SFBBG
Schoenberg | Finkel | Beederman | Bell | Glazer LLC

SENSIBLE SOLUTIONS

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In This Issue

About Our Law Firm

We are comprised of seasoned and dedicated professionals who familiarize themselves with our clients' industries as well as their legal issues. We strive to maintain long-term client relationships by keeping our clients fully informed and respecting their time and business resources.

Legal Practice Areas

- Banking and Creditors' Rights
- Condo-Community Association Representation
- Corporate and Other Business Transactions
- Defamation, Privacy and First Amendment
- Employee Benefits
- Employment Law
- Estate Planning, Probate and Trust Administration
- Health and Fitness Industry
- Independent Sales Representatives
- Intellectual Property Law
- Litigation and Alternative Dispute Resolution
- Matrimonial Mediation
- Mergers, Acquisitions and Busi-ness Sales
- Real Estate and Finance
- Real Estate Tax Reduction
- Securities, Futures and Derivatives

To Arbitrate or to Litigate: An Overlooked Part of Many Contracts

Many companies devote hours negotiating the "substantive" terms of a contract, but pay little attention to the dispute resolution clause often included among boilerplate terms at the end of the contract. This is a risky practice, since rights that were carefully bargained for may effectively be lost if the "right" dispute resolution procedure is not negotiated at the outset.

When it comes to dispute resolution clauses, there is no one-size-fits-all solution. Those negotiating the agreement must fully understand the dispute resolution options available and their implications in different contexts. Because arbitration is a creature of contract, the ability to negotiate those procedures upfront can be a gold mine for the astute or a minefield for the uninformed. The following are some of the threshold issues that should be explored when negotiating a dispute resolution clause.

Specialized Knowledge of the Arbitrator(s)

Perhaps the greatest potential benefit of arbitration is the ability to select the person(s) who will resolve the dispute. Judges and jurors are not likely to have expertise on the subject matter of the dispute and they may have no experience in operating a business. Arbitrating before one or more experts in the relevant industry may provide a more efficient and satisfying result, especially in complex cases.

Publicity/Confidentiality

A compelling advantage of arbitration is the option to keep the proceedings confidential. This can provide great value to a company that prefers to avoid publicity or fears developing a reputation as a litigious actor or an easy target. The ability to keep dispute resolution proceedings confidential can also be critical when a dispute involves commercially sensitive matters such as trade secrets or business strategies. Of course, confidentiality is not always desirable, and some view the lack of transparency as making the process more likely to be tainted or biased. This issue should be considered at the outset and not postponed until a dispute arises.

Fees and Costs

Minimizing costs and legal expenses is always important, but this issue merits focused attention when selecting a dispute resolution procedure. Although arbitration can be less expensive than litigation, that will not always be the case. Arbitration costs that would not arise in court include hourly fees for the arbitrators, as well as the arbitrator forum's administrative fees. These fees can be substantial. A well-known arbitrator may charge $3,000 – $5,000 per day or more, while the arbitration filing fee itself could be upwards of $10,000. In contrast, judges are not paid by the parties, and the courthouse filing fees generally pale in comparison to those assessed in arbitration. The difference is certainly worth considering.

Of greater significance is the common misperception that arbitration will always minimize attorneys' fees. Often, the discovery process is narrow and motion practice is more limited in arbitration. On the other hand, some arbitrators allow for broad discovery since limiting discovery can make it more difficult to try a case effectively. Conversely, some courts place the same type of limits on discovery and motion practice that are often employed in arbitration. In these courtrooms, litigating a case is often less expensive.

In negotiating arbitration provisions, the parties can agree on what the process will look like, including discovery rights and motion practice. In sum, arbitration may be less expensive than litigation, but that will depend on the arbitration procedures to which the parties agree.

Speed of the Case

The ability to obtain a speedier resolution can be a significant advantage of arbitration. In fact, some arbitration agreements require a brief time frame to resolve matters within short deadlines. Yet, arbitrations can proceed just as slowly as litigation when the issues are complex, when the parties are numerous and/or dispersed, and when the parties have agreed to court-like pretrial procedures. When expediency is an issue, careful attention must be paid to forum selection.

How the Dispute Will be Resolved

An often overlooked distinction between arbitration and litigation is the basis for the outcome. In litigation, the judge is constrained to rule based on the law. Arbitrators have greater flexibility in considering the same body of law, and they also have discretion to consider evidence that may otherwise be excluded in a courtroom. In addition, the decision of judges and juries is subject to appeal. In contrast, an arbitrator's decision generally cannot be appealed unless it can be established that the arbitrator exceeded his or her authority or that the decision was obtained through illegal means. The inability to appeal an arbitrator's decision requires careful consideration in deciding whether to litigate or arbitrate.

The above considerations in deciding whether to litigate or arbitrate are not exhaustive, but they demonstrate the complexity of an issue that is often overlooked in contract negotiations and the importance of addressing the issue head on and early on.

This article is for informational purposes only and does not constitute legal advice. Always consult with a qualified attorney for guidance on your specific situation. For more information, please contact Norman Finkel at norm.finkel@sfbbg.com or 312-648-2300.

Tips for Avoiding Contract Litigation

Notable Outcomes:

On December 4, 2025, SFBBG attorney Adam Hirsch prevailed at trial in the U.S. Bankruptcy Court for the Northern District of Illinois. Adam successfully proved that a contractor intentionally made false statements to deceive others and, as a result, the judge ruled that the contractor's debt could not be discharged in bankruptcy. SFBBG's clients may now continue pursuing their claims against the contractor.

On October 30, 2025, SFBBG attorney Dean Kalant successfully defended a Cook County Court judgment of more than $2.6 million. The defendant argued that the Complaint was not properly served, but after extensive briefing, discovery, and an evidentiary hearing, the judge agreed with Dean's arguments and upheld the judgment. As a result, SFBBG's client may continue collection enforcement.

Accolades:

On December 4, 2025, SFBBG attorney David Inlander received the 2025 AJC Chicago Human Rights Medallion Award. A distinguished matrimonial attorney and mediator, David was recognized by AJC for his leadership within the organization and his interfaith initiatives, as well as for his many contributions in the field of family law.

SFBBG is proud to announce that several of its attorneys have been recognized for their outstanding legal achievements. The following attorneys have been named Leading Lawyers, a distinction reserved for top legal talent demonstrating exceptional skill, results, and professional reputation: George Banakis, Daniel Beederman, Joan Berg, Bruce Bell, Norman Finkel, Michael Friman, Len Gambino, Adam Glazer, Rich Goldwasser, Jeffery Heftman, Adam Hirsch, Andrew Johnson, Michael Kim, J. Christian Manalli, Adam Maxwell, Jason Newton, and Ronald Silbert.

In addition, the following attorneys have been recognized as Super Lawyers: Joan Berg, Norman Finkel, Adam Glazer, Jeffery Heftman, David Inlander, Michael Kim, Bob Kaufman, Adam Maxwell, Jason Newton, and Monica Shamass. These recognitions underscore the firm's continued commitment to delivering exceptional results for its clients.

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Litigation can be time-consuming, expensive and risky — even with the best of cases -– and should be undertaken only after a thorough review of the underlying facts and law, coupled with a careful cost/benefit analysis. Therefore, your company should do all that it can to avoid litigation. The following are eight tips on how to achieve that goal by avoiding or minimizing the possibility contract disputes and ensuing litigation.

Tip No. 1: *Read* the contract!!! Sounds simple, right? But it never ceases to amaze us how often people don't know the terms of a contract under which their company is bound and that is the subject of a dispute. That is entirely avoidable. Before signing a contract, or accepting a quotation, proposal or purchase order, know what is in those documents. It is better to spend your time and resources reviewing and negotiating a contract before proceeding with it, rather than after a dispute arises.

Tip No. 2: *Understand* the contract. Know and be mindful of your contractual rights and obligations. Don't be embarrassed if you don't understand every clause or provision in a proposed contract. As a general rule, consult with legal counsel. The cost for an attorney review is far less than what you will incur in litigation fees and expenses.

Tip No. 3: Don't make assumptions about something you don't know. This often happens with non-compete clauses and agreements. Many people erroneously believe that such provisions won't be enforced. However, except in a handful of states, such "restrictive covenants" will be enforced if they comply with certain legal requirements, such as being narrow in scope as to duration, geographic territory or specified accounts or markets, and are necessary to protect a party's valid protectible business interest, such as preserving its confidential information. Remember, know what you don't know and ask someone who does. Don't assume or guess.

Tip No. 4: Be mindful of and comply with contract deadlines. Besides delivery and payment terms, business contracts contain other deadlines that can affect the parties' respective rights and obligations. Some contracts contain deadlines for inspecting goods following delivery, for reporting problems or for revoking acceptance, or for making warranty or other claims. Don't put yourself in a situation where your legal rights, or the contract itself, have expired because you unknowingly failed to act when necessary.

Tip No. 5: Make sure all the provisions you agreed to are in the written contract. Many contracts are the result of prior negotiations. It is critical that you ensure that all agreed terms are in the final written contract.

Don't rely on unwritten "side agreements," even if made with a buddy or someone with whom you have worked before. Buddies can come and go, and even the best of buddies can suffer from what we call "contractual amnesia," and will have no recollection, or a different recollection, of the "side agreement" when you seek to enforce or rely upon it. Moreover, most well-drafted contracts have an "integration clause" stating that it is the full understanding and agreement between the parties, to the exclusion of prior or contemporaneous oral or written agreements or representations. If a term is important to you, make sure it is in the final written, signed contract.

Tip No. 6: Always document changes/exceptions to existing contracts. Sometimes it may be necessary to make changes to an existing contract. To avoid later disputes, all changes should be memorialized in writing, whether in a formal written amendment that will be signed by the parties, in an amended purchase order, or even in an exchange of detailed confirming email messages.

Tip No. 7: Just because you don't sign and return a contract or a contract amendment, it still may be enforceable. Sometimes, even if you don't sign and return a contract or an amendment to an existing contract, it still may be enforceable under the doctrine of "acceptance by performance." If the parties perform as if a contract or amendment is in force, they may not be able later to object to its enforceability. If there is a provision in a contract that you find objectionable -- confront it and try to negotiate a resolution. Otherwise, you may later be surprised to find that you accepted it by your conduct.

Tip No. 8: Don't accept all contracts. No one wants to give up potential business, but it is often better to reject a bad contract, than to be bound by one. Too often, people accept contracts that they know have problems because they "hope for the best." That is wrong. If a proposed contract contains terms that you know are unreasonable, are confusing, or are one-sided (and not your side), and the other party refuses to negotiate better terms, it may be better to just walk away. Otherwise, when a dispute does arise -- and it likely will -- it may be too late to avoid the consequences of your misplaced optimism.

While following the above tips won't guarantee that you will avoid every dispute, they certainly will give you and your business a better chance of doing so.

The foregoing is an abridged version of an article written by Dan Beederman and published in the November 2025 issue of The Wholesaler Magazine. This article is for informational purposes only and does not constitute legal advice. Always consult with a qualified attorney for guidance on your specific situation. For more information, please contact Dan Beederman at Dan.Beederman@sfbbg.com or 312-648-2300.