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A DEEPER DIVE INTO THE ARBITRATION PROCESS AND A LOOK AT THE ADVANTAGES AND DISADVANTAGES OF ARBITRATION

During arbitration, evidence and testimony are presented at a formal arbitration hearing. Discovery may occur before then, but its scope usually is limited by the parties' agreement or the arbitrator rules. After the arbitration hearing, the arbitrator issues a decision, known as an "award."

Arbitration may be binding or non-binding. Most arbitrations held in the U.S. today are binding arbitrations. In a "binding" arbitration, the arbitrator's decision is final, binding, and enforceable in court, similar to a court judgment. Both Wisconsin state and federal courts will enforce binding arbitration decisions. A "non-binding" arbitration does not have these elements of a binding arbitration, but can be helpful for evaluating a case or creating a basis for settlement negotiations between the parties.

The utility of arbitration (and other forms of alternative dispute resolution) in a particular dispute depends on various factors, including the nature of the dispute, the contract at issue and the state and federal laws in question, as well as the potential financial and time-related costs of litigation.

So why do parties choose arbitration? They do so because the arbitration process offers certain advantages. For instance, arbitration allows the parties to choose the place, time, rules, law, and people who will make the decision on the dispute. This flexibility, in turn, can make it easier for the parties to present technical facts since they can often choose a person or panel with expertise to understand a complex situation. The arbitration process also is typically shorter and faster than litigation and a trial due to limited, private discovery and streamlined procedural rules. Finally, most arbitration decisions are final and binding, with no appeals.

As with every dispute resolution process, however, arbitration also has certain disadvantages. Arbitration does not offer the right to a judge or a jury. Discovery is limited not only by the "ground rules" of the selected arbitration forum, but also by the limited power arbitrators have to force non-parties to submit to discovery or to issue subpoenas. Third parties cannot be added to arbitration without their consent, making complex multi-party

disputes more difficult to resolve. Court rules of evidence and procedure do not apply. Since complex arbitration can be costly, parties with limited financial resources may be at a disadvantage in arbitration, and may not have the leverage litigation can provide to share or shift costs.

Arbitrators have wide discretion in their decision-making and have no obligation to explain their reasoning to the parties. Appeals from arbitration awards are rare. Typically, an arbitration award can be overturned only as a result of corruption, fraud, partiality, or prejudicial misconduct by the arbitrator.

If you have any question, please contact Grant Killoran at grant.killoran@wilaw.com or 414-276-5000.