

Arbitration: A Better Resolution How Does Arbitration Differ From Court Proceedings

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I. Strategic Differences

- Strategic considerations when drafting agreement and/or upon commencement of litigation
- Should you select a jurisdiction with well-developed relevant law or arbitration with arbitrators who are industry experts
- Schedule of Proceedings: Litigation versus Arbitration
- Consideration of relative costs
- Finality



II. *Different procedural requirements for trials as opposed to arbitration hearings*

Jury Trial	Bench Trial	Arbitration
Likelihood of intense motion practice	Likelihood of intense motion practice	NOT REQUIRED
Mandatory Pre-Trial Order	Mandatory Pre-Trial Order	NOT REQUIRED
Jury Selection	NOT REQUIRED	NOT REQUIRED
In limine Motions	In limine Motions	NOT REQUIRED
Litigation of evidentiary issues	Litigation of evidentiary issues	NOT REQUIRED
Verdict Sheet	NOT REQUIRED	NOT REQUIRED
Jury instructions	NOT REQUIRED	NOT REQUIRED
NOT REQUIRED	Proposed Findings of Fact and Conclusions of Law	NOT REQUIRED
Post-Trial Motions	Post-Trial Motions	NOT REQUIRED
Appeals	Appeals	NOT REQUIRED

III. *Differences in Use of Experts*

- Is there a Requirement for Expert Reports?
- Depositions of experts
- Tribunal's expertise
- Qualification or disqualification of experts in Arbitration versus Litigation
- *Voir Dire* In court proceedings

IV. *Differences in Awarding Attorneys' Fee and Imposing Sanctions*

- American Rule
- Arbitration Rules
- Inherent Power of Courts
- Addressing misconduct in arbitration

In ReliaStar Life Insurance Co. of New York v. EMC National Life Co., the Second Circuit reversed the vacatur of an arbitration award that included a sanction awarding attorneys' and arbitrators fees. The court noted that a broad arbitration clause confer on arbitrators' authority to fashion any remedy the arbitrators deem appropriate, including sanctioning a party's bad faith conduct. (564 F3d. 81, 86 (2d Cir. 2009); see also, for example *Todd Shipyards Corp. v. Cunard Line, Ltd.*, 948 F.2d 1056, 1065 (9th Cir. 1991).