



2011 PRESIDENT'S LETTER & FINANCIAL STATEMENTS

MAY 3, 2012 | NEW YORK, NEW YORK



American Arbitration Association  
*Dispute Resolution Services Worldwide*





**Building the Future**  
**OF RESOLUTION**

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**American Arbitration Association**  
*Dispute Resolution Services Worldwide*

## **OUR SHARED MISSION**

The American Arbitration Association is dedicated to effective, efficient and economical methods of dispute resolution through education, technology, and solutions-oriented service.

## **OUR SHARED VISION**

The American Arbitration Association will continue to be the global leader in conflict management – built on integrity, committed to innovation and embracing the highest standards of client service achievable in every action.

## **OUR SHARED COMMITMENT TO DIVERSITY**

The American Arbitration Association is the global leader in conflict management with core values of integrity and service. Our integrity demands impartial and fair treatment of all people with whom we come in contact, regardless of gender, race, ethnicity, age, religion, sexual orientation, or other characterization. Our conflict management services put into practice our goal for the resolution of disputes between parties with different perspectives, experiences and backgrounds.

Because of the breadth of the Association's work and the global reach of its services, we recognize the importance and contribution of a diverse work force, a diverse Roster of Neutrals and diverse Board and we commit to respect and increase diversity in all of our endeavors.



**American Arbitration Association**  
*Dispute Resolution Services Worldwide*



## President's Letter

This overview of the 2011 accomplishments and initiatives of the American Arbitration Association (AAA, the Association) is particularly meaningful to me, as it will be my last as President and CEO of this great organization.

It has been my singular privilege to lead the AAA since 1994. Eighteen years...don't they go by in a blink. During that time the ADR landscape has undergone considerable change. We have seen the use of arbitration and, more recently, mediation grow by leaps and bounds in a global context. Correspondingly, public debate over arbitration has intensified, most notably in such areas as consumer and employment disputes. Technological advances have made accessible an entirely new world of online dispute resolution. All of this amid a rapidly changing backdrop of significant economic, judicial and political developments on both the domestic and international stages that has left a lasting impression on the ADR field.

Certainly no company or organization can operate effectively in a vacuum, as the forces that affect the world create consequential change at every level of business. At the AAA, our understanding of the need for meaningful transformation under such circumstances imbues our efforts to uncover opportunities within the challenges to further our global vision and our path of continuous improvement. In that context the AAA's growth over my 18-year tenure is a reflection of the metamorphoses within the broader field that have occurred either through natural progression or public policy changes issuing at the legislative or judicial level, and the needs of an evolving constituency. Some brief examples:

- An expanding global marketplace suggested a strengthening of our global presence. We subsequently established the International Centre for Dispute Resolution (ICDR) in 1996 and later increased our presence in Europe and expanded further into Mexico City, Singapore and Bahrain. The ICDR is now the international leader in terms of arbitration case filings. We also worked with strategic partners to establish new ADR organizations such as the Commercial Arbitration and Mediation Center for the Americas (CAMCA) to resolve private-party disputes under the NAFTA accords. More recently, we established the International Mediation Institute, with ADR entities in the Netherlands and Singapore.
- In response to the aforementioned elevated scrutiny of the dispute resolution process as it affects individual due process rights, we played a leadership role in crafting and implementing a series of Due Process Protocols to ensure a fundamentally fair process for the equitable resolution of consumer, consumer debt, employment and healthcare disputes. These Protocols are considered the gold standard, in large part because they were drafted by committees composed of top-flight representatives from their respective fields, representatives from the pre-eminent dispute resolution providers, and “nonaligned” members that included academics, judges and government officials.
- We take very seriously our obligation to let our informed views be known to public policy decision makers when pivotal issues of the arbitral process are being reviewed by the courts. During the time I have served as President, the AAA has filed eight amicus curiae briefs (six before the U.S. Supreme Court) that address key issues in arbitration that could potentially impact the future of the ADR industry.
- The explosive growth of mediation as a preferred method of dispute resolution has led us to significantly expand and enhance our service offerings for this process. Notwithstanding the mediation services we provide in the areas of no-fault insurance, commercial, labor-management and employment disputes, increasingly we have been called upon through court-mandated programs to craft and administer mediation options for the resolution of disputes arising out of natural disasters.
- I take a great deal of pride in the role we have played in making the AAA, and the ADR field, more inclusive. One of our major initiatives in this regard, the A. Leon Higginbotham Fellows Program, the details of which are delineated elsewhere in this Report, continues to ensure in robust fashion the meaningful involvement of outstanding individuals who have traditionally not had the opportunity to be actively involved in the ADR field.

There are many such examples of how the AAA has manifested its leadership in the field and acted to advance its global vision during the last two decades. No less important to us is our standing as a *thought leader* in the field and our abiding commitment to advance ADR in its totality through education and public service. As I have stated many times before, this commitment remains deeply embedded within our institutional DNA.

I invite you to review below some of the admirable and exciting initiatives the Association has developed and implemented during 2011. What I wrote in my very first column in the pages of the AAA's *Dispute Resolution Journal* in March 1994 remains no less true today: *The AAA is poised to take on new leadership challenges as we further develop and refine ADR techniques and applications, to meet the discrete needs of a growing number of users in different fields.* I have indeed been privileged to have played a role in bringing ADR to such an accepted and prominent place in the fabric of our business, professional, public sector, and personal lives.

“We have seen the use of arbitration and, more recently, mediation grow by leaps and bounds in a global context.”

*William K. Slate*

President and CEO, American Arbitration Association

## THE 2011 LANDSCAPE -

# Challenging Times, Emergent Opportunities



Yes, 2011 was a challenging year. It necessitated that we further refine and reorganize our operations to better marshal our resources to support future efforts and profitability.

Yet, even in the face of global economic adversity that reverberated through businesses of every stripe, the AAA enjoyed encouraging growth in some caseloads and held its own in others. There were record numbers of international case filings with the ICDR and in the area of New York State No-Fault insurance claims. Those details are outlined below in their respective sections. But we saw increases as well in several other sectors:

- Technology filings increased 29% and large complex cases in particular rose 33%.
- Aerospace/defense filings increased 55%.
- Accounting filings grew 10%. Half of the increase came from large complex cases, which rose 27%.
- Hospitality/travel/restaurant filings finished the year up 17%. Cases with claims of at least one million dollars experienced the most growth, increasing 218%.

We expect the sustainability and growth in the aforementioned areas to be replicated among our other caseloads as the economic forecast improves. Thomas Jefferson said, "Never put off until tomorrow what you can do today." Mindful of that edict, in 2011 we took action to prepare for anticipated service demands, meet the immediate needs of our client groups, and lay the groundwork for a future in which we will have the technology and other tools at our disposal to keep moving forward successfully.

Of the many and varied initiatives at the corporate level conceptualized and begun in 2011, there are three that I would highlight here as being particularly reflective of our service-driven values and our ongoing efforts to further improve client engagement.

## INTERNAL INVESTMENT INITIATIVE

The purpose of the Internal Investment Initiative is to invest resources in new opportunities for growth potential or a significant one-time positive impact on the AAA's financial health that would not likely otherwise be undertaken due to limited operational budgets or the press of day-to-day business.

With its roots in venture capital and R&D concepts, the seed money for the Internal Investment Initiative will come from AAA investment returns. Up to 50% of the interest and dividend income earned in the previous year will be the source for internal investment opportunities in the current year. The projects submitted by AAA staff that are approved for development will, in effect, be part of the AAA's investment portfolio.

What are the general standards for submission and further consideration? The focus will be on innovative projects that do not simply tweak existing services but address needs for AAA customers in new business opportunities. And, of course, the idea must be related to the Association's core competencies and expertise.

The AAA has always thrived on the innovation of its staff to help it remain the premier ADR services provider. This initiative taps that ability to help drive the Association's growth while it fosters a shared entrepreneurial spirit that we believe will pay significant dividends in the years to come.

## ECONOMY, SPEED AND JUSTICE PROJECT

There is an ongoing effort within the AAA to help parties reduce the cost and time involved in arbitration. Begun in 2010, our collective response during the past year to this all-important challenge has been focused and certainly effective to date insofar as we are seeing widespread acceptance of the proposition that there is a need for all of us, and arbitrators in particular, to become more proactive in managing the process.

Our approach to the issue has been and continues to be multifaceted, encompassing information gathering, a staff education component, the development of new guidelines and procedures, and neutral engagement.

- An initial step consisted of gathering and collating information from arbitrators and case managers on cost- and time-saving best practices derived from actual cases.
- Issuing from the results of the staff and neutrals' submissions and interviews, a working committee drafted a set of best practices guidelines. These guidelines provide streamlined alternatives to parties and counsel as a voluntary supplement to applicable AAA arbitration rules. They suggest the use of a single arbitrator, simplify the arbitrator selection process, suggest the scheduling of a preliminary hearing, limit motions and document exchange and discovery, and minimize continuances, among other procedural options to reduce time and cost. These guidelines must be agreed upon by all parties and can be modified by them to meet the particular needs of the dispute. The result is a resolution process that holds the promise of returning arbitration to its fast, efficient and economical roots.
- Two new Arbitrator Continuing Education courses that are integral to the effectiveness of the cost and time initiative were developed and launched in 2011 to overwhelmingly positive response. The two courses, "Maximizing Efficiency & Economy in Arbitration: Challenges at the Preliminary Hearing" and "Managing the Arbitration Process for Efficiency and Economy Following the Preliminary Hearing," are roadshow programs

conducted in a variety of locations throughout the year. In 2011, there were 30 "Maximizing Efficiency" programs held in 29 cities, and six "Managing the Arbitration Process" courses conducted in six cities. The courses are designed as companion pieces, but each can be taken independently of the other.

- Information about the importance of this initiative was disseminated using a variety of media: writeups that appeared in all divisional newsletters and bulletins sent to our constituents as well as posted on our website; articles in development for publication in the AAA's flagship publication *Dispute Resolution Journal*. A marketing and public relations plan was formulated in 2011 to optimize the newsworthiness of the initiative.
- Additionally, we are tracking time and cost data more proactively than ever before and incorporating the issue into our arbitrator training programs.

There are numerous other specific examples at the divisional level of the Association's commitment to addressing the issue of cost and speed. For instance, a factsheet of examples of how AAA divisions have successfully streamlined the arbitration process was developed and AAA division worksheets were updated to help AAA case managers, arbitrators, and attorneys representing parties commit to an expeditious process by establishing a time-conscious mindset; recent educational programs have focused on how to get "Muscular" on arbitration cost and speed; and a new Fast-track Mediation Program was launched by the Construction Division with the purpose of expediting the scheduling of mediations.

As you can see by the brief summary above of our efforts to address the matter of cost and speed, we are moving forward with agility and single-minded determination. I am confident that the strong and consistent supportive response to our efforts in this area is indicative of a broader acknowledgment that we are in fact on the correct path to re-affirming and re-invigorating arbitration's fundamental underliers—finality, speed and economy.

## STRATEGIC IS PROJECT

We all know that many roads are paved with the good intentions that are an important component of any successful business plan. Yet, without the proper tools to effectively put a plan into practice, those good intentions have little chance of attaining fruition. In 2011, we substantially increased our investment in essential technology. At the same time, our commitment to ensuring a sound strategic direction to our various technological initiatives resulted in the position of Vice President of IS being elevated and expanded to that of Senior Vice President/Chief Information Officer. Our new SVP/CIO is guiding the implementation of several large-scale projects that advanced significantly in the past year under her direction. Among them:

### PRISM™

The development of our multi-tiered case management software which will deliver new technology that will increase our level of service to customers is proceeding at an accelerated rate. Ultimately, PRISM will provide a powerful tool to aid case managers and supervisors with some of the more administrative aspects of their jobs by automating certain aspects of the processes; facilitate the acquisition of valuable data to aid us in process improvement; make us more compatible with the full spectrum of users of AAA services; improve functions such as case intake, document availability, and payment. All of these features and benefits will, at the end of the day, contribute to an elevated level of customer satisfaction. Our goal is to deploy the new system in December 2012.

### ADR.org Redesign

You may recall that the AAA was the first ADR organization to have a domain on the World Wide Web. We haven't looked back since and have remained on a continual path of improvement of our online service offerings. Last year, we initiated a comprehensive overhaul of both the appearance and functionality of our website, a project that engaged the services of external vendors as well as AAA staff at all levels. Not only will there be an updated visual appeal to the site, navigation and searchability will be considerably enhanced, and content streamlined and focused to provide a much improved user experience. Also, the site's new content management system gives us the ability to keep the website up-to-date and current. On the back end, we will be utilizing several new tools to provide stronger analytic reporting about visitors to the site. The Beta version of the site was launched internally to staff for review in December 2011, with a "go-live" date of March 2012 for public rollout.

Other key technology-related efforts include an overall infrastructure review and refresh, the ongoing development of a clause-building function for the website, and a Mobile Phone App slated for joint launch with the new web site, and the introduction of a Sharepoint Intranet to facilitate internal communication and access to data.



DIVERSITY -

# The Importance of Inclusiveness



Each year the AAA continues its leadership role in creating opportunities for diverse professionals to become future ADR leaders.

To address this pipeline issue, in 2009 the Association created the AAA A. Leon Higginbotham Fellows Program (Fellows Program) to provide training, mentorship and networking opportunities to up and coming diverse alternative dispute resolution professionals.

Now in its fourth year, the Fellows Program is a one-year program that offers the full breadth of AAA resources to participants to enhance their knowledge and skills in the field of alternative dispute resolution. The foundation of the Program is a week-long intensive training that is conducted at the AAA's New York headquarters in the Spring and consists of seminars on a variety of dispute resolution topics as well as participation in mock arbitrations and mediations facilitated by leading ADR neutrals and practitioners. The AAA also provides the Fellows with training and networking opportunities throughout the year and provides Fellows with mentors in their field of interest.



## FAST FACTS

- ✓ The “Class of 2011” consisted of 15 participants from across the country as well as Ghana.
- ✓ The effectiveness of the Higginbotham Fellows Program can be measured by the rapid advancement of its participants. Two past Fellows already have been named to the AAA’s Labor and Commercial rosters of neutrals.
- ✓ In 2011 the AAA’s divisions further reinforced their commitment to the recruitment and selection of diverse neutrals. These initiatives included maintaining strategic partnerships with minority bar associations to identify and recruit diverse members; providing speaking and networking opportunities for diverse professionals; sharing information with diverse neutrals pertaining to the frequency with which they are listed and ranked on cases; and promoting diverse neutrals to users and the ADR community.
- ✓ An important publication, “Increasing Diversity Among Arbitrators: A Guideline to What the New Arbitrator and ADR Community Should Be Doing to Achieve this Goal,” authored by AAA staff for women and minorities newly appointed to the roster of neutrals, was issued by the New York State Bar Association and is receiving broad distribution.

AAA DIVISIONS IN 2011 -

# Meeting... and Exceeding... Expectations



Despite the difficult global economic challenges, the AAA continued a balanced and purposeful approach to its operations in conformity with our top-tier position in the dispute resolution field.

The importance of our emphasis on tailoring service to stated client needs was reflected in continuing and, in several caseloads, greatly accelerated momentum in terms of sustainability and growth.

International Centre  
For Dispute Resolution (ICDR)<sup>®</sup>



International Centre  
for Dispute Resolution<sup>®</sup>

A Division of the American Arbitration Association

The ICDR is the international division of the AAA, charged with the exclusive administration of all of the AAA's international matters. Its experience, international expertise and multilingual staff constitute an integral part of the dispute resolution process. The proven success of the ICDR is predicated on its ability to advance cases in a prompt and efficient manner, facilitate communications, ensure the appointment of qualified arbitrators and mediators, control costs, understand cultural sensitivities, resolve procedural impasses and properly interpret and apply its International Dispute Resolution Procedures. In 2011 the ICDR continued to make major strides in its efforts to solidify its standing as the largest provider of international dispute resolution services in the world.

## FAST FACTS

- ✓ There were 994 case filings in 2011, representing a 12% increase from 2010 figures, and issuing the challenge to the ICDR to surpass 1,000 case filings in 2012.
- ✓ There were 93 mediation cases (9% of all filings), a 60% increase from 2010.
- ✓ The AAA was one of three ADR providers worldwide named in the new Internet Corporation for Assigned Names and Numbers (ICANN) gTLD procedures for dispute resolution. gTLD stands for “generic Top-Level Domain” and is an internet extension such as .com, .net, or .org. Under the new gTLD program, anyone will be able to apply to operate a new Top-Level Domain, which is expected to result in some applications for confusingly similar names or “character strings.” The AAA has been selected to administer the “String Confusion Objection” process for all gTLD name applications.
- ✓ The ICDR is working with the United States Internal Revenue Service to provide administrative services in support of arbitration under the Mutual Agreement Procedure (MAP) article of U.S. income tax treaties. The U.S. has entered into new treaties and protocols with Belgium, Canada and Germany to allow for a mandatory arbitration process to supplement the historic negotiation process used in the MAP. The ICDR will provide administrative services which include case management and assistance with arbitrator training and selection for these tax-treaty cases.
- ✓ In October, the AAA/ICDR and Trinity College Dublin assembled faculty from the United Nations, multiple developing and developed states, and multi-national corporations to discuss the role of mediation and arbitration in modern justice systems. The issues addressed included:
  - How do states, investors and non-governmental organizations bring about sustainable changes in the culture of justice?
  - Are viable mediation and arbitration regimes necessary components of an effective, accessible system of justice?
  - What are the keys to investor confidence?
- ✓ The ICDR/AAA once again conducted the Annual ICDR Practice Moot and Seminar, in preparation for the Willem C. Vis International Commercial Arbitration Moot (Vis Moot) which the AAA founded and continues to sponsor. It was the fourth year of the practice moot, an educational event designed to help student teams competing at the Vis Moot to improve their advocacy skills and prepare for the competition. Participants in the 2011 program included 12 student teams from six countries and over 40 arbitrators. In addition to organizing the practice moot, a number of ICDR staff members coached teams from Columbia Law School, Harvard Law School, New York University School of Law, Rutgers School of Law, and the University of Montevideo (Uruguay). The ICDR/AAA regularly sends staff members to serve as arbitrators at the Vis Moots in Vienna and Hong Kong, the global FDI Moot, and the Latin American Moot, as well as other practice moots in the U.S. and abroad.
- ✓ The ICDR conducted or co-sponsored numerous successful programs during 2011, including its 9th Annual Miami International Arbitration Conference; a sold-out joint program with the IBA held in New York City, attended by over 200 people from 29 nations; a Joint Colloquium with the ICC and ICSID; and a joint program with the Arbitration Center of American Chamber of Commerce of Sao Paulo (AMCHAM) in Brazil. The ICDR participated in programs worldwide, most notably in Korea, Mexico, Singapore, China, Brazil, Bahrain, Saudi Arabia, Switzerland, France, the United Kingdom, Kosovo, India, and Barbados.

Some themes were repeated. For example, it is clear that emerging states increasingly recognize that a modern, effective justice system is a critical need for real economic growth.

## AAA DIVISIONS IN 2011 -

# Labor / Employment Elections Division

Every year, labor and management enter into thousands of collective bargaining agreements, virtually all of which provide for arbitration of unresolved grievances.

The AAA provides rules, procedures and a variety of services for the prompt and cost-effective resolution of such labor-related disputes. Similarly, the AAA offers time-tested rules and procedures for the resolution of non-collective bargaining-related employment disputes.

## Labor and Employment

Educational events were the 2011 focus of the Labor/Employment/Elections Division. Programs included “Winning Your Labor Arbitration,” “Solving the Puzzle of Just Cause in Labor Arbitration,” “Grievance Processing,” “How to Hit a Home Run in Arbitration,” and “Do’s and Don’ts of Election Administration,” generating substantial revenue and business growth opportunities.

### FAST FACTS

- ✓ While there was an overall 8% decline in labor management case filings, the employment caseload showed a modest 1% increase for the year. The number of employer promulgated plan arbitration cases was up 5%. Multiemployer Pension Plan Arbitration (MEPPA) cases increased 13%.
- ✓ In New York City, the division initiated a Meet & Greet program designed to introduce new arbitrators to the labor management community, with a special focus on broadening the diversity of our panel. On a similar note, the AAA and ABA Labor and Employment Section co-sponsored a Diversity Reception at the section’s Annual Meeting in Seattle, Washington, attended by more than 400 people.
- ✓ Four open-enrollment mediator training courses in basic mediation skills were conducted in California and Washington State.
- ✓ Motors Liquidation Company, formerly General Motors Corporation, was the company created to settle liability claims issuing from the GM Chapter 11 reorganization. The Motors Liquidation Company mediation program, designed to assist the parties in resolving their disputes, is the result of the AAA being named in a court order issued by the U.S. Bankruptcy Court, and is now in its third year. To date, 148 mediation cases have been filed. The project is a combined effort of the Labor/Employment, Commercial, Construction and Shared Services Divisions.
- ✓ The division’s operational teams focused on converting employment arbitration cases to mediation to settle them faster and more cost effectively, with 38 cases being converted in 2011.
- ✓ The AAA also filed an *amicus curiae* brief in the case *Town of Little Compton v. Little Compton Firefighters Local 3957* that was decided by the Supreme Court of the State of Rhode Island. The issue before the Court was whether it was permissible for a non-attorney to represent a labor union in an arbitration. The AAA’s brief provided statistics that illustrated that such non-attorney representation is a common practice nationally. The brief also advocated the view that a fundamental characteristic of labor arbitration is that parties should be able to be represented by an individual of their own choosing, and that national labor policy supports the right of parties to be represented by non-lawyers. The Court ultimately decided the case in a manner consistent with the views expressed and advocated by the AAA.

## Elections

The AAA provides impartial administration for straightforward as well as large and complex elections for private sector organizations such as unions, corporations, credit unions, colleges and associations, and for public entities such as federal, state and local governments. Elections Services administers voting for initiatives including elections of officers, contract ratifications, representation elections, dues referenda, bylaws amendments, affiliations, mergers, and delegate elections.

### FAST FACTS

- ✓ In 2011 there were 274 elections filed, a 13% increase over 2010 filings.
- ✓ In 2011, the division conducted an election for the Hawaii Government Employees Association (HGEA), its first in the state. With 26,000 members, the HGEA is the largest union in Hawaii. The division also worked with the Hawaii Teachers Association Partnership to provide arbitration advocacy training to union and management employees and leaders.
- ✓ The AAA administered a number of high-profile elections and card checks involving professional athletes from both the National Football League and National Basketball Players Association.
- ✓ At the request of the Office of Labor Management Standards of the U.S. Department of Labor (DOL), the AAA prepared and filed a comprehensive report about online voting and whether it is a viable option for union officer elections. We also coordinated and hosted a summit with 12 DOL investigators, including the Northeast Director, to examine how the AAA and government can work together to assist our nation's unions to reduce and/or eliminate election challenges.
- ✓ The Labor/Employment/Elections division worked with the Mashantucket Pequot Tribe at the Foxwoods casino in Connecticut to conduct an election and also provide case management services.
- ✓ Elections worked with a number of state governments and large unions to administer representation elections, including the State of Minnesota Bureau of Mediation Services to administer its Child Care Provider election, and the State of Wisconsin, through the Wisconsin Employment Relations Commission, to administer hundreds of representation elections telephonically involving over 250,000 state employees.



## AAA DIVISIONS IN 2011 -

# Government Programs



The American Arbitration Association has a long history of working successfully with all levels of government.

The cornerstones of the Association's mission—*independence, neutrality, and integrity*—as well as its comprehensive process expertise, have provided strong inducement for Congress, federal, state and local departments and agencies to call on the AAA for advice, information, and alternative dispute resolution services. Each year the Association administers thousands of cases under governmental authorization, thereby reducing the burdens on agencies and court systems throughout the country. Following are some highlights from 2011.

## Florida Residential Mortgage Foreclosure Mediation

With the residential mortgage foreclosure crisis impacting Florida with particular severity, the AAA provided an important public service by managing the Florida Residential Mortgage Foreclosure Mediation Program mandated by the state's Supreme Court. The program provided mediation services to borrowers and lenders for the purpose of facilitating settlements in foreclosure proceedings. Issuing from a competitive bidding process, the AAA was named as Program Manager in the 8th, 17th (including Broward County, Florida's second most populous county) and 18th Judicial Circuits.

The program provided homeowners who agreed to participate an additional opportunity to save their homes through mediation with lenders conducted by a specially trained Florida Supreme Court-certified mediator. Homeowners received HUD-certified financial counseling prior to mediation. The program was successful in eliminating many communications errors and documentation problems between homeowners and lenders so that the mortgages could be renegotiated, or steps could be taken by the parties to mitigate the default issues for the homeowner.

### FAST FACTS

- ✓ The AAA received nearly 30,000 foreclosure mediations in the three judicial circuits it managed. Of these cases, approximately 21,000 were eligible for the program.
- ✓ In addition to the mediations that ended in a recorded agreement, an additional 37% of mediations eventually settled.
- ✓ Although the Florida Supreme Court eliminated the statewide mandate for the program in December 2011, the AAA continued to manage cases that had been filed prior to that date and provide services to individual circuit courts as required by local administrative orders.

## New York State Insurance

Since 1973, the AAA has been designated by the New York State Insurance Department as the program administrator for the resolution of disputed no-fault automobile and supplementary uninsured motorist (SUM) claims. Specifically, the caseload stems from medical treatment claims under automobile policies. The overall annual growth in this caseload has been prodigious, and 2011 was no exception.

### FAST FACTS

- ✓ There were a record number 91,688 new cases filed, a 37% increase over 2010 figures and 75% more than in 2009. The surge is attributable in substantial part to increased customer recognition of the speed and convenience of arbitration, as enhanced by the AAA's outreach efforts and quality customer service.
- ✓ A unique feature of the program is a conciliation phase, with AAA staff conciliators working directly with the parties on each no-fault case to attempt to reach a settlement. AAA conciliators maintained a fast pace to disposition in 2011, resolving nearly 50% of the cases in the conciliation phase in an average of less than two months from the date of filing, and 85% of cases resolved within five months.
- ✓ Administrative improvements contributed greatly to the success of the program in 2011. More than 80% of cases are now filed electronically, adding to customer convenience and streamlining the processing of online case folders for paperless use by parties and arbitrators.
- ✓ The AAA initiated the option of paying filing fees by credit card, an alternative eagerly, and quickly, embraced by large numbers of filers.
- ✓ There were also record New York SUM program case filings in 2011. The 2,400 cases filed represented an 8% increase over 2010 and the highest number since 2006.

The AAA also administers a program on behalf of the New York State Worker's Compensation Board to resolve coverage disputes between health care insurers and worker's compensation insurers. There were 170 such cases filed in 2011, a 21% increase over the 2010 figure.

## Minnesota No-Fault Automobile Insurance

In Minnesota, the AAA has managed the state's no-fault program for 37 years, with the Minnesota Supreme Court's Standing Committee for No-Fault Arbitration providing oversight. Recognized for its exemplary customer service, our staff continuously has developed innovative approaches to managing the caseload, most recently creating a new online award form to facilitate the work of the arbitrator.

### FAST FACTS

- ✓ Record numbers of filings in 2011 were also the case for this program: 6,401 compared to 5,476 in 2010, a 15% increase.



## AAA DIVISIONS IN 2011 -

# Commercial Division

The AAA administers commercial (B2B) disputes involving monetary claims ranging from thousands of dollars up to billions of dollars, as well as claims in which monetary relief is not requested at all.

Cases may involve two parties or multi-party disputes, and organizations from a wide range of industries and government agencies from the local level to the federal level. The following sections highlight 2011 initiatives formulated in response to the expressed needs of our constituents in the commercial sector.



## North Carolina Disaster Mediation Program

The AAA has, on many occasions, partnered successfully with various states to administer insurance claims programs on their behalf. Since 2005, the North Carolina Department of Insurance has used the AAA to administer its Disaster Mediation Program. The program provides a non-adversarial mediation process to facilitate the effective, fair and timely resolution of disputed residential property insurance claims arising out of damages caused by declared disasters.

### FAST FACTS

- ✓ Prior to 2011, the North Carolina Disaster Mediation Program had been activated only once, in response to 2006's Hurricane Ernesto. Last year, the program was activated twice, as a result of tornados in April and Hurricane Irene in August, yielding more than 65 mediation requests to date.
- ✓ There are 12 mediation sites that cover more than 30 counties in North Carolina and more than 25 mediators participating in the program.
- ✓ The settlement rate hovers near 65% for all 2011 mediation cases.

## Foreclosure

Disputes arising out of the mortgage foreclosure crisis resulted in a myriad of initiatives and opportunities for the Commercial Division in 2011. In each case the Association acted to provide education, viable dispute resolution options, and a high level of administrative service that vividly underscores our commitment to responsiveness, innovation and flexibility.

### FAST FACTS

- ✓ The Commercial Division engaged in an initiative involving the 50-state AG Foreclosure investigation of the 14 largest banks for robo-signing and other potentially fraudulent acts in the foreclosures of residential properties throughout the country. Pursuant to settlement talks arising out of those investigations, business development vice presidents have met with a number of Attorneys General in some of the hardest hit states to discuss the AAA's expertise in administering cases in the foreclosure arena and our capacity to quickly customize and implement local and/or national processes for large volume mass claims. Attorneys General offices in Florida, Georgia, North and South Carolina, Ohio, California, New Mexico and Arizona were contacted as part of this initiative and discussions pertaining to the AAA's potential role as a resource in the settlement process are ongoing.

- ✓ The AAA is working with the newly formed Foreclosure Mediation Unit (FMU) at Arizona State University. The FMU was created with funds that the State of Arizona collected from a lawsuit with Wells Fargo. The AAA will provide mediator training for the program, make the necessary appointments to cases, and ensure proper disbursement of funds to the mediator pool.

- ✓ Responding to interest expressed by Massachusetts state legislators in providing a mediation step in the state's nonjudicial mortgage foreclosure process, two AAA vice presidents testified before a bicameral committee of the state legislature on mediating mortgage foreclosures.

## Muscular Arbitration

Fighting the rising costs and delays in arbitration is a priority for the AAA. In 2011, the Association developed an outreach program to identify and communicate best practices to streamline the process for arbitrators, advocates and administrative staff. Launched with a highly successful conference in March that drew more than 150 attendees to Fordham University Law School in New York City, the program was later replicated on the West Coast at the University of California Irvine, and has been further developed into a webinar series being offered in 2012.

## Healthcare

In response to the continuing growth of the healthcare caseload, the AAA has rolled out new Healthcare Payor Provider Arbitration Rules. The rules, which became effective in January 2011, are the first of their kind, designed specifically to help payors and providers in the healthcare industry resolve reimbursement disputes in a timely and cost effective manner as compared to litigation.

### FAST FACTS

- ✓ The rules were developed in collaboration with a panel of healthcare experts.
- ✓ They provide flexibility for the parties to choose a procedural track regardless of the claim amount.
- ✓ Parties may group claims involving different patients and the same provider and payor in a single arbitration.
- ✓ Parties may substitute patient claims prior to appointment of the arbitrator.
- ✓ In lieu of in-person hearings, parties may reduce costs by agreeing to desk and/or telephonic hearings.
- ✓ Arbitrations are heard by a single arbitrator regardless of the amount in controversy, unless the parties agree otherwise.

- ✓ Parties have access to the National Healthcare Panel whose members are knowledgeable and experienced in handling healthcare payor provider disputes.
- ✓ A preliminary telephone conference with the arbitrator is convened immediately after the arbitrator is appointed to facilitate document exchange and discovery.
- ✓ Discovery is limited to documents specific to payor provider disputes and a limited number of depositions are allowed.

## Equal Foot

The AAA entered into a strategic agreement with a new company, Equal Foot, founded by two well-known internet entrepreneurs. Equal Foot is a technology company that has developed an online platform that assists contracting parties to negotiate, execute and manage escrow funds pursuant to the contract, and also enforce their contracts. To use the Equal Foot platform, parties to a contract agree to resolve disputes using an ADR process offered by and through Equal Foot. The AAA is the exclusive provider of the mediation and arbitration services offered.

## Webinar-mania

There was a strong commitment to expanding our web-based educational offerings in 2011, resulting in a number of very successful webinar presentations.

### FAST FACTS

- ✓ A pair of webinars on negotiation skills enhancement boasted the highest paid attendances among commercial division webinars. “How Are Your (Negotiation) Table Manners?” drew 165 attendees; “Consummate Negotiation: Techniques and Tactics” had 160 attendees. The overall evaluations for both programs ranged from very good to excellent.
- ✓ One of the most popular webinars of 2011 was “How to Become a More Innovative Neutral or Advocate.” The 162 attendees were presented with cutting edge innovation management techniques that are being applied across many industries and how those concepts and techniques can be applied to ADR practice. In conformity with the AAA’s ongoing time and cost initiative, the presentation placed a special emphasis on innovating to increase value and save time and costs in resolving disputes.
- ✓ Another webinar, “What’s a Respondent Like You Doing in a Place Like This? Confronting Arbitrability and Jurisdiction Issues in Arbitration,” had 153 paid attendees. The program covered the important question of who decides arbitrability and jurisdiction – arbitrators or the courts – as well as best practices for addressing the issue early and thoroughly. Other popular webinars were “Ethics 101: Mediators, Arbitrators and Attorneys,” with 127 paid attendees, and “Drafting Mediation Settlements that Stick,” with 53 paid attendees.

## Pharmaceuticals / Biotechnology

During 2011 our efforts pertaining to the pharmaceuticals (Pharm) and biotechnology (Tech) industries focused on building caseload and strengthening the underpinnings of our administrative services in these important areas.

### FAST FACTS

- ✓ Qualifications for inclusion on the Pharm and Tech rosters of neutrals were established and refined for those already on the panels.
- ✓ A Pharm/Tech representative was added to the Intellectual Property/Technology Advisory Committee of the AAA.
- ✓ States with zero or an inadequate number of Pharm and Tech neutrals were identified to facilitate recruitment efforts.
- ✓ The intellectual property area of the AAA’s website was revised to include references to our Pharm/Tech-related services and new Pharm and Tech webpages that highlight our capabilities and services in these areas have been created for inclusion on the AAA’s new website.
- ✓ Several nationally recognized Satellite Law experts were added to the Tech roster of neutrals.



## AAA DIVISIONS IN 2011 -

# Construction Division

Few business sectors were as significantly impacted by the economic downturn as the construction industry.

Tighter credit, the lack of new construction development, and fewer projects moving forward resulted in continuing struggles for a formerly buoyant sector. Not surprisingly, the Construction Division experienced the ripple effects of this sluggishness, but used this opportunity to initiate and continue development of services that will support prospective growth as the economic climate improves.

## FAST FACTS

- ✓ On October 1, 2011, the Construction Division launched a new service called the Fast Track Mediation Program. This program provides for one day of mediation at a flat rate of \$525 per party, plus mediator out-of-pocket expenses, if any. The program was designed to provide an affordable mediation offering for construction claims below \$75,000 using the same AAA panelists who serve on regular track and large complex cases. It was piloted for a year and, due to its success, was launched nationally last fall.
- ✓ The division held a successful annual conference with over 100 attendees and five sponsors and conducted eight construction ADR webinars with over 700 participants.
- ✓ “Green” or “Sustainable Construction” is now a mainstream trend in the building industry. During 2011, the Construction Division embarked on a national “Green/Sustainable” building campaign during which division business development vice presidents focused calls on the advantages of using alternative dispute resolution for Green/Sustainable projects. As part of the campaign, a subcommittee of the AAA’s National Construction Dispute Resolution Committee (NCDRC) developed a “Frequently Asked Questions” fact sheet for Green/Sustainable building dispute resolution.
- ✓ After extensive work, the NCDRC revised its mission statement to read as follows: “The mission of the NCDRC is to facilitate a broad-based dialogue on dispute avoidance, management and resolution in the construction industry. This dialogue serves the member organizations and the American Arbitration Association (AAA) by offering a collaborative forum for the exchange of ideas and advancement of AAA dispute management theory and practice within the industry.”
- ✓ Managers of ADR Services in the Construction and Commercial divisions routinely worked together with counsel, parties and neutrals toward a common goal of lowering costs and saving time. Here are several examples:
  - A \$10 million claim was filed and awarded in four months. The clause called for party-appointed arbitrators with deadlines for their appointment as well as for the timing of the hearing and delivery of the award. AAA staff worked with counsel and the potential panel to ensure the arbitrators were appointed within the designated time frames, a preliminary hearing was conducted, and four days of hearings were scheduled to be held within two weeks.
  - A claim with a value just under \$1 million was filed and awarded in nine months. The Manager suggested and the parties attempted mediation even though it was not mandated by the contract. Although mediation was unsuccessful in resolving all of the issues, a documents-only arbitration followed that resulted in the quick adjudication of the remaining issues. The Manager being mindful that one of the parties was experiencing financial hardship, the mediation narrowed the issues for the arbitrator to resolve, saving time and the expense of an in-person hearing.
  - A \$4.9 million claim involved three parties, two of whom raised the question of arbitrability. The clause required a panel of three arbitrators. The Manager suggested appointing a provisional arbitrator to determine arbitrability. The parties concurred and the arbitrator determined that the claim was time barred, saving the parties the cost of a panel and protracted hearings.



## AAA DIVISIONS IN 2011 - Legislation

2011 was a tumultuous year in Washington, D.C., both on Capitol Hill and among the agencies of the executive branch.



Congress focused much of its attention on economic and political issues. Although a number of bills affecting ADR were introduced in the House and Senate, few of them moved forward in the legislative process. For example, S. 138, the first bill introduced in 2011 relating to the use of ADR, would have resolved certain federal land valuation disputes through an arbitrator appointed from a list provided by the AAA. But this legislation, like most others introduced last year, will await possible Congressional action in 2012.

The Association continued its proactive efforts in Washington to develop new programs, affect public policy and regulatory initiatives, enhance decision-makers' understanding of the benefits of ADR, and provide ADR services to federal agencies such as the Federal Communications Commission, U.S. Department of Justice, and the Centers for Medicare & Medicaid Services.

### FAST FACTS

- ✓ Working with the Internal Revenue Service, the ICDR began implementation of an innovative program for the arbitration through the AAA of certain international tax disputes. (See the ICDR section of this Report.)
- ✓ The AAA's "Chapter 4" solution for potential amendments to the Federal Arbitration Act, which would create within Title 9 of the U.S. Code a new fourth chapter, was included in legislation that was proposed in Congress in 2011. The Chapter 4 solution greatly minimizes unintended impacts from new legislation on the statutory language, legislative history, and court precedents upon which most commercial and international arbitration is based.
- ✓ An important element of our outreach was further distribution of our "Report to Congress on the Automobile Industry Special Binding Arbitration Program," which included key Congressional staff and legal and policy executives in a number of federal executive agencies.
- ✓ The Association also continued to promote the various Due Process Protocols, targeting agencies such as the new Consumer Financial Protection Bureau, as they consider policies, regulations and standards that may affect the use of ADR.

# AAA University

AAA University (AAAU) utilizes both state of the art technology and traditional methods to teach and encourage the responsible use of ADR processes.



In 2011, AAA neutrals, advocates, corporations, law firms, unions and government agencies all benefitted from an ever-expanding menu of courses that includes offerings that encompass new trends in ADR to established “best practices” and sets the standard in innovative training and thought leadership.

## Publications

An important component of AAA University, AAA publications continue to support the Association’s educational imperative to promote the understanding and use of ADR, as well as enhance our image of quality, leadership and expertise. In 2011, our publications further solidified their reputation as a primary source of the best information and guidance in the field.

## FAST FACTS

- ✓ The number of participants attending AAAU webinar programs increased 300%.
- ✓ Overall, more than 5,000 participants enrolled in AAAU webinars, online courses, classroom programs and conferences.
- ✓ Two new courses for AAA neutrals were developed with a focus on addressing issues related to perceived increases in arbitration time and cost. More than 30 such programs were conducted in various cities across the nation with many more scheduled for 2012. Similar courses for advocates are being developed.
- ✓ A Neutrals Conference scheduled for early 2012 has as its theme: *Maximize Efficiency in ADR*. Program highlights include “Unleashing Innovation in ADR,” “Using Technology to More Efficiently Manage a Large, Complex Case,” and “AAA Triple Play: Arbitration Discovery, Delays, and Motions in Three Acts.” More than 300 neutrals and guests are expected to attend this event.

## FAST FACTS

- ✓ The *Dispute Resolution Journal*, the award-winning flagship publication of the AAA, is a world-recognized authoritative resource for advocates, neutrals, parties, educators, public-policy leaders and corporate executives. In 2011, in-depth articles by leading practitioners and scholars provided timely coverage of pressing issues such as time and cost in arbitration, discovery, disputes arising out of green construction projects, changes in international arbitration law, ADR and healthcare disputes, how social networking could impact arbitration, and many others.
- ✓ In 2011, our three labor arbitration award print newsletters—*Summary of Labor Arbitration Awards*, *Arbitration in the Schools*, and *Labor Arbitration in Government*—were consolidated into a single monthly periodical, *Labor Award Reporter*. The summarized awards are both an alternative and a complement to the availability online of redacted, full-text AAA labor, employment and international arbitration awards.
- ✓ *AAA Yearbook on Arbitration & the Law*, 23rd Edition, the successor to our perennially popular *ADR & the Law* series, premiered in 2011. It continues the tradition of surveying annual legislative and judicial developments affecting ADR and also offers comprehensive new articles on a wide range of timely and important arbitration topics.
- ✓ Two new projects are on tap for 2012: the companion book to the *AAA Yearbook* titled *ICDR Awards and Commentaries*, which features an international focus, and the second volume in our collaborative publishing arrangement with the Cornell University ILR School’s Scheinman Institute on Conflict Resolution, titled *Preparation, Presentation & Evidence: A Guide for the Arbitration Advocate*.

## AWARDS AND RECOGNITION

## Acknowledging Excellence



In 2011, the AAA bestowed several awards in recognition of outstanding work in the field of ADR. The Outstanding Director award was given to Norman M. Hinerfeld. The President's Award for Leadership in Conflict Management was presented to Marc Lalonde. The President's Award for Living the Values, presented each year to an AAA staff member who exemplifies the Association's core values, was given to Charity Smith.

Summary & *Denouement*

One constant for the AAA, throughout the 86 years of its existence, has been the nature of its mission and, indeed, its very identity. The basics that helped establish us as the standard setter in the dispute resolution field—the quality of our panel of neutrals, our top-notch case management services, the depth of our educational and training offerings, and our commitment to the improvement of the ADR process—are those on which we continue to focus our energies. I have noted many times in the past that change, service improvement and innovation are all integral to forward progress, but at the same time we have remained true to our roots, our institutional uniqueness. Looking back as well as ahead, we have been successful in our efforts to both elevate the quality of our services and enhance the benefits and acceptability of ADR in general, and will continue to be successful in the future. The wonderful partnership we enjoy with our board members, dedicated staff and constituents is the foundation upon which our sustainability and growth have been built. My thanks to each and every one of you.

On a final and more personal note, recently I was again reminded of why I take such pride in the many accomplishments of the AAA and of the opportunity I have been given during these last 18 years to guide the AAA to even greater successes. My attention was captured by a vivid sign posted in a train in which I was riding to one of the symposia or conferences I am frequently invited to attend. Touting the benefits of a particular cable weather network, the sign read, “It’s Not What It Does. It’s What It Lets You Do.” Catchy. I wish we at the AAA had thought of it, because ADR fits that slogan so very well. To our many and varied constituents, it’s not arbitration or mediation or any of the other processes that in and of themselves are of significant personal value to them; it is what the processes *let the parties do* that is important. In many cases it saves them time and money. It preserves relationships. Essentially, it lets them move on. In the overall view of things business related, there is nothing more important. Parties want to put disputes behind them. ADR lets them do that in a largely beneficial way. I reiterate now that our focus at the AAA always has been that we need to do *well* in order to do *good*, the good that ADR users and prospective users worldwide have come to expect of us. That underlying philosophy has been my ongoing personal mandate, one that I hope has been fulfilled as both the AAA and I look forward to the challenges that await us around the next corner.

**William K. Slate**

President and CEO, American Arbitration Association





2011 - 2012

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