State of Illinois
Circuit Court of the 18th Judicial Circuit
County of DuPage
Court-Annexed Mandatory Arbitration Program

ARBITRATOR'S BENCH BOOK

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DU PAGE COUNTY MANDATORY ARBITRATION PROGRAM

Arbitrator's Bench Book

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Chief Judge

The Honorable Hollis L. Webster
Presiding Judge Law Division

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Judge Kenneth A. Abraham
Supervising Judge
Mandatory Arbitration

INTRODUCTION

In 1986 the Illinois General Assembly established court-annexed mandatory arbitration as a mandatory, non-binding, form of alternative dispute resolution [735 ILCS 5/2-1001A et seq.]. It is governed by Supreme Court Rules 86 – 95 contained in the Appendix to the Bench Book commencing at page 55. The program applies to all civil cases exclusively for money damages greater than $10,000, but "not exceeding $50,000 or any lesser amount as authorized by the Supreme Court for a particular circuit" [735 ILCS 5/2-1001A].

In DuPage County the program applies to all civil cases exclusively for money damages between $10,000 and $50,000 and all small claims jury proceedings. These arbitration eligible cases are subject to a hearing, which resembles a bench trial, before a panel of three attorney-arbitrators. The panel members and all litigants must be aware that the 18th Judicial Circuit Court Rules 13.01, et seq. are binding on all parties and references to those rules may be made periodically to clarify a ruling. The18th Judicial Circuit Court Rules amended through January 23, 2006 are contained in the appendix to the Bench Book commencing at page 73.

Court-annexed Mandatory Arbitration was instituted to help relieve the crowded court dockets of modest-sized claims, which could be handled effectively by closer management and faster resolution in an informal dispute resolution process. Concerned that fairness might be an issue; safeguards to insure fairness include the right to transfer out of the arbitration calendar and the right to reject the award of the arbitrators.

The Code of Civil Procedure, Supreme Court Rules and established rules of evidence all apply to the arbitration proceeding. The arbitration panel must make an award the same day as the hearing. If the parties are satisfied with the award, the court may enter judgment on the award at the post-arbitration status date, or, by agreement, an order may be submitted to the presiding judge closing the case and striking the post-arbitration status date. A dissatisfied party may, upon payment of the appropriate rejection fee and notice to all other parties, file a notice of rejection within thirty days (30) of the arbitration hearing and proceed to a *trial de novo*.

Arbitration is a special creature created by the Illinois Supreme Court to serve as an adjunct to the circuit court. The system is not intended to infringe upon the jurisdiction of the court and the arbitration panel must be sensitive to the limits of its authority.

The Illinois Supreme Court Rules have created a rather unique position in that of the arbitration chairperson. The chairperson is authorized to administer oaths and affirmations to the witnesses, determine the admissibility of evidence and, along with the panel, decide the law and facts of the case. The chairperson of the panel is expected to exhibit professionalism, decorum and dignity during the proceeding while insuring that the parties "have their day in court." Since the arbitration panel is serving as an adjunct of the circuit court, they are not expected to mediate a case or assist in any settlement discussions.

The role of the arbitrator is a very serious one. In the majority of cases, the arbitration hearing will serve as the only hearing on the merits of the case. The high acceptance rate of the awards reflects the degree of confidence in the system and the arbitrators.

If a party decides to reject the award of the arbitrators, four conditions must be satisfied:

1) Generally, the party desiring to reject the award must have been present at the arbitration hearing;
2) The rejection must be filed with the Clerk of the Circuit Court within thirty days (30) of the hearing; and
3) Except for indigent parties, the party desiring to reject the award must pay the appropriate rejection fee to the Clerk of the Court.

If no rejection is filed within thirty (30) days of the hearing, upon motion of one of the parties, the court will enter judgment on the award.

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I. APPOINTMENT, QUALIFICATION, AND COMPENSATION OF ARBITRATORS.

A. Arbitrator Qualifications

Each circuit is allowed to establish the criteria for qualification as an arbitrator within the guidelines set forth in Supreme Court Rule 87. The 18th Judicial Circuit requires an arbitrator be a licensed Illinois attorney in good standing and engaged in the practice of law for a minimum of one year. He/she must reside in, practice in, or maintain an office in DuPage County, complete the required arbitrator training, and file an approved application form with the Arbitration Administrator. Any attorney desiring to be a chairperson must certify that he/she has been engaged in the active practice of law for at least five (5) years. [Circuit Court Rule 13.02(a) and (c)] A retired judge may be an arbitrator without going through the training seminar by just filling out the application for approval.

B. Oath of Office and Arbitrator Indemnification

The arbitrators are required to sign a written oath of office. While acting in the capacity of an arbitrator, an attorney is covered under State of Illinois representation and indemnification statute. [5 ILCS 350/2 (1992)]

C. Compensation

Each arbitrator is compensated in the amount of $100 per hearing. [Ill. S. Ct. Rule 87(e)] When an arbitrator reports for service, he/she will be requested to sign a payment voucher. At the end of the day, this voucher is sent to the Administrative Office of the Illinois Courts and processed for payment to the arbitrator as requested. Arbitrators have the option of being paid individually or through their law firm. It is very important that the Arbitration Center be advised of the arbitrator's correct address and proper tax identification number or any changes of that number. If an arbitrator is notified that his/her service is not required prior to the day of scheduled service, that arbitrator will not be compensated. It takes approximately 4 – 6 weeks for arbitrators to receive their payment from the State.

Applicable Rules

Illinois Supreme Court Rule 87(b) Panel. The panel of arbitrators shall consist of three members of the bar, or such lesser number as may be agreed upon by the parties, appointed from a list of available arbitrators, as prescribed by circuit rule, and shall be chaired by a member of the bar who has engaged in trial practice for at least three years or by a retired judge. Not more than one member or associate of a firm or office association of attorneys shall be appointed to the same panel.

Illinois Supreme Court Rule 87(d) Oath of office. Each arbitrator shall take an oath of office in each county or circuit in which the arbitrator intends to serve on an arbitration panel. The oath shall be in conformity with the form provided in Rule 94 herein and shall be executed by the arbitrator when such arbitrator's name is placed on the list of arbitrators.

Arbitrators previously listed as arbitrators shall be re-listed on taking the oath provided in Rule 94.

> "I do solemnly swear (or affirm) that I will support, obey, and defend the constitution of the United States and the Constitution of the State of Illinois and that I will faithfully discharge the duties of my office."

Illinois Supreme Court Rule 87(e) Compensation. Each arbitrator shall be compensated in the amount of $100 per hearing.

18th Judicial Circuit Rule 13.02 Appointment, Qualification and Compensation of Arbitrators and Prohibition from Post-Hearing Contact with Arbitrators (Ill. S. Ct. Rule 87)

(a) Applicants shall be eligible for appointment as arbitrators by filing an application form with the Arbitration Administrator certifying that the applicant:

(1) Has attended an approved mandatory arbitration training; and

(2) Has read and is informed of the rules of the Supreme Court and the Act relating to mandatory arbitration; and

(3) Is presently licensed to practice law in Illinois and is in good standing; and

(4) Has engaged in the practice of law in Illinois for a minimum of one year; or is a retired judge pursuant to Supreme Court Rule 87(b); and

(5) Resides in, practices in, or maintains offices in the 18th Judicial Circuit, DuPage County, IL.

(b) Those attorneys who certify that they have engaged in the trial practice in Illinois for a minimum of five years, who are retired judges pursuant to Supreme Court Rule 87(b), or have heard twenty arbitration cases may apply to serve as chairs. The Supervising Judge shall review applications.

(c) The Arbitration Administrator shall maintain a database of qualified arbitrators who shall be assigned to serve on a rotating basis. The Arbitration Administrator shall also maintain a list of those persons who have indicated on their applications a willingness to serve on an emergency basis. Emergency arbitrators shall also serve on a rotating basis.

(d) Each panel will consist of three arbitrators, one of which is chair-qualified. In cases where the ad damnum is in excess of $15,000, the Arbitration Administrator shall endeavor to provide two chair-qualified panelists. Where the ad damnum is in excess of $30,000, the Arbitration Administrator shall endeavor to provide two chair-qualified panelists, one of which is chair-qualified in the area of that case designation. In certain circumstances the parties may stipulate using the prescribed form to a two-arbitrator panel. In no instance shall a hearing proceed with only one arbitrator.

(e) Only one member or associate of a firm, office, or association of attorneys shall be appointed to the panel. Upon assignment to a case, an arbitrator shall notify the Arbitration Administrator of any conflict and withdraw from the case if any grounds for disqualification appear to exist pursuant to the Illinois Code of Judicial Conduct.

(f) The Arbitration Administrator shall notify the arbitrators of the day they are scheduled to serve as a panelist at least sixty-days (60) prior to the hearing date. Those arbitrators who habitually cancel their dates may be deleted from the program.

(g) The Supervising Judge and the Arbitration Administrator may from time to time review the eligibility of each attorney to serve as arbitrators.

(h) Each arbitrator shall take an oath of office in conformity with the form provided in Supreme Court Rule 94 in advance of the hearing.

(i) Upon completions of each day's arbitration hearings, arbitrators shall file a voucher with the Arbitration Administrator for submission to the Administrative Office of the Illinois Courts for payment.

(j) An arbitrator may not be contacted, nor publicly comment, nor respond to questions regarding a particular arbitration case heard by that arbitrator during the pendency of that case.

II. ARBITRATOR DISQUALIFICATION, RECUSAL, AND CHALLENGE

A. To Recuse or Not to Recuse, that is the Question.

One of the most important and often difficult decisions arbitrators must make is whether or not to recuse themselves from hearing a case. This is a decision not to be taken lightly, since the arbitration process is based upon the ability to receive a fair and impartial hearing.

An arbitrator may recuse him/herself if the arbitrator feels there may be a conflict or if grounds appear to exist for disqualification pursuant to the Code of Judicial Conduct. (Ill. Sup. Ct. Rules 61-68). An arbitrator must disqualify him/herself if, within the previous seven (7) years, he/she has represented a party, or within the previous three (3) years been associated with any representative of a party in the controversy that he/she may hear as an arbitrator. Likewise, an attorney must withdraw from hearing a case if he/she was associated with one of the parties or ever served as an attorney in the matter to be heard.

The fact that the arbitrator knows one of the attorneys for one of the parties is not in itself grounds for recusal. Arbitrators must use their conscience and judgment in making the decision whether or not to recuse themselves. They must ask themselves whether their impartiality could reasonably be questioned and whether they can honestly give the parties a fair hearing. (Some arbitrators use the dinner test – if they have ever had one of the litigants and/or attorneys over for dinner, then they recuse themselves from his/her case.)

The fact that three arbitrators comprise a panel also insures a degree of impartiality, since, even if one member is perceived to have a bias, there are two other votes. It must be kept in mind that the goal remains to have a panel whose impartiality is above question.

There are two restrictions upon the composition of a panel: (1) that at least one member must be a qualified chairperson; and (2) no two attorneys from the same law firm may serve on the same panel.

ARBITRATOR RECUSAL CHECKLIST

The following checklist is helpful in determining whether arbitrators can hear a case or should recuse themselves:

- Are you prejudiced or do you have a bias for or against a party or attorney to the dispute?

- Do you have personal knowledge of an evidentiary fact? (which, if known, may be perceived as indicating bias or prejudice)

- Have you or a member of your firm previously been involved in the case as counsel?

- Within the last three (3) years have you been associated with an attorney or firm who has filed an appearance in this case?

- Within the last seven (7) years have you represented any party in the case?

- Do you or a member of your household have any other interest that could be substantially affected by the outcome of the proceeding?

- Are you and another member of your current firm or association assigned to the same panel?

If the answer to any of these questions is **YES**, you should recuse yourself from hearing the case. If there is a potential minor conflict, it should be disclosed to the parties. If they give their consent for that arbitrator to hear the case despite the potential conflict, that consent should be given in writing and noted on the Award.

[See, Jorgensen, *Obligations of an Arbitrator*, CBA Record 13, 15 (1993).]

B. Change of Venue from the Arbitration Panel

An arbitrator may recuse him/herself based upon the above considerations. There is no provision in the rules for a substitution of arbitrators or change of venue from the panel or any of its members on motion of the parties. The only remedy to perceived bias or prejudice on the part of any member of the panel or error by the panel in the determination of its award is to reject the award and proceed to trial. [See Committee Comments to Ill. S. Ct. Rule 87(c)]

In the event that an arbitrator must recuse him/herself after a hearing has begun, the hearing may proceed before the two remaining panelists if one is a qualified chairperson and the parties agree in writing to proceed with the hearing. If those conditions do not exist, the Arbitration Administrator must call in an emergency arbitrator to complete the hearing.

C. Ex-Parte Communication with the Arbitrators

As stated above, arbitrators are subject to the Code of Judicial Conduct; and therefore, may not discuss pending litigation with the parties until a final order has been entered in the case and the time for appeal has expired. Consequently, communication between the parties and the arbitrators after a hearing is prohibited. The rationale behind this rule is that the arbitration hearing should not be treated as a practice run for trial, nor should the arbitrators be allowed to coach the parties on the presentation of their case.

D. Arbitrators May Not Testify

Arbitrators may not be called to testify as to what transpired before the panel, and no reference to the fact of the conduct of the arbitration hearing may be made at trial. [Ill. S. Ct. Rule 93(b)] In the event an arbitrator is subpoenaed to testify, the Arbitration Administrator should be notified immediately so that the Illinois Attorney General's Office can be informed and take any appropriate action.

Applicable Rules

Illinois Supreme Court Rule 87(c) Disqualification. Upon appointment to a case, an arbitrator shall notify the court and withdraw from the case if any grounds appear to exist for disqualification pursuant to the Code of Judicial Conduct.

Committee Comments

No provision is made in these rules for substitution of arbitrators or change of venue from the panel or any of its members. The remedy of rejection of the award and the right to proceed to trial is determined to be the appropriate response to perceived bias or prejudice on the part of any member of the panel or error by the panel in the determination of its award. Subdivision (c) requires an attorney who has been appointed to serve as arbitrator to disqualify himself or herself on a particular case if circumstances relating to the parties, their counsel, or the matter in controversy would appear to be grounds for such recusal under the Code of Judicial Conduct. A motion on that basis could be presented to the court to determine the existence of any basis for disqualification and for reassignment to another panel or the substitution of another panelist. Where one of the counsel has raised the question of bias or prejudice of a member of the panel, if that panelist is not replaced or a new panel made available, as award adverse to that counsel will likely be rejected.

Illinois Supreme Court Rule 93(b) Arbitrator May Not Testify. An arbitrator may not be called to testify as to what transpired before the arbitrators and no reference to the fact of the conduct of the arbitration hearing may be made at trial.

III. CASE JURISDICTION

A. Eligible Actions

The question of whether a panel has jurisdiction to hear a case rarely occurs since that issue is disposed of before the case is assigned by the court to arbitration. On occasion, the issue of jurisdiction will arise. In those cases, it is important to remember that the panel can decide cases involving money damages only and may make an award not to exceed the jurisdictional limit for the jurisdiction in which the case is being heard. In the 18th Judicial Circuit, the program applies to all civil cases exclusively for money damages between $10,000 and $50,000 and all small claims jury proceedings. [Ill. S. Ct. Rules 86(b) & 92(b)]

B. Law Division Cases

Cases not assigned to the arbitration calendar may be ordered into arbitration at a status call or during a case management conference when it appears to the court that no claim in the action has a value in excess of the jurisdictional limit set for the jurisdiction in which the case is being heard, irrespective of defenses. [Ill. S. Ct. Rule 86(d)]

It is also possible to file a case in the Law Division (claim for damages exceeding the arbitration jurisdictional limit) and then seek to amend the damages to within the arbitration jurisdictional limits in order to qualify for arbitration. In such a case, an appropriate motion to amend damages and to transfer an assigned "L" case to the arbitration calendar must be made before the Law Division judge in accordance with local circuit court rules.

If an action is filed as an arbitration case but appears to be appropriately a Law Division case (i.e. damages are amended in excess of the jurisdictional limit for that particular county or circuit), the case pending in arbitration may be transferred to the "L" calendar by filing an appropriate motion with the Supervising Judge for Arbitration in accordance with local circuit court rules. he arbitration panel does not have the authority to enter an order transferring the case.

C. Chancery Cases

Cases that contain a prayer for relief other than money damages (e.g., forcible entry and detainer, confession of judgment, detinue, ejectment, replevin, trover, and registrations of foreign judgment) are not assigned to arbitration. However, a chancery case may be assigned to the arbitration calendar if a judge has disposed of the equitable relief sought and refers the money damages issue, which is within the arbitration jurisdictional limits for the circuit, to arbitration.

Applicable Rules

Illinois Supreme Court Rule 86(b) **Eligible Actions.** A civil action shall be subject to mandatory arbitration if each claim therein is exclusively for money in an amount or of a value not in excess of the monetary limit set by the Supreme Court for that circuit or county within that circuit, exclusive of costs and interest.

Illinois Supreme Court Rule 92(b) **Determining an Award.** The panel shall make an award promptly upon termination of the hearing. The award shall dispose of all claims for relief. The award may not exceed the monetary limit authorized by the Supreme Court for that circuit or county within that circuit, exclusive of interest and costs. The award shall be signed by the arbitrators or the majority of them. A dissenting vote without further comment may be noted. Thereafter, the award shall be filed immediately with the clerk of the court, who shall serve notice of the award, and the entry of the same on the record, to other parties, including any in default.

IV. AUTHORITY OF THE ARBITRATION PANEL

A. Powers of Arbitrators

Supreme Court Rule 90(a) provides that the arbitrators shall have the power to administer oaths and affirmations to witnesses, to determine the admissibility of evidence, to decide the law and facts of the case. Supreme Court Rule 92(b) further grants the panel the power to enter an award not exceeding the jurisdictional limit set by the Supreme Court for that circuit, exclusive of interest and costs. The authority and power of the arbitrators exists only in relation to the conduct of the hearing at the time it is held. Issues that may arise in the proceeding of a case prior, ancillary or subsequent to the hearing, must be resolved by the court. [See Committee Comments to Ill. S. Ct. Rule 90(b)] Therefore, any motion involving the issuance of an order must be made before the Supervising Judge for Arbitration in advance of the arbitration hearing date.

When the Supreme Court propounded the rules for arbitration, it was assumed that all litigants would comply with the rules in good faith. After several years, it became apparent that some frequent litigators followed the letter, but not the spirit of the rules. In response to that abuse of the system, the Illinois Supreme Court promulgated Rule 91(b) which allows the panel to make an unanimous finding that a party to the hearing did not participate in the hearing in good faith and a meaningful manner. It is up to the panel to determine the limits of good faith and meaningful participation. Attorneys may suggest to the panel that a Rule 91(b) finding should be in order, but the panel must make that determination on their own. If the panel so finds and notes in the award, the opposing party may move for sanctions as provided by Illinois Supreme Court Rule 219(c), which may also include debarring the party against whom the finding was made from rejecting the award.

B. Province of the Arbitration Panel

Arbitration hearings are conducted by a panel of three attorney/arbitrators. Rulings on objections to evidence or other issues which arise during the hearing shall be made by the chair of the panel. The chair must have a minimum of five years of trial practice or be a retired judge or have heard twenty arbitration cases. The only restrictions upon the composition of the panel are that at least one member must be a qualified chair and no two attorneys from the same law firm may serve on the same panel. [Ill. S. Ct. Rule 87(b) – 18th Judicial Circuit Rule 13.02(b) – 18th Judicial Circuit Rule 13.02(e)]

C. Role of the Chairperson

Each circuit will determine how the chairperson is to be selected. In the 18th Circuit, the Arbitration Administrator determines the panels and who is chair qualified. Pursuant to local rule, on cases seeking damages between $15,000 and $30,000, the panel shall have at least two chair-qualified arbitrators. On cases seeking damages between $30,000 and $50,000, the panel shall have two chair-qualified arbitrators, one of which shall be certified as chair-qualified in the area of that case designation. However, in each instance, only one panel member will act as the chairperson for the particular hearing. [18th Judicial Circuit Rule 13.02(d)]

The chairperson administers oaths and affirmations to witnesses and determines the admissibility of evidence. Additionally, it is the responsibility of the chairperson to insure the case is completed in the time allotted. When there are multiple parties or counterclaims the court file should be carefully reviewed to determine the precise issues and then obtain an agreement from the parties as to the amount of time allocated to the presentation of each party's case. Once the chairperson obtains the agreement there should be no hesitation in enforcing the agreement or reminding the parties of the agreed time allocation.

The chairperson is encouraged to ask if any stipulations have been reached by the parties prior to the hearing. Past experience indicates that there are very few discussions between attorneys prior to the hearing to determine is stipulations are possible. Using the court file information and knowledge of the locale, the chairperson may obtain agreement from the parties regarding certain background facts regarding the claim. This allows the parties to avoid tedious background testimony and to proceed with the salient points of testimony. It also gives the litigants a feeling that the panel has taken an interest in their case, is familiar with the controversy, and will be a good panel to resolve the dispute.

D. Questioning Witnesses and Assistance of Counsel

Since the arbitrators are serving in the capacity of a finder of fact and law, and not as advocates, arbitrators should refrain from taking an active role in the questioning of parties or witnesses other than for clarification purposes. Clarification should be about matters already testified to but where the response was unclear or perhaps not heard. The arbitrators should never ask questions that establish necessary elements of a claim that were omitted by the litigants. Arbitrators must not try the case for the litigants. This may be difficult when the litigant is *pro se*, but nevertheless must be strictly adhered to.

Applicable Rules

Illinois Supreme Court Rule 90(a) Powers of Arbitrators. The arbitrators shall have the power to administer oaths and affirmations to witnesses, to determine the admissibility of evidence and to decide the law and facts of the case. Rulings on objections to evidence or on other issues which arise during the hearing shall be made by the chairperson of the panel.

Committee Comments

The authority and power of the arbitrators exist only in relation to the conduct of the hearing at the time it is held. Issues that may arise in the proceedings of the case prior, ancillary or subsequent to the hearing must be resolved by the court.

Illinois Supreme Court Rule 91(b) Good Faith-Participation. All parties to the arbitration hearing must participate in the hearing in good faith and in a meaningful manner. If a panel of arbitrators unanimously finds that a party has failed to participate in the hearing in good faith and in a meaningful manner, the panel's finding and factual basis therefor shall be stated on the award. Such award shall be *prima facie* evidence that the party failed to participate in the arbitration hearing in good faith and in a meaningful manner and a court, when presented with a petition for sanctions or remedy therefor, may order sanctions as provided in Rule 219(c), including, but not limited to, an order debarring that party from rejecting the award, and costs and attorney fees incurred for the arbitration hearing and in the prosecution for the petition for sanctions, against that party.

Illinois Supreme Court Rule 87(b) Panel. The panel of arbitrators shall consist of three members of the bar, or such lesser number as may be agreed upon by the parties, appointed from the list of available arbitrators, as prescribed by circuit rule, and shall be chaired by a member of the bar who has engaged in trial practice for at least three years or by a retired judge. Not more than one member or associate of a firm or office association of attorneys shall be appointed to the same panel.

18th Judicial Circuit Rule 13.02(b) Those attorneys who certify that they have engaged in trial practice in Illinois for a minimum of five years, who are retired judges pursuant to Supreme Court Rule 87(b), or have heard twenty arbitration cases may apply to serve as chairs. The Supervising Judge shall review applications.

18th Judicial Circuit Rule 13.02(d) Each panel will consist of three arbitrators, one of which is chair-qualified. In cases where the *ad damnum* is in excess of $15,000, the Arbitration Administrator shall endeavor to provide two chair-qualified panelists. Where the *ad damnum* is in excess of $30,000, the Arbitration Administrator shall endeavor to provide two chair-qualified panelists, one of which is chair-qualified in the area of that case designation. In certain circumstances the parties may stipulate using the prescribed form to a two-arbitrator panel. In no instance shall a hearing proceed with only one arbitrator.

18th Judicial Circuit Rule 13.02(e) Only one member or associate of a firm, office, or associations of attorneys shall be appointed to the panel. Upon assignment to a case, an arbitrator shall notify the Arbitration Administrator of any conflict and withdraw from the case if any grounds for disqualification appear to exist pursuant to the Illinois Code of Judicial Conduct.

V. CONDUCT OF THE ARBITRATION HEARING

To eliminate any doubts as to the standards to be applied by the arbitrators during the course of the arbitration hearing, Supreme Court Rules 86(e) and 90(b) specifically provide that the Code of Civil Procedure, Supreme Court Rules and established rules of evidence shall apply to the proceeding. The chairperson will rule on all matters arising during the hearing but is not authorized to enter an order of any kind. In unusual circumstances requiring judicial intervention, the Arbitration Administrator may contact the Supervising Judge for Arbitration.

A. Settlement of a Case at the Time of Hearing

If an attorney for a party appears at the Arbitration Center and represents to the Arbitration Administrator or Administrative Assistant that the case is settled, the attorney may (a) present a stipulated award to the panel; or (b) prepare a case dispositive order (either a dismissal or judgment) for the Arbitration Administrator to present to the Presiding Judge.

B. Time Management

Arbitration hearings are scheduled for a concise presentation of the controversy (a maximum of two (2) hours per hearing unless parties have requested more time pursuant to Circuit Rule 13.03 (g). It is incumbent upon the chairperson to keep the hearing within the allotted time.

When there are multiple parties or counterclaims it is important that the chairperson review the file carefully to determine the precise issues in controversy and then obtain an agreement from the parties as to the amount of time allocated to the presentation of each party's case.

The chairperson should ask if the parties have reached any stipulations prior to the hearing. Since the court file is available, the chairperson can use the information in the file as well as personal knowledge to obtain agreement from the parties regarding certain background facts regarding the claim. By obtaining an agreed statement of the facts, the chairperson can save time and avoid the tedious examination required to establish facts that everyone already knows. This allows the parties to proceed with the salient points of testimony. It also gives the litigants a feeling that the panel is familiar with the controversy and will be a good panel to resolve the dispute.

C. Court Reporters and Record of the Proceedings

Arbitration hearings are open to the public. A record is not made of the proceeding. The 18th Judicial Circuit allows a stenographic record of the hearing to be made at the party's own expense. If a party has a stenographic record made, a copy shall be furnished to any other party requesting the same, upon payment of a proportionate share of the total cost of making the record. [18th Judicial Circuit Rule 13.05(b)]

D. Interpreters for the Deaf and Translators

Translators are to be provided by the parties with the exception of interpreters for the deaf. In the event an interpreter for the deaf is required, notice must be given to the Arbitration Administrator at least two (2) weeks in advance of the hearing date.

E. Established Rules of Evidence Apply

The Code of Civil Procedure and Rules of Evidence are applicable to the arbitration hearing. A rule of evidence unique to arbitration is Illinois Supreme Court Rule 90(c) which allows for the presumptive admissibility of many documentary forms of evidence without the formalities of foundation and authentication. This section corresponds with the policy “paper, not people”, at the arbitration hearing so as to facilitate a quick and efficient hearing of the issues.

F. Documents Presumptively Admissible

Illinois Supreme Court Rule 90(c) provides that certain documents are presumptively admissible such as: bills, records and reports of hospitals, doctors, dentists, registered nurses, licensed practical nurses and physical therapists, or other health-care providers; drug bills and other medical bills; bills or estimates of repair for property damage; written estimates of value, earnings reports, expert's opinion, and the deposition of a witness. Under the rule, these documents are admissible without the maker being present. They are, however, subject to the usual objections and cross-examination. In order to take advantage of the presumptive admissibility of these documents at least a thirty-(30) days written notice of intention to offer the documents into evidence must be given to every other party accompanied by a copy of the document.

The Committee Comments to this rule indicate that the emphasis should be placed on the integrity of evidence rather than its formal method of introduction. However, regardless of the presumptive admissibility of the documents, the arbitrators will be required to apply the test under established rules of evidence otherwise relating to credibility and to determine the weight to be given such evidence.

G. The Introduction of Non-timely Rule 90(c) Documents

In the event that the documentary evidence offered under Rule 90(c) has not been submitted in a timely manner, the documents may be offered into evidence with the proper foundation and subject to the established rules of evidence. Due to time limitations and the desire to make the arbitration a meaningful proceeding, stipulations to evidence are encouraged if a party has not complied with the thirty-day (30) requirement.

H. Opinions of Opinion Witnesses

Written opinions or testimony of an opinion witness at the arbitration hearing will be admitted into evidence provided written notice is given thirty (30) days prior to the date of hearing, accompanied by a statement containing the identity of the expert, his/her qualification, the subject matter, the basis of his/her conclusion, and the opinion. [See Supreme Court Rule 222(f)(2)(b)] The18th Judicial Circuit Rules require that witness statements shall include the address and telephone number of the witness. [18th Judicial Circuit Rule 13.05(c)]

I. Right to Subpoena Maker of the Document

Subpoena practice in arbitration cases is conducted in essentially the same fashion as that followed in non-arbitration cases. [Ill. S. Ct. Rule 90(e)] Any party may subpoena the author or maker of a document admissible under Rule 90(e) at that party's expense and examine the author or maker as if under cross-examination. The provisions of the Code of Civil Procedure relative to subpoenas, 735 ILCS 5/2-1101, apply to arbitration, and it is the duty of a party requesting the subpoena to modify the form to show that the appearance is set before an arbitration panel and to give the time, date and place set for the hearing. Witness fees and costs shall be in the same amount and shall be paid by the same party or parties as provided for trial in the Circuit Court. [S. Ct. Rule 90(e) and 90(g); 18th Judicial Circuit Rule 13.05(d)]

J. Adverse Examination of Parties or Agents

An adverse party or agent may be called and examined as if under cross-examination. The custom is to arrange for appearance of such witnesses by agreement. [Ill. S. Ct. Rule 90(f)]

K. Compelling Appearance of Parties at the Hearing and Failure to Comply

The provisions of Illinois Supreme Court Rule 237 concerning the service of subpoenas and notice to parties of the appearance of witnesses are applicable to an arbitration hearing. If a party has served a Rule 237 Notice on another party, that party must appear at the hearing unless his/her presence was waived by stipulation or excused by court order for good cause not less than seven (7) days prior to the hearing. If a party fails to comply with a Rule 237 Notice, the other party may move for sanctions, which may include an order debarring the non-complying party from rejecting the award. It should be noted that the panel is not authorized to continue a hearing or impose sanctions for failure to comply with the subpoena or Rule 237 Notice. However, the panel should note in the award any failure to comply with a subpoena or Rule 237 Notice so that the opposing party has a basis for a motion for sanctions. [Ill. S. Ct. Rule 90(g)]

In the event that a party does not appear for the hearing after due notice has been given, the hearing shall proceed as an *ex parte* hearing. All parties present shall present such evidence as may be required by the panel to prove that party's case. [Ill. S. Ct. Rule 91]

L. Objections to Evidence

Illinois Supreme Court Rule 90(a) makes a rather broad grant of power to the arbitration panel governing the conduct of the hearing. The chairperson has the power to determine the admissibility of evidence according to the established rules of evidence.

Regardless of the presumptive admissibility of certain documents submitted under Illinois Supreme Court Rule 90(c), the arbitrators will be required to apply the test under established rules of evidence otherwise relating to credibility and to determine the weight to be given such evidence. Consequently, even though some documents may be presumptively admissible under Rule 90(c), counsel is not precluded from objecting to their introduction under the established rules of evidence.

M. Motions at the Arbitration Hearing

The authority and power of the arbitrators exists only in relation to the conduct of the hearing at the time that it is held. Issues that may arise in the proceedings of a case prior, ancillary or subsequent to the hearing must e resolved by the court. [See Committee comments to Ill. Sup. Ct. Rule 90(b)] ***Therefore*, any motion involving the issuance of an order *must* be made before the supervising Judge for Arbitration in advance of the arbitration hearing date**.

The Illinois Supreme Court Rules make a broad grant of power to the arbitrators over the conduct of the hearing including the authority to rule on the admissibility of evidence as well as decide the law and the facts of the case. This authority implies that the arbitrators may exclude witnesses upon request of counsel, make a directed finding for one of the parties and rule on motions concerning the admissibility of evidence for purposes of the arbitration hearing only. However, since the arbitrators do not have the authority to issue an order of any kind, they cannot hear motions for dismissal, summary judgment, sanctions, default judgment, continuance, amendment to the pleadings or transfer a case. Arbitrators are encouraged to rule on motions *in limine*.

With respect to objections to admissibility of evidence for lack of proper disclosure the Second District case of Kapsouris, 319 Ill.App.3d 844, 747 N.E.2d 427 (2nd Dist., 2001) provides that in the event that an expert witness disclosure has occurred in Rule 222, it need not be re-disclosed in Rule 213. Supreme Court Rule 222(f)(3) provides that no evidence deposition shall be taken except with leave of court. In Zaragoza v. Ebenroth, 331 Ill.App.3d 139, 770 N.E.2d 1238, a plaintiff took the evidence deposition of a physician without leave of court as required by Supreme Court Rule 222(f)(3). The trial court admitted the deposition over the defendant's objection that its submission would violate Rule 222 (since Dr. Davis had been disclosed as a witness and her medical records provided in discovery, discretion was not abused by allowing the deposition to be read to the jury).

Motions to be brought prior to the Hearing before the Supervising Judge

- ✓ Summary Judgment*
- ✓ Dismiss*
- ✓ To compel attendance of witness, party, or productions of documents or evidence at hearing or trial
- ✓ Continue
- ✓ Default Judgment*
- ✓ Amend the Pleadings
- ✓ Any other motion requiring the issuance of an Order

*Because these motions are case dispositive, pursuant to Circuit Rule 6.04(a), they must be filed more than 63 days prior the hearing.

Motions that may be brought at the Arbitration Hearing before the Arbitration Panel

- ✓ Motions in *Limine*
- ✓ Exclude witnesses
- ✓ Admissibility of evidence
- ✓ Directed Finding

N. Exhibits

The offering of non-Rule 90(c) exhibits is conducted much in the same manner as in a trial. However, counsel should remember that it might be helpful to the panel if three sets of exhibit materials are prepared so that each member of the panel has a copy.

In the 18th circuit, all exhibits left at the Arbitration Center will be destroyed if they are not retrieved within seven (7) days after the entry of judgment. [18th Judicial Circuit Rule 13.13]

O. The Submission of Voluminous Documents or Depositions

The Committee Comments to Illinois Supreme Court Rule 90(c) indicate that the blanket submission of voluminous records or depositions will not be tolerated. The panel will not be expected to pore over these documents to attempt to sort out relevant or material issues. In the event a voluminous document is submitted to the panel, the chairperson should instruct the parties to stipulate to the relevant portion(s) of the document, which the panel should consider.

P. Memorandum of Law

A short, written memorandum of law on any complex or unsettled point of law may be prepared in triplicate so that it may be presented to the panel at the hearing. In addition, copies of the cases cited should be attached since the arbitrators only have access to a limited law library at the Arbitration Center.

Since the arbitration hearings are set for a concise presentation, any memorandum of law should be brief (1 to 3 pages) and to the point so as to minimize the arbitrator's deliberation time. Furthermore, any memorandum of law should be exchanged in advance of the hearing to allow opposing counsel to respond and avoid surprise.

Applicable Rules

Illinois Supreme Court Rule 86(e) **Applicability of Code of Civil Procedure and Rules of the Supreme Court.** Notwithstanding that any action, upon filing, is initially placed in an arbitration track or is thereafter so designated for hearing, the provisions of the Code of Civil Procedure and the rules of the Supreme Court shall be applicable to its proceedings except insofar as these rules otherwise provide.

Illinois Supreme Court Rule 90(a) **Powers of Arbitrators.** The arbitrators shall have the power to administer oaths and affirmations to witnesses, to determine the admissibility of evidence and to decide the law and the facts of the case. Rulings on objections to evidence or on other issues which arise during the hearing shall be made by the chairperson of the panel.

Illinois Supreme Court Rule 90(b) **Established Rules of Evidence Apply.** Except as prescribed by this rule, the established rules of evidence shall be followed in all hearings before arbitrators.

Illinois Supreme Court Rule 90(c) **Documents Presumptively Admissible.** All documents referred to under this provision shall be accompanied by a summary cover sheet listing each item that is included detailing the money damages incurred by the categories as set forth in this rule and specifying whether each bill is paid or unpaid. If at least 30 days' written notice of the intention to offer the following documents in evidence is given to every other party, accompanied by a copy of the document, a party may offer in evidence, without foundation or other proof:

(1) bills, (specified as paid or unpaid), records and reports of hospitals, doctors, dentists, registered nurses, licensed practical nurses and physical therapists, or other health-care providers;

(2) bills for drugs, medical appliances and prostheses (specified as paid or unpaid);

(3) property repair bills or estimates, when identified and itemized setting forth the charges for labor and material used or proposed for use in the repair of property;

(4) a report of the rate of earnings and time lost from work or lost compensation prepared by an employer;

(5) the written opinion of an expert, the deposition of a witness, the statement of a witness which the witness would be allowed to express if testifying in person, if the statement is made by affidavit or by certification as provided in section 1-109 of the Code of Civil Procedure; (735 ILCS 5/1-109)

(6) any other document not specifically covered by any of the foregoing provisions, and which is otherwise admissible under the rules of evidence.

The Pages of any Rule 90 (c) package submitted to the arbitrators should be numbered consecutively from the first page to the last page of the package in addition to any separate numbering of the pages of individual documents compr9ising such package.

Illinois Supreme Court Rule 90(d) **Opinions of Expert Witnesses.** A party who proposes to use a written opinion of an expert witness or the testimony of an expert witness at the hearing may do so provided a written notice of such intention is given to every other party not less than thirty (30) days prior to the date of hearing, accompanied by a statement containing the identity of the expert witness, the expert's qualifications, the subject matter, the basis of the expert's conclusions, and the expert's opinion as well as any other information required by Rule 222(d)(6).

Illinois Supreme Court Rule 90(e) **Right to Subpoena Maker of the Document.** Any other party may subpoena the author or maker of a document admissible under this rule, at that party's expense, and

examine the author or maker as if under cross-examination. The provisions of the Code of Civil Procedure relative to subpoenas, section 2-1101, shall be applicable to arbitration hearings and it shall be the duty of a party requesting the subpoena to modify the form to show that the appearance is set before an arbitration panel and to give the time and place set for the hearing.

Illinois Supreme Court Rule 90(f) **Adverse Examination of Parties or Agents.** The provisions of the Code of Civil Procedure relative to the adverse examination of parties or agents, section 2-1102, shall be applicable to arbitration hearings as upon the trial of a case.

Illinois Supreme Court Rule 90(g) **Compelling Appearance of Witness at Hearing.**
The provisions of Supreme Court Rule 237, herein, shall be equally applicable to arbitration hearings as they are to trials. The presence of a party may be waived by stipulation or excused by court order for good cause shown not less than seven (7) days prior to the hearing. Remedies upon a party's failure to comply with notice pursuant to Supreme Court Rule 237(b) may include an order debarring that party from rejecting the award.

Illinois Supreme Court Rule 91(a) **Failure to be Present at Hearing.** The arbitration hearing shall proceed in the absence of any party who, after due notice, fails to be present. The panel shall require the other party or parties to submit such evidence as the panel may require for the making of an award. The failure of a party to be present, either in person or by counsel, at an arbitration hearing shall constitute a waiver of the right to reject the award and a consent to the entry by the court of a judgment on the award. In the event the party who fails to be present thereafter moves, or files a petition to the court, to vacate the judgment as provided therefor under the provisions of the Code of Civil Procedure for the vacation of judgments by default, sections 2-1301 and 2-1401, the court, in its discretion, in addition to vacating the judgment, may order the matter for rehearing in arbitration, and may also impose the sanction of costs and fees as a condition for granting such relief.

Illinois Supreme Court Rule 237 **Compelling Appearance of Witnesses at Trial.**

(a) Service of Subpoenas. Any witness shall respond to any lawful subpoena of which he has actual knowledge, if payment of the fee and mileage has been tendered. Service of a subpoena by mail may be proved *prima facie* by a return receipt showing delivery to the witness or his authorized agent by certified or registered mail at least seven (7) days before the date on which appearance is required and an affidavit showing that the mailing was prepaid and was addressed to the witness, restricted delivery, with a check or money order for the fee and mileage enclosed.

(b) Notice to Parties, *et al.* The appearance at the trial of a party or a person who at the time of the trial is an officer, director, or employee of a party may be required by serving the party with a notice designating the person who is required to appear. The notice also may require the production at the trial of the originals of those documents or tangible things previously produced during discovery. If the party or person is a nonresident of the county, the court may order any terms and conditions in connection with his or her appearance at the trial that are just, including payment of his or her reasonable expenses. Upon a failure to comply with the notice, the court may enter any order that is just including any order provided for in Supreme Court Rule 219(c) that may be appropriate.

18th Judicial Circuit Rule 13.03(g) It is anticipated that the majority of cases to be heard by an arbitration panel will require a maximum of two (2) hours for presentation and decision. Any party seeking a hearing in excess of two hours must obtain an Order of Court and tender that Order to the Arbitration Administrator at least ten days prior to the arbitrations.

18th Judicial Circuit Rule 13.05(b) A stenographic record of the hearing may be made by any party at that party's expense. If a party has a stenographic record transcribed, notice thereof shall be given to all other parties and a copy shall be furnished to any party upon payment of a proportionate share of the total cost of making the stenographic record.

18th Judicial Circuit Rule 13.05(c) Statement of witnesses shall set forth the name, address and telephone number of the witness.

18th Judicial Circuit Rule 13.05(d) Costs shall be considered by the arbitration panel pursuant to law.

18th Judicial Circuit Rule 13.13 Destruction of Arbitration Hearing Exhibits. Exhibits admitted into evidence may be retained by the panel until the entry of the award. It is the duty of the attorneys or parties to complete forms informing the Arbitration Administrator that they are leaving such exhibits. Exhibits must be retrieved by the attorneys or parties from the Arbitration Administrator within seven (7) days after the entry of judgment. All exhibits not retrieved shall be destroyed.

18th Judicial Circuit Rule 6.04(a) Filing. All case or claim dispositive motions, other than motions arising during the course of trial, shall be filed no later than sixty-three (63) days before the scheduled trial date, except by prior leave of court and for good cause shown. The title to each motion shall indicate the relief sought and the applicable section of the Code of Civil Procedure.

Directed Awards In response to inquires from arbitrators, the panel can make directed Awards. The basis may relate to any of the elements of proof, including damages. Specifically, one recent panel found that the plaintiff did not establish any damages. Such a finding is very informative in the event of a rejection.

Contents of Award

Dissent In another recent Award, the arbitrators provided great assistance to counsel by adding "Dissenting Arbitrator finds damages to be greater than Award rendered." In so doing, they deflated the possibility that the defendant had a sympathetic panel member and assisted in helping both attorneys in analyzing their cases.

Costs & Attorneys Fees If no evidence of costs or attorneys fees has been presented, noting the absence of proofs greatly assists the court in avoiding motions seeking to clarify, modify or amend an Award.

Affirmative Defenses If an affirmative defense is pled and the pleading party fails to present evidence, it should be noted on the Award.

Post Arbitration Motions Post Arbitration motions under Rules 91(a), 91(b) and 91(g) are often presented by counsel, neither of whom were actually present at the arbitration. Since there usually is no transcript available, the Court has only the Award and argument of counsel to rely upon. It is very helpful to memorialize in the Award the failure of a party to appear, whether a Rule 237 notice has been presented to the panel, and provide a basis for bad faith findings.

VI. ABSENCE OF A PARTY/FAILURE TO PARTICIPATE

A. Ex-Parte Awards

Illinois Supreme Court Rule 91(a) provides that the hearing shall proceed in the absence of a party who, after due notice, fails to be present. The panel shall require the other party or parties to submit such evidence as the panel may require for making an *ex-parte* award. A party's failure to appear at the arbitration hearing may act as a waiver of that party's right to reject the award and that party's consent to the entry of a judgment on the award by the court.

If the plaintiff fails to appear at the arbitration hearing, an *ex-parte* award is normally entered in favor of the defendant for plaintiff's failure to sustain the burden of proof. If the defendant fails to appear, plaintiff still has the burden of proof and must present such evidence as may be necessary to prove the case. An *ex-parte* award will be entered based on the panel's determination of the evidence. If neither plaintiff nor defendant appear at the hearing, an *ex parte* award may be entered under rule 91 (a), or the court may enter an order dismissing the case for want of prosecution.

The arbitration panel does not have the authority to enter a default judgment; and therefore, any such motion must be brought before the Supervising Judge for Arbitration prior to the arbitration hearing. Pursuant to Circuit Court Rule 6.04(a), all claim dispositive motions must be filed no later than 63 days before the scheduled trial/hearing date.

B. Filing an Appearance or Answer at the Arbitration Hearing

The filing of an appearance or answer instanter at the arbitration hearing is inappropriate and not allowed.

C. Parties Arriving Late to the Arbitration Hearing

When both parties appear on the scheduled hearing dated, they are assigned to an arbitration panel. If a party believes it he/she will be late for an arbitration hearing, the Arbitration Administrator should be notified immediately. If no notice is given to the Arbitration Administrator, a party who does not answer ready within fifteen (15) minutes of the time set for the hearing to begin may be found to be in default and the hearing will proceed *ex parte.* It is the practice of the Arbitration Center to wait fifteen (15) minutes after the prescribed hearing time before proceeding to an *ex parte* hearing. If one of the parties has called the Arbitration Center and has indicated that he/she will be late, the case will be held for a reasonable time pending the arrival of the missing party. However, the party causing the delay will have that time deducted from his/her presentation time.

D. Vacating an *Ex-Parte* Award

If the party which failed to appear desires a full hearing, they must wait until judgment is entered on the award and then petition the Court to vacate the judgment pursuant to 735 ILCS 5/2-1301 or 2-1401. An award, because it is not a court order, may not be vacated. The Court, in its discretion, may order the matter set for rehearing in arbitration. However, pursuant to Illinois Supreme Court Rule 91(a), costs and fees may be assessed against the party seeking to vacate the *ex-parte* award.

E. Failure to Participate in an Arbitration Hearing

Illinois Supreme Court Rule 91(b) mandates that all parties to a hearing participate in good faith and a meaningful manner. If the panel unanimously finds that a party has not done so, it may so note that on the award. Such a finding shall be prima facie evidence that the party did not participate in good faith or a meaningful manner. The Court may, upon petition for sanctions, enter an order debarring the party against whom the finding was made from rejecting the award and for sanctions provided in Rule 219 (c).

Arbitration is a serious effort by the bench, the bar and the public to reduce court backlog and for litigants in cases with small to intermediate claims to have their cases expeditiously heard and determined. Prior to the adoption of rule 91(b), some lawyers and litigants perceived arbitration as a hurdle to cross before getting to trial and would subvert the integrity of the system. It was hoped that with the implementation of Rule 91(b), litigants would present their cases in a meaningful manner and thus preserve that integrity. This has happened to some degree.

Applicable Rules

Illinois Supreme Court Rule 91(a) **Failure to be Present at Hearing.** The arbitration hearing shall proceed in the absence of any party who, after due notice, fails to be present. The panel shall require the other party or parties to submit such evidence as the panel may require for the making of an award. The failure of a party to be present, either in person or by counsel, at an arbitration hearing shall constitute a waiver of the right to reject the award and a consent to the entry by the court of a judgment on the award. In the event the party who fails to be present thereafter moves, or files a petition to the court, to vacate the judgment as provided therefor under the provisions of the Code of Civil Procedure for the vacation of judgments by default, sections 2-1301 and 2-1401, the court, in its discretion, in addition to vacating the judgment, may order the matter for rehearing in arbitration, and may also impose the sanction of costs and fees as a condition for granting such relief.

Illinois Supreme Court Rule 91(b) Good Faith-Participation. All parties to the arbitration hearing must participate in the hearing in good faith and in a meaningful manner. If a panel of arbitrators unanimously finds that a party has failed to participate in the hearing in good faith and in a meaningful manner, the panel's finding and factual basis therefor shall be stated on the award. Such award shall be *prima facie* evidence that the party failed to participate in the arbitration hearing in good faith and in a meaningful manner and a court, when presented with a petition for sanctions or remedy therefor, may order sanctions as provided in Rule 219(c), including, but not limited to, an order debarring that party from rejecting the award, and costs and attorney fees incurred for the arbitration hearing and in the prosecution for the petition for sanctions, against that party.

Illinois Supreme Court Rule 219(c) Failure to Comply with Order or Rules. If a party, or any person at the instance of or in collusion with a party, unreasonably fails to comply with any provision of part E of article II of the rules of this court (Discovery, Requests for Admission, and Pretrial Procedure) or fails to comply with any order entered under these rules, the court, on motion, may enter, in addition to remedies elsewhere specifically provided, such orders as are just, including, among others, the following:

(i) That further proceedings be stayed until the order or rule is complied with;

(ii) That the offending party be debarred from filing any other pleading relating to any issue to which the refusal or failure relates;

(iii) That the offending party be debarred from maintaining any particular claim, counterclaim, third-party complaint, or defense relating to that issue;

(iv) That a witness be barred from testifying concerning that issue;

(v) That, as to claims or defenses asserted in any pleading to which that issue is material, a judgment by default be entered against the offending party or that the offending party's action be dismissed with or without prejudice;

(vi) That any portion of the offending party's pleadings relating to that issue be stricken and, if thereby made appropriate, judgment be entered as to that issue; or

(vii) That in cases where a money judgment is entered against a party subject to sanctions under this subparagraph, order the offending party to pay interest at the rate provided by law for judgments for any period of pretrial delay attributable to the offending party's conduct.

In lieu of or in addition to the foregoing, the court, upon motion or upon its own initiative, may impose upon the offending party or his or her attorney, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred as a result of the misconduct, including a reasonable attorney fee, and when the misconduct is willful, a monetary penalty. When appropriate, the court may, by contempt proceedings, compel obedience by any party or person to any subpoena issued or order entered under these rules. Notwithstanding the entry of a judgment or an order of dismissal, whether voluntary or involuntary, the trial court shall retain jurisdiction to enforce, on its own motion or on the motion of any party, any order imposing monetary sanctions, including such orders

as may be entered on motions which were pending hereunder prior to the filing of a notice or motion seeking a judgment or order of dismissal.

Where a sanction is imposed under this paragraph (c), the judge shall set forth with specificity the reasons and basis of any sanctions so imposed either in the judgment order itself or in a separate written order.

18th Judicial Circuit Rule 6.04(a) Filing. All case or claim dispositive motions, other than motions arising during the course of trial, shall be filed no later than sixty-three (63) days before the scheduled trial date, except by prior leave of court and for good cause shown. The title to each motion shall indicate the relief sought and the applicable section of the Code of Civil Procedure.

Directed Awards In response to inquires from arbitrators, the panel can make directed Awards. The basis may relate to any of the elements of proof, including damages. Specifically, one recent panel found that the plaintiff did not establish any damages. Such a finding is very informative in the event of a rejection.

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Costs & Attorneys Fees If no evidence of costs or attorneys fees has been presented, noting the absence of proofs greatly assists the court in avoiding motions seeking to clarify, modify or amend an Award.

Affirmative Defenses If an affirmative defense is pled and the pleading party fails to present evidence, it should be noted on the Award.

Post Arbitration Motions Post Arbitration motions under Rules 91(a), 91(b) and 91(g) are often presented by counsel, neither of whom were actually present at the arbitration. Since there usually is no transcript available, the Court has only the Award and argument of counsel to rely upon. It is very helpful to memorialize in the Award the failure of a party to appear, whether a Rule 237 notice has been presented to the panel, and provide a basis for bad faith findings.

18th Judicial Circuit Rule 13.05 (f) Cases should be ready at the scheduled time. The Arbitration Administrator may extend the time for good cause shown. If no notice is given to the Arbitration Administrator, a party who does not answer ready within 15 minutes of the time called will be found in default and the hearing will proceed *ex-parte*. If a party calls the Arbitration Center and indicates they will be late, the case will be held for a reasonable time. Any time delay will be deducted from the presentation time of the party causing the delay.

F. Rule 90 Conduct of the Hearings

The 90(c) packet must include a summary sheet detailing the money damages and specifying whether each bill is paid or unpaid (see Rule below).

Applicable Rule

Rule 90. Conduct of the Hearing

(a) Powers of Arbitrators. The arbitrators shall have the power to administer oaths and affirmations to witnesses, to determine the admissibility of evidence and to decide the law and the facts of the case. Rulings on objections to evidence or on other issues which arise during the hearing shall be made by the chairperson of the panel.

(b) Established Rules of Evidence Apply. Except as prescribed by this rule, the established rules of evidence shall be followed in all hearings before arbitrators.

(c) Documents Presumptively Admissible. All documents referred to under this provision shall be accompanied by a summary cover sheet listing each item that is included detailing the money damages incurred by the categories as set forth in this rule and specifying whether each bill is paid or unpaid. If at least 30 days' written notice of the intention to offer the following documents in evidence is given to every other party, accompanied by a copy of the document, a party may offer in evidence, without foundation or other proof:

(1) bills (specified as paid or unpaid), records and reports of hospitals, doctors, dentists, registered nurses, licensed practical nurses and physical therapists, or other health-care providers;

(2) bills for drugs, medical appliances and prostheses (specified as paid or unpaid);

(3) property repair bills or estimates, when identified and itemized setting forth the charges for labor and material used or proposed for use in the repair of the property;

(4) a report of the rate of earnings and time lost from work or lost compensation prepared by an employer;

(5) the written statement of any expert witness, the deposition of a witness, the statement of a witness which the witness would be allowed to express if testifying in person, if the statement is made by affidavit or by certification as provided in section 1–109 of the Code of Civil Procedure;

(6) any other document not specifically covered by any of the foregoing provisions, and which is otherwise admissible under the rules of evidence.

The pages of any Rule 90 (c) package submitted to the arbitrators should be numbered consecutively from the first page to the last page of the package in addition to any separate numbering of the pages of individual documents comprising such package.

(d) Opinions of Expert Witnesses. A party who proposes to use a written opinion of any expert witness or the testimony of any expert witness at the hearing may do so provided a written notice of such intention is given to every other party not less than 30 days prior to the date of hearing, accompanied by a statement containing the identity of the expert witness, the expert's qualifications, the subject matter, the basis of the expert's conclusions, and the expert's opinion as well as any other information required by Rule 222(d)(6).

(e) Right to Subpoena Maker of the Document. Any other party may subpoena the author or maker of a document admissible under this rule, at that party's expense, and examine the author or maker as if under cross-examination. The provisions of the Code of Civil Procedure relative to subpoenas, section 2–1101, shall be applicable to arbitration hearings and it shall be the duty of a party requesting the subpoena to modify the form to show that the appearance is set before an arbitration panel and to give the time and place set for the hearing.

(f) Adverse Examination of Parties or Agents. The provisions of the Code of Civil Procedure relative to the adverse examination of parties or agents, section 2–1102, shall be applicable to arbitration hearings as upon the trial of a case.

(g) Compelling Appearance of Witness at Hearing. The provisions of Rule 237, herein, shall be equally applicable to arbitration hearings as they are to trials. The presence of a party may be waived by stipulation or excused by court order for good cause shown not less than seven days prior to the hearing. Remedies upon a party's failure to comply with notice pursuant to Rule 237(b) may include an order debarring that party from rejecting the award.

[Rule 90(c) Cover Sheet]

IN THE CIRCUIT OF COUNTY, ILLINOIS

Plaintiff)
)
)
vs.) No.
)
Defendant)

NOTICE OF INTENT
PURSUANT TO SUPREME COURT RULE 90(C)

Pursuant to Supreme Court Rule 90(c), the plaintiff(s) intend(s) to offer the following documents that are attached into evidence at the arbitration proceeding:

I.	Healthcare Provider Bills	Amount Paid	Amount Unpaid
	1.		
	2.		
	3.		
	4.		
	5.		
	6.		
	7.		
	8.		
	9.		
	10.		

II. Other Items of Compensable Damages

1.
2.
3.
4.
5.

_____
Attorney for Plaintiff

Adopted May 20, 1987, effective June 1, 1987; amended April 7, 1993, effective June 1, 1993; amendedMarch 26, 1996, effective immediately; amended March 28, 2002, effective July 1, 2002; amended December 5, 2003, effective January 1, 2004.

Paragraph (c)

All jurisdictions utilizing court-annexed arbitration have adopted rules substantially and conceptually similar to the provisions at paragraph (c) of this rule. The purpose for allowing presumptive admissibility of documents is to enable the parties to achieve the economy of time and expense available for the conduct of the hearing. The emphasis should be placed on substance and not form; the integrity of the evidence should be more meaningful than its formal method of introduction. The documents described in (c) are generally considered reliable and trustworthy for the purpose of admission. The documents that could be admitted under the general classification in (c)(6) could be photos, maps, drawings and blueprints, weather reports, business records and communications, and the like, so as to relieve the requirements of a foundational predicate for their admission.

The practice of the presumptive admission of documents of the type and nature described in the rule has stood the test of time and of experience in many thousands of hearings; one encounters no reported criticism or suggestion for change.

Regardless of the presumptive admissibility of the documents, the arbitrators will be required to apply the tests under established rules of evidence otherwise relating to admissibility and credibility and to determine, fairly, the weight to be given such evidence. Otherwise, the purpose of this procedure to achieve a fair, economical and early disposition of the controversy must ultimately fail by virtue of the lack of an essential integrity to the hearing itself.

Practitioners may not assume that practice will tolerate the blanket submission of voluminous records, charts or entire depositions with the expectation that the panel must pore over these documents and attempt to sort out that part which may be relevant or material to the issues at hand. Nor should such burden be placed on opposing counsel when such documents have been provided by notice. It would not be inappropriate or unreasonable, on the part of the panel, if it were to reject such blanket submissions unless proffering counsel specifies the entries or statements therein having relevancy and materiality.

None of the documents eligible for admission without foundation may be so offered unless the intention to do so, and a copy thereof, has been provided to opposing counsel not less than 30 days prior to the hearing. That length of time should be sufficient to enable counsel to verify the authenticity of the document, if prior discovery has not already accomplished that purpose. The Committee is recommending a period of notice longer than any of the arbitration jurisdictions; many provide a 20-day notice and some as few as seven days. We recommend the longer period so that there is less reason for the parties to request a continuance.

If the period of notice given for the submission of documents for presumptive admission is the minimum provided by this rule, and opposing counsel, in the exercise of prudent practice finds need to submit a document in rebuttal, he should apply to the court for leave to do so, unless his adversary will stipulate to a submission in less time than is required by this rule. Under such circumstances the court, in its ruling, should be guided by the degree of diligence and preparation previously undertaken by both counsel.

Whenever possible, counsel should endeavor to avoid delay and needless expense by stipulating to the admission of documents where there is no reasonable basis for believing they will not and should not be admitted.

VII. THE AWARD

Illinois Supreme Court Rule 92(a) provides that the panel shall make an award promptly upon termination of the arbitration hearing. The panel should first determine liability of the parties. If the plaintiff has failed to meet his/her burden of proof, the panel may enter an award in favor of the defendant. If the plaintiff has met the necessary burden, the panel then needs to address the issue of damages.

The award must dispose of all claims for relief including any counter-claims, statutory or contractual claims for attorney's fees, or other relief sought. If the parties ask for and are entitled to attorney's fees and prove them up either by testimony or affidavit, they must be addressed in the award. The prevailing party is entitled to costs and the costs should be itemized in the award. The court may not change the award based on the fact that the panel did not determine a specific claim for relief. The award may not exceed the jurisdictional limit of $50,000, which was set by the Supreme Court for the circuit, exclusive of interest and costs. [Ill. S. Ct. Rule 92(b)]. The award shall be signed by the arbitrators or the majority of them. A dissenting vote without further comment may be noted.

The arbitration award should be written in clear and understandable language so as to avoid any potential confusion concerning the panel's decision and should state clearly the determination of all the claims for relief. Please note that the panel is not entering a judgment, but is making an award.

The following are examples of language that can be used in the drafting of an award:

> **All parties being present, award is made in favor of the Plaintiff, XYZ Company, in the amount of $5,000 and against the Defendant, ABC Company, plus costs of $162.00 itemized as follows: filing fee $133.00, service of process $31.00.**

or

> **All parties being present, award is made in favor of Defendant, ABC Company, and against Plaintiff, XYZ Company, all parties to bear their own costs.**

In cases involving multiple-parties, the arbitrators must indicate *by name* which party or parties in whose favor the award is being made for or against whom the award is being made so as to avoid confusion.

> **All parties being present, award is made in favor of Plaintiff, Jack Jones, and against Defendant, Jon Smith, in the amount of $4,789.45; in favor of Plaintiff, Sam Jones, and against Defendant, Jon Smith, in**

the amount of $8,904.28; in favor of defendant, Sue Smith, and against plaintiffs, Jack Jones and Sam Jones.

Likewise, when making an award in favor of a counter-plaintiff or counter-defendant, the parties should be indicated by name:

We further make an award in favor of Plaintiff/Counter-defendant, XYZ Company, on the counter-claim.

Additionally the *amount* of the award for or against each party must be *specifically* set forth, particularly when different parties may be awarded different amounts.

Award in favor of Plaintiff, Jane Jones, and against Defendant, Sam Smith, in the amount of $5,987.54 plus costs; in favor of Plaintiff, Jane Jones, and against Defendant, Fred Freund, in the amount of $1,101.98 plus costs; in favor of Plaintiff, Jack Jones, and against Defendant, Sam Smith, in the amount of $3,907.68 plus costs; in favor of Defendant, Fred Freund, and against Plaintiff, Jack Jones.

If there is a third-party complaint, the panel needs to address both complaints:

On the original complaint, we find in favor to the Plaintiff, Eric Anthony, and against the Defendant, Emily Leonard, in the amount of $15,258.00 plus costs of $259.00 itemized as follows: filing fee $208.00, service of process $51.00. On the third-party complaint, we find in favor of the 3rd party Defendant, Michael James, and against the 3rd party Plaintiff, Emily Leonard.

If one party fails to appear at the arbitration hearing, the panel should indicate that the award is being made *ex-parte*:

Pursuant to Rule 91(a), Defendant, Sam Smith, not appearing in person or through counsel, an *ex-parte* award is made in favor of Plaintiff, Jane Jones, in the amount of $6,408.29 plus costs of $162.00 itemized as follows: filing fee $133.00, service of process $31.00.

If the award contains an obvious or unambiguous error in math or language, any party may bring a motion before the Supervising Judge for Arbitration for correction of the award as provided for in Supreme Court Rule 92(d). The filing of such a motion will stay the thirty-day (30) period for rejection of the award until disposition of the motion. The parties may not contact the arbitrators directly for clarification or call an arbitrator directly as to what transpired at the arbitration hearing. [Ill. S. Ct. Rule 93(b) - 18th Judicial Circuit Rule 13.08 (b)]

Once the award form is completed, it should be delivered to the Arbitration Administrator. The award shall be filed with the Clerk of the Court, who shall make entry of the award on the record and serve notice of the award to all parties.

Any party which has been present at the hearing either in person or through counsel and who has not been barred from rejecting the award, may reject the award and proceed to trial *de novo* upon notice to all other parties and payment to the clerk of the court of the appropriate rejection fee. [Ill. S. Ct. Rule 93(a)] Said notice and payment must be made within thirty days (30) of the filing of the award with the Clerk of the Court. Pursuant to Supreme Court Rule 93(a), the filing of a single rejection shall be sufficient to enable all parties, except those who have been barred from rejecting the award to proceed to trial on all issues.

It must be noted that the arbitrators enter an Award. This Award has no legal status and may not be the basis for supplementary proceedings. It is incumbent upon one of the parties to move the Court to enter judgment on the Award. This is usually done at the post-hearing status.

Applicable Rules

Illinois Supreme Court Rule 92(a) Definition of Award. An award is a determination in favor of a plaintiff or defendant.

Illinois Supreme Court Rule 92(b) Determining an Award. The panel shall make an award promptly upon termination of the hearing. The award shall dispose of all claims for relief. The award may not exceed the monetary limit authorized by the Supreme Court for that circuit or county within that circuit, exclusive of interest and costs. The award shall be signed by the arbitrators or the majority of them. A dissenting vote without further comment may be noted. Thereafter, the award shall be filed immediately with the clerk of the court, who shall serve notice of the award, and the entry of the same on the record, to other parties, including any in default.

Illinois Supreme Court Rule 92(c) Judgment on the Award. In the event none of the parties files a notice of rejection of the award and requests to proceed to trial within the time required herein, any party thereafter may move the court to enter judgment on the award.

Illinois Supreme Court Rule 92(d) Correction of the Award. Where the record and the award disclose an obvious and unambiguous error in mathematics or language, the court, on application of a party within the 30-day period allowed for rejection of an award, may correct the same. The filing of such an application shall stay all proceedings, including the running of the 30-day period for rejection of the award, until disposition of the application by the court.

Illinois Supreme Court Rule 93(a) Rejection of Award and Request for Trial. Within 30 days after the filing of an award with the clerk of the court, and upon payment to the clerk of the court the sum of $200 for awards of $30,000 or less or $500 for awards greater than $30,000, any party who was present at the arbitration hearing, either in person or by counsel, may file with the clerk a written notice of rejection of the award and request to proceed to trial, together with a certificate of service of such notice on all other parties. The filing of a single rejection shall be sufficient to enable all parties except a party who has been debarred from rejecting the award to proceed to trial on all issues of the case without the necessity of each party filing a separate rejection. The filing of a notice of rejection shall not be effective as to any party who is debarred from rejecting the award.

Illinois Supreme Court Rule 93(b) Arbitrator May Not Testify. An arbitrator may not be called to testify as to what transpired before the arbitrators and no reference to the fact of the conduct of the arbitration hearing may be made at trial.

18th Judicial Circuit Rule 13.08 (b) Rejection of Award. An arbitrator may not be contacted, nor publicly comment, nor respond to questions regarding a particular arbitration case heard by that arbitrator during the pendency of that cause.

AN ARBITRATOR'S GUIDE TO THE ESTABLISHED RULES OF EVIDENCE

I. INTRODUCTION

The pleadings in a case assigned to Mandatory Arbitration will define the issues to be decided at the hearing. The Mandatory Disclosure Statement required of both plaintiff and defendant by Supreme Court Rule 222 in tort and contract cases subject to mandatory arbitration will also be helpful in defining the issues. If the parties can furnish these to the arbitrators before the hearing commences, it will be helpful. If not, you may want to ask the parties to brief you on the issues.

A. Relevant Evidence

The issues to be decided will define what is **relevant evidence. Relevant evidence** is evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.[1]

As a GENERAL RULE only RELEVANT EVIDENCE IS ADMISSIBLE. By limiting the evidence presented by the parties to RELEVANT EVIDENCE, the arbitrators will avoid wasting time unnecessarily.

Otherwise irrelevant, and even inadmissible, evidence may be received in evidence by the arbitrators if:

1. The parties STIPULATE to the admissibility and receipt in evidence of testimony, documents, or objects, etc.
2. The evidence becomes RELEVANT by a party's laying a foundation establishing the testimony, documents, or objects as RELEVANT.

B. Presumptive Admissibility Under Rule 90(c).

Illinois Supreme Court Rule 90(c) provides that certain documents are PRESUMPTIVELY ADMISSIBLE; they include hospital bills, hospital records, doctor's reports, drug bills, and other medical bills, bills for property damage, estimates of repair, written estimates of value, earnings reports, expert's opinions, and the depositions of a witness. A party desiring to present documents through Rule 90(c) must give all other parties to the action at least 30 days' written notice of the intention to offer the documents into evidence, accompanied by a copy of the document. Where there has been compliance with Supreme Court Rule 90(c), neither AUTHENTICATION nor FOUNDATION are required. However, the documents are still subject to objection and cross-examination by any other party.

[1]Illinois adopted Federal Rule 401 in In re Elias, 114 Ill. 2d 321, 499 N.E.2d 1327, 102 Ill. Dec. 314 (1986) and People v. Monroe, 66 Ill. 2d 317, 362 N.E.2d 295, 5 Ill. Dec. 824 (1977).

Illinois Supreme Court Rule 90(c) **Documents Presumptively Admissible.** All documents referred to under this provision shall be accompanied by a summary cover sheet listing each item that is included detailing the money damages incurred by the categories as set forth in this rule and specifying whether each bill is paid or unpaid. If at least 30 days' written notice of the intention to offer the following documents in evidence is given to every other party, accompanied by a copy of the document, a party may offer in evidence, without foundation or other proof (emphasis added):

(1) bills, (specified as paid or unpaid), records and reports of hospitals, doctors, dentists, registered nurses, licensed practical nurses and physical therapists, or other health-care providers;

(2) bills for drugs, medical appliances and prostheses (specified as paid or unpaid);

(3) property repair bills or estimates, when identified and itemized setting forth the charges for labor and material used or proposed for use in the repair of property;

(4) a report of the rate of earnings and time lost from work or lost compensation prepared by an employer;

(5) the written opinion of an expert, the deposition of a witness, the statement of a witness which the witness would be allowed to express if testifying in person, if the statement is made by affidavit or by certification as provided in section 1-109 of the Code of Civil Procedure; (735 ILCS 5/1-109)

(6) any other document not specifically covered by any of the foregoing provisions, and which is otherwise admissible under the rules of evidence.

The pages of any Rule 90 (c) package submitted to the arbitrators should be numbered consecutively from the first page to the last page of the package in addition to any separate numbering of the pages of individual documents comprising such package.

Any evidence, which falls within Supreme Court Rule 90(c), is PRESUMPTIVELY ADMISSIBLE. Any other evidence offered must meet the requirements of the ESTABLISHED RULES OF EVIDENCE [Supreme Court Rule 90(b)].

II. MODE OF INTERROGATION AS IT DETERMINES ADMISSIBILITY OF EVIDENCE

A. Direct Examination

DIRECT EXAMINATION GENERAL RULE: Leading questions are forbidden. DEFINITION OF A LEADING QUESTION: A question that contains the answer desired of the witness, e.g. "Was the color of the defendant's car red?" instead of "What color was the defendant's car?"

EXCEPTION: If the witness' memory is exhausted, or the witness is HOSTILE, or where the witness is identified with an opposing party as an ADVERSE WITNESS, then the witness may be examined as if under cross-examination, i.e., leading questions may be used.

Whether the witness is HOSTILE or ADVERSE is determined by the presence of one or more of the following conditions:

- the attitude of the witness;
- the witness' interest in the outcome (i.e., an agent or employee of the opponent);
- the content of the witness's testimony indicates surprise or affirmative damage to the party calling the witness.[2]

B. Cross-Examination

CROSS-EXAMINATION GENERAL RULE: Leading questions are permissible. SCOPE: Cross-examination is limited to those subject matters covered on DIRECT EXAMINATION and to those matters affecting credibility.

C. Redirect Examination

The real purpose of REDIRECT is REHABILITATION and should be limited to matters brought out for the first time on cross-examination. The offering party should have the opportunity on REDIRECT to meet such matters and try to explain them. It should not be an opportunity to say the same thing that was said on DIRECT examination (i.e., to reinforce direct), nor to add material that could have been, but was not, offered on direct. This will be extremely important because of the time constraints on the arbitration hearing.

[2] 735 ILCS 5/2-1102(1993); Supreme Court Rule 238(b).

D. Offer of Proof

In the event the arbitrator rules certain evidence is inadmissible, either testimony of a witness, or objects such as photos or other items, a party may make an OFFER OF PROOF in one of the following ways;

(1) ask the witness what his or her testimony would have been if the objection had been overruled;
(2) counsel may make a statement as to what the substance of the witness' testimony would have been but for the ruling.

GENERAL RULE: Allow the OFFER OF PROOF to be made. Even though there is no transcript for a review proceeding, the primary purpose of the OFFER OF PROOF is to provide the arbitrator with the most informed opportunity to make the proper ruling. After hearing the OFFER OF PROOF the arbitrator may have a different opinion as to the relevance or admissibility of the proposed evidence.

III. EVIDENCE SCENARIOS

Each of these hypothetical problems assumes that the offering party has NOT complied with Supreme Court Rule 90(c). Hence, the arbitrator will have to make a ruling pursuant to the established Rules of Evidence for Illinois. These examples are illustrative, but not exhaustive, of the typical types of evidentiary rulings, which arbitrators may face. (Please note: the hypothetical fact patterns provided below are for purposes of illustration and should not be relied upon as authority when making rulings.)

A. Subsequent Remedial Measures

1. The Plaintiff seeks to admit proof that the Defendant, two days after the incident, repaired defects in the steps upon which Plaintiff allegedly fell and was injured.

OBJECTION: Not relevant.

RULING: SUSTAINED. Proof of subsequent remedial measures is not admissible on the issue of negligence.[3]

2. The Plaintiff seeks to admit evidence of a subsequent remedial repair by the Defendant of a manhole as proof that Defendant owned the property.

OBJECTION: Not relevant because it is proof of a subsequent remedial repair.

RULING: OVERRULED. Proof of subsequent remedial repairs is admissible on an issue other than negligence of the defendant, i.e., proof of ownership, control, feasibility of precautionary measures, or impeachment.[4]

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[3]Howe v. Medaris, 183 Ill. 288, 55 N.E. 724 (1899); Hodges v. Percival, 132 Ill. 53, 23 N.E.423 (1890); Lundy v. Whiting Corp., 93 Ill. App. 3d 244, 417 N.E.2d 154, 48 Ill. Dec. 752 (1st Dist. 1981); Day v. Barber-Coleman Co., 10 Ill. App. 2d 494, 135 N.E.2d 231 (1956).

[4]Evidence of repairs made or precautions taken after an accident may be admissible, as an exception to the General Rule, to show that control of the premises is in Defendant, where there is a dispute on the issue of control. Larson v. Commonwealth Edison Co., 33 Ill. 2d 316, 211 N.E.2d 247 (1965). Practicability of enclosing equipment. Supolski v. Ferguson & Lange Foundry Co., 272 Ill 82, 111 N.E. 544 (1916). Post-occurrence changes are admissible in products liability cases to establish feasibility of alternative design. Davis v. International Harvester Co., 167 Ill. App. 814, 521 N.E.2d 1282, 118 Ill. Dec. 589 (2d Dist. 1988). See also, Sutkowski v. Universal Marion Corp., 5 Ill. App. 3d 313, 281 N.E.2d 749 (3d Dist. 1972). Evidence of post-occurrence changes admissible to show Defendant acted with conscious disregard for safety of others or as proof of wilful and wanton conduct. Collins v. Interroyal Corp., 126 Ill. App. 3d 244, 466 N.E.2d 1191, 81 Ill. Dec. 389 (1st Dist. 1984); contra, Schaffner v. Chicago & North Western Transp. Co., 129 Ill. 2d 1, 541 N.E.2d 643 (1989). Cleary and Graham, *Handbook of Illinois Evidence*, Sec. 407.1 (5th Ed. 1990).

B. Similar Happenings

1. Plaintiff seeks to admit Defendant's records which show that 2 other accidents occurred under substantially similar conditions on the steps of Defendant's building.

OBJECTION: Not relevant.

RULING: OVERRULED. The records are admissible to show the probability that defendant had notice of the existence of a dangerous condition.[5]

2. Defendant apartment building owner seeks to introduce his own maintenance records to show the lack of any other similar accidents.

OBJECTION: Not relevant.

RULING: SUSTAINED. The records are inadmissible on the issue of absence of notice to the defendant of a defective condition.[6]

3. Plaintiff, in a suit to recover for lost profits for Defendant's alleged breach of a real estate contract, offers proof of the sale prices of other similar real estate in the same area.

OBJECTION: Not relevant.

RULING: OVERRULED. Admissible as a proper method of proving fair market value.[7]

C. Character; Habit; Routine Business Practices

1. Defendant offers the testimony of a long-time friend who will testify concerning Defendant's reputation in the community as a careful person as proof that he was not negligent on the occasion at issue.

OBJECTION: Not relevant.

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[5]Ballweg v. City of Springfield, 114 Ill. 2d 107, 499 N.E.2d 1373, 102 Ill Dec. 360 (1986) substantially similar happenings admissible to show notice of dangerousness.

[6]Evidence of no accidents inadmissible to show absence of notice. Mobile & Ohio Railroad C. v. Vallowe, 214 Ill. 124, 73 N.E. 416 (1905).

[7]Department of Public Works & Buildings v. Klehm, 56 Ill. 2d 121, 306 N.E.2d 1 (1973).

RULING: SUSTAINED. Proof of another's character, or character trait, i.e., a careful person, is not admissible in a civil case unless the character or trait of character is an essential element of the cause of action, claim or defense.[8]

2. In an action for negligence against a car wash owner for damages sustained to Plaintiff's auto which jumped the conveyor track while being washed, Plaintiff seeks to testify that he has, for the past 3 years, washed his car at the same car wash every week, and that each time he reads the posted instructions, next drives his car onto the conveyor, then puts it in park and before he leaves the vehicle again checks to see that it is in park.

OBJECTION: Not relevant.

RULING: OVERRULED. Proof of the Plaintiff's habit or routine practice established by evidence of sufficient pattern of repeated responses in the same situation is admissible and is evidence of his character as a careful person and as proof that he acted in conformity with that character trait on this occasion. The ruling could conceivably be sustained depending on whether you agree or do not agree that Illinois still follows the eyewitness requirement, or necessity rule, before habit testimony is permitted.[9]

3. The Defendant insurance company seeks to have an office manager testify that the company has a routine practice of mailing notices of non-coverage, which indicate that the proposed insured is not covered by insurance until after receipt of the insured's premium check; that this procedure is followed immediately upon a telephone request from a proposed insured for coverage, and that the records indicate that the practice was followed in the instant case.

OBJECTION: Hearsay.

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[8] Holtaman v. Hoy, 118 Ill. 534, 8 N.E. 832 (1886). But see McClure v. Suter, 63 Ill. App. 3d 378, 379 N.E.2d 1376, 20 Ill. Dec. 308 (2d Dist. 1978). Evidence of swimming regulations at similar campground admitted as custom and usage. Custom held to be relevant in determining the standard of care.

[9] Illinois courts have adopted **Federal Rule** of Evidence **406** (Fed.R.Evid.406) regarding the admission of habit and routine practice evidence. See *Hajian v. Holy Family Hospital,* 273 Ill.App.3d 932, 942, 210 Ill.Dec. 156, 652 N.E.2d 1132 (1995); *Taruc v. State Farm Mutual Automobile Ins. Co.,* 218 Ill.App.3d 51, 161 Ill.Dec. 7, 578 N.E.2d 134 (1991); *Wasleff v. Dever,* 194 Ill.App.3d 147, 155, 141 Ill.Dec. 86, 550 N.E.2d 1132 (1990).

RULING: OVERRULED. The routine practice of an organization, coupled with proof that the practice was in fact followed on the occasion in issue, is admissible.[10]

D. Offers of Compromise or Settlement; Payment of Medical Expenses

The Plaintiff in a personal injury action testifies that at the scene of the accident the Defendant offered to pay for her medical expenses and property damage as proof of Defendant's admission of liability, and that Defendant did pay part of her medical expenses.

OBJECTION: Payment of medical expenses and offers to settle are inadmissible on the issue of liability.

RULING: SUSTAINED. Compromises and offers to compromise or settle claims are inadmissible. Payment of medical and similar expenses are not admissible to prove liability.[11]

E. Evidence of Intoxication

Plaintiff in an action alleging negligence and wilful and wanton conduct of the Defendant seeks to have a bystander testify that when Defendant emerged from his vehicle after the collision with Plaintiff's car, he smelled from alcohol.

OBJECTION: Evidence of the use of alcohol is not admissible.

RULING: SUSTAINED. Evidence of the use of alcohol is not admissible unless the offering party is prepared to prove intoxication.[12]

F. Convictions; Pleas of Guilty

Plaintiff seeks to introduce that Defendant, after a plea of not guilty and bench trial, was convicted for speeding at the time of the alleged accident.

OBJECTION: Traffic offense convictions are not admissible because of the great volumes of cases handled by these courts, and traffic

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[10]Webb v. Pacific Mutual Life Ins. Co., 348 Ill App. 411, 109 N.E.2d 258 (1st Dist. 1952). Evidence of business practice admissible to show practice followed on occasion in issue.

[11]736 ILCS 5/8-1901 (1993); Boey v. Quaas, 139 Ill. App. 3d 1066, 487 N.E.2d 1222, 94 Ill. Dec. 345 (5th Dist. 1986). Settling Defendant allowed to testify so as to disclose terms of settlement with Plaintiff. Held admissible on issue of credibility of testimony of settling defendant; Sawicki v. Kim, 112 Ill. App. 3d 641, 445 N.E.2d 63, 67 Ill. Dec. 771 (2d Dist. 1983). Reference in opening statement to Defendant's offer to pay $100 to settle the matter and an offer to reduce her bill for medical services reversible error.

[12]Evidence of use of alcohol not permitted except where the offering party is prepared to prove actual intoxication. Benuska v. Dahl, 87 Ill. App. 3d 911, 410 N.E.2d 249, 43 Ill. Dec. 249 (2d Dist. 1980); Ballard v. Jones, 21 Ill. App. 3d 496, 316 N.E.2d 281 (1st Dist. 1974).

courts do not operate so as to assure the reliability of their judgments.

RULING: SUSTAINED. Traffic offense convictions are not admissible unless entered on a plea of guilty. The nature of traffic court proceedings is that they are often perfunctory in nature and such convictions are frequently uncontested. Courts are reluctant to admit them.[13]

G. Original Writing; Best Evidence Rule

1. Plaintiff Realtor, in a suit to recover a real estate commission, seeks to introduce a copy of the Real Estate Listing Agreement as evidence of the terms of the contract with the Seller-Defendant. The Realtor testifies that each person was given a copy of the contract as his original at the time of execution and that this is the Realtor's copy.

OBJECTION: This is not the original document and the Best Evidence or Original Writing Rule requires that the original be produced.

RULING: OVERRULED. Copies which the parties by their conduct treat as originals are admissible, i.e. contracts executed in multiple copies.[14]

2. An attorney in a suit for fees testifies from memory about the time and services rendered to his client.

OBJECTION: The attorney's written time records are the Best Evidence of the services and time rendered.

RULING: OVERRULED. The facts of the attorney's time and services exist independently of the written time records and the attorney may testify.[15]

3. Plaintiff seeks to introduce a copy of a contract after testifying that the original is in the possession of the Defendant.

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[13]Hengels v. Gilski, 127 Ill. App. 3d 894, 469 N.E.2d 708, 83 Ill. Dec. 101 (1st Dist. 1984); O'Dell v. Dowd, 102 Ill. App. 3d 189, 429 N.E.2d 548, 57 Ill. Dec. 650 (4th Dist. 1981). Traffic conviction for driving too fast for conditions is admissible as an admission in later civil case when entered on plea of guilty. See also Cleary and Graham, *Handbook of Illinois Evidence*, Sec. 802.4 (5th Ed. 1990).

[14]735 ILCS 5/8-401 (1993); S.Ct. Rule 236 (1991) amended 4-1-92, effective 8-1-92; People v. Chicago, R.I. & P. Ry. Co., 329 Ill. 467, 160 N.E. 841 (1928): Hayes v. Wagner, 220 Ill. 256, 77 N.E. 211 (1906). Duplicate originals of Election Notices and Ballots made from same reliable printing process through mechanical means, i.e. printing, are admissible as originals, without accounting for the absence of any other duplicate originals.

[15]In re Marriage of Collins, 154 Ill. App. 3d 655, 506 N.E.2d 1000, 107 Ill. Dec. 109 (2d Dist. 1987).

OBJECTION: The Best Evidence Rule requires Plaintiff to produce the original.

RULING: SUSTAINED, unless Plaintiff can show that he gave notice pursuant to Supreme Court Rule 237 requesting Defendant to produce the original at the hearing. The Best Evidence Rule requires that the original writing be introduced into evidence unless the original is shown to be lost, destroyed or unavailable. Detention of the original by the opposing party is a basis for an unavailability finding provided that the proponent shows the opponent's possession or control of the original, transmittal of notice to the opponent that the particular document will be needed at trial and the opponent's refusal or failure to produce the original at trial.[16]

H. Police Reports

The Plaintiff seeks to introduce the investigative report of a policeman, who arrived immediately after the accident, as to what the parties and witnesses said regarding how the accident occurred. Plaintiff argues the report is admissible.

OBJECTION: Hearsay.

RULING: SUSTAINED. Police investigative and accident reports are inadmissible as Business Records.[17]

I. Refreshed Recollection

The officer who investigated the accident, upon testifying, cannot recall the exact positions and locations of the vehicles involved, but he did write this information in his Accident Report. The Defendant seeks to mark the Accident Report as an exhibit and show it to the officer so that he may testify regarding what he observed.

OBJECTION: This is a Police Report and inadmissible.

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[16]S.Ct. Rule 237(b) (1991); Electric Supply Corp. v. Osher, 105 Ill. App. 3d 46, 433 N.E.2d 732, 60 Ill. Dec. 690 (1st Dist. 1982). But notice may not be necessary if from the nature of the case an opponent must know the party will rely on a writing in his possession. Maxcy-Barton Organ Co. v. Glen Bldg. Corp., 355 Ill. 228, 189 N.E. 326 (1934).

[17]S.Ct. Rule 236, amended 4-1-92, effective 8-1-92; Jacobs v. Holley, 3 Ill. App. 3d 762, 279 N.E.2d 186 (2d Dist. 1972).

RULING: OVERRULED. The witness, after a showing that his independent memory of what he observed is exhausted, may review his written Police Report, put it down, and testify from his refreshed recollection.[18]

J. Past Recollection Recorded

The same police officer, after refreshing his memory from his written report, still cannot testify from his refreshed recollection as to the details of the locations of the cars, or his analysis as to how the accident occurred. (Assume he has been qualified to give such an opinion.) Defendant seeks to have the officer read from his report.

OBJECTION: Police reports are inadmissible by Statute and Supreme Court Rule. Also, this is hearsay since it is an out-of-court statement being used to prove the truth of the matter asserted in the report.

RULING: OVERRULED. After an attempt to refresh the witness' memory has failed and the arbitrator finds that the officer has no independent recollection about a matter covered in the writing, the officer may read from the report as a exception to the Hearsay Rule. This is Past Recollection Recorded. The document itself is also admissible.[19]

K. Medical Records; Business Records

The Plaintiff seeks to introduce his medical records from the hospital where he was treated for the injuries sustained in the incident by having a doctor testify that he treated Plaintiff, supervised Plaintiff's treatment by the persons who entered their treatment notes in the records, and that these entries were made in the normal course of his and the hospital's treatment of patients.

OBJECTION: Hearsay and Medical Records are inadmissible.

RULING: OVERRULED. Medical records are now admissible under Supreme Court Rule 236 as a Business Record. A proper foundation for the record's admissibility has been laid by testimony that the records were kept in the regular course of business at the time of the acts or events or within a reasonable time thereafter, and that the person testifying either supervised or has personal knowledge of their recordation or method of recordation.

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[18]Rowlett v. Hamann, 112 Ill. App. 2d 121, 251 N.E.2d 358 (1st dist. 1969);Hall v. Checker Taxi Co., 109 Ill. App. 2d 445, 248 N.E.2d 721 (1st Dist. 1969).

[19]Taylor v. City of Chicago, 114 Ill. App. 3d 445, 248 N.E.2d 721 (1st Dist. 1983); Wilsey v. Schlawin, 35 Ill. App. 3d 892, 342 N.E.2d 417 (1st Dist. 1975); Rowlett, supra.

L. Hearsay; Non-Hearsay; Exceptions to Hearsay

THE SELF-QUOTING WITNESS. The Plaintiff offers the testimony of a witness, a passenger in Defendant's vehicle, who testifies that just before the collision with Plaintiff, he told Defendant he was exceeding the speed limit because he had just passed a 45 mph sign and his speedometer was reading 60.

OBJECTION: Hearsay. This is an out-of-court statement being offered to prove the truth of the matter asserted.

RULING: SUSTAINED. The statement is hearsay and inadmissible even though the declarant is available to be cross-examined. The declarant's testimony is an out-of-court statement being introduced to prove the truth of the matter asserted.

M. State of Mind

In an action by a broker to recover damages for alleged failure of Defendant to pay his brokerage fee, Defendant testifies that he had discussions with his wife about his pending offers to buy the land before listing with Plaintiff, and also that he had no conversations with his wife concerning using the Plaintiff as his broker. The issue was whether Defendant had listed with Plaintiff or was awaiting the results of independent offers to buy before listing with Plaintiff.

OBJECTION: These are self-serving statements and hearsay.

RULING: OVERRULED. Where the state of mind of a person at a particular time is relevant to a material issue in the case, his declaration made at a time when no motive to misrepresent existed are admissible as proof of that issue, even when not made in the presence of the adverse party.[20]

N. Admission by a Party Opponent

The Plaintiff, in an action against the owner of a trucking company for injuries sustained as a result of a truck's defective brakes, testifies that the driver of the truck, Defendant's employee, shortly after the incident and at the scene of the accident, said, "The truck's brakes were bad man, really bad. When I made out my maintenance report 2 months ago, I warned the company that they were dangerous."

OBJECTION: This is hearsay. It is an out-of-court statement being admitted to prove the truth of the matter asserted, i.e. that the defendant owner had knowledge that the brakes were in need of repair and did nothing.

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[20] People v. Coleman, 116 Ill. App. 3d 28, 451 N.E.2d 973, 71 Ill. Dec. 819 (3d Dist. 1983); Hackett v. Ashley, 71 Ill. App. 3d 179, 389 N.E.2d 246, 27 Ill. Dec. 434 (3d Dist. 1979).

RULING: OVERRULED. The statement by an agent, here the employee-driver, if within the scope of his employment or express or implied authority, is binding on the owner as an ADMISSION and is not hearsay.[21]

O. Excited Utterance

Plaintiff testified that immediately after the accident with the Defendant Company's truck and while lying on the road feeling all numb, Defendant's employee truck driver, not available at trial, rushed up to Plaintiff and said, "Man, am I sorry. I just didn't see the red light."

OBJECTION: Hearsay.

RULING: OVERRULED. Admissible as an EXCITED UTTERANCE exception to the Hearsay Rule. An excited utterance is one made where there is an occurrence sufficiently startling to cause a spontaneous and unreflecting statement, and absence of time to fabricate, and the statement relates to a startling event such as an auto accident.[22]

P. Statements of Medical Diagnosis

The Plaintiff's treating physician testified that on the first occasion he saw and treated Plaintiff, Plaintiff told him, "The speeding red car hit me head on."

OBJECTION: Hearsay.

RULING: OVERRULED. Statements made to a physician for the purpose of diagnosis and treatment are admissible as an exception to the Hearsay Rule. Here the doctor needed to know the extent of the impact to make a proper diagnosis.[23]

The arbitrators should be aware of the Supreme Court's ruling in Voykin v. Estate of DeBoer, 192 Ill.2d 49, 733 N.E.2d 1275 (2000) rejecting the same part of the body rule. Voykin holds that the mere fact that a previous injury related to the same part of the body does not automatically guarantee its admission. If a defendant wishes to

[21] Cornell v. Langland, 109 Ill. App. 3d 472, 440 N.E.2d 985, 65 Ill. Dec. 130 (1st Dist. 1982); where statement by managing golf pro at defendant's club to plaintiff's husband that hole was shorter than 315 yards marked was admissible as an admission against club in action to recover for injuries suffered when plaintiff was hit by other golfer's drive. Golf pro was "overseer" of the course and had authority to deal with patrons concerning safety of others. See also Taylor v. Checker Cab. Co., 34 Ill. App. 3d 413, 339 N.E.2d 769 (1st Dist. 1979).

[22] People v. State, 143 Ill. App. 3d 1039, 493 N.E.2d 1157, 98 Ill. Dec. 136 (2d Dist. 1986). To be admissible as an excited utterance exception to the hearsay rule there must be an occurrence or event sufficiently startling to cause a spontaneous and unreflecting statement, and absence of time to fabricate, and a relationship between the statement and the occurrence or event.

[23] Ryan v. Monson, 33 Ill. App. 2d 406, 179 N.E.2d 739 (4th Dist. 1961)

introduce evidence that a plaintiff has suffered a prior injury, the defendant must introduce expert evidence demonstrating why the prior injury is relevant to causation or damages. The rule applies unless the trial court determines that the natures of the prior and current injuries were such that a lay person can readily appraise the relationship between those injuries without expert assistance. Voykin, 192 Ill.2d at 59. Voykin has been distinguished in Janky v. Perry, 343 Ill.App.3d 230, 797 N.E.2d 1066 (3rd Dist., 2003) and in Felber v. London, 346 Ill.App.3d 188, 803 N.E.2d 1103, 1106 (2nd Dist., 2004) (evidence is admissible if jurors can readily appraise the relationship between the injuries of which Felber complained after the collision and her preexisting injuries without additional expert assistance when connected up by the plaintiff's own doctor).

In Caliban v. Patel, 322 Ill. App. 3d 251, 750 N.E. 2d 734, 255 Ill. Dec. 817 (2001), the Court held that evidence of a motorist's prior and subsequent injuries was not causally connected to injuries he sustained in a motor vehicle accident and thus was not admissible in his personal injury action. In so holding, the Court noted that the doctor testified that plaintiff's symptoms from the motor vehicle accident were distinctly different from his prior symptoms, and the doctor did not know whether the prior symptoms of plaintiff's back condition still existed in the two years between his last office visit and the motor vehicle accident.

In Obszanski v. Foster Wheeler Constructions, Inc., 328 Ill. App. 3d 550, 765 N.E. 2d 1193, 262 Ill. Dec. 585 (2002), the Court held that evidence of a subsequent back injury to the plaintiff ironworker was not admissible in his personal injury action against a construction manager. The Court reasoned that evidence of the plaintiff's subsequent back injury was admitted without any supporting expert testimony, and expert testimony was needed to demonstrate why the subsequent injury was a "cause" of the plaintiff's current personal injury claim.

Q. Photographs

Plaintiff testifies that group exhibits 1 through 10 are photographs of his injuries and property damage taken by his wife one day after the accident. He states that they accurately depict both his injuries and the property damage as they looked at the time of the occurrence in issue and offers them in evidence.

OBJECTION: Not admissible. The Plaintiff did not take the photographs and he cannot testify to their accurateness. There is no proper foundation for their admission.

RULING: OVERRULED. A proper foundation has been laid by:

(1) testimony that Plaintiff observed his injuries and the damage the photographs portray at the time of, or shortly after, the accident;

(2) the fact that the photographs were taken at a time relevant to the case or at a later date;

(3) the fact that the photographs depict the same condition as it existed at the time relevant to the case; i.e. at the time of the accident.[24]

R. Telephone Calls

Plaintiff, who has known Defendant and his family for 5 years and spoken to them many times in person, testifies as to the length of the relationship and extent of conversations, and that 3 days after Plaintiff slipped and fell on snow and ice which had accumulated on Defendant's property, Defendant called him on the phone and stated, "I'm sorry my husband didn't shovel that snow and ice 10 days ago. I told him it was slippery and that I was afraid someone was going to get hurt."

OBJECTION: Hearsay. Also Plaintiff can't testify that it was Defendant who called. Defendant will offer evidence that such a call was never made.

RULING: OVERRULED. A person may be identified by voice. A voice may be authenticated by someone who heard the call and was familiar with the caller's voice so as to identify the caller.[25]

[24]People v. Donaldson, 24 Ill. 2d 315, 181 N.E.2d 131 (1962); The arbitrators should be aware of two cases dealing with the introduction of photographs showing minimal damage to the vehicle as an inference of lack of injury. DiCosola v. Bowman, 342 Ill.App.3d 530, 794 N.E.2d 875 (1st Dist., 2003) (holds that a party must introduce expert evidence that there is a relationship between the minimal damage and the nature and extent of the plaintiff's injury). The First District held that the trial court did not abuse its discretion in granting plaintiff's motion *in limine* to exclude the evidence of the dollar amount of property damage and to exclude testimony of photographs regarding property damage without expert connection. Conversely, the Third District in Ferro v. Griffiths, 361 Ill.App.3d 738, 836 N.E.2d 925 (2005) held that the trial court did not abuse its discretion in admitting photographs showing minimal damage to the plaintiff's vehicle as relevant to the nature and extent of the plaintiff's injuries. The Ferro opinion suggested it is not contrary to DiCosola but simply agrees that it's the trial court's call. Both cases have vigorous dissents. Conclusion: The arbitrators may exercise their discretion in permitting photographs to show that minimal damage to a plaintiff's vehicle is relevant to the nature and extent of the plaintiff's injuries without an expert's connection.

[25]Bell V. McDonald, 308 Ill. 329, 139 N.E. 613 (1923).

S. Certified Copies

Defendant on cross-examination denies he was convicted of the felony charge of forgery in 1985. Plaintiff seeks to admit a certified copy of Defendant's 1985 Conviction for Felony Forgery in the Circuit Court of Cook County - Criminal Division as impeachment evidence against Defendant.

OBJECTION: Convictions are not admissible in civil cases and this is not the proper way to prove such a conviction.

RULING: OVERRULED. Any felony conviction and a misdemeanor conviction (a crime punishable by less than 1 year in jail) within the last 10 years for a crime involving deceit or dishonesty is admissible to impeach the credibility of a witness or party.[26] A certified copy of a court record is a proper form of evidence. 735 ILCS 5/8-1202 (1993) provides as follows:

> The papers, entries and records of courts may be proved by a copy thereof certified under the signature of the clerk having the custody thereof, and the seal of the court, or by a judge of the court if there is no clerk.

See also, 735 ILCS 5/8-101 (1993) and Fed. R. of Evid. 609.

Also admissible are the following:

1. Certified Municipal Records. 735 ILCS 5/8-1203 (1993).
2. Certified Corporate Records. 735 ILCS 5/8-1204 (1993).
3. Official Certificate of Land Offices. 735 ILCS 5/8-1208 (1993).
4. Certified State Land Patents. 735 ILCS 5/8-1210 (1993).
5. Certified Deposition Transcripts. S.Ct. Rule 207(b).
6. Certified Public Aid Records. 305 ILCS 5/10-13.4 (1993).
7. Certified Copies of Vital Statistics Records. 410 ILCS 535/1 to 410 ILCS 535/25 (1993).

[26] People v. Montgomery, 47 Ill. 2d 510, 268 N.E.2d 695 (1971), which adopted Fed. Rule of Evidence 609; Smith v. Andrews, 54 Ill. App. 2d 51, 203 N.E.2d 160, Cert. Denied 382 U.S. 1029 (1964). Proof of conviction for felony rape admissible as prima facie evidence in later civil case of fact that Defendant committed rape. This is the judicial admission exception to the Hearsay Rule. People v. Spates, 77 Ill. 2d 193, 395 N.E.2d 563, 32 Ill. Dec. 333 1979). A misdemeanor that has as its basis deception, dishonesty or false statement, or bears a reasonable relation to testimonial deceit, can be used for impeachment.

Additionally, the following documents are SELF-AUTHENTICATING because they are accepted as authentic in normal everyday affairs:

1. Interstate Commerce Commission Printed Schedules, Classifications and Tariffs. 735 ILCS 5/8-1201 (1993).
2. Illinois Statutes, Foreign Statutes, and Acts of Congress. 735 ILCS 5/8-1104 (1993).
3. Uniform Commercial Code. 810 ILCS 5/1-202 (1993).
4. Mortality and Annuity Tables.
5. Ancient Documents (those more than 30 years old).
6. Reports of Courts. 735 ILCS 5/8-1106 (1993).

T. Impeachment

1. Plaintiff is asked on cross-examination whether his brake lights were functioning when he stopped at the stoplight just before Defendant collided with the rear of Plaintiff's car. He states, "I do not recall." Defendant offers questions and answers from Plaintiff's deposition when Plaintiff responded to an identical question with the answer, "No, they were not functioning."

OBJECTION: This is not a prior inconsistent statement and is not proper impeachment.

RULING: SUSTAINED. Plaintiff's failure to recall facts at the hearing cannot be impeached by prior testimony that on another occasion he remembered. The purpose of impeachment is to show that the witness lied or is not credible, not to prove the truth of the prior statement. This ruling could be otherwise if there is evidence that the failure to recall is feigned.

2. Plaintiff answers on cross-examination that his brake lights were on when Defendant hit him from the rear. Defendant seeks to introduce questions and answers Plaintiff gave at his deposition when Plaintiff said in answer to the question, "Were your brake lights on at the time of the collision with Defendant's vehicle?" Answer, "I don't recall."

OBJECTION: Not impeaching. Plaintiff did not recall and now he does.

RULING: OVERRULED. Plaintiff's answer at trial is inconsistent with his failure to recall at a time closer to the event in question. It should be received. The arbitrator may give it whatever weight appropriate on the issue of credibility of the witness.

U. Expert Witness

The Defendant offers a doctor who testifies that he examined the Plaintiff, but did not treat him, reviewed the Plaintiff's treating chiropractor's records, and from his examination and the notes regarding Plaintiff's complaints of whiplash, he has an opinion to a reasonable degree of medical certainty that the Plaintiff is malingering and his complaints are feigned.

OBJECTION: This non-treating physician is not qualified to give such an opinion.

RULING: OVERRULED. A non-treating physician can base his opinion on subjective complaints and the history the patient gives him. Who is qualified as an expert is within the sound discretion of the Court.[27]

V. Lay Witness Opinion Testimony

Plaintiff offers to testify that after he looked in both directions before entering the intersection, he saw the Defendant's truck barreling toward him at 60 miles per hour.

OBJECTION: This is lay testimony about a matter that requires expert knowledge.

RULING: OVERRULED.[28]

W. Admissibility of Computer Printouts and Graphics

Albertson v. Alberto Culver USA, 337 Ill.App.3d 643, 789 N.E.2d 304 (1st Dist., 2003). Foundation necessary for admission: Grand Liquor Co. v. Department of Revenue, 67 Ill.2d 195, 367 N.E.2d 1238.

Note the distinction between computer generated records (telephone MUDD records) and computer stored records. Each has distinct foundation requirements. [See Marriage of DeLarco, 313 Ill.App.3d 107, 728 N.E.2d 1278 (2nd Dist., 2000)] It is reversible error to refuse computer printouts if a proper foundation has been established. Victory Memorial Hospital v. Rice, 143 Ill.App.3d 621, 493 N.E.2d 117 (2nd Dist., 1986).

[27] Nowakowski v. Hoppe Tire Co., 39 Ill. App. 3d 155, 163, 349 N.E.2d 578, 586 (1st Dist. 1976)

[28] Peterson v. Lou Bochrodt Chevrolet Co., 76 Ill. 2d 353, 392 N.E.2d 1 (1979). Non-expert can give an opinion in miles per hour on speed of a vehicle. See Robinson v. Greeley & Hansen, 114 Ill. App. 3d 720, 449 N.E.2d 250 (2d Dist. 1983). Non-expert not allowed to express an opinion on the ultimate legal issue, i.e. whether the entrance to a sewer lift station was dangerous.

X. Attorney's Fees

Plaintiff requests that the panel award attorney's fees.

OBJECTION: The American System does not provide for attorney's fees in a case like this.

RULING: There may be a fee provision in the contract. The rules governing Mandatory Arbitration contemplate presentation of the case in its entirety, exclusive of equitable counts and remedies. If either party requests attorney's fees, the following should be considered:

1. PREDICATE It is first necessary to determine if either party is entitled to fees. What has often been referred to, as the "American System" is a codification of case law that states the general rule that each side should bear their own fees. Exceptions include allowance of fees by statute (e.g. Consumer Fraud Act), case law (e.g. attorneys' fees as a consideration of punitive damages), and where the parties have contracted for an award of fees (e.g. "prevailing party" provisions in real estate contracts or one-sided fee provisions in leases). First, verify the basis of the request. Often there is no proper basis.

2. FACTORS TO CONSIDER To determine a reasonable fee award, the panel must consider:

(a) the skill and standing of the attorney employed;
(b) the nature of the cause;
(c) the novelty and difficulty of the questions;
(d) the amount and importance of the subject matter;
(e) the degree of responsibility in the management of the cause;
(f) the time and benefits resulting to the client;
(g) the usual and customary charges in the community; and
(h) the benefits resulting to the client, Ashby v. Price, 112 Ill App 3d 114 (3rd, 1983).

The panel need not make specific findings as to these factors.

3. ATTORNEYS AS PLAINTIFF In cases where attorneys are seeking fees from their former client, the panel should determine if fees are being sought for the prosecution of the current claim. If an attorney seeks fees pursuant to a retainer agreement which calls for fees to collect past due fees, and if the fees sought for collection are by the same firm who appears for plaintiff, please review Lustig v. Horn, 732 N.E.2d 613 (1st, 2000), which at the very minimum, requires the finder of fact to explore the relationship between attorney and client surrounding the approval of the retainer agreement. Some commentators have viewed this case as an outright bar to imposition of fees for collection of fees, and some have extended the application of Lustig to an attorney seeking interest on fees.

4. PRESENTATION OF EVIDENCE Documents not subject to presumptive admissibility under Rule 90 (c), must be presented through proper foundation.

For a review of foundation requirements for computer-stored and computer-generated documents, see IRMO: DeLarco, 728 N.E.2d 1278 (2nd, 2000).

5. CONSIDERATION OF FEE AGREEMENT While the panel may consider the retainer agreement between the successful litigant and their attorney (see Blankenship v. Dialist, 209 Ill.App.3d 920, 5th, 1991), the award against the opposing party may not be based solely on a contingent fee agreement (Collins v. Hurst, 316 Ill.App.3d, 3rd, 2000). Arbitrators still have to review the factors set forth.

6. POWERS V. ROCKFORD STOP-N-GO, INC., 326 Ill.App.3d 511 (2001) In citing the same factors set forth in paragraph B, the Second District, in strictly construing a lease agreement has held that the party seeking fees must prevail on a "significant issue" to be entitled to any fees.

Y. Admission of Medical Bills into Evidence

Although a paid bill is an exception to the hearsay rule (see Clearly and Graham's Handbook of Illinois Evidence, Sec. 803.22), it is not presumptively admissible. A proper foundation is, therefore, required. In order to admit a bill into evidence, it is necessary to establish that the charges are reasonable, plus that the bill was necessarily incurred because of injuries caused by the defendant (North Chicago Street Ry. Co. v. Cotton, 140 Ill. 2d 486).

The first element, reasonableness, may be established by either payment of a bill or by competent testimony that the charges are reasonable (usually by the testimony of the medical practitioner). The necessity of the services is routinely shown by the plaintiff themselves or by an opinion witness.[29]

[29] For a variety of reasons, group health insurance providers & HMO's often discount bills submitted by health-care providers. In Arthur v. Catour, 216 Ill. 2d 692, the Supreme Court answered the question of what number should go to the jury – the billed amount. In Arthur v. Catour, the Court ruled on a motion for partial summary judgment, the trial judge certified a question for review, which centered on whether the amount billed ($19,355.25) or the discounted amount paid ($13,577.97) should go to the jury. Following appellate review, the Supreme Court of Illinois determined that the pre-discounted bill should be submitted, provided that there is competent evidence of its reasonableness. In other words, payment of the lesser sum is not, in and of itself, a basis for admitting the larger sum.

Evidence Reference Texts

Cleary and Graham, Handbook of Illinois Evidence (5th Edition 1990)
Goodman, Illinois Trial Evidence (1987)
Hunter, Trial Handbook for Illinois Lawyers (7th Edition 1997)
McCormick, Evidence (4th Edition 1992)

Appendix A

SUPREME COURT RULES

Supreme Court Rules 86 – 95 Mandatory Arbitration
Supreme Court rule 218 Pretrial Procedure
Supreme Court Rule 222 Limited and Simplified Discovery in Certain Cases
Supreme Court Rule 281 Definition of Small Claims

MANDATORY ARBITRATION
SUPREME COURT RULES

RULE 86. ACTIONS SUBJECT TO MANDATORY ARBITRATION

(a) ***Applicability to Circuits.*** Mandatory arbitration proceedings shall be undertaken and conducted in those judicial circuits which, with the approval of the Supreme Court, elect to utilize this procedure and in such other circuits as may be directed by the Supreme Court.

(b) ***Eligible Actions***. A civil action shall be subject to mandatory arbitration if each claim therein is exclusively for money in an amount or of a value not in excess of monetary the limit authorized by the Supreme Court for that circuit or county within that circuit, exclusive of interest and costs.

(c) ***Local Rules***. Each judicial circuit court may adopt rules for the conduct of arbitration proceedings which are consistent with these rules and may determine which matters within the general classification of eligible actions shall be heard in arbitration.

Jury Demands *Pursuant to the authority granted in Supreme Court Rule 86, on January 18, 2006 local rules were amended to provide that all new cases filed and designated "SC" or "SR" in which a jury demand is filed will be subject to Mandatory Arbitration.*

(d) ***Assignment from Pretrials***. Cases not assigned to an arbitration calendar may be ordered to arbitration at a status call or pretrial conference when it appears to the court that no claim in the action has a value in excess of the monetary limit authorized by the Supreme Court for that circuit or county within that circuit, irrespective of defenses.

(e) ***Applicability of Code of Civil Procedure and Rules of the Supreme Court***. Notwithstanding that any action, upon filing, is initially placed in an arbitration track or is thereafter so designated for hearing, the provisions of the Code of Civil Procedure and the rules of the Supreme Court shall be applicable to its proceedings except insofar as these rules otherwise provide.

RULE 87. APPOINTMENT, QUALIFICATION AND COMPENSATION OF ARBITRATORS

(a) ***List of Arbitrators.*** A list of arbitrators shall be prepared in the manner prescribed by a circuit rule. The list shall consist of a sufficient number of members of the bar engaged in the practice law and retired judges within the circuit in which the court is situated.

(b) ***Panel***. The panel of arbitrators shall consist of three members of the bar, or such lesser number as may be agreed upon by the parties, appointed from the list of available arbitrators, as prescribed by circuit rule, and shall be chaired by a member of the bar who has engaged in trial practice for at least three years or by a retired judge. Not more than one member or associate of a firm or office association of attorneys shall be appointed to the same panel.

(c) ***Disqualification.*** Upon appointment to a case, an arbitrator shall notify the court and withdraw from the case if any grounds appear to exist for disqualification pursuant to the Code of Judicial Conduct.

(d) ***Oath of Office.*** Each arbitrator shall take an oath of office in each county or circuit in which the arbitrator intends to serve on an arbitration panel. The oath shall be in conformity with the form provided in Rule 94 herein and shall be executed by the arbitrator when such arbitrator's name is placed on the list of arbitrators.

Arbitrators previously listed as arbitrators shall be re-listed on taking the oath provided in Rule 94.

(e) ***Compensation.*** Each arbitrator shall be compensated in the amount of $100 per hearing.

RULE 88. SCHEDULING OF HEARINGS

The procedure for fixing the date, time and place of a hearing before a panel of arbitrators shall be prescribed by the circuit rule provided that not less than 60 days' notice in writing shall be given to the parties or their attorneys of record. The hearing shall be held on the scheduled date and within one year of the date of filing of the action, unless continued by the court upon good cause shown. The hearing shall be held at a location provided or authorized by the court.

RULE 89. DISCOVERY

Discovery may be conducted in accordance with established rules and shall be completed prior to the hearing in arbitration. However, such discovery shall be conducted in accordance with Rule 222, except that the timelines may be shortened by local rule. No discovery shall be permitted after the hearing, except upon leave of court and good cause shown.

RULE 90. CONDUCT OF HEARINGS

(a) ***Powers of Arbitrators.*** The arbitrators shall have the power to administer oaths and affirmations to witnesses, to determine the admissibility of evidence and to decide the law and the facts of the case. Rulings on objections to evidence or on other issues which arise during the hearing shall be made by the chairperson of the panel.

(b) ***Established Rules of Evidence Apply.*** Except as prescribed by this rule, the established rules of evidence shall be followed in all hearings before arbitrators.

(c) ***Documents presumptively admissible.*** All documents referred to under this ach item that is included detailing the money damages incurred by the categories as set forth in this rule and specifying whether each bill is paid or unpaid. If at least 30 days' written notice of the intention to offer the following documents in evidence is given to every other party, accompanied by a copy of the document, a party may offer in evidence, without foundation or other proof:

(1) bills (specified as paid or unpaid), records and reports of hospitals, doctors, dentists, registered nurses, licensed practical nurses and physical therapists, or other health-care providers;

(2) bills for drugs, medical appliances and prostheses (specified as paid or unpaid);

(3) property repair bills or estimates, when identified and itemized setting forth the charges for labor and material used or proposed for use in the repair of the property;

(4) a report of the rate of earnings and time lost from work or lost compensation prepared by an employer;

(5) the written statement of an opinion witness, the deposition of a witness, the statement of a witness which the witness would be allowed to express if testifying in person, if the statement is made by affidavit or by certification as provided in 735 ILCS 5/1-109 of the Code of Civil Procedure;

(6) any other document not specifically covered by any of the foregoing provisions, and which is other otherwise admissible under the rules of evidence.

The pages of any Rule 90(c) package submitted to the arbitrators should be numbered consecutively from the first page to the last page of the package in addition to any separate numbering of the pages of individual documents comprising such package

(d) ***Opinions of Expert Witnesses***. A party who proposes to use a written opinion of an expert witness or the testimony of an expert witness at the hearing may do so provided a written notice of such intention is given to every other party not less that 30 days prior to the date of hearing, accompanied by a statement containing the identity of the expert witness, the expert's qualifications, the subject matter, the basis of the expert's conclusions, and the expert's opinion as well as any other information required by Rule 222 (d)(6).

(e) ***Right to Subpoena Maker of the Document***. Any other party may subpoena the author or maker of a document admissible under this rule, at the party's expense, and examine the author or maker as if under cross-examination. The provisions of the Code of Civil Procedure relative to subpoenas, 735 ILCS 5/2-1101, shall be applicable to arbitration hearings and it shall be the duty of a party requesting the subpoena to modify the form to show that the appearance is set before an arbitration panel and to give the time and place set for the hearing.

(f) ***Adverse Examination of Parties or Agents***. The provisions of the Code of Civil Procedure relative to the adverse examination of the parties or agents, 735 ILCS 5/2-1102, shall be applicable to arbitration hearings as upon the trial of the case.

(g) ***Compelling Appearance of Witness at Hearing***. The provisions of Rule 237, herein, shall be equally applicable to arbitration hearings as they are to trials. The presence of a party may be waived by stipulation or excused by court order for good cause shown not less than seven days prior to the hearing. Remedies upon a party's failure to comply with notice pursuant to Rule 237(b) may include an order debarring that party from rejecting the award.

(h) ***Prohibited Communication.*** Until the arbitration award is issued and has become final by either acceptance or rejection, an arbitrator may not be contacted *ex parte*, nor may an arbitrator publicly comment or respond to questions regarding a particular arbitration case heard by that arbitrator. Discussions between an arbitrator and judge regarding an infraction or impropriety during the arbitration process are not prohibited by this rule. Nothing in this rule shall be construed to limit or expand judicial review of an arbitration award or limit or expand the testimony of an arbitrator at judicial hearing to clarify a mistake or error appearing on the face of an award.

RULE 90 (c) COVER SHEET

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

DUPAGE COUNTY, LLINOIS

A, B, C, D, etc.
(naming all plaintiffs),

Plaintiffs,
vs.

H, J, K, L, etc.
(naming all defendants),

Defendants.

No.

NOTICE OF INTENT PURSUANT TO SUPREME COURT RULE 90(C)

Pursuant to Supreme Court Rule 90(c), the plaintiff(s) intend(s) to offer the following documents that are attached into evidence at the arbitration proceeding:

I.	Healthcare Provider Bills	Amount Paid	Amount Unpaid
	1.		
	2.		
	3.		
	4.		
	5.		
	6.		
	7.		
	8.		
	9.		
	10.		

II. Other Items of Compensable Damages

1.
2.
3.
4.
5.

_____
Attorney for Plaintiff

Dated:

RULE 91. ABSENCE OF A PARTY AT HEARING

(a) ***Failure to Present at Hearing.*** The arbitration hearing shall proceed in the absence of any party who, after due notice, fails to be present. The panel shall require the other party or parties to submit such evidence as the panel may require for the making of an award. The failure of the party to be present, either in person or by counsel, at an arbitration hearing shall constitute a waiver of the right to reject the award and a consent to the entry by the court of a judgment on the award. In the event the party who fails to be present thereafter moves, or files a petition to the court, to vacate the judgment as provided therefor under the provisions of the Code of Civil Procedure for the vacation of judgments by default, 735 ILCS 5/2-1301 or 5/2-1401, the court, in its discretion, in addition to vacating the judgment, may order the matter for rehearing in arbitration, and may also impose the sanction of costs and fees as a condition for granting such relief.

(b) ***Good-Faith Participation.*** All parties to the arbitration hearing must participate in the hearing in good faith and in a meaningful manner. If a panel of arbitrators unanimously finds that a party has failed to participate in the hearing in good faith and in a meaningful manner, the panel's finding and factual basis therefor shall be stated on the award. Such award shall be *prima facie* evidence that the party failed to participate in the arbitration hearing in good faith and in a meaningful manner and a court, when presented with a petition for sanctions or remedy therefor, may order sanctions as provided in Rule 219(c), including, but not limited to, an order debarring that party from rejecting the award, and costs and attorney fees incurred for the arbitration hearing and in the prosecution of the petition for sanctions, against that party.

RULE 92. AWARD AND JUDGMENT ON AWARD

(a) ***Definition of Award.*** An award is a determination in favor of a plaintiff or defendant.

(b) ***Determining an Award.*** The panel shall make an award promptly upon termination of the hearing. The award shall dispose of all claims for relief. The award may not exceed the monetary limit authorized by the Supreme Court for that circuit or county within that circuit, exclusive of interest and costs. The award shall be signed by the arbitrators or the majority of them. A dissenting vote without further comment may be noted. Thereafter, the award shall be filed immediately with the clerk of the court, who shall serve notice of the award, and the entry of the same on the record, to other parties, including any in default.

(c) ***Judgment on the Award.*** In the event none of the parties files a notice of rejection of the award and requests to proceed to trial within the time

required herein, any party thereafter may move the court to enter judgment on the award.

(c) ***Correction of Award.*** Where the record and the award disclose an obvious and unambiguous error in mathematics or language, the court, on application of a party within the 30-day period allowed for rejection of an award, may correct the same. The filing of such an application shall stay all proceedings, including the running of the 30-day period for rejection of the award, until disposition of the application by the court.

RULE 93. REJECTION OF AWARD

(a) ***Rejection of Award and Request for Trial.*** Within 30 days after the filing of an award with the clerk of the court, and upon payment to the clerk of the court of the sum of $200 for awards of $30,000 or less or $500 for awards greater than $30,000, any party who was present at the arbitration hearing, either in person or by counsel, may file with the clerk a written notice of rejection of the award and request to proceed to trial, together with a certificate of service of such notice on all other parties. The filing of a single rejection shall be sufficient to enable all parties except a party who has been debarred from rejecting the award to proceed to trial on all issues of the case without the necessity of each party filing a separate rejection. The filing of a notice of rejection shall not be effective as to any party who is debarred from rejecting an award.

(b) ***Arbitrator May Not Testify.*** An arbitrator may not be called to testify as to what transpired before the arbitrators and no reference to the fact of the conduct of the arbitration hearing may be made at the trial.

(c) ***Waiver of Costs.*** Upon application of a poor person, pursuant to Rule 298, herein, the sum required to be paid as costs upon rejection of the award may be waived by the court.

RULE 94. FORM OF OATH, AWARD AND NOTICE OF AWARD

The oath, award of arbitrators, and notice of award shall be in substantially the following form:

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

DU PAGE COUNTY, ILLINOIS

OATH

I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of the State of Illinois and that I will faithfully discharge the duties of our office.

_____

Name of Arbitrator

Date

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

DU PAGE COUNTY, ILLINOIS

A. B., C. D. etc. (naming all plaintiffs), Plaintiffs,	)	No.
v.	)	
H. J., K. L. etc. (naming all defendants), Defendants.	)	Amount Claimed

AWARD OF ARBITRATORS

☐ All parties participated in good faith. ☐ _____ did NOT participate in good faith based upon the following findings.

FINDINGS: _____

_____

WE, the undersigned arbitrators, having been duly appointed and sworn (or affirmed); make the following award:

_____

_____

IN ADDITION TO THE ABOVE AWARD, Costs in the amount of $ _____are awarded to _____itemized as follows:_____

_____.

_____

Chair/Arbitrator (Print Name) Signature ARDC No.

_____

Arbitrator (Print Name) Signature ARDC No.

_____

Arbitrator (Print Name) Signature ARDC No.

DISSENT As To The Award:

_____

Arbitrator (Print Name) Signature ARDC No.

Dated:_____

AWARD OF ARBITRATORS JUNE/2003

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
COUNTY OF DuPAGE

Case No. _____

-vs-

File Stamp Here

AWARD OF ARBITRATORS CODE 5825

☐ All parties participated in good faith, ☐ _____ did NOT participate in good faith based upon the following findings.
FINDINGS: _____

We, the undersigned arbitrators, having been duly appointed and sworn (or affirmed), make the following award:

FIRST: We find the damages suffered by the Plaintiff as a proximate result of the occurrence in question is $_____, itemized as follows:

The reasonable expense of past medical and medically related expenses	$_____
The reasonable expense of future medical and medically related expenses	$_____
The disability/loss of a normal life experienced	$_____
The disability/loss of a normal life reasonably certain to be experienced in the future	$_____
The pain and suffering experienced	$_____
The pain and suffering reasonably certain to be experienced in the future	$_____
The value of lost wages or earning/profits lost	$_____
The value of lost wages or earning/profits reasonably certain to be lost in the future	$_____
Other. (Fill in specific type of loss) _____	$_____

SECOND: Assuming 100% represents the total combined fault of all persons or entities whose fault proximately caused harm to plaintiff(s), we find that percent of fault is attributable as follows:

(a) Name of Plaintiff _____	_____%
(b) Name of Defendant _____	_____%
(c) Name of Defendant _____	_____%
(d) Name of Non-Party _____	_____%
TOTAL	**100 %**

THIRD: After reducing the plaintiff's total damages by the percent of fault, if any, of plaintiff, we award recoverable damages in the amount of $_____.

FOURTH: We make the following specific findings: _____

FIFTH: In addition to the above award, costs in the amount of $_____ are awarded to _____ itemized as follows: _____

Chair/Arbitrator (Print Name)	Signature	ARDC No.
Arbitrator (Print Name)	Signature	ARDC No.
Arbitrator (Print Name)	Signature	ARDC No.

DISSENT As to the Award:

Arbitrator (Print Name)	Signature	ARDC No.

Dated: _____

CHRIS KACHIROUBAS, CLERK OF THE 18TH JUDICIAL CIRCUIT COURT ©
WHEATON, ILLINOIS 60189-0707

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

DUPAGE COUNTY, ILLINOIS

A. B., C. D. etc. (naming all plaintiffs),	)	
Plaintiffs,	)	No.
v.	)	
H. J., K. L. etc., (naming all defendants),	)	
Defendants.	)	Amount Claimed

NOTICE OF AWARD

On the _____ day of _____, 2001, the award of the arbitrators dated _____, 2001, a copy of which is attached hereto, was filed and entered of record in this Cause. A copy of this NOTICE has on this date been sent by regular mail, postage prepaid, addressed to each of the parties appearing herein, at their last known address, or to their attorney of record.

Dated this ____day of _____ 2001

Clerk of the Circuit Court

RULE 95. FORM OF NOTICE OF REJECTION OF AWARD

The notice of rejection of the award shall be in substantially the following form:

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

DU PAGE, COUNTY, ILLINOIS

A. B., C .D. etc.	)	
(naming all plaintiffs),	)	
	)	
Plaintiffs,	)	No.
	)	
v.	)	
	)	
H. J., K. L. etc.	)	
(naming all defendants),	)	
	)	Amount Claimed
Defendants.	)	

NOTICE OF REJECTION OF AWARD

To the Clerk of the Circuit Court:

Notice is given that _____rejects the award of the arbitrators in this case on _____, 2001, and hereby request a trial of this action.

By:
(Certificate of Notice of Attorney)

RULE 218. PRETRIAL PROCEDURE

(a) ***Initial Case Management Conference*.** Except as provided by local circuit court rule, which on petition of the chief judge or the circuit has been approved by the Supreme Court, the court shall hold a case management conference within 35 days after the parties are at issue and in no event more than 182 days following the filing of the complaint. At the conference counsel familiar with the case and authorized to act shall appear and the following shall be considered:

(1) the nature, issues and complexity of the case;

(2) the simplification of the issues;

(3) amendments to the pleadings;

(4) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(5) limitations on discovery including:

(i) the number and duration of depositions which can be taken;
(ii) the area of expertise and the number of expert witness who can be called; and
(iii) deadlines for the disclosure of witnesses and the completion of written discovery and depositions;

(6) the possibility of settlement and scheduling of a settlement conference;

(7) the advisability of alternative dispute resolution;

(8) the date on which the case should be ready for trial;

(9) the advisability of holding subsequent case management conferences; and

(10) any other matters which may aid in the disposition of the action.

(b) ***Subsequent Case Management Conferences*.** At the initial and any subsequent case management conference, the court shall set a date for a subsequent management conference or a trial date.

(c) ***Order.*** At the case management conference, the court shall make an order which recites any action taken by the court, the agreements made by the parties as to any of the matters considered, and which specifies as the issues for trial those not disposed of at the conference. The order controls the subsequent course of the action unless modified. All dates set for the disclosure of witnesses, including rebuttal witnesses, and the completion of discovery shall be chosen to ensure that discovery will be completed not later than 60 days before the date on which the trial court reasonably anticipates the trial will commence, unless otherwise agreed by the parties. This rule is to be liberally construed to do substantial justice between and among the parties.

(d) ***Calendar.*** The court shall establish a pretrial calendar on which actions shall be placed for consideration, as above provided, either by the court on its own motion or on motion of any party.

RULE 222. LIMITED AND SIMPLIFIED DISCOVERY IN CERTAIN CASES

(a) ***Applicability.*** This rule applies to all cases subject to mandatory arbitration, civil actions seeking money damages not in excess of $50,000, exclusive of interest and costs, and to cases for the collection of taxes not in excess of $50,000. This rule does not apply to small claims, ordinance violations, actions brought pursuant to 750 ILCS (FAMILIES), and actions seeking equitable relief. Except as otherwise specifically provided by this rule, the general rules governing discovery procedures remain applicable to cases governed by this rule.

(b) ***Affidavit re Damages Sought.*** Any civil action seeking money damages shall have attached to the initial pleading the party's affidavit that the total of money damages sought does or does not exceed $50,000. If the damages sought do not exceed $50,000, this rule shall apply. Any judgment on such claim which exceeds $50,000 shall be reduces post-trial to an amount not in excess of $50,000. Any such affidavit may be amended or superseded prior to trial pursuant to leave of court for good cause shown, and only if it is clear that no party will suffer any prejudice as a result of such amendment. Any affidavit filed pursuant hereto shall not be admissible in evidence at trial.

(c) ***Time for Disclosure; Continuing Duty.*** The parties shall make the initial disclosure required by this rule as fully as then possible in accordance with the time lines set by local rule, provided however that if no local rule has been established pursuant to Rule 89 then within 120 days after the filing of a responsive pleading to the complaint, counter-complaint, third-party complaint, etc., unless the parties otherwise agree, or for good cause shown, if the court shortens or extends the time. Upon service of a disclosure, a notice of disclosure shall be promptly filed with the court. The duty to provide disclosures as delineated in this rule and its subsections shall be a continuing duty, and each party shall seasonably supplement or amend disclosures whenever new or different information or documents become known to the disclosing party.

All disclosures shall include information and data in the possession, custody and control of the parties as well as that which can be ascertained, learned or acquired by reasonable inquiry and investigation.

(d) ***Prompt Disclosure of Information.*** Within the times set forth in section (c) above, each party shall disclose in writing to every other party:

(1) The factual basis of the claim or defense. In the event of multiple claims or defenses, the factual basis for each claim or defense.

(2) The legal theory upon which each claim or defense is based including, where necessary for a reasonable understanding of the claim or defense, citations of pertinent legal or case authorities.

(3) The names, addresses, and telephone numbers of any witnesses whom the disclosing party expects to call at trial with a designation of the subject matter about which each witness might be called to testify.

(4) The names, addresses, and telephone numbers of all persons whom the party believes may have knowledge or information relevant to the events, transactions, or occurrences that gave rise to the action, and the nature of the knowledge or information each such individual is believed to possess.

(5) The names, addresses, and telephone numbers of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies of those statements.

(6) The identity and address of each person whom the disclosing party expects to call as an expert witness at trial, plus the information called for by Rule 213(f).

(7) A computation and the measure of damages alleged by the disclosing party and the document or testimony on which such computation and measure are based and the names, addresses, and telephone numbers of all damage witnesses.

(8) The existence, location, custodian, and general description of any tangible evidence or documents that the disclosing party plans to use at trial and relevant insurance agreements.

(9) A list of the documents or, in the case of voluminous documentary information, a list of the categories of documents, known by a party to exist whether or not in the party's possession, custody or control and which that party believes may be relevant to the subject matter of the action, and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the dates(s) [*sic*] upon which those documents will be made, or have been made, available for inspection and copying. Unless good cause is stated for not doing so, a copy of each document listed shall be served with the disclosure. If production is not made, the name and address of the custodian of the document shall be indicated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.

(e) ***Affidavit re Disclosure.*** Each disclosure shall be made in writing, accompanied by the affidavit of an attorney or a party which affirmatively states that the disclosure is complete and correct as of the date of the disclosure and that all reasonable attempts to comply with the provisions of this rule have been made.

(f) ***Limited and Simplified Discovery Procedures.*** Except as may be ordered by the trial court, upon motion and for good cause shown, the following limited and simplified discovery procedure shall apply:

(1) Each party may propound to any other party a total of 30 interrogatories and supplemental interrogatories in the aggregate, including subsections. Interrogatories may require the disclosure of facts upon which a party bases a claim or defense, the enumeration, with proper identification, of all persons having knowledge of relevant facts, and the identification of trial witnesses and trial exhibits.

(2) ***Discovery Depositions.*** No discovery deposition shall exceed three hours, absent agreement among the parties. Except as otherwise ordered by court, the only individuals whose discovery depositions may be taken are the following:

(a) ***Parties.*** The discovery depositions of parties may be taken. With regard to corporations, partnerships, voluntary associations, or any other groups or entities, one representative deponent may be deposed.

(b) ***Treating Physicians and Expert Witnesses.*** Treating physicians and expert witnesses may be deposed, but only if they have been identified as witnesses who will testify at trial. The provisions of Rule 204(c) do not apply to treating physicians who are deposed under this Rule 222. The party at whose instance the deposition is taken shall pay a reasonable fee to the deponent, unless the deponent was retained by a party to testify at trial or unless otherwise ordered by the court.

(3) ***Evidence Depositions.*** No evidence depositions shall be taken except pursuant to leave of court for good cause shown. Leave of court shall not be granted unless it is shown that a witness is expected to testify on matters material to the issues and it is unlikely that the witness will be available for trial, or other exceptional circumstances exist. Motions requesting the taking of evidence depositions shall be supported by affidavit. Evidence depositions shall be taken to secure trial testimony, not as a substitute for discovery depositions.

(4) Requests pursuant to Rule 214 and 215 are permitted, as are notices pursuant to Rule 237.

(5) Requests pursuant to Rule 216 are permitted except that no request may be filed less than 60 days prior to the scheduled trial date or, if within said 60 days, only by order of court.

(g) ***Exclusion of Undisclosed Evidence***. In addition to any other sanction the court may impose, the court shall exclude at trial any evidence offered by a party that was not timely disclosed as required by this rule, except by leave of court for good cause shown.

(h) ***Claims of Privilege***. When information or documents are withheld from disclosure or discovery on a claim that they are privileged pursuant to a common law or statutory privilege, any such claim shall be made expressly and shall be supported by a description of the nature of the documents, communications or things not produced or disclosed and the exact privilege which is being claimed.

(i) ***Affidavits Wrongly Filed***. The court shall enter an appropriate order pursuant to Rule 219 (c) against any party or his or her attorney, or both, as a result of any affidavit filed pursuant to (b) or (e) above which the court finds was (a) false; (b) filed in bad faith; or (c) was without reasonable factual support.

(j) ***Applicability Pursuant to Local Rule***. This rule may be made applicable to additional categories of cases pursuant to local rules enacted in any judicial circuit.

RULE 281. DEFINITION OF SMALL CLAIMS

For the purpose of the application of Rules 281 through 288, a small claim is a civil action based on either tort or contract for money not in excess of $10,000, exclusive of interest and costs, or for the collection of taxes not in excess of that amount.

The order entered December 6, 2005, amending rule 281 and effective January 1, 2006, shall apply only to cases filed after such effective date.

Appendix B

CIRCUIT COURT RULES

Article 13: Mandatory Arbitration
Article 16: Small Claims

ARTICLE 13: MANDATORY ARBITRATION

The mandatory arbitration program in the Circuit Court for the 18th Judicial Circuit, DuPage County, Illinois is governed by Supreme Court Rules 86-95 [not chaptered in ILCS] for the conduct of Mandatory Arbitration Proceedings. Pursuant to Supreme Court Rule 86(c), the Circuit Judges of the 18th Judicial Circuit adopt the following Local Rules effective January 23, 1989. Arbitration proceedings and small claims jury proceedings shall be governed by Supreme Court Rules and Article 13. (amended effective 1/23/06)

13.01 CIVIL ACTIONS SUBJECT TO MANDATORY ARBITRATION *(S. Ct. Rule 86)*

(a) Mandatory Arbitration proceedings are undertaken and conducted in the Circuit Court for the 18th Judicial Circuit, pursuant to Order of the Illinois Supreme Court of December 19, 1988 and written letter from the Illinois Supreme Court dated November 20, 1996.

(b) All civil actions will be subject to Mandatory Arbitration on all claims exclusive for money in an amount exceeding $10,000 but not exceeding the monetary limit authorized by the Supreme Court for the 18th Judicial Circuit, exclusive of interest and costs. These civil actions shall be assigned to the Arbitration Calendar of the Circuit Court of the 18th Judicial Circuit at the time of initial case filing with the Clerk of the Circuit Court, DuPage County, Illinois. (amended 1/23/06)

(c) Cases not originally assigned to the Arbitration Calendar may be ordered to arbitration on the motion of either party, by agreement of the parties or by order of court at a status call or pretrial conference when it appears to the Court that no claim in the action has a value in excess of the monetary limit authorized by the Supreme Court for the 18th Judicial Circuit but is not within the monetary limits of Small Claims Court, irrespective of defenses. However, all small claims jury proceedings are subject to Mandatory Arbitration pursuant to 16.04 of these Rules (amended effective 1/23/06)

(d) When a civil action not originally assigned to the Arbitration Calendar is subsequently assigned to the Arbitration Calendar, pursuant to Supreme Court Rule 86(d), the Supervising Judge or the judge to whom the case is assigned shall promptly assign an arbitration hearing date. Except by agreement of counsel for all parties, and subject to approval by the court, the arbitration hearing date shall be not less than sixty (60) days nor more than one hundred eighty (180) days from the date of the assignment to the Arbitration Calendar. An extension may be granted upon good cause shown.

13.02 APPOINTMENT, QUALIFICATION AND COMPENSATION OF ARBITRATORS AND PROHIBITION FROM POST-HEARING CONTACT WITH ARBITRATORS

(S. Ct. Rule 87)

(a) Applicants shall be eligible for appointment as arbitrators by filing an application form with the Arbitration Administrator certifying that the applicant:

(1) Has attended an approved mandatory arbitration training; and

(2) Has read and is informed of the rules of the Supreme Court and the Act relating to mandatory arbitration; and

(3) Is presently licensed to practice law in Illinois and is in good standing; and

(4) Has engaged in the practice of law in Illinois for a minimum of one year; or is a retired judge pursuant to Supreme Court Rule 87(b); and

(5) Resides in, practices in, or maintains offices in the 18th Judicial Circuit, DuPage County, IL.

(b) Those attorneys who certify that they have engaged in trial practice in Illinois for a minimum of five years, who are retired judges pursuant to Supreme Court Rule 87(b), or have heard twenty arbitration cases may apply to serve as chairs. The Supervising Judge shall review applications.

(c) The Arbitration Administrator shall maintain a database of qualified arbitrators who shall be assigned to serve on a rotating basis. The Arbitration Administrator shall also maintain a list of those persons who have indicated on their applications a willingness to serve on an emergency basis. Emergency arbitrators shall also serve on a rotating basis.

(d) Each panel will consist of three arbitrators, one of which is chair-qualified. In cases where the *ad damnum* is in excess of $15,000 the Arbitration Administrator shall endeavor to provide two chair-qualified panelists. Where the *ad damnum* is in excess of $30,000, the Arbitration Administrator shall endeavor to provide two chair-qualified panelists, one of which is chair-qualified in the area of that case designation. In certain circumstances the parties may stipulate using the prescribed form to a two-arbitrator panel. In no instance shall a hearing proceed with only one arbitrator.

(e) Only one member or associate of a firm, office, or association of attorneys shall be appointed to the panel. Upon assignment to a case, an arbitrator shall notify the Arbitration Administer of any conflict and withdraw from the case if any grounds for disqualification appear to exist pursuant to the Illinois Code of Judicial Conduct.

(f) The Arbitration Administrator shall notify the arbitrators of the day they are scheduled to serve as a panelist at least sixty (60) days prior to the hearing date. Those arbitrators who habitually cancel their dates may be deleted from the program.

(g) The Supervising Judge and the Arbitration Administrator may from time to time review the eligibility of each attorney to serve as arbitrators.

(h) Each arbitrator shall take an oath of office in conformity with the form provided in Supreme Court Rule 94 in advance of the hearing.

(i) Upon completion of each day's arbitration hearings, arbitrators shall file a voucher with the Arbitration Administrator for submission to the Administrative Office of the Illinois Courts for payment.

(j) An arbitrator may not be contacted, nor publicly comment, nor respond to questions regarding a particular arbitration case heard by that arbitrator during the pendency of that case.

13.02.1 DILIGENCE DATE *(Added eff. 7/15/03)*

If service of process has not been had on a defendant, the court may set the case for a diligence date approximately six (6) months after the initial return date. The plaintiff must request the issuance of an alias summons and otherwise establish the exercise of diligence during the diligence period or the case may be dismissed pursuant to Supreme Court Rule 103(b). Except for good cause shown, no more than one diligence date will be given. Summons shall not issue for a return date beyond the diligence date set by a court. Any summons issued beyond that date without leave of court shall be considered a nullity.

In the event plaintiff's counsel does not appear on a return date of a summons issued with a future diligence date, the court shall take the matter off the call. Plaintiff or plaintiff's counsel must appear on the return date of a served summons. Failure to do so may result in a dismissal for want of prosecution.

13.03 SCHEDULING OF HEARINGS *(S. Ct. Rule 88)*

(a) On the effective date of these Rules, and on or before the first day of each July thereafter, the Arbitration Administrator will provide the Clerk of the Circuit Court a schedule of available arbitration hearing dates for the next calendar.

(b) Upon the filing of a civil action subject to Article 13, the Clerk of the Circuit Court shall set a return date for the summons not less than twenty-one (21) days nor more than forty (40) days after filing, returnable before the Supervising Judge or the judge to whom the case is assigned. The summons shall require that the plaintiff or the plaintiff's attorney and all defendants or their attorneys shall appear at the time and place indicated. The complaint and all summonses shall state in upper case letters on the upper right-hand corner: **"THIS IS AN ARBITRATION CASE."**

(c) The Court shall assign an arbitration hearing date on the earliest available date after all parties have been required to appear or answer in accordance with Supreme Court Rule 88.

(d) Any party to a case may request advancement or postponement of a scheduled arbitration hearing date by filing a written motion with the Clerk of the Circuit Court requesting the change. The notice of hearing and motion shall be served upon counsel for all other parties, upon *pro se* parties as provided by Supreme Court Rule and Rules of the Circuit Court of the 18th Judicial Circuit, and upon the Arbitration Administrator. Neither the Administrator, the Arbitration Staff, nor the arbitrators may grant a continuance even if by agreement.

The motion shall be set for hearing on the calendar of the Supervising Judge or the judge to whom the case is assigned or any other judge sitting in their place. The motion shall be verified, contain a concise statement of the reason for the change of hearing date, and be subject to Supreme Court Rule 137. The Supervising Judge or the judge to whom the case is assigned may grant such advancement or postponement upon good cause shown. If such advancement or postponement is granted, the party requesting the advancement or postponement shall immediately notify the Arbitration Administrator, by phone and fax, or personal service, or if time permits, mail of the new date and time.

(e) Consolidated cases shall be heard on the hearing date assigned to the latest case.

(f) Upon settlement of any case scheduled for an arbitration hearing, counsel for plaintiff shall immediately notify the Arbitration Administrator of such settlement by phone and fax, or personal service, or if time permits, mail.

(g) It is anticipated that the majority of cases to be heard by an arbitration panel will require a maximum of two hours for presentation and decision. Any party seeking a hearing in excess of two hours must obtain an Order of Court and tender that Order to the Arbitration Administrator at least ten (10) days prior to the arbitration.

13.04 DISCOVERY *(S. Ct. Rule 89)*

(a) Discovery shall proceed as in all other civil actions.

(b) All parties shall comply with the provisions of Supreme Court Rule 222. Plaintiff shall file an initial Rule 222 Disclosure statement with the Clerk of the Court with the initial pleading. Thereafter, defendant or third-party defendant if applicable shall file an initial Rule 222 Disclosure Statement with the Clerk of the Circuit Court not later than 28 days after their first court appearance or as otherwise ordered by the court. If a case is transferred to the arbitration call by order of court, all parties shall comply with disclosure not later than 28 days after the date of transfer. Failure to serve the disclosure statement, as provided by rule, or as the court allows may result in the imposition of sanctions as prescribed in Supreme Court Rule 219(c) and Rule 222(g).

13.05 CONDUCT OF THE HEARINGS *(S. Ct. Rule 90)*

(a) A stenographic record of the hearing may be made by any party at that party's expense. If a party has a stenographic record transcribed, notice thereof shall be given to all other parties and a copy shall be furnished to any party upon payment of a proportionate share of the total cost of making the stenographic record.

(b) Statements of witnesses shall set forth the name, address and telephone number of the witness.

(c) Costs shall be considered by the arbitration panel pursuant to law. *(Amended Effective 11/16/99)*

(d) Any party requiring the services of a language interpreter during the hearing shall be responsible for providing it. Any party requiring the services of an interpreter or other assistance for the deaf or hearing impaired shall notify the Arbitration Administrator of said need not less than seven (7) days prior to the hearing.

(e) Cases should be ready at the scheduled time. The Arbitration Administer may extend the time for good cause shown. If no notice is given to the Arbitration Administer, a party who does not answer ready within 15 minutes of the time called will be found to be in default and the hearing will proceed *ex-parte*. If a party calls the Arbitration Center and indicates they will be late, the case will be held for a reasonable time. Any time delay will be deducted from the presentation time of the party causing the delay.

13.06 DEFAULT OF A PARTY *(S. Ct. Rule 91)*

A defendant who fails to appear at the scheduled arbitration hearing may have an award entered against that defendant, upon which the Court may enter judgment. If a defendant appears and a plaintiff fails to appear, an award may be entered for the defendant and the court may enter judgment on the award.

Costs that may be assessed under Supreme Court Rule 91 if the judgment on the award is vacated or the complaint reinstated may include, but are not limited to, filing fees, attorney fees, witness fees, stenographic costs and any reasonable out-of-pocket expenses incurred by any party or witness for appearing at the arbitration hearing.

13.07 AWARD AND JUDGMENT ON AWARD *(S. Ct. Rule 92)*

The panel shall render its decision and enter an award on the same day of the hearing. The Chair shall present the award to the Arbitration Administrator who shall then file same with the Clerk of the Circuit Court. The Clerk of the Circuit Court shall serve a notice of the award upon all parties who have filed an appearance.

13.08 REJECTION OF AWARD *(S. Ct. Rule 93 and Letter from the Illinois Supreme Court dated November 20, 1996)*

Rejection of the award of the arbitrators shall be in strict compliance with Supreme Court Rule 93.

(a) In all cases where the arbitration award exceeds $30,000 the rejection fee shall be $500. The arbitration award shall be marked in such a manner as to make this clear to all attorneys and litigants.

(b) An arbitrator may not be contacted, nor publicly comment, nor respond to questions regarding a particular arbitration case heard by that arbitrator during the pendency of that cause.

13.09 FORM OF OATH, AWARD AND NOTICE OF ENTRY OF AWARD
(S. Ct. Rule 94)

The Clerk of the Court and the Arbitration Administrator or Assistant Administrator of the ADR Center shall provide the forms called for in the rules in Article 13.

13.10 FORM OF NOTICE OF REJECTION OF AWARD *(S. Ct. Rule 95)*

(Reserved)

13.11 ADMINISTRATION OF MANDATORY ARBITRATION

(a) The Chief Judge of the 18th Judicial Circuit shall appoint one or more Judges from the 18th Judicial Circuit to act as Supervising Judge for Arbitration, who shall serve at the pleasure of the Chief Judge.

(b) The Chief Judge of the 18th Judicial Circuit shall designate an Arbitration Center for arbitration hearings.

13.12 DUTIES OF SUPERVISING JUDGE FOR ARBITRATION

(a) Supervisory authority over questions arising in an arbitration proceding, including the applicability of rules under Article 13.

(b) Act as liaison between the Circuit Court and the Administrative Office of the Illinois Courts.

(c) Review applications for appointment or re-certification as an arbitrator or chair arbitrator, complaints about an arbitrator or the arbitration process and determine the initial and continued eligibility of arbitrators.

(d) Promote the dissemination of information about the arbitration process, the results of arbitration, developing case law, and new practices and procedures in the area of Arbitration as well as to provide for the continuing education of the arbitrators and the bar.

(e) Periodically meet with the representatives of the DuPage Bar Association to discuss recommendations regarding the improvement of the Arbitration process.

13.13 DESTRUCTION OF ARBITRATION HEARING EXHIBITS

Exhibits admitted into evidence may be retained by the panel until the entry of the award. It is the duty of the attorneys or parties to complete forms informing the Arbitration Administer that they are leaving such exhibits. Exhibits must be retrieved by the attorneys or parties from the Arbitration Administrator within seven (7) days after the entry of judgment. All exhibits not retrieved shall be destroyed.

ARTICLE 16: SMALL CLAIMS

16.01 FORM OF SUMMONS AND COMPLAINT

(a) An approved summons form provided by the Clerk of the Court, substantially in the form set forth in Supreme Court Rule 101(b), shall be served upon each defendant together with a copy of the complaint.

(b) The form of complaint to be used in small claims actions shall provide for a statement of claim setting forth the elements provided in Supreme Court Rule 282 on approved forms provided by the Clerk of the Court.

16.02 (RESERVED)

16.03 RETURN DAY PROCEDURES

(a) *Failure of Defendant to Appear*: If the defendant fails to appear as required by a duly served summons, the Court may enter judgment for the plaintiff upon a Verified complaint or proof by affidavit or testimony upon an unverified complaint.

(b) *Written Appearance by Defendant*: If the defendant files a written appearance on or before the return date, unless the Court orders the filing of a written answer, the defendant's appearance shall stand as an answer denying the allegations of the complaint.

(c) *Plaintiff's Failure to Appear*: If the plaintiff fails to appear on the return date, the case will be dismissed for want of prosecution.

(d) *Plaintiff's Diligence*: The Clerk of the Court shall issue a diligence date for each case classified "SC" or "SR", for 9:00 a.m. seven months from the date of filing and shall notify the plaintiff of that date by affixing it on the complaint. The Plaintiff must request the issuance of an alias summons and otherwise establish the exercise of diligence during the diligence period or the case may be dismissed pursuant to Supreme Court Rule 103 9(b). Except for good cause shown, no more than one diligence date will be given. Summons shall not issue for a return date beyond the diligence date set by a court, except with leave of court. Any summons issued beyond that date without leave of court shall be considered a nullity.

In the event plaintiff's counsel does not appear on a return date of an unserved summons issued with a future diligence date, the court shall take the matter off call. Plaintiff or plaintiff's counsel must appear on the return date of a served summons. Failure to do so may result in a dismissal for want of prosecution. (amended eff. 1/13/10)

(e) *Continuances*: Motions for continuances shall be governed in accord with Supreme Court Rule 231 and Local Rule 9.01.

(f) *Case not Tried on the Return Date*: Cases not tried or otherwise disposed of on the return date will be set for trial by order of the Court.

(g) *Pre-Judgment Court Costs*: Any litigant seeking court costs shall, at the time judgment is entered, tender an affidavit specifically and individually listing each and every cost incurred and the amount sought, together with a statement by affiant that these costs have been paid by affiant.

The Court will only take judicial notice of the filing fee and certified mail cost.

16.04 JURY DEMANDS

Supreme Court Rule 281, small claims actions in which a jury demand is filed, shall be subject to Mandatory Arbitration under Article 13 of these Rules. The judge to whom the case is assigned shall promptly assign an arbitration hearing date before a trial is scheduled.

Appendix C

SAMPLE
I.P.I. JURY INSTRUCTIONS
SUBROGATION ACCIDENT CASE

The law regarding this case is contained in the instructions I will give to you. You must consider the Court's instructions as a whole, not picking out some instructions and disregarding others.

It is your duty to resolve this case by determining the facts and following the law given in the instructions. Your verdict must not be based upon speculation, prejudice, or sympathy. Each party, whether a corporation or an individual, should receive your same fair consideration.

You will decide what facts have been proven. Facts may be proven by evidence or reasonable inferences drawn from the evidence. Evidence consists of the testimony of witnesses and of exhibits admitted by the court. You should consider all the evidence without regard to which party produced it. You may use common sense gained from your experiences in life in evaluating what you see and hear during trial.

You are the only judges of the credibility of the witnesses. You will decide the weight to be given to the testimony of each of them. In evaluating the credibility of a witness you may consider that witness' ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case.

An opening statement is what an attorney expects the evidence will be. A closing argument is given at the conclusion of the case and is a summary of what an attorney contends the evidence has shown. If any statement or argument of an attorney is not supported by the law or the evidence you should disregard that
statement.

I.P.I #1.01

Plaintiff's Instruction No. 1

Given_____

Refused_____

Withdrawn_____

Reserved_____

Now that the evidence has concluded, I will further instruct you as to the law and your duties. I have not meant to indicate any opinion as to the facts of this case by any of my rulings, remarks, or instructions.

I.P.I #3.01

Plaintiff's Instruction No. 2

Given_____

Refused_____

Withdrawn_____

Reserved_____

An attorney may, if a witness agrees, interview a witness to learn what testimony will be given. Such an interview, by itself, does not reflect adversely on the truth of the testimony of the witness.

I.P.I #3.02

Plaintiff's Instruction No. 3

Given_____

Refused_____

Withdrawn_____

Reserved_____

Whether a party is insured has no bearing whatever on any issue that you must decide. You must refrain from any inference, speculation, or discussion about insurance.

I.P.I #3.03

Plaintiff's Instruction No. 4

Given_____

Refused_____

Withdrawn_____

Reserved_____

A fact may be proved by circumstantial evidence. Circumstantial evidence consists of the proof of facts or circumstances which leads to a reasonable inference of the existence of other facts sought to be established.

I.P.I #3.04

Plaintiff's Instruction No. 5

Given_____

Refused_____

Withdrawn_____

Reserved_____

When I use the word "negligence" in these instructions, I mean the failure to do something which a reasonably careful person would do, or the doing of something which a reasonably careful person would not do, under circumstances similar to those shown by the evidence. The law does not say how a reasonably careful person would act under those circumstances. That is for you to decide.

I.P.I #10.01

Plaintiff's Instruction No. 6

Given_____

Refused_____

Withdrawn_____

Reserved_____

When I use the words "ordinary care," I mean the care a reasonably careful person would use under circumstances similar to those shown by the evidence. The law does not say how a reasonably careful person would act under those circumstances. That is for you to decide.

I.P.I #10.02

Plaintiff's Instruction No. 7

Given_____

Refused_____

Withdrawn_____

Reserved_____

It was the duty of each defendant, before and at the time of the occurrence, to use ordinary care for the safety of the plaintiff. That means it was the duty of each defendant to be free from negligence.

I.P.I #10.04

Plaintiff's Instruction No. 8

Given_____

Refused_____

Withdrawn_____

Reserved_____

When I use the expression "contributory negligence," I mean negligence on the part of the plaintiff that proximately contributed to cause the alleged injury and property damage.

I.P.I #11.01

Plaintiff's Instruction No. 9

Given_____

Refused_____

Withdrawn_____

Reserved_____

When I use the expression "proximate cause," I mean any cause which, in natural or probable sequence, produced the damages complained of. It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes the damage.

I.P.I #15.01 (Modified)

Plaintiff's Instruction No. 10

Given_____

Refused_____

Withdrawn_____

Reserved_____

The plaintiff claims that it was injured and sustained damage, and that the defendants were negligent in one or more of the following respects:

Defendant Alcorn:

Operated his vehicle without keeping a safe and proper lookout;

Failed to properly control his vehicle;

Operated his vehicle at a speed unreasonable for then existing traffic conditions;

Failed to reduce the speed of his vehicle to avoid a motor vehicle collision; and

Failed to yield the right-of-way to the Plaintiff subrogor's vehicle, which had a preferential right-of-way.

Defendant Aurora Limo, Inc.:

Through its agent/employee failed to maintain a proper lookout for Plaintiff subrogor's vehicle;

Through its agent/employee failed to properly control its vehicle;

Through its agent/employee operated its vehicle at a speed unreasonable for then existing traffic conditions;

Through its agent/employee failed to reduce the speed of its vehicle to avoid a motor vehicle collision; and

Through its agent/employee failed to yield the right-of-way to the Plaintiff subrogor's vehicle, which had a preferential right-of-way.

The plaintiff further claims that one or more of the foregoing was a proximate cause of its injuries.

Defendants Alcorn and Aurora Limo deny that they did any of the things claimed by the plaintiff, denies that they were negligent in doing any of the things claimed by the plaintiff and denies that any claimed act or omission on the part of the defendants was a proximate cause of the plaintiff's claimed injuries.

The defendants claim that the plaintiff;s subrogor was contributorily negligent in .

Failing to keep a proper lookout;

Failing to yield right of way;

Failing to keep vehicle in its proper lane of traffic;

Failing to reduce her speed to avoid a collision;

Traveling too fast; and

Failing to warn of impending danger.

The defendants further claim that one or more of the foregoing was a proximate cause of the plaintiff's damages.

The plaintiff denies that she did any of the things claimed by defendants, denies that she was negligent in doing any of the things claimed by defendants, and denies that any claimed act or omission on her part was a proximate cause of her claimed damages.

The defendants further deny that the plaintiff sustained damages to the extent claimed.

I.P.I #20.01

Plaintiff's Instruction No. 11

Given_____

Refused_____

Withdrawn_____

Reserved_____

When I say that a party has the burden of proof on any proposition, or use the expression "if you find," or "if you decide," I mean you must be persuaded, considering all the evidence in the case, that the proposition on which he has the burden of proof is more probably true than not true.

I.P.I #21.01

Plaintiff's Instruction No. 12

Given_____

Refused_____

Withdrawn_____

Reserved_____

The plaintiff has the burden of proving each of the following propositions as to each defendant:

First, that the defendant acted or failed to act in one of the ways claimed by the plaintiff as stated to you in these instructions and that in so acting, or failing to act, the defendant was negligent;

Second, that the plaintiff's property was damaged;

Third, that the negligence of the defendant was a proximate cause of the damage to the plaintiff's property.

You are to consider these propositions as to each defendant separately.

If you find from your consideration of all the evidence, that any one of these propositions has not been proved as to any one of the defendants, then your verdict should be for that defendant. On the other hand, if you find from your consideration of all the evidence that all of the propositions have been as to any one or more defendants, then you must consider the defendants' claim that the plaintiff was contributorily negligent.

As to that claim, each defendant has the burden of proving each of the following propositions:

A: That Kathy Dusseault acted or failed to act in one of the ways claimed by the defendants as stated to you in these instructions and that in so acting, or failing to act, the plaintiff was negligent;

B: That Kathy Dusseault's negligence was a proximate cause of the damage to her property.

If you find from your consideration of all of the evidence that the plaintiff has proved all of the propositions required of the plaintiff, and that either defendant has not proved both of the propositions required of it, then your verdict should be for the plaintiff as to that defendant, and you will not reduce the plaintiff's damages.

If you find from your consideration of all the evidence that the plaintiff has proved all of the propositions required of it and that either defendant has proved both of the propositions required of him, and if you find that Kathy Dusseault's contributory negligence was greater than 50% of the total proximate cause of the injury or damage for which recovery is sought, then your verdict should be for that defendant.

If you find from your consideration of all the evidence that the plaintiffs has proved all the propositions required of it and that either defendant has proved both of the propositions required of it, and if you find that Kathy Dusseault's contributory negligence was 50% or less of the total proximate cause of the injury or damage for which recovery is sought, then your verdict should be for the plaintiff and you will reduce the plaintiff's damages in the manner stated to you in these instructions.

I.P.I #B21.03
(Modified)

Plaintiff's Instruction No. 13

Given_____

Refused_____

Withdrawn_____

Reserved_____

If you decide for Safeco Insurance Company as subrogee of Great Lakes Restoration and Kathy Dusseault on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate it for the following elements of damages proved by the evidence to have resulted from the negligence of the defendants.

The reasonable expense of necessary repairs to the property which was damaged; and

the reasonable expense of necessary car rental.

Whether these elements of damages have been proved by the evidence is for you to determine.

.

I.P.I #30.01

Plaintiff's Instruction No. 14

Given_____

Refused_____

Withdrawn_____

Reserved_____

If you decide for a defendant on the question of liability, you will have no occasion to consider the question of damages as to that defendant.

I.P.I #36.01

Plaintiff's Instruction No. 15

Given_____

Refused_____

Withdrawn_____

Reserved_____

There was in force in the State of Illinois at the time of the occurrence in question certain statutes which provided that:

> "No vehicle may be driven upon any highway of this State at a speed which is greater than is reasonable and proper with regard to traffic conditions and the use of the highway, or endangers the safety of any person or property. The fact that the speed of a vehicle does not exceed the applicable maximum speed limit doe not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazard exists with respect to pedestrians or other traffic or by reason of weather of roadway conditions. Speed must be decreased as may be necessary to avoid colliding with any person or vehicle on or entering the highway in compliance with legal requirements and the duty of all persons to use due care."

If you decide that a party violated the statute on the occasion in question, then you may consider that fact together with all the other facts and circumstances in evidence in determining whether and to what extent, if any, a party was negligent before and at the time of the occurrence.

I.P.I. #60.01 (modified by 625 ILCS 5/11-601(a))

Plaintiff's Instruction No. 16

Given_____

Refused_____

Withdrawn_____

Reserved_____

When you retire to the jury room you will first select a foreperson. He or she will preside during your deliberations.

Your verdict must be unanimous.

Forms of verdicts are supplied with these instructions. After you have reached your verdict, fill in and sign the appropriate form and return it to the court. Your verdict must be signed by each of you. You should not write or mark upon this or any of the other instructions given to you by the court.

The parties in this case are:

Plaintiff:	Safeco Property & Casualty Companies a/s/o Great Lakes Restoration and Kathy Dusseault
Defendants:	Aurora Limo
	Roger Alcorn

If you find for Safeco Insurance Company and against either of the defendants and if you further find that Kathy Duseault was not contributorily negligent, then you should use Verdict Form A.

If you find for Safeco Insurance Company and against either of the defendants and if you further find that Safeco Insurance Company's damages were proximately caused by a combination of Roger Alcorn's negligence and Kathy Dusseault's contributory negligence and that Kathy Dusseault's contributory negligence was 50% or less of the total proximate cause of the damage for which recovery is sought, then you should use Verdict Form B.

If you find for either defendant and against Safeco Insurance Company, or if you find that Kathy Dusseault's contributory negligence was more than 50% of the total proximate cause of the damage for which recovery is sought, then you should use Verdict Form C.

I.P.I. #B45.02 (modified)

Plaintiff's Instruction No. 17

Given_____

Refused_____

Withdrawn_____

Reserved_____

VERDICT FORM A

We, the jury, find for Safeco Insurance Company as Subrogee of Great Lakes Restoration and Kathy Dusseault and against the following defendants:

Aurora Limo, Inc.

Roger Alcorn

We assess the damages in the sum of $_____, itemized as follows:

The reasonable expense of necessary repairs to the property which was damaged; and	$_____
the reasonable expense of necessary car rental.	$_____

_____ _____

Foreperson

_____ _____

_____ _____

I.P.I. #B45.01A (modified)

Plaintiff's Instruction No. 18

Given_____

Refused_____

Withdrawn_____

Reserved_____

VERDICT FORM B

We, the jury, find for Safeco Insurance Company as Subrogee of Great Lakes Restoration and Kathy Dusseault and against the following defendants:

Aurora Limo, Inc.

Roger Alcorn

We Further find the following:

First: Without taking into consideration the question of reduction of damages due to the negligence of Kathy Dusseault, we find that the total amount of damages suffered by Safeco Insurance Company as a proximate result of the occurrence in question is $_____.

Second: Assuming that 100% represents the total combined negligence of Kathy Dusseault and of Roger Alcorn, we find that the percentage of negligence attributable solely to Kathy Dusseault is _____ percent (%).

Third: After reducing the total damages sustained by Safeco Insurance Company by the percentage of negligence attributable solely to Kathy Dusseault, we assess Safeco Insurance Company's recoverable damages in the sum of $_____, itemized as follows:

The reasonable expense of necessary repairs to the property which was damaged; and	$_____
the reasonable expense of necessary car rental.	$_____

_____ _____

Foreperson

_____ _____

_____ _____

I.P.I. #B45.02.B (modified)
Plaintiff's Instruction No. 19

Given_____

Refused_____

Withdrawn_____

Reserved_____

VERDICT FORM C

We, the jury, find for all of the defendants and against Safeco Insurance Company.

_____ _____

Foreperson

_____ _____

_____ _____

I.P.I. #B45.02.C

Plaintiff's Instruction No. 20

Given_____

Refused_____

Withdrawn_____

Reserved_____

Appendix D

SAMPLE
I.P.I. JURY INSTRUCTIONS
PERSONAL INJURY ACCIDENT
CASE

The law regarding this case is contained in the instructions I will give to you. You must consider the Court's instructions as a whole, not picking out some instructions and disregarding others.

It is your duty to resolve this case by determining the facts and following the law given in the instructions. Your verdict must not be based upon speculation, prejudice, or sympathy. Each party, whether an entity or an individual, should receive your same fair consideration.

You will decide what facts have been proven. Facts may be proven by evidence or reasonable inferences drawn from the evidence. Evidence consists of the testimony of witnesses and of exhibits admitted by the court. You should consider all the evidence without regard to which party produced it. You may use common sense gained from your experiences in life in evaluating what you see and hear during trial.

You are the only judges of the credibility of the witnesses. You will decide the weight to be given to the testimony of each of them. In evaluating the credibility of a witness you may consider that witness' ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case.

An opening statement is what an attorney expects the evidence will be. A closing argument is given at the conclusion of the case and is a summary of what an attorney contends the evidence has shown. If any statement or argument of an attorney is not supported by the law or the evidence you should disregard that statement.

I.P.I #1.01

Defendant's Instruction No. 1

Given_____

Refused_____

Withdrawn_____

Reserved_____

The testimony of Ram Pankaj, M.D. was presented by the reading of his testimony. You should give this testimony the same consideration you would give it had the witnesses personally appeared in court.

I.P.I #2.01

Defendant's Instruction No. 2

Given_____

Refused_____

Withdrawn_____

Reserved_____

Now that the evidence has concluded, I will further instruct you as to the law and your duties. I have not meant to indicate any opinion as to the facts of this case by any of my rulings, remarks, or instructions.

I.P.I #3.01

Defendant's Instruction No. 3

Given_____

Refused_____

Withdrawn_____

Reserved_____

The credibility of a witness may be attacked by introducing evidence that on some former occasion the witness made a statement or acted in a manner inconsistent with the testimony of the witness in this case on a matter material to the issues. Evidence of this kind may be considered by you in connection with all the other facts and circumstances in evidence in deciding the weight to be given to the testimony of that witness.

I.P.I #3.01 (1995 Edition)

Defendant's Instruction No. 4

Given_____

Refused_____

Withdrawn_____

Reserved_____

Whether a party is insured has no bearing whatever on any issue that you must decide. You must refrain from any inference, speculation, or discussion about insurance.

I.P.I #3.03

Defendant's Instruction No. 5
(if warranted by the evidence)

Given_____

Refused_____

Withdrawn_____

Reserved_____

A fact may be proved by circumstantial evidence. Circumstantial evidence consists of the proof of facts or circumstances which leads to a reasonable inference of the existence of other facts sought to be established.

I.P.I #3.04

Defendant's Instruction No. 6

Given_____

Refused_____

Withdrawn_____

Reserved_____

When I use the word "negligence" in these instructions, I mean the failure to do something which a reasonably careful person would do, or the doing of something which a reasonably careful person would not do, under circumstances similar to those shown by the evidence. The law does not say how a reasonably careful person would act under those circumstances. That is for you to decide.

I.P.I #10.01

Defendant's Instruction No. 7

Given_____

Refused_____

Withdrawn_____

Reserved_____

When I use the words "ordinary care," I mean the care a reasonably careful person would use under circumstances similar to those shown by the evidence. The law does not say how a reasonably careful person would act under those circumstances. That is for you to decide.

I.P.I #10.02

Defendant's Instruction No. 8

Given_____

Refused_____

Withdrawn_____

Reserved_____

It was the duty of the plaintiff, before and at the time of the occurrence, to use ordinary care for her own safety. A plaintiff is contributorily negligent if (1) she fails to use ordinary care for her own safety and (2) her failure to use such ordinary care is a proximate cause of the alleged injury.

The plaintiff's contributory negligence, if any, which is 50% or less of the total proximate cause of the injury or damage for which recovery is sought, does not bar her recovery. However, the total amount of damages to which she would otherwise be entitled is reduced in proportion to the amount of her negligence. This is known as comparative negligence.

If the plaintiff's contributory negligence is more than 50% of the total proximate cause of the injury or damage for which recovery is sought, the defendants shall be found not liable.

I.P.I #B10.03

Defendant's Instruction No. 9

Given_____

Refused_____

Withdrawn_____

Reserved_____

It was the duty of the defendant, before and at the time of the occurrence, to use ordinary care for the safety of the plaintiff. That means it was the duty of the defendant to be free from negligence.

I.P.I #10.04

Defendant's Instruction No. 10

Given_____

Refused_____

Withdrawn_____

Reserved_____

When I use the expression "contributory negligence," I mean negligence on the part of the plaintiff that proximately contributed to cause the alleged injury.

I.P.I #11.01

Defendant's Instruction No. 11

Given_____

Refused_____

Withdrawn_____

Reserved_____

When I use the expression "proximate cause," I mean that cause which, in natural or probable sequence, produced the injury complained of.

I.P.I #15.01

Defendant's Instruction No. 12

Given_____

Refused_____

Withdrawn_____

Reserved_____

The plaintiff claims that she was injured and sustained damage, and that the defendant was negligent in one or more of the following respects:

Failed to keep a safe and proper lookout;

Failed to give warning of his approach; and

Failed to yield the right-of-way from a stop sign.

The plaintiff further claims that one or more of the foregoing was a proximate cause of her injuries.

The defendant denies that he did any of the things claimed by the plaintiff, denies that he was negligent in doing any of the things claimed by the plaintiff and denies that any claimed act or omission on his part was a proximate cause of the plaintiff's claimed injuries.

The defendant claims that the plaintiff was contributorily negligent in one or more of the following respects:

Traveled at an unreasonable speed for the traffic conditions;

Failed to keep a proper lookout for her own safety;

Failed to reduce the speed of her vehicle before entering an intersection;

Failed to reduce the speed of her vehicle to avoid an accident;

Failed to remain in her lane of traffic; and/or

Attempted to change lanes when it was not safe to do so and without signaling an intention to do so.

The defendant further claims that one or more of the foregoing was the sole proximate cause of the plaintiff's injuries.

The plaintiff denies that she did any of the things claimed by defendant, denies that she was negligent in doing any of the things claimed by defendant, to the extent claimed by defendant, and denies that any claimed act or omission on her part was a proximate cause of her claimed injuries.

The defendant further denies that the plaintiff was injured or sustained damages to the extent claimed.

I.P.I #20.01

Defendant's Instruction No. 13

Given_____

Refused_____

Withdrawn_____

Reserved_____

When I say that a party has the burden of proof on any proposition, or use the expression "if you find," or "if you decide," I mean you must be persuaded, considering all the evidence in the case, that the proposition on which she has the burden of proof is more probably true than not true.

I.P.I #21.01

Defendant's Instruction No. 14

Given_____

Refused_____

Withdrawn_____

Reserved_____

The plaintiff has the burden of proving each of the following propositions:

First, that the defendant acted or failed to act in one of the ways claimed by the plaintiff as stated to you in these instructions and that in so acting, or failing to act, the defendant was negligent;

Second, that the plaintiff was injured;

Third, that the negligence of the defendant was a proximate cause of the injury to the plaintiff.

If you find from your consideration of all the evidence that any of these propositions has not been proved, then your verdict should be for the defendant. On the other hand, if you find from your consideration of all the evidence that each of these propositions has been proved, then you must consider the defendant's claim that the plaintiff was contributorily negligent.

As to that claim, defendant has the burden of proving each of the following propositions:

A: That the plaintiff acted or failed to act in one of the ways claimed by the defendant as stated to you in these instructions and that in so acting, or failing to act, the plaintiff was negligent;

B: That the plaintiff's negligence was a proximate cause of her injury.

If you find from your consideration of all the evidence that the plaintiff has proved all of the propositions required of her and that the defendant has not proved both of the propositions required of him, then your verdict should be for the plaintiff and you will not reduce the plaintiff's damages.

If you find from your consideration of all the evidence that the plaintiff has proved all of the propositions required of her and that the defendant has proved both of the propositions required of him, and if you find that the plaintiff's contributory negligence was greater than 50% of the total proximate cause of the injury or damage for which recovery is sought, then your verdict should be for the defendant.

If you find from your consideration of all the evidence that the plaintiff has proved all the propositions required of her and that the defendant has proved both of the propositions required of him, and if you find that the plaintiff's contributory negligence was 50% or less of the total proximate cause of the injury or damage for which recovery is sought, then your verdict should

be for the plaintiff and you will reduce the plaintiff's damages in the manner stated to you in these instructions.

I.P.I #B21.02 (modified)

Defendant's Instruction No. 15

Given_____

Refused_____

Withdrawn_____

Reserved_____

If you decide for the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate her for any of the following elements of damages proved by the evidence to have resulted from the negligence of the defendant, taking into consideration the nature, extent and duration of the injury.

The reasonable expense of necessary medical care, treatment, and services received and the present cash value of the reasonable expenses of medical care, treatment and services reasonably certain to be received in the future;

The pain and suffering experienced and reasonably certain to be experienced in the future;

The disability experienced and reasonably certain to be experienced in the future; and

The value of earnings lost.

Whether any of these elements of damages has been proved by the evidence is for you to determine.

I.P.I #30.01

Defendant's Instruction No. 16

Given_____

Refused_____

Withdrawn_____

Reserved_____

The disability experienced and reasonably certain to be experienced in the future.

Loss of a normal life experienced and reasonably certain to be experienced in the future.

I.P.I #30.04.01

Defendant's Instruction No. 17

Given_____

Refused_____

Withdrawn_____

Reserved_____

When I use the expression "loss of a normal life", I mean the temporary or permanent diminished ability to enjoy life. This includes a person's inability to pursue the pleasurable aspects of life.

I.P.I #30.04.02

Defendant's Instruction No. 18

Given_____

Refused_____

Withdrawn_____

Reserved_____

The pain and suffering experienced and reasonably certain to be experienced in the future as a result of the injuries.

I.P.I #30.05

Defendant's Instruction No. 19

Given_____

Refused_____

Withdrawn_____

Reserved_____

If you find for the plaintiff you shall not speculate about or consider any possible sources of benefits the plaintiff may have received or might receive. After you have returned your verdict the court will make whatever adjustments are necessary in this regard.

I.P.I #30.22

Defendant's Instruction No. 20

Given_____

Refused_____

Withdrawn_____

Reserved_____

If you find that plaintiff is entitled to damages arising in the future because of injuries or because of future medical expenses, you must determine the amount of these damages which will arise in the future.

If these damages are of a continuing nature, you may consider how long they will continue.

I.P.I #34.01

Defendant's Instruction No. 21

Given_____

Refused_____

Withdrawn_____

Reserved_____

In computing the damages arising in the future because of future medical expenses you must not simply multiply the expenses by the length of time you have found they will continue to live, Instead, you must determine their present cash value. "Present cash value" means the sum of money needed now, which, when added to what that sum may reasonably be expected to earn in the future, will equal the amount of the expenses at the time in the future when the expenses must be paid.

Damages for pain and suffering are not reduced to present cash value.

I.P.I #34.02

Defendant's Instruction No. 22

Given_____

Refused_____

Withdrawn_____

Reserved_____

If you decide for the defendant on the question of liability, you will have no occasion to consider the question of damages.

I.P.I #36.01

Defendant's Instruction No. 23

Given_____

Refused_____

Withdrawn_____

Reserved_____

When you retire to the jury room you will first select a foreperson. He or she will preside during your deliberations.

Your verdict must be unanimous.

Forms of verdicts are supplied with these instructions. After you have reached your verdict, fill in and sign the appropriate form of verdict and return it to the court. Your verdict must be signed by each of you. You should not write or mark upon this or any of the other instructions given to you by the court.

If you find for Sharon Brooks and against Jeffery Dumke and if you further find that Sharon Brooks was not contributorily negligent, then you should use Verdict Form A.

If you find for Sharon Brooks and against Jeffery Dumke and if you further find that Sharon Brooks' injury was proximately caused by a combination of Jeffery Dumke's negligence and Sharon Brooks' contributory negligence and that Sharon Brooks' contributory negligence was 50% or less of the total proximate cause of the injury or damage for which recovery is sought, then you should use Verdict Form B.

If you find for Jeffery Dumke and against Sharon Brooks or if you find that plaintiff's contributory negligence was more than 50% of the total proximate cause of the injury or damage for which recovery is sought, then you should use Verdict Form C.

I.P.I #B45.01

Defendant's Instruction No. 24

Given_____

Refused_____

Withdrawn_____

Reserved_____

There were in force in the State of Illinois at the time of the occurrence in question a certain statute which provided that:

> No vehicle may be driven upon any highway of this State at a speed which is greater than is reasonable and proper with regard to traffic conditions and the use of the highway, or endangers the safety of any person or property. The fact that the speed of a vehicle does not exceed the applicable maximum speed limit does not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, approaching and going around a curve, when approaching a hill crest, when traveling upon ay narrow or winding roadway, or when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions. Speed must be decreased as may be necessary to avoid colliding with any person or vehicle on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.
>
> After having stopped, the driver shall yield the right-of-way to any vehicle which has entered the intersection from another roadway or which is approaching so closely on the roadway as to constitute an immediate hazard during the time when the driver is moving across or within the intersection, but said driver having so yielded may proceed at such time as a safe interval occurs.
>
> A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

If you decide that a party violated the statute on the occasion in question, then you may consider that fact together with all the other facts and circumstances in evidence in determining whether and to what extent, if any, a party was negligent before and at the time of the occurrence.

I.P.I #60.01
625 ILCS 5/11-601(a)(modified)
625 ILCS 5/11-709 (a)
625 ILCS 5/11-904 (b)(modified)
Defendant's Instruction No. 25

Given_____

Refused_____

Withdrawn_____

Reserved_____

VERDICT FORM A

We, the jury, find for Sharon Brooks and against the Jeffery Dumke. We assess the damages in the sum of $_____, itemized as follows:

The reasonable expense of necessary medical care, treatment, and services received and the present cash value of the reasonable expenses of medical care, treatment and services reasonably certain to be received in the future;	$_____
The pain and suffering experienced and reasonably certain to be experienced in the future;	$_____
The disability experienced and reasonably certain to be experienced in the future;	$_____
Loss of normal life.	$_____

_____ _____

Foreperson

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

I.P.I #B45.01A
Defendant's Instruction No. 26

Given_____

Refused_____

Withdrawn_____

Reserved_____

VERDICT FORM B

We, the jury, find for Sharon Brooks and against Jeffery Dumke and further find the following:

First: Without taking into consideration the question of reduction of damages due to the negligence of Sharon Brooks, we find that the total amount of damages suffered by Sharon brooks as a proximate result of the occurrence in question is $_____, itemized as follows:

The reasonable expense of necessary medical care, treatment, and services received and the present cash value of the reasonable expenses of medical care, treatment and services reasonably certain to be received in the future.	$_____
The pain and suffering experienced and reasonably certain to be experienced in the future;	$_____
The disability experienced and reasonably certain to be experienced in the future;	$_____
Loss of normal life.	$_____

Second: Assuming that 100% represents the total combined negligence of all persons whose negligence proximately contributed to the plaintiff's injuries, including Sharon Brooks and Jeffery Dumke, we find that the percentage of such negligence attributable solely to Sharon Brooks is _____ percent (%).

Third: After reducing the total damages sustained by Sharon Brooks by the percentage of negligence attributable solely to Sharon Brooks, we assess Sharon Brooks' recoverable damages in the sum of $_____.

_____ _____

Foreperson

_____ _____

_____ _____

_____ _____

_____ _____

I.P.I #B45.01B

Defendant's Instruction No. 27

Given_____

Refused_____

Withdrawn_____

Reserved_____

VERDICT FORM C

We, the jury, find for Jeffery Dumke and against Sharon Brooks.

_____ _____

Foreperson

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

I.P.I #B45.01C

Defendant's Instruction No. 28

Given_____

Refused_____

Withdrawn_____

Reserved_____

Appendix E

SELECTED CASE LAW ADDRESSING MANDATORY ARBITRATION ISSUES IN ILLINOIS

Prepared By:

Honorable John G. Laurie
Circuit Court of Cook County

Arbitration Case Law

by: Judge John G. Laurie

NOTICE OF ARBITRATION HEARING

Horn v. Newcomer **1-00-1777 Rule 23**

Plaintiff files personal injury case. Notice of arbitration sent to only one of two plaintiffs' attorneys was inadequate. Both attorneys of record entitled to notice (Hoffman dissents from rule).

Arguilar v. Singleton **1-01-0568 Rule 23**

Once original arbitration date known, continuance of less than 60 days okay.

West v. Malik **1-00-3580 Rule 23**

Notice sent to former office okay, no change of address on file.

Juszczyk v. Flores **334 Ill.App. 3d 122 (1st Dist. 2002)**
(***petition for leave to appeal denied)***

Defense did not receive notice or arbitration.
Arbitration judgment is voidable not void (due to lack of notice) (**Ratkovich**).
2-1401 to vacate judgment denied due to lack of diligence. Knew of judgment 2 ½ months prior to petition.

Meine v. Rathunde **1-02-0130 Rule 23**

Plaintiff files personal injury case. Neither plaintiff nor attorney appear at arbitration. Award for defendant. Plaintiff rejects. Plaintiff claimed lack of notice. No 237 was served on plaintiff. Court barred plaintiff's rejection. Appellate Court affirms. Plaintiff has duty to follow progress of case. Failure of plaintiff to follow progress of case may constitute inept preparation.

Tiller v. Semonis **263 Ill. App. 3d 653 (1st Dist. 1994)**

Failure of a litigant to be notified of the date of an arbitration hearing does not constitute an excuse for failing to appear at the hearing. Litigants must follow progress of own case.

Progressive Insurance Co. v. Ogilvie **1-03-2490 Rule 23**

Litigants must follow progress of own case. Arguments of lack of notice are based on credibility. Court found notice sent.

Ratkovich v. Hamilton **267 Ill. App. 3d 908 (1st Dist. 1994)**

A party who intervenes less than 60 days prior to an arbitration hearing is entitled to receive 60 days' notice of that hearing required by Supreme Court Rule 88. Worker's compensation.

Padron v. Sotiropoulos **315 Ill. App.3d 1087 (1st Dist. 2000)**

Arbitration hearing need not be held within one year from date of filing nor is 60-day notice of hearing required.

ARBITRATORS MUST RESOLVE ALL CLAIMS

Kolar v. Arlington **179 Ill. 2d 271 (1997)**

Cruz v. Northwestern Chrysler Plymouth Sales **179 Ill. 2d 271 (1997)**

All issues must be submitted to arbitrators including attorney fees.

MBNA American Bank v. Cardoso **302 Ill. App. 3d 710 (1st Dist. 1998)**

A prevailing defendant who is entitled to costs including attorney fees under the Credit Card Liability Act is precluded from requesting those fees from the circuit court on the judgment on the award date when they failed to request the fees at the arbitration hearing.

Hinkle v. Womack **303 Ill. App. 3d 105 (1st Dist. 1998)**

Arbitration is not just another hurdle. Defendant's non appearance need not result in prejudice to plaintiff. Merely cross examining witnesses and making arguments to rebut a plaintiff's case is not adversarial testing.

A court cannot modify the substantive provisions of the arbitration award or grant any monetary relief in addition to the sum awarded by the arbitrators.

Costelo v. Illinois **263 Ill App.3d 1052 (1st Dist. 1993)**

Presumption exists that arbitrators considered all of the claims raised by each of the parties in determining their award.

Father and Son v. Taylor **301 Ill App.3d 448 (1st Dist. 1998)**

Attorney's fees must be decided by arbitrators.

Winbush v. CHA **1-00-0880 Rule 23**

Attorney's fees issue must be presented to arbitration panel.

Progressive Insurance Company v. Damoto **1-01-0460 Rule 23**

If arbitration award is silent as to costs, trial court is prohibited from assessing costs in judgment.

ORDERS BARRING PRESENTING EVIDENCE ON ANY ISSUES AT ARBITRATION DUE TO DISCOVERY VIOLATIONS

Lopez v. Miller **1-05-1035 Rule 23**

Barring of rejection affirmed for discovery violation.

Glover v. Barbosa **344 Ill. App. 3d 58 (1st Dist. 2003)**

Defendant barred from presenting evidence at arbitration because she failed to comply with discovery. During the six months between the date she was sanctioned and the date of the arbitration hearing, she made no attempt to "comply with discovery" or modify or vacate order.

Anderson v. Pineda **354 Ill. App. 3d 85 (1st Dist. 2004)**

Court considered conflicting opinions in Glover and AMRO and concluded Glover more persuasive and barred rejection based on discovery violations.

Eichler v. Record Copy Service **318 Ill App.3d 790 (1st Dist. 2000)**

Failure to comply or vacate order precludes participation.

Arguelles v. Higgs **1-03-2053 Rule 23**

Court followed the rationale of Eichler that barring order was proper and plaintiff's failure to comply with discovery was proper basis to bar rejection.

Lozano v. Ly **1-01-1331 Rule 23**

Barring/compelling order against defendant. Defendant appeared at arbitration although did not testify due to arbitrators honoring barring order. Trial court affirmed (based on **Eichler**) defendant should have complied, updated or sought other relief in one month period before arbitration.

Czernak v. Taylor **1-03-1744 Rule 23**

Barring/compelling order entered against plaintiff for written discovery. Plaintiff did not comply. Barred at arb.hearing. Trial court barred rejection of award for defendant. Affirmed.

Bianco v. Lee **1-01-3672 Rule 23**

Plaintiffs barred due to discovery violation. Arbitrators honor barring language. Plaintiff unable to present evidence. Award for defendant and plaintiff rejects. Defendant files motion to bar rejection. Court held pre-printed form type language of barring order is a warning that can become a sanction and is proper. Affirmed . (Relies on **Eichler**.)

Gilmore v. City **1-01-1431 Rule 23**

Plaintiff files personal injury case. Compel/bar order entered. At arbitration, plaintiff unable to present evidence due to failure to comply. Plaintiff offered no 90 (c) or other evidence. Appellate Court affirmed bar, held plaintiff presented insufficient evidence of compliance with barring order.

Allstate Ins. Co. v. Simons **1-02-2193** ***(pet. for lv. to appeal denied)***

Subrogation case. Plaintiff barred for discovery violation. Arbitrators followed order; award and judgment for defendant. Plaintiff rejects. Rejection barred. Appellate Court affirms. Barring order is proper. Plaintiff never vacated order or sought leave to comply late.

Kukis v. Wang **1-00-4249 Rule 23**

Barring order without compliance. Rejection barred. App. Ct. reverses and allows rejection suggesting duty to pursue discovery beyond order.

Nichols v. Bettis **1-02-0388 Rule 23**

Plaintiffs barred for failure to appear for deposition. Arbitration award for defendant rejected. Summary Judgment for defendant. Allegations of agreement not to take depositions argued by plaintiff. Court must follow factors in **Shimanousky**. Insufficient showing of deliberate disregard of court's authority.

Geico v. Campbell **335 Ill. App. 3d 930 (1st Dist. 2002)**

Plaintiff served with 237 for adjuster and claim file. Adjuster does not appear at arbitration. Plaintiff awarded $0 and rejects. Court barred rejection based on 237 violation and 91(b). Affirmed.

Geico v. Buford **338 Ill. App. 3d 448 (1st Dist. 2003)**

Barring order against defendant. Defendant failed to comply. Arbitrators barred defendant and entered award for plaintiff. Defendant rejected. Court followed **Eichler** decision since defendant never moved to vacate barring order prior to arbitration. Court reasonably concluded no intent to participate in good faith.

King v. Duprey **335 Ill. App 3d 923 (1st Dist. 2002)**

Summary judgment improper after barring order. Defendant should have requested additional compliance with order and set dates.

Mitchell v. Hatch **1-02-0431 Rule 23**

Barring order entered. At arbitration, barring order prevents plaintiff form presenting evidence. Plaintiff argues depositions never reset by defendant. Defendant has no obligation to reset depositions. Insufficient basis on facts to bar rejection.

Amro v. Bellamy **785 N.E. 2d 939 (1st Dist. 2003)**

Two orders to compel violated. Barring order entered. Defendant not allowed to testify. Award rejected. Motion to bar rejection granted due to lack of discovery compliance, conduct before hearing. Reversed.

United Services v. Lee **1-02-1602 Rule 23**

237 on named plaintiff's adjuster. Plaintiff's adjuster did not appear. Award entered in favor of plaintiff. Defendant rejected and filed motion to bar plaintiff from presenting evidence at trial for violation of 91(b). Court barred plaintiff based on 91(b). Appellate Court found plaintiff's violation of 237 unreasonable and pronounced disregard for rules. Summary judgment affirmed.

Davenport v. Tyms **324 Ill. App. 3d 1122 (1st Dist. 2001)**

Barring order should not be basis for 91 (b) finding. Sanction of barring testimony or evidence should extend to trial if party rejects. (Summary Judgment seems appropriate)

Bachmann v. Kent **293 Ill. App. 3d 1078 (1st Dist. 1997)**

A rejection of an arbitration award that was signed by the attorney's secretary improper. Unexcused absence of party precludes filing of rejection. Party barred per discovery violation must appear at arbitration. The Court is under no obligation to allow an

attorney to sign a document when that document is already signed in violation of a Court rule.

State Farm Insurance v. Gebbie **288 Ill. App. 3d 640 (1st Dist. 1997)**

Failure to appear at arbitration is not excused because court had barred presentation of any evidence.

Walikonis v. Haslor **306 Ill. App. 3d 811 (2nd Dist. 1999)**

Improper to bar defendant from rejecting the arbitration award based on conduct (discovery abuse) prior to arbitration.

Williams v. Martinez **323 Ill. App. 3d 1153 (1st Dist. 2001)**

Supreme Court Rule 237 Notice on plaintiff Defendant excused from arbitration. Plaintiffs barred from presenting evidence due to discovery violation. Court really only barred one plaintiff. Court affirmed barring rejection on proper plaintiff, but remanded case on other plaintiff. (Good review of barring order and 91(b)).

Mamolella v. Nandorf **318 Ill. App. 3d 1221 (1st Dist. 2001)**

No 237 on plaintiff. Plaintiff did not attend arbitration. Plaintiff attorney present. No 90(c) material. Plaintiff rejects. Court, as sanction (91 (b)), bars testimony of plaintiff at trial. Plaintiff argued traffic delay prevented appearance. Summary Judgment entered since plaintiff could present no evidence.

Yodka v. Gallagher **324 Ill. App. 3d 1142 (1st Dist. 2001)**

Barring order on plaintiff. No evidence presented. Rejection properly barred.

Little v. Beatty **1-01-4241 Rule 23**

Barring order entered. Award for defendant. Case is dismissed for want of prosecution. Re-filed case (under 219(e)) is subject to same bar.

GOOD FAITH PARTICIPATION AT ARBITRATION (SUPREME COURT RULE 91 B) FAILURE OF PARTIES TO BE PRESENT

Nationwide v. Kogut **354 Ill App 3d 1 (1st Dist. 2005)**

Insured did not appear at subrogation action. Insurance agent testified. Liability contested. Plaintiff had 90(c). Court held failure to produce insured at arb. hearing did not amount to intentional disregard for arbitration process, thus, plaintiff participated in good faith.

State Farm v. Culbertson **355 Ill. App. 3d 205 (1st Dist. 2005)**

Subrogation action. Plaintiff had 90 (c). Claim representative testified but not insured. No bad faith finding by arbitrators. Court held that adverse testimony of defendant along with claim representative is sufficient good faith participation.

Zietara v. Daimler Chrysler **361 Ill. App. 3d 819 (1st Dist. 2005)**

Late appearance by plaintiff car owner did not amount to deliberate disregard for the rules and arb. process when arbitrators had not finished drafting award and plaintiff should have been allowed to participate in hearing. Arbitrators had authority to exercise discretion and recommence hearing. Judgment barring plaintiff from rejecting award was reversed.

Faircloth v. Livehelper **1-03-1362 Rule 23**

Contract action. Plaintiff had no witnesses at arb. hearing. Award for defendant. Plaintiff rejects. Trial court bars rejection on basis of lack of good faith participation by plaintiff who went to hearing knowing it could not sustain its burden of proof. App. Court affirmed stating that arb. panel does not have to find bad faith for trial court to enter sanction.

Fiala v. Schulenberg **256 Ill. App. 3d 922 (1st Dist. 1993)**

Defendant Century 21 was misled as to their need to appear at arbitration and liability. Thus, court found failure to appear was based on extenuating circumstances and allowed rejection despite non appearance.

Johnson v. Saenz **311 Ill. App. 3d 693 (2nd Dist. 2000)**

Defendant in wrong location, spoke Spanish. Non appearance of defendant was not deliberate and pronounced disregard of rules.

Ware v. Zaragoza **1-01-1209 Rule 23**

Plaintiff not present due to ill father. 237 for plaintiff. Only attorney attended. Plaintiff's rejection barred.

Starling v. Furey **1-01-4241 Rule 23**

Plaintiff did appear at arbitration. 237 on plaintiff. Arbitration lasted until 9:23 a.m. Plaintiffs arrived but were told hearing was over. Plaintiffs were delayed by major storm, not just traffic. No evidence of deliberate and pronounced disregard.

Gore v. Martino **312 Ill. App. 3d 701 (1st Dist. 2000)**

Plaintiffs arrived 40 minutes late, but prior to time hearing had terminated. Conduct not pronounced disregard or bad faith. Rejection allowed. Panel need not make bad faith finding.

State Farm v. Watkins **1-03-2818 Rule 23**

Subrogation action. Plaintiff's insured driver not present. No transcript or brief filed by defense. No bad faith finding by arbitrators. Plaintiff's counsel was present and found to have participated in good faith. 237 does not apply.

Hejduk v. Gandhi **1-01-1210 Rule 23**

Defendant appearing "by telephone" after 237 without leave of court does not satisfy 237 or 91(b).

State Farm v. Santiago **344 Ill. App. 3d 1010 (1st Dist. 2003)**

Subrogation action. Plaintiff's insureds were not present. No finding of bad faith by panel. Court suggests defense should subpoena indureds. Plaintiff's actions were sufficient for good faith participation by calling defendant.

Maltese v. Accardo **1-01-3273 Rule 23**

91(b) lack of good faith participation shown when plaintiff only filed 90 (c) and called defendant. Plaintiff did not appear after 237. Affidavit relative to absence held insufficient.

Pezza v. Cerniglia **1-03-1362 Rule 23**

Defendants received notice of arb. the day before. 237 with no date. Defendant's attorney and witness appeared. Rejection allowed.

Richmond v. Bailin **1-03-1812 Rule 23**

Circuit court has no authority to impose sanctions without a motion filed by counsel.

State Farm v. Koscelnik **342 Ill. App. 3d 808 (1st Dist. 2003)**

237 served on adjuster in subrogation case. Only attorney appears. Insured driver not present. Award for defendant. Plaintiff rejects. Rejection is barred. App. Ct. holds that insured driver is essential witness under 91(b) as to liability in contested liability cases

Hall v. Allied **1-01-2257 Rule 23**

Defendants failed to appear in roof repair case. Defendants' attorney present. 237 served on defendants. By failing to appear, defendants did not preserve right to reject arbitration award.

Liberty Mutual v. Garcia **1-03-2785 Rule 23**

Subrogation action. Injured employee did not appear. Defendant had admitted negligence and was excused. With only damages being at issue, injured employee not needed. No finding by arb. panel. 237 did not apply.

91 (B) EXCUSES; FAILURE OF PARTY TO BE PRESENT AFTER SERVICE OF PROPER 237 REQUEST

Ziolkowski v. Collins **323 Ill. App. 3d 1154 (1st Dist. 2001)**

237 served on defendant who did not appear in arb. hearing room. Defense argues that defendant fell asleep in bathroom at arb. center. Award for plaintiff. Defendant rejects. Rejection barred. Affirmed. Court held insufficient affidavits and insufficient excuse.

Adetona v. Difor **1-02-1372 Rule 23**

Defendant did not appear at arbitration. No 237. Defendant stipulated to negligence. Transcript showed extensive cross of plaintiff and impeachment. Defendant satisfied 91(b) requirement.

Ibeagwa v. Habitat Co. **204 Ill. 2d 660 (2003)**
(Leave to appeal denied)

Plaintiff failed to appear at arbitration. No 237. Judgment for defendant vacated. New arbitration scheduled. Plaintiff failed to appear at 2nd arbitration. Plaintiff rejection barred. Judgment for defendant. Plaintiff filed motion to vacate judgment and offered excuse that train was 17 minutes late. Court held insufficient excuse.

State Farm Insurance v. Nasser **337 Ill. App. 3d 362 (1st Dist. 2003)**

Plaintiff files subrogation based on rear end accident, seeking property damage and medical payments. Defendant excused due to admission of negligence and proximate cause. Neither insured driver, nor adjuster appeared. Award for plaintiff. Motion to bar plaintiff from producing evidence at trial granted. Summary Judgment granted to defendant. Appellate Court reversed. Rear end case with admission of negligence and proximate cause sufficient.

Pruzan v. Brauer **315 Ill. App 3d 1223 (1st Dist. 2000)**

Plaintiff files personal injury case, fails to appear at arbitration, despite 237. Plaintiff resided in Florida and made no attempt to appear. Award for defendant. Court barred plaintiff's rejection. Affirmed.

Quinn v. Reardon **316 Ill. App. 3d. 1294 (1st Dist. 2000)**

Plaintiffs file personal injury case. Plaintiff Johnson is awarded damages. Plaintiff Quinn loses due to non-appearance despite 237 on plaintiff Quinn to appear. Appellate Court found plaintiff Quinn's non-appearance reasonable due to medical excuses provided.

Macon v. Hurst **1-01-3109 Rule 23**

Plaintiff files personal injury case, arrives 45 minutes late during closing arguments. Plaintiff alleges attorney mistake that plaintiff was sent to wrong address. 237 served on plaintiff. Plaintiff did not testify, yet arbitrators entered an award for plaintiff. Court barred plaintiff's testimony at trial. Defendant filed motion for summary judgment which court granted. Appellate Court reversed, found plaintiff excuse to be reasonable.

State Farm v. Sumskis **1-00-3987 Rule 23**

Subrogation action. 237 served for claims adjustor who failed to appear. Insufficient adversarial testing without claims adjustor.

State Farm v. Mohammed **1-03-0536 Rule 23**

Plaintiff had no insureds or employees at arb. No bad faith finding by panel. 237 notice found to be deficient.

United Services v. Lee **1-02-1602 Rule 23**

237 served on named plaintiff's adjuster. Plaintiff's adjuster did not appear. Award entered in favor of plaintiff. Defendant rejected and filed motion to bar plaintiff from presenting evidence at trial for violation of 91(b). Court barred plaintiff based on 91(b).

Appellate Court found plaintiff's violation of 237 unreasonable and pronounced disregard for rules. Summary judgment affirmed.

Bachmann v. Kent **293 Ill. App. 3d 1078 (1st Dist. 1997)**

A rejection of an arbitration award that was signed by the attorney's secretary improper. Unexcused absence of party precludes filing of rejection. Party barred per discovery violation. Must appear at arbitration. The court is under no obligation to allow an attorney to sign a document when that document is already signed in violation of a Court rule.

State Farm Insurance v. Gebbie **288 Ill. App. 3d 640 (1st Dist. 1997)**

Failure to appear at arbitration is not excused because court had barred presentation of any evidence.

Morales v. Mongolis **293 Ill. App. 3d 660 (1st Dist. 1997)**

237 notice to appear at trial sufficient for arbitration.

Miller v. Beach **1-01-2391 Rule 23**

Court held 237 for trial is sufficient 237 for arbitration as well after defendant who was served with 237 failed to appear at arbitration contending 237 was for trial only.

Smith v. Johnson **278 Ill. App. 3d 387 (1st Dist. 1996)**

The defendant can be barred from rejecting an arbitration award if she fails to appear at the arbitration hearing but appears through counsel. Defendant argued never got mail notice from attorney. Court held notice to attorney adequate. Prior motion to excuse co-defendant stated this defendant would appear.

Williams v. Dorsey **273 Ill. App. 3d 893 (1st Dist. 1995)**

Notice to appear qualifies as 237(b) notice to appear at arbitration
Notice to an attorney of an arbitration hearing is considered notice to the client.
Defendant said no notice received from attorney.

Hinkle v. Womack **303 Ill. App. 3d 105 (1st Dist. 1998)**

Arbitration is not just another hurdle. Defendant's non appearance need not result in prejudice to plaintiff. Merely cross examining witnesses and making arguments to rebut a plaintiff's case is not adversarial testing.
A court cannot modify the substantive provisions of the arbitration award or grant any monetary relief in addition to the sum awarded by the arbitrators.

Kellett v. Roberts **281 Ill. App. 3d 461 (2nd Dist. 1996)**

The trial court must set forth a reason when it denies a party's motion for sanctions under 137.
Supreme Court Rule 91(b) is not an impermissible and unconstitutional restriction to a party's right to a trial by jury.
The fact that the defendant was not informed of the date of the arbitration hearing constitutes an excuse for the defendant's failure to appear. Attorney was notified.

Allstate v. Avelares **295 Ill. App. 3d 950 (1st Dist. 1998)**

A defendant who fails to participate in the arbitration hearing in good faith warrants denial of the request for reimbursement of the statutory jury demand fee and the arbitration award rejection fee. No excuse for non-appearance presented.

Foy v. Ford **205 Ill. 2d 580 (2003)**

237 for trial includes arbitration. Not necessary to show deliberate and contumacious disregard for court's authority for 237 violation. Arbitrators' substantive ruling of law not reviewable by trial court. (Expansion of Morales ruling.)

State Farm v. Bozzi **1-02-3595 Rule 23**

Both served 237 notices. Court excused State Farm adjustor if insured appeared. Insured did not appear and court found adjustor's failure to appear was due to reasonable excuse. Court discusses ability to use 237 as basis for sanctions.

Starling v. Furey **1-01-4241 Rule 23**

Plaintiff did appear at arbitration. 237 on plaintiff. Arbitration lasted until 9:23 a.m. Plaintiffs arrived but were told hearing was over. Plaintiffs were delayed by major storm, not just traffic. No evidence of deliberate and pronounced disregard.

Devries v. Cruz **1-01-3668 Rule 23**

Despite 237, plaintiff did not appear at arbitration due to family emergency of mother-in-law's stroke on morning of arbitration. Court found affidavits sufficient.

Merendino v. French **315 Ill.App3d 1217 (1st Dist.2000)**

Plaintiff failed to appear. Attorney present. 237 on plaintiff. Plaintiff confused depositions and arbitration. Court held excuse not reasonable.

State Farm Insurance v. Jacquez **322 Ill. App. 3d 652 (1st Dist. 2001)**

A defendant who failed to appear at the arbitration hearing pursuant to a Supreme Rule 237 notice should not be barred from rejecting the award when the arbitration panel indicated in the award that there was no prejudice to the plaintiff. Plaintiff subrogor not a witness.

Hornburg v. Esparza **316 Ill. App. 3d 801 (3rd Dist. 2000)**

Partial rejection in multi-party case allowed.

Vazquez v. Young **1-01-0016 Rule 23**

237 notice on plaintiff. Barring order on defendant (no signed interrogatory). Plaintiff stated was at hospital with son on date of arbitration. Plaintiff arrived 30 minutes late. Plaintiff rejects. Court bars rejection on 237. Should have used 91(b), possibly different result.

Williams v. Martinez **323 Ill. App. 3d 1153 (1st Dist. 2001)**

237 Notice on plaintiff. Defendant excused from arbitration. Plaintiffs barred from presenting evidence due to discovery violation. Court really only barred one plaintiff.

Court affirmed barring rejection on proper plaintiff, but remanded case on other plaintiff. (Good review of barring order and 91(B)).

Weisenburn v. Smith **214 Ill. App. 3d 160 (2nd Dist. 1991)**

A party preserves the right to reject the arbitration award by having counsel present at the proceeding despite the request under 237 that he appear. Prior to 1993 Rule change. (Not good law).

Allstate v. Marshall **1-00-2901 Rule 23**

237 notice. Defendant does not show. Defendant at funeral five days prior to arbitration. Drove back from Mississippi. Arrived too late. Rejection barred based on insufficient affidavit.

State Farm v. Harmon **335 Ill. App. 3d 687 (1st Dist. 2002)**

Rear end accident. 237 for plaintiff without specificity as to who was requested. Driver not at arbitration. Court should state reason for sanction. Defendant obligated to require insured to appear. 237 does not apply.

McGee v. Lopez **1-01-3914 Rule 23**

Neither plaintiff nor attorney appeared at arbitration hearing, despite 237 notice. Plaintiff argued delayed in traffic. Appellate Court found deliberate and pronounced disregard for rules.

FAILURE OF PARTY TO BE PRESENT WITHOUT 237 NOTICE, 91B FAILURE TO PARTICIPATE

Schmidt v. Joseph **315 Ill. App. 3d 77 (1st Dist. 2000)**

Plaintiff did not appear. Plaintiff attorney opened, crossed defendant, closed and presented 90 (c). Court held insufficient good faith participation under 91(b).

Meine v. Rathunde **1-02-0130 Rule 23**

Plaintiff files personal injury case. Neither plaintiff nor attorney appear at arbitration. Award for defendant. Plaintiff rejects. Plaintiff claimed lack of notice. No 237 was served on plaintiff. Court barred plaintiff's rejection. Appellate Court affirms. Plaintiff has duty to follow progress of case. Failure of plaintiff to follow progress of case may constitute inept preparation.

Employer's Consortium, Inc. v. Aaron **298 Ill. App. 3d 187 (2nd Dist. 1998)**

Plaintiff's corporation representative did not appear. Plaintiff attorney called no witnesses, introduced verified complaint and promissory note. Court held insufficient 91(b) participation

Martinez v. Galmari **271 Ill. App. 3d 879 (2nd Dist. 1995)**

Failure to request continuance of arbitration for medical reasons demonstrates lack of good faith participation. Defendant failed to present any evidence to rebut plaintiff's case. Case not subjected to proper adversarial testing (sick child).

Hill v. Behr **239 Ill. App. 3d 814 (2nd Dist. 1997)**

The plaintiffs should be barred from rejecting the arbitration award despite the fact that the arbitrators failed to find that the plaintiffs did not participate in the arbitration hearing in good faith. Plaintiffs did not appear, no 90(c) material, and no liability testimony or damages.

Knight v. Guzman **291 Ill. App. 3d 378 (1st Dist. 1997)**

An attorney who did not appear at the arbitration hearing, but is an associate of the law firm that is representing a defendant can sign notice of rejection. Law firm's prior rejections cannot be basis for sanction.

Fiala v. Schulenberg **256 Ill. App. 3d 922 (1st Dist. 1993)**

Defendant Century 21 was misled as to their need to appear at arbitration and liability. Thus court found failure to appear was based on extenuating circumstances and allowed rejection despite non-appearance.

State Farm v. Rodrigues **324 Ill. App. 3d 736 (1st Dist. 2001)**

No 237. Parked car. Attorney for plaintiff appeared. No finding by panel. Defendant admits liability. No bad faith.

Saldana v. Newmann **318 Ill. App. 3d 1096 (1st Dist. 2001)**

A plaintiff who was not present at the arbitration hearing because she was unintentionally late can be barred from rejecting the arbitration award. Unintentional tardiness (traffic) is not an extenuating circumstance.

State Farm v. Cozzola **1-02-2960 Rule 23**

Plaintiffs insured did not appear. No excuse offered. Finding for defendant. Defendant must subpoena insured. Barring of rejection improper.

Ross v. Tinch **1-02-2480 Rule 23**

No 237. Defendant's attorney appears but not defendant. Pleadings establish contract dispute with credibility of parties essential. Award for plaintiff. Defendant rejects. App. Ct. affirms trial court barring rejection and rules 237 notice is not prerequisite to 91(b) finding.

Spano v. City of Chicago **1-00-4134 Rule 23**

Plaintiff and attorney 15 minutes late. Arbitration completed. Tardiness not deliberate and pronounced disregard for rules.

Lekienta v. Soltys **1-99-3016 Rule 23**

The plaintiffs should not be barred from rejecting the arbitration award because the plaintiffs' attorney was mistaken as to the time of the hearing and failed to appear.

Schmidt v. Sanders **1-02-1209 Rule 23**

Defendant arrived late for arbitration but during hearing. No request to re-open proofs. Barring rejection affirmed.

Moy v. Galustyan **195 Ill. 2d 580 (2001)**

Neither parties, not attorneys attended arbitration. Award for defendant. Case dismissed for want of prosecution on judgment on award call. No rejection filed. Two years later motion to vacate and enter judgment for defendant. Plaintiff argued clerical error in not appearing. Appellate Court affirmed barring of rejection and also would not vacate judgment for defendant per 2-1301 waiver argument denied.

Mamolella v. Nandorf **318 Ill. App. 3d 1221 (1st Dist. 2001)**

No 237 on plaintiff. Plaintiff did not attend arbitration. Plaintiff attorney present. No 90 (c) material. Plaintiff rejects. Court as sanction (91(b)), bars testimony of plaintiff at trial. Plaintiff argued traffic delay prevented appearance. Summary Judgment entered since plaintiff could present no evidence.

Dimaano v. Freeman **302 Ill. App.3d 1086 (1st Dist. 1999)**

A court should not set aside the arbitration award and schedule another arbitration when the plaintiffs nor their counsel appeared at the hearing. Transcript or bystander's report needed to review sanction.

Williams v. Abelkader **312 Ill. App. 3d 1212 (1st Dist. 2000)**

Neither plaintiff nor defendant appeared at arbitration. Both attorneys present. Award for defendant. Plaintiff said attorney gave wrong time to plaintiff. Court barred based on 91(b).

GOOD FAITH PARTICIPATION: QUALITY V. QUANTITY. HOW MUCH PARTICIPATION IS REQUIRED?

Easter Seal v. Current Development Corp. **307 Ill. App. 3d 48 (3rd Dist. 1999)**

Defense counsel appeared without witnesses or defendant at arbitration hearing. No transcript of hearing. Panel award of less than full damages indicates sufficient adversarial testing.

Employer's Consortium, Inc. v. Aaron **298 Ill. App 3d 187 (2nd Dist. 1998)**

Plaintiff's corporation representative did not appear. Plaintiff attorney called no witnesses, introduced verified complaint and promissory note. Court held insufficient 91(b) participation.

Hill v. Behr **239 Ill. App. 3d 814 (2nd Dist. 1997)**

The plaintiffs should be barred from rejecting the arbitration award despite the fact that the arbitrators failed to find that the plaintiffs did not participate in the arbitration hearing in good faith. Plaintiffs did not appear, no 90(c) material, and no liability testimony or damages.

Ruback v. Doss **347 Ill. App. 3d 808 (1st Dist. 2004)**

Dead Man's Act per **Rerack** permits certain unreffutable testimony by plaintiff. Good faith participation satisfied with 90(c) and attempt to subpoena independent witnesses. Transcript essential.

Danzot v.Zabilka **342 Ill. App. 3d 493 (1st Dist. 2003)**

Dead Man's Act did not wholly prohibit testimony by injured plaintiff or spouse. Good faith participation satisfied with 90 (c) and plaintiff's testimony. No obligation by plaintiff to subpoena each named witness. No authority for sanction barring presentation of evidence and subsequent summary judgment for defendant.

Martinez v. Galmari **271 Ill. App. 3d 879 (2nd Dist. 1995)**

Failure to request continuance of arbitration for medical reasons demonstrates lack of good faith participation. Defendant failed to present any evidence to rebut plaintiff's case. Case not subjected to proper adversarial testing (sick child).

Goldman v. Dhillon **307 Ill. App. 3d 169 (1st Dist. 1999)**

Defendant appeared without attorney, offered no evidence, exhibits, cross or arguments. Court found transcripts not needed. No good faith participation.

Johnson v. Williams **323 Ill. App. 3d 1144 (1st Dist. 2001)**

Defendant and attorney at arbitration without appearance or answer. No default entered. Court held defendant may participate and reject.

Webber v. Bednarczyk **287 Ill. App. 3d 458 (1st Dist. 1997)**

The history of a law firm's rejection of prior arbitration awards is not relevant to whether the defendant or the defendant's attorney participated in this arbitration hearing in good faith.

Knight v. Guzman **291 Ill. App. 3d 378 (1st Dist. 1997)**

An attorney who did not appear at the arbitration hearing, but is an associate of the law firm that is representing a defendant can sign notice of rejection. Law firm's prior rejections cannot be basis of sanction.

Mamolella v. Nandorf **318 Ill. App. 3d 1221 (1st Dist. 2001)**

No 237 on plaintiff. Plaintiff did not attend arbitration. Plaintiff attorney present. No 90(c) material. Plaintiff rejects. Court, as sanction (91(b)), bars testimony of plaintiff at trial. Plaintiff argued traffic delay prevented appearance. Summary Judgment entered since plaintiff could present no evidence.

ABSENCE OF PREJUDICE AS FACTOR IN PARTY NOT APPEARING

State Farm Insurance v. Jacquez **322 Ill. App. 3d 652 (1st Dist. 2001)**

A defendant who failed to appear at the arbitration hearing pursuant to a Supreme Rule 237 notice should not be barred from rejecting the award when the arbitration panel indicated in the award that there was no prejudice to the plaintiff. Plaintiff subrogor not a witness.

State Farm Insurance v. Gebbie **288 Ill. App. 3d 640 (1st Dist. 1997)**

Failure to appear at arbitration is not excused because court had barred presentation of any evidence.

Bachmann v. Kent **293 Ill. App. 3d 1078 (1st Dist. 1997)**

A rejection of an arbitration award that was signed by the attorney's secretary improper. Unexcused absence of party precludes filing of rejection. Party barred per discovery violation must appear at arbitration. The Court is under no obligation to allow an attorney to sign a document when that document is already signed in violation of a Court rule.

Hinkle v. Womack **303 Ill. App. 3d 105 (1st Dist. 1999)**

Arbitration is not just another hurdle. Defendant's non appearance need not result in prejudice to plaintiff. Merely cross examining witnesses and making arguments to rebut a plaintiff's case is not adversarial testing.

A court cannot modify the substantive provisions of the arbitration award or grant any monetary relief in addition to the sum awarded by the arbitrators.

REJECTING THE ARBITRATION AWARD

Gershak v. Feign **317 Ill. App.3d 14 (1st Dist. 2000)**

Where notice of rejection not personally signed by attorney, but no evidence of improper purpose, Supreme Court Rule 137 does not apply. Proper remedy is to allow attorney to sign when brought to his attention**.**

Killoren v. Racich **260 Ill. App. 3d 197 (2nd Dist. 1994)**

An award is validly rejected if rejection is filed within the 30-day rejection period and fee is paid within that same 30-day period.

Pakrovsky v. Village of Lakemoor **274 Ill. App. 3d 515 (2nd Dist. 1995)**

A Supreme Court Rule 93(a) notice of rejection is timely filed where the notice is mailed within the 30-day period but received thereafter.

Thomas v. Leyva **276 Ill. App. 3d 652 (1st Dist. 1995)**

Parties must reject within 30 days even if unsure of meaning.

Howard v. Jimenez **316 Ill. App. 3d 1287 (1st Dist. 2000)**

Rejection mailed within 30 days proper.

Ianotti v. Chicago Park District **250 Ill. App. 3d 628 (1st Dist. 1993)**

A party who files a notice of rejection of an arbitrator's award one week late should. not be allowed to proceed to trial. No good cause shown for inadvertent error.

Zero v. Carde **1-01-2107 Rule 23**

Party who fails to reject may not rely on the rejection of a subsequently de-barred co-party. 237 for all witnesses and all materials pursuant to 214 request is appropriate.

Knight v. Guzman **291 Ill. App. 3d 378 (1st Dist. 1997)**

An attorney who did not appear at the arbitration hearing, but is an associate of the law firm that is representing a defendant can sign notice of rejection. Law firm's prior rejections cannot be basis of sanction.

Walikonis v. Haslor **306 Ill. App. 3d 811 (2nd Dist. 1999)**

Improper to bar defendant from rejecting the arbitration award based on conduct (discovery abuse) prior to arbitration.

Stewart v. Brown **324 Ill. App. 3d 1141 (1st Dist. 2001)**

Complaint for $2,500 was supposed to be $25,000. Award for $2,500 properly rejected to allow amendment.

Rodriguez v. Hushka **325 Ill. App. 3d 329 (1st Dist. 2001)**

$200 fee not required to reject for legal services provider. (735 ILCS 5/5-105.5 provides for fee waiver)

Liebovich Steel v. Advance Iron **353 Ill. App. 3d 311 (2nd Dist. 2004)**

Court struck arbitration rejection because defendant paid $200 fee when he should Have paid $500 fee on a case with an award in excess of $30,000.

PARTIAL REJECTIONS

Hornburg v. Esparza **312 Ill. App. 3d 801 (1st Dist. 2001)**

Partial rejection in multi-party case allowed.

Kolar v. Arlington **179 Ill. 2d 271 (1997)**

Cruz v. Northwestern Chrysler Plymouth Sales **179 Ill. 2d 271 (1997)**

All issues must be submitted to arbitrators including attorney fees.

BAD FAITH FINDING BY ARBITRATION PANEL

Schmidt v. Joseph **315 Ill. App. 3d 77 (1st Dist. 2000)**

Plaintiff did not appear. Plaintiff attorney opened, crossed defendant, closed and presented 90(c). Court held insufficient good faith participation under 91(b).

Goldman v. Dhillon **307 Ill. App. 3d 169 (1st Dist. 1999)**

Defendant appeared without attorney, offered no evidence, exhibits, cross or arguments. Court found transcripts not needed. No good faith participation.

West Bend Mutual Insurance v. Herrera **292 Ill. App. 3d 669 (1st Dist. 1997)**

Supreme Court Rule 91(b) does not require that the arbitration panel must first make a finding of failure to participate in a hearing in good faith and in a meaningful manner before a court can review the issue.

The fact that the defendant could not speak English and did not appear at the hearing with a translator did not constitute failure to participate in the hearing in good faith and in a meaningful manner.
Supreme Court Rule 237 does not require a witness to provide an interpreter, if one is necessary.

Mamolella v. Nandorf **318 Ill. App. 3d 1221 (1st Dist. 2001)**

No 237 on plaintiff. Plaintiff did not attend arbitration, plaintiff attorney present. No 90(c) material, plaintiff rejects. Court, as sanction (91(b)), bars testimony of plaintiff at trial. Plaintiff argued traffic delay prevented appearance. Summary Judgment entered since plaintiff could present no evidence.

SECOND ARBITRATION

Akpan v. Sharma **293 Ill. App. 3d 100 (1st Dist. 1997)**

A case cannot be set for a second arbitration hearing after a party has rejected the award from the first arbitration hearing.

Dimaano v. Freeman **302 Ill. App.3d 1086 (1st Dist. 1999)**

A court should not set aside the arbitration award and schedule another arbitration when the plaintiffs nor their counsel appeared at the hearing. Transcript or bystander's report needed to review sanction.

Moon v. Jones **282 Ill. App. 3d 335 (1st Dist. 1996)**

A plaintiff cannot be barred from rejecting future arbitration awards regardless of whether the plaintiff attends those hearings or participates in good faith. Discovery abuse.

Guider v. McIntosh **293 Ill. App. 3d 935 (1st Dist. 1997)**

The trial court does not have authority to order a second arbitration hearing when both parties were present at the first hearing.

MODIFYING ARBITRATION AWARD

Kolar v. Arlington Toyota **179 Ill. 2d 271 (1997)**

Cruz v. Northwestern Chrysler Plymouth Sales **179 Ill. 2d 271 (1997)**

All issues must be submitted to arbitrators including attorney fees.

Issacs v. Hemmerich **313 Ill. App. 3d 1085 (1st Dist. 2000)**

Excessive award not subject to review by trial court.

Winbush v. CHA **321 Ill. App. 3d 1056 (1st Dist. 2001)**

Attorneys fees issue must be presented to arbitration panel.

Hinkle v. Womack **303 Ill. App. 3d 105 (1st Dist. 1998)**

Arbitration is not just another hurdle. Defendant's non appearance need not result in prejudice to plaintiff. Merely cross examining witnesses and making arguments to rebut a plaintiff's case is not adversarial testing.

A court cannot modify the substantive provisions of the arbitration award or grant any monetary relief in addition to the sum awarded by the arbitrators.

Mrugala v. Fairfield **325 Ill. App. 3d 484 (1st Dist. 2001)**

Parties who fail to appear may after 2-1301 or 2-1401 be allowed to re-arbitrate if both parties present. Must reject award. Motion to vacate award improper.

EXCESSIVE ARBITRATION AWARD

Hinkle v. Womack **303 Ill. App. 3d 105 (1st Dist. 1999)**

Arbitration is not just another hurdle. Defendant's non appearance need not result in prejudice to plaintiff. Merely cross examining witnesses and making arguments to rebut a plaintiff's case is not adversarial testing.

A court cannot modify the substantive provisions of the arbitration award or grant any monetary relief in addition to the sum awarded by the arbitrators.

Issacs v. Hemmerich **313 Ill. App. 3d 1085 (1st Dist. 2000)**

Excessive award not subject to review by trial court.

VOLUNTARY NON-SUIT, DWP'S AND REFILED ACTIONS

Arnett v. Jiffy Cab Company **269 Ill. App. 3d 858 (1st Dist. 1995)**

The language of Supreme Court Rule 91 bars an absent party from voluntary dismissal under section 2-1009 of the Illinois Code of Civil Procedure.

George v. Ospalik **299 Ill. App. 3d 888 (3rd Dist. 1998)**

A plaintiff who does not reject the arbitration award is not entitled to a voluntary dismissal pursuant to section 2-1009(a) of the Illinois Code of Civil Procedure.

Perez v. Leibowitz **215 Ill. App. 3d 900 (1st Dist. 1991)**

A plaintiff is entitled to a voluntary dismissal pursuant to section 2-1009 of the Illinois Code of Civil Procedure after the parties have participated in mandatory arbitration proceedings, and rejection allowed case to move to trial stage.

Lewis v. Collinsville Unit #10 School District **311 Ill. App. 3d 1021 (5th Dist. 2000)**

An arbitration hearing precludes a voluntary dismissal pursuant to section 2-1009 of the Illinois Code of Civil Procedure, if proper notice of an attempt to take a voluntary non suit not given.

Padron v. Sotiropoulos **315 Ill. App. 3d 1087 (1st Dist. 2000)**

A plaintiff party who is not present at the mandatory arbitration hearing may not voluntarily non-suit their case to avoid the consequences of Rule 91 (b).

Little v. Beatty **1-01-4230 Rule 23**

Barring order entered. Award for defendant. Case is dismissed for want of prosecution. Re-filed case (under 219(e)) is subject to same bar.

ORDERS BARRING REJECTIONS PRIOR TO ARBITRATION HEARING

Hampton v. Ray **1-01-2379 Rule 23**

Personal injury action filed. Compelling order entered against plaintiff. Plaintiff barred at arbitration for non-compliance. Award for defendant. Plaintiff rejects. Court barred rejection. Appellate Court reversed. Held plaintiff made sufficient effort to comply in scheduling depositions. Plaintiff's conduct was not deliberate or contumacious.

Nettles-Jackson v. Merker **1-01-3288 Rule 23**

Plaintiff files personal injury action. Disputed compelling order entered. Plaintiff barred from presenting evidence at arbitration due to non-compliance. Award for defendant. Plaintiff rejects. Rejection is barred. Appellate Court reversed. Lack of contumacious disregard.

Moon v. Jones **282 Ill. App. 3d 335 (1st Dist. 1996)**

A plaintiff cannot be barred from rejecting future arbitration awards regardless of whether the plaintiff attends those hearings or participates in good faith. Discovery abuse.

Walikonis v. Haslor **306 Ill. App. 3d 811 (2nd Dist. 1999)**

Improper to bar defendant from rejecting the arbitration award based on conduct (discovery abuse) prior to arbitration.

WAIVER OF RIGHT TO CONTEST REJECTION

Pineda v. Flores **306 Ill App. 3d 1178 (1st Dist. 1999)**

The defendant waived his right to contest the rejection of the arbitration award by failing to bring a motion for nearly two years and by participating is subsequent litigation.

Moy v. Galustyan **195 Ill. 2d 580 (2001)**

Neither parties, nor attorneys attended arbitration. Award for defendant. Case dismissed for want of prosecution on judgment on award call. No rejection filed. Two years later motion to vacate and enter judgment for defendant. Plaintiff argued clerical error in not appearing. Appellate Court affirmed barring of rejection and also would not vacate judgment for defendant per 2-1301 waiver argument denied.

Schmidt v. Sanders **1-02-1209 Rule 23**

Defendant arrived late for arbitration but during hearing. No request to re-open proofs. Barring rejection affirmed.

JUDGMENT ON AWARD

Lollis v. Chicago Transit Authority **238 Ill. App. 3d 583 (1st Dist. 1992)**

Court may not enter judgment on award *sua sponte*. Need motion.

COUNTERCLAIMS AND SET OFFS AFTER ARBITRATION

Maher v. Chicago Park District **269 Ill. App. 3d 136 (1st Dist. 1994)**

A defendant does not waive its right of setoff when the defendant did not present the setoff claim to the arbitrators and did not reject the award. Plaintiff settled with co-defendant.

Marsh v. Nellessen **235 Ill. App. 3d 998 (2nd Dist. 1992)**

The plaintiffs may proceed with allegations as a counterclaim after arbitration result rejected.

O'Leary v. State Farm **1-03-2980 Rule 23**

Set-offs may be applied to arbitration award.

INTERPRETERS AT ARBITRATION

State Farm Insurance v. Kazakova **299 Ill. App. 3d 1028 (1st Dist. 1998)**

A non-English speaking defendant did not fail to participate in a mandatory arbitration hearing in good faith and in a meaningful manner and violate the notice to appear by failing to provide a foreign-language interpreter so that she could testify.

West Bend Mutual Insurance v. Herrera **292 Ill. App. 3d 669 (1st Dist. 1997)**

Supreme Court Rule 91(b) does not require that the arbitration panel must first make a finding of failure to participate in a hearing in good faith and in a meaningful manner before a court can review the issue.

The fact that the defendant could not speak English and did not appear at the hearing with a translator did not constitute failure to participate in the hearing in good faith and in a meaningful manner.

Supreme Court Rule 237 does not require a witness to provide an interpreter, if one is necessary.

POST ARBITRATION BUT PRIOR TO JUDGMENT ON AWARD SETTLEMENT

Poole v. Mosley **307 Ill. App. 3d 625 (1st Dist. 1999)**

Judgment on the award was properly entered when the parties had previously attempted to settle the matter without success.

INTERVENTION

Ratkovich v. Hamilton **267 Ill. App. 3d 908 (1st Dist. 1994)**

A party who intervenes less than 60 days prior to an arbitration hearing is entitled to receive 60 days' notice of that hearing required by Supreme Court Rule 88. Worker's compensation.

2-1301 VACATING JUDGMENT

Ibeagwa v. Habitat Co. **204 Ill. 2d 660 (2003)**
(leave to appeal denied)

Plaintiff failed to appear at arbitration. No 237. Judgment for defendant vacated. New arbitration scheduled. Plaintiff failed to appear at 2nd arbitration. Plaintiff rejection barred. Judgment for defendant. Plaintiff filed motion to vacate judgment and offered excuse that train was 17 minutes late. Court held insufficient excuse.

Moy v. Galustyan **195 Ill. 2d 580 (2001)**

Neither parties, not attorneys attended arbitration. Award for defendant. Case dismissed for want of prosecution on judgment on award call. No rejection filed. Two years later motion to vacate and enter judgment for defendant. Plaintiff argued clerical error in not appearing. Appellate Court affirmed barring of rejection and also would not vacate judgment for defendant per 2-1301 waiver argument denied.

Horn v. Newcomer **1-00-1777 Rule 23**

Plaintiff files personal injury case. Notice of arbitration sent to only one of two plaintiffs' attorneys was inadequate. Both attorneys of record entitled to notice (Hoffman dissents from rule).

NEITHER PLAINTIFF OR DEFENDANTS APPEAR AT ARBITRATION

Williams v. Abelkader **312 Ill. App. 3d 1212 (1st Dist. 2000)**

Neither plaintiff nor defendant appeared at arbitration. Both attorneys present. Award for defendant. Plaintiff said attorney gave wrong time to plaintiff. Court barred based on 91(b).

Moy v. Galustyan **195 Ill. 2d 580 (2001)**

Neither parties, not attorneys attended arbitration. Award for defendant. Case dismissed for want of prosecution on judgment on award call. No rejection filed. Two years later motion to vacate and enter judgment for defendant. Plaintiff argued clerical error in not appearing. Appellate Court affirmed barring of rejection and also would not vacate judgment for defendant per 2-1301 waiver argument denied.

RELIEF ONLY, NO EQUITABLE RELIEF

Mrugala v. Fairfield **325 Ill. App. 3d 484 (1st Dist. 2001)**

Parties who fail to appear may after 2-1301 or 2-1401 be allowed to re-arbitrate if both parties present, must reject award, motion to vacate award improper.

Appendix F

MANDATORY ARBITRATION STATISTICS
SOFT-TISSUE CASES

EXCERPTS FROM

ADR Quarterly
2003 - 2005

2002

Mandatory Court-Annexed Arbitration
Soft-Tissue Case Statistics
Verdict vs. Award

The following chart compares jury verdicts to arbitration awards in soft-tissue accident cases during 2002. This category of cases represents the largest number of rejection of awards. Except for a few cases at the beginning of the year, the disparity between awards and verdicts is obvious. Arbitrators have suggested that this has caused them to consider the reality of their awards in jury cases, it is not intended to dictate to arbitrators, who are quasi-judicial officers, but merely to provide information.

DATE	CASE NO.	VERDICT	AWARD
1/7/02	01 AR 283	5792	6778
1/14/02	01 AR 515	13518	17500
1/24/02	01 AR 455	2250	6000
1/28/02	01 AR 16	0	9895
2/11/02	01 AR 1496	3238	9000
2/19/02	00 AR 1344	25000	17765
2/25/02	01 AR 1179	5913	21000
2/26/02	01 AR 2106 (00 AR 2292)	4670	4500
3/11/02	01 AR 1173	0	15000
4/15/02	01 AR 1875	92076 REDUCED TO 50K	20000 (20% CONTRIB)
4/29/02	02 AR 124 (00 AR 1639)	10000	15000
5/6/02	00 AR 2499	0	11000
5/13/02	01 AR 594	12000	15000
6/17/02	01 AR 2387	0	9000
6/24/02	01 AR 1588	3685	7297
7/15/02	01 AR 2968	9885	9926
7/22/02	01 AR 3097 (00 AR 1538)	6256	25557
7/31/02	01 AR 2264	0	0
8/05/02	01AR3022	5116	12000
8/05/02	01 AR 1951	1828	11000
8/21/02	00 L 179	0	0
8/26/02	01 L 272	196	15796
9/30/02	02 AR 243	0	15000
10/21/02	02 AR 405	0	7500
10/21/02	01 AR 2753	2370	6000
10/30/02	01 AR 2975	0	2500
11/12/02	02 AR 1130 (00 AR 2149)	8897	15000
12/9/02	01 AR 3102	5850	9300
12/16/02	00 AR 2619	0	15000

While this disparity may also be attributable to other factors, including the difficulty in presenting proofs on those matters presumptively admissible under Supreme Court Rule 90, Judge Abraham is aware of the difficulty presented to counsel who recognize these problems but have a “hard sell” when their clients have obtained an award far greater than counsel believes will result from a trial. Many cases were resolved during 2002 by a pretrial conference at which plaintiff is present; and with the permission of counsel for all parties, the court has discussed this information directly with the plaintiff(s).

2003

Mandatory Court-Annexed Arbitration
Soft-Tissue Case Statistics
Verdict vs. Award

DATE	CASE NO.	VERDICT	AWARD
01/13/03	01 AR 2649	2,250	9,000
01/21/03	02 AR 735	4,778	19,000
01/27/03	02 AR 1854 REFILED	5,166	15,800
02/03/03	00 L 1177	9,816	20,000
02/10/03	02 AR 994	0	25,000
02/18/03	02 AR 1706	0	15,000
02/24/03	02 AR 2074	1,427	4,500
03/10/03	01 L 895	0	7,000
04/21/03	01 L 1314	1,602	8,000
04/23/03	02 AR 920	513	3,934
04/28/03	00 AR 2396	415	27,000
05/12/03	02 AR 2742	750	7,000
05/19/03	02 AR 2951	2,136	2,300
05/19/03	03 AR 351 REFILED	18,500	21,000 (2 Pltfs)
05/19/03	00 L 870	62,577	70,000 (2 Pltfs)
06/11/03	02 AR 637	4,035 (Pltf)	5,954 (3rd Prty Pltf)
06/16/03	02 AR 2448	0	13,640
06/23/03	01 L 720	Pltf A 505 Pltf B 360	Pltf A 5,500 Pltf B 7,500
07/07/03	02 AR 2778	3,763	8,500
07/07/03	02 AR 2001	5,250	10,500
07/14/03	02 AR 3421	2,174	8,500
07/21/03	02 AR 3383	10,503	15,000

2003

Continued from Prior Page

DATE	CASE NO.	VERDICT	AWARD
08/11/03	02 AR 3886	4,585	30,000
08/18/03	01 L 603	28,652	30,000
08/18/03	02 AR 694	7,794	16,500
08/25/03	01 L 425	0	15,000
09/08/03	02 AR 218	0	17,614
09/08/03	02 AR 2587	0	4,750
09/22/03	03 AR 117	1,654	8,700
09/29/03	02 AR 700	11,000	7,500
10/15/03	02 AR 2825	7,791	13,000
10/21/03	03 AR 950 (01AR1729)	0	5,000
10/21/03	02 AR 1995	15,606	20,000
11/17/03	02 AR 3905	750	8,500
12/10/03	01 L 1211	1,079	21,773

The total of arbitration awards on these cases during 2003 is **$527,965**. However, the jury verdicts on these cases total **$215,431**. The total average recovery at jury trial is 40.8% of the average award.

During 2003, there were fifty (50) jury trials conducted for arbitration cases. The types of cases tried included:

35 Soft Tissue (8 of which were filed as “L” cases)
1 Malpractice
1 Magnuson/Moss
1 Personal Injury (minor surgery)
11 Property Damage/Auto Subrogation
1 Auto Subrogation/Soft Tissue Counter Claim

2004

Mandatory Court-Annexed Arbitration
Soft-Tissue Case Statistics
Verdict vs. Award

Of the 51jury trials, which took place in arbitration cases during 2004, 37 were soft-tissue cases and 8 were subrogation actions. It is, therefore, easy to demonstrate how much of our judicial resources are utilized by this category of cases. With this in mind, the Summary of Jury Verdicts rendered in 2004 on soft tissue cases is outlined in the Table below. The total amount of the awards on these cases was $373,275 and the total verdicts were $145,957. The total verdicts are 39% of the total awards.

DATE	CASE NO.	VERDICT	AWARD
1/5/04	02 L 008	0*	10,000
1/5/04	02 L 1007	16,263	15,390
1/12/04	03 AR 777	1,586*	11,724
1/20/04	02 L 1197	0*	27,000
1/26/04	01 L 655	0*	8,500
2/9/04	02 AR 3193	0 (SUBRO) 1,000 (PI)	8,459 (SUBR0) 11,000 (PI)
2/17/04	03 AR 1530	0	0
2/23/04	01 L 1103	4,203	13,000
3/15/04	03 AR 1182	4,262*	9,387
3/22/04	02 L 289	22,197	29,500
4/12/04	03 AR 1693	0*	11,561
4/26/04	03 AR 97	2,916	19,554
5/3/04	03 AR 2687	8,618*	10,500
5/5/04	03 AR 1413	3,342*	5,500
5/24/04	01 L 300	1,135	0
6/7/04	03 AR 2165	0*	11,185
6/7/04	01 L 958	8,587	22,550
6/21/04	02 L 1353	4,050*	16,460
6/28/04	03 AR 2866	5,928*	15,013
6/28/04	02 AR 3862	0*	3,007
7/12/04	03 AR 2689	3,980*	6,500
7/19/04	03 L 155	0	0
8/2/04	03 AR 1238	3,665*	15,000
8/23/04	02 AR 1424	0	0
8/23/04	03 AR 2199	0*	9,900
9/13/04	03 AR 2322	4,846	10,000
9/13/04	03 AR 3516	3,317	4,078
9/20/04	03 AR 860	3,400*	13,000
11/1/04	02 L 1255*	26,877	31,809
11/9/04	03 AR 2432	0 for Dft in Ct 3,200 Agnst Defaulted Deft	5,000
11/29/04	04 AR 871*	5,717	7,500
12/6/04	03 L 733	2,226	6,180
12/13/04	03 AR 2951*	50	5,018
12/13/04	04 AR 344	4,592	0

- **STIPULATION OF NEGLIGENCE**

2005

Mandatory Court-Annexed Arbitration
Soft-Tissue Case Statistics
Verdict vs. Award

DATE	CASE NO.	AWARD	VERDICT	P & S	LOSS/ DIS.
1/10/05	03L104	3,652	2,278*	0	0
1/24/05	03L82	Pltf A 7,892 Pltf B 9,926	0	0	0
2/07/05	03L589	11,676	3,000*	140	0
2/07/05	04AR597	0	1,260	0	0
2/28/05	03L103	10,000	4,000*	1,000	3,000
3/07/05	04AR574	13,000	6,734*	1,200	
3/14/05	03AR2458	16,811 (2 Pltfs)	1,437*	0	0
4/04/05	03L962	13,334	8,587*	1,000	0
4/13/05	04AR1156	3,000	0*	0	0
4/18/05	03L492	40,000	0	0	0
4/18/05	04AR1147	4,000	2,551	500	500
5/16/05	03AR3155	7,500	1,500**	0	0
5/16/05	04AR638	8,492	3,885	500	
5/16/05	04L27	20,000	0	0	0
6/20/05	03L1377	17,001	36,000	19,000	7,500
6/27/05	04AR903	1,500 5,000	270 Pltf A* 3,286 Pltf B	0 500	0 0
7/11/05	03AR2949	10,830	8,528*	1,000	500
7/18/05	04AR2089	4,000	0*	0	0
8/01/05	04AR3415	7,047	5,928*	0	0
8/29/05	03AR182	21,000	0	0	0
9/19/05	04AR3711	7,095	4,795*	2,200	0
9/26/05	04AR4248	3,805	1,747*	0	0
10/03/05	04AR4269	12,500	0	0	0
10/17/05	04AR2960	3,280	450*	450	0
10/31/05	04AR3046	6,500	3,208	1,050	
11/05/05	04AR3962	11,452	100*	0	0
TOTALS		**280,221**	**99,544**	**28,540**	**11,500**

* ***Stipulation of Negligence***
*****$1,350 in Favor of 3rd Party Plaintiff***
NOTE*: ABSENCE OF A NUMBER INDICATES THIS ELEMENT OF DAMAGES WAS NOT REQUESTED OF THE JURY*

KEY POINTS

26	Jury Trials in this Category
1	"0" Award by Arbitrators
7	"0" Verdicts
19	"Plaintiff Verdicts"
35.53%	Average Jury Verdict Compared to Award
28.48%	Average if 03 L 492 and 03 L 1377 are removed as Statistical Anomalies
$530	Average of Pain & Suffering after removing the two cases
15	Of Plaintiff's Verdicts sought Disability or Loss of Normal Life after removing the two cases
$266.66	Average of Loss of Normal Life or Disability

SETTLEMENT CONFERENCES

The fact that 26 cases were tried to verdict in this category during 2005 compared to 34 trials during 2004 and 35 in 2003, suggests that more cases are settling and at an earlier date; particularly, since the overall number of filings in Mandatory Arbitration have consistently increased since 2001.

Consideration should be given to setting a conference at a date after initial discovery has been completed and prior to arbitration. If an arbitration date has been set and if counsel are in agreement to obtain a pretrial date while continuing to prepare for the arbitration, please contact Judge Abraham's secretary, Ursula, at (630) 407-8807. She may be able to set a date without the need to put the case on the call. As a reminder, it is much more effective if the plaintiff is present.