THE ACTUARY AS ARBITRATOR

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Shortly after the completion of my term as President of the Society of Actuaries in the mid-sixties, I was asked to be the sole arbitrator in a dispute between two major oil companies. The contract between the parties had an arbitration clause requiring that the arbitrator be a past president of the Society of Actuaries. After it was apparent to all parties that I had no conflict of interest, I accepted this opportunity to extend and enlarge my professional experience. The only conditions I imposed upon the parties were that I could retain counsel at the expense of the parties and that the hearings would be in Atlanta. Since the dispute involved was in excess of $1 million and since my decision was to be final and binding on the parties, I felt more comfortable with counsel at my side. Since both counsel and I were in Atlanta, Atlanta was for us, at least, a convenient site for the arbitration hearings.

Even though during the years prior to this arbitration experience I had been an expert witness in many cases involving life insurance company taxes, valuations and related matters, I had never been exposed to the arbitration process. This was my first experience as an arbitrator, an experience carrying a heavy burden since I was the sole arbitrator, i.e., a panel of one.

Thereupon, I

1. Retained legal counsel,
2. Reviewed the contacts between the parties, documents, briefs, evidentiary data, applicable legislation and regulations,
3. Held court for two days in Atlanta -- with a court reporter,
4. Served as judge and jury, and

5. Made a decision, rendered an award, all of which were documented in a lengthy report of findings by the arbitrator.

Since that time I have continued to provide expert testimony in cases being "tried" before either a single judge or a panel of judges or before an arbitrator or an arbitration panel. I have served as a sole arbitrator or as one of a panel of three arbitrators. Even though a dispute leading to arbitration may involve only insurance issues, a panel of arbitrators may have a lawyer, a CPA, other experienced insurance executives and sometimes an actuary.

Recently I have served on a panel of three appraisers (not arbitrators) in a dispute about the value of the stock of a life insurance company. Two of the appraisers were actuaries; the third was an economist, a retired professor of economics and finance at the business school of a prestigious university.

The panel of appraisers was, for all practical purposes, a panel of arbitrators without the legal procedural requirements of an arbitration, i.e., no hearings, no sworn witnesses and no counsel representing parties to the dispute. Such an appraisal responded to the specific provisions of statute. The statutory process for appraisal protects the third party. The arbitration process provides a means of resolving disputes generally between two parties in accordance with the terms of a contractual relationship between these parties.

During my experience as an expert witness either before a judicial body or before a panel of arbitrators I have observed that in disputes involving employee benefits or life and health insurance, frequently neither the judicial body nor the panel of arbitrators has sufficient exposure to or understanding of the business practices under dispute to make a decision which would survive critical analysis of the experienced actuary. Of course, there are exceptions to this. Nonetheless, it has occurred to me that actuaries should recognize that there exists a need for the

profession to make significant contribution to the arbitration process, a system of justice. The actuary, as an actuary, cannot sit on the judicial bench or practice law and plead a case before the bench, but he is permitted to serve as an arbitrator, mediator, appraiser, or expert witness.

One of the purposes of this brief presentation on arbitration is to expose actuaries to Dispute Resolution Alternatives, referred to either as DRA's or ADR's. There are three alternatives:

(1) mediation (2) arbitration (3) litigation.

General

Disputes come in various sizes and forms, and there are various methods of resolving disputes. Usually one thinks that the most logical and easiest way to resolve a dispute is to resort to litigation, a torturous process -- involving lawyers, judges, juries, etc. "We'll sue the rascals." Exhibit D reveals the attention the media is giving to arbitration.

There are several ways of resolving disputes, i.e., there are the three DRA's. Familiarity with the various ways of resolving disputes should lead to a choice of a way best suited for the particular circumstances.

Each of these DRA's employs different techniques. Since an actuary, unless he is also a lawyer, could not be a central player in litigation (except as an expert witness), this presentation devotes its attention to mediation and arbitration, with particular emphasis upon arbitration. The actuary, I believe, may more likely be asked to serve as an arbitrator than a mediator. Even though an actuary may be only an expert witness (not an arbitrator) in a hearing before a panel of arbitrators, it is helpful to be familiar with the arbitration process.

But, first, a brief comment about mediation.

Mediation

Mediation is a voluntary process. An impartial third party encourages and assists the disputing parties to reach a compromise or an agreement which is acceptable to each party. The mediator uses his persuasive powers to encourage the disputing parties to articulate their grievances, to identify their points of disagreement, to present their cases and identify their interests. During the mediation process, the mediator suggests possible solutions, encourages compromise, provides an opportunity for each party to vent his spleen, to blow off steam. Mediation focuses on the basic underlying issues. The mediator has no coercive power. He may not render a decision, make an award or dictate terms of an agreement. The dispute is resolved by the parties reaching an agreement. Their agreement may or may not be legally binding. The mediation alternative probably is most effective in those situations where the parties really do wish to continue their business or professional relationship.

Mediation is less formal than arbitration. After the opening statements of the parties, the mediator discusses the issues with the parties to be sure that the mediator and the parties have a clear understanding of the issues. The mediator may meet with the parties separately in caucus. In caucus, a party may share confidential information (not revealed to the other side) that can be helpful to the mediator in assisting the parties to reach an agreement. (There can be no such sharing of confidential information during an arbitration.) The mediator will work with the parties toward establishing realistic acceptable claims and offers. When the parties reach agreement, they should reduce the terms to writing and exchange releases. The agreement may be put in the form of a consent award.

If there are any issues not resolved in mediation, the parties, of course, may submit them to arbitration for a final, binding determination.

And, now, a look at arbitration.

Arbitration

Stated simply, arbitration consists of the submission of a dispute to a third party who renders a decision after hearing arguments and reviewing evidence. It represents a compromise between the formal procedure of litigation and the consensus obtained through mediation. Dependent upon the agreement between the parties, the decision of the arbitrator may be binding or nonbinding.

In the United States the arbitration process is initiated by the disputing parties in accordance with the contractual agreements between the parties or, in the absence of any previously signed contractual agreement, in accordance with an agreement to arbitrate reached at the time of dispute. An agreement to arbitrate may require the parties to submit their dispute to the American Arbitration Association (AAA) for resolution or the parties may have agreed to resolve their dispute without submitting it to the AAA. The resolution of the dispute, unless otherwise required to be obtained through AAA procedures, may be solely in accordance with procedures set forth in their agreement without submitting to the AAA.

What is the AAA?

American Arbitration Association

The American Arbitration Association (AAA) is a public service, not for profit organization offering a broad range of dispute resolution services to business executives, attorneys, insurers, individuals, trade associations, unions, managements, consumers, families, communities, and all levels of government. Services are available through headquarters in New York City and through major offices located in about 20 major cities throughout the United States. Hearings may be held at locations convenient for the parties and are not limited to cities with AAA offices. In addition the AAA serves as a center for education and

training, issues specialized publications and conducts all forms of out-of-court dispute settlements.

The AAA maintains a large Panel of Arbitrators who are individuals covering a wide range of expertise and professional and business experience. A person's name will be submitted only on cases calling for arbitrators with the person's expertise or background. The person is not called unless the parties both agree on his hearing the case, each being satisfied that person is not perceived to have a conflict of interest. Usually several names are submitted for review by parties.

The AAA is not involved at all unless the contract between the parties specifically directs the involvement of AAA or the parties -- extra contract -- agree to have the AAA involved in the arbitration process. Usually, the contract between the parties either involves the AAA or it outlines the procedures to be followed in arbitration.

Even though the disputing parties, in the absence of a contractual requirement for arbitration, may agree to submit their dispute to arbitration (or mediation), generally in insurance related matters the contract between the parties provides for submission of a dispute to arbitration. An example of such contractual language is given in Exhibit A. An arbitration provision appearing in a 1990 "surplus relief" agreement is provided in Exhibit B. A quote from the Tiller-Fagerberg text pertaining to aribitration in reinsurance agreements is given in Exhibit C.

It became customary years ago for parties to write reinsurance treaties to include an arbitration provision stating that, in the event the parties were unable to agree on a third arbitrator, the President of the American Council of Life Insurance (ACLI) would be asked to appoint a neutral third arbitrator. As the number of disputes going to arbitration increased, the ACLI found the process of qualifying and appointing arbitrators burdensome and, more importantly, potentially injurious to good relations with member companies involved in arbitration. There upon the

ACLI issued a Bulletin asking member companies to discontinue use of appointment clauses naming the ACLI or its President. This bulletin contained the following statement:

> "In all contracts entered or amended after December 31, 1989, we ask that life insurance companies cease naming the ACLI or its President as the source for appointment of arbitrators. ACLI staff will no longer appoint an arbitrator in any dispute over a reinsurance or other contract signed after December 31, 1989. The ACLI is not party to these contracts and has previously performed this service only as an accommodation to its members. We hope member companies will understand why we must, in the future, decline to assist in these appointments.
>
> For contracts existing on or before December 31, 1989, with such appointment language in the arbitration clauses, the ACLI will do its best to continue to provide assistance to member companies involved in arbitrations. If such contracts are renegotiated for any other purpose, the ACLi would deeply appreciate member companies who are a party to such contracts considering a revision to the appoint clause."

The AAA has established arbitration rules which are deemed to have been made a part of the arbitration agreement between the parties whenever the parties have provided for arbitration by the AAA or under its rules. Even though an agreement provides that the arbitration shall be conducted in accordance with the arbitration rules of the AAA, the arbitration process need not be conducted by the AAA, unless the arbitration agreement between the parties requires that the AAA conduct the arbitration.

The Commercial Arbitration Rules as amended and in effect January 1, 1991, published by the AAA has 17 pages of rules and procedures covering, among

others, many of the items shown on the "Check List" (see below) which I have prepared for my use in planning for arbitration.

Code of Ethics

The use of arbitration to resolve disputes has grown extensively and forms a significant part of the system of justice which our society relies upon for a fair determination of legal rights. The person who acts as an arbitrator, therefore, undertakes serious responsibilities to the parties and to the public. These responsibilities include important ethical obligations.

The professional actuary is subject to the rules and guides to professional conduct promulgated by the various actuarial bodies. He carefully observes the demands and requirements of the code of ethics applicable to his actions and conduct as an actuary. His responsibility includes important ethical obligations.

The American Bar Association and the American Arbitration Association have set forth generally accepted standards of ethical conduct for the guidance of arbitrators and parties in dispute. This code of ethics is intended to apply to all "proceedings in which disputes or claims are submitted for decision to one or more arbitrators appointed in a manner provided by an agreement of the parties, by applicable arbitration rules or by law."

Although the code is sponsored by the American Bar Association and the American Arbitration Association, it is presented as a public service to provide guidance in all types of arbitration.

The Code of Ethics has seven Canons. The actuary will observe that several of them are related to the Guides to Professional Conduct observed by the actuary in his professional activities as an actuary. The seven canons are listed below

without the lengthy text which explains and interprets each Canon (if an actuary is interested, a copy of the Code in its entirety will be provided upon request):

I. An arbitrator should uphold the integrity and fairness of the arbitration process.

II. An arbitrator should disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality or bias.

III. An arbitrator in communicating with the parties should avoid impropriety or the appearance of impropriety.

IV. An arbitrator should conduct the proceedings fairly and diligently.

V. An arbitrator should make decisions in a just, independent, and deliberate manner.

VI. An arbitrator should be faithful to the relationship of trust and confidentiality inherent in that office.

VII. Ethical considerations relating to arbitrators appointed by one party.

Checklist

When a person has been selected and approved as an arbitrator, he or she will find it helpful to review the many areas which should be a part of his initial planning. The following checklist I have assembled has been quite helpful to me in assuring that all bases are covered. The AAA has published "Commercial Arbitration Rules" (as amended and in effect January 1, 1991) which has 17 pages of detail about the whole range of arbitration activity (a copy will be provided upon request).

- Identify claimant and respondent.
- Resumé of dispute -- presentation of evidence, contracts, exhibits, etc., distributed to all parties
- Issues to be decided.
- Areas of agreement.

- Points of disagreement as to facts.
- Remedy sought.
- Legal counsel representation.
- Locale of arbitration -- time, date, place.
- Witnesses -- list, divulged to each party; reason for each; relationship to the dispute.
- Time each party expects to use to present its case.
- Has good faith effort been made to reach agreement.
- Have parties considered mediation -- why rejected?
- All communications will flow between chairman of panel and designated person representing each party.
- Stipulations of facts.
- Each party to file a "brief" or presentation of its case with each filing a response to other party's brief.
- Court stenographer -- stenographic record; transcript -- whose expense?
- Each party designates person to present its case.
- Authority to subpoena witnesses for discovery. (Under Federal law and some state statutes, arbitrator may have no specific authority to grant discovery.)
- Fees to arbitrators.
- Allocation of expense of arbitration -- i.e., expenses and fees of arbitrators.
- Identify points each party is expected to make and relevant issues involved.
- How does applicable law affect proceedings -- Uniform Arbitration Act?
- Order of presentation: first - claimant, second - respondent.
- At the hearing, arbitrator may examine witnesses and others representing parties.
- Dates and location of hearing.
- Responsibility for producing witnesses
- Submission and signing of Dispute Resolution Form

- Submission of the facts and points of disagreement to reach consensus on issues involved.
- Parties want full and fair hearing -- to ventilate -- blow off steam -- such that parties may be more nearly satisfied with decision.
- Do not discuss rationale of decision -- do not discuss case.
- No character witnesses.
- Arbitrators opening statement should provide road map of case.
- Arbitrator may object to questions or answers -- need not wait for other party to do so.
- Do not permit abusiveness.
- Recess hearing if there is need for additional evidence or clarification.
- No finding of facts -- no conclusion as to law -- just establish award.
- Chairman of panel.
- What if vacancy on panel?
- Absence at hearing of one of parties.
- Order of presentation.
- Award: time, form, scope, delivery.
- Closing hearing.

EXHIBIT A

An arbitration provision appearing in an assumption reinsurance transaction in 1991 is as follows:

ARTICLE XXIII

Any dispute, controversy or claim between the parties hereto arising out of or relating to this Agreement (or the subject matter hereof) or an alleged breach hereof which the parties are unable to settle amicably shall be submitted to and settled by arbitration as hereinafter set forth.

(a) Either party to a dispute, controversy or claim hereunder may institute arbitration by giving written notice to the other party of intention to arbitrate, which notice shall contain a conspicuous notation of the subject matter of such notice on the face thereof or on the transmitting envelope, where applicable, and shall contain the name of the arbitrator selected by said initiating party, the nature of the controversy, the amount involved, if any, the remedies sought, and other pertinent matter and indicating the location of the proceeding as discussed in Article XXIII(b) hereof. Within thirty (30) days after receipt of such notice, the other party shall submit to the initiating party the name of an arbitrator whom it has appointed and may submit an answering statement. Within fifteen (15) days thereof the two arbitrators so appointed shall select a third arbitrator; and the three arbitrators selected shall resolve the controversy. Should the two arbitrators not be able to agree on a third arbitrator, then the appointment thereof shall be left to the chief executive officer of the American Arbitration Association (or any successor thereto). In the event the other party shall refuse or neglect to appoint an arbitrator within the requisite thirty (30) day period,

the arbitrator appointed by the initiating party shall be empowered to proceed to arbitrate and determine the fact or matter in controversy as the sole arbitrator, and his decision or award shall be final, conclusive and binding on the parties. If there are three arbitrators selected as above provided, and decision or award in writing signed by any two (2) of them shall be final, conclusive and binding on the parties hereto.

(b) The arbitration shall be held in Chicago or Atlanta, such location to be selected by the initiating party and specified in the notice of intention to arbitrate described in Article XXII(a).

(c) It is the general intention of the parties that they shall share the fees and expenses of the arbitrators and the other costs of arbitration equally; however, the arbitrators shall be entitled to allocate such expenses differently if, in their opinion, the circumstances so dictate. The arbitrators shall be impartial and neutral officers or retired officers of life companies, unrelated to the parties to this Agreement and without interests in either of the parties or their affiliates or their respective businesses through contract or otherwise, unless full disclosure of any financial or personal interest or any relationship with a party to this Agreement is made and both parties consent in writing to the service of such arbitrator.

(d) Absent agreement between the Reinsurer and the Ceding Company to the contrary (with respect to which both parties shall act reasonably, unless the time is extended by a majority of the arbitrators (which extension shall not exceed sixty (60) days and shall be made only for good cause, taking into account the nature of the issue in dispute, the terms of the Agreement and the interests of each of the parties in ensuring that the obligations of the other are properly performed), the arbitrators shall submit their decision or award in writing within forty-five (45) days after the third arbitrator is

selected, or if only one arbitrator is acting, within ninety (90) days after his appointment. Except as specifically provided herein or otherwise agreed by the parties, the arbitration shall be conducted in all respects in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The strict rules of law or evidence or civil procedure shall not apply; however, the arbitrators shall make their decision or award according to the terms and provisions of this Agreement and the applicable law. Said decision or award shall set forth findings of fact and conclusions of law of the arbitrators upon which the decision or award is based.

(e) Any decision or award made pursuant to the arbitration may be entered as a judgment by any court of competent jurisdiction on the application of any party to said arbitration. The decision or award of the arbitrators shall be final, conclusive, binding and nonappealable.

EXHIBIT B

An arbitration provision appearing in a "surplus relief" reinsurance agreement in 1990 is as follows:

Arbitration

It is the intention of the REINSURED and the REINSURER that the customs and practices of the insurance and reinsurance industry shall be given full effect in the operation and interpretation of this Agreement. The parties agree to act in all things with the highest good faith. If the REINSURED and the REINSURER cannot mutually resolve a dispute which arises out of or relates to this Agreement, however, the dispute shall be decided through arbitration as set forth in Schedule VIII, the Arbitration Schedule (copy attached). The arbitrators shall base their decision on the terms and conditions of this Agreement, and in particular, their decision shall take into account the right to offset mutual debts and credits as permitted in this Agreement. In the event that an interpretation of the terms and conditions of this Agreement does not explicitly dispose of an issue in dispute between the parties, then the arbitrators may base their decision on the customs and practices of the insurance and reinsurance industry rather than solely on a strict interpretation of the applicable law. There shall be no appeal from the arbitrator's decision, except that either party may apply to a court of competent jurisdiction for a de novo trial on the factual and legal basis of the arbitrator's decision regarding the parties' right of offset. Additionally, any court having jurisdiction of the subject matter and the parties may reduce the arbitrator's decision to judgment.

SCHEDULE VIII -- Arbitration Schedule

To initiate arbitration, either the REINSURED or the REINSURER shall notify the other party in writing of its desire to arbitrate, stating the nature of its dispute and the remedy sought. The party to which the notice is sent shall respond to the notification in writing within ten (10) days of its receipt.

The arbitration hearing shall be before a panel of three arbitrators, each of whom must be a present or former officer of a life insurance company. An arbitrator may not be a present or former officer, attorney, or consultant of the REINSURED or the REINSURER or either's affiliates.

The REINSURED and the REINSURER shall each name five (5) candidates to serve as an arbitrator. The REINSURED and the REINSURER shall each choose one candidate from the other party's list, and these two candidates shall serve as the first two arbitrators. If one or more candidates so chosen shall decline to serve as an arbitrator, the party which named such candidate shall add an additional candidate to its list, and the other party shall again choose one candidate from the list. This process shall continue until two arbitrators have been chosen and have accepted. The REINSURED and the REINSURER shall each present their initial lists of five (5) candidates by written notification to the other party within twenty-five (25) days of the date of the mailing of the notification initiating the arbitration. Any subsequent additions to the list which are required shall be presented within ten (10) days of the date the naming party receives notice that a candidate that has been chosen declines to serve.

The Two arbitrators shall then select the third arbitrator from the eight (8) candidates remaining on the lists of the REINSURED and the REINSURER within fourteen (14) days of the acceptance of their positions as arbitrators. If the two arbitrators cannot agree on the choice of a third then this choice shall be referred back to the REINSURED and the REINSURER. The REINSURED and the

REINSURER shall take turns striking the name of one of the remaining candidates from the initial eight (8) candidates until only one candidate remains. If the candidate so chosen shall decline to serve as the third arbitrator, the candidate whose name was stricken last shall be nominated as the third arbitrator. This process shall continue until a candidate has been chosen and has accepted. This candidate shall serve as the third arbitrator. The first turn at striking the name of a candidate shall belong to the party this is responding to the other party's initiation of the arbitration. Once chosen, the arbitrators are empowered to decide all substantive and procedural issues by a majority of votes.

It is agreed that each of the three arbitrators should be impartial regarding the dispute and should resolve the dispute on the basis described in the ARBITRATION section of the Agreement. Therefore, at no time will either the REINSURED or the REINSURER contact or otherwise communicate with any person who is to be or has been designated as a candidate to serve as an arbitrator concerning the dispute, except upon the basis of jointly drafted communications provided by the REINSURED and the REINSURER to inform those candidates actually chosen as arbitrators of the nature and facts of the dispute. Likewise, any written or oral arguments provided to the arbitrators concerning the dispute shall be coordinated with the other party and shall be provided simultaneously to the other party or shall take place in the presence of the other party. Further, at no time shall any arbitrator be informed that the arbitrator has been named or chosen by one party or the other.

The arbitration hearing shall be held on the date fixed by the arbitrators. In no event shall this date be later than six (6) months after the appointment of the third arbitrator. As soon as possible, the arbitrators shall establish prearbitration procedures as warranted by the facts and issues of the particular case. At least ten (10) days prior to the arbitration hearing, each party shall provide the other party and the arbitrators with a detailed statement of the facts and arguments it will present at the arbitration hearing. The arbitrators may consider any relevant

evidence; they shall give the evidence such weight as they deem it entitled to after consideration of any objectives raised concerning it. The party initiating the arbitration shall have the burden of proving its case by a preponderance of the evidence. Each party may examine any witnesses who testify at the arbitration hearing. Within twenty (20) days after the end of the arbitration hearing, the arbitrators shall issue a written decision which shall set forth their decision and the factual basis therefore, including explicit findings regarding the parties' right to offset mutual debts and credits. In no event, however, may the arbitrators award punitive or exemplary damages. In their decision, the arbitrators shall also apportion the costs of arbitration, which shall include, but not be limited to, their own fees and expenses.

EXHIBIT C

In the U.S., practically all reinsurance agreements have an arbitration provision. John Tiller, FSA, and Denise Fagerberg, FSA, in their text entitled "Life, Health and Annuity Reinsurance", published in 1990, have the following paragraphs on page 173-174 of their book:

> **"Arbitration**
>
> "The arbitration clause exemplifies the gentlemen's agreement concept. In the event that any disagreement or claim arises out of the contract, both parties to the contract agree that such disagreement is to be settled amicably and with good faith. If the parties cannot agree among themselves, these disputes are settled through arbitration rather than litigation in the courts.
>
> "The clause generally explains the arbitration procedures. Typically, the treaty will specify many details of the arbitration procedure. Alternatively, some treaties may specify that arbitration will be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association which are in effect at the date of the disagreement.
>
> "The typical clause calls for three arbitrators who are current or past officers of life insurance companies other than the two parties to the contract. Each party to the contract appoints one arbitrator and the two arbitrators select a third. If one company fails to appoint an

arbitrator or if the two arbitrators are unable to agree to a third arbitrator, the treaty will specify a method for selecting the third arbitrator. The arbitrators determines how the expenses are apportioned.

"The terms of arbitration clauses vary relative to the guidelines provided for the arbitrators in considering the dispute. Treaties frequently require that the intent of the parties, equity, and normal business practices be considered rather than a strict application of the law. Newer treaties direct that the arbitrators first look to the terms of the treaty and, only if they are unclear, should equity be considered.

"The decision of the arbitrators is final and may not be appealed. The appropriate court may be approached to enforce a decision."

EXHIBIT D

This exhibit includes excerpts from three press stories:

1. "Question: To Arbitrate or Not to Arbitrate?"
   Atlanta Business Chronicle, October 7, 1991

   "For years, the securities, insurance and construction industries have solved disputes using compulsory arbitration, but elsewhere the process has caught on piecemeal. Northrop Corp. has had binding arbitration for decades. Chrysler Corp. since 1989 has experimented with arbitration covering salaried workers at five plants.

   "Fueled by rebellion against vast numbers of wrongful discharge suits in states such as California, the American Arbitration Association's case load grew from 38,600 in 1981 to 60,808 last year."

   "Because private arbitration usually takes less time and costs less than lawsuits, the American Bar Association has officially supported the idea of private arbitration -- but somewhat reluctantly. Any major flow of wrongful-discharge complaints into the arbitration arena won't be accepted meekly by litigators, Clark predicts."

2. "Law Firms Promise to Encourage Litigation Alternatives for Clients"
   The Wall Street Journal, October 21, 1991

"In an effort to promote alternatives to litigation, more than 150 major law firms across the nation signed a statement promising to encourage the use of so-called alternative dispute resolution by clients."

"Litigation alternatives have existed for years. But arbitration, mediation and other private dispute resolution techniques have only recently received widespread attention as courts have become clogged and as litigation costs have jumped."

"Lawyers are in the business of making the justice system work and it's not working that well now and an effective system will drive up the demand for dispute resolution."

3. "White House Encourages Use of ADR"
Arbitration Times, Fall 1991

"Expressing concern about the legal system's impact on the American economy and the U.S.'s ability to compete in the global marketplace, Quayle said, 'we should look at litigation in American today. Our system of civil justice is, at times, a self-inflicted competitive disadvantage.' He cited $80 billion in direct litigation costs and higher insurance premiums as well as indirect costs likely to bring the total to $300 billion. In addition to costs, he noted the excessive delays faced by many litigants. Quayle asked the 600 bar leaders in attendance, 'Does American really need 70% of the world's lawyers? is it healthy for our economy to have

18 million new lawsuits coursing through the system annually? Is it right that people with disputes come up against staggering expenses and delay?'"

"Quayle stressed that, in addition to empowering parties in dispute and helping unclog the courts, use of ADR will also help preserve relationships that might be destroyed by the stresses of a courtroom fight. Many Americans, Quayle continued, find litigation 'bewildering, a little intimidating, and frightfully expensive.' The ADR alternatives are seen by the President's Council as serving people's needs. 'After all,' Quayle observed, 'the system belongs to them, and it ought to respond to their needs.'"