

## **DIFFERENCES BETWEEN PRIVATE ARBITRATION AND COURT LITIGATION**

### **LITIGATION**

### **ARBITRATION**

Generally longer to conclusion	Generally quicker to conclusion
Generally more expensive	Generally less expensive
Generally right to appeal ruling	Rarely able to appeal a ruling
Extensive discovery permissible	Limited discovery allowed (depositions interrogatories may be precluded)
Extensive motion practice often	Limited motion practice in general
Rules of evidence apply (limits information to judge/jury)	No rules of evidence apply (Arbitrator generally hears everything)
Random decision maker	Parties have input into who decision maker is
Trials usually go day to day until completed	Arbitration often scheduled with single days over extended period of time
Court schedule often causes delays	Arbitrators are more accommodating on schedule
Initial Judge may not decide the case as fact-finder or be the referee during a jury trial	Arbitrator or panel of arbitrators will be the same throughout
Almost all hearings in Court	Many preliminary hearings by phone
Less chance of getting a compromise ruling	More chance of getting a compromise ruling
No payment for judge/jury	Parties pay arbitrator(s)
Limited secrecy via protective orders	More comprehensive secrecy
Precedential outcome	Non-precedential outcome
Minimal filing fees	Filing fees can vary with case value

Injunctions, Attachments, Lis Pendens, Trustee Process are available	No preliminary, equitable relief available
Court <u>can</u> resolve 93A, § 9 claims (consumer vs. business claims)	Limited ability to resolve 93A, § 9 claims (but can resolve all §11 claims, business vs. business claims)
Automatic pre-judgment and post-judgment interest	No automatic pre-judgment or post-judgment interest
Very formal hearing process	Informal hearing process
Tough legal rulings often made	Tough legal rulings often avoided
Limited ability to award attorneys fees	Broad discretion to award attorneys fees