a defendant served by certified mail if the defendant does not answer or otherwise appear within 60 days of service, and default cannot be entered in such cases. In those cases, the party seeking service may apply to the court for permission to serve the defendant by other means.

**3.2 Are any pre-action interim remedies available in New Jersey? How do you apply for them? What are the main criteria for obtaining these?**

A plaintiff may seek a preliminary injunction or a temporary restraining order to preserve the *status quo*, which requires a showing of likelihood of success on the merits, the need for immediate relief, that the balance of the equities favours the applicant, and that there would be irreparable injury in the absence of an injunction.

**3.3 What are the main elements of the claimant’s pleadings?**

The pleading must contain a caption, a notice to defend, numbered paragraphs each containing one material allegation, a claim for relief, and must be signed by the attorney filing the document or by the party if appearing *pro se*. Complaints may, but are not always required to be, verified by a party or party representative. Claims need not be pleaded with specificity, except for allegations of fraud, misrepresentation, mistake, breach of trust, wilful default or undue influence. R. 4:5-8. A party also must include a certification under Rule 4:5-1 stating whether the matter in controversy is the subject of any other action pending in any court or of a pending arbitration proceeding, or whether any such action is contemplated, and if so, must identify such actions and all parties thereto. The party also must identify any non-party who should be or must be joined in

the action. R. 4:5-1. Civil complaints in the Law Division must be accompanied by a Civil Case Information Statement, which is a form available from the New Jersey Judiciary’s website.

**3.4 Can the pleadings be amended? If so, are there any restrictions?**

A party may amend any pleading as a matter of course at any time before a responsive pleading is served, or, if the pleading is one to which no responsive pleading is to be served, and the action has not been placed upon the trial calendar, at any time within 90 days after it is served. R. 4:9-1. Thereafter, a party may amend a pleading only by written consent of the adverse party or by leave of the court, which shall be freely given in the interest of justice. A motion for leave to amend shall have annexed thereto a copy of the proposed amended pleading. R. 4:9-1.

**4 Defending a Claim**

**4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/ claim or defence of set-off?**

An answer shall state in short and plain terms the pleader’s defenses to each claim asserted and shall admit or deny the allegations upon which the adversary relies. A pleader who is without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state and, except as otherwise provided by R. 4:64-1(c) (foreclosure actions), this shall have the effect of a denial. Denials shall fairly meet the substance of the allegations denied. A pleader who intends in good faith to deny only a part or a qualification of an allegation shall specify so much of it as is true and material and deny only the remainder. The pleader may not generally deny all the allegations but shall make the denials as specific denials of designated allegations or paragraphs. Wholesale general denials have the effect of an admission. R. 4:5-3 and 4:5-5. A party waives most defenses and objections that are not presented in an answer.

The answer shall set forth specifically and separately a statement of facts constituting an avoidance or affirmative defence, such as accord and satisfaction, arbitration and award, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, failure to state a claim upon which relief may be granted, fraud, illegality, injury by fellow servant, *laches*, licence, payment, release, *res judicata*, statute of frauds, statute of limitations, or waiver. R. 4:5-4.

The defendant’s responsive pleading may contain a counterclaim or a cross-claim. New Jersey’s entire controversy doctrine requires that any related claim against another party to the litigation, including claims for indemnity or contribution, must be asserted in the original proceeding, or be precluded from assertion in a later proceeding. Rule 4:30A.

**4.2 What is the time limit within which the statement of defence has to be served?**

The defendant may file an answer or motion in response to a complaint within 35 days of service of the complaint. R. 4:6-1. The time for service of a responsive pleading may be enlarged by a period not to exceed 60 days by written consent of the parties.

**4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?**

A defendant may join as an additional defendant any person who may be solely liable or liable with the joining party. R. 4:5-1, 4:28.

**4.4 What happens if the defendant does not defend the claim?**

If the defendant fails to file a response to a pleading, the plaintiff can file a request for entry of default within six months after the default. R. 1:6-8, 4:43-1. After entry of default, the party may apply to the court for entry of final judgment by default. R. 4:43-2. If the claim is for a sum certain, the clerk may enter judgment on the basis of an affidavit. If not, the party must move before the Superior Court, which may conduct a proof hearing on the issue of damages. *Id.*

**4.5 Can the defendant dispute the court’s jurisdiction?**

A defendant can challenge the court’s subject matter or personal jurisdiction in its answer or by way of a motion to dismiss the complaint. Subject matter jurisdiction can be raised at any time. Personal jurisdiction must be raised in the initial responsive pleading or the defence is waived.

**5 Joinder & Consolidation**

**5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?**

If a transaction or occurrence gives rise to more than one cause of action, the plaintiff must join all causes of action and parties. If the claims do not arise out of the same transaction or occurrence, the plaintiff may still bring multiple claims in one action, but it is not required. The defendant’s responsive pleading may contain a counterclaim or a cross-claim. New Jersey’s entire controversy doctrine requires that any counterclaims or cross-claims for indemnity or contribution against other parties to the case be asserted in the original proceeding, or be precluded from assertion in a later proceeding. Rule 4:30A. The entire controversy doctrine “is intended to be applied to prevent a party from voluntarily electing to hold back a related component of the controversy in the first proceeding by precluding it from being raised in a subsequent proceeding thereafter”. *Oltremare v. ESR Custom Rugs*, 330 N.J. Super. 310, 315 (App. Div. 2000).

**5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?**

When actions involving a common question of law or fact arising out of the same transaction or series of transactions are pending in the Superior Court, the court on a party’s or its own motion may order the actions consolidated. If the actions are not triable in the same county or vicinage, the order shall be made by the Assignment Judge of the county in which the venue is laid in the action first instituted on a party’s motion, the judge’s own initiative, or on certification of the matter to the judge by a judge of the Law or Chancery Division.

R. 4:38-1. If actions pending in different venues are consolidated, the order shall specify the venue in which the consolidated action shall proceed and the party having the responsibility to file a copy of the order with the deputy clerk of the Superior Court in each county from which an action is being transferred. The order of consolidation may also include such terms as the court may prescribe to expedite further proceedings. *Id.*

**5.3 Do you have split trials/bifurcation of proceedings?**

The court has discretion to order trials of separate issues for the convenience of the parties or to avoid prejudice. 4:38-2. The court also has discretion to bifurcate trial of liability and damages (particularly punitive damages).

**6 Duties & Powers of the Courts**

**6.1 Is there any particular case allocation system before the civil courts in New Jersey? How are cases allocated?**

The Superior Court has separate trial-level courts that handle small claims, landlord/tenant cases, probate and guardianship cases, family cases, criminal cases, and cases in which the primary relief sought is equitable in nature. Also, civil cases are assigned to one of four tracks at the time the complaint and Case Information Statement are filed, which vary in terms of the length of discovery period permitted, ranging from 150 days (Track 1) to 450 days (Tracks 3 and 4), as well as the type of judicial involvement in the cases. Track 4 cases have active case management by individual judges. New Jersey also has courts that specialise in multi-county litigation involving specific products.

As of January 1, 2015, New Jersey also has a Complex Business Litigation Program to handle complex commercial and construction cases that have the potential for \$200,000 or more in damages.

**6.2 Do the courts in New Jersey have any particular case management powers? What interim applications can the parties make? What are the cost consequences?**

Courts have authority to take actions reasonably necessary for the administration of justice within their jurisdiction. Most civil cases are assigned a pre-trial motion judge to handle discovery and other pre-trial motions when the complaint is filed. Judges sitting in the General Equity Part, which hears cases in which the primary requested relief is equitable in nature, case-manage every case.

Otherwise, the parties may request a case management conference or the court may order the attorneys for the parties to appear for a conference to simplify the issues, enter a scheduling order, obtain admissions of fact, limit the number of expert witnesses, or settle the case. R. 4:5B-2.

**6.3 What sanctions are the courts in New Jersey empowered to impose on a party that disobeys the court's orders or directions?**

The court may use its contempt power to sanction parties for conduct that brings into disrespect the authority of the court. The court may impose sanctions when a party fails to obey a court order compelling discovery. A party subject to sanctions may be required to pay the moving party's expenses and attorneys' fees. The court may also order a party's pleading stricken or suppressed, with or without prejudice.

**6.4 Do the courts in New Jersey have the power to strike out part of a statement of case or dismiss a case entirely? If so, in what circumstances?**

On the court's or a party's motion, the court may either: (1) dismiss any pleading that is scandalous, impertinent, or, considering the nature of the cause of action, abusive of the court or another person; or (2) strike any such part of a pleading or any part thereof that is immaterial or redundant. The order of dismissal may expressly require, as a condition of the refile of a pleading asserting a claim or defence based on the same transaction, the payment by the pleading party of attorneys' fees and costs incurred by the party who moved for dismissal. R. 4:6-4.

**6.5 Can the civil courts in New Jersey enter summary judgment?**

Summary judgment may be granted: (1) where there is no genuine issue of any material fact as to a necessary element of the cause of action or defence; and (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defence which in a jury trial would require the issues to be submitted to a jury. R. 4:46.

**6.6 Do the courts in New Jersey have any powers to discontinue or stay the proceedings? If so, in what circumstances?**

The court may stay execution on a judgment, order a stay of proceedings, pending an outcome in another venue, such as a bankruptcy court or arbitration, and order a stay pending appeal.

**7 Disclosure**

**7.1 What are the basic rules of disclosure in civil proceedings in New Jersey? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure?**

A party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. R. 4:10-2. The information must appear reasonably calculated to lead to the discovery of admissible evidence. *Id.* A party's access to documents or materials prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer or agent) depends only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. A party can discover facts known or opinions held by an expert retained by a party who is not expected to be called as a witness only upon a showing of exceptional circumstances under which it is impractical for the party seeking discovery to obtain facts or opinions on the same subjects by other means. R. 4:10-2(c) and (d).

**7.2 What are the rules on privilege in civil proceedings in New Jersey?**

A party may not obtain discovery regarding matters which are privileged. Communications subject to the attorney-client and accountant-client privilege are not discoverable. In New Jersey, “the root of the attorney-client privilege is the recognition that sound legal advice or advocacy serves public ends and requires full and frank communication between a client and his counsel”. *Halbach v. Boyman*, 369 N.J. Super. 323, 328 (App. Div. 2004). A party also may not obtain attorney work product, which includes the mental impressions of a party’s attorney or his or her conclusions, opinions, memoranda, notes, summaries, research, or theories.

**7.3 What are the rules in New Jersey with respect to disclosure by third parties?**

A subpoena requires a third party to attend and testify at a deposition, and may also require the person to produce documents. R. 4:14-7. A subpoena commanding a person to produce evidence for discovery purposes may be issued only to a person whose attendance at a designated time and place for the taking of a deposition is simultaneously compelled. The subpoena shall state that the subpoenaed evidence shall not be produced or released until the date specified for the taking of the deposition and that if the deponent is notified that a motion to quash the subpoena has been filed, the deponent shall not produce or release the subpoenaed evidence until ordered to do so by the court or the release is consented to by all parties to the action. The subpoena shall be simultaneously served no less than 10 days prior to the date therein scheduled on the witness and on all parties, who shall have the right at the taking of the deposition to inspect and copy the subpoenaed evidence produced. If evidence is produced by a subpoenaed witness who does not attend the taking of the deposition, the parties to whom the evidence is so furnished shall forthwith provide notice to all other parties of the receipt thereof and of its specific nature and contents, and shall make it available to all other parties for inspection and copying. R. 4:14-7(c).

**7.4 What is the court’s role in disclosure in civil proceedings in New Jersey?**

A party may seek to compel discovery responses, or to strike another party’s pleading for failure to produce discovery. Upon motion to quash a subpoena, the court may make an order to protect the party, witness, or other person from unreasonable annoyance, embarrassment, oppression, burden, or expense.

**7.5 Are there any restrictions on the use of documents obtained by disclosure in New Jersey?**

The court may prohibit a party from disclosing trade secrets, confidential research, or other commercial information. R. 4:10-2(g). The court may also enter a protective order to govern production of and use of confidential information.

**8 Evidence**

**8.1 What are the basic rules of evidence in New Jersey?**

The New Jersey Rules of Evidence govern the admissibility of evidence.

**8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?**

Evidence is admissible if it is competent and relevant. “Relevant evidence” means evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action. N.J.R.E. 401. Evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or is cumulative. N.J.R.E. 403. Hearsay is inadmissible unless it is permitted by a legal exception set forth in the New Jersey Rules of Evidence or some other legal grounds. The standard for qualification of an expert is liberal: “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise”. N.J.R.E. 702.

**8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?**

A fact witness can only testify to matters as to which he or she has personal knowledge. N.J.R.E. 602. Deposition testimony may be used at trial for many purposes, including impeachment, to preserve a witness’s testimony, or in the event a witness is absent from court. R. 4:16.

**8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Does the expert owe his/her duties to the client or to the court?**

A party may propound interrogatories, asking the other party to identify any expert witness, as well as the subject matter on which the expert is expected to testify. The interrogatories can also demand production of the expert’s report. An expert is permitted to give an opinion on the ultimate issue. However, experts may not testify on questions of law. The purpose of expert testimony is to assist the trier of fact in deciding complex factual issues.

**8.5 What is the court’s role in the parties’ provision of evidence in civil proceedings in New Jersey?**

The court decides preliminary questions regarding the witness’s qualifications, the existence of a privilege, and admissibility of evidence. N.J.R.E. 104.

**9 Judgments & Orders**

**9.1 What different types of judgments and orders are the civil courts in New Jersey empowered to issue and in what circumstances?**

A final judgment is the final determination of the rights and obligations of the parties in a case. An interlocutory judgment determines a preliminary issue and does not adjudicate the parties’ ultimate rights. A preliminary injunction is an interlocutory judgment designed to maintain the *status quo* while litigation is pending. The court may enter a final judgment ordering money damages. Courts also have authority to issue declaratory judgments, which determine the rights of the parties with respect to certain legal issues.



**9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?**

New Jersey courts adhere to the American Rule, which provides that litigants are responsible for their own litigation costs and may not recover them from an adverse party unless there is express statutory authorisation, a clear agreement of the parties, or some other established exception. The exceptions are codified at R. 4:42-9. An award of damages is subject to post-judgment interest from the date on which the judgment is finally entered. The legal rate of interest in New Jersey varies. Prejudgment interest may also be awarded.

**9.3 How can a domestic/foreign judgment be recognised and enforced?**

Execution of a judgment is commenced by filing a writ of execution with the clerk of any county in which the judgment has been entered. The writ of execution can be enforced by a variety of means including sale of real property, garnishment, execution against contents of a safety deposit box, or sale of securities. In special actions, enforcement of a judgment occurs through an action of ejectment (to obtain possession of real property), an action of replevin (to obtain possession of personal property), and mortgage foreclosures.

The Full Faith and Credit Clause of the United States Constitution requires courts to recognise judgments from other states. New Jersey law contains a Uniform Enforcement of Foreign Judgments Act, which governs enforcement of judgments of other states. See N.J.S.A. 2A:49A-25. Enforcement of money judgments obtained in another country is governed by N.J.S.A. 2A:49A-11.

**9.4 What are the rules of appeal against a judgment of a civil court of New Jersey?**

The Appellate Division of the Superior Court is the intermediate appellate court in New Jersey. The Rules Governing the Courts of the State of New Jersey provide for appeals of right to the Appellate Division from final orders, collateral orders, and certain interlocutory orders within 45 days of their entry. If an order is not appealable of right, a motion for leave to appeal may be filed, or a determination of finality sought. R. 2:2-3 and 2:2-4.

The New Jersey Supreme Court hears appeals following adjudication in the Appellate Division and directly from the trial court in cases in which the death penalty has been imposed. Appeals may also be taken to the Supreme Court on certification. R. 2:2-1.

**II. ALTERNATIVE DISPUTE RESOLUTION**

**1 Preliminaries**

**1.1 What methods of alternative dispute resolution are available and frequently used in New Jersey? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)**

Arbitration and mediation are commonly used methods of dispute resolution.

**1.2 What are the laws or rules governing the different methods of alternative dispute resolution?**

Certain claims are subject to statutory arbitration, including collective bargaining agreements and most personal injury cases. R. 4:21A-1. Within 30 days of the arbitrator’s decision, a party may file for a notice of rejection of the arbitrator’s award and a demand for trial *de novo*. New Jersey also has a complementary, and in many cases, compulsory, mediation program, to which parties may be required to attend and participate in good faith. R. 1:40. Mediators also play a large role in certain family law matters.

**1.3 Are there any areas of law in New Jersey that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?**

An agreement to arbitrate a child custody dispute is permissible but may not be enforced where it is not in the best interests of the child. *Johnson v. Johnson*, 204 N.J. 529, 547 (2010).

**1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, will the court force parties to arbitrate when they have so agreed, or will the court order parties to mediate or seek expert determination? Is there anything that is particular to New Jersey in this context?**

Where an arbitration clause governs a dispute between parties, a party may file a motion to compel arbitration. Courts address disputes over the scope of the arbitration clause, i.e. what issues may be arbitrated, unless the parties have agreed to submit such disputes to arbitration. A court may order litigation to be stayed pending arbitration. Before an arbitrator is appointed and is authorised and able to act, the court, in such summary action upon application 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 pursuant to the same conditions as if the controversy were the subject of a civil action. N.J.S.A. 2A:23B-8(a). A party does not waive a right of arbitration by making an application for provisional remedies. N.J.S.A. 2A:23B-8(c).

**1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to New Jersey in this context?**

Appellate review is available of final arbitration orders, but the review is subject to the Federal Arbitration Act and is narrowly limited only to circumstances of fraud, corruption or similar wrongdoing by the arbitrator, or manifest disregard. *Tretina Printing, Inc. v. Fitzpatrick & Associates, Inc.*, 135 N.J. 349 (1994). A court may enforce an arbitration award by ordering specific performance.

**2 Alternative Dispute Resolution Institutions**

**2.1 What are the major alternative dispute resolution institutions in New Jersey?**

Arbitration agreements often call for disputes to be arbitrated by the American Arbitration Association or by JAMS, both well-known providers of arbitration and mediation services. Under Rule 1:40, the New Jersey judiciary also maintains a large mediation programme.

**3 Trends & Developments**

**3.1 Are there any trends or current issues in the use of the different alternative dispute resolution methods?**

Alternative dispute resolution continues to be a popular choice given the rising costs of litigation.



**Andrew B. Joseph**  
 Drinker Biddle & Reath LLP  
 600 Campus Drive  
 Florham Park, NJ 07932  
 USA  
 Tel: +1 973 549 7264  
 Fax: +1 973 360 9831  
 Email: [Andrew.Joseph@dbr.com](mailto:Andrew.Joseph@dbr.com)  
 URL: [www.drinkerbiddle.com](http://www.drinkerbiddle.com)

**Andrew B. Joseph** is the partner in charge of the firm's Florham Park office and is one of 12 managing partners of the firm. Andrew is a trial lawyer in the firm's Commercial Litigation and Communications Litigation Practice Groups. He is an experienced litigator who has tried multiple cases to verdict, and his practice is focused on complex business disputes, consumer class action litigation, securities litigation and the defence of white collar criminal investigations and prosecutions. Andrew has been engaged as lead trial counsel for clients in a variety of business disputes throughout the country. Among other things, he has defended corporations and executives in federal, state, arbitral and regulatory claims involving franchise disputes, unfair competition, breach of contract, tortious interference, fraud, bad faith, professional malpractice, trademark infringement, business divorce, commercial real estate and leasing disputes, non-compete covenants, RICO laws and Qui Tam statutes. Andrew also counsels his clients on strategic issues and initiatives to minimise litigation risk. His clients include leading wireless carriers, pharmaceutical companies, business consulting firms, retailers and financial institutions.

For a full biography visit:  
<http://www.drinkerbiddle.com/people/attorneys/joseph-andrew-b>.



**Andrew C. Egan**  
 Drinker Biddle & Reath LLP  
 600 Campus Drive  
 Florham Park, NJ 07932  
 USA  
 Tel: +1 973 549 7198  
 Fax: +1 973 360 9831  
 Email: [Andrew.Egan@dbr.com](mailto:Andrew.Egan@dbr.com)  
 URL: [www.drinkerbiddle.com](http://www.drinkerbiddle.com)

**Andrew C. Egan** is an associate in the firm's Commercial Litigation Practice Group. He has represented clients in business disputes in state and federal court, including: an internal investigation of a public housing authority; an FDIC clawback proceeding; a price-gouging lawsuit brought by the New Jersey Attorney General against a hotel chain; defending a major telecommunications company in contract disputes involving its dealers and customers; a property tax appeal for a major healthcare system; and an administrative challenge to Medicaid determinations. Andrew's practice has a strong focus on chancery and probate litigation, in New York and New Jersey, with representative matters involving injunctions; specific performance; commercial lease disputes; quiet title and partition of real property; guardianships; fiduciary accountings; trust modification applications; and "corporate divorce" of closely held businesses. He has served as first chair trial counsel in a contested guardianship involving \$3 million in assets, and a negligence/contract matter involving a commercial refrigeration company. Before joining Drinker Biddle & Reath, Andrew clerked for the Hon. Walter Koprowski, Jr. in the General Equity Division of the Superior Court.

For a full biography visit:  
<http://www.drinkerbiddle.com/people/attorneys/egan-andrew>.

**Drinker Biddle**

With 650 lawyers in 11 offices nationwide, including in Pennsylvania, New Jersey and Illinois, Drinker Biddle & Reath LLP provides clients with unparalleled service in matters ranging from complex class actions to multibillion-dollar deals, across a broad spectrum of industries. We strive not only to assist clients in negotiating complex transactions and resolving high-stakes disputes, but also in anticipating future challenges and opportunities. By combining sound judgment with creative thinking, we help clients achieve their present-day goals and position themselves strategically for future success.

Drinker Biddle's litigators have successfully tried hundreds of cases to verdict, efficiently managed class action and multidistrict litigation, and won major victories through creative dispositive motions, well-crafted trial strategies, and focused and effective appeals. Whether it is a "bet-the-company" case, a complex financial dispute, or a more routine business conflict, our experienced litigators stand ready to serve the interests of our clients.

## Other titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Environment & Climate Change Law
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks



59 Tanner Street, London SE1 3PL, United Kingdom  
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255  
Email: [sales@glgroup.co.uk](mailto:sales@glgroup.co.uk)

[www.iclg.co.uk](http://www.iclg.co.uk)