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Watching the contract wording will revive arbitration process

Practical tips for faster, more cost-effective dispute resolution by improving contractual arbitration clauses are provided by Chris Hanslik, a shareholder in the Litigation Group of the Houston law firm of Boyar & Miller (www.boyar-mille.com).



Hanslik

“It’s time to revisit the original purposes of arbitration and draft arbitration clauses to help companies lower the cost of litigation and provide faster resolution,” he says.

“Arbitration clauses found their way into a vast number of commercial contracts through the years. However, over time, the original purposes have been eroded,” Hanslik says. “Traditional discovery and litigation tactics have migrated into the arbitration process.”

He adds that arbitration has become a less popular dispute resolution method because it ends up not saving any time or money.

This is mainly because most parties end up agreeing to a level of discovery similar to what would be conducted in a state or federal court proceeding. Additionally, the parties must pay an hourly rate for their arbitrators to sit as judges when there is no

direct out-of-pocket cost for the parties to have the same dispute decided by a judge or jury. Hanslik lists steps that can be taken to make arbitration a more cost-effective dispute resolution vehicle:

- **Self-administration.** “Parties can administer the arbitration without the services of a third-party organization like the American Arbitration Association. A self-administered arbitration process negates the sometimes excessive filing and administrative fees charged by those organizations.”

- **Selection process.** “The clause should include a detailed but simple procedure for selecting the arbitrators. For example, the parties can agree that within a certain number of days of arbitration being demanded, each party may select an arbitrator and that the party-selected arbitrators have a certain amount of time to select a third arbitrator who will serve either as the sole arbitrator or the presiding arbitrator on a panel of three. The clause should also address the consequence of one party failing to comply with the selection of its own arbitrator. Typically, the penalty for lack of selection compliance is that the person selected by the opposing party will serve as the arbitrator for the proceeding.”

- **Procedure.** “The parties can also provide for a certain set of rules of procedure and evidence to govern the proceeding, such as the Texas Rules of Civil Procedure and the Texas Rules of Evidence. This will eliminate uncertainty as to what the parameters of the limited discovery, if any, will be as well as what evidence will be admissible during the arbitration hearing.”

- **Timing.** “The parties should also agree in the clause to a time frame in which the final hearing will take place. Usually this is determined by a period of time from the original demand for arbitration or when the final arbitrator has been selected. Although speedy resolution to the dispute is of paramount importance, the parties should be reasonable in calculating how much time it will take to prepare their case for an arbitration hearing, when establishing or setting forth the time period in the arbitration clause.”

- **Mediation.** “Finally, it is always a good idea for the parties to include within the arbitration clause, an agreement to mediate before starting this process.”

Thora Qaddumi