

Arbitration Gains Popularity

In-House News:

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By Jen Woods

Arbitration has become increasingly popular in commercial contracts. In fact, most contracts now require arbitration, but there is also increasing controversy over whether it should take the place of court trials.

Most arbitration disputes are heard by a panel of one to three arbitrators who are usually senior lawyers or retired judges. The arbitrators are neutral decision makers, and they are experts in the fields of law in dispute.

Advocates of arbitration argue that it is more efficient and cheaper than a trial. Not only are the evidence and discovery rules looser, but arbitration decisions are also exempt from the standard appeals process. In addition, the hearings and decisions are confidential, so there are no public records of the process.

Arbitration is especially popular in international litigation because, unlike in court judgments, awards are valid in any country, regardless of where the decision was made. Commercial parties want to settle disputes in neutral environments, and with arbitration, neither party is at an advantage based on the location of the dispute.

"Personally, I prefer a good state or federal judge over arbitration," Barry Davidson, a partner at Hunton & Williams in Miami and a litigator who has

handled many arbitrations, told the *Daily Business Review*. But I do believe arbitration is sometimes the best way to handle disputes."

"The fact is, many of our clients are not interested in settling a dispute in a United States court," Jose I. Astigarraga, a partner at Astigarraga Davis in Miami told the *Daily Business Review*. "It all depends on where a party's assets are and where an award can be enforced. In a lot of cases, a judgment in a U.S. court is not going to do them any good," he added.

Despite the growing popularity of arbitration, many lawyers still prefer court trials. Some critics, including Davidson, consider arbitration to be cumbersome. Many logistical headaches are associated with arbitration because it can be very difficult just to schedule hearings, and there is no protection against interruptions.

"Most people involved in arbitrations are very successful, busy people, so it can be hard to get everyone in one room for a long period of time," Davidson told the *Daily Business Review*. "Many times you will have three days of hearings and then have to stop for a week or a month."

While arbitration might save clients money, it can cost them a lot of time. In some instances, arbitration can take longer than a trial. It isn't always cheaper either. Mandatory arbitration, which requires parties to pay arbitrators' fees, can cost as much as \$500 an hour.

Also, even though arbitrators are supposed to be neutral parties, there is no guarantee that their decisions will be unbiased. In questionable cases, it is extremely difficult to prove an arbitrator's bias and virtually impossible to get a

decision overturned in court.

Despite criticisms, interest in arbitration remains strong. The Minneapolis-based National Arbitration Forum, in conjunction with several sections of the American Bar Association, recently conducted a survey that found that alternative dispute resolution, including arbitration, is extremely popular among attorneys.

About 86 percent of the surveyed lawyers said alternative dispute resolutions were the best options for some of their clients. More than 66 percent said the use of alternative dispute resolutions would increase in the future. In addition, more than 56 percent of those polled said their practices in particular were likely to provide alternative dispute resolutions to their clients in the near future.

According to the Chicago International Dispute Resolution Association, arbitration is the most commonly used form of alternative dispute resolution. A recent survey conducted by the American Bar Association Litigation Section Task Force on Alternative Dispute Resolution found that 78 percent of surveyed lawyers said arbitration was more efficient than litigation, while 56 percent said it was more cost effective.

"In the old times, arbitration was often referred to as 'splitting the baby,'" Daniel E. Gonzalez, Director of International Litigation and Arbitration at Hogan & Hartson, told the *Daily Business Review*. Now arbitration is seen as "finding the best people to hear arguments on highly technical matters, in order to get the most reasoned results."