

STATE OF MINNESOTA
IN SUPREME COURT

OFFICE OF
APPELLATE COURTS

In re:

JUN 11 2008

National Arbitration Forum's
Challenge to the Standing Committee's
May 12, 2008 Notice of Selection
of the Administrator of the Minnesota
No-Fault Insurance Arbitration Program

FILED

PETITION OF NATIONAL ARBITRATION FORUM

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner National Arbitration Forum ("FORUM") respectfully petitions this Honorable Court to stay the No-Fault Standing Committee's May 12, 2008 Notice of Selection of the Administrator of the Minnesota No-Fault Insurance Arbitration Program ("Notice of Selection") until such time as the Court can review and confirm an independent, objective and impartial selection process free of the appearance of impropriety and favoritism. As will be shown below, the process used to arrive at the current Notice of Selection is, at a minimum, unacceptably flawed in that the principal decision-makers on the Screening Committee, charged with evaluating bid applicants and making a recommendation to the Standing Committee, have long-standing relationships and direct affiliations with the American Arbitration Association ("AAA"), the entity awarded administration of the program, despite its higher cost proposal. The AAA affiliations of at least two Screening Committee Members, one of whom serves as Chair of that Committee, as well as AAA affiliations among Standing Committee members, create an unacceptable appearance of impropriety and favoritism that, under established Minnesota precedent, mandates the issuance of a stay of the current Notice of Selection

until such time as a conflict-free committee can be impaneled to conduct a new selection process.

**INTRODUCTION AND RELEVANT
PROCEDURAL HISTORY OF THE MINNESOTA NO-FAULT
PROGRAM AWARD PROCESS**

(1) The Minnesota Legislature, pursuant to Minn. Stat. § 65B.525 (Subd. 1), delegated to the Minnesota Supreme Court the duty to “provide for the mandatory submission to binding arbitration of all [No-Fault] cases at issue where the claim at the commencement of arbitration is in an amount of \$10,000 or less” Initially, the Court carried out this duty by unilaterally awarding administration of the Minnesota No-Fault Arbitration Program to the AAA. Thus, Rule 1(c) of the Minnesota No-Fault, Comprehensive or Collisions Damage Automobile Insurance Arbitration Rules (“No-Fault Rules”) previously stated that the day-to-day administration of arbitration under Minn. Stat. § 65B.525 shall be by the American Arbitration Association or such other agency as shall be subsequently designated by the Standing Committee. Under this Rule, the AAA administered this program until 2004 without having to go through any competitive selection or renewal process.

(2) In August 2002, the Standing Committee presented a report and petition to the Supreme Court, proposing certain amendments to the No-Fault Rules. In September 2002, the FORUM petitioned the Court requesting an additional amendment to Rule 1(c) to allow for a competitive bidding process for the award of the Program. (*See* Exhibit A.)

(3) After published notice seeking written comments on the above petitions, the Minnesota Supreme Court issued an order on August 3, 2003, amending the No-Fault Arbitration Rules so as to require a “competitive selection process” for the award of

administration of the No-Fault Arbitration program. (See Exhibit B; August 3, 2003 Order of Court.) In that Order, the Court states that the process must “involve an independent screening committee” to advise the Court on program award. (*Id.*) Rule 1(c) was specifically amended to delete the reference to the American Arbitration Association.

(4) In 2004, after the mandatory competitive bidding process, the Supreme Court awarded the program administration to the AAA for an additional four-year term.

(5) In 2007, the Court, through its Standing Committee, again requested proposals for the administration of the program. The Forum submitted the best-value proposal, but the Standing Committee rejected that proposal after a recommendation by the Screening Committee, and the program was again awarded to the AAA. Both Committees contained individuals who were members of the AAA’s panel of arbitrators.

(6) The AAA affiliation of these committee members, one of whom serves as Chairman of the Screening Committee, creates an appearance of partiality and favoritism that, under established Minnesota precedent, mandates that the current Notice of Selection be stayed until a truly conflict-free and independent selection process can be undertaken.

**ESTABLISHED MINNESOTA PRECEDENT
REQUIRES THIS COURT TO STAY THE CURRENT
NOTICE OF SELECTION OF THE AAA UNTIL AN
INDEPENDENT AND IMPARTIAL COMMITTEE
CAN BE IMPANELED TO REVIEW THE
IMPARTIALITY OF THE PROCESS**

(7) “Once a public authority adopts a competitive bidding method, the [public authority] is required, so long as that method was not seasonally abandoned, to pursue such method.” *Byrd v Indep School Dist No 194*, 495 N.W.2d 226, 231 (Minn. Ct.

App. 1993) (*citing Griswold v. Ramsey County*, 65 N.W.2d 647, 652 (Minn. 1954)). This is true “even if an entity is not required to use a competitive bidding process.” *See Northwest Petroleum Assn. v. Minnesota Dept. of Economic Sec.*, 402 N.W.2d 591, 595 (Minn. Ct. App. 1987). Once a competitive bidding process is adopted, the process must be followed “in a manner reasonably designed to accomplish its normal purpose of giving all contractors an equal opportunity to bid” *Id.* (quoting *Griswold*, 65 N.W.2d at 652 (1954)). Similarly, the contracting agency “should adhere to that process” and to the “published specifications.” *Id.* at 596. “The purpose of standards and guidelines for competitive bidding is to prevent such abuses as fraud, favoritism, extravagance, and improvidence, and to promote honesty, economy, and aboveboard dealing.” *Transit Team, Inc v. Metropolitan Council*, 679 N.W.2d 390, 396 (Minn. Ct. App. 2004) (citation omitted). “Even the slightest deviations from prescribed form are viewed with a most jaundiced eye.” *United Tech. Comm’n Co. v. Washington County Bd.*, 624 F.Supp. 185, 188 (D. Minn. 1985) (citing *Foley Bros., Inc. v. Marshall*, 123 N.W.2d 387, 389 (1963)).

(8) When, as here, the competitive bidding process is fraught with the appearance of favoritism and partiality, this court must enjoin the award. For example, in *Northwest Petroleum Ass’n*, the Court of Appeals affirmed the district court’s finding that the “bidding process was improperly influenced by [a consultant for one of the bidders] who was a social acquaintance and next door neighbor” of the employee responsible for awarding the contract. 402 N.W.2d at 595. Similarly, in *Byrd*, the court found that an architect charged with awarding an electrical contract had rendered assistance to one of

the bidders and that this created an appearance of favoritism that “casts a cloud over the integrity of the process used in awarding the contract.” 495 N.W.2d at 233.

(9) Avoiding the potential for favoritism is one of the primary reasons why competitive bidding standards exist. *See Transit Team*, 679 N.W.2d at 396. The fact that members of both the Screening Committee and the Standing Committee had direct affiliations with the AAA, which was ultimately awarded the contract, creates at a minimum an appearance of impropriety and/or the possibility for bias or favoritism. Specifically, two Screening Committee members, Michael D. Tewksbury and Wilbur W. Fluegel, publicly identify their status as members of the American Arbitration Association’s Panel of Arbitrators on their respective professional biographies (*See www.tkz.com/Bio/MichaelTewksbury; Professional Association* (copy attached as Exhibit C); *www.lawyers.com/Minnesota/Minneapolis/Wilbur-W.-Fluegel-749653; Biography* (copy attached as Exhibit D).) Mr. Fluegel is chair of the Screening Committee and signed the May 12, 2008 Notice of Selection. Similarly, members of the Standing Committee are on the AAA Panel of Arbitrators. In addition to Mr. Tewksbury, who is on both the Standing Committee and the Screening Committee, Standing Committee member William Bannon is on the AAA’s arbitrator panel. *See http://www.bannonlaw.com/index_files/Page544.htm* (copy attached as Exhibit E). Also, at least one Standing Committee member whose term ended at the end of 2007, Joseph Leoni, publicly states that he is a member of the AAA panel of arbitrators. *See <http://joeleoni.com/cgi-bin/viewResume.cgi>* (copy attached as Exhibit F).

(10) The AAA affiliation of these committee members is especially troublesome in the context of this award because those members are granted, by the terms

of Request for Proposal itself, unfettered discretion to weigh a series of highly subjective criteria and non-quantifiable factors in determining which of the three bidding entities best serves the No-Fault Program. These criteria include the bidding party's experience managing the fiscal and human resources of an organization, experience resolving complaints, ability to recruit sufficient qualified arbitrators, and ability to implement a new program in a short time frame.

(11) The subjective nature of the Request for Proposal becomes even more problematic when coupled with the AAA's stated policy that all of its panelists serve "at the discretion of the AAA and offering specific panelists [for arbitration panels] is at the discretion of the AAA." See Reality v. Myth: The Truth About Management of the AAA Commercial Roster, at p. 2, India Johnson, Senior Vice President of the AAA, March 2003 (copy attached as Exhibit G). Thus, the recommendation to select the AAA as program administrator was made by a committee that included at least two AAA panelists who were asked to apply highly subjective and non-quantifiable weighting factors to the respective proposals with full knowledge that their AAA panel affiliation and their opportunity to be offered as arbitrators was at the sole discretion of the AAA. There can be no bidding circumstance more fraught with the public appearance of favoritism.¹

(12) The FORUM provided a proposal offering the best economic value. In its proposal, the FORUM committed to a reduction of \$30 in overall filing fees, bringing filing fees down from a total of \$210 to \$180, or more than 14%. By contrast, the

¹ The FORUM is not taking issue here with the individual actions of any of these Committee members, but rather with the process that allows individuals who are affiliated with one of the bidders to participate in the decision to award a significant project to that bidder.

incumbent AAA offered to reduce filing fees by only \$10, or less than 5%. No rationale on the selection process was ever provided despite repeated requests by the FORUM. When the FORUM asked Standing Committee Counsel what the weighting criteria were for the factors identified in the request for proposal, it was told that the committee has not discussed any specific weighting process. The FORUM issued a second request for this information after the bidding concluded, but the Standing Committee would not provide this information, or confirm whether such criteria existed.

(13) The existence of, at a minimum, the appearance or potential for bias and favoritism, combined with the rejection of a best-value proposal, creates an untenable situation that mandates a stay of the Notice of Selection. Mr. Fluegel himself has admitted that the Standing Committee has a duty to avoid any appearance of impropriety in its dealings with issues related to No-Fault Arbitrations. (*See* Exhibit H, February 20, 2003 letter from Wilber W. Fluegel to William Starr and Michael D. Tewksbury.) Although it is presumed that public officials enter into contracts in good faith, this presumption does not carry the day in a competitive bidding context where, even “without any showing of actual fraud or an intent to commit fraud, [] a procedure has been followed which emasculates the safeguards of competitive bidding.” *Griswold*, 65 N.W.2d at 652. Certainly the above facts and circumstances create a sufficient appearance of impropriety as to undermine these safeguards.

(14) There will be no prejudice to AAA or the users of the program with a delay of the award. It is customary for an ADR administrator to provide carryover services under a government contract. Indeed, the incumbent administrator AAA carried over for approximately one year as administrator of the No Fault Arbitration program for

the state of New Jersey to accommodate delays in the state's procurement process before the program was then transitioned to the current administrator, the FORUM. This carryover can be achieved with no or minimal additional cost, while preserving the integrity of the system.

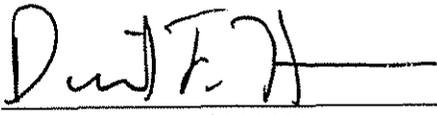
(15) Finally, the FORUM will suffer a variety of irreparable harms if the decision to award administration of the No-Fault Arbitration program is not stayed. First, as set forth above, the FORUM will be deprived of the right to participate in a fair bidding process, which in and of itself constitutes irreparable harm for which a stay of the award is the "only true remedy." *See United Tech. Commc'n. Co.*, 624 F.Supp. at 188. In addition, the FORUM will suffer reputational injury, a loss of prestige, and a decreased ability to compete for the administration of other arbitration programs, none of which is readily compensable by monetary damages. The nature and extent of this harm further justifies the relief sought by the FORUM herein.

CONCLUSION

For the foregoing reasons, the FORUM respectfully requests that the decision to award the administration of the No-Fault Arbitration program to the American Arbitration Association, as reflected in the Notice of Selection, be stayed so that a selection process free of the concerns outlined above can be implemented.

Dated: June 10, 2008

MASLON EDELMAN BORMAN & BRAND, LLP

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- No. C6-74-45550
STATE OF MINNESOTA
IN SUPREME COURT

In re:

Amendment to Rules of Procedure
for No-Fault Arbitration.

PETITION OF NATIONAL ARBITRATION FORUM

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner National Arbitration Forum (the "Forum") respectfully petitions this Honorable Court to amend the Minnesota No-Fault Comprehensive or Collision Damage Automobile Insurance Arbitration Rules for the reasons set forth below.

1. The Forum is a leading provider of alternative dispute resolution ("ADR") services and is one of the leading providers of all ADR services throughout the United States. The Forum's world headquarters are in Roseville, Minnesota. The Forum has substantial experience in ADR in Minnesota. Principals of the Forum are Edward Anderson and Roger Haydock, both experienced Minnesota lawyers.

2. By statute, this Court has exclusive authority over the administration of arbitration proceedings required or established under the Minnesota No-Fault Act, MINN. STAT. §§ 65B.525 (2000).

Exhibit A

3. This Court has established Minnesota No-Fault Comprehensive or Collision Damage Automobile Insurance Arbitration Rules, most recently amended by Order dated and effective September 7, 1999.

4. Under the existing rules, the American Arbitration Association ("AAA") is made the exclusive statewide administrator of no-fault arbitration. The AAA has had an exclusive monopoly on providing ADR administrative services under the No-Fault Act since the formation of the system in 1975.

5. The Forum has requested that it be allowed to compete to serve as administrator of no-fault arbitration under the rules. See Petition to Amend Rules of Procedure for No-Fault Arbitration transmitted to this Court's Standing Committee on July 16, 1997. True and correct copies of this petition and transmittal letter are attached as Exhibit A to this Petition. This petition was denied by the advisory committee, and the Forum has not had an opportunity to compete to provide no-fault ADR administrative services in Minnesota.

6. The Forum is uniquely qualified to provide outstanding ADR administrative services. Among its other qualifications are the following:

a) The Forum has been an approved ADR organization under Minnesota Supreme Court Rule 114 since 1994; the Forum has been selected by hundreds of judges and attorneys to administer ADR proceedings under Rule 114.

b) The Forum was selected by the Minnesota Department of Labor and Industry to be the administrator of Workers Compensation arbitration under MINN. STAT. § 176.191.

c) The Forum has been selected by the Office of the Minnesota Attorney General to administer arbitration of settlement issues in litigated cases.

d) The Forum has been selected by the Internet Corporation for Assigned Names and Numbers ("ICANN") to administer international arbitration of Internet domain name disputes, including those in Minnesota.

e) Forum neutrals have been appointed as Special Masters in federal court cases in the District of Minnesota.

f) The Forum has administered thousands of arbitrations and mediation proceedings in Minnesota under these programs and the contracts of the parties.

g) Nationally, the Forum has been selected to be the neutral administrator of arbitration services in over half a billion contracts, with arbitrations provided by a national panel of experienced lawyers and former judges, including former state supreme court, intermediate appellate court, and trial court judges.

h) Nationally, the Forum provides mediation services to parties by a national panel of experienced lawyers and former judges, including former federal circuit and district court judges who are members of FedNet.

6. The Forum continues to believe it can provide higher quality administrative services to the no-fault program, at a lower cost to the participants, than the current administrator. The Forum requests that it be allowed to be an alternative provider of services or, if the Court determines that an exclusive provider should be named, that the Forum be allowed to compete to be the exclusive provider on terms that will benefit the parties to no-fault arbitrations.

7. The Forum is in fact capable of administering arbitration under the Minnesota No-Fault Act in a modern, fair, and efficient manner. Its procedures have been recognized by many courts as models of fairness. For example, in *Green Tree Financial Corp. v. Randolph*, 531 U.S. 79 (2000), the Court cited the Forum arbitration code and stated: “[O]ther national arbitration organizations (Example: The National Arbitration Forum) have developed similar models for fair cost and fee allocation.” 531 U.S. at 95 (Ginsburg, J., concurring in part and dissenting in part). Similarly, the Third Circuit observed the NAF Code provides for “the full range of remedies available under” controlling law, *Johnson v. West Suburban Bank*, 225 F.3d 366, 375 n.2 (3d Cir. 2000), and that “the [NAF] clause did not create an arbitration procedure that favors one party over another.” *Id.* at 378 n.5.

8. The ability of the Forum to deliver ADR services efficiently (and at a cost lower than the AAA) has also been recognized by the courts. In a recent decision, the Eleventh Circuit stated: “Under the National Arbitration Forum *Code of Procedures*, “statutory remedies are not proscribed and there is no evidence that the fees and costs of the NAF will approach those of the American Arbitration Association in *Paladino*,” where the Eleventh Circuit had found the AAA’s fees excessive. *Baron v. Best Buy*, 260 F.3d 625 (11th Cir. 2001) (unpublished table decision) (citing *Paladino v. Avnet Computer Techs., Inc.*, 134 F.3d 1054, 1062 (11th Cir. 1998)). See also *Marsh v. First USA Bank*, 103 F. Supp. 2d 909, 925 (N.D. Tex. 2000) (“NAF boasts an impressive assembly of qualified arbitrators.”); *Vera v. First USA Bank*, No. Civ. A. 00-89-GMS, 2001 WL 640979, at *1 (D. Del. Apr. 19, 2001) (“[T]he NAF is a model for fair cost and fee allocation.”).

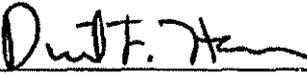
9. The Forum submits that it is not in the public interest to allow a single entity to maintain a virtual monopoly over administration of the no-fault arbitration process mandated by the Minnesota No-Fault Act. The Forum requests that the rules be amended to allow litigants a choice among approved administrators. This process would encourage competition and allow no-fault litigants a choice of providers. In the alternative, and only if the Court determines that the use of a single provider is necessary or desirable, then the Forum requests that it be allowed to bid to be the exclusive provider for a term deemed appropriate by the Court. Although not binding on this Court or in this situation, the Legislature has in many contexts required either competitive bidding or periodic review and reassignment of contracts to provide services under government auspices. For example, MINN. STAT. § 16C.03 requires the executive to use competitive bidding, unless there is a determination that an alternative method would determine "best value." Similarly, MINN. STAT. § 16C.09 limits service contracts to two years, with extensions up to a total of five years. These expressions of public policy should also guide the administration of the No-Fault arbitration system.

Based upon the foregoing, Petitioner National Arbitration Forum respectfully requests this Court to amend the Minnesota No-Fault Comprehensive or Collision Damage Automobile Insurance Arbitration Rules to allow The National Arbitration Forum, based in Roseville, Minnesota, to be an approved administrator for arbitrations under the Minnesota Arbitration. In the alternative, and only if the Court determines that the use of a single provider is necessary or desirable, then the Forum requests that it be allowed to bid to be exclusive provider for a term deemed appropriate by the Court.

Dated: September 20, 2002.

Respectfully submitted,

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STATE OF MINNESOTA

IN SUPREME COURT

C6-74-45550

ORDER AMENDING
MINNESOTA NO-FAULT
ARBITRATION RULES

On August 8, 2002, the Standing Committee for Administration on No-Fault Arbitration presented a report and petition to the Supreme Court proposing amendments to Rules 10, 40(b) and 42. By published notice, the Supreme Court solicited written comment by November 8, 2002.

On September 23, 2002, the National Arbitration Forum filed a petition with the Supreme Court requesting amendments to the No-Fault Arbitration Rules, including Rule 1(c), to designate "an arbitration organization" for the day-to-day administration of the rules and to provide for competitive selection of such arbitration organization. By published notice, the Supreme Court solicited written comment by January 10, 2003.

After due consideration by the Supreme Court of the petitions and written comments,

IT IS HEREBY ORDERED THAT the appended Minnesota No-Fault Arbitration Rules are amended as indicated in the attached copy and are incorporated herein.

IT IS FURTHER ORDERED THAT within the next twelve months, the Chair of the Standing Committee for Administration on No-Fault Arbitration, with the assistance of the State Court Administrator or her designee, define and implement a competitive selection process for an arbitration organization for the day-to-day administration of the No-Fault Arbitration Rules. This process should involve an independent screening committee with representative members of the Standing Committee, the Minnesota State Bar Association, the Trial Court Bench, and the public. The screening committee shall make recommendations about arbitration organization(s) to the Standing Committee and the Court.

DATED: August 5, 2003.

BY THE COURT:

OFFICE APPELLATE COURTS

AUG - 5 2003

FILED


Kathleen A. Blatz
Chief Justice

Exhibit B

Minnesota No-Fault, Comprehensive or Collisions Damage Automobile Insurance Arbitration Rules

Rule 1. Purpose and Administration

(a) The purpose of the Minnesota no-fault arbitration system is to promote the orderly and efficient administration of justice in this State. To this end, the Court, pursuant to Minn. Stat. §85B.525 and in the exercise of its rule making responsibilities, does hereby adopt these rules. These rules are intended to implement the Minnesota No-Fault Act.

(b) The Arbitration under Minn. Stat. §85B.525 shall be administered by a Standing Committee of 12 members to be appointed by the Minnesota Supreme Court. Initially, the 12 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.

(c) The day-to-day administration of arbitration under Minn. Stat. §85B.525 shall be by the American Arbitration Association (AAA) or such other agency as shall be subsequently an arbitration organization designated by the Standing Committee with the concurrence of the Supreme Court. The administration shall be subject to the continuing supervision of the Standing Committee.

Rule 2. Appointment of Arbitrator

The Standing Committee may conditionally approve and submit to the AAA arbitration organization nominees to the panel of arbitrators quarterly in March, June, September and December of each year, commencing March 1988. These nominees then may be included in the panel of arbitrators that 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 arbitration organization.

Rule 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.

Rule 4. Administrator

When parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA arbitration organization and an arbitration is initiated hereunder, they thereby constitute the AAA arbitration organization the administrator of the arbitration.

Rule 5. Initiation of Arbitration

(a) Mandatory Arbitration (for claims of \$10,000 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 \$10,000). 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 Arbitration organization, giving the AAA Arbitration organization's current address. On request, the AAA Arbitration organization 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 Arbitration organization. If the claimant asserts a claim against more than one insurer, claimant shall so designate upon the arbitration petition. In the event that a respondent claims or asserts that another insurer bears some or all of the responsibility for the claim, respondent shall file a petition identifying the insurer and setting forth the amount of the claim that it claims is the responsibility of another insurer. Regardless of the number of respondents identified on the claim petition, the claim is subject to the jurisdictional limits set forth in Rule 6.

(d) Denial of Claim. If a respondent fails to respond in writing within 30 days after 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) Itemization of Claim. 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. Medical and replacement services claims must detail the names of providers, dates of services claimed, and total amounts owing. Income-loss claims must detail employers, rates of pay, dates of loss, method of calculation, and total amounts owing.

(f) Insurer's Response. 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.

Rule 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 \$10,000 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 \$10,000. If the claimant waives a portion of the claim in order to come within the \$10,000.00 jurisdictional limit, the claimant must specify within thirty (30) days of filing the claims in excess of the \$10,000.00 being waived.

Rule 7. Notice

Upon the filing of the petition form by either party, the AAA Arbitration organization 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 Arbitration organization of the name of counsel, if any.

Rule 8. Selection of Arbitrator and Challenge Procedure

The AAA Arbitration organization 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 seven 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 Arbitration organization. In the event of multiparty arbitration, the AAA Arbitration organization 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 a party does not return the list within the time specified, all persons named therein shall be deemed acceptable.

One of the persons who has been approved on both lists shall be invited by the AAA Arbitration organization to serve in accordance with the designated order of the mutual preference. Any objection to an arbitrator based on the arbitrator's post-appointment disclosure must be made within seven business days from the mailing date of the arbitrator disclosure form. Failure to object to the appointed arbitrator based upon the post-appointment disclosure within seven business days constitutes waiver of any objections based on the post-appointment disclosure. An objection to a potential arbitrator shall be determined initially by the AAA Arbitration organization, subject to appeal to the Standing Committee. If an acceptable arbitrator is unable to act, or for any other reason the appointment cannot be made from the submitted list, the AAA Arbitration organization 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 Arbitration organization shall appoint another arbitrator from the no-fault panel to the case.

Rule 9. Notice to Arbitrator of Appointment

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

Rule 10. Qualification of Arbitrator and Disclosure Procedure

Every member of the panel shall be a licensed attorney at law of this state or a retired attorney or judge in good standing. Effective August 1, 2003, requirements for qualification as an arbitrator shall be: (1) at least 5 years in practice in this state; (2) at least one-third of the attorney's practice is with auto insurance claims or, for an attorney not actively representing clients, at least one-third of an ADR practice is with motor vehicle claims or no-fault matters; (3) completion of an arbitrator training program approved by the No-fault Standing Committee prior to appointment to the panel; (4) at least three CLE hours on no-fault issues within their reporting period; and (5) arbitrators will be required to re-certify each year, confirming at the time of recertification that they continue to meet the above requirements. 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 that may disqualify the person as a potential arbitrator. Each member shall supplement the disclosures as circumstances require. The following facts, in and of themselves, do not create a presumption of bias or conflict of interest: That an attorney or the attorney's firm represents auto accident claimants against insurance companies, including the insurance company which is the respondent in the pending matter. That an attorney or an attorney's firm represents or has represented insurance companies.

Rule 11. Vacancies

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

Rule 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 seven years prior to the accident;
- 3) employment records and authorizations for two years prior to the accident, when wage loss is in dispute;

- 4) supporting documentation required under No-Fault Arbitration Rule 8; 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.

Rule 13. Withdrawal

A claimant may withdraw a petition up until ten (10) days prior to the hearing. The claimant will be responsible for the arbitrator's fee, if any, upon withdrawal. If the petition is withdrawn after a panel of arbitrators is submitted and if the claimant shall file another petition arising from the same accident against the same insurer, the same panel of arbitrators shall be resubmitted to the claimant and the respondent. If the petition is withdrawn after the arbitrator is selected and if the claimant shall file another petition arising from the same accident against the same insurer, the same arbitrator who was earlier assigned shall be reassigned. The claimant who withdraws a petition shall be responsible for all parties' filing fees incurred upon the refiling of the petition.

Rule 14. Time and Place of Arbitration

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. If the claimant resides outside of the state of Minnesota, AAA Arbitration organization shall designate the appropriate place for the hearing. The arbitrator shall fix the time and place for the hearing. At least 14 days prior to the hearing, the AAA Arbitration organization 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.

Rule 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.

Rule 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 Arbitration organization 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.

Rule 17. Stenographic Record

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other party of those arrangements at least 24 hours 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.

Rule 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.

Rule 19. Attendance at Hearing

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.

Rule 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.

Rule 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 the 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 Arbitration organization for transmittal to the arbitrator.

Rule 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.

Rule 23. Witnesses, Subpoenas and Depositions

- (a) Through the AAA Arbitration organization, the arbitrator may, on 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.

Rule 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 that 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.

Rule 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.

Rule 26. Re-opening 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.

Rule 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 Arbitration organization shall specify a fair and equitable procedure.

Rule 28. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA Arbitration organization 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 Arbitration organization shall notify the parties of any extension.

Rule 29. Serving of Notice

Each party waives the requirements of Minn. Stat. §572.23 and shall be deemed to have agreed 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 including application for the confirmation, vacation, modification or correction of an award issued hereunder as provided in Rule 30; or for the entry of judgment on any award made under these rules may be served on a party by mail or facsimile 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 Arbitration organization 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 and to serve process for an application for the confirmation, vacation, modification or correction of an award issued hereunder.

Rule 30. Time of Award

The award shall be made promptly by the arbitrator, unless otherwise agreed by the parties or specified by law, no later than 30 days from the date of closing the hearing, or if oral hearings

have been waived, from the date of the AAA arbitration organization's transmittal of the final statements and proofs to the arbitrator.

Rule 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.

Rule 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 arbitration organization, in favor of the AAA arbitration organization, except that the arbitrator must award interest when required by Minn. Stat. 65B.54. The arbitrator may not, in the award, include attorneys fees for either party. Given the informal nature of no-fault arbitration proceedings, the no-fault award shall not be the basis for a claim of estoppel or waiver in any other proceeding.

Rule 33. 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, 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.

Rule 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.

Rule 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 arbitration organization.

Rule 36. Release of Documents for Judicial Proceedings

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

Rule 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 arbitration organization nor any arbitrator in a proceeding under these rules can be made a witness or 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 arbitration organization nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

Rule 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, except that service of process pursuant to Minn. Stat. §572.25 shall be made as provided in Rule 29 of these rules.

Rule 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. In the event that there is more than one respondent in an action, each respondent shall pay the \$180.00 fee.

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

Rule 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 the AAA Arbitration organization is notified of a settlement or a withdrawal of a claim at any time up to 24 hours prior to the scheduled hearing, but after the appointment of the arbitrator, the arbitrator's fee shall be the sum of \$60.00. If the AAA Arbitration organization is notified of settlement or a withdrawal of a claim 24 hours or less prior to the scheduled hearing, the arbitrator's fee shall be \$300.00. Unless the parties agree otherwise, the fee in a settlement shall be assessed equally to the parties unless the parties agree otherwise and the fee in a withdrawal shall be borne by claimant.

(c) Once a hearing is commenced, the arbitrator shall direct assessment of the fee.

Rule 41. Rescheduling Fees

A rescheduling fee of \$100.00 shall be charged against the party requesting a postponement.

Rule 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, 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. Generally each side should pay its own expenses. An arbitrator does, however, have the discretion to direct a party or parties to pay expenses as part of an award.

Rule 43. Amendment or Modification

The Standing Committee may propose amendments to these rules as circumstances may require. All changes in these rules and all other determinations of the Standing Committee shall be subject to review and approval by the Minnesota Supreme Court.



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**OR TOLL FREE
800-837-9117**

Attorney Profiles

Michael D. Tewksbury
Minneapolis, Minnesota
Partner, since September 1, 1994
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(800) 837-9117
fax (612) 334-5787
email [Email Me](#)



Michael D. Tewksbury was born and grew up in Chicago. After completing two years of college at Knox College, he transferred to the University of Northern Colorado and graduated with honors in 1975. Mike then attended law school at Gonzaga University in Spokane, Washington. He graduated with honors in 1978 and was then hired to teach at the law school. He taught legal writing and advanced legal writing classes for two years.

In 1980, Mike joined the law firm of Rider, Bennett, Egan & Arundel, an insurance defense firm in Minneapolis. He was made a partner of that firm and focused his work on insurance coverage issues, defense of personal injury cases, and also was instrumental in handling the firm's plaintiffs' work. In 1988, Mr. Tewksbury joined Schwebel, Goetz & Sieben to work exclusively on claims for injured people.

In 1994, Mr. Tewksbury joined with his friend Keith Kerfeld to create Tewksbury & Kerfeld, P.A. The goal this firm set out to achieve was to provide individual service for its clients in an aggressive, efficient, and fair manner. The firm adopted the practices and procedures that were beneficial to the clients from their previous firms and focused on individual attention for each client.

In addition to representing injured people, Mike Tewksbury is often hired to be an arbitrator or mediator to help resolve other lawyers' cases. He has been appointed by the Supreme Court to the Minnesota No-Fault Standing Committee and has been appointed to the Minnesota Trial Lawyers Association Board of Governors. He is often asked to teach, lecture, or write on various areas of the law and trial practice techniques.

Mr. Tewksbury has been repeatedly named as a Super Lawyer by Minnesota Law & Politics and recognized for that achievement in Mpls St Paul Magazine, Minnesota Law & Politics, and Business Monthly. He has been named as one of the top arbitrators and mediators, one of the top appellate lawyers, and one of the top personal injury trial lawyers. In 2001, he was named as one of the top 100 lawyers in the state of Minnesota.

Mike's approach to handling injury claims is to provide an efficient problem-solving technique in an effort to maximize his clients' recoveries in a prompt and fair manner. He utilizes a highly-trained and well-qualified staff to assist his clients in obtaining the benefits to which they are entitled so they can focus their energies on recovering from their injuries and losses.

Exhibit C

<http://www.tkw.com/Bio/MichaelTewksbury.html>

6/6/2008

Year Joined Organization:
1994

Areas of Practice:
Personal Injury Work

Litigation Percentage:
100% of Practice Devoted to Litigation

Bar Admissions:
Colorado, 1978
Minnesota, 1979
U.S. District Court District of Minnesota
U.S. District Court District of Colorado

Education:
Gonzaga University School of Law, Spokane, Washington, 1978
Juris Doctor
Honors: Cum Laude

University of Northern Colorado, Greeley, CO, 1975
Bachelor of Arts
Honors: Cum Laude

Knox College, Galesburg, IL, 1973

Published Works:
Minnesota Motor Vehicle Accident Desk Book, Chapter 10, "Accidents involving motorcycles, buses, rental cars, bicycles, and other specialized vehicles," June, 1994

Revise and Update Minnesota Motor Vehicle Desk Book, Chapter 10, June, 2002

Classes/Seminars Taught:
2004 Medical Malpractice Seminar- Use of New Jury Instruction in Aggravation of Injury Cases, June 16, 2004
No-Fault/UIM/UM Update Seminar, May 14, 2004
Mediations and Arbitrations Brown Bag Seminar, February 11, 2004
Alternative Dispute Resolution Maximizing Your Return: Settling The Liability/UM Claim With The Best Results, June 14, 2002
Alternative Dispute Resolution - Recent Case Law- Avoiding The Pitfalls, November 5, 1999
Settling Personal Injury Cases - Complicated Personal Injury Cases, June 23, 1998
Alternative Dispute Resolution, June 1, 1998
Alternative Dispute Resolution Real Life Answers to Real Life Circumstances-Uninsured and Underinsured Motorist Subrogation and Settlement Techniques, June 17, 1998
Effective and Efficient Litigation Techniques, ADR Use and Misuse, October 8, 1997
Mediation as ADR Evolves, August 20, 1997
UIM Insurance, April 23, 1997
Anatomy of a Personal Injury Trial; final argument presenter, written materials by Richard Hunegs and David Fitzgerald, March 7, 1997
Minnesota No Fault, Arbitration Primer, February 20, 1997

Handling the Auto Accident Case, Handling UIM with Multiple Parties and Substitution of Checks in UIM, December 13, 1996

Efficient and Productive Handling of Automobile Accident Cases, Handling Settlement Agreements, November 15, 1996

Advanced UIM and UIM, Uninsured Motorist Subrogation and Settlement/A' Underinsured Motorist Subrogation and Settlement., August 8, 1996

Soft Tissue Injuries, Presentation the Plaintiff's Case Through the Treating Doctor and Independent Medical Examiner, February 11, 1996

Certified ADR Training, How to Manage The Arbitration Process, October 1, 1995

Settlement Agreements, Motor vehicle accidents in Minnesota, Normandale Community College, 1995

The Nuts and Bolts of ADR, A Practical Seminar for Mediators and Arbitrators, Course co-chair, June 15, 1995

Claims Handling and Resolution of Claims Seminar for USF&G Claim Representatives, April 20, 1995

Human Anatomy, Handling Brain Injury Claims, January 31, 1995

Personal Injury Litigation; Expert Testimony by an Economist, January 6, 1995

Minnesota Civil Trial Practice: Jury Trial or Court Trial?, April 14, 1994

Pain and Injury Seminar, The Medical Seminar for Attorneys-Chronic Pain, 1993

Pain and Injury Seminar, September 18, 2002

Handling Motor Vehicle Accident Cases IV - Damages: Plaintiff's Perspective on Evaluating and Proving Damage Claims, June 5, 1992

MTLA Mock Trial Seminar Demonstration of personal injury trial assumed defense counsel role, December 5, 1991 - December 6, 1991

Soft Tissue Injury Seminar, course chair, direct and cross-examination of the independent medical examiner and direct and cross-examination of the treating physician, November 9, 1990

Personal Injury Institute, 6th Annual - Before and After the Lawsuit Doing the Paperwork and Avoiding the Traps, October 11, 1990 - October 12, 1990

Minnesota Motor Vehicle Accident Seminar, Damages - Plaintiff's Perspective, May 25, 1990

Personal Injury Institute 5th Annual, December 12, 1989

The Chiropractic Physician in the Courtroom. December 2, 1989

Drafting Settlement and Release Documents, Preserving Claims Against Other Parties and Insurers, December 1, 1989

Personal Injury Institute, voir dire - The Plaintiff's Perspective, October 12, 1989 - October 13, 1989

Minnesota State Bar Association State Fair Mock Trial Demonstration, September 3, 1989

Insurance Law - A Re-examination, July 12, 1989

Reflections of an Ex-Defense Lawyer: Avoiding Pitfalls-Measuring Damages in Wrongful Death Cases, June 23, 1989

Handling Motor Vehicle Accident Cases, No-Fault Issues, June 13, 1989

Innovative Settlement Strategies, February 17, 1989

Settlement Strategies: No-Fault, Uninsured Motorist and Underinsured Motorist Claims, February 9, 1989

Defense Lawyer's Perspective of Plaintiff's Practice, January 11, 1989

Understanding Soft Tissue Injuries - A Medical Perspective, course chair, December 9, 1988

Orthopaedics for Lawyers: The Spine, May 13, 1988

UM/UM Seminar, April 28, 1988

Liquor Liability - Minnesota 1988. Successful Trial Tactics in a Dram Shop Case, January 16, 1988

Chiropractic Costs Management for the Insurance Professional, legal consideration for usual routine and customary standards of care, December 1, 1987

Utilizing Legal Assistants: Billing and Profitability, November 6, 1987

Minnesota Uninsured and Underinsured Motorist Coverage Issues Subrogation Right and the Use of Special Releases in UM and UIM Claims, April 29, 1987

Soft Tissue Injury, Defending Against Soft Tissue Claims-Use of the Chiropractor as an Independent Medical Examiner course chair, February 5, 1987

A Potpourri: Guide to Recent Developments in Minnesota Insurance Law, May 14, 1986

Soft Tissue Injury: Special Diagnostic Tests, December 5, 1985

Fundamentals of Trying a Personal Injury Case, October 1, 1985

Arbitrating No-Fault Cases, July 26, 1985

Honors and Awards:

Leading American Attorneys, Minnesota, 1997 - Present

Super Lawyer, Law & Politics, Twin Cities Business Monthly, Minneapolis-St. Paul Magazine, 1996 - Present

Top 50 Appellate Lawyers in Minnesota (6th), Law & Politics, November 1, 2000

Top 25 Mediators in Minnesota, Law & Politics, 2000 - 2004

Top 25 Personal Injury Attorneys in Minnesota, Law & Politics, 2001 - 2002

Top 100 Super Lawyers in Minnesota, Law & Politics, 2001 - 2003

Top 40 Personal Injury Attorneys in Minnesota, Law and Politics, 2005

Professional Associations and Memberships:

Supreme Court No-Fault Standing Committee, 2001 - Present

Minnesota Trial Lawyers Association Board of Governors, 2005 - Present

American Arbitration Association Panel of Arbitrators
Member

Past Employment Positions:

Schwebel, Goetz, Sieben & Moskal, Practice focused on plaintiffs' personal injury litigation, handling all aspects of trial work from initial pleadings through trial, November 1, 1988 - September 1, 1994

Rider, Bennett, Egan & Arundel, Litigation Partner practicing insurance defense litigation and insurance coverage matters. Also worked on most of the firm's major plaintiff, August 1, 1980 - October 1, 1988

William Mitchell College of Law, Adjunct Faculty. William Mitchell College of Law, St. Paul, Minnesota - Legal Writing and Appellate Advocacy., 1982 - 1985

Gonzaga University School of Law, Instructor of law - Legal Writing Programs , 1978 - 1980

TEWKSBURY & KERFELD, P.A.

Attorneys at Law

88 SOUTH TENTH STREET SUITE 300 MINNEAPOLIS, MN 55403

TEL: 612-334-3399 TOLL-FREE: 800-837-9117 E-MAIL US

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Member
[View firm profile of Fluegel Law Office](#)



Contact Information

Phone: 612-238-3540; 888-690-3540
Fax: 612-344-2138

Wilbur W. Fluegel practices in the following areas of law: Automobile Accidents and Injuries; Personal Injury; Wrongful Death; Dram Shop Liability; No Fault Auto Insurance; Personal Injury Appeals; Insurance Coverage; Professional Liability

Admitted: 1979, Minnesota; 1987, Wisconsin

Law School: University of Minnesota, J D , 1979

College: Mankato State University, B S., summa cum laude, 1976

Member: Hennepin County, Minnesota State and American Bar Associations; Minnesota Trial Lawyers Association (President, 2005; President-Elect, 2004; Vice President, 2003; Secretary, 2002; Treasurer, 2001; Board of Governors, 1993-2000); American Board of Trial Advocates; American Association for Justice; Academy of Certified Trial Lawyers of Minnesota.

Biography: Managing Editor, 1978-1979, Minnesota Law Review. Lecturer in Law: University of Minnesota Law School, 1986-1989; St. Thomas University School of Law, 2004-2005. Author: "Work-Related Injuries," "State & Municipal Claims," Minnesota Cause of Action Manual, (MTLA, 1990, 1995, 1999); "Third Party Practice," The Minnesota Workers' Compensation Deskbook, Chapter 16, (MSBA, 1993, 1997, 2001); Premises Liability Handbook, (1993, 1995, 1997, 1999, 2002, 2005); "Automobile Liability Coverage," Minnesota Insurance Law Deskbook, (MSBA, 1997, 1999, 2006). Member, Minnesota Campaign Finance & Public Disclosure Board, 1998-2005; Member, Supreme Court No-Fault Standing Committee, 1999-2006; Member, Panel of Arbitrators, American Arbitration Association. (Civil Trial Specialist Certified by the Civil Litigation Section, Minnesota State Bar Association; Certified as Civil Trial Advocate by the National Board of Trial Advocacy)

Born: Mankato, Minnesota, May 21, 1955

LexisNexis Analyzet

Location

150 South Fifth Street, Suite 3475
Minneapolis, Minnesota 55402
(Hennepin Co)

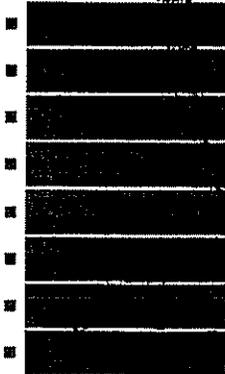
Exhibit D

<http://www.lawyers.com/Minnesota/Minneapolis/Wilbur-W-Fluegel-749653-a.html>

6/6/2008



Our Legal Staff



Bill Bannon

Bill grew up in St. Paul, Minnesota. He attended the University of Minnesota and then served in the United States Army during the Vietnam War. He graduated with a degree in Justice Administration from Brigham Young University and attended the University of Utah College of Law, graduating in 1982. Before law school, he was a Salt Lake County Deputy Sheriff, and he adjudicated many automobile accidents. As an Assistant Utah Attorney General he defended the State of Utah in highway defect cases.

Bill is certified as a civil trial specialist by the Minnesota State Bar Association and the National Board of Trial Advocacy. He is President of the Board of Directors of Western Minnesota Legal Services and serves on the panel of arbitrators of the American Arbitration Association. He is a member of the Minnesota State Bar Association and the Minnesota Association for Justice. Bill is a Qualified Neutral for Civil Mediation and Arbitration, as well as Child Custody and visitation Mediation, Parental Child Custody and Visitation Evaluator. He has served on the New London/Spicer School Board for 7 years.

- Personal Injury
- Family Law (including Divorce, Post-Decree Child Custody and Support)
- Adoption
- Guardianship and Co-Parenting
- Estate Planning and Probate
- General Legal Services and Advice

E-mail: bill@bannonlaw.com

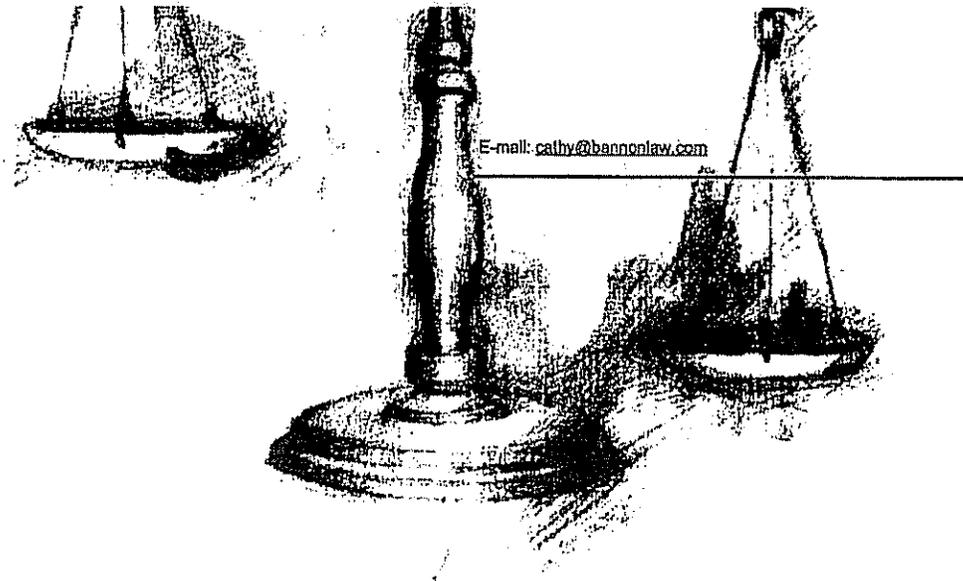
Cathy Ann Bannon



Cathy is a native of Willmar, Minnesota. She attended the University of Minnesota where she received a degree in child development. She has earned a paralegal certificate.

Cathy has worked in litigation support for nearly 20 years, first with a major industrial equipment manufacturer, then for a large telecommunications firm. She joined her husband's law firm in 1998.

Exhibit E



Joe Leoni Trial Specialist



Date: 6-9-2008

Joe Leoni Resume

JOSEPH F. LYONS-LEONI
Attorney-at-Law
225 First Street North, P.O. Box 958
Virginia, MN 55792
(218)749-1962 Fax(218)749-4308
jleoni@trentilaw.com Website: JOELEONI.COM

EDUCATION

YEAR AREA SCHOOL DEGREE

2000 EMERGENCY MEDICAL LAURETIAN EMT-P
TECH-PARAMEDIC COMM/TECH COLLEGE

1984 LAW WILLIAM MITCHELL COLLEGE J.D.
OF LAW

1981 SPEECH UNIVERSITY OF B.A.
COMMUNICATION MINNESOTA, MINNEAPOLIS

EMPLOYMENT

1991 ã€ Present TRIAL LAWYER TRENTI LAW FIRM

1984- 1990 ATTORNEY CLOUTIER & MUSECH

1987 ã€ 1989 ADJUNCT PROFESSOR INVER HILLS
BUSINESS LAW COMMUNITY COLLEGE, MN

TRIAL SPECIALIST & ACTIVE LEGAL COMMITTEES

2002 - Present SUPER LAWYER MN LAW POLITICS
DESIGNATION

2002 ã€ Present AV ATTORNEY RATING MARTINDALE HUBBEL

2000 ã€ Present BOARD OF GOVERNORS MN TRIAL LAWYERS

2000 - Present EMT ã€ PARAMADIC NATIONALLY AND STATE
CERTIFIED PARAMEDIC

1999 - 2007 STANDING COMMITTEE MN SUPREME COURT
NO-FAULT

1998 - Present CIVIL TRIAL SPECIALIST CERTIFIED BY THE
MINNESOTA STATE BAR
ASSOCIATION AND
NATIONAL BOARD OF
TRIAL ADVOCACY

1998 RISING YOUNG STAR MN LAW POLITICS
JUDICIAL EXPERIENCE

- #### Partial Expertise I
- Personal Injury
 - Wrongful Death
 - Seriously Injured
 - Car Accidents
 - Dog Bites
 - Workmans Comp.
 - Trial Specialist
 - Medical Malpractice
 - Criminal Defense

Contact Me

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Toll Free: 800-422-09

Name:
Email:
Phone:
Comments:

Send Comment

Exhibit F

1991 &c Present AMERICAN ARBITRATION A.A.A
ASSOCIATION; ARBITRATOR MINNEAPOLIS, MN

1991 - 1999 CONCILIATION COURT HENNEPIN COUNTY
JUDGE DISTRICT COURT
MINNEAPOLIS, MN

1994 - 1999 HENNEPIN COUNTY COURT HENNEPIN COUNTY
ARBITRATOR DISTRICT COURT

1995 - 1999 AD-HOC SELECTION HENNEPIN COUNTY
COMMITTEE CONCILIATION DISTRICT COURT
JUDGE PANEL

AWARDS AND COMMUNITY INVOLVEMENT

VIRGINIA HOSPITAL COMMISSION, 2007 - PRESENT
CHICAGAMI NON-PROFIT BOARD OF DIRECTORS, 2005 - PRESENT
EMT: NATIONALLY REGISTERED EMT, 1997 &c Present
COMMUNITY DEVELOPMENT GRANT BOARD; ST. LOUIS COUNTY 2000
- 2005

TROOP 114 TROOP COMMITTEE, 2007 - PRESENT
FIRST RESPONDER BIWABIK TOWNSHIP, 2000 &c Present
TROOP 114 BOY SCOUTMASTER, 2001 - 2007
VIRGINIA FOUNDATION VOLUNTEER AWARD, 2001
GILBERT H.S. ALUMNI ASSOCIATION PRESIDENT, 2000 - 2003
CUB SCOUT LEADER &c 1997 &c 2001
YOUTH HOCKEY AND SOCCER COACH - 1997 - 2003
STRATHMORE'S WHO'S WHO
NATIONAL RUNNER-UP HOCKEY TEAM 1978; COMMUNITY COLLEGE
WEST POINT ACADEMY APPOINTMENT; LEADERSHIP APPOINTMENT
1977
EAGLE SCOUT 1976
ORDER OF THE ARROW 1974

PROFESSIONAL MEMBERSHIPS

MN ITALIAN AMERICAN LAWYERS ASSOCIATION
AMERICAN TRIAL LAWYERS ASSOCIATION
MINNESOTA TRIAL LAWYERS ASSOCIATION
AMERICAN BAR ASSOCIATION
ST. LOUIS COUNTY BAR ASSOCIATION
HENNEPIN COUNTY SPEAKERS PANEL
CRIMINAL DEFENSE LAWYERS
PUBLICATION COMMITTEE OF MTLA
ACADEMY OF CERTIFIED TRIAL LAWYERS OF MN

PROFESSIONAL ARTICLES AND LECTURE

AVOID MALPRACTICE CLAIMS ARROWHEAD EMS
CONVENTION LECTURER 2008

PRELITIGATION ATTACHMENT OF PROPERTY MSJ MAGAZINE
PUBLISHED ARTICLE WINTER '08

MENTAL ILLNESS &c RULE 20 MSJ MAGAZINE
PUBLISHED ARTICLE FALL '07

EXCESSIVE POLICE FORCE MSJ MAGAZINE
PUBLISHED ARTICLE SUMMER '07

MN SEXUAL OFFENDER 2007 LAWS MSJ MAGAZINE
PUBLISHED ARTICLE SPRING '07

EMS MEDICAL-LEGAL REFERENCE ARROWHEAD EMS
CONVENTION 2007

DRAM SHOP VS. DUI: CHAIN OF CUSTODY MTLA MAGAZINE
PUBLISHED ARTICLE WINTER '07

PRODUCT RULE: WHAT IS IT? MTLA MAGAZINE
PUBLISHED ARTICLE FALL '06

CRIMINAL LAW EXPERTS/ FRYE MACK STANDARD MTLA MAGAZINE
PUBLISHED ARTICLE SUMMER'06

EXPUNGEMENTS MINN. STAT. 609A MTLA MAGAZINE
PUBLISHED ARTICLE SPRING '06

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Reality vs. Myth

THE TRUTH ABOUT MANAGEMENT OF THE AAA COMMERCIAL ROSTER

By India Johnson, Senior Vice President

MARCH 2003

FROM TIME TO TIME, WE HEAR FROM PEOPLE WHO ARE DISAPPOINTED WITH THE AMERICAN ARBITRATION ASSOCIATION (AAA) FOR NOT "PUTTING ME ON THEIR LIST" OR FOR "TAKING ME OFF THEIR LIST." WE ALSO KNOW THAT SOME CURRENT ROSTER MEMBERS ARE UNCLEAR ABOUT HOW THEY WILL BE APPOINTED TO CASES. THE AAA ROSTER AS WE USE IT TODAY IS NOT SIMPLY A "LIST" BUT A PRIMARY AAA RESOURCE TO HELP PARTIES RESOLVE CASES.

The AAA Rules make for a level playing field, the Roster provides fair and excellent decision makers for many types of disputes, and the AAA staff helps parties and arbitrators get from filing to closing the arbitration. This article describes both the general management of the Roster, as well as the listing and appointment opportunities panelists may have for AAA cases. It will lay to rest some of the myths about the Roster.

REALITY # 1 Managing the Roster

We continuously "right size" the Roster, meaning we recruit for specific needs as well as rotate some arbitrators off the Roster each year. Most people inside and outside the AAA are surprised to learn that approximately 7,500 people contact us annually about joining the Roster. The entire Roster of the AAA includes 8,500 people and it includes separate discrete panels such as the Labor Panel, No-Fault Insurance Panels and the International Panel. The so-called "Commercial" Panel includes the commercial, construction, employment, consumer and technology or industry panels. For this varied caseload of approximately 18,000 cases per year, we currently have a panel of around 5,500 individuals all over the country, covering a broad

spectrum of subject-matter expertise. Because the AAA is known for extensive subject-matter expertise and diversity of professional or legal experience, we must necessarily maintain a large enough roster to accommodate differing legal and commercial user communities. Roster members cannot simply have "ADR expertise" but must have expertise in subject areas where we actually have cases. Our main arbitration work is our business-to-business (B2B) commercial and construction communities, but in recent years we have added many employment and consumer experts including plaintiff representation, government and judicial experts because those caseloads have also grown.

Unfortunately, there are many myths surrounding how we add or delete Roster members, while the truth is quite simple. The regional offices, in conjunction with the four case management centers and the neutrals' services departments of the AAA work together on maintaining a quality Roster. Of course, quality is always a moving target. In any endeavor, just like all other service organizations, we must continually ratchet up our efforts. We recruit and retain arbitrators with the subject-matter expertise and case management skills to meet the needs of the parties using our services. Each year, we add a few

Exhibit G

hundred people and rotate off a few hundred people from the Roster – nationwide. This keeps the total number of panelists fairly constant. Of course, when we add people, it is because we need their expertise for cases we have or expect to have. The recruited arbitrators will be appropriate and necessary for us to add in specific caseload areas, be it energy industry or intellectual property or industrial construction projects.

When we rotate people off the Roster, it may be for any of a variety of reasons. Here is a brief list of some of the reasons why we have rotated people off the Roster:

- Career change requiring resignation from the Roster
- Not meeting all training requirements
- Unsuccessful participation or performance in the training programs
- No cases or not enough cases in the arbitrator's area of expertise and location
- Unprofessional conduct toward parties, attorneys, witnesses or staff
- Failure to make appropriate and sufficient disclosures on a case – this is a fundamental requirement and rotation off the Roster for failure to make disclosures that should or could have been made is subject only to the discretion of the AAA.
- Arbitrators who do not manage the process effectively and efficiently so that the parties derive the benefits of speed, economy and justice
- Fees higher than AAA parties will pay or billing practices not in line with our billing guidelines
- Failure to act in accordance with AAA Rules and procedures

People are sometimes surprised when notified that we are rotating them off of the Roster. Some may mistakenly believe that appointment to the panel is a permanent appointment, or is in the hands of the panel member alone. This is not true. The Roster's makeup is at the discretion of the AAA and offering specific panelists is at the discretion of the AAA. The AAA reviews panel members approximately every two years to make sure the fit is right

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for the caseload available. Just as anyone can decline an invitation to be on the Roster and can decline any appointments to cases, the AAA can decline to add someone and can also decide to rotate someone off the Roster.

Keep in mind that we want the Roster to be dynamic and diverse. We cannot add new experts each year if we retain

all existing panelists. Sometimes voluntary resignations are supplemented by simple reductions because we do not need some of the panelists in the areas where we have them. For instance, there is no need to have a lot of panelists with a seldom-used type of expertise in a given geographic area. There is no need to retain panelists whose fees and billing requirements

exceed the amounts parties on our cases are willing to pay for those arbitrators, especially if we have others of equal suitability with more acceptable billing practices. Being on the Roster costs not only the panel member, but also the AAA and we want to minimize wasted money and wasted time for everyone. In these serious economic times, our users are looking for faster, less expensive arbitration that provides high quality, fair procedures and decision-makers. Everyone that can help us make quality arbitration faster, less expensive, and more accessible is better situated on the Roster because these are the values the parties who use AAA are seeking.

The staff and existing panel members can help the AAA by educating others about how we use the Roster. It is not simply a "list" people should try to get on as a credential to use independently of the AAA. That is another one of those myths. The AAA is over 75 years old and has provided case management service and neutrals for over two million cases. Consequently, we have significant experience in the development of the Roster for the cases we have. Right now, we are particularly recruiting qualified women, minorities and attorneys with plaintiff experience and small business representation experience. Our B2B cases generally involve complex industry or business and legal transactions. Candidates must have significant expertise and acceptability in their own fields of endeavor to be chosen to serve on actual cases. In employment and consumer cases, neutrals must have acceptability to both plaintiffs and defendants. Candidates

should first be brought to the attention of the AAA staff. If a local regional office or a case management center of AAA has no need for an individual, then an invitation cannot be extended. Disappointment is best avoided if the AAA staff manages the interaction with the candidates that are potential recruits to the Roster. Remember, we already have approximately 8,000 professionals contacting us throughout the U. S. each year to inquire about membership on our Roster. While some of these inquiries come from people not precisely qualified, many are extremely qualified professionals with top level credentials in law, business, academia, professional services, government, the state and federal judiciary, construction and technology. While it is a challenge to interact with this many people, it does give us a lot of choice about additions to the Roster. It is also gratifying to meet so many people who want to associate with the AAA. We are not able to accommodate people who just want to fill out some forms and claim the AAA as a credential on their resumes while pursuing other work in alternative dispute resolution. The Roster recruiting is just that, recruiting by us for our own caseloads. So, out with another myth – the one that says, "the panel is closed." It is not closed and has never been closed. We add people every year! We just try to add exactly what we need, and we try not to create expectations that will not be met. We try not to waste anyone's time. The Roster is more important to us and to our user communities than anyone can imagine. We intend to recruit people the parties will select and will respect, and who will in turn respect the parties and the attorneys using AAA for dispute resolution.

REALITY #2
Appointing Arbitrators to Actual Cases

This is another aspect of the Roster that is not always understood, but is really practical and simple. The case management staff prepares arbitrator or mediator lists for specific cases based on what the parties and lawyers have told them are important criteria. They may want only engineers or only accountants or only former judges; they may have several criteria we have to meet. We have put together lists with forestry law expertise, nuclear engineering expertise, patent expertise and even a list of lawyers who also had to have a pilot license! This greatly distinguishes the AAA from most providers of arbitration. The lists are not random, not a rotation system, not the luck of the draw. These are more myths. No matter how many times a neutral is listed, the parties are still performing the

striking and numerical ranking effort by themselves, based on their own choices. Thus, panelists may be listed only a few times each year but picked frequently by both parties, or may be listed many times in one year but not mutually selected on many cases. The AAA staff is familiar with the Roster members by geographic area and by subject-matter or caseload type. Our computerized Roster database further helps the staff conduct refined searches for neutrals to place on a list for the parties to consider on a particular case. We are able to achieve mutual selections by the parties most of the time and seldom have to resort to appointing an arbitrator on a case as an "administrative appointment." In summary, a panelist will generally be listed/appointed to cases if he or she has:

- The right expertise for cases we receive
- Compensation practices that fit such cases
- Few or no conflicts that will bar service
- Availability to serve promptly and on consecutive days if needed
- A reputation for excellence and appropriate demeanor in the community.

You have probably realized that parties and their attorneys may be as fussy in selecting arbitrators or mediators as they would be in selecting jurors and, after all, an arbitrator is a combined judge and jury. We expect the parties and their attorneys to be selective and we want them to think we put together a great list for them to consider. Trying to lobby for cases or listings is ineffective. This is another myth without any substance. The AAA does not list neutrals because they ask to be listed; we must have the right cases in the right area for their service. In larger or complex cases, our staff is able to provide lists of neutrals from anywhere necessary, including from outside the United States. Repeated personal contact with case managers will not increase listings. The AAA is committed to seeing our case service from the party's point of view and to providing lists of neutrals that will give the parties some true choice and ownership of the arbitration process. Rest assured that no one, not one neutral on the Roster, is appointed to cases because he or she stays in constant contact with the case staff. The reality is that the case staff is very busy each day working with the parties and their attorneys. Each Case Management Center manages thousands of open cases that present the staff with many urgent challenges every single day. The parties on those cases expect the Case Managers to be problem solving all the time. Concerns some panel

members have about acceptability or about the likelihood of being appointed to cases should be discussed with the vice president or assistant vice president in local regional offices, not Case Management Center staff. Regional vice presidents and assistant vice presidents are especially knowledgeable about the case types in their specific regions, they know the staff in the Centers and will be able to answer questions.

REALITY # 3

How Do Arbitrators Demonstrate Their Capability?

If the AAA cannot make someone a busy, successful arbitrator – what do arbitrators do to become active or to stay active? To increase opportunities to serve as an arbitrator, panelists can write articles on arbitration in specific business or legal areas for publications, give talks on arbitration and do pro bono work in arbitration to become better known within an industry. Many industries and legal areas need education about how arbitration works and how it applies to the specific type of disputes faced in that industry. Panel members who use arbitration themselves for their clients or their own business disputes can become known as experts in arbitration, particularly where they have subject-matter expertise. The reality is that one probably cannot ignore alternative dispute resolution (ADR) for many years and then expect to suddenly become a sought after mediator or arbitrator. Also, one cannot rely upon expertise in areas where ADR is never or seldom used and expect to simply be sought after in other industries or legal fields. An attorney with many years of experience in government taxation disputes is not going to be sought out for commercial, construction, employment or textile disputes.

REALITY # 4

Abundance and Opportunity for the AAA and Parties with Disputes

Managing and maintaining a quality Roster of Neutrals for AAA cases is a challenge, but also a labor of love for the staff. We are always proud and grateful for all the hard work resolving disputes that AAA panelists perform each year. We are especially grateful to the panelists who have served pro bono and to those who have served on our fixed-fee cases to help the general public. Most of the legal and business communities are aware that the AAA's primary services are in B2B, complex, commercial disputes. Since the inception of the AAA in 1926, fast, economical resolution of B2B disputes has been the AAA's core service and we have developed more subject-matter expertise in our Roster than any other arbitration provider, at home or abroad. In recent years, after recruiting additional panelists, the AAA has also been able to provide arbitration and mediation to numerous individuals who would not have been able to afford a court proceeding or perhaps even obtain legal representation. So, in addition to helping complex B2B matters get resolved without piling up in our nation's already burdened court system, we also performed this additional public service for individual claimants, with smaller but nevertheless important claims.

Our AAA reality is an existing abundance of superb arbitrators and mediators, along with an enormous opportunity to bring in new, diverse experts for the Roster, and to grow in new areas such as Internet disputes, software disputes – whatever disputes the economy grows!



American Arbitration Association
Dispute Resolution Services Worldwide

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February 20, 2003

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RE: *Complaint of Arbitrator Misconduct in Graff v. Auto-Owners*
AAA File: 56-600-01279-02

Gentlemen:

Today - - in my capacity as one of the members of the Supreme Court Standing Committee's subcommittee on arbitrator misconduct - - I received from AAA Case Manager Ryan C. Frank a packet of materials relating to a complaint of arbitrator misconduct made by Attorney William Starr against Arbitrator Michael Tewksbury regarding the conduct of an arbitration in the above matter.

Before I proceed with my investigation - - which typically would consist of telephone interviews of the involved participants and the consideration of any written submissions the principals wish to be considered - - I wanted to raise a threshold issue for your consideration: Since Mr. Tewksbury currently serves with me as one of the 12 members of the Supreme Court No-Fault Standing Committee, is it appropriate for me to evaluate his conduct? While this is my main concern, I also obviously know each of you professionally, having had Mr. Starr as an arbitrator and Mr. Tewksbury as a mediator. Indeed, I am scheduled to use Mr. Tewksbury's services as a mediator sometime next month on a personal injury case in which I represent the claimant.

What I am getting at is the potential for appearance of a conflict of interest. For example, when a judge of one bench is accused of some impropriety, a jurist from a different bench is usually invited to hear the matter. We only have the one Standing Committee, and our procedure calls for a member of the subcommittee of that group to investigate, so I have no sister organization to send the matter to. Some creative solution may present itself, or you may both waive the potential conflict and I could then proceed.

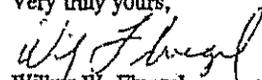
* Certified Civil Trial Specialist by Minnesota State Bar Association & National Board of Trial Advocacy
(Also Admitted to Wisconsin)

Exhibit H

I am writing at this time to invite your thoughts. Until this threshold issue is resolved, my preference is not to have direct telephons or personal contact on the matter with either of you. Would you thus kindly send me your written view on the propriety of my hearing this issue? When you write me back, please copy the other on your correspondence. What I am looking for from each of you is a short note advising me: (1) do you have an objection to my hearing this matter, and (2) if so, have you any suggestion as to how the matter might otherwise be disposed of? I'd rather we restrict ourselves to this narrow agenda first, if possible, rather than touch on the merits of the complaint. May I hear from you by Friday, *February 28, 2003* please?

Thank you.

Very truly yours,



Wilbur W. Fluegel

cc: Ryan C. Frank, Case Manager