ABA Section of Litigation
Task Force on ADR Effectiveness

Survey on Arbitration

August 2003

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Introduction

In August 2002, Section Chair Scott Atlas formed the Task Force on ADR Effectiveness. The mission of the Task Force was to survey trial lawyer perceptions of the effectiveness of various alternative dispute resolution processes. From the information developed, the Task Force was to determine whether improvements were needed in ADR processes and, if so, to make appropriate recommendations.

The first ADR process chosen for examination was arbitration. This report will describe what was discovered to be the trial bar's sentiments toward arbitration, and offer suggestions for further programs indicated by that information.

The Survey Process

The Task Force spent substantial time learning the art and science of conducting public opinion surveys in general, and surveys of American lawyers in particular. After reviewing published literature and interviewing experts in the business of constructing and executing public opinion surveys, the Task Force determined that the cost and time involved in completing a formal nationwide inquiry of trial lawyers would be problematic.[1] In light of the budgetary and time constraints within which the Task Force was to operate, a more modest approach to the survey process was adopted.

Accordingly, we drafted our own survey questionnaire and presented it to outside experts for final tuning and adjustment; for the most part, we restricted our inquiry to select members of the Litigation Section; we performed our own data analysis, and we generally attempted to minimize overall costs. While we do not profess to have any expertise in survey techniques, with the excellent help we received from Dr. Thomas Jukam, a recognized authority in the field of public opinion survey work,[2] we are comfortable in claiming the result of our efforts as having reasonable

[1] Following several weeks of discussion and inquiry, the Task Force was informed by one organization specializing in nationwide surveys of legal groups that the cost of preparing, executing and tabulating a sizable population of trial lawyers would take 4 to 6 months and in excess of $100,000 to complete.

[2] The Task Force would like to recognize the critically important contributions to this effort provided by Dr. Jukam of AustinTrends Inc. in Austin Texas. Dr. Jukam provided us with invaluable assistance in finalizing our questionnaire, designing and monitoring the web site used as the principal survey mechanism, and tabulating the results.

statistical validity. We hope that the information developed will be useful to the Section.

The Field Surveyed and the Survey Mechanism

Because they were accessible to us at no significant cost, this survey was focused on trial lawyers who are also members of the Litigation Section.[3] The survey used an internet web based mechanism for collecting and collating the data.

In general terms, e-mails were sent to members of the survey field asking them to visit a web site through a link embedded in the e-mail message. Upon their arrival at the website, the respondents were presented with the survey questionnaire. Upon completion of the survey form the results were electronically recorded and tabulated.

In order to reach litigators who would be more likely to have direct contact with arbitration in their day-to-day legal practice, members of the Construction Litigation, Securities, Business Tort, Insurance Practice, Employment & Labor, International Law, and Trial Practice Committees were contacted. Slightly in excess of 7000 Section members were thus reached. Of those, approximately 10% responded by visiting the web site and completing the questionnaire.

Demographically, 49% of those lawyers responding characterized their primary areas of practice as, “General Commercial”. The bulk of the remaining respondents were from “Construction,” “Labor/Employment,” and “Personal/Injury Tort Law” fields. Sixty percent of those surveyed told us that they represent an equal mixture of plaintiffs and defendants, while the remaining members of the field lean slightly to the defense side (26% defense oriented, 14% plaintiff oriented).

Summary of Findings

The entire body of data collected is attached hereto as “Exhibit A” and “Exhibit B” in both statistical data table and bar chart formats. This data

[3] Although the survey form was distributed using list serve e-mail listings from select Section Committees, some 16% of the respondents reported that they were not members of the Section. We are unable to explain this anomaly.

should be directly referenced to gain a complete view of the survey results. The following general observations, however, were noted by the Task Force.

Overall, 78% of those surveyed believe that arbitration is generally timelier than litigation, and 56% feel it is more cost effective. On balance, however, it does not appear that arbitration carries overwhelming support of the field as an ADR process to be recommended to clients. Only 4% of those surveyed always recommend arbitration to their clients, which is more than offset by 5.5% who claim to always recommend against arbitration. On a broader scale, 60% of those polled report that they suggest arbitration to their clients less than 3 times out of 10, and 34% report that they actively counsel against arbitration 6 times out of 10.

When those who recommend arbitration do so, it is because they feel that the process is cost effective (38%), produces a more prompt resolution (38%), and uses a panel with a greater potential for subject matter expertise and overall quality (23%). It would appear Construction Litigation lawyers tend to recommend arbitration more than the other fields surveyed. The case-specific characteristics that tend to prompt arbitration as a recommended choice of ADR processes are technical, complex subject matter (42%) and low dollar value, *i.e.*, under $250,000 (26%).

Those who affirmatively recommend against arbitration cite lack of appellate opportunity (38%), lack of discovery (24.4%), and excessive costs (22.2%) as their primary reasons. Insurance lawyers seem to lead the group of those recommending against arbitration. The overall cost and time effectiveness of arbitration was also challenged by those generally decline to use the process with administrative expenses and arbitrators' fees and costs cited as making the process more costly (63%), and lawyer's schedules and excessive hearing time (51%) listed as making arbitration less timely than litigation.

Forty six percent reported their opinion that the quality of the arbitration outcome (in terms of client satisfaction, fairness, overall validity) is comparable to outcomes achieved through litigation. The 25% who reported that the quality of arbitration outcomes is not as good as litigation cite "compromise" awards (51.3%) and "occupational prejudices or lack of neutrality" by the panel (34.2%) as the chief reasons. The remaining 29% of those polled feel that arbitration and litigation outcomes are about the same.

Forty eight percent of those surveyed prefer arbitrators with subject matter experience, 29% prefer arbitrators with general litigation experience, and only 18% like arbitrators with judicial experience. Interestingly, the arbitrators of choice thus revealed by this survey turns out to be litigators with experience in the subject matter of the dispute (77%).

The attached raw data reveals deeper levels of detail in each area of inquiry. While that statistical information may present a sterile picture of lawyers' views of arbitration, a more vibrant picture can be obtained by reviewing the verbatim responses solicited by the Task Force in the survey form. In several of the questions posed by the survey, the Task Force elected to allow the respondents to insert their own comments to supplement the answers selected. It is here that more personal information can be found expressed directly in the words of those surveyed. We strongly recommend a review of those comments.

A significant number of respondents, for example, cited contractual or statutory mandates in describing why they recommend arbitration, or in describing the case-specific characteristics which favor its use. One might conclude, therefore, it that some recommendations for arbitration or case attributes favoring arbitration occur when there is no other choice. Some respondents cite a general aversion to juries and judges as a reason to use the process, while others seek to avoid arbitration in an effort to obtain a judicial determination more influenced by law than fact, or a jury's perspective on the case.

Suggestions for Future Consideration

If the Council wishes to pursue this project further, there are a number of possible future tasks to consider.

1. Improve the Survey Process.

As noted, this survey was "homemade" in many respects. Those wishing to quarrel with the results will undoubtedly find fault with the form of the questionnaire, the limited field surveyed, and even the conclusions reached by the Task Force. We do not profess to be experts in conducting public opinion surveys, although we drew upon Dr. Jukam's considerable expertise. If there is a feeling that more reliable data should be collected on a broader scale, one approach would be to appropriate the funds and set aside

the time necessary to complete a more exhaustive, professionally-sponsored survey effort. Alternatively, the data generated by this survey might be more closely examined using professional help.

2. Create a Litigation Section Arbitration Process

If the Council is prepared to accept the data presented as reasonably valid, it appears that there could be some benefit to creating a Litigation Section Arbitration program with its own set of rules and panel of arbitrators. The idea would thus be to create a program addressing the problems with current arbitration systems evidenced by this survey. Such things as providing for limited discovery, allowing some level of appeal, imposing firm time constraints, and creating a panel of experienced litigators with specific subject matter expertise would be among the areas to explore.

3. Become Actively Involved in Arbitration Reform Movements

A review of the literature reveals any number of efforts currently underway to reform or revitalize arbitration in a manner that would deal with problems that people are now experiencing with the process. While some would note that these national efforts are experiencing difficulty in reaching closure due to the complex nature of the subject and the often conflicting agendas of the people and institutions directly involved, injecting a point of view from the trial lawyers who actually use the process could prove useful.

4. Move On to the Next ADR Process

Another option might be to simply preserve the data developed thus far on the arbitration process and move on to survey our constituency on meditation, private judging, dispute review boards, and other ADR formats. Once a more complete picture is developed, the Section could evaluate the data in its entirety to determine what, if any, additional steps would be required.

Conclusion.

Anything that the Section can do to improve the trial bar's professional environment and the client experience in the dispute resolution process warrants serious consideration. Without question, ADR processes have become a major component of today's litigation culture and will

continue to take a prominent role in the experience of litigators and their clients. The Task Force on ADR Effectiveness can facilitate the Section's making a significant impact on the quality of this experience.

We have enjoyed working on this project. On behalf of the entire Task Force, we thank you for allowing us to become involved.

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EXHIBIT A

Statistical Data Tables

ABA Task Force on ADR Effectiveness
August 2003 Report

Q1 Please select the best overall description of your practice

		Frequency	Percent
	General Commercial Law	307	49.0
	Construction Law	94	15.0
	Labor/Employment Law	84	13.4
	Personal Injury/Tort Law	69	11.0
	Securities Law	35	5.6
	Intellectual Property Law	19	3.0
	Insurance/Reinsurance Law	13	2.1
	International Law	6	1.0
	Total	627	100.0

Q2 Please select the best overall description of the area of law in which you most frequently become involved as counsel in voluntary arbitration proceedings

	Frequency	Percent
General Commercial Law	262	41.8
Construction Law	144	23.0
Labor/Employment Law	83	13.2
Personal Injury/Tort Law	60	9.6
Securities Law	48	7.7
Intellectual Property Law	14	2.2
Insurance/Reinsurance Law	13	2.1
International Law	3	.5
Total	627	100.0

Q3 Please select the best overall description of the clients that you most frequently represent in voluntary arbitration proceedings

	Frequency	Percent
Plaintiff/Claimant	90	14.4
Defendant/Respondent	167	26.6
A mixture of both	370	59.0
Total	627	100.0

Q4 In about what percent of your clients' disputes do you recommend voluntary arbitration as a dispute resolution process?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	100% (Always)	26	4.1	4.2	4.2
	90%	29	4.6	4.7	8.8
	80%	31	4.9	5.0	13.8
	70%	47	7.5	7.6	21.4
	60%	26	4.1	4.2	25.6
	50%	64	10.2	10.3	35.9
	40%	22	3.5	3.5	39.4
	30%	69	11.0	11.1	50.5
	20%	107	17.1	17.2	67.7
	10%	127	20.3	20.4	88.1
	0% (Never)	74	11.8	11.9	100.0
	Total	622	99.2	100.0	
Missing	(no response)	5	.8		
Total		627	100.0		

Q5 When you do recommend voluntary arbitration to your clients, which of the following reasons best describes why?

		Number	Percent
Reasons Why Recommend Voluntary Arbitration	Cost effectiveness	210	38.0%
	More prompt resolution	210	38.0%
	Potential quality or expertise of panel	128	23.1%
	Avoiding jury consideration of issues	95	17.2%
	Potential quality of outcome	62	11.2%
	Privacy	59	10.7%
	Potential control over selection of panel	32	5.8%
	Other	28	5.1%

Base = 553 Attorneys who sometimes recommend voluntary arbitration as a dispute resolution process [see Question 4]

Total Percentages may exceed 100% since two responses were permitted

Other Responses to Question 5:
When you do recommend voluntary arbitration to your clients,
which of the following reasons best describes why?

	Other Verbatim Responses
1	All of those
2	Avoid contract negotiation deadlock on court in which disputes are to be litigated.
3	Avoid setting binding precedent
4	Avoidance of foreign court proceedings
5	Avoiding problems of bad judging, vagaries of legal system, allowing for emotional/non-money issues to be well handled, allowing for the power of apology
6	Bound by contract
7	Compelled by agreement
8	Continuing relationships
9	Contractual obligation
10	Contractual obligation to exhaust remedies
11	Contractual requirement
12	Contractual requirement to resolve unsettled grievances
13	Different cases, different reasons. Any answer to this question is meaningless. Meaningless question.
14	Hearings are for date certain unlike trials--clients like it
15	I am an arbitrator.
16	I find that juries are hostile to professional architects and engineers and usually fail to understand the real issues.
17	I recommend mediation rather than arbitration
18	Issues are too complicated to litigate for the amount in issue, and mediation has produced no resolution
19	It's mandatory in securities matters
20	It is the quid pro quo for a no strike clause in labor agreements
21	May facilitate maintaining relationship with adversary
22	May help to settle case.
23	More efficient (time & cost eff.) resolution (this should be one of your choices)
24	No appeal
25	No appeal
26	Only reasonable way of getting agreement to a dispute mechanism in a mulinational agreement.
27	Results in an answer for future references
28	Want to avoid application of statute or case law

Other Verbatim Responses

Q6 Which of the following best describes the most important case-specific characteristics that prompt you to recommend arbitration?

		Number	Percent
Most Important Case-Specific Characteristics	When the subject matter is technical or complex in nature	231	41.8%
	When the dollar amount in controversy is low (Under $250,000)	144	26.0%
	When time is of the essence	117	21.2%
	When privacy is important	86	15.6%
	When the dollar amount in controversy is high (Over $250,000)	28	5.1%
	Other	52	9.4%

Base = 553 Attorneys who sometimes recommend voluntary arbitration as a dispute resolution process [see Question 4]

Total Percentages may exceed 100% since two responses were permitted

Other Responses to Question 6: Which of the following best describes the most important case-specific characteristics that prompt you to recommend arbitration?"

Other Verbatim Responses

1 Ability to select arbitrator
2 All cases
3 All our cases are complex/tech, big fast private
4 Any commercial dispute
5 Arbitration panel better suited to decide issues than jury
6 Avoid Setting Binding Precedent
7 Avoiding a jury trial
8 Avoiding jury on selected matters -- typically defense
9 Case might be dismissed outright in court
10 Case will benefit from more simple forum
11 Compelled by agreement
12 Contractual requirement
13 Contractual obligation
14 Cost - benefit
15 Cost effectiveness
16 Cross Border Agreements
17 Different factors are the most important in different cases. This is a poor question.
18 Exhaustion of remedies
19 Focus on allocation between parties

20 Greater degree of control over outcome
21 I almost always recommend it to the client
22 I am a neutral arbitrator.
23 I recommend mediation rather than arbitration
24 Mandated by the agreement
25 Mandatory
26 None
27 Ongoing relationships
28 Relative attractiveness of parties to jury
29 Some unique issue in case could best be handled by arbitration rather than litigated
30 Speed and Cost
31 The entire process just seems to run smoother.
32 To avoid protracted litigation and have more control over the process
33 To resolve matters relatively quickly and cost effectively, most times.
34 When a practicing attorney as an arbitrator will better understand my position and/or opposing counsels' tactics.
35 When case is simple and resolution obvious, but parties need to be told so by someone other than the lawyers.
36 When concern with lack of review does not outweigh practical benefits
37 When confinement of dispute and cost control are important
38 When I represent a bank (or other lending institution) or a hospital
39 When issue is only contract interpretation
40 When jury appeal is low
41 When opponent has unrealistic expectations
42 When reasonably fair outcome at low cost is desired
43 When subject matter is not mission critical and do not need to preserve appellate review
44 When the $ amount in controversy is low(Under $50,000)
45 When the facts are not complicated and there are no significant novel issues of law
46 When the issues are easy and dollars are low
47 when the parties' contract requires it
48 When the parties are irreconcilably far apart for mediation
49 When the subject matter and issues are narrow and specific.
50 When there are issues other than dollars that need a careful airing, when apology will be helpful, when acknowledgement of hurt is critical
51 When there is an arbitration agreement that may be invoked.
52 Where I am afraid of a jury

Q7 In about what percent of your clients' disputes do you recommend against using a voluntary arbitration process to your clients?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	100% (Always)	34	5.4	5.5	5.5
	90%	60	9.6	9.7	15.2
	80%	49	7.8	7.9	23.1
	70%	44	7.0	7.1	30.3
	60%	23	3.7	3.7	34.0
	50%	72	11.5	11.7	45.6
	40%	28	4.5	4.5	50.2
	30%	68	10.8	11.0	61.2
	20%	70	11.2	11.3	72.5
	10%	97	15.5	15.7	88.2
	0% (Never)	73	11.6	11.8	100.0
	Total	618	98.6	100.0	
Missing	(no response)	9	1.4		
Total		627	100.0		

Q8 When you do recommend against voluntary arbitration to your clients, which one of the following reasons best describes why you do so?

		Number	Percent
Reasons Why Recommend Against Voluntary Arbitration	Lack of appellate options	210	38.0%
	Lack of discovery	135	24.4%
	Excessive costs involved (administrative charges, panel expenses, lawyer time, hearing costs etc.)	123	22.2%
	Quality of panel (bias, lack of neutrality, occupational prejudices, etc.)	88	15.9%
	Lack of evidentiary rules	75	13.6%
	Lack of opinion describing basis of award	31	5.6%
	Excessive time involved (scheduling, hearing time, panel response)	24	4.3%
	Other	112	20.2%

Base = 554 Attorneys who sometimes recommend against using a voluntary arbitration process [see Question 7]

Total Percentages may exceed 100% since two responses were permitted

Other Responses to Question 8:
When you do recommend against voluntary arbitration to your clients, Which one of the following reasons best describes why you do so?

	Other Verbatim Responses
1	A waste of time, as the losing side almost always filed a request for trial de novo, and often no one takes the process seriously.
2	Absence of bias -- need for home cooking
3	Advantage in litigation (costs, delay, summary judgment available)
4	Again, different reasons apply in different cases. This is a poor question.
5	All of the above - the downside to arbitration is far greater than any benefits
6	All of the above
7	All of the above
8	All of the above
9	All the above - that's why arbitration generally terrible
10	Arbitration awards are made by lawyers and out of step with most juries.
11	Arbitration usually results in splitting the baby
12	Availability of cheaper ADR alternatives
13	Belief that another ADR method is more appropriate
14	Believe client should obtain summary judgment in its favor.
15	Better success with jury.
16	Binding
17	Can exert more pressure in state or federal court
18	Cannot agree with adverse party regarding logistics.
19	Client case more attractive to jury
20	Client has a loser.
21	Client more comfortable with traditional litigation
22	Controlling legal issue better heard in court
23	Decision not required to be in accordance with law as it would in court
24	Desire a jury
25	Difficulty in getting opposing party to agree.
26	Discrimination cases: We have burden of proof, employer has all the evidence
27	Doesn't save time or money or provide due process
28	Don't have a good case
29	Eliminates jury option
30	Equitable claims
31	Fact that arbitrators don't feel bound by the law as do courts
32	Failure of arbitrator to follow the law
33	I'd rather let jury decide if parties can't unless I believe client is unrealistic
34	I never recommend arbitration. I recommend mediation.
35	I prefer a jury trial in personal injury cases
36	I wouldn't recommend if I felt I had a good motion to dismiss or summary judgement
37	If case involves favorable law but not favorable facts.
38	Inability to enforce adherence to applicable law
39	Inability to join parties.

40 Inability to obtain agreement of opposing party
41 Inadequate motion practice
42 It has become a retirement program for retired judges and many of them are not prepared to give it the required effort. Instead they look to settle the dispute.
43 Lack of certainty of precedential outcome - the law does not always prevail.
44 Lack of depositive motions
45 Lack of finality
46 Lack of jury
47 Lack of jury trial
48 Lack of leverage
49 Lack of motion practice to narrow case
50 Lack of predictable rules, procedures and outcomes
51 Lack of pressure for settlement
52 Lack of procedural protection (i.e., summary judgment)
53 Lack of random selection of Arbitrator
54 Lack of requirement to strictly follow the law
55 Lack of summary judgements in strictly legal issues.
56 Lack of summary judgment
57 Legal issue decides the case; need prompt equitable relief
58 Limitation of available remedies
59 Limited appeal and uncertain discovery
60 Little chance for summary judgment
61 Loss of jury making decision
62 Lower recovery for complainants
63 Mandatory
64 Mediation is preferred
65 Mission critical/must have appellate review
66 Mistakes of law or fact are not reviewable
67 Most of the above in varying degrees and the uncertainty of how the proceeding will be handled
68 My client can use its financial leverage to force a favorable negotiated result in court.
69 My client has an ironclad case
70 Need for careful application of law
71 Need for judicial precedent or injunction
72 Need for precedent
73 Neither side takes the results seriously and it is ridiculous that the arbitrator only takes about 15 minutes to review the file and then has to put a $ value on it.
74 No agreement compelling arbitration
75 No jury
76 No written agreement to arbitrate
77 Other benefits of judicial system
78 Panel not familiar with legal issues
79 Parties are not susceptible to the process
80 Prefer existing forum

81 Prefer jury to decide fact issues
82 Prefer to be under procedural and discovery rules of court
83 Prefer to have jury as finder of fact
84 Preference for a jury
85 Quality of judiciary
86 Question of law involved
87 Questionable merit
88 Risk of all eggs in one basket with unknown quality and no appeal
89 Serious case where jury will punish defendant
90 Simple process has become too complex to be cost effective
91 Sometimes, we need a law and motion ruling--e.g., statute of limitation, or statute of jurisdiction
92 Specifically want a jury trial
93 Split the Baby Decisions are too common
94 Strategy, litigation has inherent advantages
95 Summary judgment likely
96 Sure winner in litigation
97 Tendency of arbitrators to 'split the baby'
98 Tendency to compromise
99 Tendency to split the baby and divide the results in half
100 The 'splitting the baby' mentality of many arbitrators
101 The law will not necessarily be followed in arbitration.
102 The other side is intimidated by the possibility of a formal trial
103 The plaintiffs in this part of the country will not agree to voluntary arbitration. So there is not much use trying to persuade the client to seek it.
104 The proclivity of arbitrators to 'split the baby'.
105 The result is hardly ever anything more than splitting claims down the middle.

106 The whole process amounts, in my opinion, to consumer fraud - the system is unpredictable, outrageously expensive, and with no appellate control whatsoever more likely to be unfair to someone
107 Too easy and inexpensive for opposition as opposed to litigation
108 Usually not effective
109 Voluntary arbitration is ineffective with Government agencies.
110 Want a jury to make a decision
111 We have a bad case which is tougher to smoke by an arbitrator than a jury
112 Where I want a jury

Q9 Overall, do you consider voluntary arbitration to be more cost effective or less cost effective than litigation, when the total "process costs" (legal fees, witness fees, discovery costs, arbitrator fees and costs, etc.) are compared to the value of the matter in controversy?

		Frequency	Percent
Valid	Arbitration is more cost effective than litigation	355	56.6
	The cost effectiveness of arbitration is same as litigation	185	29.5
	Arbitration is less cost effective than litigation	87	13.9
	Total	627	100.0

Q10 Why do you believe that voluntary arbitration is less cost effective than litigation?[a]

	Frequency	Percent
Arbitrator's fees and costs	40	46.0
Administrative expenses	15	17.2
Additional legal fees required	10	11.5
Hearing costs	4	4.6
Other	18	20.7
Total	87	100.0

a. Asked only of the 87 survey participants who consider voluntary arbitration to be less cost effective than litigation [see Question 9].

Other Responses to Question 10:
Why do you believe that voluntary arbitration is less cost effective than litigation?

	Other Verbatim Responses
1	(no response)
2	A combination of all of the above
3	Administrative expenses if it is an AAA arbitration and the arbitrator's fees
4	All of the above
5	All of the above
6	All of the above
7	All of the above
8	Arbitration rarely works to a resolution
9	Arbitrators are afraid/incapable of controlling the dispute
10	Because rarely does the arbitration decision resolve the case or help in settling or trying it.
11	Combination of forum costs and legal fees in relation to the progress achieved; court process has proven to be more cost effective in most cases--though it depends upon the case
12	Delays in hearings and resulting appeals from arbitration award
13	Less discovery means less complete pretrial evaluation of case
14	Little incentive for defendants to settle
15	More protracted hearings
16	No quality result. It is not worth paying for if noone is going to abide by the results.
17	There is less reliability in the quality of the process than in litigation; and very narrow bases for appeal
18	Usually unsuccessful and adds delay and cost

Q11 Overall, do you believe that a voluntary arbitration process takes less time or more time to complete than a comparable trial court itigation process (i.e., the time elapsed between filing the initial claim and securing a final award or verdict without regard to appeal)?

		Frequency	Percent
Valid	Arbitration takes less time than litigation	490	78.1
	Arbitration takes about same amount of time as litigation	112	17.9
	Arbitration takes more time than litigation	25	4.0
	Total	627	100.0

Q12 Why do you believe that voluntary arbitration takes more time to complete or takes about the same amount of time to complete as litigation? [a]

		Frequency	Percent	Valid Percent
Valid	Lawyers' schedules	41	29.9	30.4
	Prolonged hearing time	28	20.4	20.7
	Arbitrators' schedule	24	17.5	17.8
	Other	42	30.7	31.1
	Total	135	98.5	100.0
Missing	(no response)	2	1.5	
Total		137	100.0	

a. Asked only of the 137 survey participants who do NOT consider a voluntary arbitration process to take less time than litigation [see Question 11].

Other Responses to Question 12: Why do you believe that voluntary arbitration takes more time to complete or takes about the same amount of time to complete as litigation?

Other Verbatim Responses

1 (no response)
2 A combination of the above and generally less rigorous insistence upon deadlines by the panel.
3 A mix of a number of factors including all of the above
4 All of the above
5 All of the above

6 All of the above
7 All of the above, plus lack of hard rules, lack of fixed location, etc
8 All three
9 Arbitrator's AND Lawyer's schedules
10 Arbitrators' inability to control the process
11 Attorney prep time
12 Attorneys can abuse the rules
13 Delay in administration
14 Discovery and as delayed
15 Discovery time is the same
16 Discovery, motion practice, individual calendars (more flexible in arbitration) and hearings are equal in length
17 Fragmented hearing dates
18 In NASD proceedings, NASD appears overwhelmed in processing cases
19 Inability to force a schedule
20 Just as many procedural timelines as court so not expedient
21 lack of finality of scheduled dates
22 Lack of procedures for pre-trial motions
23 Lack of rules - allowing more arbitrary discovery disputes
24 Lawyers attempts to make it more like litigation
25 Less respect for role of arbitrator(s)/ADR firm to set schedule
26 Little opportunity for pre-hearing summary judgment or dismissal may prolong case
27 No good reason, it simply does
28 Poor administration
29 Poor administration, and no power to speed the process.
30 Preparation time is the same
31 Schedules of everyone, along with some arbitrators' reluctance to impose limits upon a party
32 Schedules, continuances, delay in decision making by arbitrator
33 Scheduling is difficult; however, inability to schedule and conclude hearings in consecutive days requires much duplication in preparation and present
34 Scheduling problems of arbitrators and lawyers
35 Selecting the arbitrator/setting Hi/Lo
36 Settlements come about quicker with litigation
37 The overall time line is too long in big cases
38 The pre-hearing process and the post hearing exchanges of memoranda is the same. The hearing adjournments and trial adjournments are at the whim of the of the arbitrator or the judge.
39 The same Discovery required either way
40 Time is a function of procedural timing of comparable court proceedings
41 Typically inefficiency of case administrator and unwillingness of arbitrator(s) to abide to schedule
42 With discovery, the work involved is about the same. Most of my litigated matters are non-jury. As a result there is really little time saving in arbitration.

Q13 In general, how would you rate the quality of the outcome (the fairness, validity, client satisfaction etc. associated with final awards) resulting from voluntary arbitration proceedings?

		Frequency	Percent
	Outcome quality is about the same as litigation verdicts or judgments	292	46.6
	Outcome quality is better than litigation verdicts or judgments	177	28.2
	Outcome quality is not as good as litigation verdicts or judgments	158	25.2
	Total	627	100.0

Q14 Why do you believe that the general quality of outcomes from arbitration proceedings is not as good as litigation verdicts or judgments?

		Number	Percent
Reasons Why	"Compromise" awards customarily given by arbitrators	81	51.3%
	Occupational prejudices, bias, or lack of neutrality of the arbitrators	54	34.2%
	No basis for award customarily given by arbitrators	25	15.8%
	Lack of evidentiary rules in arbitration process	21	13.3%
	Subject matter competence of the arbitrators	20	12.7%
	Other	22	13.9%

Base = 158 Attorneys who rate the outcome quality resulting from voluntary arbitration to be not as good as litigation verdicts or judgments [see Question 13]

Total Percentages may exceed 100% since two responses were permitted

Other Responses to Question 14:
Why do you believe that the general quality of outcomes from arbitration proceedings is not as good as litigation verdicts or judgments?

	Other Verbatim Responses
1	A blend of various factors
2	Absence of discovery and potential for abuse
3	All of the Above
4	Arbitration does not work well in multiparty disputes ,especially if the parties are spread out geographically. It also doesn't work well where you need to comp
5	Arbitrators are told to ignore the law and any contract
6	Arbitrators do what they think is 'fair' rather than follow the law
7	Arbitrators don't feel fully bound by the law
8	As expensive as litigation, but lacking procedural protection
9	Counsel prepare a poor case
10	I avoid arbitration if possible, and welcome mediation if it is in the best interests of my client.
11	Inability to obtain summary judgment
12	Intransigence of parties
13	Lack of adherence to governing law
14	Lack of jury consideration
15	Lack of public access to information about the suit.
16	Lack of quality control of arbitrators compared to judicial selection and information available about judges
17	No appeal
18	No procedural protection, no appeal, and variable quality of arbitrators
19	Non appealability -- appeals correct errors
20	The lack of any appellate review process for arbitrators' decisions
21	Trial by ambush -- unpredictable
22	Very limited right of appeal

Q15 Generally speaking, which one of the following classes of arbitrators produces the best awards in terms of fairness, validity, and acceptability to the parties?

		Frequency	Percent
	Arbitrators with professional knowledge of, or experience with, the subject matter of the controversy	304	48.5
	Arbitrators with general litigation experience	182	29.0
	Arbitrators with judicial experience	111	17.7
	Other	30	4.8
	Total	627	100.0

Other Responses to Question 15:
Generally speaking, which one of the following classes of arbitrators produces the best awards in terms of fairness, validity, and acceptability to the parties?

	Other Verbatim Responses
1	(no response)
2	(no response)
3	(no response)
4	A bad judge with judicial experience will be a bad arbitrator. Arbitrators with experience may tend to judge the case in accordance with their experi
5	All of the above
6	Arbitrators able to remain objective who have intellectual talent
7	Arbitrators who are attorneys and possess knowledge of, or experience with, the subject matter of the controversy
8	Arbitrators who know how to listen and maintain a calm environment for the case
9	Arbitrators who take the time and make the effort to really understand the problem
10	Arbitrators with both professional and legal knowledge
11	Arbitrators with common sense
12	Arbitrators with intelligence and integrity
13	arbitrators with life experience comparable to working men and women
14	Arbitrators with ligitation experience in the dispute area
15	Attorneys with knowledge of or experience with the subject matter of the controversy.
16	Attorneys with substantive experience in field
17	Depending upon the case and the arbitrator, it is either someone with judicial experience or some with experience in the specific area
18	Different cases, suggest different choices.
19	Doesn't matter
20	Don't know
21	Experienced arbitrators
22	I haven't seen a clear pattern/depends on the type of case
23	I think the tendency of the arbitrator to seek a compromise result cuts across the board
24	In cases involving sophisiticated legal and factual issues, arbitrators with experience dealing with complex corporate matters.
25	No pattern
26	None of the above--it is totally unpredictable
27	Not seen difference
28	Panel with combined industry and litigation experience
29	The class does not matter. It is the quality of the people making the decision, i.e. do they have good judgment, are they attentive and open minded pending the decision.
30	Too subjective to answer

Q16 Which, if any, of the following best describes steps that you have most frequently taken (or attempted to take) to improve voluntary arbitrations in which you have been involved?

		Number	Percent
Steps most frequently taken	Incorporating discovery into arbitration process	240	38.3%
	Requiring arbitrators to apply governing substantive law	219	34.9%
	Requiring arbitrators to provide opinions explaining awards	183	29.2%
	Requiring arbitration process to be completed within specified period of time	70	11.2%
	Requiring arbitrators to apply rules of evidence	59	9.4%
	Requiring arbitrators to render award within specific period of time	35	5.6%
	Other	35	5.6%

Total Percentages may exceed 100% since two responses were permitted

Other Responses to Question 16:
Which, if any, of the following best describes steps that you have most frequently taken (or attempted to take) to improve voluntary arbitrations in which you have been involved?

	Other Verbatim Responses
1	All of the above
2	All of the above
3	Avoiding AAA and like services and making arbitrator selections by agreed protocol with opponent.
4	Choosing arbs who are employed, not retired
5	Depends on the case
6	Detailed contract provisions governing arbitration.
7	Giving the parties absolute right to approve each member of the panel.
8	I haven't found a good way to improve arbitrations.
9	In securities arbitration you are stuck with the SRO's rules
10	Including prehearing conferences to deal with the six subjects listed above.
11	It is almost impossible to get plaintiffs to agree to voluntary arbitration here. We have much luck with mediation.
12	Keep lawyers off the panel; keep principals in the drifvers seats.
13	Limited discovery
14	Limited discovery only.
15	Limiting discovery
16	Limiting to one (1) the number of arbitrators
17	None
18	None
19	None of the above is an adequate substitute for a a good judge -- but you don't always get good judges and you don't always get good arbitrators.
20	Not applicable
21	render awards within a 30 day period after closing evidence
22	Requesting aggressive time management and consecutive hearings
23	Requesting non-binding arbitration
24	requiring arbitrators spend atleast 2 hours reviewing the file
25	Requiring arbitrators to disclose the number of arbitrations with my opponent
26	Requiring one arbitrator, private with no affilation wtih AAA or similar group
27	Requiring panel-appointed arbitrators to refain from ex parte communications with the parties or their attorneys
28	Requiring that arbitrators have expertise in the subject area
29	Selected an arbitrator who is an attorney with knowledge of, or experience with, the subject matter of the controversy
30	Selecting only one arbitrator, when possible.
31	Specifying and limiting the types of relief and the dollar amounts the arbitrator may award
32	Telling arbitrators that if I have not proven my case, rule against me, but do not 'split the baby'
33	The most important factor in arbitration is selecting good arbitrators.
34	Using a mediation format
35	Using arbitrators that are familiar with the facts of the case