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).

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 Procedure*, "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.").

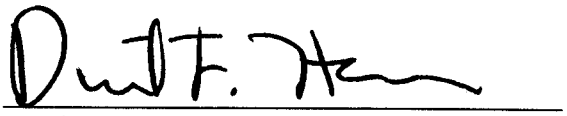
9. The Forum submits that it is not in the public interest to allow a single entity to maintain a virtual monopoly over administration of the no-fault arbitration process mandated by the Minnesota No-Fault Act. The Forum requests that the rules be amended to allow litigants a choice among approved administrators. 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 proved 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,

MASLON EDELMAN BORMAN & BRAND, LLP

By 

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ATTORNEYS FOR PETITIONER
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July 16, 1997

The Honorable John Simonett
Chair, No-Fault Standing Committee
Greene & Espel
333 South Seventh Street, Suite 1700
Minneapolis, MN 55402

NATIONAL ARBITRATION FORUM

Dear Justice Simonett:

Enclosed is a petition to amend the Rules of Procedure for No-Fault Arbitration to provide for the competitive selection of that provider. We respectfully request your committee to consider this Petition.

We understand the Standing Committee concluded that only one organization should administer no- fault arbitration matters. Your letter of June 18, 1997 stated that the Committee felt "it was not feasible to divide up the administrative duties" relating to no-fault arbitration cases.

We are now asking that Committee to solicit competitive proposals for these administrative duties and to select one administrative organization from the applicants. The enclosed Petition contains our supporting reasons. A copy of the proposed rule changes is included.

We further respectfully ask the Committee to review the Petition in a timely manner. We understand that the next scheduled meeting of the Committee is not until October, 1997. It is our hope that a final decision on our Petition could be reached at that meeting or shortly thereafter. We are prepared to meet with the Committee at any time to answer any questions. There may be lawyers and other interested parties who want to comment on the proposed rule changes.

As explained in the Petition, we believe, that the best interests of the public and the parties involved in no-fault arbitration hearings will be served by this rule change. We appreciate the work that will be involved in reviewing this petition and are available to do whatever we can to assist with that process. We thank you in advance for your consideration.

Sincerely,

NATIONAL ARBITRATION FORUM

Roger S. Haydock, Esq.

Edward C. Anderson, Esq

RSH/mkm
Enclosures

cc: James Deye
American Arbitration Association

Minneapolis, MN
Atlanta, GA
Brunswick, NJ
Ft. Myers, FL
San Francisco, CA
Washington, D.C.

EXHIBIT A

PETITION TO AMEND
RULES OF PROCEDURE FOR NON-FAULT ARBITRATION

Petitioner respectfully requests amendment of the No-fault Arbitration Rules. The proposed amendment replaces the words "the American Arbitration Association" with the words "an arbitration organization approved by the Standing Committee." The purpose of the rule change is to permit competitive proposals and to allow the Committee to select an arbitration organization to administer no-fault arbitration cases.

Reasons which support this amendment are:

1. Comply with the law. This change would be in compliance with Minnesota Statue 65B.525 and the Rules of Procedure adopted by the Minnesota Supreme Court. At the time of its adoption in 1975, the purpose of Minnesota Statue 65B was to create arbitration procedures for no-fault cases. Subsequently, the Minnesota Supreme Court adopted rules to implement those arbitration procedures. It was neither the intent of the legislature nor the Supreme Court that one organization be appointed in perpetuity to administer arbitration cases. The audio tapes of the Legislative Committee on Labor and Commerce which considered the initial statute and subsequent amendments disclose nothing in the legislative history to indicate that the American Arbitration Association and no other arbitration organization would be given an administrative monopoly. Further, nothing in the Court records regarding the passage of the initial rules of procedure and subsequent amendments indicate that only the American Arbitration Association could administer no-fault arbitration cases. The amendment we propose reflects legislative and judicial intent.

2. Eliminate a monopoly Minnesotans should not be subject to a monopoly. The current rule provides one organization with a monopoly for administrative services. There is no justifiable reason that a permanent monopoly should continue to exist. Other organizations provide arbitration services and administration, and these organizations ought to have an opportunity to provide these services to Minnesota litigants. At the time the current rule was drafted, the drafters may have thought that only one arbitration organization was available to administer such matters. This is no longer the situation. There is nothing inherent in these administrative services that require a monopolistic system, and it should be replaced.

3. Provide for competitive proposals The rule amendment would allow arbitration organizations to compete for the administration of no-fault arbitration. This competitive process would be identical to the system used in virtually all other situations where the Court seeks services from the private sector. The Supreme Court, through its Standing Committee, ought to seek and review competitive proposals from interested private organizations before selecting one of those organizations to perform no-fault arbitration administration. The Supreme Court and the Standing Committee can contract with any private organization for this administrative work, after providing all qualified organizations the opportunity to seek the assignment.

4. Benefit the public interest. The public interest is always better served by a competitive, rather than a monopolistic system. A competitive system will result in a more economical arbitration system. The present administrative fee charge is $240. The average no-fault arbitration case involves $ 6,205 in dispute. A reasonable administrative filing fee for this type of average dispute is within the range of $150 to $175. The entire cost of a no-fault arbitration is $540 with the arbitrator receiving $300. The current administrative charge constitutes 45% of the entire cost of arbitration. An average administrative fee is normally between 25 to 35% of the entire arbitration cost. High quality administrative services can be provided at significantly lower rates.

5. Benefit the interests of arbitration parties. The parties involved in future no-fault arbitration cases will be better served under the amended rule than the present rule. The amended rule will result in a more economical, efficient, and effective arbitration system. All parties will save money and time.

6. Promote efficiency. Competition promotes efficiency and effectiveness. A competitive system will naturally result in a more efficient administration of arbitration cases. Competitive organizations will do their best to develop an effective process. The Standing Committee can select the organization it deems best to administer the arbitrations and can implement ideas it obtained from organizations who were not selected to administer the cases. Competition will provide the Standing Committee and the arbitration organization selected with new and innovative ways to administer the arbitrations. Everyone will benefit from this education.

7. Comply with current ADR policies. The most recent pronouncement by the Minnesota Supreme Court regarding ADR services is Rule 114 of the General Rules of Practice. This Rule recognizes that judges and parties may select an ADR organization or neutral from among the panel of neutrals approved by the Supreme Court. Rule 114 does not create a monopoly for any one organization or arbitrator. Similarly, the No-fault Rules should be changed to reflect the policies underlying Rule 114.

8. Recognize no-fault administration as a private business. Arbitration service is a private business. The administrative services currently provided are a private, not a governmental business. Because arbitration is required by the law, the Standing Committee should not unilaterally select one organization, without providing an opportunity for other organizations to compete for the services. The arbitration administrator is not performing the work of a Referee or a Special Master of the court, but is simply administering the services of the Court's arbitrators.

9. Recognize no-fault administration involves substantial amounts of money, paid by Minnesota litigants. No-fault arbitration and no-fault administration are substantial businesses. In 1996, Minnesotans paid $879,120 in filing fees for the 3,663 cases filed. If Minnesota No-fault administrative costs were reduced to average administrative costs, Minnesotans would save hundreds of thousands of dollars. This substantial amount of money justifies and requires competitive proposals so that litigants get the most for their money.

10. Standardize the arbitration process. No-fault arbitration is subject to a standard administrative process. The administration of arbitrations is not unique, requiring the knowledge or skills available to only one arbitration organization. There exist other experienced and expert arbitration organizations who can and who do provide similar and identical arbitration administration. The National Arbitration Forum has administered thousands of arbitrations involving tens of thousands of parties, since 1986. We administer arbitrations under several codes that are similar to and some rules which are identical to the rules of procedure for no-fault arbitration.

11. Provide a choice. Users should be provided with a choice. The present rule provides users of no-fault arbitration services with no administrative choice. The amended rule, which allows for competitive proposals, provides users with some choice. It is very difficult in a monopolistic system for users to voice concerns or complaints about the monopolistic administration for fear, whether justified or not, that they may be dealt with unfairly. A competitive system promotes the free and unfettered expression of experiences and does not have the potential stifling effect of dissent inherent in a monopolistic system.

12. Recognize the panel of no-fault arbitrators is a Panel of the Supreme Court. The actual decision-making in no-fault arbitration cases is performed by Minnesota arbitrators, approved by the Minnesota Supreme Court through the Standing Committee. This panel is not the property of the administrator. Another arbitration organization can appoint arbitrators from this list.

13. Recognize the No-Fault Rules of Procedure are the Rules of the Supreme Court. The rules which govern no-fault arbitrations are rules adopted and approved by the Supreme Court through the Standing Committee. The rules are not rules of the incumbent. Another arbitration organization can administer these rules.

14. Recognize the statues of the no-fault system. Minnesota no-fault administration is a mature system. The American Arbitration Association has long since recouped the costs incurred in developing the no-fault administration system. Time and dollars expended in developing this system have been repaid many times over in subsequent years, by administrative fees paid by the parties.

15. Focus on Minnesota issues by Minnesota professionals. In all public contracting and employment, there is renewed interest in the local nature of the provider. Not only does the use of local organizations return substantial funds to the community, but it also assures that the provider is focused on issues which concern Minnesota litigants. This proposal allows Minnesota organizations to compete for the opportunity to provide administrative services in Minnesota.

16. Establish approval standards. The amendment would require the Standing Committee to adopt standards to seek competitive proposals and select an arbitration organization. These standards would be the basis for the proposals. Standards need to be appropriately selected to make sure that high quality administrative services are made available. Standards which could be adopted to ensure economical, efficient, and effective arbitration administration are:

A. The existence of experienced arbitration administrators;
B. Significant experience with administering arbitration codes of procedure;
C. Experienced directors operating the organization;
D. Significant experience in providing various types of ADR services;
E. Available mediation services if parties in an arbitration request a mediator;
F. Location of an administrative office in the Twin Cities;
G. Non-profit status of the arbitration organization.

17. Conclusion. The reasons to support the rule change are numerous, and far outweigh any reason to support the current rule. A competitive proposal, approval system is much superior to a monopolistic system. The public and parties involved in no-fault arbitration will all be better served.

We appreciate the time and effort the Standing Committee will devote to reviewing this proposal. We are available to provide additional information to support the proposal and a list of names of persons who support this proposal.

National Arbitration Forum

By: _____
Roger S. Haydock, Esq.

Edward C. Anderson, Esq.

SUMMARY OF PROPOSED AMENDMENTS TO RULES OF PROCEDURE FOR NO-FAULT ARBITRATIONS

The primary rule change is to Rule 1, changing AAA to "an arbitration organization approval by the standing committee. . "

All the other changes replace AAA with "arbitration organization."