

WHY BUSINESSES PREFER TO ARBITRATE THEIR DISPUTES

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1. INTRODUCTION.

- a. **Purpose of this presentation** is to equip lawyers who attend the luncheon with more information about the advantages of arbitration as an alternative dispute resolution process and to provide lawyers with more tools they can use in arbitration proceedings.
 - i. Summary of Texas General Arbitration Act. Tex. Civ. Prac. & Rem. Code ch. 171; *Rachal v. Reitz*, 403 S.W.3d 840 (Tex. 2013).
 - ii. Summary of the Federal Arbitration Act. 9 U.S.C. §1 et seq.; *Hall Street Associates, LLC v. Mattel, Inc.*, 552 U.S. 576 (2008).
 - b. Arbitration experience of the presenters.
 - c. Distinguish business-to-business and commercial arbitration versus consumer arbitration. See “Arbitration Agreements,” Proposed Rule by Consumer Financial Protection Bureau, 81 FR 32830 (May 24, 2016).
 - d. Distinguish international commercial arbitration versus U.S. domestic business and commercial arbitration.
 - i. 9 U.S.C. §201.000 *et seq.* (the New York Convention).
 - ii. *Scherk v Alberto-Culver Co.*, 417 U.S. 506, 94 S.Ct. 2449, 41 L.Ed.2d 270 (1974).
 - e. AAA’s study of 1,000 Fortune 500 companies that showed that the majority of the surveyed companies prefer to resolve their business disputes with arbitration because the **time to resolution** is quicker than litigation and the **cost of resolution** is less than litigation – called “dispute wise” companies.
2. **Examples of business disputes** that Hunter and John Allen have arbitrated – either as advocates or as arbitrators.
- a. Business owner disputes;
 - b. Business break-ups;
 - c. Partnership disputes and break-ups;

- d. Business/Vendor disputes;
 - e. Employer/Employee disputes;
 - f. On-the-job injuries (worker's compensation non-subscribers);
 - g. Healthcare disputes;
 - h. Healthcare Provider/Payor disputes;
 - i. Construction disputes;
 - j. Real Estate disputes;
 - k. Oil and gas disputes;
 - l. Insurer/Insured disputes;
 - m. Landlord/Tenant disputes;
 - n. Creditor/Debtor disputes;
 - o. Intellectual property disputes;
 - p. Producer/Distributor disputes;
 - q. Bank/Bank Customer disputes;
 - r. Securities Industry disputes – FINRA;
3. Almost all these disputes were arbitrated because of **pre-dispute arbitration clauses** in underlying contracts between the parties.
- a. Arbitration is a **creature of contract**.
 - b. The disputing parties have agreed – usually in a pre-dispute agreement – to arbitrate versus litigate their disputes.
4. We often assist clients with the **negotiation and drafting of arbitration clauses** in their underlying contracts – but not the focus of today's discussion.
- a. An arbitration agreement can be as short as one sentence or as long as the parties desire with all kinds of provisions controlling the arbitration process.
 - b. Arbitration is a private process controlled principally by the parties' arbitration agreement.
5. Why do businesses **prefer to arbitrate** their disputes?
- a. To protect goodwill;
 - b. To preserve an existing business relationship;
 - c. To maintain the privacy and confidentiality of the dispute resolution process;
 - d. To get a “final” resolution of the dispute;
 - i. *Hall Street v. Mattel*, 552 U.S. 576 (2008). (U.S. Supreme Court) – Federal Arbitration Act;

ii. *Hoskins v. Hoskins*, 2016 Tex. LEXIS 386 (Tex. 2016). (Texas Supreme Court) –Texas Arbitration Act;

- e. To be able to select or have input in the selection of the decision-maker for the dispute;
- f. To get a decision-maker with specific industry-knowledge and experience;
- g. To determine the limits, if any, of the decision-maker's authority;
- h. To get the opportunity to tell the decision-maker the whole story;
- i. To control or structure the dispute resolution process;
- j. To limit the kind of damages recoverable in a dispute (e.g. punitive damages);
- k. To determine what arbitration rules apply to the process;
- l. To determine what arbitration law applies to the process;
- m. For flexibility in the dispute resolution process;
- n. For informality in the dispute resolution process;
- o. To save time;
- p. To save money;
- q. To cut down on the discovery efforts and costs, especially the effort and cost related to the discovery of Electronically Stored Information ("ESI");
- r. To protect trade secrets and other confidential and proprietary information involved in the business and the dispute;
- s. To prevent class actions;
- t. To arbitrate class actions;