**Arbitration versus Litigation**

The prevailing perception of arbitration is that it is faster, cheaper, and more efficient than litigation. This is somewhat true, with some caveats.

A recent study by the Federal Mediation and Conciliation Services indicates that the average time from filing an arbitration claim to Award is about 475 days, whereas court cases average between a year-and-a-half and three years, sometimes longer, depending on the jurisdiction. These kinds of disputes, whether in court or an arbitral forum, can be financially and sometimes emotionally taxing, and given the time differential between the two methods of dispute resolution, the opportunity to minimize this toll by reducing the length of a case should not be taken for granted.

To have a case decided by trial, the parties put themselves at the mercy of the court’s overcrowded calendars. Arbitration, on the other hand, offers much more flexibility. Hearings can usually be scheduled in a manner that is convenient for the parties involved. Further, arbitration’s rules of evidence are can be less strict. Also, the procedural rules can limit costly and the time-consuming aspects of court cases, such as motion practice and discovery (or example, depositions). Because arbitration is quicker and is a generally less complicated process, legal fees tend to be lower in cases decided in arbitration. Importantly, arbitration hearings can be conducted privately, and decisions are not public, thereby affording confidentiality on top of efficiency.

Arbitrators are also often experts in the subject matter of disputes they preside over. In fact, some arbitration provisions require arbitrators who have such expertise. This process puts the chosen neutral in a unique position to limit costs and time by guiding a more tailored process.

Finally, parties in arbitration have agency in the arbitrator-selection process (whereas there is none in court, where judges are assigned randomly) even when not choosing a subject matter expert. In arbitration, when a case is filed with JAMS or American Arbitration Association, these prominent arbitral organizations usually provide a pool of potential arbitrators specific to the case. After that, parties begin the striking process, in which both sides can remove candidates that they see as problematic. Further, this allows (at least in theory) the parties to settle on an arbitrator most likely to leave them comfortable with the ultimate factfinder and decision-maker.

But for all its efficiency and discretion, arbitration also carries notable downsides.

To start, despite being *generally* less expensive than litigation, arbitration can still be costly. Filing fees alone can be very high. The filing fee with JAMS, for example, is $1,750 for two-party matters, and $3,000 for matters with three or more parties. For AAA, filing fees depend on the amount disputed in the claim. At a minimum, filing fees are $1,725; at most, they can be (and often are) north of $25,000. In many arbitral organizations, the arbitrators are experienced practitioners. At JAMS they are often retired judges. In either case, because arbitrators are paid for the time they spend on a case the costs can quickly escalate. And these costs can triple when a case has to be decided by a panel of three arbitrators. Assume the hourly rate for an experienced arbitrator is $750 per hour and the hearing is three eight hour days long. Arbitrators also charge for the time prior to the hearing and after the case is closed (and an Award is drafted), which is often equal to time spent at a hearing. In this hypothetical case, an arbitrator will bill for 48 hours of time at $750 per hour. The total is $36,000. If there are three arbitrators, the fee is $108,000. In contrast, there is no cost to having a judge and jury hear a case. Judges are paid by the state or federal government and the jurors don’t charge the parties for their time. Even if the estimate is too high, it is easy to see how the costs of arbitration can be extreme. That’s true even if the process itself is more streamlined and it may not be, at least not all the time.

There are tradeoffs to consider in determining the best place to resolve cases. These choices are usually determined at the time a contract between the parties is drafted. If it has an arbitration clause, the choice is made before any dispute arises. Even when an agreement does not contain such a clause, the parties can agree to submit a dispute to arbitration. In any case, it is important to consider the relative benefits and downsides of each method of dispute resolution. An efficiently run arbitration with an experienced arbitrator (not a panel of three) in a case that is not exceedingly costly to file can be a great approach. That said, in larger cases, the costs can often be as high as a court case.