Resolving a construction dispute isn’t the easiest matter in the world.

That’s because so many of these disputes need to be resolved promptly and also because so many of the disagreements often involve technical questions that can be best understood and decided by construction experts.

To accommodate these requirements the National Construction Industry Arbitration Committee exists. This committee establishes for the American Arbitration Association the National Construction Arbitration Rules upon which the more than 5,000 arbitrators of the AAA function.

Thomas J. McGlone, former President of iaWCC, and who heads his own wall and ceiling contracting firm in Rahway, N.J., is the new Chairman of the NCIAC (see People, Companies). Tom succeeded Robert F. Borg, an attorney and professional engineer, who is president of the Kreisler Borg Florman Construction Company, of Scarsdale, N.Y.

For the past two years, McGlone had been chairman of the subcommittee working on revisions to the Rules which have not undergone any substantial change in the last 10 years.

That changes were needed is obvious from the caseload that is being handled in the construction area. During 1974 alone, a total of 1,618 construction disputes with claims totaling $105,902,939 were filed for arbitration pursuant to the “Construction Industry Arbitration Rules.”

Most of these consisted of claims by contractors to recover payment for work done. More than 79 percent of these disputes involved subcontractors, and 20 cases were for $1-million or more each; 54 percent, though, were for $25,000 or less.

McGlone, currently chairman of iaWCC/GDCl’s National Labor Liaison Committee, is the representative of the American Subcontractors Association to the NCIAC. Among other honors he has earned are the Subcontractor of the Year in 1974 by the New Jersey Subcontractors Association, followed up by his being named “Construction Man of the Year” by Industrial Construction Magazine.

This article has been prepared for wall and ceiling contractors who would like to familiarize themselves more thoroughly with the workings and the potential of the AAA for resolving disagreements.

Practically all of the arbitrations were filed on the basis of a “future disputes clause” contained in the parties’ basic documents, such as the Owner-Architect Agreement of the American Institute of Architects, which provides: “All claims, disputes and other matters in question between the parties to this agreement arising out of, or relating to the agreement or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.”

Size Determines

The number of arbitrators assigned to a case is usually determined by the size of the claim. The Subcommittee recently recommended that claims up to and including $35,000.00 shall have one arbitrator, and if both parties do not object, one arbitrator will serve on cases up to $50,000.00. The Subcommittee has also recommended that a single list of arbitrators be submitted to the contestants; however, it is also recommended that the list be enlarged and that a more detailed biographical sketch be included for each potential arbitrator.

There are presently more than 5,000 arbitrators on the American Arbitration Association’s Construction Panel, without whose dedication and willingness to serve, the system could not function. Their background is representative of all segments of the construction industry, and includes attorneys who are also experts in related fields.

Since more construction arbitrators are not attorneys, periodic arbitrator training programs designed to supplement the information regularly provided to panelists are conducted by the Association.

One of the questions recently considered by the Subcommittee was whether the construction rules should be amended to provide for the consolidation of multiple party claims, where the same construction project, but separate agreements between the parties are involved.
Getting Disputes Resolved

The conclusion of the Subcommittee, based on the results of a survey of 556 cases indicating that consolidation might be appropriate in many instances, but not in others, was that the parties themselves should continue to regulate either in their arbitration agreement, or at the time of arbitration, the question of whether multiple claims involving the same construction project, but separate construction agreements, should be arbitrated jointly or separately. Owner-Architect and Owner-Engineer agreements now prohibit consolidation or joinder or additional parties without the specific written consent of all concerned parties.

On the other hand, many agreements between owners and contractors expressly provide the right to implead separate contractors having contractual relationships with the owner, who in any manner may be involved in any arbitrable claim of the owner or the contractor. Some of these agreements also contain provisions permitting consolidation of two or more related controversies involving the contractor and the subcontractor or other persons having contractual relations with the contractor.

Initiation Policy

American Arbitration Association administrative policy on consolidation and joinder is to initiate the arbitration—be it the claim, counterclaim or request to join additional parties—as filed by the moving party, even though separate contracts may be involved, thereby providing parties with an opportunity to proceed jointly if they so desire. Should one or more parties object to such a procedure, the cases will be separated and processed individually, unless a court orders otherwise. Separately instituted cases may be consolidated whenever all parties mutually agree or consolidation is ordered by the courts.

The results of a recent survey made by the American Arbitration Association from which there were over 4,000 answers indicated that there are many panelists who expressed a willingness to serve at least 5 to 10 consecutive days. This certainly indicates a real opportunity on large and complicated cases to have continuous sessions leading to a quick resolution.

As indicated by the statistics, about 10 per cent of the caseload is made up of large complicated disputes, involving substantial sums of money, a multitude of claims and counterclaims, and often issues of great complexity.

In order to expedite the arbitration of these "heavy" cases, experienced AAA staff are conducting pre-arbitration conferences with the parties and their counsel prior to the first hearing in order to arrange for the exchange of bills of particulars, the stipulation of uncontested facts and, whenever appropriate, the resolution of collateral issues by mediation.

Experience has shown that such conferences can be of great value in shortening what would otherwise be lengthy, protracted proceedings, whenever approached with a spirit of cooperation by the parties and their counsel.

Time Reduced

In a case handled by the American Arbitration Association's Los Angeles office, where it appeared at the outset that the hearings would require 15 full days, a pre-arbitration conference resulted in various stipulations as to the authenticity of documents which eliminated the need for the testimony of numerous witnesses thereby reducing actual hearing time to 5 days.

In another case in New York, which the parties estimated would take at least 37 days of hearings, the matter was disposed of in six and one-half days of conferences and hearings.

The procedure has worked so well that the National Construction Industry Arbitration Committee is now considering making it a regular part of the rules. In the meantime, counsel are urged to request the convening of such a conference whenever they believe that this technique would serve to expedite a particular matter.

(Continued on Page 45)
In small cases, the arbitrator(s) may request a pre-arbitration statement from the contesting parties, which is a simple statement of position which clearly frames the questions in writing. This is another aid in speeding up the decision-making process.

Another recommendation made by the Subcommittee is to increase the initial administrative fee from $50.00 to $100.00, with a corresponding adjustment in the refund schedule to reflect the new $100.00 minimum. At the same time, certain charges for hearings held on Saturdays, legal holidays and in the evenings were eliminated. The fee for postponement has also been increased from $50.00 to $100.00.

It has been observed by those who know best that the construction industry is unique in every respect, but brings together more diverse groups than any other industry; that its problems are many, that its contributions are great.

By providing a modern mechanism for the resolution of a variety of construction contract disputes, arbitration is making a valuable contribution not only to a dynamic industry, but also to the well-being of our society. Arbitration is another tool for the subcontractor to use to get its disputes resolved before knowledgeable people with “speed, economy and justice.”