The Basics of Arbitration: ICYMI Webinar Recap

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As part of the Morse Women Attorneys Webinar Series, Amanda Thibodeau and Paige Zacharakis presented on the basics of arbitration, reviewing topics including an overview of what arbitration is, a summary of the arbitration timeline and process, and pros and cons of electing arbitration. Each session in this webinar series focuses on an area of law essential to the business lifecycle, from start to exit and everything in between. Here are some of the takeaways from Amanda and Paige's session.

Paige began the presentation by explaining what arbitration is and how it differs from a lawsuit. Arbitration is a form of alternative dispute resolution, meaning that it provides parties with an avenue to resolve disputes instead of filing a lawsuit. As she explained, arbitration differs from lawsuits in a few ways. First, arbitration is decided by an arbitrator, not a judge. Arbitrators can be individuals with expertise in a certain field, whereas judges are individuals appointed to decide all types of court cases. Relatedly, the parties can select whether they would like one arbitrator or a panel and who the arbitrator(s) will be. By contrast, in a lawsuit, parties are not able to choose their judge. Second, arbitration offers flexibility in several areas. The Rules of Evidence are not strictly applied, which may lead to a more conversational tone when testifying, whereas in a courtroom setting the tone is a more formal question and answer style between the attorney and the witness. Arbitration can also be flexible in terms of discovery. In an arbitration, parties can customize what type or form of discovery gets completed based on the needs of the case. Parties also can customize the schedule. Third, unlike lawsuits, arbitrations are confidential. Lastly, it is harder to appeal an arbitration award than it is to appeal a ruling in a lawsuit.

Amanda then turned to arbitration procedures. First, she explained that arbitration is governed by the Federal Arbitration Act or the applicable arbitration state statute. Second, Amanda explained that there are various arbitration associations which have their own set of procedures. Third, she explained, to begin an arbitration, the party initiating the arbitration files a notice of arbitration, and the responding party files a response and any counterclaims. Fourth, Amanda explained the process for selecting an arbitrator. Ideally, an arbitrator will be chosen by mutual agreement of the parties. However, if the parties are not able to mutually agree, a case manager may appoint the arbitrator. Fifth, once an arbitrator has been chosen, the parties attend a preliminary hearing where they agree to the procedural framework and timing of the arbitration. Sixth, the parties will exchange documents and information (known as discovery). Seventh, the parties will attend a hearing where evidence and arguments are presented. Lastly, the arbitrator will issue a binding award.

Amanda then turned to the importance of arbitration agreements. As she explained, these agreements can be challenged by a court, so it is important to get the agreement clearly articulated in the contract. Amanda offered a helpful tip that this is especially the case in situations where a court may perceive an imbalance of power between the parties, such as in disputes between an employer and employee and corporations and consumers. She also

explained that including arbitration clauses in contracts compels parties to arbitrate. Lastly, Amanda touched on the limits of arbitration and the effects on some claims. For example, some jurisdictions limit the arbitrability of certain employment disputes and consumer disputes.

Paige then covered the advantages of arbitration. First, Paige highlighted that arbitration can sometimes be speedier and more efficient than a lawsuit as parties are able to set the schedule based on the case's needs. Second, she explained that arbitration may be cost effective. While parties will be responsible for fees that they would not otherwise be in a lawsuit, parties can save money on attorney's fees especially during the discovery phase. Second, Paige highlighted that being able to choose the arbitrator(s) whose area of expertise suits the needs of the case may be an advantage. Lastly, she explained that due to the confidential nature of arbitration, if parties want to keep a dispute private, arbitration may be an advantageous option.

Paige then moved to the criticisms and challenges with arbitration. First, she explained that it is difficult to overturn an arbitration award. Paige also explained that the potential to limit discovery may be a disadvantage if the facts of the case would make the full scope of discovery involved with a lawsuit beneficial. Lastly, she mentioned that the confidential nature of arbitration may be perceived as a criticism for certain disputes that the public would benefit from knowing about.

Amanda closed out the session by recapping key points and emphasizing the role and benefits of arbitration as an alternative dispute resolution.

If you have questions about arbitration, please contact Paige Zacharakis

Also, be on the lookout for upcoming events in this series, which will resume in early 2024 and address topics such as Privacy & Data Security.

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