

*On The Reasoned Arbitration Award:*

“It is often a useful exercise to think about the larger system of commercial arbitration from the standpoint of the losing, disappointed party: Did the arbitrator listen to, really hear, my case? Did the arbitrator engage with the issues? After reading the award, can I understand the reasons the arbitrator ruled as he or she did? One could argue that the long-term vitality of commercial arbitration as a dispute resolution system hinges on our ability to provide parties with good answers to these questions consistently.

For far too long, however, this aspect of the world of arbitration has not received the attention it deserves. John McArthur’s new book, *The Reasoned Arbitration Award in the United States: Its Promise, Problems, Preparation and Preservation*, is a much-needed, timely and welcome addition to our resources in this area. One of the book’s many useful features is a set of appendices that, among other things, contains a valuable (and surprisingly extensive) collection of recent real-world awards which are, in turn, discussed and appraised in the text. Using these as examples, McArthur persuasively shows that many “reasoned” awards too often lack true reasons, and thus fail to leave the parties, and particularly the disappointed parties, with satisfactory answers to the questions posed above. McArthur urges instead an approach to award-drafting that genuinely explains the reasons for the awards made, and gives the reader many practical examples of how best to do that. In particular, McArthur addresses drafting issues that should be considered when writing a well-reasoned award, comments (often tartly) on specific approaches to award-drafting that fall short of his recommended standards (he collects several of these into a set of recurring “pathologies”), discusses whether and how solidly-reasoned awards can still be prepared in a cost-effective manner, and, based on an impressive review of the modern case law, eviscerates the myth that reasoned awards entail an elevated risk of vacatur. The discussion also includes a provocative argument that courts should do a better job of enforcing clause requirements obligating the arbitrator to issue a reasoned award. In that regard, McArthur eloquently demonstrates that today’s dominant judicial standard for enforcing a reasoned-award requirement does not effectively distinguish genuinely reasoned awards from more superficial efforts.

The book’s treatment of these issues is at once thorough, rigorous and readable, and will be of great pragmatic assistance to parties, counsel and arbitrators working in the field of commercial arbitration. I welcome all the hard work and good thinking that went into this project, and predict the book will be a thought-leader in our field for years to come.”

—Thomas J. Brewer, Independent Arbitrator