



CONFLICT RESOLUTION
MINNESOTA

ARBITRATION

WHAT IS IT IN MINNESOTA,
AND WHEN IS IT THE BEST SOLUTION?

CRM 2018 Conference

Paul Jacobsen

Peter Obermeyer

Arbitration in Minnesota is....



- According to Minnesota Rules of Practice 114.02, Arbitration is:
 - *“A forum in which a neutral third party renders a specific award after presiding over an adversarial hearing at which each party and its counsel present its position. If the parties stipulate in writing that the arbitration will be **binding**, then the proceeding will be conducted pursuant to the Uniform Arbitration Act (Minnesota Statutes, sections 572.08 to 572.30). If the parties do not stipulate that the arbitration will be binding, then the award is **non-binding** and will be conducted pursuant to Rule 114.09.”*
- The purpose of arbitration is “fair, expeditious, and cost-effective” resolution of disputes (Revised Minnesota Uniform Arbitration Act Minn. Stat. §§ 572B)”

What law governs arbitrations in Minnesota?



- **The Minnesota Revised Uniform Arbitration Act** – Minnesota has adopted the RUAA in Minn. Stat. §§ 572B.01 to 572B.31. Although parties are free to determine much of the arbitration process under general contract principles, in the absence of a contrary agreement between the parties, written agreements to arbitrate are interpreted with reference to the Revised Uniform Arbitration Act.
 - *But...*
- **The Federal Arbitration Act** – The U.S. Supreme Court has found that the FAA applies to all arbitrations involving interstate commerce and that interstate commerce broadly includes virtually all types of agreements and transactions. Federal arbitration law preempts contrary or restrictive state statutes and state judicial decisions in interstate commerce cases.
- **Labor**

What rules apply to an arbitration in Minnesota?



- **Minnesota Rule 114.09(a):** ...Whether they elect binding or non-binding arbitration, **the parties may construct or select a set of rules to govern the process. The agreement to arbitrate must state what rules govern.** If the parties elect binding arbitration, and their agreement to arbitrate is otherwise silent, **the arbitration will be deemed to be conducted pursuant to Minnesota Statutes, section 572.08 et seq. ("Uniform Arbitration Act").** If they elect non-binding arbitration, and their agreement is otherwise silent, they shall conduct the arbitration pursuant to Rule 114.09, subsections (b)-(f). **Parties are free, however, to contract to use provisions from both processes or to modify the arbitration procedure as they deem appropriate to their case.**
- **AAA Rules** – Commercial, Construction Industry, Consumer, Minnesota Rules of No-Fault Insurance Arbitration Procedures
- **JAMS**
- **National Center for Dispute Settlement - Minnesota Association of Realtors**
- **Minnesota Rules of Civil Procedure, Rules of Evidence**
- **Labor rules**
- **Custom rules**

What powers does an arbitrator have in Minnesota?



- **Statutory.** RUAA, FAA
 - *Both legal and equitable*
- **Contract:** theoretically unlimited
- Final deciders of law and fact, compared to court
 - *Can be limited by contract or statute (No-fault)*
- An “arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. **The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award** under section 572B.22 or for vacating an award under section 572B.23.” Minn. Stat. 572B.21(c)”
- Enforcement of awards

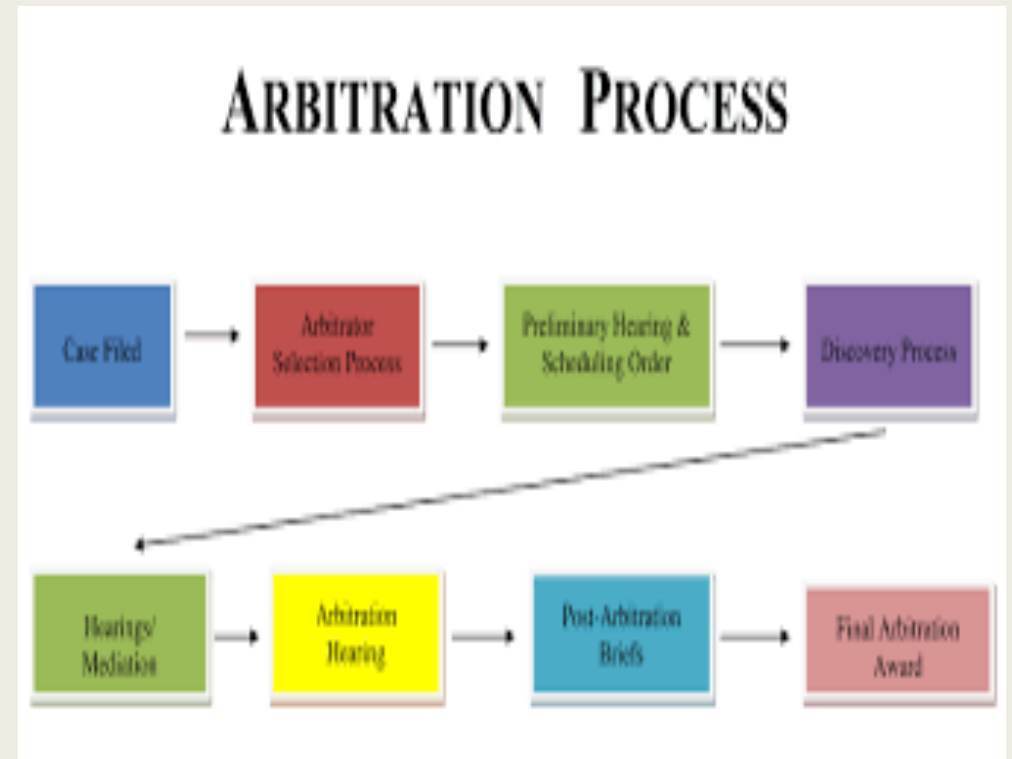
What role does a court have in arbitration?



- **Motion to compel or stay arbitration:** Minn. Stat. § 572B.07; 9 U.S.C. § 3, 4
 - Who decides arbitrability?
- **Confirmation or Vacation of an Award.**
 - **Confirm:** *After a party to the arbitration proceeding receives notice of an award, the party may file a motion with the court for an order confirming the award, at which time the court shall issue such an order unless the award is modified or corrected ...Minn. Stat. § 572B.22*
 - **Vacate:** *Minn. Stat. § 572B.23. Some reasons*
 - corruption, fraud, or other undue means;
 - evident partiality by an arbitrator;
 - corruption by an arbitrator
 - misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
 - refusal to postpone the hearing upon showing of sufficient cause
 - refusal to consider evidence material to the controversy
 - exceeding the arbitrator's powers;
 - no agreement to arbitrate.

Steps to an arbitration

- **Agreement to Arbitrate**
 - *Before or after dispute*
 - *Standard clauses (AAA, AIA)*
 - *Binding/non-binding*
 - *Scope of arbitration*
 - *Rules applied*
 - *Fees, retainer*
- **Administration:**
 - *AAA, JAMS, FINRA, Arbitrator*
- **Selection of arbitrator**
- **Scheduling**
 - *Discovery, motions*



Steps to an Arbitration (cont.)

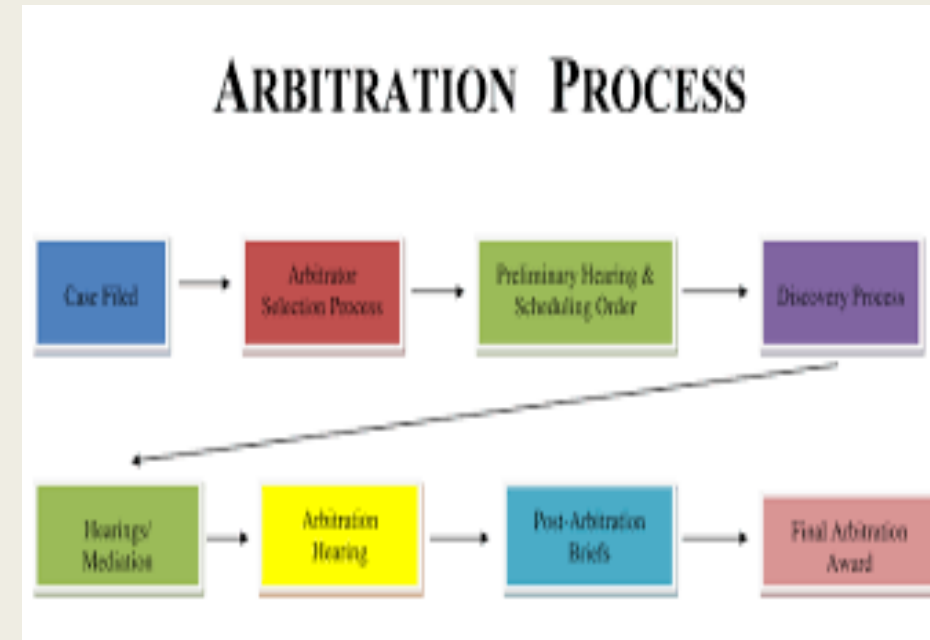
- Hearing

- Award

- AAA variations (*Findings, Reasoned, Basic*).
- “Baseball” arbitration
- High-low arbitration
- Labor
- Others

- Post hearing, confirmation

- “Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.” Minn. Stat. 572B.25(a)



Advantages of Arbitration

- **Less expensive (usually).**
 - *Less attorney time*
- **Quicker (usually) No appeals, less discovery**
- **Expertise of decision-maker**
- **Private**
- **Less formal**
- **Control of process**
 - *Pick arbitrator, rules, award*

Disadvantages of Arbitration

- **More out-of-pocket expenses**
- **Limited discovery**
- **Private.**
 - *No caselaw or precedent for society*
- **No class actions**
- **Enforcement delay**
- **Third party joinder difficulties**

Hypothetical #1: Remodel Claim



- Homeowner hired Contractor to remodel her house and they have a verbal agreement to get the work done for \$50,000.
- At the end of the job, Contractor presents Homeowner with an invoice for \$70,000, claiming additional work. Homeowner says no additional work was ordered and, in fact, some of the work was not done correctly, and it will cost \$10,000 to fix the defective work.
- The case has not yet been filed with a court, and Homeowner says she'll never settle as she wants to go to court to prove Contractor wrong. She won't agree to mediate.

Hypothetical #2: Medical Device Claim



- Patient came down with a severe infection after implantation of a medical device designed and manufactured by Medical Device Co.
- Patient plans to sue Medical Device Co. and Doctor, who ask if Patient would be willing to submit claim to a three arbitrator panel, consisting of a doctor, a plaintiff's lawyer and a defense lawyer.
- They tried mediation, and it failed.
- Should patient agree to arbitrate?

Hypothetical #3: Family Business



- John and Jane own a family business worth millions of dollars. John wants to retire and sell the business, but Jane wants to keep operating it.
- John and Jane are well known in the community, and do not want people to know how much their business may be worth.
- John and Jane cannot agree on a buyout price or how it will be paid. They tried mediation, and because their offers were so far apart, it made them more upset, so it failed.

Hypothetical #4: Multiparty claim



- Building Owner has found structural defects in trusses in his high-rise building constructed by General Contractor. Building owner sues General Contractor only, claiming defective workmanship.
- General Contractor says that, if there are defects, they are design defects, and it brings the Architect into the suit by a third-party action. The Architect says it hired Engineer to do the structural calculations, so it joins the Engineer.
- In their contract, General Contractor and Building Owner agreed to arbitrate disputes. However, Architect didn't have an arbitration clause with the Building Owner, but it did have an arbitration agreement with the Engineer.

Hypothetical #5: Class Action



- Consumer opened a bank account with Big Bank and the standard terms and conditions state that Consumer will arbitrate any disputes.
- Consumer sues Big Bank saying the Bank imposed illegal fees on her account, and seeks class action status for a million other consumers. Big Bank claims that each case must be arbitrated.
- Consumer's damages are less than \$100.