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 the monetary 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.

(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.

Adopted May 20, 1987, effective June 1, 1987; amended December 30, 1993, effective January 1, 1994.

Committee Comments

Paragraph (a)

It is implicit from the authority granted to it by the enabling legislation and appropriate to its responsibility for the effective operation of the courts that the Supreme Court shall decide which, if any, circuit should undertake a mandatory arbitration program. Where available resources permit, and the benefits anticipated are determined, any other circuit, with the approval of the Supreme Court and by virtue of the authority of this rule, can elect to institute such program.

Paragraphs (b) and (c)

Examination of existing statutes and rules in jurisdictions with mandatory arbitration reveals that claims for a specific sum of money or money damages are the cornerstone for this form of disposition. Pennsylvania, by statute, limits this remedy to such civil matters or issues where the amount in controversy, exclusive of interest and costs, does not exceed a certain value and which do not involve title to real property. Within that broad spectrum, further limitation is authorized by rule of court. Most jurisdictions expressly exclude actions involving title to real property or equitable issues.

It was the consensus of the Committee that arbitrable actions should be limited by rule only to those matters involving a claim exclusively for money. Eligibility for arbitration, by the terms

of the Act, could be more broadly interpreted. The less complex the issues, the less concern there need be for the level of experience or specialized practice of the arbitrators.

The present volume of cases in litigation potentially arbitrable under this rule, in many of the circuits, could quickly exhaust the resources that would be available to administer the program for all. For this reason, each circuit should be authorized, as is herein permitted, to further limit and define that class of cases, within the general class of arbitrability, that it may wish to submit to this program.

It could prove to be appropriate, in some circuits, until its requirements and resources dictate otherwise, to limit its program solely to actions within the monetary limit, in which jury demands have been filed. Obviously, considerable cost savings could be achieved if such matters could be resolved at a two or three hour hearing as compared to a two- or three-day trial to a jury.

The initial draft of the Committee excluded from eligible actions small claims as defined by Rule 281. The exclusion of such actions of insubstantial amounts is not unusual in arbitration jurisdictions. Although their inclusion in the conduct of hearings would appear to be an indiscriminate use of manpower and funding resources, the Committee considers that such discretion best be left to the circuit. That court may determine that those small claims cases with jury demands should be arbitrable and thus susceptible to quick and early resolution.

If the amount of claimed interest and costs is determinable by the time of filing and constitutes an integral part of the claim, the amount of the demand, including such items, would determine eligibility for arbitration. If, however, interest and costs are determined by the arbitrators to be includable, and due and owing as of the date of the award, then the amount thereof may be added to the award even though by such addition the arbitrable limit is exceeded.

Paragraph (d)

This paragraph of the rule enables the court to order the matter to hearing in arbitration when it reasonably appears to the court that the claim has a value not in excess of the arbitrable limit although the prayer is for an amount or of a claimed value in excess thereof. Early skepticism on the part of the bar relative to the merits of this form of dispute resolution could serve to cause demands in an amount that would avoid assignment of the claim to an arbitration hearing. Some jurisdictions provide for an early conference call on all civil matters at which time arbitrability would be determined.

Philadelphia County enables the claim to be placed in the arbitration track at time of filing, at which time the date and time of hearing is assigned. The hearing date given is eight months from date of filing. Although the court in Philadelphia County may divert a case from the major case trial track to arbitration, that event is altogether infrequent. The Philadelphia bar has long recognized the benefits and advantages available in its arbitration program and do not see fit to avoid its process.

An undervaluation of the claim at the time of filing or by the court in diverting the claim to arbitration as a result of its undervaluation does not preclude the claimant from the opportunity to eventually realize its potential value. No party need accept as final the award of the arbitrators and any may reject the award and proceed on to trial in which no monetary limit would apply.

A claimant who believes he has a reasonable basis for having the matter removed from an arbitration track may move the court for such relief prior to hearing. Where there are multiple claims in the action, the court may exercise its discretion to determine whether all meet the requirements of eligibility for arbitration and if not whether a severance could be made of any or several without prejudice to the parties.

Paragraph (e)

The concern expressed by some reviewers in response to the initial draft as to whether or not the Code of Civil Procedure and the rules of the Supreme Court would apply to matters that are to be arbitrated caused the Committee to realize that some perceived this procedure as essentially *sui generis*. What we thought apparently went without saying, did not. To avoid any misconception in that regard, the Committee has adopted this part to the rule.