ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7964 HOUSE LABOR & COMMERCE

229

CLAIMS - MADE PREMIUM SCHEDULE

Effective January 1, 1989 **

LIMITS OF LIABILITY: EACH CLAIM AND ANNUAL AGGREGATE

	1st - 5th Years	$200,000/$600,000	$500,000/$1,000,000	$1,000,000/$2,000,000 $1,000,000/$3,000,000 *
CLASS 1				
1st year rates	Jan. 1, 1989	3,087	3,598	4,364
• 2nd year renewal rates	Jan. 1, 1988	4,932	5,644	7,269
• 3rd year renewal rates	Jan. 1, 1987	7,141	9,275	12,374
• 4th year renewal rates	Jan. 1, 1986	8,027	10,504	14,098
• 5th year renewal rates	Jan. 1, 1985	8,012	10,581	14,206
CLASS 2				
1st year rates	Jan. 1, 1989	4,477	5,396	6,740
• 2nd year renewal rates	Jan. 1, 1988	7,031	8,930	11,736
• 3rd year renewal rates	Jan. 1, 1987	11,515	15,161	20,441
• 4th year renewal rates	Jan. 1, 1986	13,029	17,256	23,376
• 5th year renewal rates	Jan. 1, 1985	13,125	17,387	23,560
CLASS 2-A *				
1st year rates	Jan. 1, 1989	6,066	7,451	9,454
• 2nd year renewal rates	Jan. 1, 1988	9,886	12,728	16,840
• 3rd year renewal rates	Jan. 1, 1987	16,514	21,887	29,651
• 4th year renewal rates	Jan. 1, 1986	18,747	24,972	33,980
5th year renewal rates	Jan. 1, 1985	18,887	25,166	34,251
CLASS 2-B/3				
1st year rates	Jan. 1, 1989	7,655	9,506	12,168
• 2nd year renewal rates	Jan. 1, 1988	12,742	16,506	21,944
• 3rd year renewal rates	Jan. 1, 1987	21,514	28,613	38,880
• 4th year renewal rates	Jan. 1, 1986	24,465	32,688	44,584
• 5th year renewal rates	Jan. 1, 1985	24,650	32,944	44,942
CLASS 4				
1st year rates	Jan. 1, 1989	11,032	13,873	17,936
• 2nd year renewal rates	Jan. 1, 1988	18,810	24,535	32,790
• 3rd year renewal rates	Jan. 1, 1987	32,138	42,906	58,472
• 4th year renewal rates	Jan. 1, 1986	36,615	49,085	67,117
• 5th year renewal rates	Jan. 1, 1985	36,895	49,473	67,659
CLASS 4-A				
1st year rates	Jan. 1, 1989	12,422	15,671	20,311
• 2nd year renewal rates	Jan. 1, 1988	21,309	27,841	37,256
• 3rd year renewal rates	Jan. 1, 1987	36,512	48,791	66,539
• 4th year renewal rates	Jan. 1, 1986	41,617	55,837	76,395
• 5th year renewal rates	Jan. 1, 1985	41,938	56,279	77,013
CLASS 5				
1st year rates	Jan. 1, 1989	16,991	21,578	28,115
• 2nd year renewal rates	Jan. 1, 1988	29,519	38,703	51,931
• 3rd year renewal rates	Jan. 1, 1987	50,886	68,129	93,046
• 4th year renewal rates	Jan. 1, 1986	58,056	78,021	106,881
• 5th year renewal rates	Jan. 1, 1985	58,505	78,641	107,749

* PREMIUM COST IS 4 % ABOVE $1,000,000/$2,000,000 LIMITS.

CLAIMS-MADE PREMIUMS PREPARED BY MILLIMAN & ROBERTSON INC., CONSULTING ACTUARIES FOR THE MEDICAL INDEMNITY CORPORATION OF ALASKA, ARE BASED ON A FIVE-YEAR PRICING STEP FOR REPORTED CLAIMS ADJUSTED ANNUALLY FOR CLAIMS EXPERIENCE.

• RETROACTIVE DATES AND RENEWAL PREMIUMS APPLY TO 2ND THROUGH 5TH YEAR ANNUAL RENEWAL. FIRST YEAR PHYSICIANS ARE SUBJECT TO FIRST YEAR RATES. ALL POLICIES ARE RENEWED EACH YEAR ON JANUARY 1. ALL 1ST AND RENEWAL PREMIUMS ARE PRORATED SUBJECT TO THE FIRST DAY OF COVERAGE UNDER THE ORIGINAL POLICY.

** SUBJECT TO 12.6 % INCREASE (RETROACTIVE TO 1/1/89) IF MICA'S FEDERAL TAX LIABILITY HAS NOT BEEN LEGISLATIVELY RESOLVED BY 7/1/89.

Coverages are limited to the course and scope of employment or association with your group. The combined clinic/group insureds are subject to the single limits of liability per occurrence and annual aggregate limits as procured. Completion of the Physician's and Surgeon's Professional Liability Group Application is required, along with completion of individual application for each physician to be insured.

Discounts Per Limits of Liability

# Doctors on Policy	$500,000	$1,000,000
1	0	0
2	9%	7%
3	11%	9%
4	12%	10%
5	13%	11%
6	14%	12%
7	15%	13%
8	16%	14%
9+	17%	15%

Installments - Deferred Payments:

Initial policy issuance subject to deposit of $1,000 or two month's annual premium. Deferred payments are available in quarterly or semi-annual installments payable: 35%, 25 %, 25 % and 15 % quarterly or 60 % and 40 % semi-annually. Premium invoices should be paid upon receipt and the policy is subject to immediate cancellation if payment is not received by the first day of the quarter in which the premium is earned. Carrying charges are computed at 10 % annual simple interest on the unpaid balance.

PHYSICIAN'S RATE CLASSIFICATIONS

Class 1
Neurology
Psychiatry - excluding ECT;
Physicians - no surgery. Applies to general practitioners and physician specialists who do not perform obstetrical procedures or surgery (other than incision of boils and superficial abscesses or suturing of skin and superficial fascia) who do not ordinarily assist in surgical procedures.

Class 2
Neonatology
Opthalmology (Excluding Radial Keratotomy)
Physicians - minor surgery or assisting in major surgery. *
Applies to general practitioners and physician specialists who perform minor surgery (including catheterization) or assist in major surgery.

Class 2-A
Emergency Medicine

Class 3
Physicians who include obstetrical procedures as any part of their practice. (May still be indicated as class 2-B on policy:)
Physicians - major surgery *
Proctology
Otorhinolaryngology
Abdominal Surgery
General Surgery
Pediatric Surgery
Thoracic Surgery
Traumatic Surgery
Plastic and Reconstructrive Surgery, excluding cosmetic surgery
Urology
Gynecology (No Obstetrics)

Class 4
Anesthesiology

Class 4-A
Physicians - major surgery
Therapeutic Radiology
Obstetrics - Gynecology
Cardiovascular Surgery
Hand Surgery
Plastic and Reconstructive Surgery, including cosmetic surgery
Vascular Surgery
Orthopedic Surgery, excluding total joint procedures, spinal surgery and insertion of prosthetic devices.

Class 5
Physicians - major surgery
Neurosurgery
Orthopedic Surgery, including total joint procedures, spinal surgery and insertion of prosthetic devices.

* Major Surgery - involves operations in or upon any body cavity including but not limited to the cranium, thorax, abdomen or pelvis, or any other operation that presents a distinct hazard to life because of the condition of a patient or the lenghth or circumstances of an operation. It also includes removal of tumors (except skin tumors), open bone fractures, amputations, abortions, removal of any gland or organ, plastic surgery and any operations using general anesthesia.

NOTE: IF A PORTION OF THE PHYSICIAN'S PRACTICE IS IN A SPECIALTY WITH A HIGHER CLASS THAN HIS NORMAL SPECIALTY, HE OR SHE WILL BE PLACED IN THE HIGHER SPECIALTY FOR RATING PURPOSES.

PROFESSIONAL LIABILITY COVERAGES

Explanation of Policy:

The Claims-Made Policy extends professional liability protection to the physician, clinic or employee for claims reported in a single year, regardless of when service is rendered as long as the incident occurred while continuously insured under Claims-Made with MICA. Thus, claims reported this year are covered by this year's policy; claims reported next year by next year's policy and so on.

MICA's premium rates are derived from the historical pattern of reported claims resulting from the performance of professional services which form a "stair step" with an increasing number of claims being reported each year until the fifth year. In the first year, only about 19 % of the total claims resulting from professional services are reported; the second 39 %; the third 78 %; the fourth 93 %; the fifth and subsequent years, about 100 %.

Cost:

In keeping with the "stair step" development of claims, the rates charged for the Claims-Made policy mature at the fifth year. Subsequent renewal policies are charged at the mature rates. The specific cost of coverage is shown within our table entitiled CLAIMS-MADE PREMIUM SCHEDULE.

All policies issued by MICA are renewed on January 1 of each year. Your first years and renewal rates are pro-rated from the first date of coverage (inception date) of the original policy. For example, if your continuous coverage became effective on July 1, 1985, your annual renewal premium on January 1, 1989 would be pro-rated from January 1 through June 30 on the fourth year rates and from July 1 through December 31 on the fifth year rates.

Limits of Liability:

MICA's professional and optional comprehensive general liability coverages are available with policy limits of:

$200,000 per occurrence/$600,000 aggregate per calendar year.
$500,000 per occurrence/$1,000,000 aggregate per calendar year.
$1,000,000 per occurrence/$2,000,000 aggregate per calendar year.
$1,000,000 per occurrence/$3,000,000 aggregate per calendar year.

Tail Coverages:

Should you stop practicing or change to another insurance company, MICA guarantees availability of a limited or unlimited Reporting Endorsement known as "tail" coverage to cover subsequently reported claims.* Tail coverage must be purchased by the insured within 30 days of termination of coverage, by cancellation or non-renewal; or by termination of employment or association with the physicians insured under a master group policy.

"Tail" coverage must also be recognized when a physician reduces rating classification to offset reduced premium charges while subsequently reported claims from the higher specialty continues to occur. This is currently being accomplished on a pro-rata basis when the policy is ultimately terminated, but depends on the company's rules, rates and rating plans in effect at the time the physician's class reduction is made

Cost:

The cost of "tail" coverage will depend upon the length of time you have been insured with MICA, and will be subject to the company's rules, rates, and rating plans in effect at the time the unlimited reporting endorsement is requested.

The tail premium is quoted as a one time cost but may be paid in installments. Refer to paragraph INSTALLMENTS.

The full premium for an Unlimited Reporting Endorsement must be received by the company within twelve months following its inception date. The Unlimited Reporting Endorsement will be cancelled at the end of this twelve month period if the full premium has not been received at that time, and only premium earned for this twelve month Reporting Endorsement period will be charged in accordance with rates actuarially determined and filed with the Division of Insurance.

Retirement Benefit:

An Unlimited Reporting Endorsement (tail coverage) will be issued at no extra cost to any physician who has attained the age and years in the MICA program (as per the schedule below) and having completed five consecutive years as a MICA insured just prior to retirement:

Age	Years as MICA Insured
60	5
59	6
58	7
57	8
56	9
55	10

*** The policy limits in effect at the time the Unlimited Reporting Endorsement is purchased will be applicable just as if the policy had not been cancelled or terminated and the claim had been reported during the last policy year.**

ATTACHMENT C

Medical Insurance Exchange of California
(MIEC) 1989 Coverage Classification and Premium Schedule

MIEC Medical Insurance Exchange of Californi

1989 Coverage Classification and Premium Schedule

If you practice in more than one specialty, use the highest rated specialty.

CLASS	SPECIALTY
2	Administrative Medicine
2	Allergy
8	Anesthesiology
6	Assisting at Surgery
4	Cardiology, Excluding Cardiac Catheterization and Angioplasty
6	Cardiology, Including Cardiac Catheterization and Angioplasty
9	Cardiovascular Surgery
8	Colon & Rectal Surgery
4	Dermatology, Excluding Hair Transplants
6	Dermatology, Including Hair Transplants
7	Dermatology – liposuction
8	Emergency Medicine
4	Endocrinology
	Family Practice/General Practice
3	– No Surgery
6	– Less than 5% of practice from Surgery
7	– 5% or more of practice from Surgery
10	– Including Obstetrics
4	Gastroenterology
4	General Preventive Medicine
8	General Surgery
8	Gynecology (Only)
8	Hand Surgery
8	Head & Neck Surgery
4	Hematology
6	Industrial Medicine
4	Infectious Diseases
4	Internal Medicine, Excluding Cardiac Catheterization and Angioplasty
6	Internal Medicine, Including Cardiac Catheterization and Angioplasty
5	Neonatology
3	Neoplastic Diseases
3	Nephrology
5	Neurology, Excluding Invasive Procedures
6	Neurology, Including Invasive Procedures
10	Neurological Surgery
4	Nuclear Medicine
10	OB-GYN
4B	Occupational Medicine (Not Industrial)
5	Ophthalmology, Excluding Radial Keratotomy
7	Ophthalmology, Including Radial Keratotomy or 5% or more from Cosmetic Surgery
9	Orthopedics, Excluding Spinal Surgery and use of Chymopapain
10	Orthopedics, Including Spinal Surgery and use of Chymopapain
8	Otolaryngology
9	Otolaryngology – 5% or more from Cosmetic Surgery
2	Pathology
4	Pediatrics
8	Pediatric Surgery
3	Physical Medicine and Rehabilitation
8	Plastic Surgery
1	Psychiatry*
1	Psychiatry, Child*
2	Public Health
4	Pulmonary Diseases
7	Radiology, Diagnostic and Therapeutic
5	Radiology, Diagnostic Only
7	Radiology, Therapeutic Only
4	Rheumatology
8	Thoracic Surgery, Excluding Cardiovascular
5	Urgent Care Medicine
7	Urology

*Without ECT or drug shock therapy. With ECT or drug shock therapy, use Class 4

Partnership/Corporation Liability and Full Time Employed Physicians — 7% if all partners/shareholders and employed doctors have $500,000/1,500,000 limits; 2.5% if all partners/shareholders and employed doctors have $1,000,000/3,000,000 limits or higher. Full Time Employed Physicians must carry limits at least equal to employer. Employer will be charged a percentage of the premium charged for the employed physician's classification at employer's limits.

Secretaries, Receptionists and Bookkeepers — No charge.

Optional Coverages:

Professional premises/limited non-owned automobile liability — Covers certain liabilities for injuries sustained by the public or for damage to property of third persons at your offices. It also covers certain liabilities to injured parties arising from an employee's use of an automobile (not owned, rented or leased to you) in the course of your professional practice, up to $100,000 for bodily injury and $25,000 for property damage. Refer to the policy for coverage specifics.

LIMITS OF LIABILITY: Bodily injury, $500,000 each claim/aggregate, or $1,000,000 each claim/aggregate (to coincide with professional liability limits, but not higher than $1,000,000); Property damage, $100,000.

PREMIUM: No additional premium for premises occupied as physicians' professional offices. Clinics and other premises: refer to MIEC.

Defense coverage for miscellaneous liability

Provides up to $100,000 legal defense coverage only for alleged acts or omissions involving:

- Certain civil actions or proceedings, including a physician's acts or omissions as an officer of a national, state or local medical or specialty society;
- Alleged wrongful termination or discrimination against an employee;
- Breach of contract or other alleged misconduct in the nature of a commercial or fee dispute arising from professional practice;
- Assault, battery, false arrest or personal restraint, malicious prosecution or conspiracy arising from professional practice.

This optional coverage is fully described in Part IV of the MIEC policy and is subject to the terms and conditions of the policy and endorsements actually issued. MIEC pays 90% of legal expenses to a maximum amount of $100,000.

If you are interested in Part IV coverage, please contact MIEC for an application and premium quotation.

MEDICAL INSURANCE EXCHANGE OF CALIFORNIA

ALASKA

CLAIMS MADE PROFESSIONAL LIABILITY PREMIUM SCHEDULE

EFFECTIVE AUGUST 1, 1989

LIMITS OF LIABILITY: 500,000 EACH CLAIM / 1,500,000 ANNUAL AGGREGATE

DOCTORS COVERAGE CLASSIFICATIONS	FIRST YEAR RATES RETROACTIVE DATES: 01/01/89 OR LATER		SECOND YEAR RATES RETROACTIVE DATES: 01/01/88 - 12/31/88		THIRD YEAR RATES RETROACTIVE DATES: 01/01/87 - 12/31/87		FOURTH YEAR RATES RETROACTIVE DATES: 01/01/86 - 12/31/86		FIFTH YEAR RATES RETROACTIVE DATES: 08/01/75 - 12/31/85	
	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY
1. COVERAGE CLASS 1	2,124	531	4,172	1,043	5,304	1,326	5,728	1,432	6,220	1,555
2. COVERAGE CLASS 2	2,700	675	5,308	1,327	6,748	1,687	7,288	1,822	7,916	1,979
3. COVERAGE CLASS 3	3,472	868	6,824	1,706	8,676	2,169	9,368	2,342	10,176	2,544
4. COVERAGE CLASS 4	3,856	964	7,584	1,896	9,640	2,410	10,408	2,602	11,308	2,827
5. COVERAGE CLASS 5	4,436	1,109	8,720	2,180	11,084	2,771	11,972	2,993	13,004	3,251
6. COVERAGE CLASS 6	5,784	1,446	11,372	2,843	14,456	3,614	15,612	3,903	16,964	4,241
7. COVERAGE CLASS 7	9,640	2,410	18,952	4,738	24,092	6,023	26,020	6,505	28,268	7,067
8. COVERAGE CLASS 8	13,880	3,470	27,292	6,823	34,692	8,673	37,468	9,367	40,708	10,177
9. COVERAGE CLASS 9	19,276	4,819	37,904	9,476	48,184	12,046	52,040	13,010	56,536	14,134
10. COVERAGE CLASS 10	26,212	6,553	51,552	12,888	65,528	16,382	70,772	17,693	76,888	19,222
11. NURSE TECHNICIAN	164	41	320	80	408	102	440	110	476	119
12. PHYSIOTHERAPIST	324	81	640	160	812	203	876	219	952	238
13. PHYS ASST/NURSE PRAC	388	97	760	190	964	241	1,044	261	1,132	283

ALASKA 500,000 / 1,500,000 LIMITS
DATE PREPARED: MARCH 29,1989
PROCEDURE: NEWPREM
USERID: KARENB

MEDICAL INSURANCE EXCHANGE OF CALIFORNIA

ALASKA

CLAIMS MADE PROFESSIONAL LIABILITY PREMIUM SCHEDULE

EFFECTIVE AUGUST 1, 1989

LIMITS OF LIABILITY: 1,000,000 EACH CLAIM / 3,000,000 ANNUAL AGGREGATE

DOCTORS COVERAGE CLASSIFICATIONS	FIRST YEAR RATES RETROACTIVE DATES: 01/01/89 OR LATER		SECOND YEAR RATES RETROACTIVE DATES: 01/01/88 - 12/31/88		THIRD YEAR RATES RETROACTIVE DATES: 01/01/87 - 12/31/87		FOURTH YEAR RATES RETROACTIVE DATES: 01/01/86 - 12/31/86		FIFTH YEAR RATES RETROACTIVE DATES: 08/01/75 - 12/31/85	
	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY
1. COVERAGE CLASS 1	2,496	624	4,908	1,227	6,236	1,559	6,736	1,684	7,320	1,830
2. COVERAGE CLASS 2	3,176	794	6,244	1,561	7,940	1,985	8,572	2,143	9,316	2,329
3. COVERAGE CLASS 3	4,084	1,021	8,028	2,007	10,204	2,551	11,020	2,755	11,972	2,993
4. COVERAGE CLASS 4	4,536	1,134	8,920	2,230	11,340	2,835	12,244	3,061	13,304	3,326
5. COVERAGE CLASS 5	5,216	1,304	10,260	2,565	13,040	3,260	14,084	3,521	15,300	3,825
6. COVERAGE CLASS 6	6,804	1,701	13,380	3,345	17,008	4,252	18,368	4,592	19,956	4,989
7. COVERAGE CLASS 7	11,340	2,835	22,300	5,575	28,344	7,086	30,612	7,653	33,256	8,314
8. COVERAGE CLASS 8	16,328	4,082	32,108	8,027	40,816	10,204	44,080	11,020	47,888	11,972
9. COVERAGE CLASS 9	22,676	5,669	44,596	11,149	56,688	14,172	61,220	15,305	66,512	16,628
10. COVERAGE CLASS 10	30,840	7,710	60,648	15,162	77,092	19,273	83,260	20,815	90,456	22,614
11. NURSE/TECHNICIAN	192	48	376	94	476	119	516	129	560	140
12. PHYSIOTHERAPIST	384	96	752	188	956	239	1,032	258	1,120	280
13. PHYS ASST/NURSE PRAC	456	114	896	224	1,136	284	1,228	307	1,332	333

ALASKA 1,000,000/ 3,000,000 LIMITS
DATE PREPARED: MARCH 29,1989
PROCEDURE: NEWPREM
USERID: KARENB

ATTACHMENT D
Arizona and North Carolina Bills

State of Arizona
House of Representatives
Thirty-ninth Legislature
First Regular Session
1989

Chapter 290
HOUSE BILL 2467

AN ACT

MAKING AN APPROPRIATION TO THE DEPARTMENT OF HEALTH SERVICES FOR THE PURPOSE OF PAYING ADDITIONAL MEDICAL MALPRACTICE PREMIUM COSTS FOR PERFORMING THE DELIVERY OF INFANTS AT CERTAIN RURAL HOSPITALS; PRESCRIBING IDENTIFICATION OF QUALIFYING HOSPITALS AND PHYSICIANS; PRESCRIBING EVALUATION OF REQUESTS FOR ASSISTANCE; PRESCRIBING LIMITATIONS, AND PRESCRIBING STUDIES AND REPORTS.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Appropriation; purpose; exemption

A. The sum of one hundred ninety-five thousand dollars is appropriated from the state general fund to the department of health services for the purposes described in subsection B of this section.

B. The department shall identify areas in the state that are underserved with regard to obstetrical services. For purposes of this section, an area shall be considered underserved with regard to obstetrical services if the area satisfies any of the following:

1. Fifty per cent or more of resident live-births occur outside the city or town of residence.

2. Cities or towns where obstetric services are threatened with discontinuance.

3. Cities or towns having a population of less than ten thousand where prenatal services are not provided by a physician.

4. Cities or towns having a population of less than ten thousand where obstetric backup services for a physician are not available.

5. Cities or towns where the average number of prenatal visits are less than the state average.

C. The department shall identify those physicians who practice in areas defined in subsection B of this section who meet the following:

1. Shall have current obstetrical delivery privileges at one or more rural, non-federal hospitals.

2. Shall be a registered provider with the Arizona health care cost containment system who has established a contract for obstetrical services with at least one or more of the system's prepaid contractors.

3. The physician shall be licensed by the appropriate licensure board.

D. Family physicians who perform less than fifty deliveries per year and who are required to pay an additional premium to perform obstetrical services shall be eligible to receive an amount not to exceed five thousand dollars. Family physicians who perform more than fifty deliveries per year and who are required to pay an additional premium to perform obstetrical services shall be eligible to receive an amount not to exceed ten thousand dollars. Obstetricians who are required to pay an additional premium to provide obstetrical services shall be eligible to receive an amount not to exceed ten thousand dollars. Payment of one-half of the financial assistance identified in this section shall be contingent upon receipt of the report required pursuant to subsection F of this section. The second payment shall be paid upon receipt of the second report required pursuant to subsection F of this section.

E. Physicians seeking financial assistance shall respond to the department's notice within thirty days of receipt of such notice in a format prescribed by the department. The department shall evaluate the physician's request for financial assistance and shall classify the requests according to the city or town's need for obstetrical services and ability to meet all or at least one of the criteria specified in subsection B of this section. The highest classification shall be assigned to those cities or towns which meet all of the criteria specified in subsection B of this section. The lowest classification shall be assigned to those cities or towns which meet at least one of the criteria specified in subsection B of this section. The department shall establish contracts with those physicians whose requests are assigned the highest classification. If funds remain available, the department shall proceed in descending order to establish contracts with those physicians whose requests have been assigned a lower classification until funding is depleted.

F. The financial assistance awarded pursuant to subsection E of this section shall be used for each physician who meets the qualifications of subsection C of this section, is under contract with the department to remain in practice in the rural area for the contract year and who provides a report upon completion of one-half of the contract term and upon conclusion of the contract to the department which identifies the number of women to whom the physician has provided medical services during delivery, the ages of the women, the number of prenatal visits each women received, the number of women who are at or below federal poverty standard, the number of Arizona health care cost containment system enrolled women served and the insurance status of the women. Contracts pursuant to this section are exempt from the requirements of title 41, chapter 23, Arizona Revised Statutes.

G. The university of Arizona college of medicine shall examine the adequacy of obstetrical services in rural underserved areas. The university of Arizona college of medicine shall develop a plan which may include the use of educational subsidies designed to overcome any identified inadequacies in the delivery of obstetrical care or other primary health care services in rural Arizona. The plan shall include recommendations regarding educational subsidies, identification of funding needs, identification of alternative funding sources and necessary legislative action to implement the recommendations. The university of Arizona college of medicine shall submit their report to the governor, president of the senate and speaker of the house of representatives by February 1, 1990.

H. The department shall submit a written report to the governor, the president of the senate and the speaker of the house of representatives on or before February 1, 1990 on the number of physicians who have applied and the number of physicians who received financial assistance provided pursuant to subsection E of this section. One year from the effective date of this section, the department shall evaluate the effectiveness of the financial assistance provided pursuant to this section and shall on or before January 1, 1991, submit a written report of its findings to the governor, the president of the senate and the speaker of the house of representatives. The report shall include recommendations regarding continuation of the financial assistance, the number of physicians who received financial assistance who plan to continue providing prenatal and delivery services in rural Arizona and legislative action necessary to improve the control, distribution and cost effectiveness of the financial assistance.

I. The appropriation made in this section is exempt from section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Approved by the Governor June 28, 1989.

Filed in the Office of Secretary of State June 28, 1989

organizations and their employees who distribute food to the public at no charge. Eliminates gross negligence and recklessness as grounds for civil action or criminal prosecution.

Rural physicians; financial assistance (H.B. 2457) - Chapter 280

Appropriates $150,000 from the state general fund to the department of health services (DHS) to provide financial assistance to rural allopathic and osteopathic physicians. The appropriation is exempt from lapsing.

Requires the Department of Health Services (DHS) to identify areas that are underserved with regard to obstetrical services and to identify licensed physicians in those areas who have current obstetrical delivery privileges at one or more rural, non-federal hospitals and who are AHCCCS registered providers.

The financial assistance is not to exceed $5,000 for family physicians who perform less than 50 deliveries and who pay an additional insurance premium to perform obstetrical services and is not to exceed $10,000 for both family physicians who perform more than 50 deliveries and obstetricians who pay an additional insurance premium to perform obstetrical services. The financial assistance shall be made in two payments during the year upon receipt of information reported by the physicians. Financial assistance shall be determined on the basis of the area's need for obstetrical services and meeting the criteria established for underserved areas.

Requires the University of Arizona College of Medicine to develop a plan to address the delivery of health care services in rural Arizona. The report shall be submitted to the Governor, President of the Senate and Speaker of the House of Representatives by February 1, 1990.

Requires the DHS to report to the Governor, President of the Senate and Speaker of the House of Representatives by February 1, 1990 on the status of the initial distribution of the financial assistance. The DHS shall report again by January 1, 1991, on the effectiveness of the program.

Contracts with qualifying physicians are exempt from the requirements of the state procurement code.

Joint legislative committee: health care (H.B. 2478) - Chapter 216

Establishes a 23-member joint legislative committee on health care to gather and compare statistical information concerning the inability of many Arizonans to obtain health care insurance. Requires the committee to develop a written report, to be submitted to the Governor, the President of the Senate and Speaker of the House of Representatives by December 31, 1989.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1987

H D

HOUSE DRH7342-LK659

Short Title: Rural Obstetrical Care Incentive (Public)

Sponsors: Representatives Hunter, E. Warren, and Woodard.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF HUMAN RESOURCES TO ESTABLISH A PROGRAM TO COMPENSATE FAMILY PHYSICIANS AND OBSTETRICIANS WHO AGREE TO PROVIDE PRENATAL AND OBSTETRICAL SERVICES IN COUNTIES THAT ARE UNDERSERVED WITH REGARD TO THESE SERVICES.

Whereas, there are currently 22 counties in the State which have no physicians to provide prenatal or obstetrical care in those counties, most of which are rural counties; and

Whereas, there are 20 counties in the State in which more than half of the expectant mothers must leave the county for obstetrical care because there are not enough physicians in their home county to provide obstetrical care; and

Whereas, prior to 1985 nearly 500 family physicians in North Carolina were providing obstetrical care; and

Whereas, after severe increases in liability insurance premiums, some in excess of three hundred fifty percent (350%), the number of family physicians providing obstetrical care has dropped to 189, and numerous obstetricians have dropped that part of their practice; and

THE
FOLLOWING
DOCUMENTS
ARE
POOR
ORIGINAL
COPIES

Whereas it is in the interest of the State to provide quality prenatal and obstetrical care and to provide access to health care for all its citizens. Now, therefore, The General Assembly of North Carolina enacts:

Section 1. From the funds appropriated from the General Fund to the Department of Human Resources there is established a reserve of nine hundred fifty thousand dollars ($950,000) for the 1987-88 fiscal year to fund a new program to compensate family physicians and obstetricians who agree to provide prenatal and obstetrical services in counties that are underserved with regard to these services. The Division of Health Services shall adopt rules determining the counties that are underserved with respect to obstetrical care that are to be part of the program; the scope of the obstetrical services that are to be provided by a physician for that physician to be eligible to receive assistance under the program; and the amount and nature of the assistance to be provided to eligible physicians. Specific rules issued by the Division of Health Services governing this new program shall include:

(1) A physician who provides obstetrical care in a county that is designated as being underserved for prenatal and obstetrical care by the Division of Health Services will be compensated for either the difference between his premiums with obstetrical care coverage and his premiums without obstetrical care coverage, or six thousand five hundred dollars ($6,500), whichever is less;

(2) Physicians providing obstetrical care through an arrangement with their local health department shall have the option of providing the care at their offices or at the facilities of the health department obstetrical clinic;

(3) No physician shall be required to assume management of the care of any obstetrical patient if the level of care required for that patient is beyond the professional competence of that physician;

(4) Physicians eligible for payment under this program shall be licensed to practice medicine in this State;

(5) Participating physicians shall provide complete obstetrical care for covered patients including prenatal care and delivery; provided, however, physicians in a county without a facility for obstetrical delivery are still eligible if they provide only prenatal care;

(6) The liability insurance rates for obstetrical care to be used to determine compensation under this program shall be based on obstetrical premiums of $1,000,000/$1,000,000 coverage at a mature rate; and

(7) Any physician compensated under this program shall not refuse to provide obstetrical care for any patient based on the patient's economic status or ability to pay.

Sec. 2. This act shall become effective July 1, 1988.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

S 8 0

SENATE DRS7620-LK-263(3.17)

PRINCIPAL CLERK

Short Title: Rural Obstetrical Care Funds (Public)

Sponsors: Senators Swain and Warner.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF HUMAN RESOURCES FOR THE RURAL OBSTETRICAL CARE INCENTIVE PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. There is appropriated from the General Fund to the Department of Human Resources the sum of one million dollars ($1,000,000) for the 1989-90 fiscal year and the sum of two million dollars ($2,000,000) for the 1990-91 fiscal year to fund the rural obstetrical care incentive program.

The rural obstetrical care program shall compensate family physicians and obstetricians who agree to provide prenatal and obstetrical services in counties that are underserved with regard to these services. The Commission for Health Services shall adopt rules determining the counties that are underserved with respect to obstetrical care that are to be part of this program, the scope of the obstetrical services that are to be provided by a physician for that physician to be eligible to receive assistance under the program, and the amount and nature of the assistance to be provided to eligible physicians. Specific rules issued by the Commission for Health Services governing this program shall include:

(1) A physician who provides obstetrical care in a county that is designated as being underserved for prenatal and obstetrical care

by the Commission for Health Services will be compensated for either the difference between his premiums with obstetrical care coverage and his premiums without obstetrical care coverage, or six thousand five hundred dollars ($6,500), whichever is less.

(2) Physicians providing obstetrical care through an arrangement with their local health department shall have the option of providing the care at their offices or at the facilities of the health department obstetrical clinic.

(3) No physician shall be required to assume management of the care of any obstetrical patient if the level of care required for that patient is beyond the professional competence of that physician.

(4) Physicians eligible for payment under this program shall be licensed to practice medicine in this State;

(5) Participating physicians shall provide complete obstetrical care for covered patients including prenatal care and delivery; provided, however, physicians in a county without a facility for obstetrical delivery are still eligible if they provide only prenatal care;

(6) The liability insurance rates for obstetrical care to be used to determine compensation under this program shall be based on obstetrical premiums of $1,000,000-$1,000,000 coverage at a mature rate; and

(7) Any physician compensated under this program shall not refuse to provide obstetrical care for any patient based on the patient's economic status or ability to pay.

Sec. 2. This act shall become effective July 1, 1989.

THE FOLLOWING DOCUMENT HAS
NOT BEEN FILMED BUT IS
AVAILABLE IN THE ORIGINAL
FILE

Alaska State Legislature

Legislative Research Agency

P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 465-3991
Fax: (907) 463-3351

January 5, 1989

MEMORANDUM

TO: Representative Sam Cotten

ATTN: David Rogers

FROM: Patricia Young PY
Legislative Analyst

RE: **Tort Reform Legislation**
Research Request 90.104

You asked this agency to provide information on recent changes to laws governing compensation for personal injury or property damage--the tort system. You specifically requested the following information:

- a summary of significant tort reform measures passed or pending in other states and information on the effectiveness of the changes;
- a comparative summary of attempts and/or proposals by other states to establish alternative tort claims resolution systems;
- a list of states which provide for "prejudgment interest" and information on how those provisions work; and
- copies of reports generated by this agency and its predecessors relating to these issues.

Legislative responses to the increasing cost and declining availability of liability insurance can be broadly categorized into civil justice--or tort--reform measures, insurance regulatory reform measures, and risk management measures. According to Brenda Trolin, senior insurance specialist with the National Conference of State Legislatures (NCSL), at least 10,000 bills were introduced and 44 states enacted legislation in 1986, and in 1987, more than 13,000 bills were introduced. Throughout the most recent cycle of the insurance "crisis," certain trends and phases in legislative effort have become apparent. Early in 1986, the emphasis was on civil justice reform. The legislative focus in 1987 turned to immunities--from sovereign immunity

extended to counties, cities, and towns, to immunity from personal liability extended to groups of public employees and volunteers.[1] More recently, however, because reforms provided little or no immediate relief to the high cost of insurance, legislative activity in civil justice reform has declined, and the focus has shifted more to regulation of the insurance industry. A major event in 1988--the anti-trust lawsuits filed by 19 state attorneys general, including Alaska's, charging that four of the largest insurers conspired to fix prices and limit the availability of liability insurance--punctuates this shift.[2]

In 1989, the majority of legislative activity regarding liability dealt with regulation of the automobile insurance industry.[3] The most notable automobile insurance reform measure was California's 1988 Proposition 103, which changed the laws that regulate rates for motor vehicle, fire and liability insurance. This controversial proposition includes a 20 percent rollback in rates from those in effect on November 8, 1987; an additional 20 percent rate reduction for "good drivers"; election--rather than appointment--of the state insurance commissioner; and publication of rate comparisons. The California Supreme Court responded to an insurance industry challenge that the rollbacks were unconstitutional and granted a stay barring the measure from immediate implementation. In May of 1989, the court upheld long-term restrictions on insurance rates and practices; however, it struck down the provision that required insurers to be "substantially threatened with insolvency" before they could receive relief from the reductions and held that rates which can be justified as "not excessive" are allowable. During 1989, several states introduced legislation similar to Proposition 103. NCSL's draft of the *1989 State Legislative Summary*, included in Attachment A, provides further information on automobile insurance legislation.

According to Ms. Trolin, in 1989,

> the most significant civil justice activities . . . were actually court rulings interpreting previously enacted tort reforms. Four state courts rendered decisions in litigation questioning the constitutionality of damage caps. In Maryland, the cap on noneconomic damages in all civil suits was upheld; in Kansas, a $100,000 cap on such damages in wrongful death actions was upheld; the Virginia court upheld a cap on total damages in medical malpractice cases; but in

---

[1]Brenda Trolin, "State Legislatures and Tort Reform--1986 and 1987," 1987 NCSL State Legislative Summary: Liability Insurance (Denver: NCSL, 1987), pp. 2-3.

[2]Brenda Trolin and Bob Boerner, 1988 NCSL State Legislative Summary: Liability Insurance (Denver: NCSL, 1988), introduction.

[3]Conversation with Bob Boerner, NCSL, October 1989.

> Washington, the cap on all noneconomic damages was rejected [as unconstitutional].[4]

While state supreme court actions in Maryland, Kansas, and Virginia add case law precedents to limitations on recoveries, the Washington Supreme Court decision was based on the argument that citizens have constitutional rights to the protective function of juries.

In general, state legislatures now appear to be taking a "wait and see" attitude toward tort reform. States also continue to question the role of the civil justice system in the affordability and availability of insurance and to consider what kind of regulatory actions will best moderate future insurance cycles. To this end, many states are establishing committees to monitor the impact of legislation and enacting statutes to require insurance companies to include analyses of the effect of tort reform with their rate filings.

Despite massive attempts to alleviate insurance problems, effective solutions remain elusive. Generally, it is too soon to accurately judge the effect of tort reform measures. According to Ms. Trolin, a minimum of five years is needed before cases processed under previous systems clear the courts. Several additional years must pass before a sufficient number of cases have been processed through new systems to determine whether changes have had the desired consequences. Ms. Trolin notes that the impacts of medical malpractice reform measures passed in the mid-1970s are only recently beginning to be meaningfully charted.[5]

Because of the variations in state constitutions and laws regarding tort reform, identical reform measures may have dissimilar effects in each state. Thus, even those reform measures which appear promising require careful consideration in the context of an individual state's circumstances to determine potential ramifications. Opponents frequently argue that constitutional rights--including equal rights to protection, access to courts, and trial by jury--are violated by certain reform measures. Also, reform measures can encourage or discourage lawsuits. Although some measures may facilitate and expedite resolution, they may also encourage claims which would not otherwise have been made.

A further complication in the tort reform issue, is the lack of a direct relationship between laws regarding liability and the cost and availability of insurance. According to "Insuring Our Future: Report of the Governor's Advisory Commission on Liability Insurance," New York, 1986, "no research currently available quantifies the linkage or even irrefutably establishes

---

[4]Letter from Brenda Trolin, December 23, 1989.

[5]Conversations with Brenda Trolin, March 1989, and Bob Boerner, October 1989.

that such a linkage exists." Proponents of tort reform argue that changes which restrict liability or limit damage awards will reduce insurance costs; however, a variety of factors--including changes in underwriting practices and costs, investment returns, market behavior, domestic interest rates, and the national economy--determine actual costs. According to Franklin Nutter, president of the Alliance of American Insurers, "It is clearly impossible to say that if you adopt a certain tort reform, you will get 'X' reductions in premiums."[6]

Brenda Trolin's "Controlling Liability Insurance Costs: State Actions and Future Initiatives in the Area of Civil Justice Reform," NCSL, 1986, is included in Attachment A. This report provides an excellent discussion of various reform alternatives and highlights state and federal reform proposals as well as their possible effectiveness. Since the compilation of this information, NCSL has published only annual legislative summaries describing proposed and enacted reform bills.

Among the additional information included in Attachment A are copies of The Alliance of American Insurers' "1987 Civil Justice Enactment List," and Stephen J. Carroll's *Assessing the Effects of Tort Reform*, published in 1987 by the Rand Corporation's Institute of Civil Justice. The Institute performs independent, nonpartisan research and analysis on the civil justice system; the report provides an excellent discussion of considerations pertinent to meaningful assessment of the effects of tort reform measures.

Attachment B contains information on alternative dispute resolution systems provided by the National Center for State Courts and prejudgment interest information provided by Bob Boerner at NCSL.

Attachment C includes copies of agency memoranda related to the tort reform/liability insurance issue. Indexes from both the Senate Advisory Council and the House Research Agency have been searched to compile this attachment.

I hope that this information is sufficient for your purposes. If the agency can be of further assistance, please let us know.

Attachments

---

[6]Quoted in Public Citizen, "The Impact of Tort Changes on Insurance Rates," attached.

THE FOLLOWING DOCUMENT HAS

NOT BEEN FILMED BUT IS

AVAILABLE IN THE ORIGINAL

FILE

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

March 15, 1989

MEMORANDUM

TO: Representative Sam Cotten

ATTN: David Rogers

FROM: Patricia Young PY
Legislative Analyst

RE: Hawaii Court Annexed Arbitration Program
Research Request 89.306

You asked this agency to provide a copy of the Hawaii statute which allows for arbitration of personal injury claims. You requested a brief description of the process, as well as contacts in Hawaii for more detailed information.

The Hawaii Court Annexed Arbitration Program (CAP) is an alternative dispute resolution program designed to encourage settlements, to reduce litigants' costs, to expedite processing and resolution, and to reduce civil caseloads in the courts. Originally intended to handle comparatively small and simple personal injury cases, the CAP has expanded to include all tort cases with a probable jury award value of $150,000 or less. The CAP is a mandatory, non-binding program.[1] Litigants may select a private arbitrator, or the arbitration commission administrator will assign one to hear the case and deliver a judgment. A litigant who wishes to appeal a judgment must do so within 20 days of the arbitrator's award. If the court does not alter the award by at least 15 percent in favor of the appealing party, the appealing party is required to pay reasonable costs and fees, costs of jurors, and attorney's fees up to $5,000.

I have attached a copy of the enabling statute and rules, background information on the program, and caseload and result data. Contacts in Hawaii for more information are Ed Aoki, CAP arbitration administrator, at (808) 548-4380; Peter Adler, director of the Program on Alternative Dispute Resolution (ADR), at (808) 548-3080; and Dee Dee Letts, assistant director, at the same number.

I hope this is information useful. Please call if you have any questions or need further information.

Attachment

---

[1]Exemptions from arbitration are considered by the arbitration judge upon request.

ADR TRENDS & ABSTRACTS

From the Hawaii State Judiciary / Program on Alternative Dispute Resolution

Vol 4, No 1 Honolulu, Hawaii Jan/Feb/Mar 1988

C O U R T A N N E X E D A R B I T R A T I O N

I N H A W A I I

A Special Report

As the Program on ADR begins its fourth year of operation, it is fitting that we provide a special report on Hawaii's Court Annexed Arbitration Program (CAP). This program was - and still is - one of the most important alternative dispute resolution experiments underway in the state. Because of its unique goal of reducing litigant costs and its high gatekeeping amount of $150,000, the program is also of great interest nationally. We continue to receive many inquiries from other state and federal court jurisdictions asking how the program is progressing. We know this is also of great interest locally because of continuing debates over tort and insurance reform. In addition to our regular mailing list, therefore, we are sending copies of this issue to the 500+ attorneys in Hawaii who serve as CAP Arbitrators and to an expanded list of judges, court administrators, and elected officials. We look forward to any comments readers might have to offer and bringing you additional updates in the future. Peter S. Adler, Director, Program on ADR

Peter S. Adler
Director
Program on A.D.R.

CONTENTS

I. WHY COURTS ADOPT ARBITRATION

(The following article has been excerpted from COURT ORDERED ARBITRATION: A BRIEFING FILE published by the National Institute for Dispute Resolution in June, 1985)

Backlogs undermine faith in the efficiency of the courts. Plaintiffs in law suits are uncertain when their cases will be resolved. Defendants face prolonged uncertainty before knowing what, if anything, they will have to pay in damages. Both sides face mounting legal costs if their cases drag on. Some observers believe that delays harden the positions of litigants, encourage plaintiffs to hope for large settlements, and force cases into trials that are expensive for both the parties and the public. In sum, prolonged court delays unnecessarily tax both public and private resources and deprive litigants of the timely resolution of disputes which is among the most fundamental obligations of a just society.

Thus, there is a challenge to solve the problem of justice delayed - to adopt a method that has the criteria for offering prompt, relatively inexpensive, less formal and fair resolution of a great many civil court actions, while firmly preserving the procedural and substantive rights of all citizens involved in law suits.

Court-ordered arbitration is one method which, in recent years, has found great favor in meeting these criteria. It interposes mandatory but nonbinding rulings by arbitrators before civil cases may be pressed to trial. The key words are mandatory and nonbinding. In jurisdictions where court-ordered arbitration applies, an arbitrator or arbitrators hear the evidence of selected civil suits in a relatively informal setting with simplified hearing procedures and sometimes, a set time limit. Then they render a decision. That's the mandatory part. If one or more parties to the action refuses to accept the arbitrator's decision, the action then can be pursued through formal litigation. That's the nonbinding part. Citizens do not lose their rights to the full course of litigation if that is what they demand. The opportunity of having one's day in court is preserved, although there are disincentives for rejecting a judgment reached in arbitration and pursuing litigation. For example, a losing party may have to pay the attorney's fees of a courtroom opponent.

The promise of prompt resolution of disputes should not obscure the other benefits of court ordered arbitration. The overhead costs of resolving disputes are usually lower with arbitration than with litigation. The rules and procedures of arbitration are less rigid and formal than those in the courtroom. Arbitration often leaves fewer traces of acrimony among disputants once they have resolved their differences. Court-ordered arbitration, thus, is a beneficial tool for resolving disputes, whether court dockets are crowded or not.

Another important attribute of court-ordered arbitration is flexibility. Beyond these core propositions, programs differ from state to state, for example, in the causes of suits to which court-ordered arbitration may be applied; the ceiling of dollar amounts that can be involved in suits; the selection and payment of arbitrators; the disincentives to pursuing litigation; the level of involvement of the judiciary; or the point in the judicial process at which a case is referred to mandatory arbitration.

Court arbitration is now in operation in more than 20 state and federal jurisdictions. Its potential for reducing caseloads of courts and assuring prompt resolution of many law suits is impressive. Some experts suggest that its widespread adoption could affect more than one half of the nation's total civil caseload.

II. COURT ARBITRATION IN HAWAII

by Peter Adler

In March, 1985 Chief Justice Herman Lum asked Judges Philip Chun and Ronald Moon along with various members of the First Circuit's Civil Rules Committee and the Judiciary's Program on ADR to explore the feasibility of establishing a mandatory, non-binding program of arbitration in Hawaii's State Courts. The initial goals, as charted by the Chief Justice, were to reduce the high cost of going to court for litigants, to speed up case processing for routine personal injury cases, and to help prevent the buildup of civil delays.

This planning group began its investigation and, after 10 months of research and development, inaugurated the start of Hawaii's CAP. As originally conceived, the program was to be created as an experiment and pilot program launched under the Supreme Court's rule-making powers. It would focus only on personal injury cases with a probable jury verdict value of $50,000 or less.

To implement the program, a governing body - the Judicial Arbitration Commission - was established by the Supreme Court and the following members appointed by Chief Justice Lum: Judge Ronald Moon (Chairperson and Arbitration Judge); James E. Duffy, Jr., Esq.; Robert Grantham; Sharon R. Himeno, Esq.; James E. Kawashima, Esq.; Walter S. Kirimitsu, Esq.; Frank Lockwood, Esq.; Christopher P. McKenzie, Esq.; Kenneth Okamoto, Esq.; Gerald Y. Sekiya, Esq.; and Robert S. Toyofuku, Esq. Appointed as Advisors to the Commission were Warren Price III, Esq.; Raymond T. Tam, Esq.; and Dr. Peter S. Adler.

In its earliest form, the CAP was designed to handle comparatively smaller and simpler cases brought into arbitration by either a plaintiff's or defendant's demand. To implement the program, a small staff headed by Arbitration Administrator Edwin Aoki was hired. Office procedures were established and rules and forms were published with the assistance of the Hawaii Law Institute. A panel of approximately 100 pro-bono Arbitrators was selected and trained by the Commission and seminars acquainting Hawaii's practicing lawyers were held. After CAP operations actually commenced in February, 1986, the CAP began processing 15 to 20 cases per month.

In July, 1986 - and as part of its special summer session - the State of Hawaii Legislature passed Act 2 pertaining to tort and insurance reform. This statute gave the CAP a basis in law and mandatorily expanded the program's focus to include all tort cases and not just personal injuries. It also raised the arbitration threshold limit to $150,000 which would theoretically make 80% of all First Circuit tort filings arbitration eligible.

Following the initial passage of Act 2, the Judicial Arbitration Commission studied a variety of ways of implementing the new legislatively imposed limits. Data on the existing arbitration program and on past and prospective civil caseloads were analyzed and court arbitration programs in other jurisdictions were contacted for advice. What emerged from this second round of planning was the CAP's present features which are unique in the United States. These features include:

- "Gatekeeping" procedures that presume all cases to be arbitration eligible and that put the onus of seeking exemptions from arbitration on litigants.

- A joint (arbitrator and court) case management model that empowers arbitrators to control discovery.

- A required pre-hearing conference 30 days after an arbitrator has been selected or assigned.

- An option for litigants to select and pay for their own arbitrators rather than using the court's panel.

- Continued emphasis on systematic experimentation and evaluation.

On May 1, 1987, the above features, as embodied in amended Rule 34 of the Hawaii Rules of Court, took effect in the First Circuit. In August, 1987 the use of a formal "comparison" group for research purposes was inaugurated. This research is long-term and will continue under a three-year contract with the University of Hawaii. In October and November, 1987 the arbitration program was expanded to include the Second, Third, and Fifth Circuits making Hawaii the first state in the nation to implement court-ordered arbitration on a state-wide basis.

III. HAWAII'S COURT ARBITRATION RULES: A SYNOPSIS

by Pamela Gring

Rule 1. The Court Annexed Arbitration Program

A mandatory, non-binding program for certain civil cases.

Rule 2. Intent of Program and Application of Rules

Purpose is to obtain prompt, equitable resolution of civil matters designated by the Judicial Arbitration Commission. Not applicable to other forms of arbitration (e.g. private arbitration agreements, arbitration under existing statutes). The arbitration rules are intended to be discretionary and informal.

Rule 3. The Arbitration Judge

A Circuit Court judge appointed by the Chief Justice shall determine all disputed issues under the Rules.

Rule 4. The Judicial Arbitration Commission

Established by the Chief Justice to oversee the Arbitration program. It selects and trains arbitrators; hires, supervises and evaluates the staff; and promulgates rules necessary to carry out its responsibilities.

Rule 5. The Arbitration Administrator

Appointed by the Commission and is responsible for the operation and management of the Program.

Rule 6. Matters Subject to Arbitration

Tort cases with a probable jury award value of $150,000 or less may be accepted at the discretion of the Commission. Other civil case may be submitted if parties agree and the Arbitration Judge approves. Parties can agree to be bound by any arbitration ruling. The Judge may accept or remove an action for good cause.

Rule 7. Relationship to Circuit Court Jurisdiction and Rules; Form of Documents

Cases within the jurisdiction of the Circuit Court remain so for all phases of the proceedings. Except for authority expressly delegated to others, issues will be determined by the responsible Circuit Court. Where applicable, rules of the Circuit Court and civil procedure apply. All parties in an action submitted to arbitration are parties to the arbitration unless dismissed by the Judge.

Rule 8. Determination of Arbitrability

All qualifying tort cases are automatically in the Program. Exemptions from arbitration will be considered if the request is supported by adequate evidence. A case may be removed or readmitted to the Program with proper factual support. The Arbitration Judge has final say on

arbitrability. The Judge has discretion to impose reasonable costs and attorney's fees against parties who unreasonably try to remove a case from the Program.

Rule 9. Assignment to Arbitrator

After each party strikes 2 out of 5 possible arbitrators, the Administrator appoints an arbitrator from the remaining list. When parties are added after arbitrators are chosen, objections may be made by those parties. Parties may select private arbitrators.

Rule 10. Qualifications of Arbitrators

The Commission maintains a panel of arbitrators who have completed an orientation and training program. Issues concerning disqualification are referred to the Commission for final, non-reviewable determination.

Rule 11. Authority of Arbitrators

Arbitrators have general powers of a court. A challenge to an arbitrator's authority will be made to the Administrator, who makes a ruling in due course.

Rule 12. Stipulations

Stipulations must be in writing, signed by the counsel or parties, and filed with the arbitrator.

Rule 13. Restrictions on Communications

Individual parties may not discuss the case with the arbitrator unless other parties are notified.

Rule 14. Discovery

The extent of discovery is governed by the arbitrator. HRCP regulates the type of discovery, which may be modified by the arbitrator.

Rule 15. Scheduling of Hearings; Pre-hearing Conferences

Arbitration must be completed within 9 months from the date of service to the last defendant. The arbitrator must hold a pre-hearing conference within 30 days of case assignment.

Rule 16. Pre-hearing Statement

Thirty days before the arbitration hearing the parties must submit a statement disclosing probable evidence and witnesses to be uses.

Rule 17. Conduct of Hearing

The arbitrator has discretion over conduct of the hearing. No transcript or recording is permitted.

Rule 18. Arbitration in the Absence of a Party

Arbitration may proceed when a duly notified party is not present or fails to obtain a continuance.

Rule 19. Form and Content of Award

Arbitrator's awards must be in writing, signed and on proper forms. Findings of Fact and Conclusions of Law are not required.

Rule 20. Filing of Award

Awards must be filed with the Administrator within 7 days of the conclusion of arbitration or 30 days after receiving final memoranda of counsel.

Rule 21. Judgment on Award

If no party files a written Notice of Appeal and Request for Trial *De Novo* within 20 days, the award is considered as a final judgment and is not appealable.

Rule 22. Request for Trial *De Novo*

A party may file a request for trial *de novo* within 20 days, after which the case will be set for trial.

Rule 23. Procedures at Trial *De Novo*

An arbitration award will be sealed if a trial *de novo* is requested. Juries will not be informed of arbitration proceedings.

Rule 24. Scheduling of the Trial *De Novo*

Cases transferred to the Program maintain approximately the same place as they would on the civil trial docket.

Rule 25. The Prevailing Party in the Trial *De Novo*; Costs

To prevail the party appealing must improve their award by 15% or more.

Rule 26. Sanctions for Failing to Prevail in the Trial *De Novo*

Sanctions include: reasonable costs and fees, costs of jurors, and attorney's fees ($5,000 or less).

Rule 27. Effective Date

Rules apply to all 1st Circuit cases filed after February 15, 1986. The Program became effective in the 2nd Circuit as of October 1, 1987, in the 3rd Circuit as of October 15, 1987, and in the 5th Circuit as of November 1, 1987.

IV. CASELOAD REPORT: FEBRUARY, 1986 TO DECEMBER, 1987

by Edwin S. Aoki

This progress report covers First Circuit CAP activity from the program's start-up on February 15, 1986 through December 31, 1987. It reports the status of nearly 1,000 cases. In the beginning - what we call Phase I - only personal injury cases with a probable jury verdict value of $50,000 or less were eligible for the program. The arbitration program was, de facto, "voluntary" because cases could only enter if one of the parties demanded it.

On May 1, 1987 major changes were made to the CAP as a result of a law passed by the Special Legislative Session on Tort Reform in June, 1987. These changes (1) expanded the jurisdictional amount from $50,000 to $150,000 and made the arbitration more "mandatory". All tort cases were now viewed as arbitration eligible and automatically "in" the program unless a plaintiff or defendant could demonstrate that the case had a value in excess of the jurisdiction and should be out.

Phase I (Cases filed February 15, 1986 to April 30, 1987)

In Phase I, the CAP admitted a total of 278 cases. 241 were successfully terminated. By terminated, we mean they were either settled, dismissed, or an award was rendered after an arbitration hearing and the case did not go to trial. A few cases were either removed from the Program because the value of the case had increased from the date of entry or were removed to a Federal Court.

Of the 241 cases that were terminated, 166 (69%) were concluded by the way of settlement by the parties, usually with the assistance of an arbitrator but prior to a formal arbitration hearing. Cases terminated by way of settlement took an average of 207 days. 53% of all cases took longer and 47% took less time. The average amount of settlement of these cases was $20,863. The total of all settlements was $3,400,792.

60 cases were arbitrated to the point of award. Cases which went to an arbitration award took an average of 258 days. 42% of all these cases took longer and 58% took less time. The average arbitration award was $24,016. The total amount of awards filed was $1,056,704. The highest individual award to a plaintiff was $93,103. The lowest was $2,926. 9 awards of zero ($0) were made.

There are currently 37 cases from Phase I pending.

Phase II (Cases filed May 1, 1987 to December 31, 1987)

Since Phase II began, the CAP has experienced a dramatic increase in the number of cases entering the program. Part of this is due to the raise in jurisdictional limit and part of it to the CAP's "gatekeeping" mechanisms of presuming cases eligible. During this time, the CAP received 668 cases or an average of 84 cases per month.

Of these 668 cases, 151 (23%) were terminated either by way of a settlement, award or dismissal. The low termination rate reflects the fact that many of these cases are "fresh", that is, they have only recently entered the arbitration system. Many of these cases are awaiting assignment of an arbitrator which normally takes 60 days from the date a complaint is filed, served, and answered.

Of the 151 cases that were terminated, 63 (42%) were terminated by way of a settlement. The average time to a settlement was 102 days with 45% of these cases taking longer and 55% taking less time. The average settlement amount of these cases was $29,842. The total amount of all settlements was $1,880,108.

Of these Phase II cases that have terminated, seven were by awards. The average time involved was 142 days with 45% taking longer and 55% taking less time. The average amount of these awards was $53,962. The highest award was $131,286. and the lowest was $9,186. Thus far in Phase II, there have been no zero ($0) awards. There are currently 517 pending cases under the CAP's Phase II procedures.

Summary: All Cases

Total Cases Received in the CAP	946
Total Cases Terminated	392
Total Pending Cases	554
Total Amount of All Settlements	$5,280,900
Average Amount of All Settlements	$23,366
Average Lapsed Time for All Settlements	178 days
Total Amount of All Awards	$1,434,442
Average Amount of All Awards	$28,126
Average Lapsed Time for All Awards	245 days
Number of Awards	67
Number of Trial de Novo Requests	23
Number of Appeals that have Gone to Trial	0

V. RESEARCH AND EVALUATION: PRELIMINARY FINDINGS

by John Barkai and Gene Kassebaum

A team of researchers from the University of Hawaii that includes ourselves and others is currently studying and evaluating Hawaii's Court Arbitration Program (CAP). Hawaii's CAP has a number of unique features including the highest dollar ceiling in the country ($150,000), early intervention in cases, and strong limitations on discovery as a way of reducing litigant costs. Because of these features, the program and its evaluation is of great interest nationally.

The research project is located at Department of Sociology, Porteus Hall 237, University of Hawaii at Manoa, Honolulu, Hawaii 96822. It is being funded by a three-year contract from the Judiciary and in-kind contributions from the Program for Conflict Resolution, the Sociology Department, and the William S. Richardson School of Law, all of the University of Hawaii at Manoa. The principal researchers are Sociology Professors Gene Kassebaum, David Chandler, and Law Professor John Barkai.

Our study of the CAP is really a study of two groups of cases: those assigned to the arbitration program and a "comparison group" of cases assigned to regular litigation. All tort cases are assigned to CAP when they are filed. Eligible cases are then assigned to either arbitration or litigation. CAP currently assigns, by random numbers, one-half of the cases to arbitration and one-half to litigation.

A comparison group of cases is necessary to measure the effects of arbitration against cases in regular litigation. It is also needed in order to develop an adequate database on cases in ordinary litigation. Current court records are only partially useful in this regard because they are geared to tracking cases but not to evaluating alternatives.

Data collected for the evaluation are being kept in the strictest confidence. Only aggregated information will be released, and no information about any specific case will be made public. Evaluation data will be collected from 1) court and arbitration records, 2) surveys sent to lawyers and arbitrators for cases both in arbitration and regular litigation, and 3) inquiries to insurance companies, discussions with judiciary employees, and interviews with lawyers.

The Survey of Closed Cases from Phase I:

It must be strongly emphasized that this brief article only reports the findings of the first surveys of arbitration cases in Phase I ($50,000) program. Phase II ($150,000) began in May, 1987. Although some Phase II cases have terminated, no Phase II case has reached the nine month deadline. Consequently, not enough cases have terminated to provide any meaningful data on Phase II. Data which will be collected later in Phase II may be similar to or different from the data reported here.

In our current work, surveys were sent to all award cases (over-sampled because they have more information) and one out of four settlements in Phase I. Approximately 300 surveys were sent to 56 awards and 170 settlements. These cases represent all the cases that had terminated at the time the surveys were distributed. 60% or 200 surveys were returned (66 plaintiff, 66 defense, and

and 68 arbitrators). The information presented here is thus drawn from 186 usable survey forms (61 plaintiff, 64 defense, and 61 arbitrators). Approximately one-half of the sample comes from award cases and one-half comes from other cases. To give a more accurate view of the program, therefore, the tabulations are weighted according to standard statistical methods to produce data in proportion to the actual number of cases terminating in settlements and in awards.

Findings on Phase I ($50,000) Cases:

Mode of Termination and Arbitrator Involvement. Approximately 20% of the cases that enter the program go all the way to an arbitration award and 80% settle before award. Arbitrators are actively involved in half the cases. 28% settle with the arbitrator's assistance and 22% receive an arbitrators award. In the other half of the cases there is either no arbitrator appointed or no work for the arbitrator. 20% of all cases settled before an arbitrator was involved, and 30% settled after the arbitrator was involved, but without the arbitrators assistance. The award cases can be appealed to a trial de novo, but so far appeals have either settled or are still pending.

Lawyer and Client Satisfaction. Overall, 76% of lawyers were satisfied with the way their case was handled in the program, but there was more criticism and dissatisfaction from defense lawyers than from plaintiff lawyers. Nearly all (84%) plaintiff lawyers were satisfied with CAP in the particular case surveyed; 71% of defense lawyers reported being satisfied. Not surprisingly, satisfaction also differed depending on whether the case settled or went to award. 100% of plaintiff lawyers and 90% of defense lawyers whose cases settled were satisfied; 72% of plaintiff lawyers and 38% of defense lawyers whose cases went to an award were satisfied.

Lawyer satisfaction is highly correlated to the lawyer's perception of whether the award was similar to what the lawyer thought might be the trial verdict. When cases proceeded to awards, more plaintiff lawyers (64%) than defense lawyers (44%) thought the awards were similar to what the verdict would have been at trial. The assumption that the case would have gone to trial is quite hypothetical. In Hawaii only three percent of personal injury cases are tried. 87% of plaintiff lawyers who saw the awards as similar to verdicts were satisfied with the arbitration program; only 40% who saw the awards as different from trial were satisfied. Defense lawyers had very similar impressions. 82% of defense lawyers who saw the awards as similar to verdicts were satisfied with the arbitration program; only 36% who saw the awards as different from trial were satisfied.

Interestingly, both plaintiff and defense counsel estimated 74% of their clients were satisfied and both estimated that their clients were 88% satisfied with settlements and 8% dissatisfied. Differences were much dramatic for awards. Plaintiff lawyers estimated that 72% of their clients were satisfied and 28% dissatisfied with the award. However, defense lawyers estimated that 52% of their clients were satisfied and 48% dissatisfied with the award. We would like to know how satisfied the insurance companies are. They are the true clients for most defense lawyers.

Speed of Disposition. Overall, 72% of the lawyers surveyed believed that if their case had not been in CAP it would have taken longer to terminate. The views of plaintiff and defense lawyers differed again. 87% of plaintiff lawyers thought the case would have taken longer if it was not in the program; 56% of defense attorneys thought it would have taken longer.

Discovery. A major program goal is to reduce expense for litigants by reducing discovery. Discovery did appear to be reduced. 83% of plaintiff lawyers, 67% of defense lawyers, and 60% of arbitrators reported discovery reductions. Discovery can be reduced either because the lawyers agree to limit discovery or because the arbitrator denies requests for discovery. Arbitrators reported that they only denied discovery requests in 9% of cases, which suggests that discovery is being reduced mainly through voluntary compliance by the lawyers. It is important to note that only 1% of plaintiff lawyers and 11% of defense lawyers reported that discovery reduction affected the outcome of the case.

Discovery costs also were examined. For plaintiff lawyers, discovery was less than $100 in 31% of the cases and less than $400 in 68% of the cases. Only 7% of plaintiff lawyers reported discovery expenses over $1000. For defense lawyers, discovery was less than $100 in 25% of the cases and less than $400 in 57% of the cases. Only 8% of defense lawyers reported discovery expenses over $1000. At this time we cannot yet estimate how much the program can save in discovery costs although insurance companies already may know the answer. We will not know the discovery costs for ordinary litigation until the comparison cases are surveyed. However, 81% of plaintiff lawyers and 54% of defense lawyers reported that the case would have cost more if it had not been in CAP.

Summary of Findings on Phase I ($50,000) Cases:

Satisfaction. Generally, lawyers were satisfied with the program, although more plaintiff lawyers were satisfied than were defense lawyers. As might be expected, more lawyers were satisfied with their voluntary settlements than with the awards by the arbitrators.

Speed of Disposition. Most plaintiff lawyers believed that if their case had not been in the arbitration program it would have taken longer to terminate. Only about half of the defense lawyers believed that the arbitration program was faster than ordinary litigation.

Discovery and Cost Reduction. Plaintiff lawyers, defense lawyers, and arbitrators, all reported that the program reduced discovery and that discovery reduction did not affect case outcome. Most plaintiff lawyers believed that if their case had not been in CAP it would have cost more to terminate. Only about half of the defense lawyers believed that the arbitration program was less costly than ordinary litigation.

In keeping with the scope and work of our study, we will continue to evaluate the development and impact of Hawaii's CAP. Future reports will include cases that entered the program after May 1, 1987.

VI. AKAMA v. TSUDA: A CASE STUDY

by Cynthia Lee

(The following story chronicles an actual case handled in the CAP. Information about this case was received from attorneys Wayne Sakai, Paul DiBianco, and Mark Desmarais. Only the names of the plaintiff and defendant have been fictionalized.)

The Facts:

On March 17, 1984, Sylvia Akama was driving on Waialae Avenue near Kahala Mall Shopping Center. Suddenly the car in front turned up a ramp into the shopping center. Sylvia braked and then stopped to prevent hitting the car in front. Samuel Tsuda, who was directly behind Sylvia, was not as lucky. He ended up running into her and causing one of the most common kinds of auto accidents: a rear end collision.

Two years later on April 12, 1986, after consulting various doctors and chiropractors, Sylvia Akama had her attorney, Paul DiBianco, file a Complaint against Samuel Tsuda. The allegations included among other things "severe and lasting physical injuries", "great pain of body and mind", and "loss of income". Samuel Tsuda's attorney, Mark Desmarais, answered this complaint on May 14, 1986.

The Case In Arbitration:

On July 18, 1986, Akama v. Tsuda entered into the Court Arbitration Program (CAP). In effect, the two parties agreed to put their case on a two-track system that continued their circuit court case but also sought to resolve matters without the time, expense and complications of a full circuit court trial. Since court arbitration is non-binding, the parties did not exclude the possibility of a trial. That right was retained if either side were dissatisfied with the results of arbitration.

On August 12, 1986, attorney Wayne Sakai was selected and confirmed as Arbitrator of the case. His deadline for filing an award was April 18, 1987, nine months after the agreement to enter into arbitration was filed. As required, Sakai sent a letter to both parties to schedule a pre-hearing conference within thirty days after his appointment. In his letter, he asked both attorneys to submit, two days before the conference, written statements of facts and issues, and a summary of discovery items.

According to Arbitrator Sakai, the liability of Samuel Tsuda was not a major issue. The major point of the case was the extent of Sylvia Akama's injuries and how much she should be awarded in compensation. Thus, much of the discovery allowed by Sakai involved medical examinations by both parties' doctors and submittal of these doctor's reports to Sakai. These examinations and reports were considered important enough that the case was extended by 60 days to June 18, 1987 to allow for a test that defendant Tsuda's doctor thought was necessary.

As the case proceeded, Arbitrator Sakai encouraged the two parties and their attorneys to reach a settlement. Whenever possible, he suggested ways to economize and speed up the process of resolution. He did not, however, get directly involved in negotiations because he felt that the two parties were too far apart in their figures. Since he might eventually end up hearing the case, he did not

actually conduct mediated settlement discussions.

After several pre-hearing conferences, the case did go to a formal arbitration hearing. The hearing was like a trial, with direct and cross-examination of witnesses and parties, and the introduction of evidence. On June 18, 1987, exactly 11 months after the Akama v. Tsuda case entered into arbitration, Akama was awarded special damages of $5,902.80 and general damages of $25,000. Defendant Tsuda had 20 days to appeal this decision and to ask for a jury trial but, declined to do so. According to his attorney, Mark Desmarais, Tsuda did not want to risk the sanctions of having to pay costs and fees, attorney's fees of up $5,000, and the cost of jurors if he could not better the jury trial outcome by 15%.

Reflections by the Attorneys:

The three attorneys in this case, Arbitrator Wayne Sakai, Plaintiff's attorney, Paul DiBianco, and Defendant's Attorney, Mark Desmarais, have all performed the roles of Arbitrator, defense attorney, and plaintiff's attorney. They felt that the Arbitration Program was, in general, accomplishing its goals of speeding up the process of civil litigation and doing it more economically and with results fairly close to circuit court awards.

Paul DiBianco summarized the assessments of all three attorneys involved in this case:

1) The process was faster so that the parties had a resolution of the dispute sooner. They didn't have to remain in litigation and prolong their anxiety over what the outcome might be.

2) The simpler procedures allowed for more informal discovery procedures and cut down the costs and fees, particularly those related to experts.

3) The informal proceedings allowed both the parties, and their witnesses, to feel more comfortable, especially since Arbitrator Wayne Sakai did not wear a black robe.

From Defendant's point of view, Samuel Tsuda and the insurance company expressed satisfaction with the handling of this case by the CAP. Samuel Tsuda was happy that the process was faster and simpler and the insurance company was pleased that costs were lower.

VII. LEADERSHIP AND MANAGEMENT

Judicial Arbitration Commission

Judge Ronald T.Y. Moon, First Circuit, Chairperson
Judge Boyd P. Mossman, Second Circuit
Judge Shunichi Kimura, Third Circuit
Judge Kei Hirano, Fifth Circuit
James E. Duffy, Jr.
Robert Grantham
Sharon R. Himeno
James Kawashima
Walter S. Kirimitsu
Frank T. Lockwood
Christopher P. McKenzie
Kenneth T. Okamoto
Gerald Y. Sekiya
Robert S. Toyofuku

Advisors to the Commission:

Peter S. Adler
Warren Price, III
Raymond J. Tam

Neighbor Island Arbitration Committees

Hawaii

Lawrence W. Cohn
Kenneth A. Ross
Diana L. Van De Car
Andrew P. Wilson

Kauai

Kurt R. Bosshard
Daryl Y. Dobashi
Raymond G. Duvauchelle
Calvin K. Murashige

Maui

James Krueger
B. Martin Luna
Robert M. Monden
Shackley Raffetto

Arbitration Administrators

Hawaii - Eleanor Mirikitani
Kauai - Steven S. Okihara
Maui - Robert M. Monden
Oahu - Edwin S. Aoki

VIII. FIRST CIRCUIT ARBITRATORS

Abbott, Ethan D.B.
Abe, Fred Y.
Abe, Michael K.
Agena, Melvin Y.
Agmata, Victor Jr.
Ahu, Elwin P.
Akana, Dudley G.
Akiba, Lorraine H.
Albu, Ronald
Alcantara, Leonard F.
Alexander-Taylor, Amy
Alston, Paul
Aluli, Yuklin
Aoki, Paul S.
Ashford, George W. Jr.
Au, Ronald G.S.
Ayabe, Sidney K.
Bain, Elton J.
Bays, A. Bernard
Bell, Roy J.
Bendet, Edward R.
Bernstein, Mark D.
Bettencourt, David
Bigelow, Bruce C.
Blauenstein, Mark P.
Bocken, R. Charles
Bogetto, Philip D.
Border, Patrick W.
Bordner, William A.
Brandt, George W.
Brodar, Sherry P.
Burke, Edmund
Carney, Thomas I. Jr.
Carroll, Benjamin L. III
Chang, Gary W.B.
Chang, Howard T.
Chang, Kevin S.C.
Chang, Louis L.C.
Chang, Nelson S.W.
Chang, Robert H.K.
Chang, Roy K.S.
Char, Peter C.P.
Chee, Kevin S.W.
Ching, Randall Y.C.
Ching, Wesley H.H.
Choi, Cedric
Chong, Robert A.
Chow, Steven J.T.
Choy, Milsen M.K.
Chu, Harold
Chuck, Gregory W.
Chun, Jerrold Y.
Chun, Richard C.F.
Chun-Hoon, Lowell K.Y.
Chung, Randall Y.S.
Chung, Steven K.S.
Cook, Thomas E.
Corpe, Randolph L.
Cosgrove, Gail Y.
Cowan, Stuart M.
Crumpton, Charles W.
Cuskaden, Everett
Davis, Mark S.
Davis, Walter
Desmarais, Mark B.
Devens, Paul
Dezzani, David J.
Dibianco, Paul E.
Duffy, James E. Jr.
Durbin, Paul J.
Earle, Jacqueline L.S.
Edmunds, John S.
Eggers, William J. III
Eichor, Rick J.
Englehart, C. Andrew
Estes, James T.
Ezra, David A.
Fairbanks, David L.
Fell, Charles F.
Fenton, Ashley K.
Ferm, Dennis K.
Ferrara, Christopher D.
Fong, Peter
Fong, Valerie W.H.
Fong, Wesley F.
Fonseca, Jurel D.
Fray, Philip S.
Fried, L. Richard Jr.
Fritz, Collin M.
Furusho, Craig K.
Furutani, Miles E.
Futa, Janice T.
Garcia, Max N.
Gibson, Michael W.
Gillardy, William H. Jr.
Gilwerg, Larry
Goslin, Mal
Greenstein, Howard
Gouveia, H. William Jr.
Greaney, H. Burnham
Gronau, Kurt A.
Guttman, Steven
Hall, David W.
Hara, C. Michael
Hayashi, Leslie Ann
Hee, Alfred H.H.
Hee, Sherman S.
Henderson, Harvey E. Jr.
Hiatt, Jerry
Hiatt, Lynn
Higa, Warren H.
Higashi, Jeffrey Y.
Himeno, Sharon R.
Himmelman, John D.
Hirai, Colleen K.
Hirai, Richard H.
Hiramatsu, Beverly L.K.
Hirono, Mazie K.
Hisaka, Steven
Hoe, Allen K.
Hoke, Richard L.
Hong, Michael D.
Horie, Walter K.
Howell, A. Peter
Hughes, Roy F.
Hulbert, Neil P.
Hunt, William S.
Ichida, Wesley W.
Ikeda, Walter H.
Ikeda, Wesley H.
Ikenara, Archie T.
Ikei, Clayton C.
Indie, Michael T.
Ing, Dennis A.
Ishida, Lincoln J.
Ito, Alvin T.
Ito, Ernest A.
Iwanaga, Michiro
Izumi, Francis M.
Jaffe, Edward A.
Jervis, Gerard Aulama
Jim On, Shelton G.W.
Johnson, Solomon E.
Johnston, Mary Blaine
Jones, Ward D.
Kakazu, Cheryl K.
Kaneko, Stuart A.
Kanecaka, Stanley T.
Kaolulo, Archibald C.K.
Kawachika, James A.
Kawashima, James
Kekina, Wayne
Kessner, Robert C.
Kidani, Grant K.
Kim, Alexander Y.H.
Kim, Bruce B.
Kim, Doway H. Jr.
Kim, Michael T.I.
Kimura, George Y.
Kimura, Glenn I.
King, Adrienne S.
King, James A.
King, Samuel P. Jr.
Kirimitsu, Walter
Kitamura, Henry T.
Kleintop, Charles
Kobayashi, Bert T.
Kodani, Roy M.
Komatsubara, Kerry M.
Komiji, John T.
Kondo, Wray
Kotake, Marvyn M.
Koyanagi, Faye M.
Kugisaki, Craig T.
Kuniyuki, Ken T.
Kupchak, Kenneth R.
Kurren, Barry M.
Kuwasaki, Leroy T. Jr.
Lacy, John R.
LaFountaine, Ralph R.
Lau, Jeffrey D.
Lau, Kenneth
Lau, Laurence K.
Lawhn, James H.
Leavitt, James T. Jr.
Lebb, Edward R.
Lee, Dale W.
Lee, Douglas T.Y.
Lee, Stephen W.H.A.
Leong, Robin J.
Lewis, Stanley F.
Levinson, Steven H.
Libkuman, Ronald D.
Lilly, Michael A.
Lim, Kwan Ki
Lo, David
Lockwood, Frank
Lockwood, John A.
Loo, George
Louie, David M.
Love, Chad P.
Low, Donald H.C.
Lum, Leslie W.S.
MacDonald, Stephen R.
Maciszewski, Felix A.
MacLaren, Alexander T.
Mah, Stanley S.
Marrack, Alexander C.
Marsh, Michael R.
Masutani, Allen I.
Masui, Stanford H.
Matsui, Clyde W.M.
Matsumoto, Colbert
Matsumoto, Robert K.
McCarthy, Michael P.
McKenzie, Christopher
McPheeters, Howard
Marco, Robert K.
Miho, Katsugo
Miller, William S.
Mirikitani, Winston
Miwa, Colin O.
Miyagi, Malvyn M.
Moore, Willson C.
Morikawa, Randall I.
Morry, G. Richard
Morse, Jack
Moseley, Roger C.
Mui, Thomas L.
Mukaida, Wayne H.
Myrdal, John R.
Nagaue, Nelson T.
Nagle, James F.
Nagle, William J. III
Nakamoto, Francis M.
Nakamura, Hideki
Nakamura, Kenneth H.
Nakamura, Lee T.
Nakamura, Richard F.
Nakamura, Yoshiro
Nakashima, David A.
Nakashima, Steven M.
Nakayama, Paula N.
Nasser, Wayne
Ng, Peter P.J.
Nip, Renton
Nip, Robert L.S.
Nishida, Rodney S.
Nishimoto, John S.
Nishimura, Donald S.
Noguchi, George K.
O'Brien, Francis T.
O'Connor, Michael P.
Okamoto, Kenneth
Okimoto, Blake T.
Oliver, Jason F.
Ono, Andrew S.
Ono, Jeffrey T.
Ortiz, Jonathan L.
Oshima, Leighton K.

Pablo, Christopher
Pacarro, Clarence A.
Painter, Enver W. Jr.
Park, Arthur Y.
Park, Corey
Park, Patricia K.
Parsons, Wayne D.
Paul, James T.
Pavey, Judith Ann
Perkin, John F.
Perry, Madelyn L.
Playdon, George W.
Pong, Winfred K.T.
Portnoy, Jeffrey
Potts, Dennis W.
Price, Warren III
Rau, Robert E.
Richards, Robert P.
Ripley, Arthur Jr.
Robbins, Kenneth S.
Robinson, David M.
Rosca, Arthur P.
Roney, John A.
Ryan, Joseph A.
Sakai, Wayne M.
Sakuda, Bert S.
Sakurai, Colleen H.
Schneider, Joseph
Schulmeister, David
Schutter, David C.
Sekiya, Gerald Y.
Shaughnessy, Patricia L.
Shigemura, Gary Y.
Shinsato, Randal I.
Sia, Jeffrey H.K.
Slaton, Randolph R.
Snyder, Burt L.
Stone, James J.
Stone, Peter T.
Street, J. Stephen
Stubenburg, James A.
Sugimoto, Brian D.
Sumida, Kevin P.H.
Sutton, Richard C. Jr.
Suzuki, Norman
Tam, Raymond J.
Taylor, Jeffrey M.
Teramae, Janice E.
Tharp, James W.
Thomas, John D. Jr.
Thomas, Mark R.
Toyioka, Leslie C.
Tom, Herbert K.
Tom, Michael D.
Tom, Stephen D.
Tomar, Paul A.
Toyofuku, Robert S.
Trenker, Steven J.
Tsukiyama, Tad T.
Tumacder, John
Turbin, Richard
Turk, David L.
Ukishima, Daniel S.
Van Etten, Alan
Wai, Louis K.
Walker, Susan P.
Watson, Kali K.
Watts, Thomas
Weinberg, Jan
White, Emmet
Williams, John R.
Wilson, Michael D.
Winegar, Cynthia
Witherwax, Charles H.
Wolff, Peter C. Jr.
Wong, Henry W.C.
Wong, John C.
Wong, Michael J.Y.
Wong, Sidney J.Y.
Worth, Edgar R.
Yamamoto, Myles T.
Yamamura, Paul T.
Yamane, Ernest Y.
Yano, Francis H.
Yano, Vincent H.
Yap, Frank K.L. Jr.
Yempuku, Roy Y.
Yomono, Brian K.
Yoshida, Gerald C.
Young, Gregg H.
Yust, Jennifer M.

IX. SECOND, THIRD, AND FIFTH CIRCUIT ARBITRATORS

Second Circuit

Albrechtson, Al
Bana, Artemio C.
Brumbaugh, James P.
Callahan, Michael J.
Cardoza, Joseph E.
Chesburn, Lowell
Clair, John G. Jr.
Cole, Thomas K.
D'enbeau, Madelyn S.
Dombroski, James M.
Fleming, William L.
Foster-Au, Renate
Fukuoka, Ken R.
Fukushima, Howard M.
Garcia, Stephen G.
Goldsmith, Stephen E.
Hall, Dick J.
Haywood, Guy A.
Higa, Kase
Ho, Diane
Kohna, William L.
Koller, Lillian B.
Langa, Senford J.
Leuteneker, Tom C.
Luna, B. Martin
MacDonald, Barclay E.
Mason, Edward F.
McNulty, Deborah
McNulty, Tim
Nakamura, Craig G.
Nakamura, David H.
Niles, Dennis J.
Ogle, William F.
Priest, Richard A. Jr.
Ramil, Antonio V.
Ranken, Anthony L.
Robert, Gary
Rowland, Robert E.
Shimoda, Walter
Takaouki, Anne M.
Takayesu, James B.
Tam, John E.
Tateiani, Michael K.
Tangan, Davelynn M.
Thomas, Jack T.
Usoka, Meyer M.
Usoka, Paul M.
Walton, Everett

Third Circuit

Altman, Gary
Amano, Donald M.
Amano, Riki May
Bartsch, Richard P.
Bathea, Robert E.
Brown, Karen Hayun
Burgess, John M.A.
Carlsmith, Donn W.
Chock, Nolan K.C.
Choi, Jeffrey
Chong, Clayton E.
Chong, Curtis E.
Choy, Duane D.
Christensen, Steven K.
Clay, James C.
Cohn, Lawrence W.
Cook, Valra A.
Cornell, Craig S.
Cox, Victor M.
Crudele, Robert J.
Dabney, Michael
deSilva, Tim E.
Dixon, Steven B.
Dod, Nelson K.
Fagundes, Joseph M. III
Fukuhara, Calvin J.
Gaudin, Ben M.
Gallup, Wallace M. Jr.
Giannini, Frederick D.O.
Halsted, Douglas L.
Hanohano, Peter
Hara, Gilbert K.
Hara, Glenn G.
Hara, Michael E.
Hasegawa, Geraldine N.
Hasegawa, Raymond K.
Hastings, Robert W. II
Henricks, Arne T.
Ibarra, Ronald
Ing, Wendell Y.Y.
Ireijo, James S.
Ishado, Lester J.
Ishida, Richard T.
Iwashita, Andrew S.
Jolly, William E.
Kimura, Glenn N.
Kimura, Jay T.
Kinoshi, Keigo
Kitaoka, Carol S.W.
Kunimura, Ruth A.
Kuahi, Herbert K.
Lau, Robert I.W.
Lee, Anson K.
Leitel, Ira
Leithead, Arthur S.
Lenell, Meredith
Lim, Steven
Love, Colin L.
Lui-Kwan, Timothy
Martin, Donald K.
Marx, Robert P.
Matsukawa, Michael J.
McCarthy, William J. Jr.
McIntosh, James L.
Medeiros, Michael J.
Menezes, Stephen J.
Metcalf, Wayne C. III
Meyer, Lionel D.
Miller, Frank L. IV
Moore, Michael W.
Nakamoto, Roy A.
Nakamura, Greg K.
Narimatsu, Curtis T.
Nishimura, Dennis D.
Oda, Stuart M.
Okamoto, Alan M.
Okura, Sanford K.
Olson, John L.
O'Toole, Patricia K.
Peterson, Richard
Pinao, Noralynne K.
Quitiquit, Sylvester V.
Randers, Arlene G.
Roehrig, Christopher J.
Roehrig, Stanley H.
Russell, William J.
Ross, Kenneth A.
Schulze, Richard P.
Schutte, Sandra E. Pechter
Seiter, Kevin A.
Shumaker, Terrence
Sogi, J. James
Tabamine, Dwight
Takase, Gerald A.
Tretheway, Richard
Triantos, Robert D.
Tully, Robert B.
Van De Car, Diana L.
Van De Car, Lloyd
Van Pernis, Mark
Vitousek, Roy A. III
Wagner, John A.
Wallen, Radcliffe
Wessel, Norman A.
Wilson, Andrew P.
Yamada, Katsuya
Yamada-Ross, Dale
Yamamoto, Jerel I.
Yamashiro, Stephen K.
Yoshioka, Terence T.
Yah, Thomas L.H.
Yuda, George S.
Yuen, Christopher J.
Zola, Michael S.

Fifth Circuit

Blake, Hartwell H.K.
Bosshard, Kurt R.
Budd, Nancy J.
Chihara, Ted A.
Dobashi, Daryl Y.
Duvauchelle, Raymond C.
Esaki, Amy I.
Faldhacker, William
Grinpas, Robert M.
Hong, Walton D.Y.
Jung, James G. Jr.
Kahr, E. Courtney
Komori, Arthur S.
Licke, James W.
Masuoka, George M.
McCreary, Lawrence D.
Murashige, Calvin K.
Nii, Michael N.
Perry, Warren C.R.
Shimizu, Wayne S.
Shiraishi, Clinton I.
Shiraishi, Sherman T.
Trask, Arthur K. Jr.
Watanabe, Kathleen N.A.
Wilson, Donald H.
Yamada, Dennis R.

X. AUTHORS

The National Institute for Dispute Resolution (NIDR) is a private, non-profit foundation that provides support and technical assistance in the field of ADR. NIDR provided early consultative and financial help to the Judiciary during the CAP's start-up.

Peter S. Adler, Ph.d., is Director of the Judiciary's Program on Alternative Dispute Resolution (ADR). He is a trained mediator and arbitrator and has worked in the ADR field since 1979.

Pamela R. Gring is a second-year law student at the Northwestern School of Law of Lewis and Clark College in Oregon. She is currently working at the Judiciary's Program on ADR on an externship arrangement with Lewis and Clark.

Edwin S. Aoki is the CAP's Arbitration Administrator. He is a trained arbitrator and has worked in the field of claims management for more than 15 years.

John L. Barkai, Esq. and Gene Kassebaum, Ph.d., are Co-Principal Investigators of the team that is conducting research and evaluation of the CAP. Barkai is Professor of Law at the Richardson School of Law, University of Hawaii. Kassebaum is Professor of Sociology at the University of Hawaii. Both Barkai and Kassebaum have extensive academic backgrounds in the field of law and justice.

Cynthia H. Lee, Esq., is with the Judiciary's Program on ADR. She is a former Public Defender and is currently working on the development of mediation and arbitration applications in Hawaii's Family Court.

COURT ANNEXED ARBITRATION PROGRAM

FIRST CIRCUIT COURT

FEBRUARY 15, 1986 through DECEMBER 31, 1988

REPORT DATE - JANUARY 25, 1989

	* OLD RULES	** NEW RULES	TOTAL
TOTAL CASES RECEIVED IN THE PROGRAM	278	1,297	1,575
CASES TERMINATED			
SETTLEMENTS	186	378	564
AWARDS	65	139	204
DISMISSED	20	134	154
OTHERS	6	60	66
REQUEST TO EXEMPT GRANTED	N/A	62	62
TOTAL CASES TERMINATED	277	773	1,050
TOTAL PENDING CASES	1	524	525
AWARDS			
ISSUED	66	151	217
APPEALED	27	83	110
APPEALS SETTLED	21	29	50
REQUEST TO EXEMPT CASES			
TOTAL FILED	N/A	455	455
GRANTED	N/A	000	000
DENIED	N/A	46	46
DENIED, ASSIGNED TO COMPARISON GROUP	N/A	73	73

* - OLD RULES (2/15/86 through 4/30/87)

** - NEW RULES (5/1/87 - effective date)

EXHIBIT A

HAWAII ARBITRATION RULES

(Rules Governing the Court Annexed Arbitration Program)

Appended to the Rules of the Circuit Courts of the State of Hawaii as Exhibit A pursuant to Circuit Court Rule 34, added January 22, 1986

TABLE OF CONTENTS

HAWAII ARBITRATION RULES

Rule 1. THE COURT ANNEXED ARBITRATION PROGRAM

The Court Annexed Arbitration Program (the Program) is a mandatory, non-binding arbitration program, as hereinafter described, for certain civil cases in the State of Hawaii.

Rule 2. INTENT OF PROGRAM AND APPLICATION OF RULES

(A) The purpose of the Program is to provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters to be designated by the Judicial Arbitration Commission.

(B) These rules shall not be applicable to arbitration by private agreement or to other forms of arbitration under existing statutes, policies and procedures.

(C) These arbitration rules are not intended, nor should they be construed, to address every issue which may arise during the arbitration process. The intent of these rules is to give considerable discretion to the arbitrator, the Arbitration Administrator and the Judicial Arbitration Commission. Arbitration hearings are intended to be informal, expeditious and consistent with the purposes and intent of these rules.

(Amended April 16, 1987, effective May 1, 1987.)

Rule 3. THE ARBITRATION JUDGE

(A) The Arbitration Judge for the Program shall be a Circuit Court Judge who shall be appointed by the Chief Justice.

(B) The Arbitration Judge shall determine all disputed issues under these rules as hereinafter set forth, including, but not limited to, all disputed issues concerning the arbitrability of cases and the qualifications and acts of arbitrators.

(Amended April 16, 1987, effective May 1, 1987.)

Rule 4. THE JUDICIAL ARBITRATION COMMISSION

(A) The Chief Justice shall establish a Judicial Arbitration Commission which will have the responsibility to develop, monitor, maintain, supervise and evaluate the Program for the State of Hawaii.

(B) The Judicial Arbitration Commission shall include a chair-

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

TABLE OF CONTENTS

HAWAII ARBITRATION RULES

Rule 1. THE COURT ANNEXED ARBITRATION PROGRAM

The Court Annexed Arbitration Program (the Program) is a mandatory, non-binding arbitration program, as hereinafter described, for certain civil cases in the State of Hawaii.

Rule 2. INTENT OF PROGRAM AND APPLICATION OF RULES

(A) The purpose of the Program is to provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters to be designated by the Judicial Arbitration Commission.

(B) These rules shall not be applicable to arbitration by private agreement or to other forms of arbitration under existing statutes, policies and procedures.

(C) These arbitration rules are not intended, nor should they be construed, to address every issue which may arise during the arbitration process. The intent of these rules is to give considerable discretion to the arbitrator, the Arbitration Administrator and the Judicial Arbitration Commission. Arbitration hearings are intended to be informal, expeditious and consistent with the purposes and intent of these rules.

(Amended April 16, 1987, effective May 1, 1987.)

Rule 3. THE ARBITRATION JUDGE

(A) The Arbitration Judge for the Program shall be a Circuit Court Judge who shall be appointed by the Chief Justice.

(B) The Arbitration Judge shall determine all disputed issues under these rules as hereinafter set forth, including, but not limited to, all disputed issues concerning the arbitrability of cases and the qualifications and acts of arbitrators.

(Amended April 16, 1987, effective May 1, 1987.)

Rule 4. THE JUDICIAL ARBITRATION COMMISSION

(A) The Chief Justice shall establish a Judicial Arbitration Commission which will have the responsibility to develop, monitor, maintain, supervise and evaluate the Program for the State of Hawaii.

(B) The Judicial Arbitration Commission shall include a chair-

person who shall be the Arbitration Judge, and a representative to be designated by the President of the Hawaii State Bar Association. Additional members shall be appointed at the discretion of the Chief Justice.

(C) The Judicial Arbitration Commission shall be responsible for the selection and training of arbitrators.

(D) The Judicial Arbitration Commission shall be responsible for the hiring, supervision and evaluation of the Arbitration Administrator and all additional necessary staff.

(E) The Judicial Arbitration Commission shall interpret these rules prior to the appointment of an arbitrator in any case under the Program.

(F) The Judicial Arbitration Commission may promulgate rules and regulations necessary to fulfill its responsibilities under these rules.

(Amended April 16, 1987, effective May 1, 1987.)

Rule 5. THE ARBITRATION ADMINISTRATOR

The Arbitration Administrator shall be appointed by the Judicial Arbitration Commission and shall be responsible for the operation and management of the Program, as hereinafter set forth.

(Amended April 16, 1987, effective May 1, 1987.)

Rule 6. MATTERS SUBJECT TO ARBITRATION

(A) All tort cases, including appeals or transfers from district courts, having a probable jury award value, not reduced by the issue of liability and not in excess of One Hundred Fifty Thousand Dollars ($150,000.00), exclusive of interest and costs, may be accepted into the Program at the discretion of the Judicial Arbitration Commission.

(B) Any other civil case, regardless of the monetary value or the amount in controversy, may be submitted to the Program upon the agreement of all parties and the approval of the Arbitration Judge.

(C) Parties to cases submitted or ordered to the Program may agree at any time to be bound by any arbitration ruling or award.

(D) The Arbitration Judge may accept into, or remove from, the Program any action where good cause for acceptance or removal is found. The Court's decision in this regard is non-reviewable.

(Amended April 16, 1987, effective May 1, 1987.)

Rule 7. RELATIONSHIP TO CIRCUIT COURT JURISDICTION AND RULES; FORM OF DOCUMENTS

(A) Cases filed in, or removed to, the Circuit Court shall remain under the jurisdiction of that court for all phases of the proceedings, including arbitration.

(B) Except for the authority to act or interpret these rules expressly given to the arbitrator, the Arbitration Administrator, the Judicial Arbitration Commission, or the Arbitration Judge, all issues shall be determined by the Circuit Court with jurisdiction.

(C) Before a case is submitted or ordered to the Program, and after a Notice of Appeal and Request for Trial *De Novo* is filed, all applicable rules of the Circuit Court and of civil procedure apply. After a case is submitted or ordered to the Program, and before a Notice of Appeal and Request for Trial *De Novo* is filed, or until the case is removed from the Program, these rules apply.

(D) The calculation of time and the requirements of service of pleadings and documents under these rules shall be the same as under the Hawaii Rules of Civil Procedure.

(E) Circuit Court Rule 12(a)(17), and all rules of court or of civil procedure requiring the filing of pleadings, remain in effect notwithstanding the fact that a case is under the Program.

(F) All dispositive motions shall be made to the Circuit Court as required by law or rule notwithstanding the fact that a case is under the Program.

(G) All documents required to be utilized or filed under these rules shall be in a form designated by the Arbitration Judge.

(H) Once a case is submitted or ordered to the Program all parties subsequently joined in the action shall be parties to the arbitration unless dismissed by the Arbitration Judge.

Rule 8. DETERMINATION OF ARBITRABILITY

(A) The court shall view all tort cases as arbitration eligible and automatically "in" the Program unless plaintiff certifies that his or her case has a value in excess of the jurisdictional amount of the Program which is $150,000. Plaintiff shall file a request for exemption at the time of filing and such a request shall include a summary of facts which support plaintiff's contentions.

(B) Where exemptions from arbitration have been requested, the Arbitration Administrator shall review the contentions, facts and

evidence available and determine eligibility. The Arbitration Administrator may upon request require that a party submit additional facts which support the party's contentions. Any objection(s) to his decision must be filed with the Arbitration Judge within ten (10) days from the date the decision is served, with service to opposing counsel.

(C) Subsequent to the filing of the complaint, any party who believes a case should be removed from or readmitted to the Program, shall file a request to remove or readmit, with the Arbitration Judge. Such a request shall include a summary of the facts which support their contentions, with service to opposing party.

(D) The Arbitration Judge shall make all final determinations regarding the arbitrability of a case when that issue is disputed by any party, and may hold a conference on the issue of arbitrability at his discretion.

(E) The Arbitration Judge may, at his discretion, impose sanctions of reasonable costs and attorney's fees against any party who without good cause or justification attempts to remove a case from the Program.

(Amended April 16, 1987, effective May 1, 1987.)

Rule 9. ASSIGNMENT TO ARBITRATOR

(A) Parties may select and stipulate to a private arbitrator(s), who is an arbitrator not on the panel of the Program, or one who is on the panel but who has agreed to serve on a private basis. Such stipulation must be made within twenty (20) days after the appearance of defense counsel and must include a statement signed by the arbitrator(s) expressing his or her express willingness to arbitrate under the rules and procedures of the Court Annexed Arbitration Program and a duly signed arbitrator's oath.

(B) Any and all fees or expenses related to the use of a private arbitrator(s) shall be borne by the parties.

(C) Unless the Arbitration Administrator is notified of a stipulation for a private arbitrator(s) within the above twenty (20) day period, the Arbitration Administrator will then serve the parties with identical lists of five (5) arbitrators.

(1) Thereafter, each party shall, within ten (10) days, return the list with no more than two (2) names stricken.

(2) If both parties respond, the Arbitration Administrator shall appoint an arbitrator from among those names not stricken.

(3) If only one party responds within the ten (10) day period, the Arbitration Administrator shall appoint an arbitrator from among those names not stricken.

(4) If neither party responds within the ten (10) day period, the Arbitration Administrator will appoint one of the five (5) arbitrators.

(D) If there are more than two (2) adverse parties, at least two (2) additional arbitrators per each additional party shall be added to the list with the above method of selection to apply.

(E) Where an arbitrator is assigned to a case and subsequent thereto, additional party(s) are added, said party(s) may object to the arbitrator assigned to the case within ten (10) days from the party(s)' appearance. Objection(s) must be in writing stating specific grounds and filed with the Arbitration Administrator, who will review the objection(s) and render a decision. This decision may be appealed to the Arbitration Judge.

(Amended April 16, 1987, effective May 1, 1987.)

Rule 10. QUALIFICATIONS OF ARBITRATORS

(A) The Judicial Arbitration Commission shall create and maintain a panel of arbitrators consisting of attorneys licensed to practice in the State of Hawaii and, in its discretion, qualified non-attorneys.

(B) Attorneys serving as arbitrators shall have substantial experience in civil litigation, and shall have been licensed to practice law in the State of Hawaii for a period of five (5) years, or can provide the Judicial Arbitration Commission with proof of equivalent qualifying experience.

(C) Arbitrators shall be required to complete an orientation and training program following their selection to the panel and other additional training sessions or classes scheduled by the Judicial Arbitration Commission or Arbitration Administrator.

(D) Arbitrators shall be sworn or affirmed by the Chief Justice or his designee to uphold these rules of the Program, the laws of the State of Hawaii, and the Code of Ethics of the American Arbitration Association.

(E) An arbitrator who would be disqualified for any reason that would disqualify a judge under the Code of Judicial Conduct shall immediately resign or be withdrawn as an arbitrator.

(F) Any issue concerning the disqualification of an arbitrator shall be referred to the Judicial Arbitration Commission for a final,

non-reviewable determination.

(Amended April 16, 1987, effective May 1, 1987.)

Rule 11. AUTHORITY OF ARBITRATORS

(A) Arbitrators shall have the general powers of a court and may hear cases in accordance with established rules of evidence and procedure, liberally construed to promote justice and the expeditious resolution of disputes. These include, but are not limited to, the power:

(1) To administer oaths or affirmations to witnesses;

(2) To relax all applicable rules of evidence and procedure to effectuate a speedy and economical resolution of the case without sacrificing a party's right to a full and fair hearing on the merits;

(3) To decide procedural issues arising before or during the arbitration hearing, except issues relating to his or her qualifications as an arbitrator;

(4) To invite or order, with reasonable notice, the parties to submit pre-hearing or post-hearing briefs;

(5) To examine, after notice to the parties, any site or object relevant to the case;

(6) To issue subpoenas for the attendance of witnesses or production of documentary evidence;

(7) To determine the place, time and procedure to hear all matters;

(8) To interpret these rules in all proceedings before him or her;

(9) To find witnesses or parties in contempt and to impose sanctions as provided by the laws of the State of Hawaii; and

(10) To attempt, with the consent of all parties in writing, to aid in the settlement of the case.

(B) Any challenge to the authority or the act of an arbitrator shall be made to the Arbitration Administrator who will make a ruling on the issue in due course. An appeal from the ruling of the Arbitration Administrator may be made within ten (10) days from the date of said ruling to the Arbitration Judge, who shall have the non-reviewable power to uphold, overturn or modify the ruling of the Arbitration Administrator, including the power to stay any proceeding.

(Amended April 16, 1987, effective May 1, 1987.)

Rule 12. STIPULATIONS

Any stipulation between the parties relating to the conduct of the

arbitration proceeding, or any factual matter therein, shall be in writing and signed by the counsel or parties, and filed with the arbitrator.

(Amended April 16, 1987, effective May 1, 1987.)

Rule 13. RESTRICTIONS ON COMMUNICATIONS

(A) Neither counsel nor parties may communicate directly with the arbitrator regarding the merits of the case, except in the presence of, or with reasonable notice to, all of the other parties.

(B) No disclosure of any offer or demand of settlement made by any party shall be made to the arbitrator prior to the filing of an award without the agreement of all other parties.

Rule 14. DISCOVERY

(A) Once a case is submitted or ordered to the Program, the extent to which discovery is allowed, if at all, is at the sole discretion of the arbitrator. Types of discovery shall be those permitted by the Hawaii Rules of Civil Procedure, but these may be modified in the discretion of the arbitrator to save time and expense.

(Amended April 16, 1987, effective May 1, 1987.)

Rule 15. SCHEDULING OF HEARINGS; PRE-HEARING CONFERENCES

(A) All arbitrations shall take place and all awards filed no later than nine (9) months from the date of service of the complaint to all defendants, or the Order of Arbitration by the Arbitration Judge, unless said time is modified by the Arbitration Judge pursuant to this rule. Arbitrators shall set the time and date of the hearing within this period.

(B) The arbitration date may be advanced or continued upon petition for good cause to the arbitrator. Petition to the Arbitration Judge must be made for a continuance beyond the above nine (9) month period.

(C) Consolidated actions shall be heard on the date assigned to the latest case involved.

(D) Arbitrators and or the Arbitration Administrator may, at their discretion, conduct pre-arbitration hearings or conferences. However, arbitrators must schedule a pre-hearing conference within thirty (30) days from the date a case is assigned.

(E) Counsel shall give immediate written notification to the Arbitration Administrator of any change of the arbitration date, any settlement or changes of counsel.

(Amended April 16, 1987, effective May 1, 1987.)

Rule 16. PREHEARING STATEMENT

(A) At least thirty (30) days prior to the date of the arbitration hearing, each party shall file with the arbitrator and serve upon all other parties a statement containing a list of probable witnesses whom the party intends to call at the arbitration hearing and a list of exhibits and documentary evidence anticipated to be introduced. The statement shall contain a brief description of the matters about which each witness will be called to testify. Each party, upon request, shall make all exhibits and documentary evidence available for inspection and copying by other parties at least twenty (20) days prior to the hearing date.

(B) A party failing to comply with this rule, or failing to comply with any discovery order, may not present at the hearing a witness or exhibit required to be disclosed or made available, except with the permission of the arbitrator.

(C) Each party shall furnish the arbitrator at least twenty (20) days prior to the arbitration hearing copies of any pleadings and other documents contained in the court file which that party deems relevant.

Rule 17. CONDUCT OF THE HEARING

(A) The arbitrator shall have complete discretion over the mode and order of presenting evidence and the conduct of the hearing.

(B) No transcription or recording shall be permitted of the arbitration proceedings.

(Amended April 16, 1987, effective May 1, 1987.)

Rule 18. ARBITRATION IN THE ABSENCE OF A PARTY

An arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain a continuance. The arbitrator shall require the party present to submit such evidence as he or she may require for the making of an award, and may offer the absent party an opportunity to appear at a subsequent hearing.

Rule 19. FORM AND CONTENT OF AWARD

(A) Awards by the arbitrator shall be in writing, signed and on forms prescribed by the Arbitration Judge.

(B) The arbitrator shall determine all issues raised by the pleadings that are subject to arbitration under the Program, including a determination of comparative negligence, if any, damages, if any, and costs. The amount of damages that can be awarded is not limited to the jurisdictional amount for arbitration.

(C) Findings of Fact and Conclusions of Law are not required.

(D) After an award is made, the arbitrator shall return all exhibits to the parties who offered them during the hearing.

Rule 20. FILING OF AWARD

(A) Within seven (7) days after the conclusion of the arbitration hearing, or thirty (30) days after the receipt of the final authorized memoranda of counsel, the arbitrator shall file the award with the Arbitration Administrator, who shall then serve copies of said award to the attorneys of record. Application by the arbitrator to the Arbitration Administrator must be made for an extension of these time periods.

(B) The arbitrator may file with the Arbitration Administrator an amended award to correct an obvious error in the award if done within the seven day period for filing an award. Subsequent to this time, application must be made to the Arbitration Administrator. Any amended award shall be served upon the attorneys of record by the Arbitration Administrator.

(C) This rule does not authorize the use of an amended award to change the arbitrator's decision on the merits. An amended award may only modify an award in order to correct an inadvertent miscalculation or description, or to adjust the award in a matter of form rather than substance. Any modification of substance can only be made upon application to the Arbitration Judge.

(Amended April 16, 1987, effective May 1, 1987.)

Rule 21. JUDGMENT ON AWARD

If, after twenty (20) days after the award is served upon the parties, no party has filed a written Notice of Appeal and Request for Trial *De Novo*, the clerk of the court shall, upon notification by the Arbitration Administrator, enter the arbitration award as a final judgment of the

court. Said award shall have the same force and effect as a final judgment of the court in the civil action, but may not be appealed.

(Amended April 16, 1987, effective May 1, 1987.)

Rule 22. REQUEST FOR TRIAL DE NOVO

(A) Within twenty (20) days after the award is served upon the parties, any party may file with the clerk of the court and serve on the other parties and the Arbitration Administrator a written Notice of Appeal and Request for Trial *De Novo* of the action.

(B) After the filing and service of the written Notice of Appeal and Request for Trial *De Novo*, the case shall be set for trial pursuant to applicable court rules.

(C) If the action is triable by right to a jury, and a jury was not originally demanded but is demanded within ten (10) days of service of the Notice of Appeal and Request for Trial *De Novo* by a party having the right of trial by jury, the trial *de novo* shall include a jury, and a jury trial fee shall be paid as provided by law.

Rule 23. PROCEDURES AT TRIAL DE NOVO

(A) The clerk shall seal any arbitration award if a trial *de novo* is requested. The jury will not be informed of the arbitration proceeding, the award, or about any other aspect of the arbitration proceeding. The sealed arbitration award shall not be opened until after the verdict is received and filed in a jury trial, or until after the judge has rendered a decision in a court trial.

(B) All discovery permitted during the course of the arbitration proceedings shall be admissible in the trial *de novo* subject to all applicable rules of civil procedure and evidence. The court in the trial *de novo* shall insure that any reference to the arbitration proceeding is omitted from any discovery taken therein and sought to be introduced at the trial *de novo*.

(C) No statements or testimony made in the course of the arbitration hearing shall be admissible in evidence for any purpose in the trial *de novo*.

Rule 24. SCHEDULING OF THE TRIAL DE NOVO

Every case transferred to the Program shall maintain the approximate position on the civil trial docket as if the case had not been so transferred, unless at the discretion of the court, the docket position is modified.

Rule 25. THE PREVAILING PARTY IN THE TRIAL DE NOVO; COSTS

(A) The "Prevailing Party" in a trial *de novo* is the party who has (1) appealed and improved upon the arbitration award by 15% or more, or (2) has not appealed and the opposing party has appealed and failed to improve upon the arbitration award by 15% or more. For the purpose of this rule, "improve" or "improved" means to increase the award for a plaintiff or to decrease the award for the defendant.

(B) The "Prevailing Party" under these rules, as defined above, is deemed the prevailing party under any statute or rule of court, and as such is entitled to costs of trial and all other remedies as provided by law.

Rule 26. SANCTIONS FOR FAILING TO PREVAIL IN THE TRIAL DE NOVO

(A) After the verdict is received and filed, or the court's decision rendered in a trial *de novo*, the trial court may, in its discretion, impose sanctions, as set forth below, against the non-prevailing party whose appeal resulted in the trial *de novo*.

(B) The sanctions available to the court are as follows:

(1) Reasonable costs and fees (other than attorneys' fees) actually incurred by the party but not otherwise taxable under the law;

(2) Costs of Jurors;

(3) Attorneys' fees not to exceed $5,000;

(C) Sanctions imposed against a plaintiff will be deducted from any award rendered. Sanctions imposed against a defendant will be added to any award rendered.

(D) In determining sanctions, if any, the court shall consider all the facts and circumstances of the case and the intent and purpose of the Program in the State of Hawaii.

Rule 27. EFFECTIVE DATE

These rules become effective as of February 15, 1986 and shall apply to all cases filed thereafter; provided that the rules governing the creation and organization of the Program and Commission shall be effective immediately

THE COURT ANNEXED ARBITRATION PROGRAM:

JANUARY 1989 EVALUATION REPORT

Professor Gene Kassebaum*

Professor John Barkai**

Professor David Chandler***

Research for this report was funded by the Judiciary of the State of Hawaii and the Program on Conflict Resolution, The University of Hawaii at Manoa.

We would like to thank the following people for their assistance on this project: the project staff of the Study of Arbitration and Litigation, Claudia Kamiyama, Thomas Webb, Ratana Ariyavisitakul, Fran Adams, and May Lam; Peter Adler, Director of the Hawaii Judiciary's Program on Alternative Dispute Resolution; Arbitration Administrator Ed Aoki and his staff Susan Izumi and Lynn Nozaki; and Arbitration Judge Ronald T.Y. Moon.

* Professor of Sociology, Department of Sociology, University of Hawaii.

** Professor of Law, William S. Richardson School of Law, University of Hawaii.

*** Associate Professor of Sociology, Department of Sociology, University of Hawaii.

EXECUTIVE SUMMARY

THE COURT ANNEXED ARBITRATION PROGRAM: JANUARY 1989 EVALUATION REPORT

Professors Gene Kassebaum, John Barkai, and David Chandler

During the past few years, virtually all state and federal jurisdictions have considered various alternative dispute resolution (ADR) methods to treat the major problems with their court systems: high costs and excessive delay. Court-annexed arbitration is one of the most popular innovations. Programs are currently operating in at least twenty states and ten United States Federal District Courts.

In 1986, Hawaii's Court Annexed Arbitration Program (CAAP) was introduced to "provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters." Hawaii Arbitration Rule 2(A). Since May 1987 this experimental program has been a mandatory, non-binding arbitration procedure for tort cases with a probable jury award of $150,000 or less. At this jurisdictional level, approximately 1500 tort cases per year are eligible for the program across the state.

The major goals of the program are: 1) to reduce litigant costs; 2) to increase the pace of disposing of cases; and 3) to maintain, if not improve, litigant satisfaction with Hawaii's civil justice system. Over 400 experienced lawyers are the volunteer arbitrators in this program. They are the key to implementing the program goals. An arbitrator is chosen by the lawyers in the case from a panel of five proposed arbitrators. The arbitrator then works with the attorneys to: 1) eliminate unnecessary pretrial discovery; 2) encourage and facilitate early settlement; and 3) manage the pace of case activity. In the minority of cases where settlement does not occur the arbitrator then; 4) holds a hearing in which litigants have a low cost opportunity for their "day-in-court"; and 5) renders an award. If the award is not accepted, the case returns to the ordinary litigation track for a trial de novo.

There is considerable national interest in Hawaii's Court Annexed Arbitration Program because it has several unique features. Hawaii is the only state which attempts to limit pretrial discovery in order to reduce litigant costs; Hawaii has the highest dollar ceiling ($150,000) among states that offer full arbitration hearings; Hawaii has the only state-wide arbitration program.

Researchers from the University of Hawaii are evaluating this experimental program in the First Circuit where approximately 1000 tort cases per year are eligible for the

program. The primary sources of empirical information in the research are over 1000 questionnaires of lawyers and arbitrators, and data bases from the arbitration program and the court. The evaluation design randomly assigns one half of the eligible cases to arbitration and the other half to a comparison group that goes through regular litigation. Only a small proportion of cases in the comparison group have terminated so they can not yet be used in the evaluation analysis.

Since the program began in 1986, more than 1500 cases have entered CAAP. The majority of cases settle in CAAP and do not result in an arbitration hearing. The ratio of settlements to awards is about 2 to 1. Just over 50 percent of the awards are appealed, but so far virtually all of the appeals have resulted in settlements on appeal. Only one of the over 750 cases that have terminated after entering CAAP has ended in a trial.

INCREASING THE PACE OF LITIGATION

Approximately three quarters of the CAAP cases close within the program requirement of nine months from the defendant's answer, but delays in assigning an arbitrator have resulted in a significant proportion of cases exceeding the nine month limit. The time to assign an arbitrator currently averages 67 days. The Judicial Arbitration Commission and the Arbitration Administrator are taking steps to rectify this delay. Nonetheless, most of the cases in CAAP close within one year from the answer by the defendant. Once arbitrators are assigned to a case, the cases progress at a timely pace. 60 percent of settlements and 38 percent of awards occur within six months, and only about 10 percent of the cases remain open nine months after the arbitrator is assigned.

In November 1988, a "general survey" was sent to the 91 lawyers (an almost equal number of plaintiff and defense lawyers) who handled the greatest number of arbitration cases among the cases we surveyed. These 91 lawyers were involved in 84 percent of the cases we surveyed, and many of them also were arbitrators. Although this general survey did not ask about specific cases, it does represent the general opinions of the lawyers who are the most active in the program. 92 percent of these "frequent flyers" thought that most CAAP cases were faster than cases in regular litigation.

Compared to other states, delay due to slow pretrial case processing is not a major problem in Hawaii's courts. Since CAAP appears to be increasing the pace of litigation, a backlog of cases should not develop, and there should be prompt access to the courts for litigants whose cases require a trial.

SATISFACTION

The great majority of both plaintiffs' and defense lawyers reported that they were satisfied with how their specific case was handled in CAAP. Defense lawyers were somewhat less satisfied than were plaintiffs' lawyers. As might be expected, there is more dissatisfaction about awards than about settlements.

In the general survey, 67 percent of the lawyers reported that they were satisfied with the program and 28 percent were dissatisfied. A major difference in satisfaction is found between plaintiffs' and defense lawyers. 91 percent of plaintiffs' lawyers reported being satisfied, but only 46 percent of the defense lawyers reported being satisfied. The reason for the dissatisfaction by the defense lawyers is not clear. Certainly one hypothesis for defense dissatisfaction would be that defense lawyers may be making less money on CAAP cases because limiitations on pretrial discovery result in fewer billable hours for the lawyers. We do know from the general survey that defense dissatisfaction is correlated to the opinion that the value of cases has increased.

REDUCING LITIGANT COSTS

The reduction of pretrial discovery is a chief feature of CAAP, and it is the feature which is expected to produce lower litigant costs. The majority of lawyers and arbitrators report that discovery was reduced in arbitrated cases. However, a significant minority of lawyers think that discovery limitation may have affected or did affect the outcome of their case.

Until more comparison cases close and we have cost data from them, we cannot say how much the program is actually reducing costs, and we cannot even confirm that it is reducing costs. However, in the general survey, 83 percent of the lawyers thought that most cases in CAAP were completed at lower cost. A few lawyers thought CAAP cost about the same amount, but not a single lawyer thought CAAP was more expensive in most cases.

We do have data on the cost of discovery for CAAP cases. The average discovery costs for each side in the litigation are about $400 for cases that settle and about $900 for cases that go to an arbitration award. These costs do not include the defense lawyers' fees for the time spent conducting the discovery.

Of course discovery costs are just part of total litigant costs. The largest part of litigant costs are lawyers' fees, not the discovery costs. Because plaintiffs' lawyers work on a contingent fee arrangement and defense lawyers work on an hourly fee arrangement, a reduction in discovery will not reduce the plaintiffs' lawyers fees but should reduce the defense lawyers

fees. A reduction of discovery costs therefore will reduce total litigation costs more for defendants than it will for plaintiffs.

Assuming that 1500 cases are eligible for CAAP state-wide each year, then for every $100 that the program can reduce litigation costs per case, total litigation costs would be reduced $150,000 annually in Hawaii. In addition to the direct cost savings for litigants, there also may savings for the state if judges and court clerks spend less time processing tort cases.

ARBITRATORS, CASES & HEARINGS

Almost all lawyers report that the arbitrators were experienced enough to handle the cases and were impartial. Arbitrators averaged less than 5 hours of work on settlements and about 15 hours on cases in which awards were rendered.

The average case is settled or results in an award of about $30,000; awards are averaging about 10 percent higher than settlements. Even with a $150,000 limit, almost 90 percent of the cases have settlements or awards of $50,000 or less. Very few cases are considered to be complex by the lawyers.

Accelerated pace and cost containment in CAAP does not prevent litigants from having their "day in court." Plaintiffs testified at virtually all arbitration hearings; defendants testified at the majority of hearings. However, expert testimony was presented in only one-third of the cases. Low levels of expert testimony may represent an important cost saving in CAAP as well as resulting in less inconvenience for doctors and other professionals.

IMPORTANT PROGRAM ISSUES

The issues of arbitrator quality, compensation, and supply, merit special discussion. First, despite informal comments that some of the arbitrators may not be qualified, the overwhelming weight of survey evidence indicates that arbitrators in CAAP were both impartial and experienced enough to handle the cases. Second, thoughts of providing any compensation to the arbitrators must be carefully analyzed. Payment might be justified based upon either an analysis of the economic benefits of the program or a theory of arbitrator motivation. However, any honorarium or stipend is an added cost of the program, and such a payment might offset any cost savings that CAAP achieved. Finally, the capacity of the program is a significant concern. With the current supply of arbitrators and operating assumptions, the program appears to be operating at maximum capacity even though it is only handling one-half of the tort cases in the state. The Judicial Arbitration Commission is working on this problem.

Hawaii's Court Annexed Arbitration Program appears to be meeting its goals of reducing litigant costs, increasing pace, and maintaining the satisfaction of the participants. Although it does not appear that CAAP could handle all the tort cases filed in Hawaii courts under its current operating procedures, the Judicial Arbitration Commission is working on this problem.

CAAP is delivering arbitration largely within the time frame prescribed by its rules, and is doing so to the satisfaction of the majority of lawyers. It clearly has succeeded in reducing pretrial discovery, and no other program can make that claim. After more comparison cases have closed, a later report will be able to provide data comparing pace, cost, and satisfaction in CAAP with regular litigation. To our knowledge, no other arbitration program in country claims to be reducing litigation costs; Hawaii leads the nation is this area.

THE COURT ANNEXED ARBITRATION PROGRAM: JANUARY 1989 EVALUATION REPORT

PROGRAM HISTORY

During the past few years, virtually all state and federal jurisdictions have considered various alternative dispute resolution (ADR) methods to treat the major problems with their court systems: high costs and excessive delay. Court-annexed arbitration is one of the most popular innovations. Programs are currently operating in at least twenty states and ten United States Federal District Courts.

In 1986, Hawaii's Court Annexed Arbitration Program (CAAP) was introduced to "provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters." Hawaii Arbitration Rule 2(A). Since May 1987 this experimental program has been a mandatory, non-binding arbitration procedure for tort cases with a probable jury award of $150,000 or less. At this jurisdictional level, approximately 1500 tort cases per year are eligible for the program across the state.

The major goals of the program are: 1) to reduce litigant costs; 2) to increase the pace of disposing of cases; and 3) to maintain, if not improve, litigant satisfaction with Hawaii's civil justice system. CAAP seeks to achieve these goals by eliminating unnecessary pretrial discovery and controlling the pace of cases. In addition, the program attempts to stimulate early settlement, and yet offers litigants a low cost "day-in-court" in the form of an arbitration hearing. Litigants who are not satisfied with the arbitration award may "appeal" their case and put it into regular litigation.

A considerable amount of national attention has been directed to Hawaii's Court-Annexed Arbitration Program because our program is unique in several respects. The program has the highest dollar ceiling ($150,000) of any mandatory state arbitration program in the country and it is the only state-wide program. Most importantly, it appears to be the only program making a major effort to limit pretrial discovery, and as such it offers the greatest potential for reducing litigant costs.

The CAAP has operated in two different forms. Phase I began in February 1986, and was a voluntary program for cases valued at $50,000 or less. Phase II began in May 1987, and is a mandatory program for cases valued up to $150,000. The current $150,000 program is referred to as Phase II. All data presented in this report will refer only to Phase II unless otherwise noted.

PROGRAM DESCRIPTION

Since May 1, 1987, when Phase II began, all tort cases are initially assigned to the arbitration program, and then attorneys must request that their case be exempted from the program if they believe the value of their case exceeds $150,000. After the defendant's answer is filed (or the last defendant's answer if there are multiple defendants), a volunteer arbitrator is assigned to the case. The arbitrator must schedule a pre-hearing conference within 30 days from the date a case is assigned and determine what pretrial discovery will be allowed. Discovery is only permitted with the consent of the arbitrator. The arbitrator can attempt to aid in the settlement of the case if all parties consent in writing. If the case precedes to an arbitration hearing, attorneys must file a pre-hearing statement 30 days prior to the hearing.

Over 400 lawyers now serve the program as volunteer arbitrators. They are selected from lawyers who have at least 5 years of experience and most of them practice personal injury litigation. After a short, group orientation, the new volunteers are added to the pool of arbitrators. Their names are placed randomly in 5 person panels for each case. Each lawyer may strike two names ensuring that at least one arbitrator is chosen for each case.

At the arbitration hearing, the rules of evidence can be relaxed and no transcription or recording is permitted. Arbitration awards must be in writing although findings of fact and conclusions of law are not required. Awards are not limited to the jurisdictional amount of $150,000. Awards must be filed within seven days of the conclusion of the arbitration hearing or within thirty days after the receipt of the final authorized memoranda of counsel. The award becomes the final judgment if no party files a written Notice of Appeal and Request for Trial De Novo within 20 days after the award is served upon the parties.

If such Notice of Appeal and Request for Trial De Novo is timely filed, the case is scheduled for trial de novo.[1] The case is then treated as if it never had been in arbitration and full discovery is permitted under the rules of civil procedure. However, no testimony made during the course of the arbitration hearing is admissible in the trial de novo. There are disincentives attached to the appeal process in the form of sanctions for failure to prevail in the trial de novo. When parties appeal, they must do at least 15 percent better at the

---

[1]. In the almost three years that CAAP has been in operation, only one case has actually resulted in a trial de novo. All other appeals have either settled before trial or remain pending.

trial de novo than they did at the arbitration award or be subject to sanctions of attorney fees up to $5000, costs of jurors, and other reasonable costs actually incurred.

THE EVALUATION PROCEDURE

Researchers from the University of Hawaii are evaluating the program in the First Circuit, where approximately 1000 tort cases per year are eligible for the program. Information for the evaluation comes primarily from surveys of lawyers and the case record database of the Arbitration Administrator. The evaluation design randomly assigns one-half of the eligible cases to arbitration and the other half are assigned to a comparison group that goes through the regular litigation process. Since the program began in 1986, more than 1500 cases have entered CAAP. The majority of cases settle in CAAP and do not result in an arbitration hearing. The ratio of settlements to awards is about 3 to 1. Just over 50 percent of the awards are appealed, but so far virtually all of the appeals have resulted in settlements on appeal. Only one of the over 750 cases that have terminated after entering CAAP has ended in a trial.

In the evaluation effort, more than 600 CAAP and comparison cases have been surveyed, and more than 1000 surveys have been completed and returned by lawyers. Although the comparison group will figure heavily in the final evaluation, they are not included in this interim report because very few have closed so far. Furthermore, the comparison cases that have closed appear to be early closings (85% settled before an answer was filed by the defendant), and therefore they are probably not representative of the typical cases in regular litigation.

Data in this report are drawn from five sources: (1) a case record database maintained by the Arbitration Administrator; (2) surveys of lawyers and arbitrators, conducted after a case closes by settlement, award or dismissal, sampling cases in arbitration or in the comparison group; (3) surveys of lawyers conducted after an arbitration appeal is concluded; (4) interviews and focus group sessions with lawyers, arbitrators, insurance industry representatives and others involved in tort litigation; and (5) a general survey of the lawyers most active in CAAP.

The evaluation focuses on the following questions:

1) Is CAAP reducing litigant costs?
2) Do arbitrators and lawyers comply with the basic concept of limiting discovery?
3) Is CAAP increasing the pace of litigation?
4) Are cases closed within prescribed time limits?
5) Are participants satisfied with arbitration?
6) Is there an adequate supply of arbitrators?
7) Are arbitrators experienced enough and impartial?

PACE OF TERMINATIONS

The majority of lawyers report that CAAP is reducing the time it takes to terminate their case. The one exception is that a majority of defense lawyers report that their CAAP settlement would have taken about the same time to close in regular litigation.

Table 8: Estimates of Time Savings

	PLAINTIFF		DEFENSE	
	SETTLEMENT	AWARD	SETTLEMENT	AWARD
TIME WOULD BE LONGER IF NOT IN CAAP	60 %	76 %	28 %	77 %

CAAP rules require that cases be completed within nine months (270 days) of the service of the complaint. Our analysis of the average time for closing cases, which we refer to as "pace," is based upon the first 567 cases that have closed in CAAP. The average pace is within the nine months for settlements and just over nine months for awards. We do not have a statistic from the judiciary on the average pace for cases in regular litigation, but numerous sources have indicated that cases in regular litigation go to settlement conferences 18-20 months after filing. Only 7 percent of settlements and 19 percent of awards in CAAP exceed one year. This data on pace excludes cases that terminated before the defendant answered, and such cases are approximately 1/3 of all cases closed in CAAP.

Table 9: Pace of Case Closings

	SETTLEMENT	AWARD
AVERAGE PACE LAST ANSWER UNTIL CLOSING	223 days	283 days
TIME FROM LAST ANSWER UNTIL CLOSING		
≤ 270 days	71%	52%
271- 365	22	29
> 365	7	19
AVERAGE PACE FROM ARBITRATOR ASSIGNMENT UNTIL CLOSING	167 days	197 days
TIME FROM ARBITRATOR ASSIGNMENT UNTIL CLOSING		
< 90 DAYS	10%	3%
91-180	51	35
181-270	32	52
271-365	6	8
> 365	1	3

While the overall program has a substantial number of cases that extend beyond the 9 month deadline, the arbitrators are able to terminate cases within nine months of assignment. In fact a significant proportion of cases are closed much earlier. 60% of the settlements and 38% of the awards occur within 6 months or less. It is the delay in assigning arbitrators to cases which accounts for almost 90 percent of the delays past nine months. The average time to assign an arbitrator from the case entering CAAP was 117 days, and from the defendant's answer was 67 days. The program administration reports that the delay occurs when all arbitrators are assigned to pending cases. Under the single case policy the program must wait for cases to close until 5 arbitrators are available to form a panel for each new case.

REDUCING DISCOVERY TO REDUCE LITIGATION EXPENSES

The reduction of pretrial discovery is a chief feature of CAAP, and it is the feature which is expected to produce lower litigant costs in Hawaii's program. Of more than 30 court-annexed arbitration programs across the country, Hawaii's appears to be the only program that is attempting to reduce discovery. Most other arbitration programs start to operate after discovery is completed. At most, they limit the time for discovery, but not the amount.

The majority of lawyers and arbitrators report that discovery was reduced in CAAP. Discovery can be reduced either because the arbitrator denies requests for discovery or because lawyers voluntarily agree to limit discovery. The discovery reduction appears to come mainly from lawyers voluntarily reducing discovery. Denials of discovery by the arbitrator take place in less than 1/3 of the cases.

Table 1: Estimates of Discovery Reduction

	PLAINTIFF		DEFENSE	
	SETTLEMENT	AWARD	SETTLEMENT	AWARD
DISCOVERY REDUCED (say lawyers)	73 %	83 %	65 %	70 %
DISCOVERY REDUCED (say arbitrators)	80	92	84	93

Table 2: Views of How Discovery Was Reduced

	PLAINTIFF		DEFENSE	
	SETTLEMENT	AWARD	SETTLEMENT	AWARD
VOLUNTARILY REDUCED (say lawyers)	86	83	67	71

	PHASE I		PHASE II	
	SETTLEMENT	AWARD	SETTLEMENT	AWARD
VOLUNTARILY REDUCED (say arbitrators)	--	--	85	83

Table 3: Denial of Discovery

	PHASE I		PHASE II	
	SETTLEMENT	AWARD	SETTLEMENT	AWARD
DENIED DISCOVERY (say arbitrators)	12 %	26 %	21 %	32 %

One concern about discovery reduction is whether it affects the outcome of the case. A significant percentage of lawyers think that discovery reduction did affect or may have affected the outcome of their case (this finding is less characteristic of settlements than of award cases).

Table 4: Effect of Discovery Denial

	PLAINTIFF		DEFENSE	
	SETTLEMENT	AWARD	SETTLEMENT	AWARD
AFFECTED OUTCOME YES OR MAYBE (say lawyers)	15 %	40 %	37 %	53 %

Discovery reduction is important because a reduction in discovery will lower discovery costs, which are a part of litigant costs. The majority of lawyers report that discovery costs are lower in CAAP. The one exception is that majority of defense lawyers report that discovery costs for settlements are about the same in CAAP and regular litigation. Plaintiff's lawyers more often see CAAP as saving costs than do defense lawyers.

Table 5: Discovery Costs of CAAP

	PLAINTIFF		DEFENSE	
	SETTLEMENT	AWARD	SETTLEMENT	AWARD
COSTS GREATER IF NOT IN ARB (say lawyers)	67 %	56 %	28 %	52 %

At this time we cannot say how much the program is actually reducing costs, and we cannot even confirm that it is reducing costs. Answers to these questions will not be available until more comparison cases close. However, we do have data on what the discovery costs have been for cases in CAAP. These discovery costs are reported in the table below. Keep in mind that the reported discovery costs for award cases underestimates the final discovery cost of these cases because more discovery is likely to be conducted if the case is appealed. The data show that discovery is more expensive in cases that go to awards than in cases that settle, and discovery for the defense is generally more expensive than for plaintiffs (the exception here is for Phase II awards). Interestingly, reported costs have declined somewhat from Phase I to Phase II even though Phase II includes higher valued cases.

Table 6: Discovery Costs Reported

	PLAINTIFF		DEFENSE	
	SETTLEMENT	AWARD	SETTLEMENT	AWARD
AVERAGE DISCOVERY COST				
Phase II	$322	$980	$479	$865
Phase I	$429	$825	$731	$926

Discovery costs for the majority of defense surveyed were below $400, and almost 2/3 of the plaintiffs had discovery costs of less than $1,000. Only about 1/3 of the cases had discovery costs in excess of $1,000.

Table 7: Ranges of Discovery Costs

	PLAINTIFF		DEFENSE	
	SETTLEMENT	AWARD	SETTLEMENT	AWARD
DISCOVERY COST				
$0-399	24%	37%	60%	50%
400-999	40	24	27	7
1000 +	36	39	13	43

Of course discovery costs are just part of total litigant costs. For the majority of cases we surveyed, for both the plaintiff and the defense discovery costs were 10 percent or less of the total costs. The largest part of litigant costs are lawyers' fees, not the discovery costs. We estimated the fees for plaintiffs' lawyers by computing 1/3 of the settlement or award value, which is the standard contingent fee percentage. In the cases for which we had the settlement or award amount, the lawyers' fees for plaintiffs' lawyers averaged $10,946 for settlements (n=82) and $9,186 for awards (n=51). The average fee

computed for awards includes defense awards for zero damages.[2] The plaintiffs' lawyer would not earn a fee in such cases.

For defense lawyers, the average fee was $2,928 for settlements (n=45) and $5,955 for awards (n=42). The fees for defense lawyers were taken from the figures reported by the defense lawyers on the surveys. Bear in mind that if the award is appealed, both plaintiffs' lawyers and defense lawyers will continue to work on the case. The fee for the plaintiffs' lawyers will not change even though these lawyers work more hours on the case because plaintiffs' lawyers are working on a contingent fee. In fact, the fee of the plaintiffs' lawyers is more likely to decrease because cases that settle on appeal often settle for somewhat less than the award.[3] On the other hand, defense lawyers will continue to earn more fees when the case is appealed because these lawyers are working on an hourly fee. We cannot estimate the defense lawyers fees on appeal until more appealed cases close and can be surveyed.

For defendants, a reduction of discovery costs is likely to also reduce lawyers' fees because defense lawyers generally charge an hourly rate. If less discovery is allowed, presumably the defense lawyers will bill fewer hours on each case. If discovery is being reduced by CAAP, defense lawyers are probably making less money on each case they handle in CAAP. However, one effect of CAAP is that some insurance companies now pay defense lawyers a flat fee for handling cases through the arbitration hearing. We cannot estimate how prevalent the new flat fee system has become or even what the amount of the flat fee is. Neither insurance companies nor defense lawyers have discussed the specifics of the flat fee arrangements with us.

For plaintiffs, a reduction of discovery costs will not effect the lawyers' fee. Plaintiffs lawyers work on contingent fee, typically receiving 1/3 of the total settlement as the fee. After the plaintiff's lawyer's fee is deducted, the discovery costs and any other litigation expenses are subtracted and the plaintiff receives the remaining amount. Put simply, the fee of the plaintiffs' lawyer is not affected by the amount of work done by the lawyer; the fee is purely a function of the size of the settlement. If CAAP reduces not only the number of calendar days that a case remains open, but also reduces the amount of time a lawyer needs to spend preparing the case, plaintiff's lawyers could be making more money per hour with CAAP. Additionally,

---

2. Twenty-two percent of the awards were defense awards, and we did not calculate a contingent fee for these cases.

3. Of the first 29 cases that settled on appeal after an award, 18 cases, or 62 percent settled at a value of less than the award.

because plaintiffs' lawyers often advance the discovery costs, CAAP also will be benefit plaintiffs' lawyers because they will now advance costs for a shorter period of time. Furthermore, earlier payment by the defendants to the plaintiffs will mean that plaintiffs will have the use of their money sooner, which is an economic benefit.

POTENTIAL SAVINGS IN LITIGATION COSTS

Although information from lawyer surveys indicates that the majority of lawyers think that CAAP is cheaper than regular litigation, until we have information from the comparison cases we cannot confirm that it is cheaper nor can we estimate how much cheaper it might be. However, we can provide a range of potential savings under certain conditions.

The first step is to estimate the number of cases that could be in CAAP. If a comparison group continues, approximately 1000 cases would enter the program each year; without a comparison group, approximately 1500 cases would enter the program each year.[4] Please bear in mind that the following analysis is purely hypothetical; no data that has been collected that support these estimates of cost savings. However, it is easy to project the potential costs savings produced by CAAP at various levels of reduction of litigation costs. For every $100 that CAAP could reduce litigation costs, total litigation expenses annually in the state could be reduced by $100,000 if the comparison group remains in place.[5] If the comparison group were eliminated, the potential savings would be approximately $150,000 for each $100 average savings.

---

[4]. In the fiscal years 1985-85 and 1986-87, each year there were approximately 1250 tort cases filed in the First Circuit. One-half of the cases are being placed in the comparison group and are not in CAAP. Approximately 500 tort cases are filed annually in all of the other circuits combined. Assuming that 10 percent of the cases in CAAP are exempted because they are estimated as being over the $150,000 limit, state-wide, approximately 1012 would be eligible for CAAP each year (625 cases from the First Circuit plus 500 from the other circuits, minus 10 percent for exempted cases). If there was no comparison group, approximately 1575 cases would be eligible for the program each year (1750 cases from the First Circuit plus 500 from the other circuits, minus 10 percent for exempted cases).

[5]. This analysis assumes that 1012 cases average a $100 reduction. The $101,200 potential savings is rounded to $100,000.

SATISFACTION WITH CAAP

We have not attempted to contact the individual litigants who have had cases in CAAP to ask about their satisfaction with the program. In most cases, individual litigants, especially injured plaintiffs, would not have had experience with other tort litigation, and therefore they could not compare CAAP to regular litigation. Instead we have asked the lawyers, virtually all of whom have had cases in both CAAP and in regular litigation, to indicate their level of satisfaction with the program and also to indicate what they think the level of satisfaction was for their clients.

The majority of lawyers reported being satisfied with CAAP when they were surveyed about a specific case. They are generally more satisfied with settlements than awards. Defense lawyers are less satisfied with both settlements and awards than are plaintiffs' lawyers.

Table 10: Lawyer Satisfaction

	PLAINTIFF		DEFENSE	
	SETTLEMENT	AWARD	SETTLEMENT	AWARD
SATISFIED	96 %	75 %	75 %	63 %

ARBITRATORS, CASES & HEARINGS

Almost all lawyers report that the arbitrators were experienced enough to handle the cases and were impartial.

Table 11: Lawyers' Views of Arbitrators

	PLAINTIFF		DEFENSE	
	SETTLEMENT	AWARD	SETTLEMENT	AWARD
EXPERIENCED ENOUGH	97 %	83 %	88 %	89 %
IMPARTIAL	98	89	97	90

Arbitrators averaged less than 5 hours of work on settlements and about 15 hours on awards. In Phase II the average hours of arbitrator work per case has decreased slightly from Phase I. The amount of time that arbitrators spend on a case varies widely. Half of the settlements are achieved in 3 hours or less, but 10 percent take from 9 to 30 hours. Similarly 20 percent of the awards take 8 hours or less, and 17 percent of the awards take from 21 to 50 hours. This data suggests either that cases vary considerably in the problems they present or that arbitrators vary considerably in their style and skill at managing the case, or perhaps both.

Table 12: Arbitrators' Work Hours

	PHASE I		PHASE II	
	SETTLEMENT	AWARD	SETTLEMENT	AWARD
AVE. HOURS OF WORK BY ARBITRATOR	6.1	15.8	4.5	1[illegible]9
HOURS PER CASE				
0-3	39%	0%	52%	1%
4-8	41	26	38	20
9-15	12	40	6	41
16-20	4	12	2	20
21-30	2	8	2	14
31-50	2	14	0	3

The lawyers reported that the majority of the arbitration hearings took less than 4 hours to complete. However, 30 percent of the hearings took 5 to 8 hours and 7 percent took longer than 9 hours.

Table 13: HOURS OF ARBITRATION HEARING

HOURS OF ARB. HEARING		
1 - 4 HOURS	72 %	62 %
5 - 8 HOURS	20	31
9 + HOURS	8	7

The arbitrator is allowed to engage in the settlement process with the signed consent of all parties. However, less than half of the arbitrators report being formally involved in settlement efforts in Phase II, which is a proportion that has declined since Phase I. We have heard in interviews and focus groups that lawyers are not willing to allow settlement discussions with the arbitrator because if a mediated settlement fails, then the arbitrator would be improperly influenced by information acquired during settlement discussions.

Table 14: Settlement Activities

	PHASE I SETTLEMENTS	PHASE II SETTLEMENTS
ENGAGED IN SETTLEMENT (say arbitrators)	71 %	41 %
ASSISTED IN SETTLEMENT (say arbitrators)	55	

Data from CAAP records indicates that the average case is valued at about $30,000. The average is higher in Phase II. Almost 90 percent of the cases have settlements or awards of $50,000 or less.

Table 15: AVERAGE SETTLEMENT OR AWARD

	SETTLEMENT	AWARD
Phase II	$28,191	$31,426[6]
Phase I	$20,880	$21,244

Table 16: Amount of Settlement or Award

AMOUNT OF SETTLEMENT OR AWARD	Percentage Within Range
$0 - $ 50,000	89 %
$50,001 - $ 75,000	6
$75,001 - $ 100,000	3
$100,001 +	2

When the jurisdicaitonal limit was raised to $150,000, many people speculated that higher valued cases would be more complex, and therefore inappropriate for an arbitration program. Very few cases in the $150,000 program, however, are considered to be complex by the lawyers.

Table 17: Case Complexity

	PLAINTIFF		DEFENSE	
	SETTLEMENT	AWARD	SETTLEMENT	AWARD
COMPLEXITY	7 %	16 %	8 %	5 %

HEARINGS

Accelerated pace and cost containment in CAAP do not prevent litigants from having their "day in court." Plaintiffs were able to tell their stories to a neutral fact-finder by testifying in virtually all (96%) of the arbitration hearings. Defendants also had an opportunity to personally respond and their testimony was heard in 68% of those cases. Even though the plaintiff testified at almost every hearing, expert testimony was heard in only one third (36%) of the cases. Low levels of expert testimony at the hearings may represent an important cost saving for CAAP as well as resulting in less inconvenience for doctors and other professionals.

---

6. This average calculated from 130 cases includes the defense or zero awards.

IMPORTANT PROGRAM ISSUES

The issues of arbitrator quality, compensation, and supply, have received much attention from the Judicial Arbitration Commission. First, despite informal comments from the legal community that some of the arbitrators might not be qualified to handle cases or might be bias toward one side, the survey evidence is overwhelmingly the opposite. Lawyers reported that the arbitrator in their case was experienced enough and impartial. This disparity between the general lore and specific assessments may result from the CAAP procedure which allows each side to exclude the two most unacceptable arbitrators on the panel. While there may be some arbitrators that certain lawyers think are unqualified, the lawyers are usually able to exclude such arbitrators from their case with their preemptory challenges.

In discussions of CAAP, sometimes an arbitrator whose own law practice concentrates on representing plaintiffs in tort cases is called a "plaintiff's" arbitrator, and, of course, defense lawyers are called "defense" arbitrators. The implication is that "plaintiff" arbitrators will give a better, and presumably a higher, award to the plaintiffs and that "defense" arbitrators will be better for the defense. This assumption of arbitrator bias can be seen in the arbitrator selection process. When an arbitrator panel of five names is presented to the lawyers in each case, perhaps not surprisingly, plaintiffs' lawyers mainly strike defense lawyers and defense lawyers mainly strike plaintiff lawyers. The assumption is that plaintiffs' lawyers would favor plaintiffs and defense lawyers would favor defendants. However, the survey data indicates that 90 percent of the lawyers thought the arbitrator in their case was impartial.

An examination of the zero dollar or defense awards also suggests that bias does not exist. As of June 1988 the defense awards, are almost identical for "plaintiff arbitrators" and "defense arbitrators." In fact, on the basis of defense awards, a defense lawyer has a sightly better chance of getting a defense award from a plaintiff arbitrator. Plaintiff arbitrators made 13 defense awards out of 50 awards rendered; defense arbitrators made 11 defense awards out of 54 awards. Furthermore, the average dollar amount of awards also suggests either no bias or at most a slight reverse bias. As of June 1988, average awards were lower for plaintiff arbitrators ($31,769) than for defense arbitrators ($32,735). Our conclusion is that there is no indication that bias results from the type of the arbitrator's law practice.

Second, is the issue of arbitrator compensation. CAAP currently operates through the volunteer efforts of several hundred lawyers who serve as arbitrators. This "pro bono" aspect

of court-annexed arbitration is rare. Although no arbitration program in the country pays the arbitrators at a rate matching the income of a lawyer in private practice, most programs do at least offer an honorarium or stipend. Some people have suggested that CAAP should compensate arbitrators in some way to attract and retain arbitrators or because of the economic benefits of the program. In fact, the November general survey indicated that a third of lawyers responding thought paying arbitrators would improve the program, and this was the most common suggestion.

This evaluation does not take a position on this policy issue of arbitrator compensation, but offers several considerations. First, if CAAP actually reduces the costs and increases the pace of litigation, then clear economic benefits accrue to the defendant, the plaintiff, and the plaintiffs' lawyers, and there is an argument for compensating the lawyers whose time is used to produce these savings. None of the people or groups who appear to benefit economically from CAAP are typically considered to be indigent, and therefore none of them would be candidates for pro bono legal services.

Economic benefits may accrue to the person or corporation (typically an insurance company) who pays the defense costs, and who might save costs under CAAP; to the plaintiff who might receive both a larger share of the settlement if litigation costs are reduced and who might receive the settlement earlier; and to the plaintiffs' lawyer who might save the time value of money by advancing the costs of litigation for a shorter period of time. And with reduced discovery, defense lawyers and private court reporters who record depositions might be making less money on tort cases with CAAP. If these people are not making less money, then CAAP is probably not saving any costs.

Second, is an argument that some honorarium or other reward is necessary to attract, motivate, and retain arbitrators. Although lawyers might be willing to volunteer for a while, some lawyers might stop arbitrating unless they derive some personal or professional benefit.

If, under any theory, the argument for compensation is persuasive, a strong note of caution is advised. Until data from the comparison cases can be collected and analyzed, it cannot be determined how much money, if any, is being saved by using CAAP. Even if the CAAP savings is large enough to be significant, the savings could be offset by the payment of a stipend to the arbitrators.

Besides the economic argument against paying arbitrators, there are other arguments as well. CAAP might be a means of encouraging "pro bono" activity by lawyers whose practice expertise would not otherwise lend itself to traditional forms of "pro bono" activity. Furthermore, the amount of time that a