S. Mayer Law

Arbitrator Insights: You Know What They Say About Assumptions?

By: Sylvia Mayer

You know what they say about assumptions, right? From the arbitrator's perspective, there are four common assumptions parties make that impact an arbitration. These involve acronyms, informality, discovery, and damages.

Acronyms.

While the attorneys may have been immersed in the case for several months or even longer, the arbitrators have not been. Avoid using a word salad. Do not assume that we share your in-depth knowledge of the case. Acronyms are one example of the basic information arbitrators need to know so you can effectively present your evidence and arguments. Before you dive into the nitty-gritty, make sure to set the stage on the basics of who is involved, what is involved, and the terminology involved. This can be addressed in writing via a pre-hearing brief or orally at the outset of a hearing.

Informality.

Arbitration is a far less formal process than federal or state court litigation, but do not assume that informality means you do not need to be prepared. Preparation remains critically important. And that includes being prepared for the initial scheduling conference, which lays the foundation for the structure of the arbitration. At the initial scheduling conference, we will discuss the timeline for the proceeding and explore issues to be addressed before the final evidentiary hearing.

Discovery.

Arbitration is designed to be fair, efficient, and economical. Do not assume that the exchange of information in arbitration will follow the same framework as the extensive discovery allowed in state or federal court litigation. One of the advantages of arbitration is that discovery can be tailored to fit the specific needs of each case. For example, while I generally do not allow interrogatories in an arbitration, I do invite input from the parties on whether their case is a situation where interrogatories are needed.

To illustrate, I will share two examples. In one matter, the parties responded that they had litigated similar issues against each other before and had developed streamlined interrogatories that were narrowly tailored to the dispute and limited the scope of information requests. I authorized interrogatories in that case. In contrast, in another matter, upon inquiry and after an awkward pause, the attorneys both chuckled and acknowledged that they requested interrogatories out of habit but actually did not think they needed them in that case. Per their agreement, no interrogatories were authorized.

Damages.

Arbitrators are not mind readers. Do not assume that we can intuit the amount, methodology, and calculation of damages based on your liability case. Yes, you need to first prove liability, but if you do, then you also need to establish damages. How much are you seeking in damages? What is the appropriate methodology for calculating damages? What is the actual calculation of the damages? Present this information clearly and concisely.

Make No Assumptions.

When preparing for arbitration, remember what they say about when you assume. And make no assumptions. Instead, set the stage, be prepared, tailor the exchange of information to the dispute, and present your case clearly and concisely.