



## **Arbitrating Engineering Disputes: Best Designed Practices**

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Businesses that find themselves embroiled in disputes involving highly sophisticated equipment and designs, or which employ advanced engineering techniques or technology in the performance or delivery of their products or services, will find significant advantages in using ADR rather than litigation to resolve these disputes. Mediation is increasingly being used as a mutually preferred form of dispute resolution. However, when mediation fails the parties often prefer and would generally greatly benefit by the use of arbitration to resolve such intractable disputes. Why this is so requires an examination of why arbitration is uniquely suited for the resolution of these "engineering disputes".

Let's start our examination with a definition of "engineering disputes." Engineering disputes are those dependent on the resolution of issues relating to design, function, operation, failure, and/or compliance with specifications of devices, materials, software, systems, processes, etc. Resolution of these issues requires an understanding of scientific principals and scientific terms, and some comfort with the related mathematics. Also required is an understanding of how scientists and engineers approach issues and solve problems.

Engineering issues may arise in contract or tort cases. The presence of these issues places an additional demand on advocates and arbitrators beyond merely presenting testimony and having arbitrators determine facts and who is telling the truth, the meaning of a contract, what parties intended, and/or did the parties act reasonably or with due care or perform in accordance with their contract. Engineering cases additionally require that advocates and arbitrators understand the particular technologies and scientific principles involved in the controversy. Advocates need to be skilled at presenting and rendering those technologies and scientific principles in a clear and understandable manner and in a less formal, but still adversarial, environment. The arbitrators and advocates also need to be skilled in applying the law, proficient in honoring dispute resolution principles and knowledgeable of the applicable technology and science that are involved in the particular dispute.

Arbitration is a particularly well-suited process to accommodate the demands of engineering disputes. This is true for several reasons. Parties can select finders of fact who have an understanding of engineering analysis and the underlying

# The Arbitration Of Industrial Engineering Disputes

**K Morrison**



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