



Muscular Arbitration- What Corporate Counsel Can Do to Shape Up Arbitration



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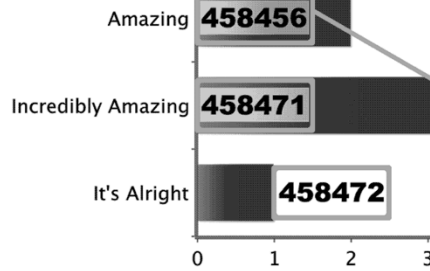
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How To Vote via Texting

EXAMPLE

How do you like my presentation so far?

Text a **CODE** to **37607**



1. Standard texting rates only (worst case US \$0.20)
- TIPS: 2. We have no access to your phone number
3. Capitalization doesn't matter, but spaces and spelling do



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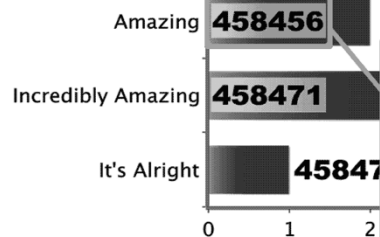
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How do you like my presentation so far?

EXAMPLE

Text a **CODE** to **37607**

Submit a **CODE** to **http://PollEv.com**



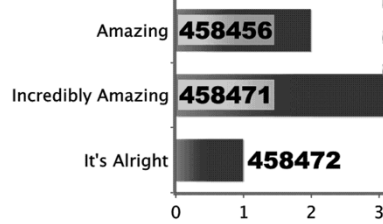
TIP: Capitalization doesn't matter, but spaces and spelling do



How do you like my presentation so far?

Submit responses at **PollEv.com/username**

Text a **CODE** to **37607**



EXAMPLE

TIP: Capitalization doesn't matter, but spaces and spelling do

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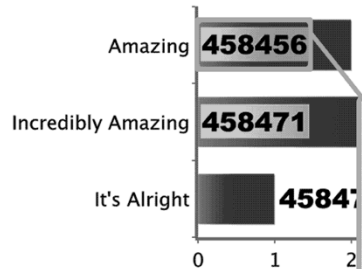


How do you like my presentation so far?

Text a **CODE** to **37607**

Tweet **@poll** and a **CODE**

Submit responses at **PollEv.com/username**



EXAMPLE

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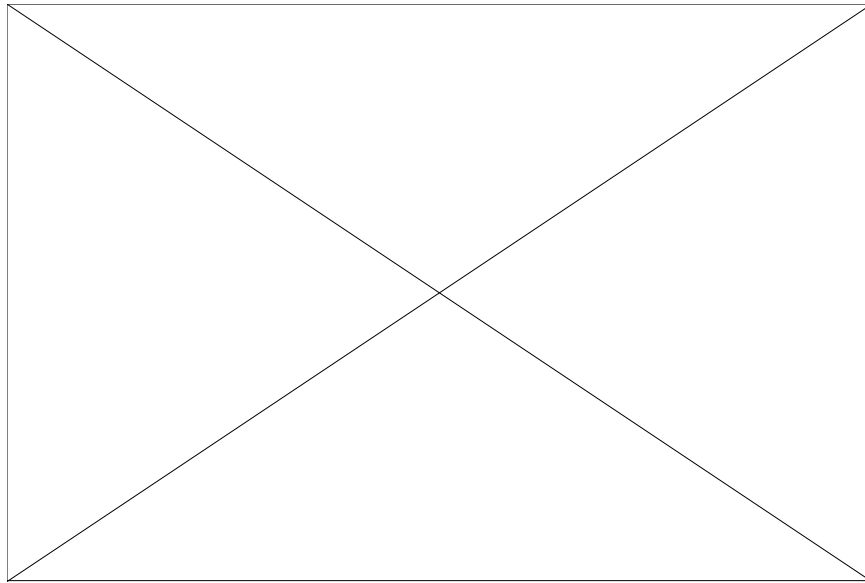
Tell us a little about you and arbitration.



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Muscular Arbitration

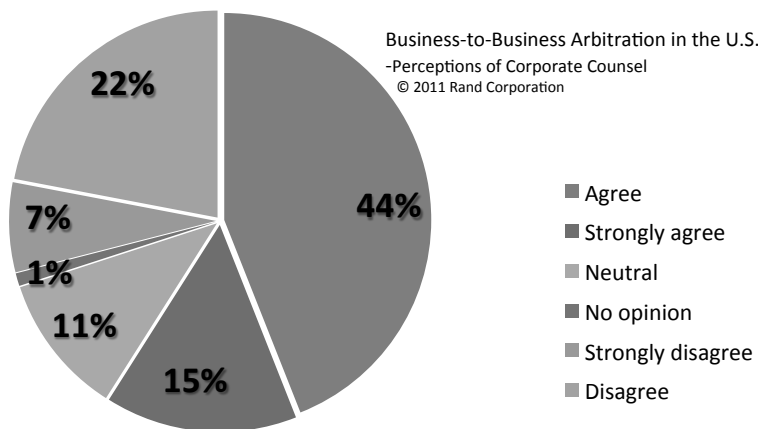
- Welcome to Muscular Arbitration:
 - A process where Corporate Counsel and their Outside Counsel, Arbitration Service Providers, and Arbitrators work to educate themselves and others about the need for control of time and money spent in Arbitration.

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Does Arbitration save time?

Fig. 2.2 Does B2B Arbitration Save Time Compared with Litigation?



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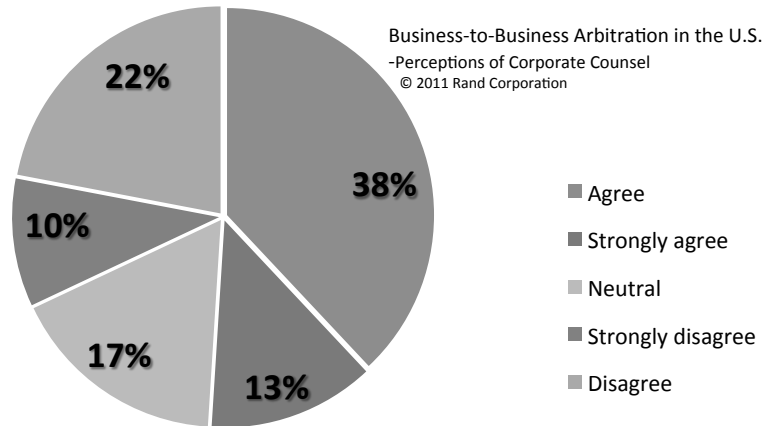
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Does Arbitration save money?

Fig. 2.3 Does B2B Arbitration Save Money Compared with Litigation?



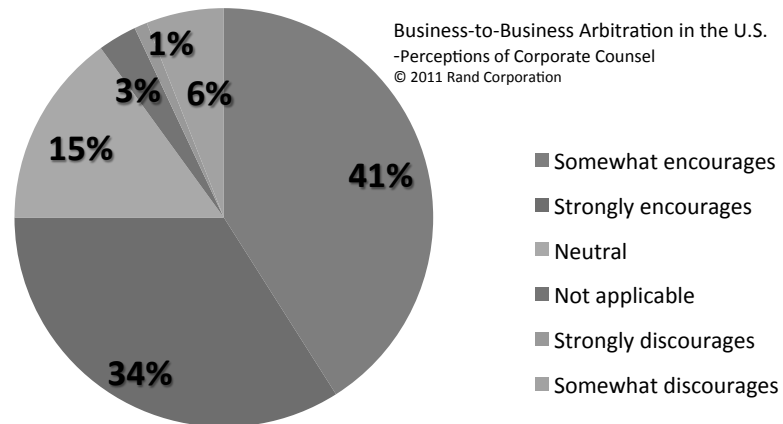
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Motivation to use Arbitration- Risk

Fig. 3.1 Does the Risk of an Excessive or Emotionally Driven Jury Award Encourage the Use of Arbitration?





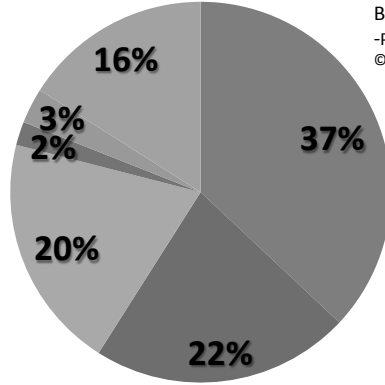
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Motivation to use Arbitration- Complexity

Fig. 3.4 Does Contract Complexity Encourage the Use of Arbitration?



Business-to-Business Arbitration in the U.S.
-Perceptions of Corporate Counsel
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- Somewhat encourages
- Strongly encourages
- Neutral
- Not applicable
- Strongly discourages
- Somewhat discourages

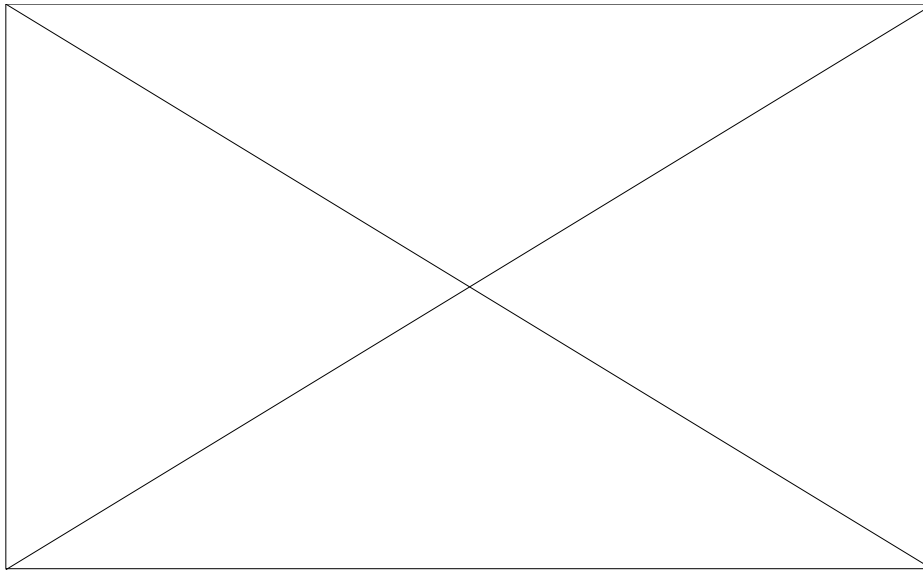
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Customized Clauses

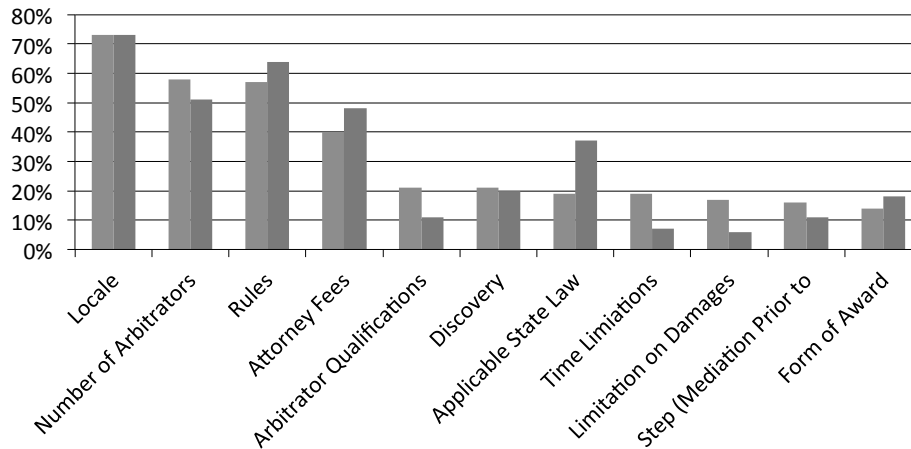
- 86% of Large Complex Business to Business Cases Awarded in 2011 had a customized provision
- 94% of the Large Complex Individually Negotiated Employee Cases in 2011 had a customized arbitration provision

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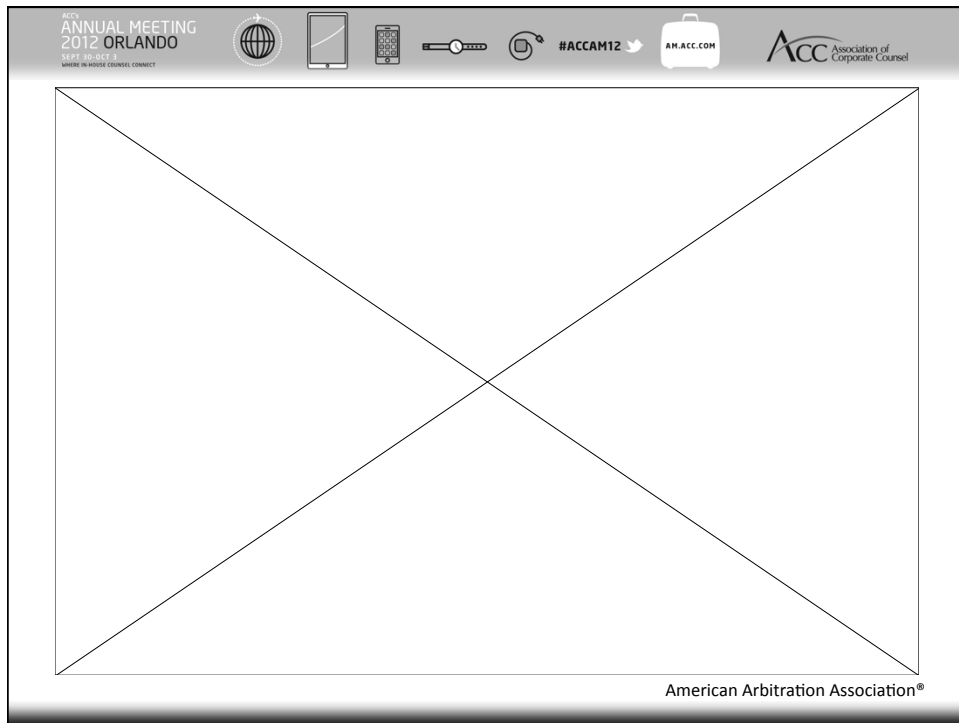


Customized Clauses

■ Commercial ■ Employment



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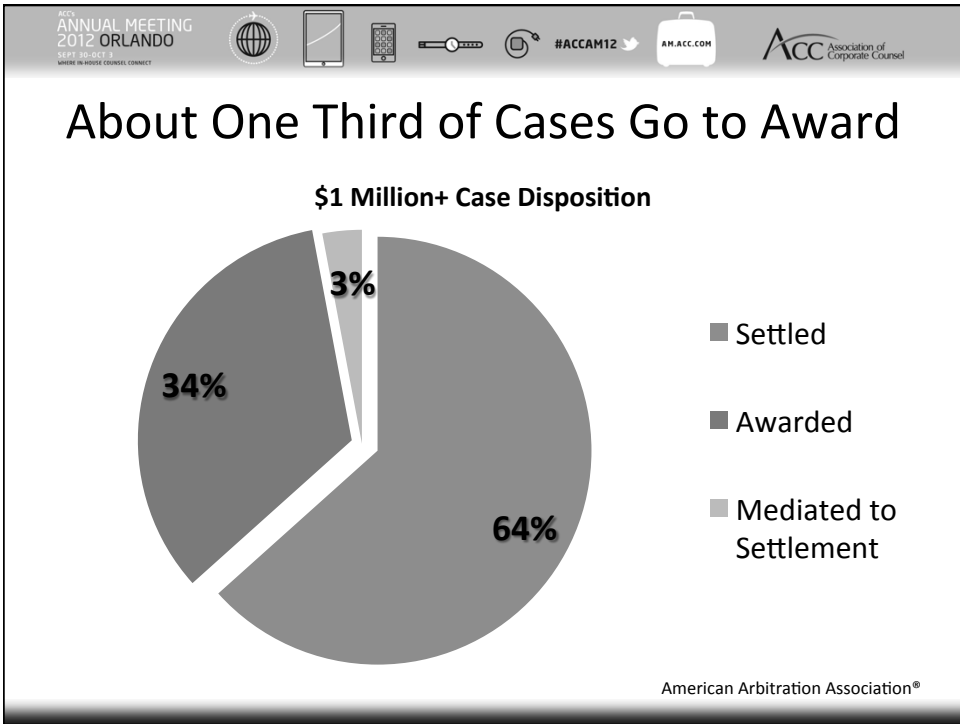
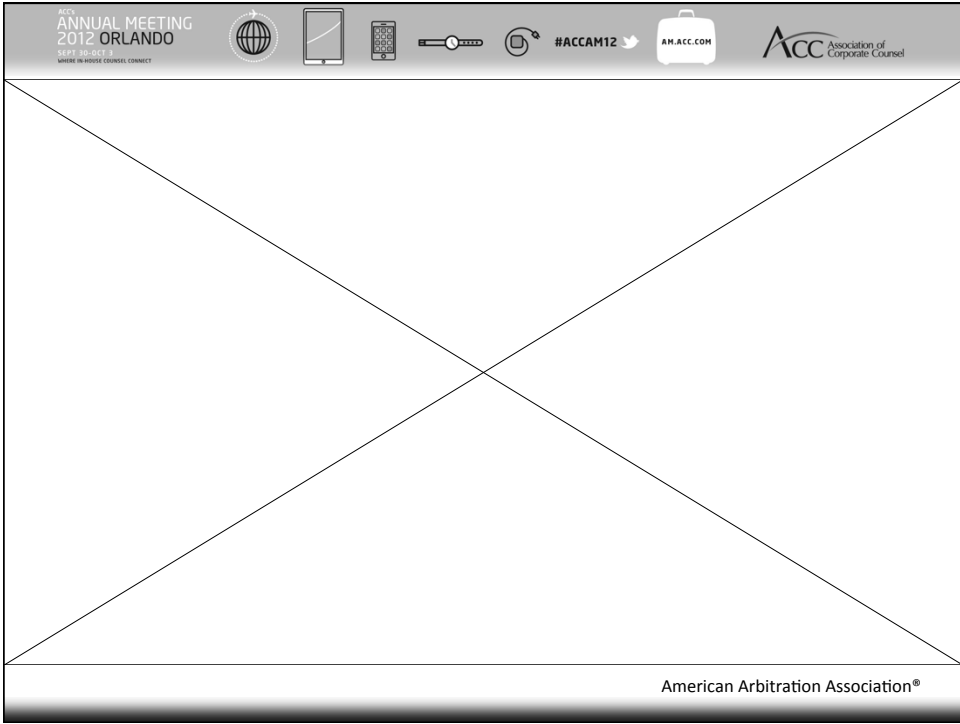


Managing Outside Counsel

- College of Commercial Arbitrators Protocols
 - “Stay actively involved throughout the dispute resolution process to pursue speed and cost-control as well as other client needs.”
 - Early case assessment
 - Set a realistic budget and forbid outside counsel from exceeding it without express approval
 - Attend first (and all important) case management conferences
 - Require regular status reports

Protocols for Expeditious, Cost-Effective Commercial Arbitration
© 2010 College of Commercial Arbitrators

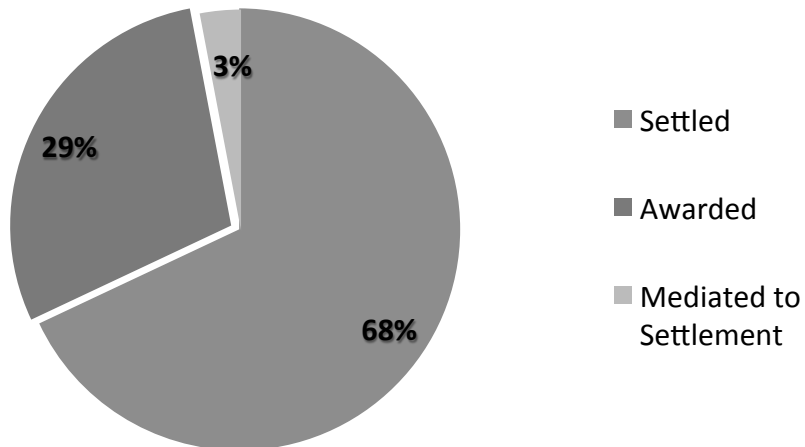
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Smaller Cases Settle More Frequently

\$75K-499,999 Case Disposition



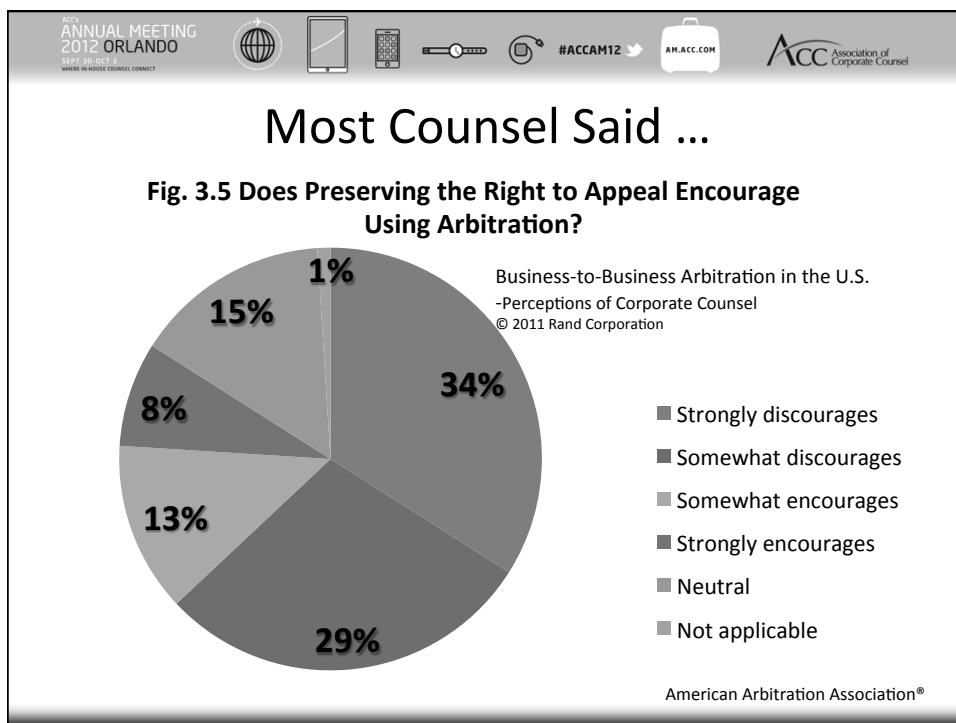
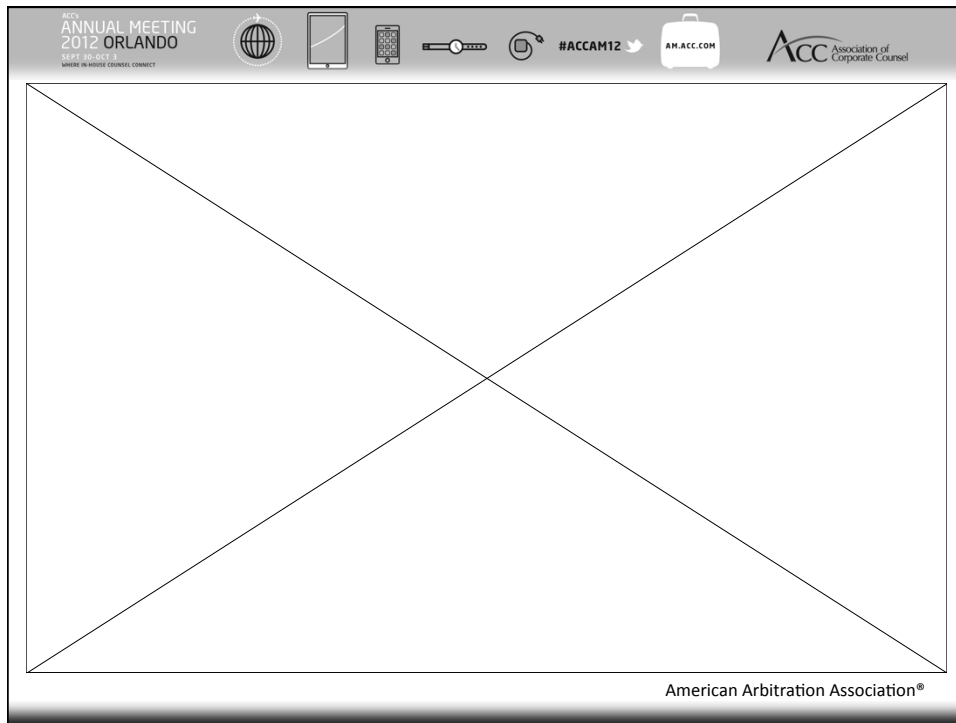
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Mediating after Filing for Arbitration

- Median days from filing a Commercial arbitration to converting/beginning a mediation:
 - 56 days for Regular Track
 - 102 days for Large Complex Cases
- Of the cases that convert to mediation after an arbitration filing (~5%)
 - 62% convert before an arbitrator is appointed
 - 35% convert after an arbitrator is in place but before an evidentiary hearing

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If you said TRUE, use AAA Appellate Arbitration

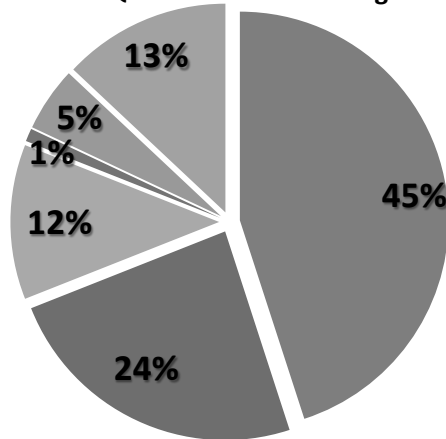
- *Hall Street* ended nearly all court review, but
 - Appellate Arbitration is available
 - Domestic and International
 - New Rules
 - Special Panel
- Finality
- Risk insurance





Controlling Arbitrator's Qualifications

Fig. 3.2 Does the Ability to Control the Arbitrator's Qualifications Encourage the Use of Arbitration?



Business-to-Business Arbitration in the U.S.
-Perceptions of Corporate Counsel
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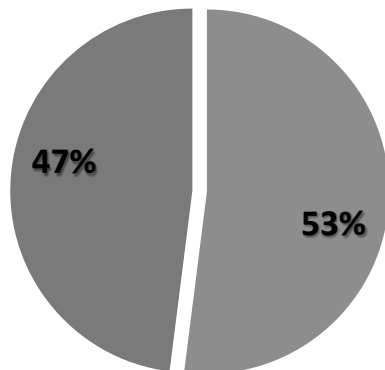
- Somewhat encourages
- Strongly encourages
- Neutral
- Not applicable

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One Versus Three Arbitrators

**Number of Arbitrators Selected
for \$1 Million+ Cases**



- One Arbitrator
- More than One Arbitrator

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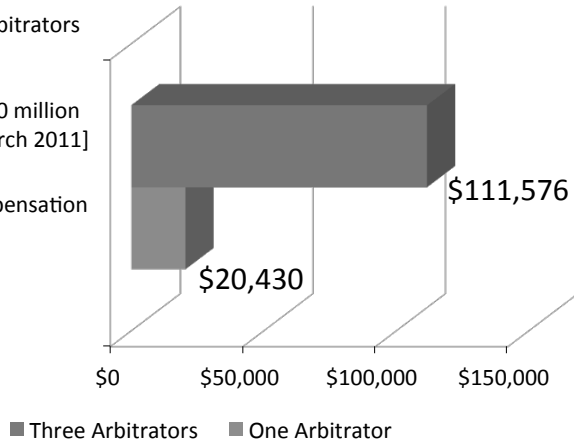


One Versus Three Arbitrators- Cost

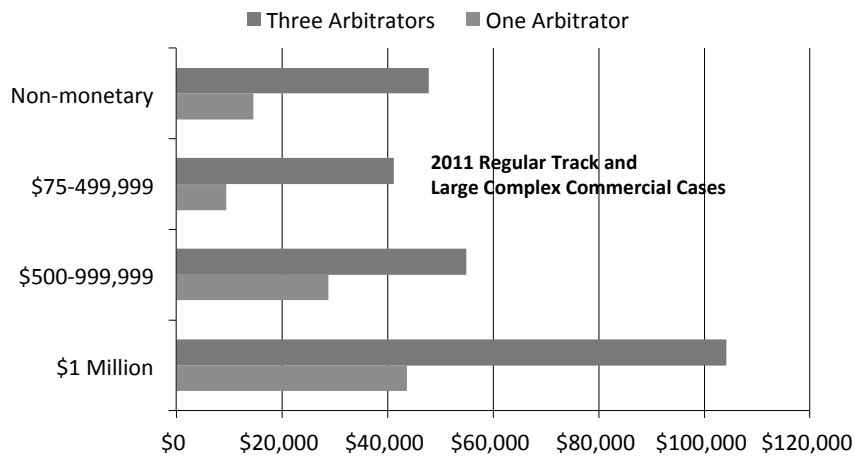
One Arbitrator Three Arbitrators
Cases: 57 43

Largest Claim:
\$128 million \$100 million
[Last 100 LCC Cases –March 2011]

Median Arbitrator Compensation



One Versus Three Cost Detail

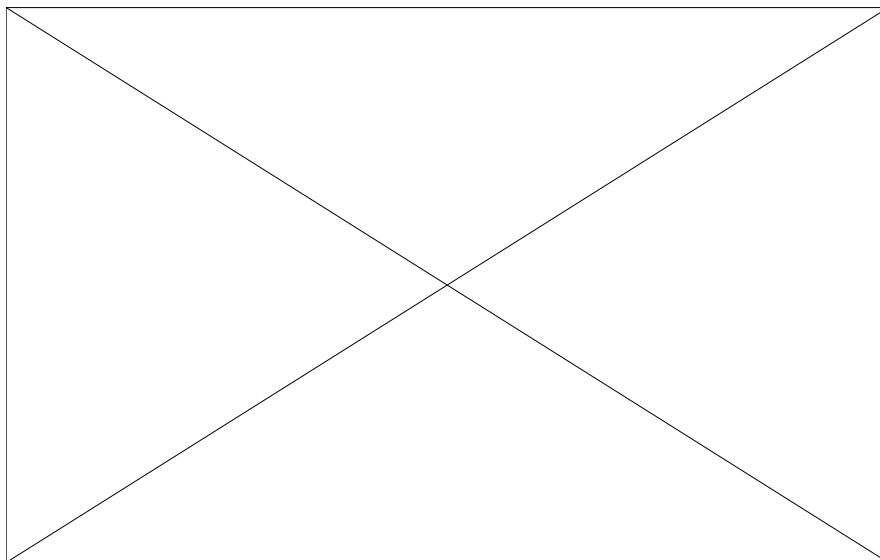
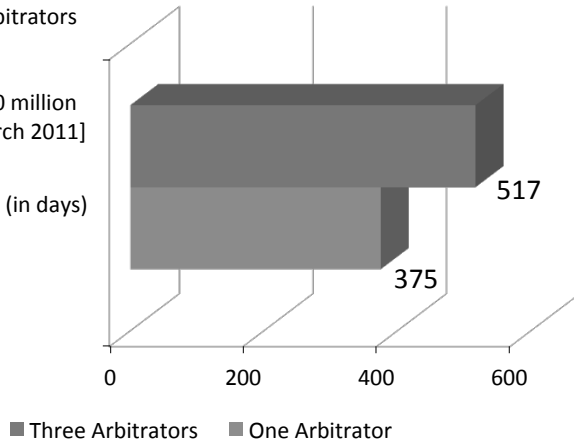




One Versus Three Arbitrators-Time

One Arbitrator Three Arbitrators
Cases: 57 43
Largest Claim:
 \$128 million \$100 million
[Last 100 LCC Cases –March 2011]

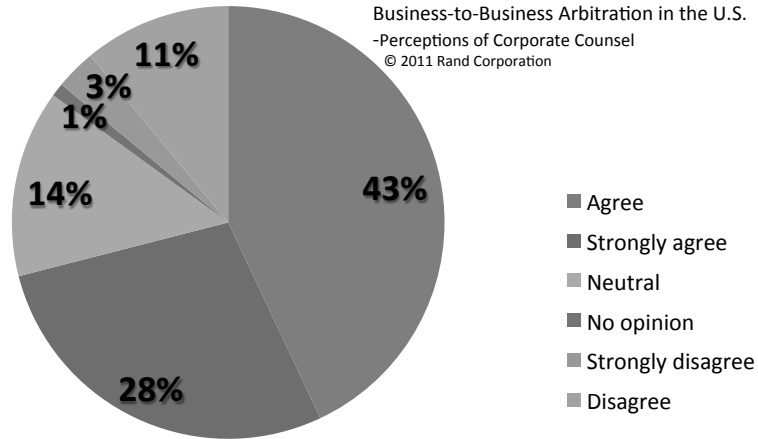
Median Filing to Award (in days)





Most Counsel Say Yes...

Fig. 2.5 Do Arbitrators Tend to "Split the Baby"?

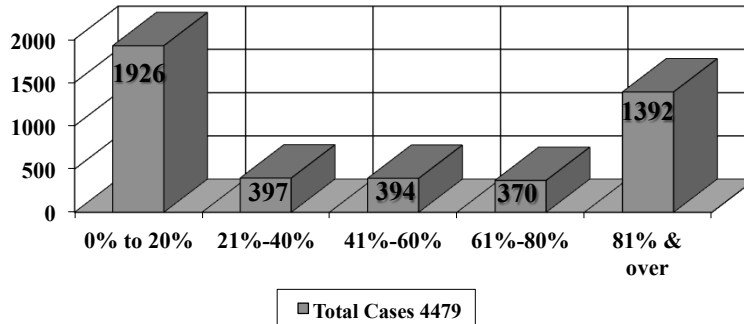


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but AAA's Numbers say otherwise.

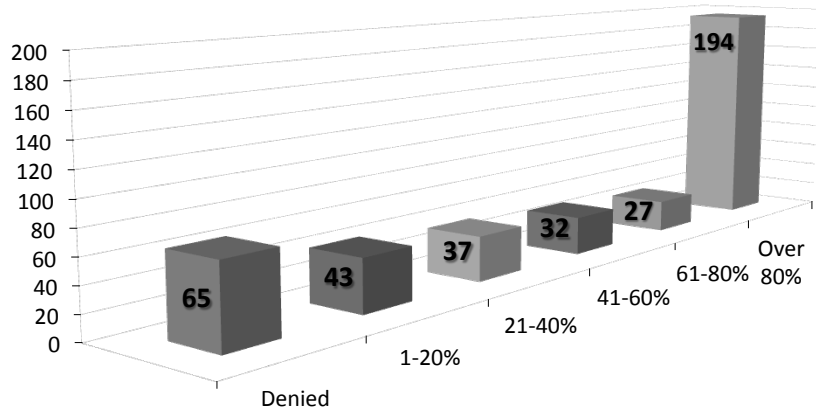
"Split the difference" decisions are an ADR myth-
AAA analyzed over 4000 domestic cases to determine
the % of claims awarded (2000, AAA survey - commercial awards
issued)





“Split the Difference” decisions are an ADR myth- Updated 2010
AAA Analyzed over 398 domestic cases to determine the % of claims awarded

Percentage of Claim Awarded (N=398) by Frequency of Cases

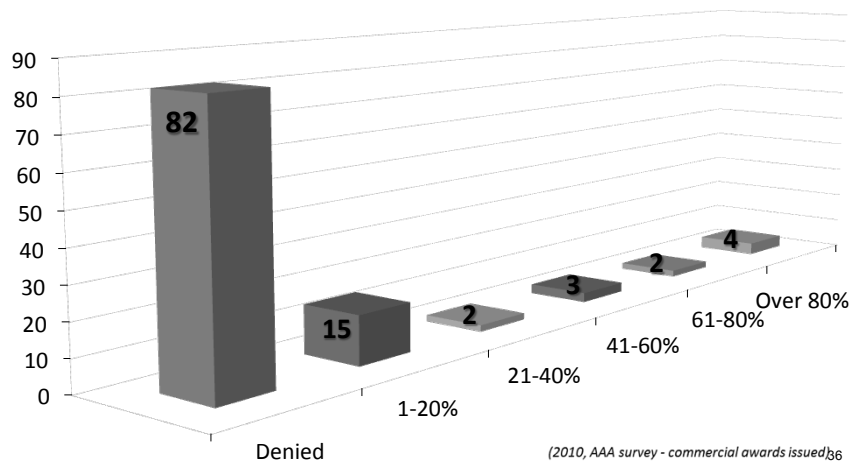


(2010, AAA survey - commercial awards issued)



“Split the Difference” decisions are an ADR myth- AAA Analyzed over
108 domestic counterclaims to determine the % of counterclaims awarded

Percentage of Counterclaim Awarded (N=108) by Frequency of Cases



(2010, AAA survey - commercial awards issued)