

WHEN CONTRACTS GO GLOBAL



INTERNATIONAL ARBITRATION PAYS OFF

EDITORIAL | STEPHEN K. VALENTINE JR.

WITH GLOBALIZATION AND THE EVER-SHRINKING WORLD, OUR CLIENTS' DEALINGS WITH COMPANIES FROM AROUND THE GLOBE INCREASED RAPIDLY. AND, AS WOULD BE LOGICAL, DISPUTES WITH THESE COMPANIES BECAME AS STATISTICALLY COMMON AS WITH DOMESTIC COMPANIES.

As part of the evolutionary process and in anticipation of inevitable disputes, the desire, if not the requirement, of at least some parties to agreements is to have a method of dispute resolution with which they are familiar, usually in the jurisdiction in which they reside. Thus many of the proposed or executed contracts presented to our firm by our clients contained provisions for dispute resolution under foreign laws and in various foreign courts or by international arbitration. These contract terms are often alien to the clients' (and many lawyers') way of thinking and past experiences. While some of the terms are reasonable, others are obviously slanted toward one party's agenda. On more than one occasion our clients (without consulting us or any other knowledgeable lawyer) signed agreements, which, because of the specified law and/or forum could present significant problems. And, of course, the clients did not realize what they had done until afterwards.

Our office has been involved in several international arbitrations with excellent awards well into the multi-millions. Although the initial cost of arbitration may be substantial, the net cost can make the investment worthwhile. And, these fees are often awarded to the prevailing party. However, the procedures are different than what we are used to in the United States and other common law jurisdictions. So it is critical to have an attorney who is familiar with international arbitration and to adapt the presentation of a case with those variances in mind.

In general, the role played by reputable and impartial international arbitration associations may be helpful in developing a sense of neutrality and trust between parties from different countries and cultures. One peripheral benefit is often a less acrimonious dispute-resolution process. There are several international arbitration in-

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stitutions that are well recognized and provide a forum which is fair and neutral and which can be acceptable to both parties. The fees and other costs charged by these institutions vary, as do some of their rules of arbitration. So these factors should be evaluated as part of the process to determine which of these venues would work for your given circumstance. And, of course, this should be done in advance as part of the preparation for negotiation.

The growth potential for commercial disputes between citizens of different countries and cultures will increase dramatically in the years to come, including those involved with sales agent/principal issues including commission disputes. And, in many circumstances, dispute resolution utilizing the neutrality of international arbitration associations provides the best,

and very possibly the most cost-effective means to achieve the objective. This is particularly so where the rules of arbitration utilized provide that the parties will carry out any award promptly and that they waive their right to any form of recourse to the extent that such a waiver can validly be made. This type of accord goes a long way toward a successful judicial confirmation of an award in the courts should such action be necessary.

In closing, it bears repeating that if confronted with a contract that has a foreign law and/or foreign forum provision, getting knowledgeable advice as to the ramifications of agreeing to such a dispute resolution process is critical. With proper guidance it may be possible to negotiate a reasonable compromise on forum and law selection and thereby protect your important rights. 

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