

The Same Result As In Court, More Efficiently: Comparing Arbitration And Court Litigation Outcomes

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Parties choosing to arbitrate disputes look for a quicker, more efficient, and less expensive resolution than traditional litigation provides. At the same time, parties want an expert decision maker to review the evidence and provide them with the same substantive outcome, in the form of an arbitration award, that they would have received had they sought a judicial decision. In short, arbitration involves the election of a different – and more efficient – forum, but should not alter the substantive rights of the parties or the availability of remedies.

The degree to which arbitration actually succeeds in providing the same result as court litigation has been the subject of some speculation. While anecdotal accounts of parties' experiences with arbitration and surveys of arbitrating parties and attorneys have indicated that arbitrations are resolved more quickly than lawsuits and that parties consider arbitration outcomes to be fair,¹ relatively few empirical studies have compared actual arbitration and litigation outcomes. The outcomes comparison studies that have been published show that arbitrating parties receive outcomes similar to parties who choose to litigate and that arbitrations are resolved much more quickly than lawsuits.

This article presents new comparison analyses based upon consumer arbitrations conducted in California. These new results are entirely consistent with those presented in previous reports. The "win" rates of consumer and business arbitration claimants are within a few percentage points of the win rates of consumer and business litigation plaintiffs. And arbitration cases are resolved much faster than cases in court litigation. In fact, for some types of claims, arbitrations conclude more than a year sooner than litigated cases.

Arbitration Procedures

Arbitration administrators strive to deliver the "same result, more efficiently" by providing rules and procedures designed to promote fair and efficient dispute resolution. The National Arbitration Forum (FORUM) approach is particularly strong in this regard. FORUM arbitration rules promote efficiency by setting realistic procedural deadlines and enforcing reasonable limits on party conduct. By exclusively using arbitrators who are legal experts and requiring arbitrators to follow the law in their decisions, the FORUM ensures that arbitration awards closely track results that would have been obtained in court.

FORUM arbitrations achieve efficiency by structuring arbitrator selection, claim and response submission, discovery, and the conduct of the hearing. Clear rules and realistic deadlines allow parties to focus their arguments on the merits of the dispute instead of on the procedural details.

Because discovery is so often lengthy, contentious, and expensive in court, it

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may be the best example of the efficiencies available with arbitration. Parties to FORUM arbitrations have access to similar discovery methods as those available in court, such as document requests, requests for admissions, interrogatories, depositions, and requests for physical or mental examinations. However, FORUM rules allow arbitrators to place reasonable limits on the scope and duration of discovery, while still allowing parties to prove their claims or defenses. By rule, a party is granted discovery in a FORUM arbitration when 1) the information sought is relevant, reliable, and informative to the arbitrator, 2) the cost is "commensurate with the amount of the claim," and 3) production is reasonable and not unduly burdensome and expensive.²

FORUM rules encourage consistency with court outcomes by requiring that arbitrators "follow the applicable substantive law" when resolving disputes and permitting arbitrators to "grant any legal, equitable or other remedy or relief provided by law" in deciding claims.³ By providing decision makers who are experienced legal experts, directing them to apply the same law that would be applied in court, and allowing them to award the same types of relief that would be available in court, the FORUM discourages compromise outcomes and creates ideal conditions for achieving the same substantive outcome as the parties would have received had they litigated the dispute.

Previous Studies Comparing Arbitration To Court

Although producing the "same result, more efficiently" is an important goal for arbitration, there is relatively little empirical research on the issue. A major obstacle to this type of outcomes study is the difficulty in gathering comparable litigated and arbitrated cases. Where arbitration and court outcomes data is available, there may be systematic differences between the arbitration cases and the court cases that render the comparison something less than apples-to-apples. The best available approach is to compare outcomes of similar types of cases that have been decided in court and in arbitration.

For example, a study published in the *Dispute Resolution Journal* compared 125 employment discrimination lawsuits filed in the Southern District of New York, with 186 arbitration claims involving employment disputes in the securities industry.⁴ The data showed that employee claimants

prevailed 46% of the time in arbitration compared to 34% in federal court. The median monetary award amount was slightly higher in arbitration, and the median time from filing to judgment was 16.5 months in arbitration compared to 25 months in litigation.

Also, a 1998 comparison of arbitration and litigation published in the *Columbia Human Rights Law Review* noted that employees prevailed over employers in 63% of employment arbitration cases filed with the American Arbitration Association between 1993 and 1995.⁵ To compare, only 14.9% of employees who brought cases to federal district court in 1994 prevailed in their litigation. The average duration of an arbitrated claim was 8.6 months, compared to 2.5 years in litigation.

New Analyses Using California Consumer Arbitration Data

California Code of Civil Procedure Section 1281.96 requires arbitration administrators to publicly disclose certain information about California consumer arbitrations. Mandatory disclosures include whether the consumer or nonconsumer party prevailed in the arbitration, the type of disposition (i.e., award after hearing, settlement, default, etc.), and the start and end dates of the arbitration.

This analysis compares "win" rates and case durations from disclosed 2003-2004 National Arbitration Forum consumer arbitration awards from California⁶ with publicly-available outcomes information from the Bureau of Justice Statistics on litigated contract cases involving individuals in the 75 largest counties in the United States.⁷ Similar types of cases from arbitration and civil litigation are compared (contract cases involving individual consumer and business parties), rather than carefully matched samples. However, the similarity in win rates for consumers and business claimants, along with the much shorter duration from initial filing to final disposition for arbitrations, illustrate that FORUM arbitrations meet the challenge of delivering the same result as do courts, but in a more efficient manner.

"Win" Rates in Arbitration are Similar to Court

The California data shows that when consumers bring arbitration claims against businesses, the consumers prevail in 65.5% of cases that reach a decision. To compare, buyer plaintiffs litigating contract claims in the 75 largest American counties prevailed 61.5% of the time overall, and 60.9% of the time in cases decided by bench trials.

When businesses bring arbitration claims against California consumers, the businesses prevail in 77.7% of cases that reach a decision. To compare, seller plaintiffs litigating contract cases in the largest 75 counties prevail 76.8% of the time overall and 78.9% of the time in cases decided by bench trial.

These results show that the win rates for consumers and businesses bringing claims in arbitration are within just a few percentage points – and, sometimes, just fractions of a percentage point – of the win rates of individuals and businesses bringing contract claims in court. These percentages confirm previous survey and outcomes research results indicating that

parties obtain the same substantive result in arbitration as they do in court.

Case Duration in Arbitration is Shorter than Litigation

While the prevailing party analysis shows a marked similarity between arbitration and court litigation, the difference in case durations is striking. In arbitration, the median duration from initial filing to final disposition is 4.35 months for claims brought by consumers against businesses and 5.60 months for claims brought by businesses against individuals.

In contrast, claims filed by individuals against businesses in court have a median length of 19.4 months. Lawsuits filed by businesses against individuals have a median length of 15 months.

This data strongly reinforces the general understanding that arbitration is a quicker and more efficient process than court litigation.

Arbitration Costs are Very Reasonable

The California consumer arbitration data also reveals the arbitration fees paid by businesses and consumers. In arbitration claims brought by businesses against consumers, businesses paid an average of \$149.50 in arbitration fees. In arbitration claims brought by consumers against businesses, consumers paid an average of only \$46.63 in arbitration fees.

Conclusions

The analyses presented in this article confirm earlier results. Consumers prevail at similar rates in arbitration and in court. In this data, businesses prevail at a rate only one percentage point higher in litigated, compared to arbitrated, cases; consumer win rates were only slightly higher in arbitration proceedings versus consumer win rates in court litigation.

Arbitrations are also demonstrably quicker and more efficient than court litigation, concluding in roughly one-third of the time as litigated cases. Arbitration costs are remarkably low.

The similarities in win rates illustrated by this data make sense. FORUM arbitrations, like bench trials in court, are decided by a legal expert tasked with weighing the evidence and applying the substantive law. With this in mind, the similarity in win rates is no surprise. The shorter duration of arbitrated cases is a result of the efficient procedures prescribed by the FORUM arbitration rules.

¹ See, e.g., *U.S. Chamber of Commerce, Institute for Legal Reform, Arbitration: Simpler, Cheaper, and Faster Than Litigation*, April 2005, available at www.instituteforlegalreform.org/resources/ArbitrationStudyFinal.pdf (arbitration seen as faster (74%), simpler (63%), and cheaper (51%) than going to court); *Ernst and Young, Outcomes of Arbitration: An Empirical Study of Consumer Lending Cases*, available at www.arb-forum.com/media/EY_2005.pdf (69% of arbitrating parties satisfied or very satisfied with arbitration process).

² *National Arbitration Forum Code of Procedure, Rule 29.*

³ *Id.* Rule 20(D).

⁴ *Michael Delikat & Morris M. Kleiner, An Empirical Study of Dispute Resolution Mechanisms: Where Do Plaintiffs Better Vindicate Their Rights?*, 58 *DISPUTE RESOLUTION JOURNAL* 56, 57-58 (2004).

⁵ *Lewis L. Maltby, Private Justice: Employment Arbitration and Civil Rights*, 30 *COLUM. HUM. RTS. L. REV.* 29, 45-48 (1998).

⁶ Available at www.adrforum.com/focus/consumers/ca_consumer.asp. This analysis uses data from 2003 and 2004, the most recent years for which complete data is available.

⁷ See *Thomas H. Cohen, Bureau of Justice Statistics, U.S. Department of Justice, Contract Trials and Verdicts in Large Counties, 2001*, 4 (2005); *Lea S. Gifford, et al., Bureau of Justice Statistics, U.S. Department of Justice, Contract Trials and Verdicts in Large Counties, 1996*, 5 (2000).

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