

Group Exercises for “DRAFTING ADR CLAUSES”

Basic Facts Known to Both Parties

Two parties, AMERICAN BUILDERS ("BUILDERS") and HOTEL DE FRANCE, INTERNATIONAL ("FRANCE") have decided to enter into an agreement for the construction of a luxury hotel in Paris. BUILDERS is a major general contractor, incorporated in Delaware with its principal office in New York City. FRANCE is a major French hotel chain, incorporated under the laws of France and located in Paris, France.

The parties have come to terms regarding the major terms of their contract, having exchanged several drafts. They have become hung up on the terms of the dispute resolution agreement, however. FRANCE wanted cases resolved by litigation in accordance with the laws of France. BUILDERS wanted disputes resolved under the laws of the United States, also through litigation. Ultimately, the parties compromised, agreeing that disputes arising out of the contract would be resolved by alternative dispute resolution.

The parties and their attorneys have scheduled a meeting at which they will attempt to negotiate the terms of the dispute resolution portion of the contract.

In PART I of this exercise, the class will be divided into two groups (BUILDERS and FRANCE). Each side will be meeting separately in order to resolve among themselves what features they want to see in the ADR clause.

In Part II of this exercise, the groups will meet together to negotiate the terms of the ADR clause. After reaching agreement, they will draft the basic terms of the ADR clause.

Note: Both the U.S. and France have signed the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Each side will also receive additional facts provided only to that party.

The nonexclusive checklist below may be helpful in terms of your preparations for the negotiation with the other side:

- administered ADR or ad hoc?
- which ADR organization?
- which ADR rules
- which ADR process(es)
- Location of hearings
- discovery
- confidentiality of process
- nationality of neutrals
- applicable law
- # of neutrals
- qualification of neutrals
- language of proceedings
- written opinion
- punitive damages
- attorneys fees