

*Maritime Arbitration: Dispute resolution outside the courtroom*

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Let's face it. Ours is a complex industry full of unusual concepts, business practices, terms and nomenclature which many folks just don't get. Laypeople find the transportation industry's underpinnings even more Byzantine. If you don't understand the principles and doctrines, how can you figure out *why* they're there, and what purpose they serve?

For those and other reasons, federal law nixes the right to trial by jury when it comes to most admiralty jurisdiction cases (those pertaining to waterborne carriage), and places parties to maritime conflict solely before a black-robed referee who rules as to matters of both law and fact. Judges are accustomed to discerning esoteric subjects and getting to the heart of what's legally at issue.

But many in the shipping business, especially when it comes to big-stakes claims, aren't comfortable with a landlubber making the calls. They feel the bench's view of the waterfront just isn't broad enough, despite judges' impressive credentials and experience. So it's not surprising our industry often seeks means for dispute resolution outside the courtroom.

Arbitration essentially empowers non-judicial organizations or persons to rule definitively on disputes that otherwise would be submitted to court litigation. The concept has been around longer than courts have, although the circumstances have evolved as a function of the pluses and minuses of conference-room trials. With some court dockets now bumping trial dates out two years or more, those interested in expedited decisions might embrace a private proceeding whose duration may be shortened. Federal court litigation's rigid formalities can be expensive, as can be the hoops parties must jump to get evidence before His Honor. These costs often may be avoided in arbitration. One caveat, however, is that some arbitration organizations have gotten rather pricey themselves.

Discovery, i.e., the parties' broad right to obtain information and evidence pertaining to their cases, may be curtailed in arbitration proceedings. The transportation industry and those it services often aren't keen on broadcasting to the world business secrets (which typically include the contents of confidential service contracts). Even if information must be disclosed in an arbitration, the sensitive stuff can better and more reliably be kept under wraps when it's presented in a closed proceeding (instead of a public trial), and won't be left sitting indefinitely in a court's archives.

Another compelling reason why parties arbitrate is that it's a much less confrontational experience for parties and witnesses. When players might like to continue doing business with each other, or if they're concerned about their industry image, the chummier

arbitration environs might spell the difference between long-term, productive friendship or eternal animosity. With the number of industry participants shrinking as a result of mergers and business failures, this point can be significant.

But the selection of an industry-familiar arbiter ranks highest in the list of reasons why maritime conflicts often are arbitrated. Salty lawsuits frequently involve fact-driven issues in the context of those hard-to-follow business principles and strange language. Arbitrators can be plucked right from industry, or from prominent lawyers in the admiralty bar. These folks need not be educated ground up, they have a big-picture perspective of the issues involved; and they can usually see through the ship in deciding what caused a conflict. A flourishing cottage industry caters to maritime dispute resolution by providing lists of arbitrators versed in nearly every imaginable sub-category of the shipping business.

Parties must agree to arbitration, usually done in advance as part of a contract (thus, those arbitration clauses usually found toward the bottom of lengthy bills of lading and other shipping documentation). Even without prior contractual terms, parties can agree to submit their beef to alternative dispute resolution in lieu of a court proceeding, or even after one has begun. In fact, parties can submit only a part of their quarrel to arbitration (typically technical or operational fact issues), leaving application of the law to a court.

Volumes have been written about this subject. Paradoxically (given how much judges love docket-clearing arbitration), a large body of judicial case law addresses alternative dispute resolution. Cases deal with the subject in the context of an entire section (Title IX) of the U.S. Code, generally enforcing the Federal Arbitration Act's preference for arbitration liberally.

All in all, arbitration makes sense, unless you're trying to beat your adversary by financial attrition, have a weak case you'd just as soon have decided by someone not versed in shipping, you already can't stand your adversary, and/or you'd prefer to wait a couple years before paying up (don't write, that irony reflects the attitude of only a small minority of maritime litigants). To the extent possible, dispute should be resolved amicably. When used correctly, arbitration can be the least expensive, most reliable and expeditious way to get conflicts behind you.

Ref: The Federal Arbitration Act, 9 USC §§ 1 *et seq*, available at <http://www4.law.cornell.edu/uscode/9/>.