STATE OF MINNESOTA

IN SUPREME COURT

In re Proposed Rule Changes for No-Fault Arbitration

REPORT OF THE STANDING COMMITTEE FOR ADMINISTRATION OF ARBITRATION UNDER MINNESOTA NO-FAULT ACT

Court File No. C6-74-45550

TO: The Minnesota Supreme Court:

INTRODUCTION

The No-Fault Act provides that the Minnesota Supreme Court shall promulgate rules to govern the administration of certain no-fault arbitrations. The Supreme Court has promulgated these rules, and these rules provide for the creation of the Standing Committee for Administration of Arbitration under the Minnesota No-Fault Insurance Act. This Standing Committee on Arbitration was granted the power to review and monitor these rules, and propose amendments to these rules which would assist in increasing the efficiency and fairness of no-fault arbitrations.

In response to recurring problems occurring in the no-fault arbitration hearings, the Standing Committee appointed a subcommittee to propose rule changes that would accommodate the developments in the law, teaching and practice of arbitration. This subcommittee submitted draft proposals for rule changes to the entire Standing Committee, who further modified these proposed rule changes and reached a consensus.

The Standing Committee then petitioned the Minnesota Supreme Court to consider and approve the proposed rule changes, and submitted these proposed changes in conjunction with the petition. Subsequently, the Minnesota Supreme Court ordered that a hearing be held to consider the proposed rule changes, and published these proposed rule changes to allow the public an opportunity to review these proposed changes prior to the hearing. The order provided that all interested parties may present written or oral statements on the proposed amendments at the hearing.

Therefore, the Standing Committee on Arbitration submits this written statement in support of the proposed rule changes.

OVERVIEW OF PROPOSED RULE CHANGES

The rules of procedure currently in effect governing the practice of handling no-fault disputes are 23 in number and were last amended by the Minnesota Supreme Court effective April 1, 1988. The proposed rules number 42.

The majority of the additional rules were submitted by the American Arbitration Association ("AAA") which has been the state-wide administrator of the system since its inception in Minnesota.

The bulk of the rule changes submitted by AAA were in turn based upon existing AAA rules governing arbitration of commercial disputes. That particular set of arbitration rules appeared to the Committee to have undergone the most scrutiny nationwide over the years and to represent an appropriate balance between the interests of the parties involved in the process as well as the administering agency, AAA. There appeared to the Committee to be a clear

advantage to the public in enabling the AAA to administer the no-fault arbitration system as efficiently as possible by bringing the no-fault rules of procedure into alignment with the widely accepted rules and procedures with which AAA was already familiar in its role as nation-wide administrator of commercial disputes. Where necessary, the rules have been modified to better accommodate the particular practice of no-fault arbitrations. Those rule revisions, dealing with more "generic" arbitration practices, are set forth without additional comment.

By contrast, it is proposed by this Committee that certain of the rules be modified in a manner that is peculiar to the requirements of the Minnesota No-Fault Automobile Insurance Act or the practice involved in those arbitrations. Several of the rules were developed in response to problems identified by interested parties, members of the Committee and the AAA. The most significant rule modifications deal with the following areas of concern:

A. "Discovery" or disclosure;

B. The process of selecting the arbitrator;

C. Fees.

The draft of the text of the new rules attempts to demonstrate the changes, whether deletion or addition of language.

DISCUSSION

PROPOSED RULE 5

~~6.~~5. Initiation of Arbitration.

. . .

(d) Denial of Claim. If a respondent fails to respond in writing within 30 days after ~~a claim~~ reasonable proof of the fact and the amount of loss is

duly presented to the respondent, the claim shall be deemed denied for the purpose of activating these rules.

(e) At the time of filing the arbitration form, or within 30 days after, the claimant shall file an itemization of benefits claimed and supporting documentation.

(f) Within 30 days after receipt of the itemization of benefits claimed and supporting documentation from claimant, respondent shall serve a response to the petition setting forth all grounds upon which the claim is denied and accompanied by all documents supporting denial of the benefits claimed.

Rationale for Proposal to Rule 5:

Rule 5 deals with initiation of arbitration. Like former rule 6 upon which it is based, it declares:

A. When a claim is denied so as to trigger the right/obligation to arbitrate claims through the AAA. In the process, the rule has attempted to distinquish between cases subject to mandatory arbitration from claims arbitrated by mutual consent. (Proposed Rule 6 deals more directly with the subject of jurisdiction in mandatory cases.)

B. The procedure for commencement, i.e., by filing the AAA petition with payment of filing fee.

Several problems were identified to the Committee.

It was reported that practice under the current rules did not allow for any clear opportunity to determine the amount of the claim or to thereby determine whether the claim was subject to mandatory arbitration pursuant to M.S.A. § 65B.525, subd. 1. Experience showed that many claims were resolved voluntarily prior to arbitration but not before some effort was expended to correlate the claim with the payments already made, or the claim with the basis for the denial. The Committee concluded that the current

rules enabled filing without a reasonable effort being made to refine the claim and the basis for the claim. Similarly, the Committee concluded the current rules allowed an insurer to defer addressing the merits of a claim once arbitration was commenced.

The proposed rule is intended to eliminate the opportunities to resort to arbitration by either side until some effort at refinement of the issue or dispute is undertaken. Paragraph (e) imposes an obligation upon the claimant to gather certain minimal supporting documentation and to itemize benefits claimed while paragraph (f) of the proposed rule imposes an equal burden upon respondent to articulate the grounds for denial and to provide documentation and support.

In the process, itemization of the claim actually in dispute enables not only assessment for meaningful settlement but would allow for a determination of <u>whether</u> the claim is subject to <u>mandatory</u> arbitration as discussed under proposed Rule 6.

Paragraph (d) is to be amended in order to correlate <u>denial of the claim</u> (in order to trigger an arbitrable claim) with the duty of an insurer to make payment of benefits pursuant to Minn. Stat. 65B.54, subd. 1.

PROPOSED RULE 6

~~7.~~6. Jurisdiction in Mandatory Cases. By statute, mandatory arbitration applies to all claims for no-fault benefits or comprehensive or collision damage coverage where the total amount of the claim, at the commencement of arbitration, is in an amount of $5,000 or less. In cases where the amount of the claim continues to accrue after the petition is filed, the arbitrator shall have jurisdiction to determine all amounts claimed including those in excess of $5,000.

Rationale for Proposal to Rule 6:

Arbitration of no-fault claims is pursuant to Minn. Stat. § 65B.525. That statute authorized the creation of a statewide arbitration system for no-fault disputes. By that authority, the Minnesota Supreme Court was authorized to designate the American Arbitration Association as the administrator of the system. This Committee was appointed to assist the Court in administering the system.

Prior to October 1, 1985, the statute provided that disputes regarding no-fault benefits were submitted to arbitration only upon mutual consent. The 1985 changes to the statute made arbitration mandatory for "all cases at issue where a claim in an amount of $5000 or less [was] made by a motor vehicle accident victim . . . ."

The no-fault arbitration rules have attempted to repeat that jurisdictional statement but there remains strong disagreement as to the intent. At the risk of oversimplification, the disagreement is over whether the entire amount in controversy between a no-fault insurer and its insured must be, in sum, less than $5,000 in order to require arbitration or whether, on the other hand, a claim may be submitted for some portion of the total dispute so as to trigger jurisdiction and require arbitration.

The 1986 rule was amended in 1988 and currently reads as follows (with the 1988 edition underscored):

> Rule 6(a) MANDATORY ARBITRATION (for claims of $5,000 or less at the commencement of arbitration). At such time as the insurer denies a claim, the insurer shall advise the claimant of claimant's right to demand arbitration.

The Committee has no clear guidance from the District Courts, whose opinions are divided, although occasionally premised upon interpretation of different rules, some arising under the 1986 version and some under the 1988 version. This Committee cannot agree upon an interpretation and is therefore unable to make recommendation to the Court for the handling of the issue. The issue ultimately involves interpretation and application of the Statute itself. The Committee therefore concluded that this issue would have to be presented to the Court within the context of a disputed case.

Former rule 7 is merely renumbered as Proposed Rule 6 and reprinted without change.

PROPOSED RULE 8

~~4.~~8. Selection of Arbitrator and Challenge Procedure. ~~On the procedures to be adopted by the standing committee, the AAA, upon initiation of an arbitration, shall select from the panel three potential arbitrators and shall notify the insurer and the claimant of the selection. Each party may strike one of the potential arbitrators and an arbitrator shall be selected by the AAA from the remaining names of potential arbitrators. In the event of multiparty arbitration, the AAA may increase the number of potential arbitrators and divide the strikes so as to afford an equal number of strikes to each adverse interest. If the selected arbitrator is unable or unwilling to serve for any reason, the AAA may appoint an arbitrator. Such appointment will be subject to challenge for cause only.~~ The AAA shall send simultaneously to each party to the dispute an identical list of four names of persons chosen from the panel. Each party to the dispute shall have 7 business days from the mailing date in which to cross out a maximum of one name objected to, number the remaining names in order of preference, and return the list to the AAA. In the event of multiparty arbitration, the AAA may increase the number of potential arbitrators and divide the strikes so as to afford an equal number of strikes to each adverse interest. A party to an arbitration may advise the AAA of any reason why an arbitrator should withdraw or be disqualified from serving prior to exercising strikes. An objection to a potential

arbitrator shall be determined initially by the AAA, subject to appeal to the standing committee. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. One of the persons who have been approved on both lists shall be invited by the AAA to serve in accordance with the designated order of the mutual preference. If an acceptable arbitrator is unable to act, or for any other reason the appointment cannot be made from the submitted list, the AAA shall have the power to make the appointment from among other members of the panel without the submission of additional lists. If any arbitrators should resign, be disqualified or unable to perform the duties of the office, the AAA shall appoint another arbitrator from the no-fault panel to the case.

Rationale for Proposale to Rule 8:

The proposed rule contemplates that the current method used by AAA to select arbitrators be substantially modified.

The current method is that AAA is required to maintain three separate panels of arbitrators, all of whom have been approved by the Minnesota Supreme Court for service as arbitrators. One panel is primarily "plaintiff-oriented" based upon the arbitrators' description of their practices. A counterpart panel is the "defense" panel, whose members predominantly practice on the defense side. The third panel is the so-called "neutral" panel whose members describe their practice as being more balanced. Under the current practice, AAA is required to submit a slate of three potential arbitrators, one drawn from each of the panels, to petitioner and respondent for each no-fault arbitration. Each side is given the opportunity to strike one of the arbitrators. AAA then appoints the arbitrator agreed upon by the parties or appoints the one that has not been stricken by either party. The clear experience of AAA is that nominees drawn from the plaintiff and defense panels are regularly stricken. The result is that the

"neutral" is almost always invited to serve. Although this may be consistent with the objective of providing fair, impartial, and disinterested arbitrators, the process is cumbersome for AAA to administer and has an unfortunate tendency to overburden quite a number of "neutral" arbitrators who are being called upon to arbitrate too often and whose service is disproportionate to that of other members of the Supreme Court approved panel. Additional criticisms have to do with the process by which individuals nominate themselves into the "neutral" category.

The proposed system does away with the need to maintain separate panels. Only a single panel is maintained from which four names are to be drawn by AAA for each arbitration. As under the old system, AAA simultaneously submits this identical list to both sides. Each side is given the same period to strike any one name objected to and to designate the others in order of preference. If one nominee is requested by both sides, that individual is invited. Otherwise, AAA will select an arbitrator from those that have not been stricken. As under the old rule, if the acceptable arbitrator is unable to act or must withdraw, AAA retains the power to make an appointment from among members of the panel in general without the submission of additional lists.

Although the Committee recognizes that it is naive to assume that all nominees can be impartial or "neutral", the Committee also recognizes that there are members of both the "plaintiff" and "defense" panels who may be as "impartial" as many of the "neutrals". As under the old system, the most objectionable (biased?) nominee may be struck by either side. The Committee is of the view that

broadening the base of potential arbitrators is an advantage. The selection process proposed will presumably also spread the burden among a greater number of the members of the no-fault arbitration panel.

PROPOSED RULE 12

~~14.~~12. **Discovery.** The voluntary exchange of information is encouraged. Formal discovery is discouraged except that a party is entitled to:

1) exchange of medical reports;
2) medical authorizations directed to all medical providers consulted by the claimant in the 7 years prior to the accident;
3) employment records and authorizations for 2 years prior to the accident, when wage loss is in dispute;
4) supporting documentation required under No-Fault Arbitration Rule 5; and
5) other exhibits to be offered at the hearing.

However, upon application and good cause shown by any party, the arbitrator may permit any discovery allowable under the Minnesota Rules of Civil Procedure of the District Courts. Any medical examination for which the respondent can establish good cause shall be completed within 90 days following the commencement of the case unless extended by the arbitrator for good cause.

Rationale for Proposal to Rule 12:

The subject of "Discovery" in the no-fault arbitration context produced the greatest degree of disagreement.

At the risk of oversimplification, the positions heard by the Committee may be summarized as follows:

A. On behalf of the petitioners, that the process is and should be informal and that discovery demands would be burdensome, particularly when applied to small claims such as are involved in mandatory arbitrations which do not involve more than $5,000.

B. On behalf of the insurers/respondents, that whether the claim is within the $5,000 jurisdiction cannot be determined in many of the current claims and that the insurers have a legitimate need for, and right to, certain information. This would include medical

> authorizations as well as the identity of present and immediate past physicians.

The existing rule encourages voluntary exchange of information but stops short of authorizing full discovery. § 65B.56 of the Minnesota Statutes is entitled "Cooperation of Person Claiming Benefits" and provides in part:

> An injured person shall also do all things reasonably necessary to enable the obligor to obtain medical reports and other needed information to assist in determining the nature and extent of the injured person's injury and loss, and the medical treatment received.

Despite this statute, many claimant attorneys take the position that their only obligation is to provide medical authorizations addressed to those providers who have rendered medical care since the accident. Insurers contended this was inadequate and not reflective of the fact that the arbitrations were contested proceedings in which more information is in the hands of the claimant.

The Committee debated this issue at great length, eventually compromising. The proposed rule balances the legitimate needs to information with the relatively informal nature of the proceeding. When coupled with the proposed revision to Rule 5, which requires supporting documentation from both petitioner and respondent early on, it was the view of the Committee that practice utilizing the guidelines set forth in Proposed Rule 12 would be compatible with current acceptable practice and eliminate certain abuses without introducing formal discovery to the proceedings.

With regard to medical examinations, the rules currently provide under Rule 14 that "any medical examination deemed

necessary by the respondent shall be completed within 90 days following commencement of the case unless extended by the arbitrator for good cause." (Emphasis added.) There were two observations made about that provision.

Respondents submitted that it would be inconsistent with the objective of avoiding formal discovery and application of the Minnesota Rules of Civil Procedure to impose upon an insurer the duty of establishing "good cause pursuant to Rule 35 of the Minnesota Rules of Civil Procedure" in order to have a medical examination.

Claimants submitted that some insurers were utilizing the language of the current rule to obtain a second independent medical examination after obtaining a first independent medical examination under the authority of Minn. Stat. § 65B.56, which provides at subdivision 1 as follows:

> Medical examination and discovery of condition of claimant. Any person with respect to whose injury benefits are being claimed under a plan of reparation security shall, upon request of the reparation obligor from whom recovery is sought, submit to a physical examination by a physician or physicians selected by the obligor as may reasonably be required.

The proposed rule eliminates any authorization for a second independent medical examination as a matter of right and substitutes the requirement that the need for any additional independent medical examination be demonstrated to the arbitrator, who will apply a standard of good cause.

PROPOSED RULE 13

> ~~10.~~13. **Conciliation and Prehearing Procedures.** Within 30 days after service of the response provided in Rule 12 above, the parties shall confer by telephone or otherwise to discuss the following:

a. Settlement of the case.
b. Stipulation of issues.
c. Stipulation of facts and/or evidence.

A copy of any settlement agreement or stipulation shall be forwarded to the AAA at least ten (10) days prior to the date of the hearing.

Rationale for Proposal to Rule 13:

The Committee considered whether it would be workable to involve the arbitrator in pre-hearing and conciliation in light of experiences that many of the claims were resolved voluntarily after petitioner and respondent compared (a) the benefits claimed with (b) payments already made. Despite the advantage of conciliation and pre-hearing, the Committee was more concerned with the fact that the arbitrators who serve are already being overburdened as a result of the burgeoning case load. The proposal for Rule 13 does not involve the arbitrator in conciliation or prehearing procedures. It does, however, impose an obligation upon the parties to an arbitration early in the process with the objective of communicating so as to either narrow issues or possibly facilitate settlement.

PROPOSED RULE 21

~~11. Communication with Arbitrator. All communication, oral or written, from a party to the arbitrator, must be through the AAA for transmittal to the arbitrator. In any and all cases, oral communication with the arbitrator must be done jointly and with the knowledge of the opposing party.~~

21. **Order of Proceedings and Communication with Arbitrator.** The hearing shall be opened by the recording of the date, time, and place of the hearing, and presence of the arbitrator, the parties, and their representatives, if any. Either party may make an opening statement regarding the claim. The claimant shall then present evidence to support the claim. The respondent shall then present evidence supporting the defense.

Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure, but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence.

Exhibits, when offered by either party, may be received in evidence by the arbitrator.

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

There shall be no direct communication between the arbitrator and the parties other than at the hearing, unless the parties and the arbitrator agree otherwise. Any other oral or written communication from the parties to the arbitrator shall be directed to the AAA for transmittal to the arbitrator.

Rationale for Proposal to Rule 21:

AAA recommended that an order of proceeding be set forth in the event that petitioners choose to represent themselves. Such a rule would eliminate putting the AAA in a position of "giving legal advice" to a petitioner. Proposed Rule 21 reflects the Committee's agreement with that thought.

Former rule 11 dealt with "Communication with Arbitrator". The subject of former Rule 11 is now incorporated into proposed Rule 21. The content and intent of former Rule 11 is preserved. That rule had appropriately prohibited ex parte contact with the arbitrator but, to accomplish that result, all communications with the arbitrator were required to be directed through the AAA. The former rule was considered too rigid, prohibiting responsible, ethical and consensual communication between the parties and the arbitrator. Furthermore the requirement that all communication be routed through the AAA and by them relayed to the arbitrator added both delay as well as expense to the process of arbitrating. Other

arrangements for communication to the arbitrator are allowed in those circumstances where "the parties and the arbitrator agree . . . ."

PROPOSED RULES 31 AND 32

31. Form of Award. The award shall be in writing and shall be signed by the arbitrator. It shall be executed in the manner required by law.

32. Scope of Award. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable consistent with the Minnesota No-Fault Act. The arbitrator may, in the award, include arbitration fees, expenses, rescheduling fees and compensation as provided in sections 39, 40, 41, and 42 in favor of any party and, in favor of the AAA, except that the arbitrator must award interest when required by M.S.A. 65B.54.

Rationale for Proposal to Rules 31 and 32:

The former rules did not address the seemingly simple subject of the form of the award. Proposed Rule 31 follows basic arbitration law and merely provides for an award form which is in writing and signed by the arbitrator.

Proposed Rule 32 addresses the scope of the award, giving guidance to the arbitrator as well as specifying certain procedural matters for the benefit of the parties. These several issues are made more apparent by isolating several provisions of the rule.

A. The arbitrator is empowered to "grant any remedy or relief that the arbitrator deems just and equitable" but adds the important qualifier that the relief awarded must be "consistent with the Minnesota No-Fault Act."

B. The arbitrator is directed to include in the award "interest when required by M.S.A. 65B.54." The penalty aspect of the statute is reflected in this rule which requires the arbitrator

to determine whether the conditions of the statute have been met. In the event interest is appropriate pursuant to the statute, the proposed rule makes it clear that the interest is to be included in the award. Under the former rules, some arbitrators and parties were confused about the subject. Some claimants did not include the claim, believing that the claim for interest must be made either to a court or from the arbitrator after an award on the merits was delivered. The procedure under the former rules did not necessarily allow for post-award determinations nor, for that matter, are they encouraged since any such proceeding would add to the burden of any arbitrator.

C. The arbitrator is given discretion to assess certain of the expenses inherent in the arbitration process against the other party, whether claimant or respondent. The authorized assessments consist of certain fees, expenses and compensation as detailed in the following Proposed Rules:

1. Rule 39 dealing with the filing fees of claimant and/or respondent.

2. Rule 40 setting arbitrator's fees.

3. Rule 41 dealing with fees for rescheduling of hearings.

4. Rule 42 which details the responsibility for expenses.

The foregoing expenses and fees, if awarded by the arbitrator, are to be set out in the award and would be awarded "in favor of any party . . . ." Directing which party is to pay the other party is necessary if judgment enforcing the award must be sought.

D. By contrast, any unpaid administrative fees or expenses due and owing to the AAA under any of the rules may also be

included and specified in the award, providing direction to the party to make payment directly to AAA.

PROPOSED RULE 39

~~8.~~**39. Administrative Fees.** The initial fee is due and payable at the time of filing and shall be paid as follows: By the CLAIMANT - $60.00, by the RESPONDENT - $180.00.

Rationale for Proposal to Rule 39:

The administrative charge currently is $50.00 by the claimant and $150.00 by the respondent insurer. AAA reports that is an inadequate amount in order to properly administer the claims. Therefore, a proposal is made for increase. The Committee recommends approval of the AAA request that the filing fees be increased to $60 for claimant and $180 for the respondent. Note that the ultimate responsibility for the cost of the filing is determined by the arbitrator pursuant to proposed Rule 32.

PROPOSED RULE 40

~~16. Arbitrator's Fees. An arbitrator shall be compensated for services and for any use of office facilities in the amount of $150 for each one-half day or part thereof spent in hearing. If a claim is settled prior to the commencement of the hearing, the arbitrator's fee shall not exceed the sum of $50. These fees shall be paid by the insurer but may be taxed as a cost and disbursement as set out hereinafter.~~

40. Arbitrator's Fees.

(a) An arbitrator shall be compensated for services and for any use of office facilities in the amount of $300.00 per case.

(b) If a claim is settled prior to the day of the hearing, but after the appointment of an arbitrator, the arbitrator's fee shall not exceed the sum of $50.00. If a claim is settled on the day of the hearing, the arbitrator's fee shall be $150.00.

These fees shall be paid as directed by the arbitrator.

Arbitrators have been serving at the rate of $150 for each one-half day. The rule has been criticized for being subject to interpretation and failing to reasonably alert the parties that the arbitrator may (?) also charge for time spent in advance of the hearing. The total amount of arbitrator's compensation at $150 is probably not adequate.

The proposal for Rule 40 is to amend paragraph (a) in order to charge a flat $300 for service by an arbitrator.

PROPOSED RULE 41

~~12. (c)~~**41. Rescheduling Fees.** A rescheduling fee of $100.00 shall be charged against the party requesting a postponement.

Rationale for Proposal to Rule 41:

The rules currently provide, at Rule 12(c) that "a postponement fee of $100 shall be charged against the party causing the postponement." The proposed rule clarifies this is a rescheduling fee commensurate with what AAA reported to the Committee to be the basis for the fee, the increased expense to the AAA as administrator resulting from the need to recirculate, collect and coordinate calendars from the representatives of all parties as well as the arbitrator. Thus, in the event an arbitration hearing is postponed but settled before it need be reset or rescheduled, no additional fee is charged under the proposed rule because no additional expense is incurred.

The current rule allocates the charge against the party "causing" the postponement. Many of the current disputes involve

requests for postponement because of failure to produce itemization and/or documentation. Revision of Rules 5 and 12 should reduce the number of occasions when postponement need be requested. Should the charge be allocated against the person requesting or causing? Under the current rules, the AAA or the arbitrator have been forced into having to decide who has "caused" the postponement. Under the proposed rules the arbitrator will be given the authority to allocate, in the award, the rescheduling fees. See Rule 32.

Respectfully submitted,

Theodore J. Smetak
For the Committee

PROPOSED RULE CHANGES FOR NO-FAULT ARBITRATION

1. **Administration (a)** Arbitration under Minn. Stat. 65B.525 shall be administered by a standing committee of twelve members to be appointed by the Minnesota Supreme Court. Initially, the twelve members shall be appointed for terms to commence January 1, 1975, and the Supreme Court shall designate three such members for a one-year term, three for a two-year term, three for a three-year term, and three for a four-year term commencing on January 1 of each succeeding year. After July 1, 1988, no member shall serve more than two full terms and any partial term.

(b) The day-to-day administration of arbitration under Minn. Stat. 65B.525 shall be by the American Arbitration Association (AAA) or such other agency as shall be subsequently designated by the standing committee. The administration shall be subject to the continuing supervision of the standing committee.

2. **Appointment Of Arbitrator.** The standing committee may conditionally approve and submit to the AAA new nominees to the panel of arbitrators quarterly in March, June, September, and December of each year, commencing March, 1988. These new nominees then may be included in the panel of arbitrators which the standing committee shall nominate annually for approval by the Supreme Court. The panel appointed by the Supreme Court shall be certified by the standing committee to the AAA.

3. **Name of Tribunal.** Any tribunal constituted by the parties for the settlement of their dispute under these rules shall be called the Minnesota No-Fault Arbitration Tribunal.

4. **Administrator.** When parties agree to arbitrate under these rules, or when they provide for arbitration by the American Arbitration Association and an arbitration is initiated thereunder, they thereby constitute the AAA the administrator of the arbitration.

~~6.~~ 5. **Initiation of Arbitration.**

(a) Mandatory Arbitration (for claims of $5,000 or less at the commencement of arbitration). At such time as the respondent denies a claim, the respondent shall advise the claimant of claimant's right to demand arbitration.

(b) Nonmandatory Arbitration (for claims over $5,000). At such time as the respondent denies a claim, the respondent shall advise the claimant whether or not it is willing to submit the claim to arbitration.

(c) All Cases. In all cases the respondent shall also advise the claimant that information on arbitration procedures may be obtained from the AAA, giving the AAA's current address. On request, the AAA will provide a claimant with a petition form for initiating arbitration together with a copy of these rules. Arbitration is commenced by the

filing of the signed, executed form, together with the required filing fee, with the AAA.

(d) Denial of Claim. If an respondent fails to respond in writing within 30 days after ~~a claim~~ reasonable proof of the fact and the amount of loss is duly presented to the respondent, the claim shall be deemed denied for the purpose of activating these rules.

(e) At the time of filing the arbitration form, or within 30 days after, the claimant shall file an itemization of benefits claimed and supporting documentation.

(f) Within 30 days after receipt of the itemization of benefits claimed and supporting documentation from claimant, respondent shall serve a response to the petition setting forth all grounds upon which the claim is denied and accompanied by all documents supporting denial of the benefits claimed.

~~7.~~6. **Jurisdiction in Mandatory Cases.** By statute, mandatory arbitration applies to all claims for no-fault benefits or comprehensive or collision damage coverage where the total amount of the claim, at the commencement of arbitration, is in an amount of $5,000 or less. In cases where the amount of the claim continues to accrue after the petition is filed, the arbitrator shall have jurisdiction to determine all amounts claimed including those in excess of $5,000.

~~9.~~7. **Notice.** Upon the filing of the petition form by either party, the AAA shall send a copy of the petition to the other party together with a request for payment of the filing fee. The responding party will then have 20 days to notify the AAA of the name of counsel, if any.

~~4.~~8. **Selection of Arbitrator and Challenge Procedure.** ~~On the procedures to be adopted by the standing committee, the AAA, upon initiation of an arbitration, shall select from the panel three potential arbitrators and shall notify the insurer and the claimant of the selection. Each party may strike one of the potential arbitrators and an arbitrator shall be selected by the AAA from the remaining names of potential arbitrators. In the event of multiparty arbitration, the AAA may increase the number of potential arbitrators and divide the strikes so as to afford an equal number of strikes to each adverse interest. If the selected arbitrator is unable or unwilling to serve for any reason, the AAA may appoint an arbitrator. Such appointment will be subject to challenge for cause only.~~ The AAA shall send simultaneously to each party to the dispute an identical list of four names of persons chosen from the panel. Each party to the dispute shall have 7 business days from the mailing date in which to cross out a maximum of one name objected to, number the remaining names in order of preference, and to return the list to the AAA. In the event of multiparty arbitration, the AAA may increase the number of potential arbitrators and divide the strikes so as to afford an equal number of strikes to each adverse interest. A party to an arbitration may advise the AAA of any reason why an arbitrator should withdraw or be disqualified from serving prior to

exercising strikes. An objection to a potential arbitrator shall be determined initially by the AAA, subject to appeal to the standing committee. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. One of the persons who have been approved on both lists shall be invited by the AAA to serve in accordance with the designated order of the mutual preference. If an acceptable arbitrator is unable to act, or for any other reason the appointment cannot be made from the submitted list, the AAA shall have the power to make the appointment from among other members of the panel without the submission of additional lists. If any arbitrator should resign, be disqualified or unable to perform the duties of the office, the AAA shall appoint another arbitrator from the no-fault panel to the case.

9. Notice to Arbitrator of Appointment. Notice of the appointment of the neutral arbitrator, whether appointed mutually by the parties or by the AAA, shall be mailed to the arbitrator by the AAA, together with a copy of these rules, and the signed acceptance of the arbitrator shall be filed with the AAA prior to the opening of the first hearing.

~~3.~~10. **Qualification of Arbitrator and Disclosure Procedure.** Every member of the panel shall be a licensed attorney at law of this state. No person shall serve as an arbitrator in any arbitration in which he or she has a financial or personal conflict of interest, whether actual or potential. Under procedures established by the standing committee and immediately following appointment to the panel, each member shall be required to disclose any circumstances likely to create a presumption or possibility of bias or conflict which may disqualify the person as a potential arbitrator. Each member shall supplement the disclosures as circumstances require. ~~A party to an arbitration may advise the AAA of any reason why the arbitrator should withdraw or be disqualified from serving prior to exercising strikes. An objection to a potential arbitrator shall be determined initially by the AAA, subject to appeal to the standing committee.~~

11. Vacancies. If for any reason an arbitrator should be unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filed in accordance with the applicable provisions of these rules.

~~14.~~12. **Discovery.** The voluntary exchange of information is encouraged. Formal discovery is discouraged except that a party is entitled to :

1) exchange of medical reports;
2) medical authorizations directed to all medical providers consulted by the claimant in the 7 years prior to the accident;
3) employment records and authorizations for 2 years prior to the accident, when wage loss is in dispute;
4) supporting documentation required under No-Fault Arbitration Rule 5; and
5) other exhibits to be offered at the hearing.

However, upon application and good cause shown by any party, the arbitrator may permit any discovery allowable under the Minnesota Rules of Civil Procedure for the District Courts. Any medical examination for which the respondent can establish good cause shall be completed within 90 days following the commencement of the case unless extended by the arbitrator for good cause.

~~10.~~13. **Conciliation and Prehearing Procedures.** Within 30 days after service of the response provided in Rule 12 above, the parties shall confer by telephone or otherwise to discuss the following:

a. Settlement of the case.
b. Stipulation of issues.
c. Stipulation of facts and/or evidence.

A copy of any settlement agreement or stipulation shall be forwarded to the AAA at least ten (10) days prior to the date of the hearing.

~~12.(a)~~14. **Time and Place of Arbitration.** If conciliation is not successful, an informal arbitration hearing will be held in the arbitrator's office or some other appropriate place in the general locale within a 50 mile radius of the claimant's residence, or other place agreed upon by the parties. The arbitrator shall fix the time and place for the hearing. At least 14 days prior to the hearing, the AAA shall mail notice thereof to each party or to a party's designated representative. Notice of hearing may be waived by any party. When an arbitration hearing has been scheduled for a day certain, the courts of the state shall recognize the date as the equivalent of a day certain court trial date in the scheduling of their calendars.

~~12.(b)~~15. **Postponements.** The arbitrator for good cause shown may postpone any hearing upon the request of a party or upon the arbitrator's own initiative, and shall also grant such postponement when all of the parties agree thereto.

16. **Representation.** Any party may be represented by counsel or other representative named by that party. A party intending to be so represented shall notify the other party and the AAA of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

17. **Stenographic Record.** Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other party of these arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties to be, or determined by the arbitrator to be, the official record of the proceeding, it must be made available to the arbitrator and to the other parties for inspection, at a date, time and place determined by the arbitrator.

18. Interpreters. Any party desiring an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service. The arbitrator may assess the cost of an interpreter pursuant to Rule 42.

19. Attendance at Hearings. The arbitrator shall maintain the privacy of the hearings. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness.

~~5.~~**20. Oaths.** Arbitrators, upon accepting appointment to the panel, shall take an oath or affirmation of office. The arbitrator may require witnesses to testify under oath or affirmation.

~~11. Communication with Arbitrator. All communication, oral or written, from a party to the arbitrator, must be through the AAA for transmittal to the arbitrator. In any and all cases, oral communication with the arbitrator must be done jointly and with the knowledge of the opposing party.~~

21. Order of Proceedings and Communication with Arbitrator. The hearing shall be opened by the recording of the date, time, and place of the hearing, and presence of the arbitrator, the parties, and their representatives, if any. Either party may make an opening statement regarding the claim. The claimant shall then present evidence to support the claim. The respondent shall then present evidence supporting the defense. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure, but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence.

Exhibits, when offered by either party, may be received in evidence by the arbitrator.

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

There shall be no direct communication between the arbitrator and the parties other than at the hearing, unless the parties and the arbitrator agree otherwise. Any other oral or written communication from the parties to the arbitrator shall be directed to the AAA for transmittal to the arbitrator.

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

~~13.~~**23. Witnesses, Subpoenas and Depositions.**

(a) Through the AAA, the arbitrator may, on ~~his or her~~ own the arbitrator's initiative or at the request of any party, issue subpoenas for the attendance of witnesses at the arbitration hearing or at such deposition as ordered under Rule 12 and the production of books, records, documents, and other evidence. The subpoenas so issued shall be served, and upon application to the district court by either party or the arbitrator, enforced in the manner provided by law for the service and enforcement of subpoenas for a civil action.

(b) All provisions of law compelling a person under subpoena to testify are applicable.

(c) Fees for attendance as a witness shall be the same as for a witness in the district courts.

~~15.~~ **24. Evidence.** The parties may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the issues. The arbitrator shall be the judge of the relevancy and materiality of any evidence offered, and conformity to legal rules of evidence shall not be necessary. The parties shall be encouraged to offer, and the arbitrator shall be encouraged to receive and consider, evidence by affidavit or other document, including medical reports, statements of witnesses, officers, accident reports, medical texts, and other similar written documents which would not ordinarily be admissible as evidence in the courts of this state. In receiving this evidence, the arbitrator shall consider any objections to its admission in determining the weight to which he or she deems it is entitled.

~~18.~~ **25. Close of Hearing.** The arbitrator shall specifically inquire of all parties as to whether they have any further evidence. If they do not, the arbitrator shall declare the hearing closed. If briefs or documents are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of said briefs or documents. The time limit within which the arbitrator is required to make his award shall commence to run upon the close of the hearing.

~~19.~~ **26. Reopening the Hearing.** At any time before the award is made, a hearing may be reopened by the arbitrator on the arbitrator's own motion, or upon application of a party for good cause shown.

27. Waiver of Oral Hearing. The parties may provide, by written agreement, for the waiver of oral hearings in any case. If the parties are unable to agree as to the procedure, the AAA shall specify a fair and equitable procedure.

28. Extensions of Time. The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any extension.

29. Serving of Notice. Each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection herewith; or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party.

The AAA and the parties may also use facsimile transmission, telex, telegram, or other written forms of electronic communication to give the notices required by these rules.

30. Time of Award. The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than thirty days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator.

31. Form of Award. The award shall be in writing and shall be signed by the arbitrator. It shall be executed in the manner required by law.

32. Scope of Award. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable consistent with the Minnesota No-Fault Act. The arbitrator may, in the award, include arbitration fees, expenses, rescheduling fees and compensation as provided in sections 39, 40, 41, and 42 in favor of any party and, in the event that any administrative fees or expenses are due the AAA, in favor of the AAA, except that the arbitrator must award interest when required by M.S.A. 65B.54.

~~21.~~**33. Delivery of Award to Parties.** ~~The placement of an award or a true copy thereof in the mail, addressed to the parties or their attorneys for delivery at their last known address, or personal service of an award upon a party or in any other manner which may be prescribed by law shall constitute legal delivery thereof.~~ Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any other manner that is permitted by law.

34. 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 an objection thereto in writing shall be deemed to have waived the right to object.

35. Interpretation and Application of Rules. The Arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. All other rules shall be interpreted by the AAA.

36. Release of Documents for Judicial Proceedings. The AAA shall, upon the written request of a party, furnish to the party, at its expense, certified copies of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

37. Applications to Court and Exclusion of Liability.

(a) No judicial proceedings by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(b) Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration.

(c) Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(d) Neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

~~22.~~**38. Confirmation, Vacation, Modification or Correction of Award.** The provisions of Minn. Stat. 572.10 through 572.26 shall apply to the confirmation, vacation, modification or correction of award issued hereunder.

ADMINISTRATIVE FEES

~~8.~~**39. Administrative fees.** The initial fee is due and payable at the time of filing and shall be paid as follows: By the CLAIMANT - $60.00, by the RESPONDENT - $180.00.

The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fee.

~~16.~~**40. Arbitrator's fees.**

(a) An arbitrator shall be compensated for services and for any use of office facilities in the amount of $300.00 per case.

(b) If a claim is settled prior to the day of the hearing, but after the appointment of the arbitrator, the arbitrator's fee shall not exceed the sum of $50.00. If a claim is settled on the day of the hearing, the arbitrator's fee shall be $150.00.

These fees shall be paid as directed by the arbitrator.

~~12. (c)~~**41. Rescheduling fees.** A rescheduling fee of $100.00 shall be charged against the party requesting a postponement.

42. Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and any witness and the cost of any

proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties.