

# Anchin Alert

**Anchin, Block & Anchin LLP**  
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## **Arbitration Compelled After Parties Did Not Try to Arbitrate in Good Faith**

Members of Anchin, Block & Anchin's Litigation, Forensic and Valuation Services Group often serve as arbitrators. Alternative dispute resolution is an increasingly popular alternative to traditional litigation. Courts are very reluctant to allow parties to an agreement to litigate if an agreement between the parties requires that disputes be arbitrated.

In a case<sup>1</sup> recently reported by the *New York Law Journal*, a plaintiff sued defendants asserting breach of contract, unjust enrichment, and fraud in connection with an agreement with their predecessor-in-interest for the assignment of patent rights. The agreement provided for a good faith effort to settle disputes by arbitration before litigation. The defendants sought to compel arbitration under the terms of the provision outlined in the agreement. In opposition, the plaintiff pointed to the agreement's repeated references to litigation and its "good faith" clause to argue that there was no agreement to submit claims to mandatory, binding arbitration.

The court found that despite referring to litigation, the agreement contemplated binding arbitration, and the provision specifically provided that the parties must first try to settle disputes under formal arbitration before submitting the matter to litigation. The court also found that the plaintiff did not fulfill their "try in good faith" obligation to initiate arbitration by sending defendants an email requesting arbitration.

Accordingly, the court granted defendants' motion to compel arbitration.

For more information, please contact Anthony Bracco, David Beckman, Margaret Kolb, Dennis Neier, or Raymond Dragon of Anchin's Litigation, Forensic and Valuation Services Group at 212.840.3456.

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<sup>1</sup>Celltrace Commc'ns Ltd. V. Acacia Research Corp, 15-CV-4746 (June 16)



**Anchin, Block & Anchin LLP**  
**Accountants and Advisors**  
**1375 Broadway, New York, NY 10018**  
**212.840.3456 • [www.anchin.com](http://www.anchin.com)**

