North Dakota Law Review

Volume 70 | Number 2 Article 7

1994

Arbitration by the American Arbitration Association

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ARBITRATION BY THE AMERICAN ARBITRATION ASSOCIATION*

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I. AN OVERVIEW OF ARBITRATION

Arbitration is one of many dispute resolution tools. It is a process of adjudication by a neutral decision-maker.[1] The primary difference between arbitration and adjudication is the expertise of the decision-maker. In arbitration, the expertise of a business professional is brought to bear on a business problem. In adjudication, the expertise of a judge, in the application of law, is brought to bear on a legal problem.[2]

Throughout the article, the term "arbitration" will refer to binding arbitration. Binding arbitration is a type of arbitration in which the parties have agreed to settle any disputes between them pursuant to arbitration and which provides for court enforcement of the arbitration award.[3] Thus, once the parties have agreed to arbitration, they are "bound" to that agreement and must use arbitration as a means of resolving their dispute. Not only are they "bound" to arbitrate, they are "bound" to satisfy any award decided upon because most jurisdictions provide that an arbitration award may be enforced by the courts.[4]

A party may get into arbitration in one of four ways: by contractual agreement,[5] by agreement after the dispute has arisen,[6] by statute,[7] and

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* The American Arbitration Association was established in 1926 to facilitate the resolution of disputes without the need of litigation. It is a not-for-profit, national organization with offices in 36 cities throughout the United States. It presents seminars and educational programs pertaining to all aspects of Alternative Dispute Resolution (ADR) through its regional offices and its Department of Education and Training. It also maintains one of the largest libraries in the world devoted solely to ADR.

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1. Arbitration is "[a] process of dispute resolution in which a neutral third party (arbitrator) renders a decision after a hearing at which both parties have an opportunity to be heard." BLACK'S LAW DICTIONARY 105 (6th ed. 1990).

2. MARTIN DOMKE, DOMKE ON COMMERCIAL ARBITRATION (Rev. ed. 1991). There are generally two civilized methods of resolving disputes: negotiation and adjudication. In negotiation, parties to the dispute reach decisions by mutual consent. *See* BLACK'S LAW DICTIONARY 1036 (6th ed. 1990). In adjudication, decisions are made by a third party for the benefit of the disputants. *See id.* at 42. Other ADR processes include: mediation, arbitration, summary jury trials, and mini-trials. These processes are simply variations of negotiation and adjudication.

3. DOMKE, *supra* note 2, at 1.

4. *See* N.D. CENT. CODE § 32-29.2-11 (Supp. 1993) (providing that "[o]n application of a party, the court shall confirm an award" unless within a specified time "grounds are urged for vacating, modifying, or correcting the award").

5. The contracting parties generally agree that any dispute that arises from the contract is to be settled by arbitration. The contract must be in writing. N.D. CENT. CODE § 32-29.2-01 (Supp. 1993).

6. *Id.* The agreement made after the dispute has arisen must also be in writing. *Id.*

by court order.[8] Today, contractual provisions are the most common way in which parties enter arbitration.[9] That, however, has not always been the case.

Prior to the passage of modern arbitration statutes, most parties entered arbitration as a result of agreements to arbitrate after the disputes had arisen.[10] Today, some arbitration cases are initiated by submission agreements, but these cases are few in number.[11]

Arbitration initiated pursuant to statutory provisions is on the rise.[12] For example, Minnesota, New York, and New Jersey provide by statute that insurance disputes, filed pursuant to no-fault automobile insurance laws, must be handled through arbitration.[13]

Akin to statutory arbitration is court-ordered arbitration. Court-ordered arbitration is also on the rise because some jurisdictions are giving judges more authority to order litigants into arbitration provided that certain criteria are met.[14] These criteria vary depending upon the jurisdiction, but generally deal with the complexity, type, and value of the case. A few jurisdictions require, either by court administrative rule, or

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7. *E.g.*, MINN. GEN. R. PRAC. 114.01 (applying to civil cases).

8. *See, e.g., id.* This is a relatively new development in arbitration. For example, Minnesota court order CX-89-1863 and Rule 114 of the Minnesota General Rules of Practice require attorneys not only to provide their clients with information about ADR processes, but also to engage in some form of ADR. *Id.* at 114.03(b). The type of ADR to be used is a decision made by the parties. *See id.* at 114.04(a). However, if they cannot decide on a particular method of ADR, the court will determine which process seems most appropriate for them and will order them to participate in that process. *See id.* at 114.04(b).

9. The American Arbitration Association (AAA) handles approximately 60,000 disputes per year throughout the United States and its territories. Of those 60,000 disputes, the AAA estimates that about 40,000 are the result of contractual provisions.

10. The modern arbitration statutes began in 1920 when New York passed a statute which provided that parties to a contract could agree, in their contract, to arbitrate disputes that had not yet arisen but which could later arise. *See* N.Y. Arbitration Act. N.Y. CIV. PRAC. L & R 7501-7514 (McKinney 1980 and Supp. 1994). The New York statute was the precursor to the Model Arbitration Act from which North Dakota passed its arbitration statute in 1987. *See* N.D. CENT. CODE § 32-29.2-01. Currently, nearly every state has adopted some form of the Model Act. The Model Act is also the basis for the Federal Arbitration Act. *See* DOMKE, *supra* note 2, at 28.

The modern statutes, which are all generally based upon the Model Act, have many similarities, including: provisions providing for the irrevocability of an agreement to submit a future dispute to arbitration, provisions enabling a party to compel another party to arbitrate, provisions providing for the staying of a court action in violation of an arbitration agreement until the completion of the arbitration, provisions enabling courts to appoint and replace arbitrators, provisions limiting court review of an arbitrator's actions, or provisions providing for the vacation of arbitral awards.

11. However, the recent interest of attorneys and courts in various ADR procedures, coupled with impending legislation and the rules of professional responsibility requiring attorneys to discuss ADR options with their clients, may lead to an upsurge in arbitration by agreement.

An example of arbitration by agreement is the AAA's Dispute Resolution Program for Insurance Claims which deals with personal injury disputes. Pursuant to this program, the insurance company generally files a claim with the AAA, and asks AAA to contact the plaintiff or his or her attorney to offer to resolve the dispute through either arbitration or mediation.

12. Lawyers Arbitration Letter, AAA, Vol. 5 No. 2 Supplement, June 1981.

13. DOMKE, *supra* note 2, at 18; MINN. STAT. ANN. § 65B.525(1) (West 1988 & Supp. 1994). Through November 1993, no-fault claims accounted for more than 11,000 cases filed with AAA; 3,500 of which were filed with AAA's Minneapolis office.

14. *See, e.g.*, BENCHBOOK FOR ARBITRATORS 2.1B (Hennepin County Arbitration Office) (1988).

by statute, that judges refer certain cases to court-annexed arbitration or mediation programs.[15]

II. CONSTRUCTION DISPUTES AND THE AMERICAN ARBITRATION ASSOCIATION (AAA) METHOD

Contractual arbitration is frequently used in construction disputes because most construction contracts include arbitration clauses.[16] Such clauses allow parties to demand arbitration for any dispute that may arise between them. When disputes arise between the parties in such situations, the parties may submit their arbitration claim to the AAA for resolution pursuant to this agreement. After a dispute has been submitted to the AAA, the AAA issues forms called "demands" to the parties. The demands require the name, address, and telephone number of each party to the arbitration,[17] the name, address, and telephone number of all the parties' representatives, a copy of the arbitration clause in the parties' contract, a brief statement as to the nature of the dispute, a brief statement of the amount claimed or relief sought, the type of business of each party, the hearing locale, and the signature of the party filing the demand.[18]

The original demand is to be served upon the other party or parties to the dispute.[19] The serving party must then file four copies of the demand and send an administrative fee to the AAA.[20]

After the AAA receives the demand, it opens a file and contacts the other party or parties.[21] In the absence of a court order staying the arbitration proceeding, the AAA will then proceed with the administration of the matter.[22] The other party or parties are then given an opportunity to

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15. *Id.*

16. DOMKE, *supra* note 2, at 16.

17. The fact that one party to a multi-party contract has signed the contract does not necessarily mean that the party must be named as a party to the arbitration. A party that did not sign the contract cannot be named as a party to the arbitration.

18. *See infra* Appendix 1 (sample Demand for Arbitration and Submission to Dispute Resolution forms).

19. American Arbitration Association, Commercial Arbitration Rules, Rule 6 [hereinafter Commercial Arbitration Rules].

20. In determining the administrative fee, the AAA uses a sliding fee schedule. Commercial Arbitration Rules, *supra* note 19, at 21. The minimum fee is $500 for claims valued at $10,000 or less; the maximum fee is $5,000 for claims valued at $1,000,000 or more. *Id.* There are also hearing, postponement, and processing fees. *Id.* The hearing fees are $150 per party per day. *Id.* The postponement fees are $150 per party per occurrence. *Id.* The processing fees are $150 per party after 180 days and quarterly thereafter until the case is closed. *Id.* All of these fees are slightly higher when more than one arbitrator is involved in the case. *Id.*

21. *Id.* at Rule 6.

22. While statutory law provides a means for compelling a recalcitrant party to arbitrate, there is no need to seek a court order to compel if the AAA is the administrator of the arbitration. Commercial Arbitration Rules, *supra* note 19, at Rules 1, 52.

respond to the claim. Such responses are sent to the AAA and the claiming party.[23]

It is the AAA's policy that no party is to have any ex parte communication with the arbitrator.[24] All written communication between the parties and the arbitrator should be directed to the AAA which will then facilitate contact among the parties and the arbitrator. Any unilateral contact between a party and the arbitrator has been viewed by the courts as misconduct by the arbitrator and has led to vacatur of awards.[25]

Following the response, the parties have an opportunity to select an arbitrator. A list of proposed arbitrators is generally provided to each party who then has an opportunity to strike arbitrators to which he or she objects. The remaining arbitrators are then ranked in order of preference and sent to the AAA. After the lists are submitted to the AAA, the AAA's case administrator compares them and appoints an arbitrator who is mutually acceptable to both parties. If an arbitrator cannot be appointed from the list,[26] another list is provided to the parties, or in the alternative, the AAA will itself appoint an arbitrator. If the AAA appoints an arbitrator, the background and expertise of the arbitrator are matched with the subject of the dispute. Such appointments by the AAA, however, are subject to factual challenges by the parties.[27]

Once an arbitrator is appointed, the case administrator contacts the parties and the arbitrator to select a date for the hearing. After selecting a mutually agreed upon hearing date, the case administrator ensures that the arbitrator executes an oath of office and discloses all relevant information concerning the parties.[28]

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23. The AAA can serve as a conduit for information between the parties if the parties do not wish to have direct contact with each other. However, it is the AAA's position that, in order to facilitate the arbitration process, the parties should discuss the matters between themselves.

24. Commercial Arbitration Rules, *supra* note 19, at Rule 29.

25. *See, e.g.*, Totem Marine Tug & Barge, Inc. v. North American Towing, Inc., 607 F.2d 649, 652-53 (5th Cir. 1969).

26. Arbitrators are generally not selected from the list because they are not mutually acceptable or the mutually acceptable arbitrators are not available or decline.

27. Commerical Arbitration Rules, *supra* note 19, at Rule 19. The parties are also able to choose an arbitrator by specifying in their contracts who they would like to arbitrate their dispute. Such contractual provisions may name specific individuals or may specify that the arbitrator must meet certain criteria such as age, residency, or ability to speak a foreign language.

Although the parties can specify in their contract that they wish a specific individual to arbitrate their dispute, it may be more beneficial for the parties to specify that they wish an administrative agency to resolve their dispute. A specific individual arbitrator can resolve administrative problems only so far as they fall within his or her authority. However, an administrative agency can resolve administrative problems that fall outside of an arbitrator's authority.

28. The case administrator ensures that the arbitrator executes an oath of office and discloses all relevant information concerning the parties by sending to the arbitrator a notice of appointment. The notice of appointment and arbitrator's oath states:

> NOTICE OF APPOINTMENT
>
> You have been selected to arbitrate the above case. If you are able to accept this responsibility, please sign below and return. It is most important that the parties have complete confidence in the arbitrator's impartiality. Therefore, please disclose any past

Pursuant to the Code of Ethics for Arbitrators in Commercial Disputes, the arbitrator must disclose any circumstances which may preclude him or her from impartially executing his or her duties.[29] Such disclosures are made to the AAA which then communicates that information to the parties.

After the information is disclosed to the parties, the parties are given an opportunity to object to the continued service of that arbitrator. If the parties are unable to agree about the continued service of the arbitrator, the AAA resolves the issue.[30]

After all of the objections to the proposed arbitrators are considered, the parties begin to prepare for the arbitration proceeding. Preparation for an arbitration proceeding is similar to preparation for litigation. The parties gather facts, talk to witnesses, prepare a chronology of events, prepare statements, formulate arguments, and draft opening and closing statements. Formal discovery is limited in the arbitration proceeding.[31] However, the parties are free to stipulate to any form of information exchange.[32] If a party is uncooperative in information exchanges, the

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or present relationship with the parties or their counsel, direct or indirect, whether financial, professional, social or of any other kind. If any relationships arise during the course of the arbitration, they must also be disclosed. Any doubt should be resolved in favor of disclosure. If you are aware of such a relationship, please describe below. The AAA will call the facts to the attention of the parties' counsel.

( ) I HAVE NOTHING TO DISCLOSE

( ) I HEREBY DISCLOSE THE FOLLOWING:

_____

_____

ARBITRATOR'S OATH

_____, being duly sworn, hereby accepts this appointment and will faithfully and fairly hear and decide the matters in controversy between the above-named parties, in accordance with their [a]rbitration [a]greement, and will make an [a]ward according to the best of the [a]rbitrator's understanding.

American Arbitration Association, Form for Notice of Appointment and Arbitrator's Oath.

29. Such disclosures include but are not limited to: familial relationships with one of the parties, business dealings with one or more of the parties, membership in fraternal or professional organizations, and social relationships. DOMKE, *supra* note 2, § 21 (Supp. 1983). *See also* JOINT COMMITTEE OF THE AMERICAN ARBITRATION ASSOCIATION AND THE AMERICAN BAR ASSOCIATION, CODE OF ETHICS FOR ARBITRATORS IN COMMERCIAL DISPUTES 6 (1977) (listing Canon II, which states that "[a]n Arbitrator should disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality or bias") [hereinafter CODE OF ETHICS].

30. In deciding whether a disclosure should lead to the disqualification of an arbitrator, the AAA looks at the merits of the case, the comments made by the parties, the comments by the arbitrator, and the standards set forth in case law and the Code of Ethics.

31. Section 32-29.2-07 of the North Dakota Century Code provides for limited discovery in arbitration proceedings. N.D. CENT. CODE § 32-29.2-07 (Supp. 1993). Section 32-29.2-07 provides for the subpoena of witnesses and documents and provides for the taking of depositions of witnesses who are unable to attend the hearing. *Id.*

32. American Arbitration Association, Drafting Dispute Resolution Clauses: A Practical Guide, AAA, New York 1993. For example, the parties may agree to the mutual taking of depositions, exchange of documents, exchange of witness lists, and exchange of interrogatories.

other party may ask the arbitrator to intervene and compel the uncooperative party to provide the relevant information.[33]

After the parties have prepared for the arbitration proceeding, the arbitration proceeding commences. The arbitrator conducts the arbitration proceeding, and it is his or her agenda, decorum, and protocol which control.[34] The proceeding includes opening statements, claimant's case and rebuttal, respondent's case and rebuttal, and closing statements. After closing statements, the arbitrator may request post-hearing briefs on a particular issue or on the entire proceeding.[35] At the conclusion of the hearing or upon the parties' submission of their briefs, the proceeding is then closed. After the proceedings are closed, the arbitrator must render his or her decision or award within the time specified by the rules or their contract.

The arbitrator's award must comply with the following requirements: 1) it must be in writing; 2) it must be signed by the arbitrator or a majority of the arbitrators; 3) it must be dispositive of all issues submitted to arbitration; 4) it must be sufficiently clear to allow for compliance and/or enforcement; 5) it must allow for an interest component; 6) it must be delivered to the parties by registered mail or as provided for in their agreement; and 7) it must be rendered within the time specified by the parties in their agreement.[36]

After the arbitrator has rendered his or her award, his or her authority with respect to the dispute ends. Thereafter, the arbitrator has no authority to modify, change, correct, clarify or alter his or her award unless the parties agree to reinstate such authority or unless certain conditions under section 32-29.2-09 of the North Dakota Century Code are met.[37] Under certain circumstances, the court, upon application of a party, may change or correct an award.[38]

Vacating awards can be done only if:

> [1)] The award was procured by corruption, fraud, or other undue means; [2)] There was evident partiality by [the] arbitrator which prejudiced the rights of a party; [3)] The arbitrators exceeded their powers; [4)] The arbitrator refused to postpone a hearing . . . or refused to hear [material] evidence . . . or otherwise so conducted the hearing . . . as to prejudice substantially

33. DOMKE, *supra* note 2, at 370. *See also* Commercial Arbitration Rules, *supra* note 19, at Rule 31.

34. *See generally* DOMKE, *supra* note 2 at ch. 24.

35. *Id.* at 251. If the arbitrator does not request such briefs, the parties may request that they be allowed to submit them. *Id.*

36. *See* N.D. CENT. CODE § 32-29.2-08 (Supp. 1993).

37. *See* N.D. CENT. CODE § 32-29.2-09 (Supp. 1993).

38. *See* N.D. CENT. CODE § 32-29.2-13 (Supp. 1993).

> the rights of a party; or [5)] There was no arbitration agreement . . . and the party did not participate in the [proceeding] without raising the objection.[39]

Arbitration awards are not self-enforcing, and thus, the prevailing party may wish to have the award confirmed by the court.[40] There is no time limit for when a party must make a motion to the court for enforcement of the award.[41] However, if a motion to confirm the award is brought, a motion to vacate may be brought in that same action by the opposing party.[42]

III. MISCONCEPTIONS ABOUT ARBITRATION

A. "SPLITTING THE BABY"

There is a conception in arbitration that arbitrators simply award half of the claimed amount to each party, or "split the baby." This, however, is not the case. That arbitration does not simply award half of the claimed amount to each party was evidenced hundreds of years ago in the time of King Solomon. During the time of King Solomon, two women had been arguing as to who was the rightful mother of a baby.[43] King Solomon was called in to decide to whom the baby belonged. King Solomon did not resolve the dispute by cutting the baby in half and awarding one half of the baby to each woman. He did not make anyone else do so, and, in fact, did not sever any part of the child from any other part. What King Solomon did do to resolve the dispute, however, was to very cagily extract from the two woman information necessary to make an informed decision as to whom the baby rightfully belonged. Combining that information with his expertise in human behavior, he returned the intact infant to its rightful mother.[44] Thus, King Solomon set the stage for arbitration ever after: 1) he gathered evidence; 2) he leavened that evidence with his own experience; and 3) he made a decision without unthinkingly awarding half of the claimed amount to each party.

Data from the AAA also supports the proposition that arbitrators generally do not award half of the claimed amount to each party. For example, in construction arbitration cases completed in 1993, only 11% of the awards were divided such that each party received approximately half of the claimed amount. Moreover, in 36% of the cases, between 80-100%

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39. *Id.* at § 32-29.2-12 (Supp. 1993). Applications brought pursuant to section 32-29.2-12 must be made within ninety days after delivery of a copy of the award to the applicant. *Id.*

40. *Id.* at § 32-29.2-11 (Supp. 1993).

41. *Id.*

42. *See* N.D. CENT. CODE § 32-29.2-12 (Supp. 1993); *see also* DOMKE, *supra* note 2, at 491, 497.

43. 1 *Kings* 3:16-28 (King James).

44. *Id.*

of the claimed amount was awarded to one party. In 10% of those cases, between 1-19% was awarded to one party, and in 31% no award was given either party.[45] Thus, as the above data indicates, arbitrators rarely award half of the claimed amount to each party.

B. ARBITRATION IS INFLEXIBLE

The perception that arbitration is inflexible, especially when conducted under the Rules of the AAA, is misconceived. Rule 1 of the AAA's Commercial Arbitration Rules specifies that "[t]he parties, by written agreement, may vary the procedures set forth in these rules."[46] Thus, it is quite evident that arbitration is flexible because the parties can themselves vary the arbitration procedures.[47]

Moreover, the AAA does more than simply provide an arbitrator and a framework of rules by which parties can arbitrate their dispute. The AAA also provides rules making it difficult for a recalcitrant party to delay a proceeding, expedites proceedings, establishes the locale of a hearing, establishes a rate of compensation for the arbitrators, provides information to the parties and the arbitrator about the arbitration process, and ensures that all of the procedural requirements of the statute are met.

C. ARBITRATORS RESOLVE DISPUTES THROUGH NEGOTIATION

The conception that arbitrators resolve disputes through negotiation or mediation is misconceived. Arbitrators do not, and should not help the parties resolve their disputes through negotiation or mediation.[48] Arbitration is an adjudicative process.[49] Once the arbitration process is begun, the arbitrator should not engage in settlement discussions between the parties.[50] Only when the parties mutually request that their dispute be negotiated or mediated can the arbitrator negotiate or mediate for the parties.[51]

Moreover, there is a danger in having an arbitrator act as a negotiator or mediator during the arbitration process. If the arbitrator also acts as a

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45. *See infra* Appendix at 3 (listing arbitration statistics).

46. Commercial Arbitration Rules, *supra* note 19, at Rule 1.

47. However, problems may arise when a party seeks to vary the procedures based on a unilateral request. The AAA will not honor such requests. The AAA will allow variance from its Rules only if both parties agree to such variance. Commercial Arbitration Rules, *supra* note 19, at 6.

48. American Arbitration Association, *Code of Ethics for Arbitrators in Commercial Disputes*, American Arbitration Association, New York 1977.

49. *See* DOMKE, *supra* note 2, at ch. 1 (discussing the characterization of arbitration).

50. Commercial Arbitration Rules, *supra* note 19, at Rule 10. *See also* CODE OF ETHICS, *supra* note 29 at 10 (listing Canon IV(H), which states that "[i]t is not improper for an arbitrator to suggest to the parties that they discuss the possibility of settlement of the case. However, an arbitrator should not be present or otherwise participate in the settlement discussions unless requested to do so by all parties. An arbitrator should not exert pressure on any party to settle.").

51. Commercial Arbitration Rules, *supra* note 19, at Rule 10.

negotiator or mediator during the arbitration proceeding, he or she may encounter information which may later influence his or her decision as an arbitrator. Thus, negotiation and mediation should be kept out of the arbitration proceeding in order for the arbitrator to make an uninfluenced, unbiased decision.

D. ARBITRATION IS USEFUL ONLY FOR CERTAIN TYPES OF DISPUTES

The conception that arbitration is useful only for certain types of disputes is misplaced. Arbitration has been used to resolve many disputes in many different areas. For example, George Washington's will provided for arbitration as a means of resolving potential challenges to it.[52] Valuation disputes with respect to real property, equipment, and services also have been resolved by arbitration.[53] Arbitration has also been used to resolve problems arising from the physical condition of both new and used residential property, commercial property, and industrial property. In addition, arbitration has successfully been used to resolve disputes in other areas, such as construction, title insurance, computer software and hardware, accounting, transportation, franchising, freight handling and shipping, stocks, bonds, securities, grain trade, seed trade, various consumer applications, automobile lemon laws, personal injury, property damage, medical malpractice, insurance coverage issues, reinsurance, banking, labor-management grievance and interest disputes, licensing, copyright, publishing, patent, health care, pensions, employment, environment, entertainment, sports, and sales representation. Arbitration, thus, can be used to resolve almost any type of dispute.

IV. CONCLUSION

Arbitration is one of many alternatives to litigation. It is not necessarily the best dispute resolution technique for every dispute. However, it is helpful for parties who wish to have their dispute resolved by a method

52. DOMKE, *supra* note 2, at 187-88. The pertinent portion of George Washington's will states:

> "[b]ut having endeavored to be plain and explicit in all the [d]evises--even at the expense of prolixity, perhaps tautology, I hope, and trust, that no disputes will arise concerning them; but if contrary to expectation the case should be otherwise from the want of legal expression, or the usual technical terms, or because too much or too little has been said on any of the devises to be consonant with law, my will and direction expressly is, that all disputes (if unhappily any should arise) shall be decided by three impartial and intelligent men, known for their probity and good understanding; two to be chosen by the disputants, each having the choice of one, and the third by those two—which three men thus chosen shall, unfettered by Law, or legal constructions, declare their sense of the [t]estator's intention; and such decision is, to all intents and purposes, to be as binding on the [p]arties as if it had been given in the Supreme Court of the United States."

Id. (quoting George Washington's will).

53. DOMKE, *supra* note 2, at 3.

other than litigation. The AAA also provides many other methods of facilitating the resolution of disputes. These methods include mediation, minitrials, early neutral evaluation, mediation-arbitration, negotiation, and fact-finding, just to name a few. When parties are confronted with a dispute, they should be cognizant of all dispute resolution techniques, and some of the methods through which those techniques are facilitated, in order to find the best means of resolving their dispute.

APPENDIX

American Arbitration Association

MEDIATION Please consult the applicable mediation rules regarding mediation procedures. If you want the AAA to contact the other party and attempt to arrange a mediation, please check this box. ☐

_____ **ARBITRATION RULES***
(Fill in the name of the applicable rules.)

DEMAND FOR ARBITRATION

DATE: _____

TO: Name _____
(of the party upon whom the demand is made)

Address _____

City and State _____ ZIP Code _____

Telephone ( ) _____ Fax _____

Name of Representative _____
(if known)

Representative's Address _____

City and State _____ ZIP Code _____

Telephone ( ) _____ Fax _____

The named claimant, a party to an arbitration agreement contained in a written contract, dated _____, _____, providing for arbitration under the _____ Arbitration Rules, hereby demands arbitration thereunder.

(Attach the arbitration clause or quote it hereunder.)

NATURE OF DISPUTE:

CLAIM OR RELIEF SOUGHT: (amount, if any)

TYPE OF BUSINESS: Claimant _____ Respondent _____

HEARING LOCALE REQUESTED: _____
(City and State)

You are hereby notified that copies of our arbitration agreement and of this demand are being filed with the American Arbitration Association at its _____ office, with the request that it commence the administration of the arbitration. Under the rules, you may file an answering statement within ten days after notice from the administrator.

Signed _____ Title _____
(may be signed by a representative)

Name of Claimant _____

Address (to be used in connection with this case) _____

City and State _____ ZIP Code _____

Telephone ( ) _____ Fax _____

Name of Representative _____

Representative's Address _____

City and State _____ ZIP Code _____

Telephone ( ) _____ Fax _____

To institute proceedings, please send three copies of this demand with the administrative fee, as provided in the rules, to the AAA. Send the original demand to the respondent.

* If you have a question as to which rules apply, please contact the AAA.

Form G2-2/91

American Arbitration Association

SUBMISSION TO DISPUTE RESOLUTION

Date: _____

The named parties hereby submit the following dispute for resolution under the _____ Rules* of the American Arbitration Association:

Procedure Selected: ☐ Binding arbitration ☐ Mediation settlement

☐ Other _____ (Describe)

FOR INSURANCE CASES ONLY:

_____ _____ to _____ _____

Policy Number Effective Dates Applicable Policy Limits

_____ _____

Date of Incident Location

Insured: _____ Claim Number: _____

Name(s) of Claimant(s)	Check if a Minor	Amount Claimed
_____	☐	_____
_____	☐	_____

Nature of Dispute and/or Injuries Alleged (attach additional sheets if necessary):

Place of Hearing: _____

We agree that, if binding arbitration is selected, we will abide by and perform any award rendered hereunder and that a judgment may be entered on the award.

To Be Completed by the Parties

_____
Name of Party

_____
Address

_____
City, State, and ZIP Code

( ) _____
Telephone Fax

_____
Signature†

_____
Name of Party's Attorney or Representative

_____
Address

_____
City, State, and ZIP Code

( ) _____
Telephone Fax

_____
Signature†

_____
Name of Party

_____
Address

_____
City, State, and ZIP Code

( ) _____
Telephone Fax

_____
Signature†

_____
Name of Party's Attorney or Representative

_____
Address

_____
City, State, and ZIP Code

( ) _____
Telephone Fax

_____
Signature†

Please file three copies with the AAA.

* *If you have a question as to which rules apply, please contact the AAA.*
† Signatures of all parties are required for arbitration.

Form G1–6/91

COMMERCIAL ARBITRATION UPDATE/SEPTEMBER 1993: "Do Arbitrators Compromise?"

(reprinted by the North Dakota Law Review)

The AAA recently conducted a survey of construction awards to determine whether arbitrators compromise when deciding cases. The survey included all commercial arbitration cases which reached an award from January 1992 through December 1992. The following types of cases are included in the survey:

Construction	Securities
Franchise	Entertainment
Real Estate	Commission on Sales
Employment Contract	Shareholder
Computer	Partnership
Equipment Leasing	Home Owner Warranty
Textile	Banking
Patent, Licensing & Trademark	

The survey included 4223 cases. Only those cases in which the dollar amounts (claimed and or counterclaimed and awarded) were clearly stated were tabulated.

The chart below indicates the specific ranges of the arbitrators' decisions on claims:

% of Claims Awarded	# of Cases	Per Cent
80 - 100	1088	26
60 - 79	434	10
40 - 59	452	11
20 - 39	507	12
1 - 19	448	10
Claim denied	1294	31

The results indicate that in 26% of the cases, the arbitrator awarded 80 to 100% of the claim while 1 to 19% of the claim was awarded in 10% of the cases. Only 11% of the claims fell in the 40 to 59% category.

The chart below indicates the specific ranges of the arbitrators' decisions on counterclaims:

% of Claims Awarded	# of Cases	Per Cent
80 - 100	55	5
60 - 79	45	4
40 - 59	62	6
20 - 39	81	7
1 - 19	96	9
Claim denied	763	69

The results also indicate that in 69% of the 1102 cases with counterclaims, the arbitrator totally denied monetary relief on the counterclaim. Eighty to 100% of the claim was awarded in 5% of the cases. Only 6% of the cases fell within the 40 to 59% category.

The data indicates that, in the vast majority of cases, arbitrators tend to decide clearly in favor of one party or the other.

For further details regarding commercial arbitration, CONTACT:

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