


HOMBURGER

29.09.2006




ASA Below 40: How to Draft Prayers for Relief

Melissa Magliana



Drafting Prayers for Relief: Why so important?

- Your Prayers are your case
- Your Prayers are one of the first things the Tribunal sees
- Getting them wrong can have consequences



What's so hard about drafting prayers for relief in international arbitration?

- Standard challenges of drafting prayers in domestic litigation
- The international element
- Example: How specific should they be?



The Swiss Approach

The Prayer for relief must be sufficiently precise so that, if granted, it can be issued as the judgment of the Court



The US Lawyer's Approach

Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favour it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

- Federal Rules of Civil Procedure, R. 54(c)



The „Catch All Clause“

“Claimant further requests an award granting Claimant such other and further relief as the Tribunal deems just and proper.”



The benefits of specific prayers

- Increase likelihood of a specific – and more easily enforceable – award
- Increase likelihood that you'll get what you want, if successful
- Are „arbitrator-friendly“
- Avoid difficult questions of role of arbitrators when prayers are unclear or unspecific



Some Dos and Don'ts in Drafting Prayers for Relief

- DO think strategy
- DO put yourself in the arbitrator's shoes
- DO have a backup plan
- DO think about lex arbitri and arbitrators
- DON'T mix prayers for relief and procedural requests
- DON'T join independent prayers
- DON'T forget costs, fees and interest on damages!

HOMBURGER

Thank you for your attention.

