



Better, Faster, More Economical Arbitration for Energy Disputes

Derrick Carson
David E. Harrell, Jr.

April 15, 2016
Houston, Texas

© 2016 Locke Lord LLP
www.lockelord.com



“[S]hort of authorizing trial by battle or ordeal or, more doubtfully, by a panel of three monkeys, parties can stipulate to whatever procedures they want to govern the arbitration of their disputes; parties are as free to specify idiosyncratic terms of arbitration as any other terms in their contract.”

Baravati v. Josephthal, Lyon & Ross, Inc., 28 F.3d 704, 709 (7th Cir. 1994).

www.lockelord.com

2

So why don't more parties craft unique arbitration provisions?

- Prior negative experience with arbitration
 - Arbitration takes as long as litigation
 - Arbitration is as expensive as litigation
 - Arbitration lacks appellate review
- Jury waiver is preferable
- Lack of planning
- Lack of creativity / knowledge of options
- Fear

Presentation Thesis

Arbitration, even in domestic cases, provides a superior form of dispute resolution in most business transactions, if the parties:

- assess disputes that are likely to arise;
- determine the attributes of arbitration best suited to resolving those disputes;
- draft a clause reflecting their intent; and
- select counsel and arbitrators experienced in arbitration who are willing and able to effect that intent.

Attributes of Arbitration

“The Basics”

- Administered or *ad hoc*
- One arbitrator or a tribunal of three
- Manner of selecting qualified arbitrators
- Discovery restrictions
- Joinder / consolidation
- Form of the Award

Attributes of Arbitration

“Advanced”

- Electronically Stored Information
- Nontraditional forms of arbitration
- Manner of offering evidence
- Restrictions on number of fact witnesses
- Manner for presenting expert evidence
- Limitations on the arbitrators' authority
- Coordinating provisions / strategies across the company

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Better, Faster, More Economical Arbitration for Energy Disputes

First appeared as part of the conference materials for the
42nd Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session
"Better, Faster, Economical ... Arbitration? "