



TIA 2018 CAPITAL IDEAS CONFERENCE

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To Arbitrate or to Litigate... That is the question

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To Arbitrate or to Litigate – that is the Question.

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... Whether 'tis nobler in the mind to suffer The slings and arrows of outrageous fortune, Or to take arms against a sea of troubles, And by opposing end them? -

William Shakespeare, Hamlet Act III, Scene I

CONTRACTING TRAPS

- NOTICE: If your contracts do not provide a dispute resolution clause, you have to litigate regardless of the amount in dispute, and the type of claim involved. (cargo , or personal injury and death.)

CARGO CLAIMS SEPARATION

- Separate cargo claims from personal injury and death.
- Provide for use of small claims court for small dollar amounts and use arbitration if no jurisdiction in small claims courts.
- Separate cargo claims from general freight, and exempt commodities such as fresh foods.

ARBITRATION

- Arbitration Rules:
 - Federal Arbitration Act
 - AAA -American Arbitration Association
 - ADR - Alternate Dispute Resolution of transportation lawyers association
 - DRC - Dispute Resolution Corporation for use with exempt commodities
 - Blue book, Red book, or naptwig rules.
- Arbitration rules can be accessed through google on the internet.
- Arbitrators can be selected who are not only expert in transportation law but also in handling with the type of claim that you have;

ARBITRATION

- **TIMING:**
 - Parties can determine timing of the process
- **PROCESS:**
 - Process is informal and does not require formal hearings or presence at a physical location
- **COSTS:**
 - Costs including attorney fees are less than in litigation because of informality
- **EVIDENCE:**
 - Evidence can be presented on documents including affidavits

ARBITRATION

- HEARINGS
 - Hearings if agreed can be conducted telephonically or by video conference;
- CONTRACTS
 - Contracts can proscribe what law is to be applied. Arbitrators decision must comply with majority opinions of law. Must state “reasoned” opinion including findings of fact and conclusion of law. Attorney fees can be awarded if provided in contract.
- LAW
 - Arbitrator decides all questions of law and fact. Decides on veracity of evidence presented.
- APPEAL
 - Generally no appeal is allowed unless decision is clearly contrary to statute like fraudulently obtained etc..

ARBITRATION

- TIMING
 - Once all evidence is submitted decision the is usually completed and delivered in 30 days.
- ENFORCEMENT
 - In the event of non payment of arbitration award, the award can be converted into a judgement, allowing further collection action.

LITIGATION

- **TIME/COST**
 - Litigation is more time consuming and expensive than arbitration. May be more suitable for complex legal questions, where decisions are non-existent or conflicting.
- **JUDGE**
 - Parties may not select the judge. Judge may or may not be knowledgeable in transportation law.
- **LOCATION**
 - Requires presence of parties (and witnesses) at physical location of court house.
- **VENUE**
 - Variations in rules from state to state and court to court.

LITIGATION

- RULES

- Formal rules of evidence must be followed. Formal discovery procedures must be followed.
- Formal rules of procedure including timing must be followed and interim decisions must be made on motion of the parties.
- Judge may or may not follow majority rules.

- WARNING!

- In personal injury and death cases, jury verdicts can be devastating.

LITIGATION



- APPEALS
 - Appeals may go to next highest court and some states to a 3rd level of appeals.
 - Additional time and expense involved at each level of appeals.
- NOTE: Litigation is generally preferred by plaintiff attorneys.
- Sample arbitration clauses