Journal of International Arbitration

Vol. 12 No. 1 March 1995

Journal of INTERNATIONAL ARBITRATION

Volume 12 March 1995 Number 1

The Revised Arbitration Rules of the Society of Maritime Arbitrators

Lucienne Carasso BULOW*

I. INTRODUCTION

The Society of Maritime Arbitrators (SMA) of New York has revised its Rules for standard arbitration, effective as from 10 May 1994. These revisions were made after extensive consultations among the various users of the system of arbitration. Questionnaires were circulated to elicit comments from both practitioners in the field of maritime arbitration and their clients. Taking their responses into consideration, the By-Laws and Rules Committee of the SMA promulgated changes to the SMA Rules which were approved by the Board of Governors of the SMA. Many of the changes were made in collaboration with the Arbitration Committee of the Maritime Law Association of the United States (MLA), which is composed of lawyers whose practice is largely focused on maritime arbitration.

One objective of the SMA Rules has always been to give users an efficient system which can lead to quick, cheap and fair resolution of their disputes. The Rules, which have been revised in simple language, provide procedural guidelines designed to assist both inexperienced disputants and experienced lawyers, as well as the arbitrators, in the presentation and adjudication of disputes. The Rules stress the fact that parties to an arbitration can always agree to alter or modify them at any time. The SMA believes that some of the changes made will render the arbitral process in New York even more efficient and accessible to disputants than before.

II. CHANGES TO THE RULES

A. *Section 2: Consolidation*

The new SMA Rules of Arbitration provide for consolidation of disputes arising from common questions of fact or law. If the parties agree, in their contracts, that the arbitration must be conducted under the Rules of the SMA, they will be deemed to have agreed to consolidate the disputes which they have in common, into one arbitration proceeding. Ever since the 1975 decision in *Compañía Española de Petróleos,*

* Ph.D., Yale University, Assistant Vice President of Continental Grain Company. A commercial and maritime arbitrator in New York, Dr Bulow has been a Board Member of the SMA for several years and serves as its present Corporate Secretary, as well as being Chairman of the SMA By-Laws and Rules Committee from 1992 to 1994.

This article was presented to the Eleventh International Congress of Maritime Arbitrators which was held in May 1994 in Hong Kong.

S. A. v. Nereus Shipping S.A.,[1] the U.S. District Court for the Southern District Court of New York, following its Appellate Court, the Court of Appeals for the Second Circuit, would routinely order the consolidation of disputes involving similar legal or factual issues arising under separate but related contracts. In a recent decision rendered on 29 June 1993, *The Government of the United Kingdom of Great Britain and Northern Ireland v. The Boeing Company and Textron, Inc.*,[2] the Court of Appeals for the Second Circuit has reversed itself on this issue. It has held that the District Court may not order consolidation of arbitration proceedings arising from separate agreements to arbitrate, absent prior agreement by all of the parties involved to allow such consolidation. The Appeals Court found that *Nereus* was distinguishable from the case before it, because in *Nereus*, all three parties had signed the addendum which incorporated the charter-party provisions. In the *Boeing* case, Boeing and Textron were in arbitration with the United Kingdom pursuant to two distinct agreements, neither of which contained a provision to consolidate. The Court of Appeals refused to force the consolidation of disputes without the consent of all the contractually involved parties. This decision should definitely cause the Southern District to change course and not to automatically order consolidation as it used to do.

This decision threw into doubt the question of how to continue to consolidate such proceedings. In response to a questionnaire distributed to users of New York arbitration under SMA Rules, as well as to legal practitioners in the field of maritime arbitration, both sectors overwhelmingly felt that consolidation was a very positive feature of New York arbitration and should be retained as much as possible. As the vast majority felt that consolidation would abet the efficient and fair disposition of a dispute, particularly where a chain of charterers and subcharterers exists, the SMA has decided to offer a solution which preserves the benefits of consolidated arbitration in New York maritime arbitration. Section 2 has been added to the Rules, and this stipulates that the parties agree to consolidate proceedings involving related contract disputes with others arising from common questions of fact or law. This should satisfy the Court's requirement that the parties agree, by contract, to consolidate.

This new rule allows parties who consistently include the Rules in their charter-parties and contracts to continue to gain the benefits of consolidated arbitration. Each middle party must incorporate the SMA Rules into the two contracts in which they are involved, in order to benefit from this consolidation feature. If each party does not do so, the desired result could be vitiated, as one of their contractual partners may not agree to consolidation.

Under Section 2, the number of arbitrators in consolidated disputes will be limited to three, unless the parties agree to a sole arbitrator. In the past, consolidated arbitrations have been heard by panels of as many as five, or even seven arbitrators, which renders the process rather unwieldy. The limitation to three sitting arbitrators should streamline the proceedings and reduce costs.

[1] 527 F.2d 966 (2d Cir. 1975), cert. denied, 426 U.S. 936 (1976).
[2] 1993 U.S. App. Lexis 15955 (1993 AMC 2906).

Because of the diversity of situations under which parties might wish to consolidate disputes, the SMA Rules do not specify how the arbitrators are to be chosen. The parties must agree on how to constitute a Panel. In most situations where three parties are involved, the party in the middle of a dispute will most probably pass the nomination of the arbitrator who has been appointed to it by one contractual partner on to its other contractual partner. The two arbitrators will then appoint the third. Alternatively, each of the three parties may appoint one arbitrator. If there are more than three parties and they cannot come to an agreement on how to choose the three arbitrators, the Rules provide that they refer the matter to the court who will decide how to constitute the Panel. Such extreme situations are expected to be rare. In most cases, the parties will define and agree to the particulars among themselves. Whenever the situation requires resort to the courts, it is expected that, by narrowing the scope and nature of the question to be adjudicated, such procedure will not be too time-consuming or expensive.

The provision for consolidation of disputes in the Rules should provide a system of arbitration which is both cost-effective and consistent. Disputes arising under a chain of charter-parties for the same vessel, such as those involving claims regarding speed and consumption; deficiency of winches and cranes; unsafe berths; dangerous cargoes; cargo damage, etc., are ideal subjects for consolidation. With consolidation, factual evidence can be presented to one Panel once, which will allow that same Panel to make decisions which are both consistent and binding on all parties. Without consolidation, the same facts may have to be presented before several differently constituted Panels who might render inconsistent awards. Of course, if the terms of the various charter-parties are different from each other, the same Panel can still examine the facts and evaluate the liability of the various parties, depending on the terms of each contract.

The new Model SMA Arbitration Clause specifies that the provision for consolidation is included in the new Rules so that all parties are equally apprised of this change. Parties who do not wish to consolidate their disputes may easily exclude Section 2.

B. *Section 10: Appointment of Respondents' Arbitrator*

Under the U.S. Arbitration Act (also known as the Federal Arbitration Act), when a respondent refuses to appoint an arbitrator, the claimant must petition the U.S. District Court to compel arbitration and appoint an arbitrator on behalf of the defaulter. This process is both time-consuming and expensive. Under the new Rules, a claimant will no longer have to resort to the courts. Instead, a new Rule, similar to the arbitration clauses of some tanker charter-parties, allows the claimant to demand that the respondent appoint an arbitrator within twenty days, failing which the claimant may do so on behalf of the respondent. The Panel can then be completed without further delay. This new feature in the Rules was overwhelmingly favoured by users of New York arbitration. Under the Rules, should the claimant wish to

compel arbitration sooner than within twenty days, resort can still be made to the courts.

C. *Section 13: Vacancy*

The SMA Rules, in an effort to streamline the process and keep costs down, encourage the continuation of an arbitration in situations where an arbitrator has to be replaced. The District Court for the Southern District of New York has, on more than one occasion, ruled that, upon the demise of one arbitrator, a new Panel should be constituted and the dispute presented anew. In *Marine Products Export Corporation v. M.T. Globe Galaxy*, decided on 8 October 1992,[3] the U.S. Court of Appeals for the Second Circuit confirmed an order of the Southern District Court of New York, ordering that arbitration proceedings be started afresh following the death of one of the party-appointed arbitrators. The Court of Appeals recognized a general rule that "upon the death of a member of an arbitration panel, the arbitration should begin anew before a new panel", unless the arbitration agreement anticipates this circumstance. Under the SMA Rules, if there has been no hearing or submission of documents (if the arbitration is to be handled on documents), and a party-appointed arbitrator must be replaced, the party-appointed arbitrators may decide on a new third arbitrator. If a third arbitrator/Chairman of the Panel must be replaced, the two party-appointed arbitrators will, of course, appoint a new Chairman. With an eye to saving costs and maintaining continuity and efficiency, however, the SMA Rules provide that, if the arbitration has already started, it should continue on the existing record with the new arbitrator, unless the parties agree or the arbitrators believe that, for the sake of equity, it should be started anew.

D. *Section 21: Pre-Hearing Arguments and Final Oral Hearing*

In order to render the process of arbitration more meaningful and efficient, the Rules now provide for a pre-hearing statement submitted by the claimant one week prior to the first hearing, as well as final oral summations, rather than written briefs, to close the arbitration. By encouraging parties to have a clear picture of each other's claims and counterclaims, the process should become more efficient. In addition, copies of any documents, exhibits and accounts intended to be introduced at a particular hearing should be supplied to the other party or opposing counsel and to Panel members at least one week prior to the date of that hearing.

The Final Oral Hearing is an option which the parties have always had, but by including it in writing in the Rules, it is believed that parties may more frequently avail themselves of this procedure if they agree that it suits well their particular case.

E. *Section 28: Time*

The revised Rules impose the duty to issue timely awards on the whole Panel,

[3] (1993 AMC 190).

rather than simply on the Chairman. Thus, the SMA is encouraging all Panel members to take the lead so that decisions may be rendered within a maximum of one hundred and twenty days from final submissions. There will always be some delays in the issuance of fully reasoned awards, but the Rule should encourage quicker decisions.

F. *Section 30*

(i) *Attorneys' fees*

Almost all disputes which take place before arbitrators are presented by attorneys. Traditionally, in the United States, each party is responsible for his own legal costs—the "American Rule". The original aim of the American Rule was to ensure that a plaintiff would not be deterred from pursuing a claim for fear of having to pay the other party's legal expenses. In a departure from traditional adherence to the American Rule, the new SMA Rules state that the arbitrators are empowered to award attorneys' fees and expenses and provide for the awarding of attorneys' fees. Some charter-parties provide that attorneys' fees be awarded, but the most common New York arbitration clause, the New York Produce Exchange Arbitration Clause, does not mention attorneys' fees. Referring to the American Rule, under which the prevailing party in court is not awarded attorneys' fees, many New York arbitrators have refused to award attorneys' fees under such a clause. As a result, parties, attorneys and especially Protection and Indemnity (P&I) Clubs, have protested that, even if they win, they will still have to pay their own attorneys' fees, which sometimes can be substantial. This change in the SMA Rules is regarded by principals in the industry, as well as by the maritime bar, as a major step in changing the practice of New York maritime arbitrators in that respect.

(ii) *Retaining jurisdiction for clerical mistakes*

Panels have jurisdiction to correct obvious clerical or arithmetical mistakes. A recent decision, rendered on 20 April 1993 by the United States Court of Appeals for the Third Circuit, has confirmed this power in *Danella Construction Company v. MCI Telecommunications Corporation.*[4] In this case, the American Arbitration Association (AAA) arbitrators sent a telefax awarding damages to Danella. The AAA office, however, issued the award in favour of MCI. The Court of Appeals reversed the decision of the District Court for the Eastern District of Pennsylvania and ruled that the arbitrators had the power to correct inadvertent clerical errors in the Award even though the Panel was *functus officio*. In order to avoid any necessity of having to go to court, the SMA has added a provision to the Rules which would make such power unambiguous by stating that the Panel shall retain jurisdiction to modify the Award for the sole purpose of correcting obvious clerical and/or arithmetical errors.

[4] 993 F.2d 876 [3rd Cir. 1993].

G. *Sections 36 and 37: Expenses and Fees*

The SMA Rules also mention the power of arbitrators to request that sums be deposited in escrow into a segregated, interest-bearing account, administered by the SMA at its bank, or in any other escrow account or other manner, if agreed by the Panel. This is especially necessary when parties are abroad or are not represented by local counsel. If acceptable to the Panel, the law firms representing the parties may hold the escrowed amounts; or if they are within the jurisdiction, the parties may certify that they have made reserves in their books for the payment of arbitrators' fees and expenses in that particular arbitration.

III. Conclusion

The changes to the SMA Rules should have the intended effect of helping disputants find a satisfying, more effective, cheaper way of resolving their maritime disputes in standard arbitration. The Shortened Arbitration Procedure of the SMA, which requires that the appointment of the Panel be formed within fifteen days of a demand for arbitration, and that the Award be issued within thirty days from the closing of the proceedings, provides another alternative for smaller and simple disputes.

Annex

Maritime Arbitration Rules
Society of Maritime Arbitrators, Inc.

(Effective as of 10 May 1994)

Preamble

Interpretation and Application of Rules

The powers and duties of the Arbitrator(s) shall be interpreted and applied in accordance with these Rules and Title 9 of the U.S. Code. Whenever there is more than one Arbitrator, and a difference arises among them concerning the meaning or application of these Rules, the difference shall be resolved by majority vote or by an Umpire, where appropriate.

In all matters not expressly addressed in these Rules, the Arbitrator(s) shall act in the spirit of these Rules and make every effort to ensure that an award is legally enforceable.

All references to Arbitrator(s) in the singular shall apply to the plural if the Panel consists of more than one Arbitrator.

All references to the "Act" are to the U.S. Arbitration Act (Title 9 of the U.S. Code).

All references to a third Arbitrator or Panel Chairman shall also apply to an Umpire, where applicable.

All references to "SMA" are to the Society of Maritime Arbitrators, Inc.

I. Rules a Part of the Arbitration Agreement

Section 1: *Agreement of Parties*

Wherever parties have agreed to arbitration under the Rules of the Society of Maritime Arbitrators, Inc., these Rules, including any amendment(s) in force on the

date of the agreement to arbitrate shall be binding on the parties and constitute an integral part of that agreement.

Nevertheless, except for those Rules which empower the Arbitrators to administer the arbitration proceedings, the parties may mutually alter or modify these Rules.

Unless stipulated in advance to the contrary, the parties, by consenting to these Rules, agree that the Award issued may be published by the Society of Maritime Arbitrators, Inc. and/or its correspondents.

Section 2: *Consolidation*

The parties agree to consolidate proceedings involving related contract disputes with others arising from common questions of fact or law.

Unless all parties agree to a sole Arbitrator, consolidated disputes are to be heard by a maximum of three Arbitrators to be appointed as agreed by all parties or, failing such agreement, as ordered by the Court.

II. TRIBUNALS

Section 3: *Name of Tribunal*

The "Panel" is any Tribunal created under the parties' agreement, to resolve disputes by arbitration under these Rules.

Section 4: *Roster of Arbitrators*

The SMA shall establish and maintain a roster of persons with qualifications to act as Maritime Arbitrators from which Arbitrators may be chosen.

Section 5: *Office of Tribunal*

Office of the Panel—Depending upon the number of Arbitrators, the office of the Panel shall be as follows:

(a) *Sole Arbitrator*: The home address or place of business of the sole arbitrator.

(b) *Two Arbitrators*: The home or business address of either of the Arbitrators, as decided by them.

(c) *Three Arbitrators*: The home or business address of the Arbitrator chosen by the other Panel members to act as Chairman of the Panel.

III. INITIATION OF THE ARBITRATION

Section 6: *Initiation under an Arbitration Agreement*

Any party to an agreement for arbitration under the SMA Rules may initiate an arbitration by giving a written notice to the other party demanding arbitration.

In its demand for arbitration, the party initiating the process shall set forth the nature of the dispute, the amount of damages involved, if any, and the remedy sought.

The parties shall be free to amend or add to their claims until the proceedings are closed pursuant to Section 25.

Section 7: *Fixing of Locality*

The arbitration is to be held in the City of New York at a location chosen by the Panel, unless otherwise agreed by the parties.

The parties shall be given sufficient notice to enable them to appear or be represented at the proceedings.

IV. APPOINTMENT OF ARBITRATORS

Section 8: *Disqualification*

No person shall serve as an Arbitrator who has or who has had a financial or personal interest in the outcome of the arbitration or who has acquired from an interested source detailed prior knowledge of the matter in dispute.

Section 9: *Disclosure by Arbitrators of Disqualifying Circumstances*

Prior to the first hearing or initial submissions, all Arbitrators are required to disclose any circumstance which could impair their ability to render an unbiased award based solely upon an objective and impartial consideration of the evidence presented to the Panel.

Such disclosure shall include close personal ties and business relations with any one of:

(a) the parties to the arbitration;
(b) other affiliates or associated companies of the parties;
(c) counsel for the parties;
(d) the other Arbitrators on the Panel.

No Arbitrator shall accept an appointment or sit on a Panel, where the Arbitrator or the Arbitrator's current employer has a direct or indirect interest in the outcome of the arbitration.

Upon receipt of the disclosure statement(s) from the Arbitrator(s), the parties may accept the Panel or challenge any (or all) of the Arbitrators.

If challenged, the grounds for it shall be made known to the Arbitrator(s), who may withdraw from the Panel and be replaced pursuant to Sections 13a and 13b as appropriate. However, if the challenged Arbitrator(s) considers the challenge to be without merit and declines to withdraw, the arbitration shall proceed with due reservation of the challenger's right to seek recourse from the appropriate U.S. District Court after the Award has been issued.

Section 10: *Direct Appointment by Parties*

If the arbitration agreement specifies a method by which Arbitrators are to be appointed, that method shall be followed and, in the event of a conflict, its terms shall prevail over this section of the Rules.

When requested by a party, the SMA shall submit its then current roster of members from which Arbitrators may be appointed.

If a party fails to appoint its Arbitrator within the time-frame specified in the arbitration agreement, the party demanding arbitration may resort to Section 5 of the Act.

If no such time-frame is specified, the party demanding the arbitration shall give the other written notice that the appointment of its Arbitrator is made pursuant to Section 10 of these Rules which requires the other to appoint an Arbitrator within twenty days of receipt of that notice, failing which the party demanding arbitration may appoint a second Arbitrator with the same force and effect as if that second Arbitrator were appointed by the other party. Any thus chosen second Arbitrator shall be a disinterested person with the same qualifications, if any, required by the arbitration agreement. If the arbitration agreement provides for three Arbitrators, the two so chosen shall appoint the third. Notwithstanding anything contained in this section to the contrary, if the party demanding arbitration seeks to compel the appointment of a second Arbitrator sooner than the stipulated twenty days, it is free to proceed under the Act.

Section 11: *Appointment of Additional Arbitrator by Named Arbitrators*

If the two party-appointed Arbitrators fail to appoint a third Arbitrator within a reasonable time, any party may petition the court under the Act to make such an appointment after advising the Arbitrators.

Section 12: *Notice of Appointment to Arbitrator(s)*

Arbitrators may be appointed by the parties, or their counsel, orally or in writing. If an oral appointment is made, it should be confirmed in writing as soon as practicable. Following appointment of the Chairman, the parties, or their counsel, shall be advised that the Panel is complete and ready to proceed with the arbitration.

Section 13: *Vacancies*

If an arbitrator is unable to serve, the vacancy shall be filled as follows:

(a) If the vacancy is created by a party-appointed Arbitrator, that party shall promptly name a replacement. The previously selected Chairman will continue to serve in that capacity unless the two party-appointed Arbitrators choose a replacement Chairman before the hearings have commenced or, if the arbitration is conducted on documents alone, before the first submissions or documents are received by the Panel.

(b) If the office of Chairman becomes vacant, the two party-appointed Arbitrators shall appoint a replacement Chairman.

(c) Following the replacement of Arbitrator(s), the arbitration shall resume on the existing record, unless the Panel directs or the parties agree otherwise.

V. Procedure for Oral Hearings

Section 14: *Representation*

Any party has the option to be represented in the arbitration proceedings by counsel or any other duly-appointed representative.

Section 15: *Stenographic Record*

Unless otherwise agreed by the parties, a stenographic record of all hearings shall be arranged. The parties shall initially share the cost of the record, subject to final apportionment by the Arbitrator(s).

Section 16: *Interpreters*

If required, the party presenting shall furnish and initially pay for an interpreter. The interpreter shall be independent of both parties.

Section 17: *Attendance at Hearings*

Persons having a direct interest in the arbitration are entitled to attend hearings. The Panel has the power to compel witnesses to leave the hearing room during the testimony of other witnesses.

Section 18: *Adjournments*

The Panel may grant adjournments upon a showing of good cause. If all parties jointly request an adjournment, it shall be granted.

Section 19: *Oaths*

After the Panel has been accepted by the parties, each Arbitrator shall take the oath set forth in Appendix A hereto. If the arbitration is to be conducted without hearings, the Arbitrator(s) may make the oath in writing.

The Arbitrators shall require witnesses to testify under oath administered by any duly qualified person (see Appendix A). The form of oath may be amended to include an affirmation under penalty of perjury.

Section 20: *Majority Decision*

Whenever the Panel consists of more than one Arbitrator, the decision and award of the Arbitrators shall be by majority vote, where appropriate, unless a unanimous decision is required by the arbitration agreement. In cases where the arbitration clause calls for two party-appointed Arbitrators and an Umpire, should the two be unable to agree, they shall appoint an Umpire who shall take into account the reasons for their disagreement and adjudicate the matters in controversy as if he/she were sole Arbitrator.

Section 21: *Order of Proceedings*

If hearings are scheduled, the first hearing of the arbitration shall be at the time and place designated by the Chairman. The Chairman shall instruct each party or their counsel to deliver to each member of the Panel a statement identifying the other interested parties so that the Arbitrator(s) may determine whether grounds for voluntary withdrawal exist.

Each claimant should submit a pre-hearing statement of its position and claim.

At the first hearing, each party, or their counsel, may make an opening statement setting forth its position.

The arbitration proceeding shall be conducted in an orderly manner appropriate to judicial proceedings. Rules of evidence used in judicial proceedings need not be applied.

If it is not clear which party is the claimant, the Panel shall make the

determination. Arbitrators shall apply burdens of proof and if by majority vote, the Panel concludes that the claimant has not made its case, no further evidence need be taken from the respondent, unless that respondent is asserting a counterclaim.

Copies of any documents, exhibits and accounts intended to be introduced at a particular hearing should be supplied to the other party or opposing counsel and to Panel members at least one week prior to the date of that hearing. Any fact or expert witness intended to testify before the Panel should likewise be identified at least one week in advance of the scheduled hearing date.

Following the presentation of all evidence, the parties may agree to present their arguments in a final oral hearing rather than in written briefs.

Section 22: *Arbitration in the Absence of a Party*

After a default has been established under the provisions of Section 4 of the Act or after the Panel has been completed pursuant to these Rules, the arbitration may proceed in the absence of the defaulting party, who, after due notice, failed to be present or failed to obtain an adjournment.

Section 23: *Evidence*

The parties may offer such evidence as they desire and shall produce such additional evidence as the Panel may deem necessary to an understanding and determination of the dispute. The Arbitrator(s) may subpoena witnesses or documents at their own initiative or at the request of any party (see Appendix B).

The Panel shall be the judge of the relevancy and materiality of the evidence offered.

All evidence shall be taken in the presence of the Arbitrator(s) and of all the parties, except in the case of depositions or where any of the parties is absent without reasonable cause, in default, or has waived its right to be present or where submission of evidence by mail or in other form has been agreed by both parties.

The Panel has the power to direct that depositions be taken from witnesses who cannot testify in person.

All evidence submitted to the Panel, as well as all written communications between any party and the Panel, after it has been constituted, shall be submitted to all parties.

Section 24: *Evidence of Affidavit*

The Panel may receive evidence by affidavit and shall give such affidavits appropriate weight in light of any objections made by opponents.

Section 25: *Closing of Proceedings*

Upon completion of submission of evidence, the parties may submit briefs on an agreed schedule. If the parties cannot agree, the schedule shall be established by the Panel. Once all submissions are completed, the Chairman shall declare the proceedings closed.

Section 26: *Reopening of Proceedings*

Following the submission of briefs, the Panel may require the parties to provide clarifications concerning their claims or defenses and may order additional hearings for that purpose.

At any time prior to the issuance of an Award, hearings may be reopened on the application of any party provided the Panel agrees that good cause has been shown.

VI. Procedure for Other than Oral Hearings

Section 27: *Arbitration on Documents Alone*

The parties, by written agreement, may submit their disputes to arbitration on documents alone. In such case, the Panel members shall make their disclosures in writing to all parties, pursuant to Section 9, and communicate the written oath (see Appendix A attached) to the parties. Thereafter, the parties shall make their

submissions of documents and briefs, on such schedule as they agree. If the parties cannot agree, the Panel will establish the schedule (see Rules for Shortened Arbitration Procedure—Document No. 2).[1]

VII. THE AWARD

Section 28: *Time*

The Panel has the collective duty to issue awards not later than one hundred and twenty days after the final evidence or brief has been received and the parties have been notified that the proceedings have been closed. Failure of the Panel to abide by this provision shall not be grounds for challenge of the Award.

Section 29: *Form*

The Award and the Arbitrator(s)' reasons for same shall be made in writing and signed either by the sole Arbitrator or Umpire or by a majority, if more than one, or by all, if unanimous. A partial or total dissent shall be signed by the dissenter and included with the majority Award.

Section 30: *Scope*

The Panel, in its Award, shall grant any remedy or relief which it deems just and equitable, including, but not limited to, specific performance. The Panel, in its Award, shall assess arbitration expenses and fees as provided in Sections 15, 36 and 37 and shall address the issue of attorneys' fees and costs incurred by the parties. The Panel is empowered to award reasonable attorneys' fees and expenses or costs incurred by a party or parties in the prosecution or defense of the case.

Any attorneys' fees or party costs awarded shall be quantified in the Award.

The Panel shall retain jurisdiction to modify the Award for the sole purpose of correcting obvious clerical and/or arithmetical errors.

Section 31: *Award upon Settlement*

Should the parties settle their dispute during the course of arbitration, the Panel may, upon the request of the parties, set forth the terms of the settlement in an Award.

Section 32: *Delivery of Award to Parties*

The parties accept that legal delivery of the Award may be accomplished:

(a) by the mailing of the Award or a true copy thereof to the parties at their last known addresses or that of their counsel; or

(b) by personal service of the Award.

VIII. SPECIAL PROVISIONS

Section 33: *Waiver*

Any party with knowledge that a provision of these Rules has been breached, but who continues with the arbitration without registering an official objection with the Panel, shall be deemed to have waived any right to object.

Section 34: *Time-Periods*

The parties may modify any period of time by mutual agreement and consent of the Panel. The Panel may extend or shorten any period of time established by the Rules upon a showing of good cause and shall notify the parties accordingly.

Section 35: *Service of Documents*

Wherever parties have agreed to arbitration under these Rules, they shall be deemed to have consented to service of any papers, notices or process, necessary to initiate or continue an arbitration under these Rules or a court action to confirm judgment on the Award issued. Such documents may be served:

(a) by mail addressed to such party or counsel at their last known address; or

(b) by personal service.

[1] Not reproduced here.

Counsel for either party may be utilized by the Panel to implement subpoenas or other legal procedures instituted by the Panel. The expenses and fees for such services are to be allocated as the Panel members direct.

IX. EXPENSES AND FEES

Section 36: *Expenses*

The expenses of witnesses shall be paid by the party producing or requiring the production of such witnesses subject to allocation by the Panel in its final Award.

Subject to final allocation in the Award, expenses incurred at the request of the Panel shall initially be borne equally by the parties. These include required travel and out-of-pocket expenses of the Panel members, the expense of producing witnesses requested by the Panel, or the cost of providing any proofs produced at the direct request of the Panel. The Panel may require an advance deposit for any sums it may reasonably have to expend.

The travel and living expenses of a party-appointed Arbitrator from outside the area named for the arbitration shall be borne by the party who appointed such Arbitrator.

Section 37: *Arbitrator(s)' Fees*

Each Panel member shall determine the amount of his/her compensation. When determining the fee, the Arbitrator(s) shall take into account the complexity, urgency and time spent on the matter.

At any time prior to issuance of the Award, the Panel may require that the parties post security for its estimated fees and expenses. Upon such request, each party shall promptly deposit the required amount into a segregated interest-bearing escrow account with the Chase Manhattan Bank, administered by the SMA. Alternatively, such deposits may be held in any other escrow account or in any other manner, if agreed to by the Arbitrator(s).

If the dispute is settled during the course of the arbitration, a fee commensurate with work already performed in the arbitration is due to the Arbitrator(s).

APPENDIX A

OATHS

These Oaths may be administered by the Recorder, or in the case of a hearing without recorder, by any one person to another, the affiant raising his right hand when being sworn.

1. Oath to be taken by Arbitrator.
   "Do you solemnly swear that you will faithfully and fairly hear and examine the matter in controversy and make a just Award, according to the best of your understanding?"
2. Oath to be taken by Witness:
   "Do you solemnly swear that the testimony you are about to give shall be the whole truth?"
3. Oath to be taken by Interpreter:
   "Do you solemnly swear that you will faithfully and fairly translate in a verbatim and objective manner from the _____ language to the _____ language or vice versa the oral or written communications you will be called upon to interpret?"

Appendix B

Subpoena

In the Matter of Arbitration
between

_____

and

_____

To:

(Name)
(Address)
(City and State)

You are Hereby Commanded to appear in an arbitration proceeding to be held at _____ on the _____ day of _____ A.D. 19_____ at _____m. of said day and bring with you _____then and there to testify in the above entitled Matter, wherein the disputant parties and their addresses are as follows:

_____ _____

_____ _____

_____ _____

_____ _____

_____

Arbitrator

_____

Arbitrator

_____

Chairman

(*Note*: Only majority need sign. See §7 of Act.)

_____

Attorney for_____

_____

Address

Note: Report to Arbitrator(s) in Room No._____