

The image features a large red triangle on the left side, partially overlapping a grayscale photograph of a modern office building. The building has a grid of windows and the name 'Bradley' is visible on its facade. The Bradley logo, consisting of the word 'Bradley' in a bold, sans-serif font with a red underline, is positioned in the top right corner.

Bradley

The Great Debate: Should You Arbitrate?

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Introduction & History

- Traditional Dispute Resolution - Litigation
- The Development of Arbitration
 - Federal Legislation
 - Industry Influence
- **Why the Debate?**

The Decision Maker

- Biggest Difference
- Judge, Jury or Arbitrator
 - Flexible Time
 - Construction Knowledge
 - Parties Control

Appeal

- Authority to Appeal
 - Arbitration – Limited
 - Litigation – Much Broader
- Final vs. Interlocutory
- Cost/Benefit Analysis
 - Prevailing Party
 - Appealing Party

Duration

- Selection of the Decision Maker
- Pre-Hearing Disputes
- Discovery
- Duration of Hearing
- Cumulative Time Before Judgment
- Confirmation
- Appeal
- Cumulative Duration

Costs

- Filing Fees
- Decision Maker's Fees
- Litigation Expenses
 - Duration
 - Discovery
- Appeal Costs

Location

- Arbitration
 - Complete Control
 - Arguments over Enforcement
- Litigation
 - Limited Ability to Control
- Considerations
 - Familiarity
 - Travel Costs
 - Controlling Law

Confidentiality

- Litigation
 - Public Record
 - Protective Orders
- Arbitration
 - Control

Burden (Discovery)

- Litigation
 - Relevant or Could Potentially Lead to Relevant Information
 - Duration
 - Arguments
- Arbitration
 - Ability to Limit
 - Creative Approaches
 - Problems with Power to Subpoena

Evidence

- Litigation
 - Ability to Limit Evidence
 - Protect Key Documents
 - Exclude Hearsay
- Arbitration
 - Generally Everything is Admitted
 - Limits Non-Substantive Arguments

Final Thoughts

- Case by Case Basis
- Beware of Drafting Arbitration Clauses that can **cause** litigation
- Creative Drafting Approaches to Resolve Cons
 - Consider Limited Scope Arbitration Provision
 - Consider Extensive Arbitration Provision with Agreed Upon Details to Limit the Arbitration Procedure
- Private Non-Administered Arbitration– Advantages but be careful

Thank You for Attending!

Questions?



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