

ARBITRATION VS. LITIGATION

By: Nancy A. Chillag, attorney

Many people today include an arbitration provision in their contracts because of a perceived notion that arbitration is a simplified proceeding, cheaper and quicker. While in some instances that may be true, the reality is that in the majority of cases arbitration can be more expensive, take just as long and have unintended consequences.

No right to a jury trial. The person deciding the case in arbitration is usually a lawyer or a lay person with a background or experience in the area of the dispute. In litigation, the case would be decided by a jury. If you choose arbitration, you will be waiving your rights to a trial by jury.

Cost is higher. Court filing fees usually range between \$100 and \$200. The filing fee in arbitration is tied to the amount in controversy, with the minimum fee usually not less than \$500.

In addition to the filing fees, you may also be charged for daily hearing fees, room rental, arbitrator's fee and various administrative fees, all of which add up very quickly.

Attorney fees can't be avoided. Today it is rare that any party with a substantial amount at stake would participate in arbitration without a lawyer. Thus any perceived savings in this area are mistaken.

No automatic right to discovery. In litigation, you can obtain all the other party's documents in advance and evaluate your claim, thus preventing surprises. Discovery of documents in arbitration is limited, if available at all.

Arbitrator acts as expert. The theory behind arbitration is that the parties to the dispute do not need to hire expensive experts since the arbitrator(s) are supposed to be experts in the field of the dispute. Unfortunately, however, you can usually predict the outcome of the case by looking at the background of the arbitrator. People with a particular expertise often have a bias associated with it.

No right to appeal. Appeal of a bad decision is virtually impossible with arbitration. A court will only set aside an arbitration award if it was procured by corruption, fraud or bias. Trying to prove these items is incredibly difficult.

Court system cannot be totally avoided. In order to collect on an arbitration award you must actually file a petition with the court, pay the filing fee and request that the court issue a judgment in accordance with the arbitration award. The bottom line is, you can't entirely avoid the court process.

If you want an arbitration clause in your contract, make sure you understand all the ramifications first.

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