



Chapter 7

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Customizing the Standard Arbitration Clause to Meet the Needs of the Energy and Minerals Industry

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Synopsis

Table with 2 columns: Section Title and Page Number. Includes sections like § 7.01. An Ounce of Prevention, § 7.02. Overview, § 7.03. Environmental/Energy Use of ADR clauses, § 7.04. Coal Industry Use of ADR Clauses, and § 7.05. Practicum: How to Design the Clause to Fit.

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### **§ 7.01. An Ounce of Prevention.**

Environmental, energy and natural resource companies have found themselves involved in increasingly complex disputes, some of which involve multiple parties and require arbitrator expertise. This chapter addresses some of the questions that arise in the drafting of conflict management clauses for such disputes. The reader is encouraged to give careful consideration to the specific insertions needed in the clause in order to customize it, and to consider the best procedures to be followed in a particular instance without alienating the other party or sacrificing expediency in the resolution of disputes.

In recent years, in-house or outside counsel have seen a need to re-examine former conflict management systems and antiquated clauses that were written long ago. Industry counsel will benefit by re-examining current contracts for boiler plate or old clauses and taking additional steps to design and customize rules and clauses so that their client's dispute resolution system promotes settlement.

The purpose of this chapter is to help the readers gain a practical knowledge of how to design and customize industry-specific clauses and guide the draftsman in developing a conflict management strategy. The writer will discuss recent trends in alternative dispute resolution (ADR) and some suggested changes to take advantage of new techniques for the expedient and economical resolution of business disputes.

In Section 7.03, matters for consideration when drafting an effective clause for use in the environmental/energy field will be discussed. Section 7.04 will share the thoughts and experience of in-house counsel on drafting an effective arbitration clause for use in the coal industry. Section 7.05