
MANDATORY ARBITRATION

The Alternative To Trial

By Christopher M. Davis, Attorney at Law



DAVIS LAW GROUP, P.S.

Davis Law Group, P.S.
2101 Fourth Avenue
Suite 630
Seattle, WA 98121

206-727-4000

Davis Law Group, P.S.
2101 Fourth Avenue
Suite 630
Seattle, WA 98121

Phone: 206-727-4000
Fax: 206-727-4001
info@injurytriallawyer.com

www.InjuryTrialLawyer.com



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THE ALTERNATIVE TO TRIAL

The purpose of Mandatory Arbitration is to reduce court congestion, expedite the litigation process, and to provide a cost effective resolution of civil claims.

In Washington, most of the superior courts have adopted a program known as "mandatory arbitration." Arbitration is another way to resolve a case instead of going to trial. With arbitration, the court appoints an "arbitrator" who will decide the case by listening to testimony, reviewing evidence, and then issuing an award. The arbitrator is usually an experienced attorney or retired judge. This author has served as an arbitrator in many personal injury cases. The purpose of Mandatory Arbitration is to reduce court congestion, expedite the litigation process, and to provide a cost effective resolution of civil claims.

Arbitration is often preferred over a jury trial because the costs are much lower, the rules of evidence are relaxed, and the hearing itself is far less stressful than a jury trial. Also, the arbitration hearing may be scheduled within four to six months after a lawsuit is filed while it can take up to two years or more to get to trial. Most arbi-

tration hearings last no longer than a day while a jury trial can last several days or even weeks.

There are potential drawbacks with arbitration. For instance, there is a limit on the amount of damages that can be awarded. In Washington (as of the date of this writing) that limit is now \$50,000. But even if your case is worth more than \$50,000 it could still be advantageous to participate in mandatory arbitration because of the high costs and risks of going to trial. Another potential drawback is that either party can appeal the arbitration award and request that the case be tried in court. However, if a party appeals the award but fails to do better at trial, that party will have to pay the other side's attorney fees and costs (which could be substantial depending on the facts of the case and the length of trial).

In this author's experience, more than 90% of the arbitration appeals are re-

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requested by the defendant's insurance company. Most plaintiff attorneys do not like to appeal an arbitration award because it creates a significant risk that the client may have to pay the defendant's attorney's fees. What most people fail to recognize is that many insurance companies will intentionally appeal a fair arbitration award to force the plaintiff to incur the substantial added expense of trying the case in court. Why is this so? Because these same insurance companies want to make it as expensive and time consuming as possible to wear down the plaintiff and her attorney. In fact, many insurance companies will routinely spend more money to defend a case than the amount of money it would take to simply pay the arbitration award.

If the arbitration award is appealed and the case goes to trial, the jury will never be informed that the case was submitted to arbitration. And of course, the jury will never be told the amount of the arbitrator's award. This can create problems especially in smaller

cases because the jury may be left with the impression that the plaintiff and his or her attorney have forced the jury to come to court to decide a small case. Many times jurors resent having to decide a small case because they believe smaller cases should be settled. Yet jurors never realize until after the trial that it was the defendant's insurance company that appealed the award and forced a trial. Fortunately, this author has developed proven trial techniques to combat this problem.

It is important to remember that there are specific rules that govern Mandatory Arbitration. These rules are complex and can provide traps to the inexperienced attorney. You should always consult with a qualified and experienced personal injury attorney about whether your accident case is appropriate for Mandatory Arbitration.

ABOUT THE AUTHOR

CHRISTOPHER M. DAVIS

Washington attorney Christopher Michael Davis has been representing individuals in accident cases and against insurance companies since 1994.

Davis Law Group, P.S.

The personal injury attorneys and trial lawyers at the **Davis Law Group, P.S.** are dedicated to protecting your interests and handling your case with personal attention, aggressive advocacy, professionalism, and compassion.

We have been successfully representing injured people, car accident victims, and wrongful death cases in Washington State for almost 15 years. We understand that sustaining traumatic and life changing injuries is emotionally devastating. We strive to balance this concern with the unique and rigorous demands of the legal system. We understand that the selection of your personal injury attorney is an important decision, and which may have far reaching consequences.

In 2006, he was named a Rising Star Attorney by Washington Law & Politics magazine (this recognition is given only to the top 2.5% of lawyers age 40 and under in Washington State). In 2007, Washington Law & Politics named Mr. Davis a Super Lawyer (the top 5% of lawyers in Washington). Mr. Davis speaks at Continuing Legal Education seminars on topics related to personal injury. He teaches and instructs other lawyers in Washington State on topics such as jury selection, proving damages and developing winning trial techniques.

Mr. Davis has been licensed to practice law in Washington State since 1993. He has obtained millions of dollars in verdicts and settlements for his clients. Mr. Davis is a member of numerous professional organizations, including the Washington State Trial Lawyers Association, American Association for Justice, and the North American Brain Injury Society.

If you believe you or a loved one has been wronged, contact Mr. Davis today for a FREE, no obligation consultation at 206-727-4000.

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