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Arbitration Perspective - Viable Alternative to Litigation?

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arbitration perspective—viable alternative to litigation?

john j. kircher

The DRI Arbitration Program

introduction

The Arbitration Program of the Defense Research Institute was conceived and developed in 1966. The purpose for the program was to provide a non-judicial forum for the resolution of insurance coverage disputes between insurers. The belief was expressed at that time, and still prevails today, that insurers should have the choice of whether to resolve coverage controversies through typical litigation procedures or through a nonjudicial mechanism.

In all candor, one of the reasons which led to the development of the DRI Arbitration Program was concern over the lack of expertise in insurance law exhibited by members of both the trial and appellate bench. That concern continues today.

The DRI Arbitration Program does not conflict with arbitration programs sponsored by the insurance industry itself, such as the Nationwide Inter-Company Arbitration Agreement. It is intended, rather, to complement and supplement insurance industry arbitration programs.

Although initially intended to handle inter-insurance company coverage disputes, the DRI Arbitration Program has been expanded. It is now able to be used in all types of disputes with no limit on the amount in controversy. These may include, but are not limited to, matters of coverage (including overlap), contractual/indemnity assumptions of liability, mixed fact and contract problems, or any other dispute as agreed to by the parties. The parties to the dispute need not be insurers. Unlike other arbitration programs, there is no requirement that either or both parties be subscribers to or signatories of the DRI Arbitration Program. They need not be members of the Defense Research Institute to participate in the Program.

HeinOnline -- 13 Forum 237 1977-1978

important program features

One of the features of the DRI Arbitration Program—which makes it unique and distinct from other arbitration mechanisms—is the arrangements we have made for arbitrators. Two panels of arbitrators have been established. One is designated as the "local panel" and the other as the "national panel."

The use of the term "local panel" to describe our first group of arbitrators is somewhat misleading. Over 1,300 of DRI's 6,100 defense trial lawyer members serve on the local panel. The geographical distribution of these trial lawyers permits us to have an arbitration dispute heard in almost any major city in the country that is selected by the parties to the arbitration—thus the term, "local panel."

A major innovation in the DRI Arbitration Program established a "national panel" of arbitrators in addition to the local panel. The Program, when initiated, only provided for a local panel. Arbitrators were thus selected from the locale in which the dispute was originated. Discussions with DRI insurance company members led us to believe that it would be advisable to establish a panel of arbitrators who could be called upon, for their particular expertise, in cases involving extremely complex policy interpretation questions and very substantial amounts of money. Thus the national panel was developed. It is made up of "senior" defense counsel who have exhibited significant expertise in insurance coverage matters and of some retired insurance company claims executives.

Therefore, one of the features of the DRI Arbitration Program which makes it unique is that the persons who serve as arbitrators, whether on local or national panels, are highly knowledgeable in

HeinOnline -- 13 Forum 238 1977-1978

the subject matter which will be involved in the cases in controversy.

Another important feature is that the DRI arbitrators do not donate their services. They charge the parties to the dispute their usual hourly or *per diem* fees for the amount of time devoted to resolve the dispute. A decision was made early on that to attract quality personnel to the task of acting as arbitrators—and to keep them interested in serving—there must be adequate compensation for the work involved.

The decisions of our arbitrators are, for the most part, rendered in written opinions. These are much like the decisions of appellate courts in which the facts and applicable law are analyzed. This gives rise to the need to discuss another important, and relatively new, feature of the DRI Program. We have instituted a provision for rehearing if any party to the dispute is not satisfied with the original decision of the arbitrators. The parties at least have the opportunity to examine the initial decision and advise the arbitrators if the belief is held that some important fact or rule or law was not considered in reaching the decision. Although we are proud of the quality and expertise of those who serve as DRI's arbitrators, we do not claim they are infallible.

program's administration

Our Arbitration Program is administered by the DRI staff from our office in Milwaukee. Inquiries about the program are, of course, most welcome. The administration is fast and efficient and the overall cost of administration is low. I have attached a copy of the Rules of Procedure, Administrative Fee Schedule and Submission Agreement to this paper as an appendix so that you may examine them at your leisure.

The initial procedure to begin the arbitration process is the filing of a submission agreement with the DRI Milwaukee office. As you will note, it is a relatively simple form. It includes the names of the parties to the dispute; a very short statement concerning the nature of the controversy; a specification as to whether the parties wish to have the matter heard by one arbitrator or three arbitrators; and a designation of whether the parties wish to use either the local or national panel. The submission agreement is signed by the parties or their representatives.

The submission agreement, when sent to our office, is to be accompanied by the required Administrative Fee. A fee is required for each party to the dispute—$50 for a party who is a DRI member and $75 for a non-member. An additional administrative fee

HeinOnline -- 13 Forum 239 1977-1978

of $75, divided equally among the parties, is required when a national panel is to be used.

When the submission agreement and requisite administrative fees are received by the Milwaukee office of DRI, the next step is the selection of the arbitrators to handle the dispute. Each party is provided with a list of potential arbitrators—five names if the parties wish to use only one arbitrator and seven names if three arbitrators are requested on the submission agreement. If a local panel is requested, the names submitted are from the locale in which the dispute will be heard. If a national panel is to be used, the selection of potential arbitrators by the DRI staff has no geographical limitation. The site for the hearing with a national panel is determined after the selection process.

Upon receipt of the list of the names, the parties are entitled to strike from the list the name of any potential arbitrator who, for any reason, is unsatisfactory. The reason for making a strike need not be specified. On rare occasions, if there are not enough names on the lists after the strikes have been made, new lists are submitted. The process is carried on until an acceptable panel, or sole arbitrator, remains.

Thereafter, if three arbitrators were requested, one of the three is designated as the coordinator by the DRI staff. The parties are then requested to submit to the arbitrators or arbitrator a brief or legal memorandum which outlines their positions, which usually is done following the submission of a stipulated set of facts on the issues involved. Supplemental briefs and memoranda may also be submitted. The parties may agree to or waive the right for an oral hearing before the arbitrators or arbitrator. The procedure also allows for the taking of testimony.

The decision of the arbitrator or arbitrators is due within thirty days after the close of the arbitration proceeding. The closing date is established as either the date designated for the submission of briefs or memoranda or for the oral argument or presentation of testimony. As noted previously, formal, written decisions are generally prepared by the arbitrators. Subject to the right of rehearing, the parties to the dispute, by their submission, agree to be bound by the decision of the arbitrators.

Once the "award" of the arbitrator or arbitrators has been rendered through the decision, copies are sent to the parties by the DRI staff along with the statement for the arbitrators' fees.

typical dispute submissions

Some examples of the types of disputes resolved by the DRI Arbitration program might prove instructive. In one case, decided under Florida law, a dispute arose between a primary carrier and

HeinOnline -- 13 Forum 240 1977-1978

an excess carrier as to whether the excess should recover from the primary for contributions to a settlement made by the excess on a claim against their common insured. The arbitrators made findings of fact to the effect that the claim against the insured, although one of doubtful liability, had an exposure of between $35,000 and $40,000. The primary insurer's policy limits were $25,000. The excess insurer had demanded that the primary settle the claim within those limits. In an attempt to limit its exposure, the primary carrier entered into a "Mary Carter" agreement with the claimant setting its maximum liability at $13,000. The claimant, thereafter, advised that it would settle for $16,000 but the primary refused to contribute more than $15,000 to the settlement. This forced the excess carrier to pay $1,000 to avoid suit and possibly higher exposure. The arbitrators, citing applicable law, concluded that the "settlement agreement" between the primary carrier and the claimant was inequitable because it placed the claimant's attorney in a position to force the excess carrier to contribute to a settlement within the primary carrier's limits of coverage, when the primary carrier had the opportunity to settle within those limits. The arbitrators awarded the excess insurer reimbursement from the primary insurer together with costs of the arbitration and arbitrators' fees.

In another case, in which Wisconsin law was applied, two defendants in a negligence action sought arbitration on the issue of whether the actions of a pharmacy in filling a doctor's prescription constituted a superceding, intervening cause so that the physician was absolved of any negligence on his part in writing the prescription.

The arbitrator concluded that there was causal negligence on the part of both parties and noted that it is a rare situation in which the principles of intervening, superceding cause can be used to prevent such factually causal negligence from being considered the legal cause of the resulting injuries. The Wisconsin Supreme Court had indicated, the arbitrator continued, that such a result was appropriate only where any other conclusion would "shock the judicial conscience of the Court." Under the circumstances presented for arbitration, it was the arbitrator's decision that the negligent conduct of the pharmacy was not so far outside the realm of reasonable anticipation as to constitute a superceding, intervening cause.

The initial responsibility for a correct prescription was held to rest with the physician and the fact that the prescription was refilled under the direction of the doctor supported the conclusion that the physician should not be absolved of liability. The arbitrator nevertheless concluded that the breach of professional respon-

HeinOnline -- 13 Forum 241 1977-1978

sibilities by the pharmacist substantially outweighed that of the doctor and found that the causal negligence should be apportioned 75 percent to the pharmacy and 25 percent to the doctor under Wisconsin's comparative negligence law.

The written decisions of the DRI arbitrators are collected at our Milwaukee office. They are indexed and published as a collection.

effectiveness of the program

The final consideration for my presentation is one which concerns the effectiveness of the DRI Arbitration Program. This involves my analysis, with as much objectivity as I can muster, of the program's strong points and its weak points.

The strength of the program lies in the fact that it is voluntary; it provides a prompt resolution of disputes; and it uses as its arbitrators persons who have expertise in the subject areas from which the issues of the disputes are drawn.

DRI is, as a general proposition, opposed to the substitution of compulsory arbitration for the process of resolving disputes through our judicial system. We have, however, expressed support for the use of compulsory arbitration, preserving the right to a trial *de novo,* for the resolution of small claims in those areas of the country in which court congestion has proved to be unmanageable and in which efforts to ease the congestion through the judicial system have proved to be unworkable. The strong commitment of DRI to the merits of the adversary-jury system does not prevent us from supporting voluntary arbitration programs, such as our own, when the parties have a free choice as to whether to submit a dispute to arbitration or to have the dispute resolved through the judicial system.

The prompt manner in which disputes submitted to the DRI Arbitration Program are resolved is another of its strengths. We are all aware that some of the courts in this country are congested with cases of all types. The reasons for that condition need not be debated here, but the condition exists nevertheless. We are also aware that when some judges advise counsel that a matter will be "taken under advisement," a serious question arises as to whether the lawyers or litigants will live long enough to ever see a decision. The DRI Program insures that a prompt resolution of the disputes that are submitted will be forthcoming.

The final strength of the DRI Program lies in the fact that the arbitrators have expertise and practical experience as to the issues which they will be called upon to decide. This may not be the case under other arbitration programs which select their arbitrators from general bar lists. One would obviously be concerned to find his insurance coverage dispute being handled by a probate or tax

HeinOnline -- 13 Forum 242 1977-1978

specialist and, as was noted earlier, one will not always be certain that, should a case be litigated, the judge who is assigned will have expertise and experience in the area of the law which is the subject of the dispute. If that should be the case, it is true that appellate courts are always available. However, appeals are costly and one can never be all that certain that the appellate panel will have any more expertise that the trial judge possessed. In this regard, the development of the DRI Arbitration Program is somewhat analogous to the development of merchants' courts in England before the time of Lord Mansfield. One will recall that these courts were developed outside of the judicial system, because of the belief of those engaged in English commerce that the jurists of the time were not knowledgeable in the practices and usages of those engaged in the mercantile trade. The merchants chose rather to submit their disputes for resolution to informal "courts" made up of other merchants who had the knowledge that the English judges lacked.

If there is a weak point in the DRI Arbitration Program it lies in its underutilization by those who could take advantage of the service. Although the Program has been expanded to broaden the range of disputes which may be submitted, we recognize that the majority of users will come from the insurance industry. Yet, since it was created in 1966, only ninety-three disputes have been submitted—less than nine a year on average. One of the factors which might make some reluctant to use the system are the costs built into it because of arbitrators' and administrative fees. Yet, those who have made use of the program tell us that it is far less costly, even with those fees, than would be a judicial determination of the disputes.

One of our problems might be that the word about the Program is not reaching those who ultimately make the decision of whether to litigate or arbitrate. There is a continuing effort on our part to inform insurance company claim executives and our defense lawyer members about the program. While chief claim executives of insurance companies have been receptive to information concerning the Program, it may be that the people in the field are, to use the words of one leading insurance executive, "bulletin proof." The use of the term was explained to me in relation to the fact that regional and local claims personnel are generally inundated with a steady stream of paper emanating from an insurer's home office.

Nevertheless, we believe that DRI provides a viable alternative to litigation. We provide it as a service to insurers and others who are potential users. Since DRI is a non-profit organization, our continued existence does not depend on our ability to "sell" this Program or on the volume of disputes that we handle.

HeinOnline -- 13 Forum 243 1977-1978

appendix a

ARBITRATION PROGRAM

Rules Of Procedure
Administrative Fee Schedule
Submission Agreement

DEFENSE RESEARCH INSTITUTE
1100 West Wells Street
Milwaukee, Wisconsin 53233

INTRODUCTION

THE DEFENSE RESEARCH INSTITUTE ARBITRATION PROGRAM is designed to handle controversies and disputes of all types with no limit as to amount, without the necessity of costly and time-consuming litigation. These may include but are not limited to matters of coverage, including overlap, contractual/indemnity assumptions of liability, mixed fact and contract problems, or any other dispute as may be agreed to by the parties.

RULES

SECTION 1

Administrator. When parties agree to arbitrate under these Rules and an arbitration is initiated thereunder, they thereby constitute The Defense Research Institute (DRI) the administrator of the arbitration. The authority and obligations of the administrator are prescribed in these Rules. The Research Director of DRI or such other person as designated by the Executive Committee of DRI shall perform all of the administrative responsibilities of DRI under these Rules.

SECTION 2

Two Panels of Arbitrators. DRI shall establish and maintain a local Panel of Arbitrators and shall appoint Arbitrators therefrom as hereinafter provided. Additionally, DRI shall establish and maintain a National Arbitration Panel, whose members shall be selected by a special committee. Parties to an existing dispute have the choice of commencing

HeinOnline -- 13 Forum 244 1977-1978

arbitration under either the local or national panel of arbitrators, as hereinafter described in Section 3.

SECTION 3

Choice of Panels of Arbitrators. Parties to an existing dispute shall have a choice of commencing arbitration under either the local or the national panel of arbitrators (when such a national panel is available and selected as provided in Section 2), as herein described and as provided under these Rules. The parties may mutually agree on the locale where the arbitration is to be held, as herein provided in Section 5. The parties may agree to a locale other than that in which the dispute arose. The National Panel of Arbitrators, maintained by DRI, shall be comprised of panel selections who possess a degree of special expertise in particular areas of the law. Names from the National Panel of Arbitrators shall be furnished to parties of an existing dispute upon request under the terms of these Rules.

SECTION 4

Initiation Under a Submission. Parties to an existing dispute may commence an arbitration under these Rules by filing at DRI headquarters four (4) copies of a written agreement to arbitrate under these Rules (Submission), signed by the parties. It shall contain a concise statement of the matter in dispute, the amount of money involved, if any, and the remedy sought, together with the appropriate administrative fee as provided in the Fee Schedule.

SECTION 5

Fixing of Locale. The parties may mutually agree on the locale where the arbitration is to be held, except that when the parties have agreed to use the National Panel of Arbitrators, in that event, the parties and the national panel so chosen must mutually agree on the locality. If the locale is not designated within seven days from the date of filing the Submission, DRI shall have power to determine the locale. Its decision shall be final and binding. If any party requests that the hearing be held in a specific locale, and the other party after receipt of notice files no objection with DRI thereto within five days after notice of the request, the locale shall be the one requested.

SECTION 6

Qualifications of Arbitrator. No person shall serve as an Arbitrator in any arbitration if he has any financial or personal interest in the result of the arbitration, unless the parties, in writing, waive such disqualification.

SECTION 7

Appointment from Panel. The Arbitrator(s) shall be appointed in the

HeinOnline -- 13 Forum 245 1977-1978

following manner: Immediately after the filing of the submission, DRI shall submit simultaneously to each party to the dispute an identical list of names of persons chosen from the Panel. A minimum list of seven names shall be submitted if three Arbitrators are requested and a minimum list of five names shall be submitted if a single Arbitrator is requested. Each party to the dispute shall have fourteen days from the mailing date in which to cross off any names to which it objects, number the remaining names indicating the order of its preference, and return the list to DRI. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, DRI shall invite the acceptance of an Arbitrator to serve. If the parties fail to agree upon any of the persons named, or if acceptable Arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, DRI shall have the power to make the appointment from other members of the Panel without the submission of any additional lists.

SECTION 8

Number of Arbitrators. If the Submission agreement does not specify the number of Arbitrators, the dispute shall be heard and determined by one Arbitrator.

SECTION 9

Notice to Arbitrator of His Appointment. Notice of the appointment of the Arbitrator(s) shall be mailed to the Arbitrator(s) by the DRI, together with a copy of these Rules, and the signed acceptance of the Arbitrator(s) shall be filed with DRI prior to the opening of the first hearing.

SECTION 10

Disclosure by Arbitrator of Disqualification. Prior to accepting his appointment, the Arbitrator(s) shall disclose any circumstances likely to create a presumption of bias or which he believes might disqualify him as an impartial Arbitrator. Upon receipt DRI shall disclose it to the parties who, if willing to proceed under the circumstances disclosed, shall so advise DRI in writing. If either party declines to waive the presumptive disqualification, or fails after due notice to object, DRI will make the appointment from other members of the Panel.

SECTION 11

Time and Place. The Arbitrator(s) shall fix the time and place for each hearing. The Arbitrator'(s) shall mail to each party notice thereof, with a copy to DRI, at least ten days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof.

HeinOnline -- 13 Forum 246 1977-1978

SECTION 12

Representation by Counsel. Any party may be represented by counsel. A party intending to be so represented shall notify the other party and the Arbitrator(s) of the name and address of counsel at least three days prior to the date set for the hearing at which counsel is first to appear. When an arbitration is initiated by counsel, such notice is deemed to have been given.

SECTION 13

Stenographic Record. The parties shall make their arrangements for the taking of a stenographic record whenever such record is desired. If such record is made, a copy shall be furnished each Arbitrator.

SECTION 14

Attendance at Hearings. Persons having a direct interest in the arbitration are entitled to attend hearings. The Arbitrator(s) shall otherwise have the power to require the retirement of any witness or witnesses during the testimony of other witnesses. It shall be discretionary with the Arbitrator(s) to determine the propriety of the attendance of any other persons and to exclude witnesses upon proper request at the beginning of the hearing.

SECTION 15

Adjournments. The Arbitrator(s) may take adjournments upon the request of a party or upon his own initiative and shall take such adjournment when all of the parties agree thereto.

SECTION 16

Oaths. Before proceeding with the first hearing or with the examination of the file, each Arbitrator may take an oath of office, and if required by law, shall do so. The Arbitrator(s) may, in his discretion, require witnesses to testify under oath administered by any duly qualified person, or, if required by law or demanded by either party, shall do so.

SECTION 17

Majority Decision. Whenever there is more than one Arbitrator, all decisions of the Arbitrators must be by at least a majority. The award must also be made by at least a majority.

SECTION 18

Order of Proceedings. A hearing shall be opened by the filing of the oath of office of the Arbitrator(s), where required, and by the recording of the place, time and date of the hearing, the presence of the Arbitrator(s) and parties, and counsel, if any, and by the receipt by the Arbitrator(s) of the statement of the case and answer, if any.

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The Arbitrator(s) may, at the beginning of the hearing, ask for statements clarifying the issues involved.

The complaining party shall then present its case and proofs and its witnesses who shall submit to questions or other examination. The defending party shall then present its defense and proofs and its witnesses, who shall submit to questions or other examination. The Arbitrator(s) may in his discretion vary this procedure but he shall afford full and equal opportunity to all parties for the presentation of any material or relevant proofs.

Exhibits, when offered by either party, may be received in evidence by the Arbitrator(s) and copies shall be furnished the other party(ies).

The names and addresses of all witnesses and exhibits in order received shall be made a part of the record.

SECTION 19

Arbitration in the Absence of a Party. Unless the law provides to the contrary, the arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The Arbitrator(s) shall require the party who is present to submit such evidence as he may require for the making of an award.

SECTION 20

Evidence. The parties may offer evidence as they desire and shall produce such additional evidence as the Arbitrator(s) may deem necessary to an understanding and determination of the dispute. When the Arbitrator(s) is authorized by law to subpoena witnesses or documents, he may do so upon his own initiative or upon the request of any party. The Arbitrator(s) shall be the judge of the relevancy and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the Arbitrators and of all the parties, except where any of the parties is absent in default or has waived his right to be present.

SECTION 21

Evidence by Affidavit and Filing of Documents. The Arbitrator(s) shall receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as he deems it entitled to after consideration of any objections made to its admission or its content.

All documents not filed with the Arbitrator(s) at the hearing, but arranged for at the hearing or subsequently by agreement of the parties, shall be filed with the Arbitrator(s). All parties shall be afforded opportunity to examine such documents and to reply or rebut them.

SECTION 22

Closing of Hearings. The Arbitrator(s) shall specifically inquire of all

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parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the Arbitrator(s) shall declare the hearings closed and a minute thereof shall be recorded. If briefs are to be filed, the hearings shall be declared closed as of the final date set by the Arbitrator(s) for the receipt of briefs. If documents are to be filed as provided for in Section 21 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the Arbitrator(s) is required to make his award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearings.

SECTION 23

Reopening of Hearings. The hearings may be reopened by the Arbitrator(s) on his own motion, or upon application of a party at any time before the award is made upon a showing of new evidence which the Arbitrator(s), in his discretion deems to warrant a reopening. If the reopening of the hearing would prevent the making of the award within the specific time agreed upon by the parties in the contract out of which the controversy has arisen, the matter may not be reopened, unless the parties agree upon the extension of such time limit. The Arbitrator(s) shall have thirty days from the closing of the reopened hearings within which to make an award.

SECTION 24

Waiver of Oral Hearings. The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are unable to agree as to the procedure to be followed, the Arbitrator(s) shall specify a fair and equitable procedure.

SECTION 25

Waiver of Rules. Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with and who fails to state or reserve his objection thereto in writing, shall be deemed to have waived his right to object.

SECTION 26

Extensions of Time. The parties may modify any period of time by mutual agreement. The Arbitrator(s) for good cause may extend any period of time established by these Rules, except the time for making the award. The Arbitrator(s) shall notify the parties of any such extension of time and its reason therefor.

SECTION 27

Communication with Arbitrator. All communication between the parties and the Arbitrator(s) other than at oral hearings shall be in writing to the Arbitrator(s) with copies to all parties.

HeinOnline -- 13 Forum 249 1977-1978

SECTION 28

Time of Award. The award shall be made promptly by the Arbitrator(s) and, unless otherwise agreed by the parties, or specified by law, not later than thirty days from the date of closing the hearings, or if oral hearings have been waived, from the date of transmitting the final statement and briefs to the Arbitrator(s).

SECTION 29

Form of Award. The award shall be in writing and shall be signed either by the sole Arbitrator or by at least a majority if there be more than one. It shall be executed in the manner required by law and forwarded to DRI.

SECTION 30

Scope of Award. The Arbitrator(s) may grant any remedy or relief which he deems just and equitable within the scope of the submission of the parties. The Arbitrator(s), in his award, shall assess arbitration fees and expenses in favor of any party and, in the event any administrative fees or expenses are due DRI, in favor of DRI. The decision of the Arbitrator(s) shall be final, unless any party to the dispute seeks a rehearing as provided for under these Rules.

SECTION 31

Award Upon Settlement. If the parties settle their dispute during the course of the arbitration, the Arbitrator(s) upon their request may set forth the terms of the agreed settlement in an award.

SECTION 32

Delivery of Award to Parties. Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by DRI or the Arbitrator(s), addressed to such party at his last known address or to his attorney, or personal service of the award, or the filing of the award in any manner which may be prescribed by law.

SECTION 33

Right to Rehearing.

(a) Any party to a dispute shall have the right to request a rehearing of an award provided the movant shall:
   1. File with DRI a written request for a rehearing within thirty (30) days following the date of the award.
   2. Pay all prior fees and expenses pursuant to the terms of the original award.
   3. Pay a $50 administrative fee to DRI.

(b) All rehearings shall be handled on written briefs and memoranda. No additional testimony shall be submitted. The Arbitrator(s) shall

HeinOnline -- 13 Forum 250 1977-1978

set the time for submission of briefs, etc. for each party. A decision on the rehearing shall be rendered within thirty (30) days after the time for submission of all briefs, etc. expired.

(c) On rehearing, all arbitrators' fees shall be as provided, under Section 37 of these Rules. The decision of the Arbitrator(s) on rehearing shall be final and binding on all parties, and no appeal shall be taken therefrom. The right to rehearing shall not be retroactive, and shall apply only to those disputes which are commenced after the effective date, January 1, 1974.

SECTION 34

Publication Rights. Upon agreement of the submitting parties obtained by the Arbitrator(s) at the hearing or later, DRI shall have exclusive publication rights in all such awards.

SECTION 35

Administrative Fees. As a nonprofit organization, DRI shall prescribe an administrative fee schedule to compensate it for the cost of providing administrative services. The schedule in effect at the time of filing or the time of refund shall be applicable.

The administrative fees shall be advanced by the initiating party or parties, subject to final apportionment by the Arbitrator(s) in his award.

SECTION 36

Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses.

The cost of the stenographic record, if any is made, and all transcripts thereof, shall be prorated equally among all parties ordering copies unless they shall otherwise agree and shall be paid for by the responsible parties directly to the reporting agency.

All Arbitrators fees and other expenses of the arbitration, including required traveling and other expenses of the Arbitrator(s), and the expenses of any witness or the cost of any proofs produced at the direct request of the Arbitrator(s) shall be borne equally by the parties, unless they agree otherwise, or unless the Arbitrator(s) in his award assesses such expenses or any part thereof against any specified party or parties.

SECTION 37

Arbitrator's Fee. Members of the Panel of Arbitrators shall be reimbursed for their expenses and paid a fee based on their usual per diem or hourly rate, to be fixed at the time of acceptance of his appointment.

SECTION 38

Interpretation and Application of Rules. The Arbitrator(s) shall interpret and apply these Rules insofar as they relate to his powers and

HeinOnline -- 13 Forum 251 1977-1978

duties. When there is more than one Arbitrator and a difference arises among them concerning the meaning or application of any such Rules, it shall be decided by a majority vote. If that is unobtainable, either an Arbitrator or a party may refer the question to DRI for final decision. All other Rules shall be interpreted and applied by DRI.

SECTION 39

Amendment to Rules. DRI reserves the right to amend, change, or modify these Rules at any time. Such amendment, change or modification shall not apply to matters pending in arbitration before the rule change.

ADMINISTRATIVE SCHEDULE

The administrative fee of DRI, due and payable at the time of filing, shall be as follows:

1. The sum of $50.00 for each party to the dispute who is a DRI member and the sum of $75.00 for each party to the dispute who is not a DRI member.
2. An additional administrative fee of $75.00 shall apply when the parties to the dispute request the use of the National Panel of Arbitrators, to be divided equally by the parties.

HeinOnline -- 13 Forum 252 1977-1978

ARBITRATION PROGRAM FOR THE
SUBMISSION OF EXISTING DISPUTES*

We, the undersigned parties, hereby agree to submit to arbitration under the Arbitration Rules of DRI the following controversy:

(Cite briefly)

_____

_____

_____

We further agree that the above controversy be submitted to (one) (three) Arbitrators selected from the (Local Panel) (National Panel) of Arbitrators of DRI. We further agree that we will faithfully observe this agreement and the Rules and that we will abide by and perform any final award rendered by the Arbitrator(s) and that a judgment of the Court having jurisdiction may be entered upon the award.

1. _____

By: _____

Date: _____

2. _____

By: _____

Date: _____

3. _____

By: _____

Date: _____

* Sample. Copies of forms for submitting disputes available upon request.

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