ASSOCIATION OF BUSINESS TRIAL LAWYERS

abtl REPORT

Volume III *Number 1*

Letter from the President

At its meeting on September 7, 1979, the State Bar Board of Governors quietly made permanent the pilot program on legal specialization covering the fields of taxation, criminal law and workers' compensation, and approved a tentative schedule for the expansion of the specialization program to several other disciplines, including civil trial practice. The tentative schedule called for the adoption of a plan for certification of civil trial specialists in 1981.

Loren R. Rothschild

This action resulted in a very unquiet response by bar associations and bar leaders from all over the state. First to join the fight was the Conference of Bar Delegates which, on September 16, 1979, adopted a resolution, by a substantial majority, requesting the Board of Bar Governors "to return the specialization program to its original status as a pilot program and to continue the program on a pilot basis only, without expansion into new areas of specialization pending the outcome of a study by a qualified independent organization . . . "

The Conference of Bar Delegates stated as its reasons for the resolution that the specialization program "may lead to discrimination against members of the minority bar, higher fees to the public, confusion among consumers of legal services and the elimination of the general practitioner."

The Conference of Bar Delegates also complained that the Board of Bar Governors had made the pilot program permanent and had expanded the specialization program to other fields "despite that fact that no survey of the public or the profession as a whole was made concerning the pilot program to determine the impact on the public, the minority bar, the general practitioner or the judicial system." The conference also pointed out that the Board had not solicited comments from local bar associations with respect to the proposal to expand the program into nine new areas.

On September 24, 1979, eight days after the Conference adopted its resolution, the Barristers of the Los Angeles County Bar Association endorsed the action of the Con-

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Superior Court Experience Under The New Judicial Arbitration Act

The new Judicial Arbitration Act, Code of Civil Procedure Sec. 1141.10 *et. seq.*, implemented by California Rules of Court Sec. 1600 *et seq.*, became operative July 1, 1979. There were three major changes from pre-existing law:

(1) Whereas pre-existing law limited an award to $7,500 where the plaintiff filed an election for arbitration, the new law increases the permissible award to $15,000. (If the parties have stipulated to arbitration, the award is only limited by the ceiling provided for by the stipulation. In a case where arbitration is ordered by the court, the arbitrator is not limited in any amount to be awarded even though the judge has determined that the amount in controversy does not exceed $15,000.)

Hon. Richard Schauer

(2) Whereas pre-existing law provided for arbitration only by election of the plaintiff or stipulation of the parties, the new law provides, in addition to those two methods of entry into arbitration, for submission of a case to arbitration where the court finds that the amount in controversy does not exceed $15,000 (with certain exceptions).

(3) Although pre-existing law provided that a dissatisfied party could request and obtain a trial *de novo*, no sanctions were available thereunder. But under the new law, if the judgment on the trial *de novo* is not more favorable to the party requesting the trial than was the arbitration award, the court must order such party to pay costs and fees as provided for in CCP Sec. 1141.21, unless the court finds ". . . in writing and upon motion that the imposition of such costs and fees would

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Ed. Note: With this issue, the ABTL Report features three articles on a subject of continuing interest: Economic Litigation. These articles, by Judge Richard Schauer, Judge Steven S. Weisman (retired), and Eddy S. Feldman, relate to the use of arbitration proceedings and retired judges to litigate matters other than through normal courtroom channels.

Arbitration of Small Claims Disputes In the Securities Industry

Three years have gone by since the "Proposals to Establish a Uniform System for the Resolution of Consumer Disputes Involving Small Claims" was published (November 15, 1977) by the Securities Industry Conference on Arbitration (SICA). The proposals were a response to concern expressed by the Securities and Exchange Commission that small claims – say, under $2500 – arising out of disputes between broker–dealer members of the various securities exchanges and their customers were expensive to resolve, were subject to varying and inconsistent procedures among the exchanges in attempting to resolve them, and that the forums for resolution established by the members of the industry (such as they were) were not readily accessible. Basically, the proposals provide a low-cost, physically convenient system of arbitration of existing (not future) disputes without hearings, if possible, and with hearings otherwise.

Eddy S. Feldman

SICA is composed of nine self-regulatory organizations (SROs) which all now have arbitration facilities, three public members experienced in arbitration matters, and the Securities Industry Association. The self-regulatory organizations include the American Stock Exchange, Chicago Board Options Exchange, Cincinnati Stock Exchange, Midwest Stock Exchange, Municipal Securities Rulemaking Board, National Association of Securities Dealers, New York Stock Exchange, Pacific Stock Exchange and Philadelphia Stock Exchange. Proposals submitted to the SEC were approved on May 4, 1978.

The uniform system is now in operation and seems to be working satisfactorily. Further, there is talk of raising the current $2500 limit.

Fundamental to the operation of the small claims disputes resolution system is an agreement among the SROs to cooperate with one another to handle these claims. Under the agreement, all claims involving securities transactions may be referred to an SRO in whose market the transactions give rise to the dispute occurred. No such referral of jurisdiction will be made, however, without the expressed written consent of the claimant and the transferee SRO.

When a hearing is required an SRO with jurisdiction may request the assistance of another SRO with an office in the geographical area where it would be most convenient to hold a hearing. In this situation, the SRO having jurisdiction supervises the proceeding and reimburses the assisting SRO for all reasonable expenses incurred in connection therewith. In this manner the SROs are able to offer hearing facilities in all major commercial centers and in at least one city in every state. By virtue of this cooperative program, the Conference believes that no new administrative organization is needed to initiate the referral of arbitrations, as was contemplated by the SEC at one time.

Under the uniform system customer disputes with a securities firm involving $2500 or less can be submitted to arbitration upon demand of the customer. All the claimant has to do is file a claim letter ("Statement of Claim") which sets out the claim with supporting documentation, deposit $15.00 (it will be returned if the dispute is settled without arbitration), and sign and return a submission agreement. The submission agreement is found inside an easily understood and most helpful pamphlet published by each of the SROs and is available for the asking. Under the submission agreement the claimant agrees to submit the dispute to arbitration, abide by the award of the arbitrator, and allow the award to be submitted to a court of competent jurisdiction for confirmation.

The pamphlet also contains a copy of the SRO's Rules on arbitration (they are the same except for provisions to accommodate administrative differences within each SRO), an "Explanation of Procedures," and a "Glossary of Terms." It is not clear if the text of the pamphlet, other than the Rules, especially the "Explanation of Procedures," is binding on the parties. The matter is important because some items are treated in the "Explanation of Procedures," but not in the Rules. For example, the fairness of the arbitrator and methods of disqualification are treated only in the Explanation and not in the Rules. Again, if a hearing is to be held, the Director of Arbitration will select a location giving due consideration to the residence of the claimant as well as to all the other relevant factors. This restraint on the Director of Arbitration is found only in the Explanation – not in the Rules. However, it is to be noted that the submission agreement provides only that any given arbitration will be conducted according to the "rules" of the individual SRO.

Once the claim has been received it will be sent to the opposing party or parties. So, a brokerage house or employee or representative of a brokerage house, or both may be named as parties.

The opposing party (respondent) within 20 calendar days may respond with an answer. The answer sets out the available defenses to the claim and it may set forth any "related" counterclaim, as well as any "related" third party claim which respondent may have against the claimant or any other person. "Related" means related to the customer's account with the broker-dealer.

If there is a third party claim (against a person other than the claimant) the Director of Arbitration has a problem: how to get jurisdiction over that party. He will attempt to serve the third party with the pertinent papers and try to obtain his signature on the submission agreement.

If the counterclaim is larger than the claim, the claimant can withdraw from the arbitration proceeding. If the claimant does not withdraw, the arbitrator may refer the matter to a panel of three or five arbitrators, or he may dismiss the counterclaim or third party claim or both without prejudice to their being pursued in a "separate proceeding."

The arbitration housekeeping is in the charge of a Director of Arbitration at each of the organizations belonging to the Conference. All papers are deposited with the Director and the Director causes them to be sent to the opposing parties. Time limits for filing the various

pleadings are prescribed in the Rules, but they may be extended for good cause.

When the papers are received, the Director of Arbitration appoints an arbitrator who is knowledgeable in the securities industry but who is not associated with or employed by a broker-dealer or securities industry organization. Of course, there may be instances when a "public" arbitrator is not available, and a member of the securities industry will perhaps be chosen.

The arbitrator is notified by the Director of Arbitration of names of the parties and the nature of the issues raised. If any party feels the appointee cannot render a fair and impartial award, the appointee must be replaced on a showing of good cause by the objector. If the appointee decides that he cannot give a fair and impartial award, another arbitrator will be appointed. If the arbitrator believes that additional expertise is needed to resolve a dispute, he can direct that an arbitration panel composed of himself and two additional arbitrators be formed. In any case where there is more than one arbitrator, the majority of the panel will be public arbitrators.

Normallly, the dispute will be resolved on the documents submitted. But if the claimant or any arbitrator believes that it cannot be so resolved then a hearing will be held. (There can be a hearing upon the request of other parties if all parties consent to it.) If possible, the request for a hearing by the claimant should be included in the original Statement of Claim. The Director of Arbitration will schedule the hearing as soon as practicable at a "locale selected by the Director of Arbitration."

Hearings in these small claims cases are conducted no differently from other arbitration hearings.

When the arbitrator has decided the matter, he makes an award, signs it and mails it to the parties. He will return the exhibits and dispose of the $15.00 deposit, which he may order refunded to the claimant if he thinks it fair. The arbitrator's award is final, and he is not required by the Rules to provide any reasons for the award.

The simplified small claims arbitration system is a remarkable display of cooperation in a most sensitive area. Its successful operation is leading to bigger things,

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Shortcut to Trial: Use of Orders of Reference and Judges Pro Tem

As of November 30, 1979, there were 38,266 civil cases awaiting trial in the Central District of the Superior Court of Los Angeles County. The average civil case does not reach our Master Calendar (Department 1) for trial until approximately 39 months after the "At-Issue" Memorandum has been filed. The time involved from the filing of the complaint to the "at issue" stage ranges from 2 months to one year.[1] In addition, cases may trail from 5-10 days or more in our Master Calendar when they are called for trial. Regardless of the capability of our judiciary, our civil courts are being so inundated with criminal matters that very few judges are available for complicated or lengthy civil cases – and this condition is steadily worsening.

The above "legal logjam" can be substantially alleviated by the use of either of the following procedures – General Order of Reference or Temporary Judge or Judge Pro Tem.

1. *General Order of Reference*[2]

By agreement of the parties, a referee can be selected "to try any or all of the issues in an action or proceeding, whether of fact or of law, and to report a finding and judgment thereon."[3] This procedure may be instituted at the outset of litigation whereunder, *in lieu of a complaint,* there is filed a "Petition for a General Reference Pursuant to C.C.P. §638(1) and Agreement of the Parties Relative Thereto and Order Thereon." The order is signed by the presiding judge or the assistant presiding judge.

As an alternative and more widely used procedure, such Petition for General Reference can be filed and ordered *at any time after* the complaint has been filed, by stipulation and order approving same. This latter procedure ordinarily is followed after all discovery has been completed, and counsel, rather than incurring the wrath of the presiding judge by frowned upon "judge shopping", can bask in the approval of the presiding judge by "retired judge choosing."

Hon. Steven S. Weisman

The referee's findings must stand as the finding of the court, and the judge appointing the referee has the mere ministerial task of signing the judgment in accordance with the findings.[4] Most important, unlike arbitration, the judgment under this procedure is subject to appeal in the same manner as in an ordinary trial court judgment.[5] In short, when the General Order of Reference is signed by the Court, the "referee" becomes, for all practical purposes, "a sitting all-purpose judge" in the case.

The minimum fee for the referee has been in the area of $100.00 per hour, with a minimum of $500.00 per diem, and covers not only trial time, but preparation and research time. The parties bear the cost of the referee and reporter equally, and such cost may be made taxable if the parties so agree. The amount of the referee's fee and cost of the reporter pales into insignificance when compared to the time delay in getting to trial, and the "trailing" in the Master Calendar. Top attorneys in the Los Angeles area command a fee of approximately $1,200.00 per day for trial time, and the *trail* time is normally considered *trial* time.

To summarize, the General Order of Reference vehicle would seem to be the answer to many of our present problems as follows:

(a) Master Calendar would welcome it, as it would help relieve the congestion of the calendar;

(b) Clients would welcome it because of the elimination of the long delay in coming to trial and the saving in costs and fees;

(c) Attorneys would welcome it because it would allow them the opportunity to select a particular retired judge whose specialty is in the field of the pending litigation;

(d) The trial can be scheduled for a certain date and the matter is guaranteed to go to trial on that date;

(e) The schedules of those involved can be accommodated more easily by working later or starting earlier.

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Shortcut to Trial

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Also, breaks in the proceedings are more easily arranged. Because of budgetary problems, the Superior Court is generally not able to hold trial before or after business hours or on weekends. The General Order of Reference vehicle would permit this if necessary;

(f) Other factors under this procedure include a greater degree of informality, the ability to change the location of the trial if required (the trial can be held either in a vacant courtroom or at the office of either counsel or referee); and finally, because counsel are required to cooperate to obtain a reference, that cooperation may well carry over into the trial.

2. *Temporary Judge or Judge Pro Tem*[6]

This vehicle has all the advantages hereinabove set forth that relate to General Orders of Reference. In addition, the following advantages, the first practical and the second psychological, exist under this latter procedure.

1. Findings can be waived and the Temporary Judge or Judge Pro Tem signs the judgment himself. (Under a General Order of Reference, findings cannot be waived, as the judgment thereunder is signed and entered by the presiding judge based solely upon such findings.)

2. To a layman, the title "referee" connotes a pugilistic rather than a legalistic officer.

Pragmatically speaking, it would seem more appropriate to allow counsel to stipulate to a referee or Temporary Judge or Judge Pro Tem from a panel available to them, rather than to feel required to opt for one or two particular retired judges. In this connection, a panel of available retired judges is on file with our Master Calendar (Department 1), and with each supervising judge of each District Superior Court in Los Angeles County.

—Steven S. Weisman
Judge of the Superior Court (Retired)

FOOTNOTES

1. Statistics obtained through the courtesy of Arnold R. Pena, Civil Courts Coordinator of the Los Angeles County Superior Court.
2. C.C.P. §§638-645
3. C.C.P. §638.1
4. C.C.P. §644
5. C.C.P. §645
6. California Constitution, Article VI, Section 21, and California Rules of Court, Rule 244(a). See in general: (a) Witkin, **California Procedure**, 2d Edition Volume 1, Courts, Sections 230, 231, and 232 (PP. 486-489)
   (b) **California Forms of Pleading & Practice, Annotated**, (Matthew Bender), Volume 9, Judges, (pp. 33-52).

Report on ABTL Seminar: "Discovery"

The Sixth Annual ABTL Seminar on the subject of "Discovery" reached new heights in the continuing success of ABTL Seminars. Amid perfect late October weather and the beauty of the Santa Barbara Biltmore, a record seminar attendance of 86 registrants, accompanied by wives and guests, had an enjoyable and instructional weekend.

The first seminar panel, on Friday afternoon, addressed the twin topics of "Formulating a Discovery Strategy" and "Means of Discovery Other Than Depositions." These opening areas of discovery were discussed by Don Hibner of Sheppard, Mullin, Richter & Hampton; Melvin B. Fliegel of Schwartz, Alshuler & Grossman and Ray Fisher of Tuttle & Taylor. On Saturday morning, "Opposing, Limiting and Compelling Discovery" and "Depositions" were the subjects. The Saturday panel included Judge Mariana Pfaelzer of the United States District Court for the Central District of California, who described the history of recent efforts to change the scope of discovery permitted by Rule 26 F.R.C.P.; William W. Vaughn of O'Melveny & Myers and Richard C. Field of Adams, Duque & Hazeltine. On Sunday, "Organizing the Fruits of Discovery" and "Introduction of Discovered Evidence" were covered. The panel included Judge Robert Weil of the Los Angeles County Superior Court, Peter Taft of Munger, Tolles & Rickershauser and Richard D. Fybel of Nossaman, Krueger & Marsh.

All panels were of exceptional quality, both in the interesting and often entertaining presentations of their material and the careful preplanning among speakers to avoid repetition. The Association is deeply appreciative of their contributions.

Registrants at the program also received written program materials comprising a hard cover, three-ring binder containing a six chapter, 172-page exposition of the principal areas of discovery. The chapters were prepared by the 1979 Seminar Committee as follows: Robert J. White of O'Melveny & Myers, "Formulating a Discovery Strategy"; Ronald P. Kaplan of Sheppard, Mullin, Richter & Hampton, "Means of Discovery Other Than Depositions"; Robert A. Schlacter of Schwartz, Alschuler & Grossman, "Opposing, Limiting and Compelling Discovery"; Thomas J. Weiss of Nossaman, Krueger & Marsh, "Depositions on Oral Examination"; Gary A. Clark of Fulwider, Patton, Rieber, Lee & Utecht, "Organizing the Fruits of Discovery"; and Martha G. Bannerman of Adams, Duque & Hazeltine, "Introduction of Discovered Evidence." The Seminar was organized by the Chairman of the 1979 Seminar Committee, Laurence H. Pretty of Fulwider, Patton, Rieber, Lee & Utecht.

Social events at the seminar included a Friday night wine and cheese party at the Coral Casino Club overlooking the ocean and a Saturday night cocktail reception and banquet at which the President of the Association, Loren R. Rothschild of Fogel, Julber, Reinhardt, Rothschild & Feldman, welcomed the attendees and honored the speakers.

—Laurence H. Pretty

Contributors to this Issue:

Judge Richard Schauer is Presiding judge of the Los Angeles County Superior Court.

Judge Steven S. Weisman, retired Los Angeles County Superior Court Judge, is presently acting as an arbitrator, referee, special master, Judge Pro Tem and in similar capacities.

Eddy S. Feldman, an attorney in Los Angeles, acts as an arbitrator and served as a consultant on small claims arbitration to the SEC in 1977-78.

Loren R. Rothschild is a partner in the firm of Fogel, Julber, Reinhardt, Rothschild & Feldman.

Laurence H. Pretty is a partner in the firm of Fulwider, Patton, Rieber, Lee & Utecht.

Superior Court Experience

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create such a substantial economic hardship as not to be in the interest of justice."

Since July 1, 1979, the Los Angeles Superior Court has experienced the entry into arbitration of approximately 5,500 cases. Only a very small percentage of such cases has entered arbitration by stipulation of the parties; at a ratio of about 3 to 1, arbitration has been instituted mainly through plaintiff's election as distinguished from court ordered arbitration.

About 20% of the court ordered arbitration matters have been business cases whereas less than 5% of the cases entering through plaintiff's elections have involved commercial or business subjects. Of the 5,500 arbitrations instituted since July 1, only approximately 10% have been business cases, the great bulk being personal injury matters.

Business arbitration hearings have averaged only 2 to 3 hours. But two of every three cases which have entered arbitration settle before reaching award after hearing. Of 1,100 arbitrators, 250 are on the business panel. Many of those 250 have been provided through the good offices of ABTL and its hard-working Bob Zakon.

Business lawyers willing to provide a public service by sitting as arbitrators at compensation of $150 per day are encouraged to submit their names to Arbitration Adminstrator John Iverson, Room 218, Los Angeles County Courthouse, 111 N. Hill Street, Los Angeles, California 90012. Arbitrators are assigned no more than three cases and are able to arrange with the attorneys involved in the cases convenient dates and times for hearings.

The Arbitration Administrator has developed two regional panels of business arbitrators, one for West (primarily Century City) and a second panel for Northwest (Van Nuys and vicinity).

Also established with relationship to business cases are panels of specialists in partnership dissolution, accounting, SEC matters and maritime law. However, it should be noted that the overwhelmingly dominant remedy sought must be money damages rather than equitable relief, since a prayer for equitable relief may invoke exemption from court ordered arbitration under CCP Sec. 1141.16.

In addition to arbitration policies heretofore established and published by the Los Angeles Superior Court, a new policy recently was adopted to the effect that a previously arbitrated case restored to the trial calendar (pursuant to a request for a trial *de novo*) should not be ordered to arbitration a second time unless all parties waive the right to request a trial *de novo*.

Arbitration in the Los Angeles Superior Court continues at a busy pace. With the large influx averaging about 1,200 cases a month, a limited number of arbitrators and limited administrative and clerical resources, the time period to get to arbitration promises to lengthen. Such delay can be avoided if the parties select and agree to a particular arbitrator; some retired judges are available for compensation in excess of statutory $150. Forms for such stipulations to specified arbitrators are obtainable in the Arbitration Administrator's office.

It still would be premature to reach a conclusion about the effect of arbitration on the Superior Court civil calendar. There has been a small reduction in civil case backlog which may be more attributable to the increase in the municipal court jurisdictional amount than to the change in the arbitration law. Since July 1, 1979, 25% of arbitration awards have been vacated by the filing of request for trials *de novo*. But the vast majority of those cases restored to the trial calendar will be settled before trial; historically (*i.e.*, without mandatory arbitration), well over 95% of cases involving $15,000 or less settled without trial. Thus, at most, the new arbitration law will make available additional judicial resources for long cases through elimination of more of the "smaller" cases. At the least, the arbitration program holds promise of further minor reduction in case backlog and delay in time to trial.

—Judge Richard Schauer

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5900 Wilshire Boulevard
Suite 2600
Los Angeles, California 90036
(213) 937-6250

Letter from the President

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ference of Bar Delegates and formally resolved to request that the Board of Bar Governors return the specialization program to its original status as a pilot program, without expansion into new areas, pending outcome of a study by a qualified independent organization, which would, *inter alia*, (1) survey the public to determine the impact of the pilot program; (2) determine if the specialization program would unnecessarily and unfairly preclude many lawyers from becoming specialists and create a disincentive to settlement, thus further burdening the already overburdened courts; and (3) ascertain the effect of the program on malpractice rates and on referral of cases.

On October 10, 1979, the trustees of the County Bar Association unanimously adopted a resolution substantially identical to those of the Conference of Bar Delegates and the Barristers. The executive committees of the Beverly Hills and San Fernando Valley Bar Associations, the Long Beach Barristers and the County Bar Association's Trial Lawyers Section adopted similar resolutions.

Apparently in response to the overwhelming reaction of the Conference of Bar Delegates and the local bar associations, the Board of Bar Governors, at its October 20th meeting, decided to reconsider at its December 15, 1979, meeting its decisions making permanent the four pilot programs and expanding the specialization program to the nine new areas. Then, at its meeting on December 15th, the Board returned its legal specialization program to the pilot stage and authorized the Board of Legal Specialization to "explore the possibility of expansion" of the program.

The ABTL and its members obviously have a substantial interest in the matter of certification of civil trial specialists. Because of this interest, immediately after the Board of Bar Governors decided to expand the specialization program to civil trial practice, the ABTL Board acted to have an ABTL representative appointed to the Civil Trial Advocacy Consulting Group, the committee appointed by the Board of Bar Governors to formulate the standards and requirements for certification of civil trial specialists. Our initial request, dated September 11, 1979, pointed out that: "The ABTL is an organization of approximately 1100 business trial lawyers, . . . is the only bar organization exclusively devoted to the interests of business trial lawyers" and thus should have a voice in setting the standards for certification (assuming the Board of Governors elects to proceed with the program).

If the Board hereafter elects to expand the specialization program to civil trial practice, the ABTL will remain active in its efforts to assure that the standards for certification accurately reflect the true nature of business trial law and account for the very substantial differences between business trial practice and personal injury practice. So far, all areas of civil trial practice, including personal injury, business and administrative practice, have been subsumed under one catch-all label. These fields vary greatly in the volume of trials, the apportionment between cases tried before juries, judges or hearing examiners, in the quantity and character of discovery and pre-trial proceedings, and in the complexity and sophistication of the issues presented. If the specialization program is expanded in the future to cover civil trial practice, it may well be necessary to establish two or three separate sets of standards.

There are, of course, questions of even wider impact which the ABTL will address: those set forth in the resolutions of the Conference of Bar Delegates, the County Bar and the Barristers. There are, also, very basic questions, not yet fully explicated by the Board of Bar Governors or anyone else: whether certification of trial specialists is administratively feasible and whether it accomplishes any legitimate objective.

—Loren R. Rothschild

Arbitration of Small Claims Disputes

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since the securities industry has been working on a uniform arbitration system for the resolution of all claims.

On December 28, 1978 to be precise, SICA submitted its Second Report on arbitration to the SEC entitled "Proposal for a Uniform Code of Arbitration." Two of the SROs, namely the Midwest Stock Exchange and the New York Stock Exchange, have already petitioned the SEC for approval of appropriate rule changes pursuant to Section 19 (b) of the Securities Exchange Act of 1934 and Rule 19b-4, to accommodate their proposed systems. SEC has not yet acted.

A final note: attorneys should be alert to the concern expressed by the SEC about the use of arbitration clauses in broker-dealer customer agreements which purport to bind customers to arbitrate *all future* disputes with a broker-dealer. A number of court decisions (e.g., *Wilko v. Swan*, 346 U.S. 427 (1953)), have limited the enforceability of these clauses against customers with respect to various types of disputes which may arise between broker-dealers and their customers. Nevertheless, the language of some of these clauses does not reflect their permissible scope. The SEC is of the opinion that many investors are unaware of the right to a judicial forum for the pursuit of claims arising under the federal securities laws, and that it is incumbent upon those who include arbitration clauses in agreements with customers to provide adequate information about such rights in order to make the clauses not misleading. In addition, the SEC has said, customers should not be lead to believe, either before or after the occurrence of disputes, that a pre-dispute arbitration agreement constitutes a waiver of the right to a judicial forum, where such waiver would be void under the securities laws.

—Eddy S. Feldman

Membership in ABTL is open to attorneys at $25.00 annual dues (due January 1, 1980). ABTL members who have not paid their 1980 dues should use this form for payment. Law firms wishing to respond on behalf of more than one attorney are requested to reproduce and complete this form for each desired membership.

Name_____

Firm_____

Address_____

Phone_____

Year admitted to California Bar_____

Complete and return, with $25.00 per member, to:

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Association of Business Trial Lawyers
c/o Marsha McLean-Utley, Treasurer
515 So. Flower St., Suite 4453, Los Angeles, CA 90071