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Cybersecurity and Artificial Intelligence Dispute Resolution: From Contention to Synergy

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This paper explores the dimensions of resolving disputes in cybersecurity and uses the Federal Arbitration Statute and the Courts to bind the parties to their contracts. The paper explores artificial intelligence and the nuances of legal issues that potentially could arise and applies dispute resolution modalities to help businesses become more productive as opposed to being mired down in litigation, creating an efficient path forward. Reading this paper is worth your time because: (1) you will learn how to use the court system to achieve good results in cybersecurity and artificial intelligence disputes applying the Federal Arbitration Statute; (2) you will become more efficient many times over; (3) with so many disputes and so little time, and inflation having increased the cost of doing business, we can ill afford to waste money. Finding solutions that have the full authority of the courts, without going through litigation, is essential to profitability. The need is great to stop fighting and start mending. The method prescribed in this paper solves problems with the support of a court judgment without the entanglement and the expense of litigation.

Keywords: cybersecurity, data breaches, corporate policy, social media, cyber management

Introduction

The Federal Arbitrations Statute is a key element to resolving disputes between any parties in business. Many have heard of the arbitration process, but few CEOs are aware of the process by which arbitration could have the full force and effect of a court judgment. As a substitute for litigation, it is a money and time saving way to do business. The problem with arbitration is that parties tend to not take the result seriously. The issue is that once the parties get to arbitration, and the process is over, how parties enforce the arbitrator's decision so that it has the full force and effect of a court judgment. If we could do that, we could strategically substitute arbitration for litigation. From my practicing law, suggesting arbitration, within a court review strategy, was very successful for all concerned. Arbitration, among many advantages, builds trust—at all levels—and does not destroy the ongoing negotiation thinking process. Once the process is complete, the judicial process is systematic and converts the arbitration decision into a court judgment; the result is enforceability. Perfect for achieving marginal cost efficiency. Not all cases should go to arbitration. However, in business the process works well when both sides bargain in good faith and trust is at the core of the process. Open communication is essential to the management of the negotiation arbitration process which builds trust at organizational level as well. Let's examine how trust is created and why it's so important… You need to take actionable definitive steps to build trust. It will not happen automatically. Below is a step-by-step list that will outline how to build trust with nearly anyone who subscribes to arbitration.

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> 1. Value long-term relationships: Trust requires long-term thinking. It might seem convenient in the moment to blame someone else or to make decisions that benefit you in the short term. But before you act, think about how they may affect how others perceive you in the future. 2. Be honest: Developing a reputation as someone who is dishonest is one of the fastest ways to erode trust. Always tell the truth, even if it's awkward; don't give people an opportunity to catch you in a lie. 3. Honor your commitments: A trustworthy person does everything in their power to stick to agreements they've made. If you make a promise, follow through on it. Avoid making promises that you might not be able to keep. 4. Admit when you're wrong: People don't like to hear excuses. If you do something wrong, it's best to just be upfront about it. If you realize you were incorrect about something, own up to it. Being vulnerable enough to admit fault can humanize you and make you appear more trustworthy. Admitting mistakes is also part of being honest. 5. Communicate effectively: Trust can be easily damaged by miscommunication. Try your best to communicate in a way that doesn't leave room for misinterpretation. If you aren't sure about something during a conversation, ask questions to clarify. Listening is just as important as speaking for effective communication. Make sure that you give others a chance to talk. It will show that you care if you genuinely listen. 6. Be vulnerable: Being open about your emotions and showing some feelings can help with building trust. It shows that you care and that you're a person too. Don't be afraid to let coworkers know if something has upset you or stressed you out. This one needs to be approached carefully. You don't want to go telling all of your coworkers' overly-personal details. Begin by sharing gradually. Done correctly, opening up about your feelings can strengthen a trusting relationship. 7. Be helpful: Someone who is trustworthy will tend to go out of their way to help people if they can. Not because of some agenda or because they expect to get something out of it. But, because they are genuinely good people. Maybe you've done all of your work for the day. You could just sit at your desk browsing the internet. Or you could be helpful. If you notice a coworker who is struggling with their own workload, offer to help. Or ask your manager if there's anything extra you can take on. Also, there is never any harm in giving guidance and advice to that new hire who seems overwhelmed. 8. Show people that you care: People will naturally trust you more if they feel like you're truly interested in them. Remembering little details like the name of a coworker's child, or asking how their weekend was is a good place to start. You've probably worked with someone who seemed to be in their own bubble. They didn't seem to care about anyone else besides themselves. You've likely also worked with someone who was friendly and regularly checked in to see how you were doing. Which person did you find more trustworthy? Even something as simple as remembering and saying someone's name can show that you care. As Dale Carnegie once said, "A person's name is, to that person, the sweetest, most important sound in any language." 9. Stand up for what's right: People respect honesty. While some bosses may like "yes" people who agree with everything they say, the best leaders value insights and opinions. Don't sacrifice your values and what you believe just to appease your manager or try to get ahead. This will decrease trust with others. 10. Be transparent: As long as you can explain what you're doing and why you're doing it, most people will be able to understand. Don't keep secrets or hoard information for yourself. The people you're building trust with are usually people on your team that you should be working collaboratively with. Share the information with them that they need to succeed too. (Wooll, 2022)

The arbitration process and building trust are worth time, depth, and reflection. Think about it. When two parties communicate and the goal is resolution, the process is a trust building exercise and helps profitability immensely. This process also provides a long term approach to problem solving within the organization. The process of sitting down and negotiating is helpful not just for the problems being presented but may lead to solving other issues like personal relationship building. This stops malicious strike lawsuits meant to damage corporations. Ford, Amazon, and other companies are in dire straits at this moment.

Without a doubt, in order to reach optimal profitability, the strategy of negotiating and arbitration is essential to the long term productivity of the company. Ford and other companies are just about to a point of taking automobile manufacturing elsewhere in the world. Stock values have plummeted recently during strike activity. The arbitration process does not have to be difficult. Here is a step by step process of how to get to arbitration. Plainly stated, let's work around troublemakers and solve problems before they become problems.

The Arbitration Process

Arbitration is a process where two parties in dispute agree to submit a matter to a neutral person, an arbitrator,

or an arbitral tribunal to settle a dispute. Usually, the parties have tried to reach an agreement to no avail. Most people know this and do not know how to choose arbitration effectively. Arbitration is chosen by signing a contract to arbitrate. This can happen on the issue of damages in cybersecurity cases or in the case of contracts regarding artificial intelligence (AI). In cybersecurity, the issues range from damages resulting in hacking, malware, denial of service attacks, firewalls that do not work to prevent theft of money, and other major problems. Let's take theft. Suppose you have an investment account and your account gets hacked transferring, stealing your money. The investment platform provider may be liable for these damages. Choose arbitration, not litigation. Sign an agreement.

Perhaps the insurance company wants to settle for 50% of the claim. There is a need to submit the case to a third party neutral. Let us look at artificial intelligence;

> One of the key features of artificial intelligence (and one of the most troubling from a legal perspective) is the machine learning feature—the capacity for the product to gather data and use it to develop and make new decisions which it has not been explicitly programmed to do. Legal liability requires a party to be responsible for the outcomes of its actions. How does this work where those outcomes were caused by an aspect of machine learning that was not necessarily foreseeable to the AI programmers, developers, providers or purchasers? (Kelly, Walsh, Wyzykiewicz, & Young-Alls, 2021)

Choose arbitration, not litigation. Just sign a contract.

In other words, the question becomes: Who is responsible for the damages if the AI does not work or breaks down? It is a machine that delivers a product subject to products liability, breach of contract, and negligence law. Companies do not have to fight in court tying down cases for years. Companies can arbitrate the dispute.

> There has been a significant legal debate on whether liability in AI matters could be settled by granting AI its own legal personality. While this might seem fanciful at first glance, it is arguably no more novel than the 19th century decision to ascribe legal personhood to companies and corporate entities. There is certainly a practical appeal in granting legal personality to AI. Firstly, it may fill the conceptual lacuna of what happens where an AI process causes damage by malfunctioning in an abnormal and unforeseen manner. It would allow fault to be allocated to the true source of the damaging act (the AI) instead of imposing it upon actors who, in reality, could not have anticipated the damage. Equally, it could be argued that if AI systems demonstrate a process of rationality, through being able to make independent decisions, then the AI should be held liable if it falls short of the parties' reasonable expectations in conducting that process. (Kelly, Walsh, Wyzykiewicz, & Young-Alls, 2021)

It may be easy to summarily and comprehensively place blame on the AI. This area of the law is not developed and arbitration is definitely the way to resolve differences involving AI. All of this area remains to be developed as AI becomes a way of doing business in the very near term. Microsoft and Adobe currently lead in this area, developing and monetizing AI.

Again, all of these matters that have no legal precedent may be settled out of court avoiding the attacks and threats of lawsuits avoiding millions of dollars of litigation costs, complexities, and time delays. Why bother with litigation? Arbitration is so much better. Arbitration brings thought and rationality to the process and can build trust which leads to profitability and long-term growth. Getting to arbitration is not difficult. Just sign a contract with an arbitration provision in it. Most good firms strongly recommend a clause for arbitration in every business contract; a principle worth remembering.

To give you an idea of the process that arbitration typically involves, the American Arbitration Association describes arbitration as having seven main steps:

- Filing and initiation: One party files a Demand for Arbitration, which starts the process.

- Arbitrator selection: Both parties work to select an arbitrator, one they can agree on and who can meet their needs based on the nature of their dispute.
- Preliminary hearing: Parties meet to discuss substantive case issues, information exchange, witness lists, etc.
- Information exchange and preparation: Parties share information and arbitrators handle any related challenges.
- Hearings: Parties present evidence and testimonies before the arbitrator.
- Post hearing submissions: If necessary, parties submit additional information to the arbitrator.
- Award: The arbitrator renders a decision (award) and closes the case.

> The main difference between arbitration and mediation is that while the process is much less formal than litigation, the arbitrator's role is similar to a judge. The arbitrator listens to both sides present their evidence and testimony and renders a final decision on the matter. By comparison, a mediator works with parties to help them find a common ground so they can reach a settlement. Mediators do not evaluate or render judgments. Many contracts or legal agreements contain provisions to resolve disputes through arbitration, and a reputable lawyer… with extensive experience is a good choice. (Quinn, 2013)

In summary, there are many problem solving approaches. Arbitration is the best for the aforementioned reasons. Signing a contract to arbitrate is simple. Be careful to include an arbitration summary clause in all contracts limiting the rights of plaintiffs to file lawsuits and solve the problem before it becomes a problem. Importantly, the next section of this research paper covers this issue: Once we have an arbitrator's decision, it can be converted to a court judgment. This solves the problem of enforceability of an arbitrator's decision. The arbitrator's decision can be enforced by attachment and disclosure hearings, and the public sale of assets to satisfy the decision. Most companies borrow money before it gets to this point and pass the increased cost onto the consumer. It gets interesting: Accountability, transparency, and enforceability of the arbitrator's decision reduce risk and add real value. Now that we may have an arbitrator's decision, we now turn to the law of arbitration.

The Arbitration Act

There is the Federal Arbitration Act. There is nothing like reading the actual law which cannot be paraphrased. The law is simply stated and most decision makers do want to read the actual law which I am providing. The relevant sections that most states have legislated is as follows best provided by the federal statute. As one can see, the three mostly relevant sections are provided in plain language and readable. The law highlights the signing of a contract to arbitrate which can be included in any business transaction, and the necessity of filing a lawsuit to enforce the arbitration law. The parties usually arbitrate concurrently with the filing of Plaintiff's complaint in a court of law to enforce the arbitrator's decision once it is reached. In plain words, the parties have two processes going on at the same time. The court portion is to enforce the arbitrator's decision. The following shows the methodology. I can hear the echo of my law professor's strong recommendations to read the actual text of the statute before analysis. All of them are truly great and I am forever indebted to them.

Title 9 USCA:

> §2. Validity, irrevocability, and enforcement of agreements to arbitrate
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> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. (Federal Arbitration Act, 1947)

This provision gives the authority to the court to order arbitration if there is a provision in any contract to arbitrate. This is a powerful insight for you. By including an arbitration provision, both sides must sit down and bargain in good faith, thus avoiding litigation. For example, if a party to a contract breaches the contract, one can file an action in court forcing everyone to arbitrate. The concurrent filing of a formal complaint with the court system, as mentioned, is required. Also, if one party decides not to arbitrate, the statute gives rise to an action in negligence. Multiple levels of damages may be granted by a court for a negligence action because the breach of duty to perform a contract is further supported by the arbitration statute. Breach of the arbitration statute gives rise to a breach of the duty of reasonable care. If this is such the case, the only issue left for the court to decide is damages that are reasonably foreseeable at the time of the breach such as loss of time, mental suffering and inconvenience. This is an action that allows way more in damages than a simple breach of contract. A suffering party may recover millions. Once known, the parties will definitely want to sit down and negotiate. Once the parties realize this and if they do not want to negotiate then Section 4 comes into play. This will surely yield results. It reads in part as follows:

> §4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination
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> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury finds that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury finds that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof. (Federal Arbitration Act, 1947)

This section definitely packs a punch. The court would upon notice hear the parties and enter default judgments. This means that the only issue remaining is damages to the party who acted in good faith. The aggrieving party could suffer four to five times a worse result than if the bargaining had taken place. If this is not enough, suppose that the lawsuit in its process leads to an impasse. The statute also allows for stay of proceedings, to break out of court and negotiate in good faith as long as the issue is referable to arbitration. Some issues are constitutional and cannot be referred to arbitration. This may have the effect of forcing the parties back to the bargaining table moving the legal process to a stay in the formal proceedings.

> §3. Stay of proceedings where issue therein referable to arbitration
>
> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue

> involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration. (Federal Arbitration Act, 1947)

Most find it refreshing to actually read the text of the relevant law and not an interpretation. It is a quality of the lawmaking process that is unmentioned but necessary to get the correct interpretation. Again, the intent of the legislation is to provide dispute resolution and not to continue business in an unresolved manner causing lost profits. Once the parties have the arbitrator's decision in writing, the attorneys file a motion to convert the arbitrator's decision for the court to adopt the arbitrator's decision. The court, after a pretrial conference, places the matter on the court record and issues an order incorporating the arbitrator's decision.

Advantages/disadvantages: The process does begin with the parties signing an agreement of enforceability and ends with a judgment by a court.

> Corporate counsel drafting or reviewing contracts should consider whether it is in their best interest to include an arbitration clause. Similarly, parties faced with an existing dispute should think about whether to propose arbitration in place of full-scale litigation. While there are myriad benefits to arbitration, there can also be some drawbacks. Attorneys should be aware of the following strategic considerations. (Leader, Rabbani, & Mancall-Bite, 2023)

Privacy

> A major difference between arbitration and litigation that is often particularly important to corporate entities relates to privacy. As a general rule, court records are public. Of course, parties may address concerns about the release of sensitive information by agreeing to a confidentiality order or moving to seal certain filings or documents—but their opponents, or their judges, may push back. Moreover, the case itself will be listed on a public docket that is generally accessible. By contrast, arbitration is private. This includes any documents turned over in discovery and later used during the hearing or motion practice, as well as any witness testimony during depositions or at the hearing. Perhaps more importantly, the existence of the arbitration itself is typically confidential. Parties concerned about public scrutiny or the disclosure of commercially sensitive information often prefer arbitration for its confidentiality. That said, potential litigants who believe their goals would be served by some level of publicity may wish to proceed in court instead. (Leader, Rabbani, & Mancall-Bite, 2023)
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> There are several levels of privacy issues that affect corporate governance. When choosing arbitration, one is fulfilling the duty of loyalty to the shareholders, and the duty to keep the business of running the corporation confidential. Shareholders have very limited rights to obtain any information regarding the running of the corporation. Information of running the company is a privileged protected asset that is waived when going into litigation which inevitably affects the wellness of the company and shareholder value. (Leader, Rabbani, & Mancall-Bite, 2023)

Efficiency and Cost

> Perhaps the most-cited difference between arbitration and standard litigation is that arbitration tends to be more efficient than pursuing a claim in court. This arises in many ways. For instance, parties may forgo the significant motion practice that accompanies litigation. JAMS requires that a party seeking to make a dispositive motion first submit a brief letter explaining the merits of the motion; the arbitrator then decides whether to permit briefing. JAMS, Arbitration Discovery Protocols 8 (2010). Discovery, too, is often more limited in arbitration. As any litigator can tell you, discovery in fact-intensive court cases can take years and require massive document productions and numerous depositions—not to mention the inevitable discovery disputes that accompany these things. The breadth of discovery in litigation stems from civil rules that tend to permit discovery of any relevant information, with some notable exceptions for privilege and the like. By contrast, consider the American Arbitration Association's rule for commercial arbitrations: The arbitrator shall manage any *necessary* exchange of information among the parties with a view to achieving the efficient and economical resolution of the dispute, while at the same time promoting equality of treatment and safeguarding each party's opportunity to fairly present its claim and defenses. Potential plaintiffs who wish for their claims to be resolved sooner rather than later can benefit from these distinctions if they pursue arbitration

rather than litigation—particularly in light of the case backlog that has burdened state and federal courts since the first COVID shutdowns. Potential defendants who are not in a hurry to reach a determination, on the other hand, may prefer the slower pace of traditional litigation. And, of course, it is not only time that parties save by opting for arbitration. A faster process and narrower discovery can lead to significant savings in legal fees and costs. However, arbitration is not *always* cheaper than litigation. Parties to an arbitration must pay for the arbitrator's time, which can add up—particularly in a complex or lengthy arbitration or when there is a panel of three arbitrators. And attorneys should review the relevant rules for cost-shifting provisions. For instance, in an AAA employment arbitration, the employer must pay 100 percent of the arbitrator's fees. (Leader, Rabbani, & Mancall-Bite, 2023)

Flexibility

Parties to an arbitration can play a larger part in determining how and when that arbitration will occur than they would in a court setting (where an assigned judge can hand down deadlines and sua sponte rulings). Arbitration parties usually play some role in choosing who their arbitrator(s) will be and whether there will be a single arbitrator or a panel. They also may agree upon a schedule and a location for hearings, which set of rules will apply to the proceeding, and whether to modify any of those rules. Moreover, arbitration parties are not usually bound by the rules of evidence. This gives parties more leeway in determining what facts and evidence they will use to build their case. But a party concerned that its opponent will rely on prejudicial or otherwise objectionable evidence should consider whether litigation is a better option. (Leader, Rabbani, & Mancall-Bite, 2023)

Arbitration does reduce risk enormously. Court proceedings can be drawn out where the outcome is akin to a flip of a coin. Privacy is legitimately connected to confidentiality. Most businesses owe a duty of confidentiality to clients and shareholders. Court proceedings, although limited in this arbitration strategy, are not always private. The media does take an interest in such proceedings. With regard to efficiency, arbitration meets the goal. However, the parties do have to pay the costs of the arbitrator and it can take some time to get one who understands the industry and the specialty of the subject matter being negotiated. Flexibility is great when the parties are fairly responsible. Arbitration does not have the evidentiary structure of a trial court which does set a schedule to a more formal process. In addition, there is no jury process. Parties forgo a jury trial which may limit the award. Arbitrators tend to order less in damages. The court proceeding cannot be appealed in most instances as well. If the parties are trying to establish precedent for future decisions, arbitration may not be a way to proceed because once the court adopts the arbitrators' decision the process ends. For the parties who want to achieve finality putting an end to the dispute, arbitration does this well.

International Applications

International operational businesses benefit immensely from having arbitration. Many firms do not understand the U. S. legal process at all. Being able to peaceably negotiate a legally binding agreement with a neutral third person soothes the wounds of conflict and provides a refreshing outlook and solution.

Disputes—whether between individuals, companies, or governments—become all the more complicated when they cross national borders. It's no surprise, then, that a variety of forms of international arbitration, in addition to other dispute-resolution processes, including mediation, are now available to resolve them. (Shonk, 2023)

Businesses from different countries generally prefer to arbitrate their disputes rather than adjudicate them in the courts of one side or another. This is because they believe an international tribunal is likely to be more independent of national prejudices and more knowledgeable about international business practices than an ordinary national court of law would be.

As a result, most contracts between corporations from different countries contain a dispute resolution clause specifying that any disputes arising under the contract will be handled through arbitration rather than litigation, writes Charles Bjork in an article for the Georgetown University Law Library. The parties can and should specify the forum for the arbitration, procedural rules, and governing law when negotiating their initial contract. The types of law applied in arbitration include

> both procedural and substantive international treaties and national laws, as well as the procedural rules of the relevant arbitral institution. (Shonk, 2023)

International firms benefit greatly from the cost savings and confidentiality of arbitration, better to engage and communicate than fight it out in court. Both parties are inclined to participate in the resolution as opposed to following the dictates of a court of law. All of the wranglings of litigation and the posturing and gamesmanship of court battles, including the media coverage, are virtually illuminated. Stock prices usually reflect better results. Once the arbitration process is in place, businesses may add a few procedures and then they have it under control. Some involve language and cultural issues that turn off international business and they leave. Arbitration is a much more welcoming process.

Ethical Considerations

One can say that the courts are a unified system to arbitration. All are like one. Arbitrators are ethically bound by impartiality and neutrality. Avoiding conflicts of interest and preconceived judgments is essential to fairness. Also, the quality of the process and payments to arbitrators is also a consideration. In any case, this area of development in the law regarding arbitration is far from over in cybersecurity and AI. There are ethical considerations when considering the use of binding arbitration clauses in contracts.

> As the research cited in this report shows, consumers and employees often find it more difficult to win their cases in arbitration than in court. For one thing, arbitration may not provide parties with the same extent of discovery that a court would. In certain types of cases, such as employment discrimination claims, it is practically impossible to win without the right to use extensive discovery to find out how others have been treated. In addition, while some arbitration agreements include due-process protections, others shorten statutes of limitations, alter the burdens of proof, limit the amount of time a party has to present his or her case, or otherwise impose constructive procedural rules. In practice it is the corporation not the consumer or employee that gets to decide whether to include fairness protections in the arbitration procedure. Although a consumer or employee can try to challenge enforcement of unfair rules in court, the ability to challenge arbitration agreements has been substantially limited by the courts. Moreover, arbitrators are often reluctant to award generous damages to prevailing parties, and their awards are not appealable. On average, employees and consumers win less often and receive much lower damages in arbitration than they do in court. And in a new development, some arbitration agreements require that the losing party pay all the arbitration fees, including the other side's attorney fees. (Stone & Colvin, 2015)

For some clients, arbitration may not be the right path to take. Some clients may want a jury trial process with discovery and the formality of court proceedings given the complexity of the issues. One of these areas is AI and intellectual property. In other instances, arbitrators are not trained in objectivity and become subjective, favoring one side over the other without consideration of the weight of the evidence. Some clients may feel trapped by arbitration clauses. These clients want their day in court and are now stuck with a contract that cannot be dissolved. Consumers often get trapped by corporations. Consumers sign these credit card agreements subject to arbitration that is paid for by the corporation. Many consumers are frustrated by the process and feel that their side of the story has not been considered. The important step to take is to consult professional association's standards for guidance. Communicate all of the advantages and the consequences of an arbitration clause in a contract with the client and allow time for reflection.

Recommendations and Conclusions

1. Arbitration is a serious way for parties to communicate and arrive at a contract of settlement.

2. The contract may be converted to a judgment pursuant to the Federal Arbitration Act. Many states have enacted a similar statute for state cases.

3. There are many advantages to arbitration, the least of which is to save money, time, and expense.

4. Arbitration clauses are a part of a contract entered into by the parties. For international firms, arbitration solves the problem of not being familiar with the court system in the U.S. and the politics of having to explain the litigation process in America. International countries may be confused because of the differences in the legal system in their home countries. Arbitration does solve the problem.

5. Arbitration must be a good fit for the clients if it is going to do justice. Be careful before signing an agreement to go over all of the advantages and disadvantages with the client disclosing all conflicts of interest.

6. Carefully considering arbitration is a process to stop the fighting and start building trust among the parties concerned; a good mindset.

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