10 Reasons Arbitration Beats Traditional Litigation

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1. Faster

Parties usually get to hearing within a year of filing and even quicker for simpler and expedited disputes whereas a court case will often wend its way through the system for two to five years before trial depending on the jurisdiction. Now add the backlog of closed courts, reduced public funding, criminal case priority, and pandemic-related lawsuits, and arbitration becomes significantly quicker than the court system. Even the decision-making process can be swifter. Most arbitrators render an award within thirty days of closing the hearing, whereas an overworked judge or appellate court may require months to issue a final decision. Traditional litigation’s delay becomes even more troubling when the parties consider the ticking of the pre or post judgment interest clock.

1. Flexibility

Parties can schedule discovery, conferences, deadlines, motion practice, and hearings around their schedule, not the beleaguered, overcrowded court docket. Most arbitrators will accommodate scheduling conflicts and personal plans, whereas the courts expect the parties to work around their calendars. Parties can also narrow the scope of the issues presented to the arbitrator for resolution without the need for a summary adjudication process.

1. Confidentiality

Parties can ensure confidentiality. Only participants can attend the arbitration because the proceedings remain private unlike traditional litigation open to the public. Even the arbitration filings remain private while anyone can access court filings. Parties may also like the non-precedent setting nature of arbitration, especially if they have similar cases coming behind this dispute.

1. Affordable

Faster hearings mean lower costs. Instead of the litigation expense mounting over years of protracted conflict, the parties can curtail the amount of discovery, conferences, motion practice, and time to hearing and thereby significantly reduce their attorneys’ fees and costs.

1. Choice

Parties typically select their arbitrator. They agree upon the decisionmaker of their choice instead of the random assignment of a court judge or the jury pool in traditional litigation.

1. Expertise

Parties can also choose an arbitrator with specific subject matter expertise, skill, or experience. Especially in highly technical cases, the parties can save a lot of time, expense, and effort when their jurist already understands the landscape. Some parties choose to forgo expert testimony because, unlike the jury, the arbitrator has the specialized knowledge to follow the presentation of evidence without an expert’s explanation.

1. Simpler

Parties can schedule a quick call with the arbitrator to settle a discovery dispute or email a subpoena request; they do not have to file a costly motion with proper notice. Most arbitrators relax the rules of evidence and eliminate burdensome procedures.

1. More Predictable

As every seasoned litigator knows, no one can predict how a jury will decide. Arbitrators, however, pride themselves on following the law, applying it to the facts, and eschewing emotional appeals. They remain far less susceptible to sympathy than a jury.

1. Control

Parties can control the arbitration process either through their arbitration contract or by post-dispute agreement. They decide how much discovery to afford, what law will apply, which procedural rules will apply, where the dispute will be heard, how the dispute will be heard – in person, video conference, telephonic, or documentary - and much more. The arbitrator will implement the parties’ choices as long as they agree. In fact, the parties can amend, modify, or reject most arbitral rules of the forum if they want.

1. Finality

Parties can only appeal arbitration awards on limited grounds. Accordingly, they can put their dispute to rest and get back to business quicker, faster, and cheaper – something we all want to do as soon as the pandemic permits.

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