



***Efficient Arbitration – Achieving the Benefits of Arbitration***

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# The Benefits of Arbitration



The stated benefits of arbitration:

*A prime objective of an agreement to arbitrate is to achieve streamlined proceedings and expeditious results.*

*Preston v. Ferrer*, 552 U.S. 346, 357 (2008) (emphasis added).

# The Benefits of Arbitration



*In bilateral arbitration, parties forgo the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution: lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes.*

*Stolt-Nielsen, S.A. v. AnimalFeeds International Corp., 559 U.S. 662, 685 (2010) (emphasis added).*

# The Phases of Arbitration



- **Arbitrability:** whether the parties agreed to arbitrate the dispute at issue. Often decided by the courts but can also be decided by arbitrator.
- **Administrative stage:** setting procedure for discovery, motion practice, and the hearing.
- **Discovery and pre-trial motions.**
- **Arbitration hearing/trial.**
- **Confirmation of award and entry of judgment.**

# Key Issues to Consider and Address at the Outset



- Rules, procedural law, and substantive law.
- Exchange of documents.
- ESI discovery issues – see *Randolph and Bennett*, 54 Feb. Advocate 34.
- Interrogatories and other types of discovery.
- Procedure for subpoenas to third parties.
  - Be weary – requires compliance with standard federal or state rules re: subpoenaing third parties.
  - I.C. § 7-907; 9 U.S.C. § 7.

# Key Issues to Consider and Address at the Outset



- Deadline to amend claims.
- Confidentiality agreement.
- Expert witness disclosures.
- Dispositive and pre-trial motions.
- Witness and exhibit disclosures.
- Date, time, and location of the hearing.

# Sources of Arbitration Rules



- As parties agree(d).
- AAA Commercial, Construction, and Employment Rules: Minimal discovery and pre-trial motion rules; arbitrator has complete discretion to allow discovery or motions.
  - All provide for exchange of documents.
  - Commercial and construction rules say depositions only allowed in extraordinary cases.
  - Employment rules seem more open to depositions and written discovery beyond document production.

# Sources of Arbitration Rules



- Financial Industry Regulatory Authority Code of Arbitration: More detailed rules regarding discovery and motions.
  - Rules 12503-04: Rules regarding motions.
  - Rules 12505-13: Rules regarding discovery.
- Federal or Idaho Rules of Civil Procedure.

# Location of the Arbitration



- As agreed by the parties.
  - *But see I.C. § 29-110(1): Every stipulation or condition in a contract, by which any party thereto is restricted from enforcing his rights under the contract in Idaho tribunals . . . is void as it is against the public policy of Idaho. Nothing in this section shall affect contract provisions relating to arbitration so long as the contract does not require arbitration to be conducted outside the state of Idaho.*
  - See also *Cerami-Kote, Inc. v. Energywave Corp.*, 116 Idaho 56, 773 P.2d 1143 (1989).

# Location of the Arbitration



- AAA Commercial Rule R-11.
  - Disputes must be submitted within 14 days “of the AAA’s initiation of the case.”
  - If arbitration agreement is silent or ambiguous as to the locale, the AAA decides subject to the arbitrator’s final determination.