

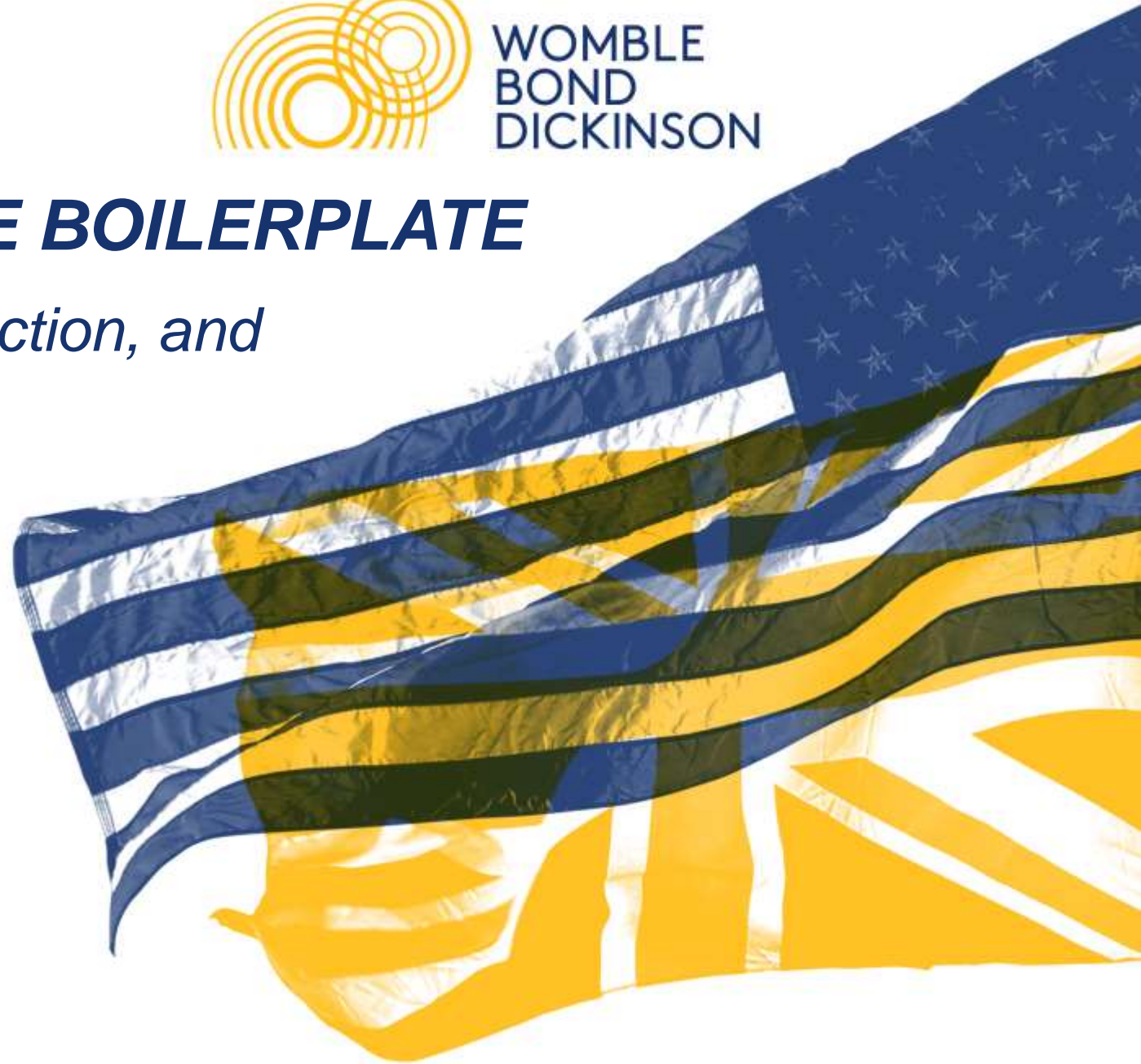


BULLET-PROOFING THE BOILERPLATE

Choice of Law, Forum Selection, and Arbitration Provisions

March 14, 2024

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Choice of Law Default Rules

- States generally use one of three tests for conflicts of laws:
 - **Lex Loci Test (NC)** – Law of place where event occurred that created the right on which the party brings suit
 - **Most Significant Relationship Test (NY)** – Place of contract formation, negotiation, performance, subject matter, and residence of parties
 - Restatement (Second) of Conflict of Laws (1971)
 - **Governmental Interest Test** – Court considers policies underlying the law of each state and applies the law of the state that has the greatest interest in the litigation
- * *Internal corporate affairs are governed by the law of incorporation*



North Carolina

Tort	Contract
<p data-bbox="180 311 843 358"><u>Lex Loci Delicti</u>– Place of Injury</p> <ul data-bbox="180 408 1238 965" style="list-style-type: none">• State where the injury occurred<ul data-bbox="275 465 1238 565" style="list-style-type: none">• State where the last act occurred giving rise to the injury• Look at the elements of the claim<ul data-bbox="275 636 1238 965" style="list-style-type: none">• Negligence (claim complete when actual injury or loss occurs)• Negligent mis. (claim complete when reliance proves detrimental)• NC Securities Act (claim complete upon <i>offer</i> or sale of security based on false fact)	<p data-bbox="1294 311 2155 358"><u>Lex Loci Contractus</u>– Place of Formation</p> <ul data-bbox="1294 425 2321 865" style="list-style-type: none">• State where contract was made• Requires tracking offer and acceptance, and who signed last• If last party <u>signs</u> in VA, contract is formed in Virginia and the law of VA controls• In NC, indicating that the contract was “made” in NC, without more, may not be enough to establish choice of law here



New York & Delaware

Tort Actions	Contract Actions
<p data-bbox="173 302 794 348"><u>Most Significant Relationship</u></p> <p data-bbox="173 416 1151 508">Applies an "interest" analysis, in which a court, after identifying the types of laws in conflict, applies:</p> <ul data-bbox="173 568 1238 859" style="list-style-type: none"><li data-bbox="173 568 1238 659">•The law of the jurisdiction where the tort occurred, if the conflict involves laws that regulate conduct<li data-bbox="173 719 1238 859">•Considers domicile of parties, place of the tort, and purposes of the applicable substantive law, if the conflict involves laws that allocate loss	<p data-bbox="1286 302 1908 348"><u>Most Significant Relationship</u></p> <p data-bbox="1286 416 2356 539">Applies a "center of gravity" or "grouping of contacts" analysis, to determine place having most interest in dispute. Following <i>Restatement</i> §§6, 188.</p> <p data-bbox="1286 591 1429 625">Factors:</p> <ol data-bbox="1286 634 1913 853" style="list-style-type: none"><li data-bbox="1286 634 1691 674">(1) Place of contracting<li data-bbox="1286 679 1691 719">(2) Place of negotiation<li data-bbox="1286 725 1719 765">(3) Place of performance<li data-bbox="1286 771 1791 811">(4) Location of subject matter<li data-bbox="1286 816 1913 856">(5) Residence and location of parties <p data-bbox="1286 905 1467 939">Principles:</p> <ol data-bbox="1286 948 2181 1202" style="list-style-type: none"><li data-bbox="1286 948 1862 988">(1) Needs of interstate commerce<li data-bbox="1286 993 1854 1033">(2) Relevant policies of the forum<li data-bbox="1286 1039 2066 1079">(3) Relevant policies of other interested states<li data-bbox="1286 1085 1928 1125">(4) Protection of justified expectations<li data-bbox="1286 1130 2181 1170">(5) Basic policies underlying the particular field of law<li data-bbox="1286 1176 2040 1216">(6) Ease in determining and applying the law



Choice of Law Clauses

- **Conflict of laws is considered procedural – apply the rules of the forum where the lawsuit is filed**
- **North Carolina and New York will generally enforce the parties' choice of law, unless:**
 - (1) The agreement and parties have no substantial relationship with the chosen state and there was no other reasonable basis for choosing it; or
 - (2) The law of the chosen state would be contrary to a fundamental public policy of a state with materially greater interest

See Cable Tel. Svcs., Inc. v. Overland Contracting, Inc., 154 N.C. App. 639, 642-43 (2002) (applying Restatement (Second) of Torts, Conflict of Laws, § 187); *Welsbach Elec. v. MasTec N. Am.*, 7 N.Y.3d 624, 629 (2006)



Choice of Law

Substantive v. Procedural Law

- Providing that contract dispute will be “governed” by law of particular state normally incorporates only *substantive* law
- Courts will continue to apply their own procedural law
 - Conflict of law rules
 - Statutes of limitation
 - Rights of indemnification and contribution among tortfeasors
- Consider
 - Specifying contract shall be governed by law of state “including laws governing statutes of limitation and conflict of laws” or “regardless of choice of laws”

Choice of Law

Tort & Contract Claims?

- **NY – Clause must be “sufficiently broad” to encompass tort and contract claims**
 - *E.g.*, “All disputes” “related to” contract and transaction
 - Better to specify both contract and tort claims

Krock v. Lipsay, 97 F.3d 640 (2d Cir. 1996)

- **DE – Looks to relationship between claim and contract, may apply to tort claims even without “broad” language**

Abry Partners V, L.P. v. F & W Acquisition LLC, 891 A.2d 1032, 1048
(Del. Ch. 2006)

- **NC generally follows DE approach, although best practice is to expressly cover both contract and tort claims**

Choice of Law

Substantive Considerations

- Parol evidence rule
- No oral modification clauses
- Implied covenants (good faith and fair dealing)
- “Best efforts” clauses
- Indemnification provisions
- Unilateral termination provisions
- Unfair trade practices
- Economic loss rule
- Attorneys’ fees
- Requirements contracts
- Jury trial waivers

Forum Selection Clauses

- **Federal and state courts generally enforce choice of forum clauses as presumptively valid unless:**
 - unreasonable or unjust
 - clause is invalid as product of fraud
 - enforcement would contravene a strong public policy of the forum where the suit is brought

See Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972); *SED Holding, LLC v. 3 Star Properties, LLC*, 246 N.C. App. 632, 638, 784 S.E.2d 627, 631 (2016)



Forum Selection

Special Considerations in NC

- **Forum selection clauses must be exclusive / mandatory to be enforceable**
 - “consents to” jurisdiction is not enough

Roth v. Penguin Toilets, LLC, 2011 NCBC 45 (N.C. Bus. Ct. 2011)

- **N.C.G.S. § 22B-3**

“Except as otherwise provided in this section, any provision in a contract entered into in North Carolina that requires the prosecution of any action or the arbitration of any dispute that arises from the contract to be instituted or heard in another state is against public policy and is void and unenforceable. . . .”



Forum Selection

Special Considerations in NC

- **By its terms, N.C.G.S. § 22B-3 applies only to contracts formed in NC**

Szymczyk v. Signs Now Corp., 168 N.C.App. 182, 606 S.E.2d 728 (2005)

- **Federal courts generally hold § 22B-3 is not dispositive, but have cited statute to support decisions not to enforce forum selection clause**

See, e.g., Republic Mortgage Ins. v. Brightware, 35 F. Supp. 2d 482 (M.D.N.C. 1999); *Rice v. Bellsouth Advert. & Pub. Corp.*, 240 F. Supp. 2d 526 (W.D.N.C. 2002)

- **Where contract is not formed in NC, state courts hold party opposing clause has “heavy burden” of “demonstrate[ing] that the clause was the product of fraud or unequal bargaining power or that enforcement of the clause would be unfair or unreasonable”**

See, e.g., Parson v. Oasis Legal Fin., LLC, 214 N.C. App. 125 (2011)



Choice of Law & Forum Selection

New York Statutes

Choice of Law – N.Y. Gen. Oblig. Law § 5-1401

- Parties can select NY law to govern their contract, *even if the transaction has no connection or "bears [no] reasonable relation" to the state* so long as contract is worth at least \$250,000.
- Does not apply to: labor, personal services, secured transactions, or insurance.

Choice of Forum – N.Y. Gen. Oblig. Law § 5-1402

Parties may select NY Courts (even if not located in NY), if:

- Action arises out of or relates to contract with NY choice of law provision
- Contract relates to transaction worth at least \$1 million in aggregate (note: not amount in controversy)
- Non-resident parties consent to jurisdiction in New York Courts



Choice of Law & Forum Selection

Delaware Statutes

Del. Code Ann. tit. 6 § 2708

Delaware law allows the parties to choose its laws to govern their contracts if:

- The contract is worth at least \$100,000
- The parties choose to adjudicate or arbitrate disputes in Delaware
- The parties may be served with legal process in the State



Choice of Law & Forum Selection

North Carolina Statutes

Choice of Law - N.C.G.S. § 1G-3

- Parties to business contract may agree that NC law shall “govern their rights and duties in whole or in part,” whether or not
 - Parties or subject matter bear reasonable relationship to NC; or
 - Application of NC law would violate fundamental policy of other state

Choice of Forum – N.C.G.S. § 1G-4

- Business contract may require dispute be brought in NC so long as:
 - Contract provides NC law governs “in whole or in part”; and
 - Parties agree to litigate dispute in NC

Choice of Law & Forum Selection

UCC

- UCC § 301(a) generally permits the contract parties to designate the governing law in a non-consumer transaction involving the sale of goods, the lease of personal property, or any of the other types of transactions covered by the UCC
- In the absence of such a designation, the state's adopted version of the UCC applies to transactions bearing “an appropriate relation to the state” (UCC § 1-301(b))
- Each state sets out specific exceptions in UCC § 1-301(c)
 - Perfection and priority of security interest in collateral
 - Goods (cars) passing by certificate of title
 - Liability of bank regarding presentment, payment or collection
 - Investment securities
- International sales are presumptively governed by UN Convention on Contracts for International Sale of Goods. Because it preempts state law, parties must affirmatively opt out of the CISG in order to choose state law / UCC



Special State Statutes

Takeaways

- *NY, DE, and NC Statutes Only Apply to Clauses Selecting Their Own Laws*
- *Choice of Law Clauses Selecting Other States Must Satisfy Common-Law Tests & Still Require “Substantial Relationship” to State*



Special State Statutes

Takeaways

- **Choice of law clause nonexistent or unenforceable → apply default rules of the forum**
- **If action is filed in NY, DE, or NC, a clause selecting another state's law requires a “substantial relationship” to that state in order to be enforceable**
- **NY, DE, and NC have special statutes allowing parties to “opt in” to their laws without a substantial connection to the state, but the action must be filed in that state for the statute to apply (e.g., filed in NY and selecting NY law)**
- **If contract is formed in NC and action is proceeding in NC state court, forum selection clause choosing another state will be unenforceable**

Drafting Considerations

Choice of Law

- ***What is the connection of the parties, subject matter, and performance to the chosen forum?***
 - Describe connection to forum in recitals
- ***Should the choice of law apply to all contract claims?***
 - IP – may want State law to apply to license, or to trade secrets, but not to validity, etc.
 - Other carve outs (e.g., perfection and priority in security agreements)
 - International sales of goods – explicit statement CISG will not apply
- ***How should the “scope” of the choice of law be defined?***
 - “This agreement shall be governed by . . .”
 - “This agreement and any claims for breach of its terms . . .”
 - “All disputes arising from this agreement . . .”
 - “All disputes related to this agreement, whether sounding in contract or in tort, . . .”



Drafting Considerations

Choice of Law

- *Expressly state where the contract was made.*
- *Should the choice of law govern both tort and contract claims?*
- *Should choice of law include conflicts of laws?*
 - “without giving effect to any rules or principles governing conflicts of laws”
- *Should the choice of law govern statutes of limitation as well?*
 - “including laws governing statute of limitation”



Drafting Considerations

Forum Selection

- ***Exclusive vs. permissive forum selection?***
- ***Floating choice of forum?***
 - e.g., the jurisdiction of the party against whom the claim is asserted
- ***Express consent to personal jurisdiction?***
- ***Venue (county, location)?***
- ***Federal or state courts?***
- ***Specialized courts?***
 - Consider specifying Business Court as mandatory jurisdiction, to extent allowed by law
 - Consider consent to Business Court for contract claims \$1 m or over
- ***Attorneys' fees and costs if required to file motion to transfer to designated jurisdiction?***



Choice of Forum

North Carolina

- Accessible federal and state courts, which are generally viewed as “business friendly”
- Federal and State courts with significant experience with complex business disputes, including cases applying NY and DE law
- Local rules with streamlined discovery procedures and few additional burdens
- “Home court” advantage
- State Courts
 - NC Business Court
 - “Rule 2.1” Judges for Complex Cases falling Outside Business Court Jurisdiction

Choice of Forum

NC Business Court

- Specialized Court formed in 1996 to increase efficiency and predictability of business cases
- Patterned on Delaware Chancery Courts
- Cases are assigned to a single judge to manage case
- Issue written, published opinions on dispositive motions
- Electronic filing
- Judges nominated by the governor, approved by the General Assembly
- Judges have significant business litigation experience
 - C.J. Bledsoe – Charlotte
 - J. Conrad – Charlotte
 - J. Davis – Raleigh
 - J. Earp – Greensboro
 - J. Robinson – Winston-Salem

Choice of Forum

NC Business Court

- Local rules drafted in consultation with bar. Require compliance with procedures, impose limits on discovery, but remain flexible
 - Court holds initial case management conferences
 - Open to staged / phased discovery & litigation
 - Informal, initial resolution of discovery disputes by letter motion
 - Rules provide for hearings by telephone and videoconference
- Decisions directly appealed to North Carolina Supreme Court, bypassing NC Court of Appeals
- Regularly deal with cases under NY or Delaware law
- During 2023, Business Court had average of 189 active cases, with 101 new cases and 103 closed cases throughout the year. The average active case is less than two years old

Choice of Forum

NC Business Court

Jurisdiction (N.C.G.S. § 7A-45.4)

“Mandatory”

- Law governing corporations
- Securities
- Antitrust
- Trademark
- Ownership, use, licensing, installation, or performance of intellectual property
- Trade secrets
- Contract disputes, if:
 - At least one party on each side is a business entity
 - Amount in controversy is \$1 million
 - All parties consent

“Double Mandatory”

- Judicial review of contested tax cases
- Involves covered subject matter and amount in controversy is at least \$ 5 million

“Mandatory” – either party may designate

“Double Mandatory” – plaintiff must designate the case and proceedings must halt until case is sent to Business Court



Choice of Forum

Western District of North Carolina

- Covers portion of state Charlotte and west.
- Four Article III Judges, with additional three on senior status

Hon. Martin Reidinger (G.W. Bush) (Asheville)

Hon. Frank Whitney (G.W. Bush) (Charlotte)

Hon. Max Cogburn (Obama) (Asheville)

Hon. Kenneth Bell (Trump)(Charlotte)

Hon. Richard Vorhees (Reagan) (Senior Status)

Hon. Graham Mullen (G.H.W. Bush) (Senior Status)

Hon. Robert Conrad (G.W. Bush) (Senior Status)

- Three magistrates with significant experience handling complex business cases and e-discovery



Choice of Forum

Western District of North Carolina

- Local rules allow flexibility in case scheduling / phased consideration of issues
- Reasonably light case load:
 - Roughly 250 civil filings per judge
 - Median time to disposition (civil) – 9.2 months
 - Median time to trial (civil) – 21.8 months
- Comparison
 - NJ – 531 civil filings per judge / Median time to trial 35.5 months
 - SDNY – 405 civil filings per judge / Median time to trial 32.4



Why Arbitration?

Comparison to Domestic Litigation

- More party control over process and timing
- More privacy and confidentiality
- Decision-makers are usually informed, sophisticated, and familiar with the subject matter
- Avoiding jury trials and class actions
- Greater likelihood of finality following the merits hearing

Why Arbitration?

Limited Appellate Rights

Under FAA, 9 U.S.C § 10, an award may only be vacated when:

- the award was “procured by corruption, fraud, or undue means”;
- there was “evident partiality or corruption in the arbitrators”;
- The arbitrators “were guilty” of (1) “misconduct” by “refusing to hear . . . pertinent and material” evidence or postpone the hearing “upon sufficient cause” or (2) other “misbehavior” that “prejudiced” a party’s rights; or
- the arbitrators “exceeded their powers” or so improperly executed them that there was no “mutual, final, and definite award.”

Arbitration Agreements

Where to Start – Model Clauses

“Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial [or other] Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.”

AAA Standard Clause 1



Arbitration Agreements

Drafting Considerations

- Governing law and location (or “seat”) of the arbitration
- Timing and deadlines
- Type of discovery permitted and any limits (e.g., no depositions)
- Confidentiality and data protection
- Reasoned or basic award? Prevailing party fees or costs?
- Remote vs. in-person hearing
- Arbitrator selection

Arbitration Agreements

Single Arbitrator or Panel?



PROS OF PANEL	CONS OF PANEL
<ul style="list-style-type: none">• Broadens experience base of the Tribunal	<ul style="list-style-type: none">• At least three times as expensive
<ul style="list-style-type: none">• Often easier for a panel to dismiss a claim or find fully in favor of one party	<ul style="list-style-type: none">• Scheduling far more difficult; expect the arbitration process to take longer
<ul style="list-style-type: none">• Less likely to get an unsupported result, especially in complex matters	



Arbitration Agreements

Method of Appointment and Qualifications



- Parties can select arbitrators or delegate to arbitration institution
- Appointment of a chair varies by regime, but a common framework is each party appointing one arbitrator, who then appoint the chair.
- Specific qualifications, processes, or attributes can be addressed in the agreement

Arbitration Agreements

Advantages to Using Popular Regimes

- Better access to strong arbitrators
- Less dependent on cooperation from other side (e.g., appointment of neutrals when parties disagree)
- Added sense of legitimacy to proceeding and award
- Commonly understood (and interpreted) rules

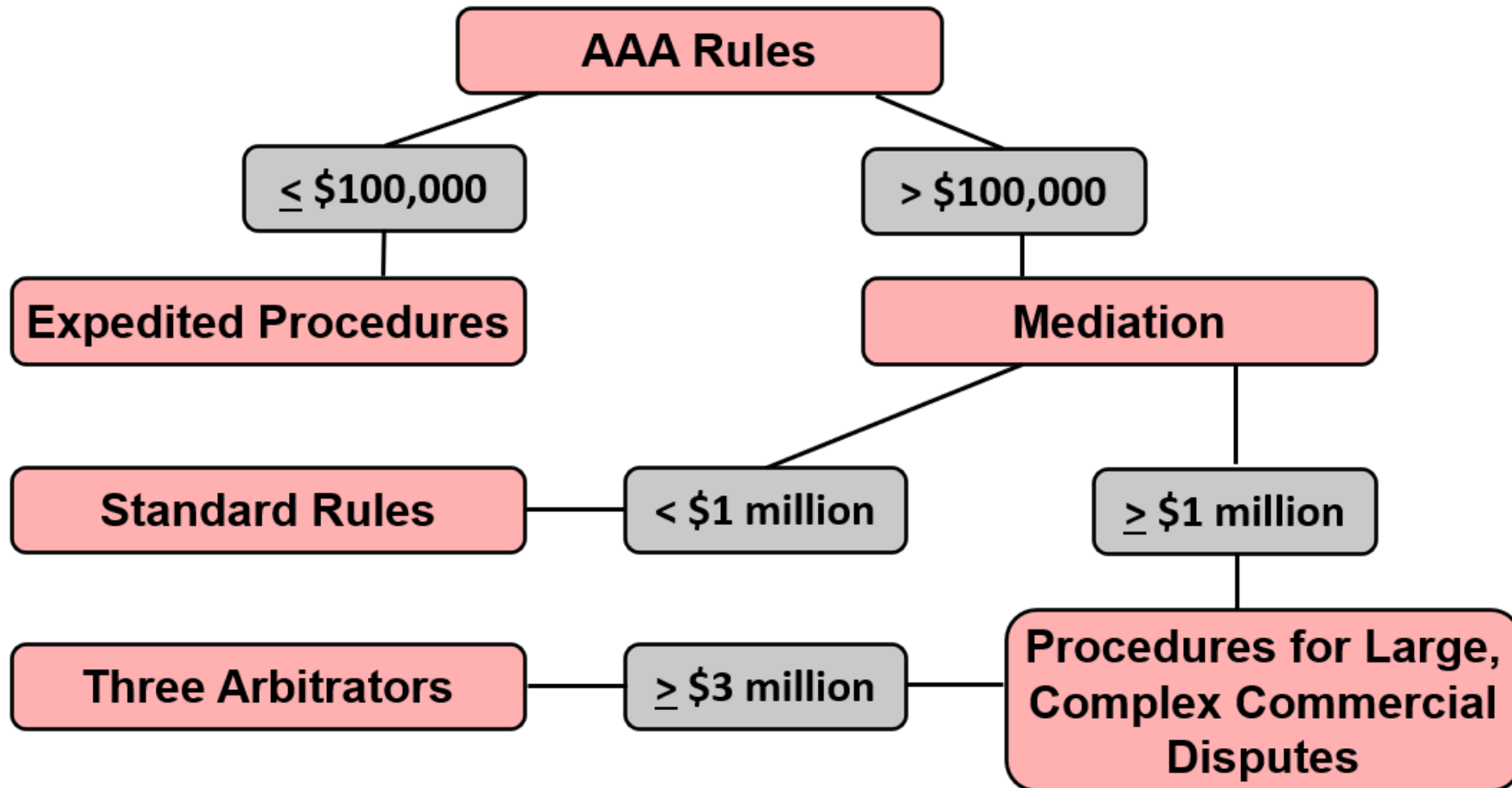


The screenshot displays the 'MOST VIEWED' section of the American Arbitration Association website. It features a table with seven rows, each representing a different arbitration regime. Each row has three columns: 'RULES', 'FORMS', and 'FEES'. The 'RULES' and 'FEES' columns contain document icons, while the 'FORMS' column contains a hamburger menu icon. The regimes listed are:

	RULES	FORMS	FEES
Commercial Arbitration Rules and Mediation Procedures			
Construction Industry Arbitration Rules and Mediation Procedures			
Consumer Arbitration Rules			
Employment Arbitration Rules and Mediation Procedures			
Labor Arbitration Rules			
International Dispute Resolution Procedures			
Optional Appellate Arbitration Rules			

Arbitration Agreements

Advantages to Using Popular Regimes



Arbitration Agreements

Cost of Using Popular Regimes

Amount of Claim	Initial Filing Fee	Final Fee
Less than \$75,000	\$925	\$800
\$75,000 to less than \$150,000	\$1,925	\$1,375
\$150,000 to less than \$300,000	\$2,900	\$2,200
\$300,000 to less than \$500,000	\$4,400	\$3,850
\$500,000 to less than \$1,000,000	\$5,500	\$6,825
\$1,000,000 to less than \$10,000,000	\$7,700	\$8,475
\$10,000,000 and above	\$11,000 plus .01% of the claim amount above \$10,000,000 up to \$65,000	\$13,750
Undetermined Monetary Claims	\$7,700	\$8,475
Nonmonetary Claims*	\$3,500	\$2,750



Phased Dispute Resolution

Step Clauses – Mediation

“If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.”

AAA Standard Mediation Clause 1

Phased Dispute Resolution

Step Clauses – Negotiation

“In the event of any dispute, claim, question, or disagreement arising from or relating to this agreement or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 60 days”

AAA Standard Negotiation Clause 1

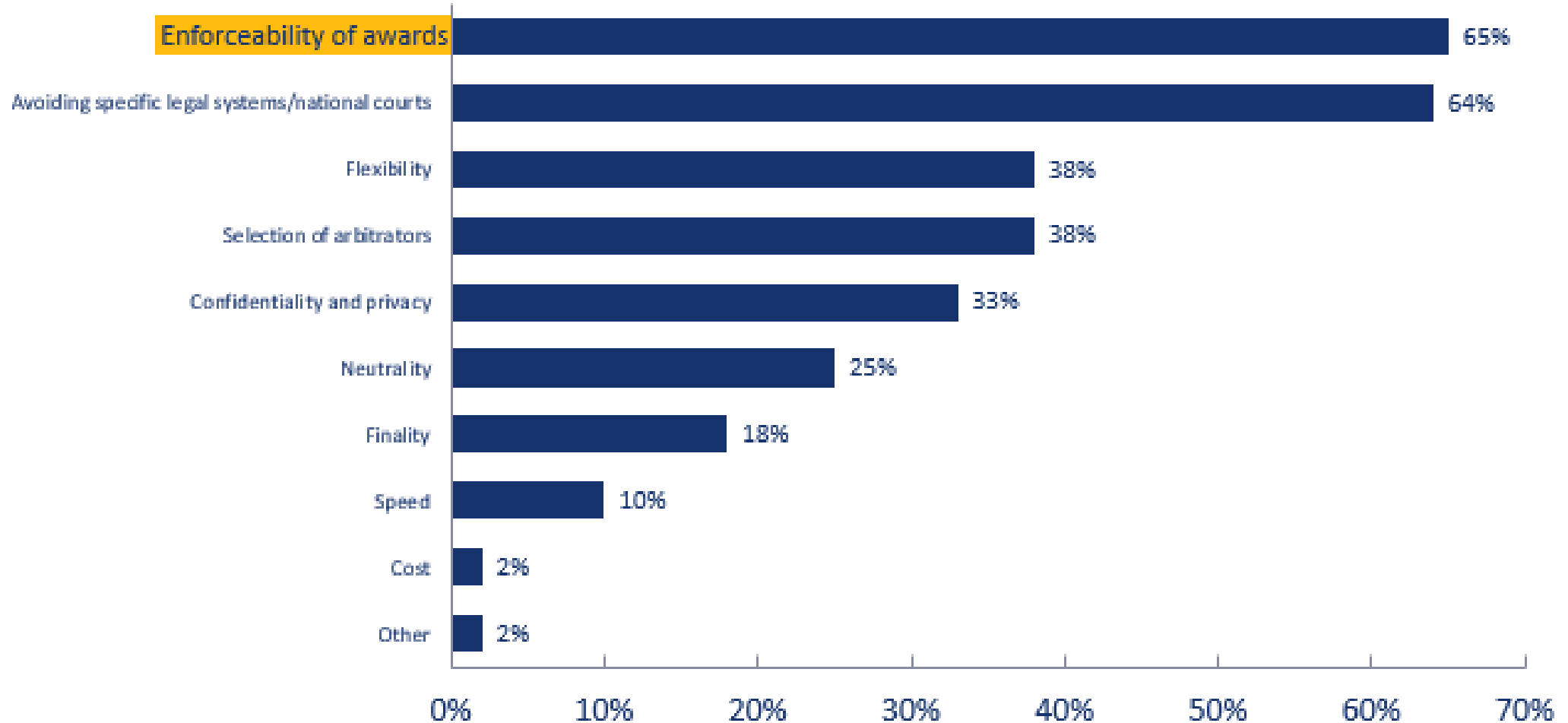
Phased Dispute Resolution

Step Clauses – Drafting Considerations

- Time limits to complete each step
- Carveout for seeking emergency or injunctive relief
- Confidentiality
- Mediator qualifications
- Business representative characteristics
- Location and mode (in-person vs. remote)

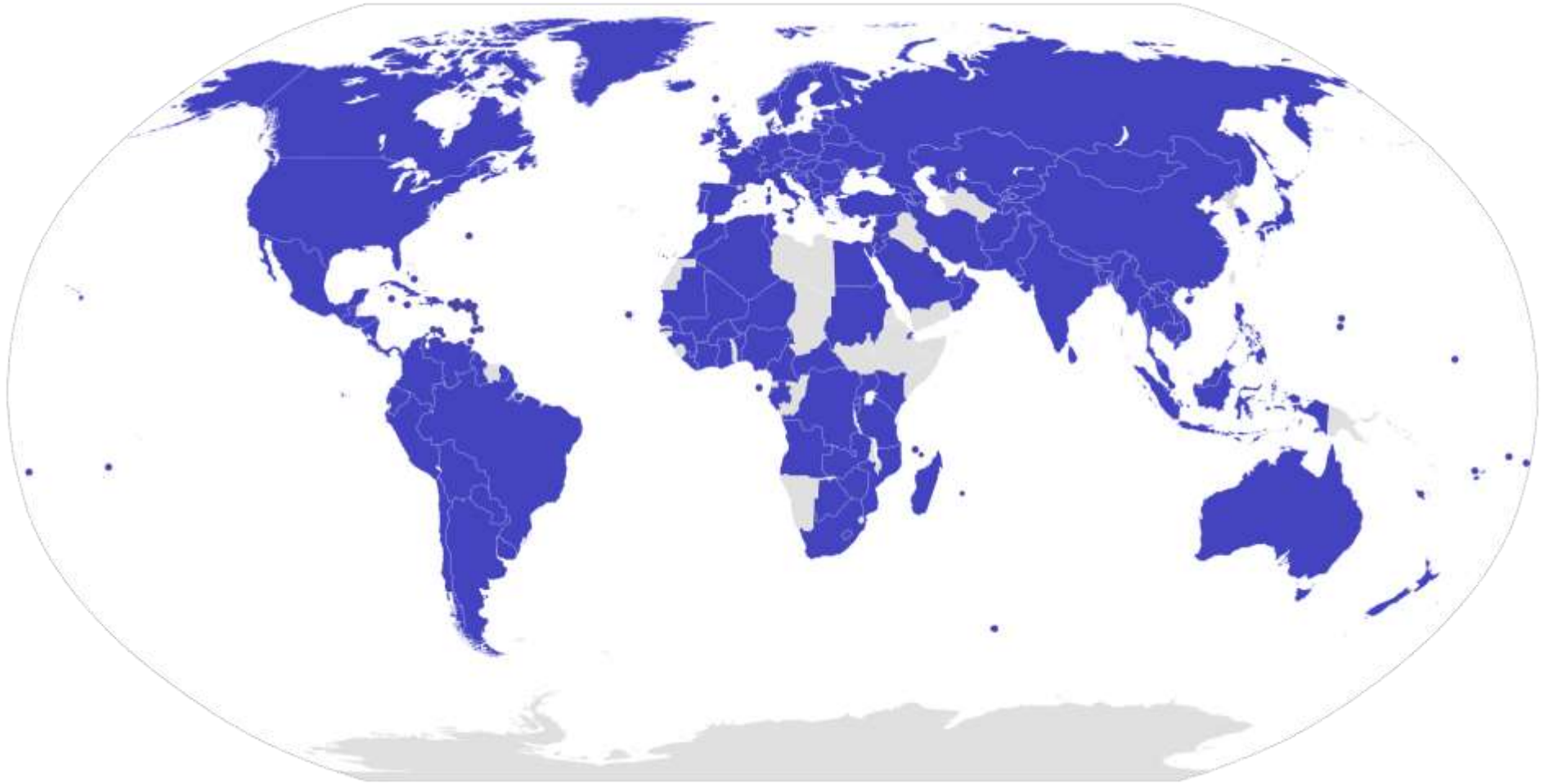
International Arbitrations

Why International Arbitration?



International Arbitrations

Enforcement – New York Convention



International Arbitrations

Enforcement – New York Convention

Art. V – The award must be recognized and enforced unless:

- A party lacked capacity or the agreement is not valid under applicable law;
- Inadequate notice to party of proceeding or party was otherwise unable to present case;
- No arbitral jurisdiction—dispute falls outside scope of arbitration agreement;
- Composition of tribunal was inconsistent with arbitration agreement or otherwise unlawful; or
- Dispute not arbitrable under applicable law or enforcement contrary to public policy.

International Arbitrations

Requirements of International Clauses

Four requirements under Article II(1) of the New York Convention:

- Must be in writing;
- Deals with existing or future disputes;
- The dispute arises out of a defined legal relationship; and
- Concerns a subject matter capable of resolution by arbitration.

International Arbitrations

Clause Drafting Considerations

- Language of arbitration
- Substantive law
- Seat of the arbitration
- Document production
- Confidentiality
- Costs and fees
- Ad hoc vs. institutional arbitration

International Arbitrations

Most Popular Institutions

- International Chamber of Commerce (“ICC”)
- London Court of International Arbitration (“LCIA”)
- Swiss Arbitration Centre (formerly Swiss Chambers Arbitration Institution)
- Singapore International Arbitration Centre (“SIAC”)
- Hong Kong International Arbitration Centre (“HKIAC”)
- International Centre for Dispute Resolution (“ICDR”)

International Arbitrations

Some Major Differences

- Depends *heavily* on documents, with witness statements often serving as direct testimony
- Experts appointed by the parties or the Tribunal
- IBA Model Rules on the Taking of Evidence are non-binding but are emerging as a common reference for guidance
- Hearings often subject to strict time allocations (e.g., chess clock)

International Arbitrations

Some Major Differences

- Discovery is very limited. Expect no depositions, and document discovery is constrained and often based on a “Redfern Schedule”

No.	Document(s) or Category of Documents Requested	Relevance and Materiality according to Requesting Party		Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decision
		Ref. to Submissions	Comments			

Model Clauses



Model Clauses

Choice of Law

Governing Law. This Agreement, and all claims or causes of action (whether in contract, tort, *or statute*) arising out of or relating to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, and enforced in accordance with, the internal laws of the State of [North Carolina], including its statutes of limitations.



Model Clauses

Forum Selection

Forum Selection Any claims or actions arising out of or relating to this Agreement (whether in contract, tort, or statute), or the negotiation or enforcement of this agreement, shall be heard and determined exclusively by the [U.S. District Court for the Western District of North Carolina], provided, however, that if subject matter jurisdiction is unavailable in that court, any such claim or dispute shall be heard and determined by the state courts in and for [Mecklenburg County, North Carolina].

The parties irrevocably submit to the personal jurisdiction and venue of the state and related federal courts in and for [Mecklenburg County, North Carolina], and waive any possible defense of *forum non conveniens* to any action brought in those courts.

In the event a party files an action in any forum other than as specified in this section, or otherwise seeks to have any such action transferred to any other forum, it shall be required to pay all costs, including reasonable attorneys fees, incurred by the other party in order to enforce the requirements of this section.



Model Clauses

Selecting Business Court

Forum Selection [The parties acknowledge and agree that this Agreement involves the laws governing _____]. The parties hereby agree, in writing, to the fullest extent allowed by law, that any action arising out of or relating to this Agreement (whether in contract, tort, or statute), shall be designated to and heard exclusively by the North Carolina Business Court, provided, however, that if subject matter jurisdiction is unavailable in that court, any such claim or dispute shall be heard and determined by the state and federal courts in and for [Mecklenburg County, North Carolina].



Model Clauses

Selecting Business Court

Sample Forum Selection Clause Requiring Business Court Designation

[I]n the event any dispute (whether in contract, tort or otherwise) arises out of this Agreement or the transactions contemplated hereby, each of the parties hereto consents in writing to the fullest extent permitted by law, to the sole and exclusive forum of the state courts of North Carolina in and for Mecklenburg County, North Carolina, with such dispute being designated by the party filing the action as a “mandatory complex business case” pursuant to Section 7A-45.4 of the North Carolina General Statutes and subject to designation or assignment to the North Carolina Business Court (or, if no state court located within the State of North Carolina has jurisdiction, the United States District Court for the Western District of North Carolina).

AGREEMENT AND PLAN OF MERGER by and between PARK STERLING CORPORATION and SOUTH STATE CORPORATION, Dated as of April 26, 2017.

https://www.sec.gov/Archives/edgar/data/764038/000104746917003102/a2232037zex-2_1.htm





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