

ADR – Recent Developments in (and out of) Texas



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Arbitration Under Fire



News from Austin (Bills that didn't pass)

- Bills that didn't pass:
 - SB 222 – banning arbitration in employment, consumer, and franchise contracts
 - HB 2696 – Arbitration unenforceable if violates right protected by US / TX Constitution

News from Austin (Bills that Did Pass)

- SB 1650 – Tx Appellate Courts have jurisdiction over interlocutory FAA appeals
- HB 1083 – Court may not send action to mediation if subject to FAA
- HB 2256 – mediation for out-of-network health benefit claims disputes

Who Decides Arbitrability?

- AAA rules, when incorporated into a contract, may delegate authority to the arbitrator(s) to determine:
 - Challenges to jurisdiction
 - Arbitrability
 - Validity of arbitration agreement (or contract containing agreement)

New AAA Constr. Ind. Rules

- Effective 10/1/2009
- Parties may adopt FT or LCC rules for cases of any size
- Use of AAA Rules requires use of AAA
- Require written notice of change of claim \$\$ amount
- Arbitrator may terminate a dispute for non-payment

Arbitrator Liability?

- Confidentiality standards
- Failure to complete arbitration
- Failure to apply rules?
 - Guzman paper
- Failure to disclose?
- “Improper” disposal of documents?

Mediator Liability

- Confidentiality Standards?
- Not practicing law
- Drafting agreements
- Commenting on (misrepresenting?) case quality
- Procedural agreements

Challenges to Arbitration Awards

- Is “Manifest Disregard” standard dead?
 - Vitarroz Corp. v. G. Willi Food Int’l.:
 - “Hall Street . . . only highlighted its impermissible applications”

Arbitration Becoming Like Litigation?

- Growing concern over procedures, fees, pre-hearing motions

Creative Uses of ADR

- Pre-dispute mediation
- Active arbitrator involvement
- Facilitated fact-finding



“Even if
you’re on the
right track,
you’ll get run
over if you
just sit there”
-Will Rogers