Compulsory Arbitration Useful in Small-Exposure Cases

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The Legal Intelligencer
January 20, 2015

Alternative dispute resolution, and particularly mediation, is known to be an excellent tool for resolving high-exposure cases. From the defense perspective, parties use this tool to avoid substantial risk in favor of a more certain outcome, as well as to limit costs and fees. From the plaintiff's side, it is a way to limit time and effort that could otherwise be put to valuable use elsewhere. It also gives plaintiffs some sense of control over the result, as they have the final say in determining whether or not to ratify and accept the offer. However, due to the costs that can be associated with mediation, ADR can sometimes be a tough sell to clients in lower-exposure matters.

Arguably, however, ADR is more effective—and more necessary—in lower-exposure cases. Limiting the time that a plaintiffs attorney works on a file, and cutting off the cost of defense at an appropriate time, can have a far more dramatic impact on the bottom line in a $25,000 to $50,000 case than it will have on a $250,000 to $500,000 case.

Fortunately, via 42 Pa.C.S. § 7361, the state provides parties with the compulsory arbitration program free of cost. Approaching the arbitration program with an ADR mindset, and understanding how the program can be used as an ADR tool, can provide parties with a cost-effective solution that puts smaller cases to bed at a reasonable cost and allows everyone involved to move on to more pressing matters.

A NEUTRAL EVALUATION

The arbitration system gives each party a chance to tell its side of the story and receive, in return, a suggested valuation determined by three practicing attorneys from the county where the case is filed. This neutral evaluation can serve as a final judgment if neither side appeals. More often, it is the starting point for a 30-day negotiation period that culminates in each party making the final decision of whether or not it is worth the cost to appeal the matter and request either a jury or nonjury trial.

The approach that the parties take to the hearing, however, can be a substantial factor in determining the hearing's utility from an ADR perspective. If the parties approach the hearing like they would any other trial, they may be missing an opportunity to resolve the matter in a manner that is cost-effective for everyone involved. If the goal of the parties is to resolve the litigation at a relatively low cost, without the need for a jury trial, some practical changes can help to bring about this mutually desirable result.

As is noted above, the utility of the compulsory arbitration process centers around the quality of the neutral evaluation. The arbitrators, however, can only rely on the cases set forth before them in making their decisions. Thus, it is no surprise that unprepared attorneys and clients can take what would otherwise be a worthwhile process and render it meaningless.

If one party is still waiting for critical medical records, lien information or wage-loss

documentation a week before trial, it would certainly make sense for the other party to leverage this situation to gain a favorable trial or settlement result for their client. However, in the arbitration context, it may make more sense to adjourn the hearing until the necessary records are gathered and the attorneys are properly prepared (at least the first time). If one side is totally unprepared for a hearing, it will be useless from an ADR perspective as the valuation provided will not truly reflect the merits of the case. More importantly, the party that bears the brunt of the surely lopsided result will no doubt file an appeal, obtain the necessary records and move forward with their case—resulting in increased costs and efforts for both sides.

A similar consideration is how to deal with questionably admissible evidence at the hearing itself. Pa.R.C.P. 1305(a) makes it clear that the Rules of Evidence are to be followed at arbitration hearings (with some limited exceptions). However, counsel should be wary of the effect that multiple, technical evidentiary objections can have on the parties to an arbitration proceeding.

As noted above, there can be some practical reasons for treating arbitration hearings quite differently than we treat a jury trial proceeding. At trial, all important evidentiary objections must be made in order to preserve the record on appeal. To avoid the necessity of appealing a jury trial, attorneys raise these objections and argue them vigorously to ensure that the only evidence heard by the jury is competent, relevant evidence not otherwise excluded by the rules. At arbitration, however, this is not the only route to take.

Anyone with substantial experience in ADR would likely suggest that one of the reasons that it can be so effective is that it offers clients a forum to tell their side of the story. It gives them a chance to get much needed things off of their chest and provides them with a neutral evaluation as to how their claims will be perceived.

ATTORNEYS AS FACT FINDERS

In an arbitration hearing, the parties have the benefit of having three attorneys serve as the fact finder, as opposed to jurors who are unfamiliar with the Rules of Civil Procedure or the Rules of Evidence. Thus, an attorney aiming to get the matter resolved should take note that the arbitrators likely know how much weight to place on evidence that would not be admissible at trial. A prudent arbitration attorney, therefore, should take care to weigh the usefulness of each objection against the possibility that its being granted may drive a party—who still feels that he has not had his day in court—to appeal a ruling that otherwise may have been acceptable. An attorney who wins the battle by having a hearsay objection granted may, in effect, lose the war when the proper witness sits on the stand at trial to testify after countless unnecessary hours of trial preparation and thousands of dollars' worth of legal fees. The objection may or may not have been helpful in gaining a more favorable result at the arbitration hearing. However, a question would certainly remain as to whether it was worth the cost.

If resolution is the goal, a similar approach should be taken with respect to questions related to the admission of documents. As those familiar with the compulsory arbitration rules are aware, Pa.R.C.P. 1305 provides parties with a vehicle to clear hearsay objections for otherwise admissible documents if they serve them on the other side 20 days in advance. Additionally, there is a provision allowing for the admission of such documents into evidence, even if not served 20 days before in conjunction with a formal Rule 1305 notice, so long as they were exchanged in discovery.

It is not uncommon for attorneys—for whatever reason—to fail to comply with this rule but to still seek to admit the documents at the hearing. Again, a party who seeks to gain

closure from an arbitration proceeding should weigh the effect that the documents' exclusion may have on the big picture before logging a strenuous objection before the panel. Excluding the other side's medical bills may result in a lower award at the hearing. But it may also result in an immediate appeal. There are times when a line in the sand must be drawn and objections must be made. However, as noted above, the effect that this can have on the litigation as a whole should at least be considered by counsel.

Finally, as with any other form of ADR, we must remember that taking all of the above steps to properly present a case before the panel, and gaining a fair and proper valuation of the claim, is only half the battle. As with mediation, the final decision to accept or reject the decision of the panel rests with the client. However, by properly explaining the process from the outset, and by placing the result within the context that it was rendered, we can do our best to make sure that our clients understand that the program presents an excellent opportunity to put behind them a dispute that is costing them time, money and potentially serious emotional investment, and move on with their lives and business. And perhaps the best part is that the program is free (unless and until someone appeals).

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