

What if the Parties Don't Want Arbitral Muscle?

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Appropriate Process when the Parties want Expansive Discovery and Motion Practice

- Presumption of an expeditious process: The AAA Rules, including Commercial Arbitration Rule L-4(a), anticipate that arbitrators will accord the parties a just, speedy and cost effective process. Rule L-4(a):
 Arbitrator(s) shall take such steps as they may deem necessary or desirable to avoid delay and to achieve a just, speedy and cost-effective resolution of Large, Complex Commercial Cases.
- Party Control of the Process: Nonetheless, parties may, by agreement, override the applicable arbitration rules and the governing presumptions as to arbitration. *E.g.*, Rule 1:
 The parties, by written agreement, may vary the procedures set forth in these rules. After appointment of the arbitrator, such modifications may be made only with the consent of the arbitrator.
- Cases where parties want greater process: With increasingly large and complex commercial cases and other cases of great concern to parties being brought to arbitration, there will be instances where parties choose an expanded process.
- Making sure it is an informed choice: When counsel communicate their parties' agreement to an expanded process, the Muscular Arbitrator will schedule a meeting **with party representatives**, as well as counsel, to make sure that the parties' choice of that approach is an informed one.
- The arbitrator's power to jawbone: Even where the parties agree on an informed basis to an expanded process, the Muscular Arbitrator will jawbone the situation, trying to bring the process within reasonable bounds, for example, by limiting the number and length of depositions and possibly sequencing the depositions, if the parties are willing to agree to such limitations
- The risk of the "blame the arbitrator" outcome: Even after electing a fuller process, the parties, after the fact, may well "blame the arbitrator" for the expanded and expensive nature of the case, making it important that the Muscular Arbitrator do everything she can, at every step of the process, to make the proceeding as expeditious and economical as possible.