

Initial Pre-hearing Arbitration Scheduling Order

Parties

IN THE MATTER OF:

Claimant(s):

Respondent(s):

Case Number:

This case was filed under the American Arbitration Association Expedited Commercial Rules. An initial pre-hearing telephonic conference was held in the above-captioned matter on _____, 20__ at ____ a.m./p.m. EST .

Participants

Arbitrator: Chase B. Saunders

Claimant's Representatives:

Respondents' Representatives:

Respondent's Representative:

Dispute Resolution Staff: _____, Case Manager

Administrative Scheduling Order

The following was agreed upon during the conference and is now entered as the Initial Pre-hearing Conference Arbitration Scheduling Order:

A. **Introductions** were made and ___ additional **disclosures** were made. The arbitrator confirms that there are no **conflicts** and the arbitrator is **confirmed** by the parties.

B. Claimants and Respondents represented that the pleadings currently filed with the AAA represent their **claims** and **responses** or **counterclaims** (or) that responses or amendments will be filed by ____. Claims and responses or counterclaims will identify all of the causes of action upon which the arbitration will be conducted.

C. The **final hearing** in this matter shall commence before the arbitrator on _____, 2013 in _____, North Carolina at 9:00 a.m. at a location to be determined by the parties after consultation with the Case Manager. The parties estimate that this case will require at least ___ day of hearing time, inclusive of arguments.

D. Initial documentary discovery requests which contemplate written interrogatories and requests to produce will be served by each party on the other by _____, 20___. The parties are given thirty days to respond up to and including _____, 20__.

E. Deposition. (i) Each party may take ___deposition/s subject to application for additional depositions if necessary. (ii) Depositions will be conducted by _____, 20___. (iii) The Arbitrator prefers to hear live testimony of key witnesses and shall receive stipulated deposition transcripts to which the parties agree or live testimony on fact issues in controversy. (or) All depositions are treated as trial depositions and are admissible for all purposes.

F. Experts. (i) Claimant will identify any experts by _____ and provide a resume. (ii) Respondents reserve the right to identify and call experts dependent upon the course of discovery and should either party seek to identify an expert, they shall notify the other party by _____, 20__ in order that any procedural issues can be determined without the need for a procedural conference with the arbitrator. Experts shall be identified by filing a notice of identification and serving it on the other party.

G. Claimant and Respondent will identify all **lay witnesses** by _____, 20__ in order that a conflict check may be conducted by the Arbitrator

H. Interim issues. (i) **Interim discovery** motions will be made in writing and exchanged with the other party prior to transmission to the Arbitrator so that a response can be prepared. Interim discovery disputes are costly and the parties should attempt to reconcile differences before contacting the Arbitrator. (ii) **Interim dispositive** motions are viewed in the context of arbitration rules rather than state or federal trial practice rules.

I. Subpoenas. The Federal Arbitration Act in Section 7 (9 USC Sec. 7) grants arbitrators the authority to issue subpoenas including subpoenas duces tecum. The Rule 31(d) of the American Arbitration Association recognizes this in its evidentiary rule: “An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.”

The text of the Federal Rule appears below:

Section 7. Witnesses before arbitrators; fees; compelling attendance

The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before masters of the United States courts. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; ***if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.***

J. **Pre-hearing briefs** will/not be prepared upon request of the Arbitrator or consent of the Parties. The parties will exchange their briefs on _____, ____ (20 days before the hearing). Responses to the briefs along with the pre-hearing briefs of all parties are to be transmitted to the arbitrator by _____, 20____, (10 days before the hearing set for _____, 20__).

K. **Award designation.** AAA Expedited Rules call for the entry of a **standard** award by the arbitrator. The parties prefer a more detailed award. No party requested the use of the AAA Expedited Rules. The arbitrator is of the opinion that this is a complex case with multiple parties and multiple claims and the Expedited Rules do not appear to meet the needs of the parties. The arbitrator requests that the Case Manager contact the parties to determine the rules under which they wish this case to be conducted and the form of the award. The arbitrator will enter a standard award under AAA Expedited Rule guidelines unless the parties use the Standard Commercial Rules which permit additional options. Other options under other Rules are the **reasoned** award and **findings of fact** award.

L. **Two week pre-hearing** schedule. By _____,20__:

1. The parties will confer and seek to file a **stipulation of uncontested facts**
2. The parties will exchange and submit **their joint exhibits** to the arbitrator.
3. The parties will exchange and submit **trial exhibits** to the arbitrator.
4. The parties will identify and resolve any issues of exhibit **authenticity and admissibility**.
5. The parties will exchange trial witness lists from the previously identified **lay and expert** witnesses. Each party will inform the other of **the intended subject matter** about which a particular witness will testify.
6. Upon the exchange of the aforesaid information, the parties will confer and determine whether or not an additional discovery conference is necessary. If so, they will seek a teleconference on this issue.

M. **Contact.** There shall be no direct oral or written communication between the parties and the Arbitrator except at oral hearings including teleconferences at which time the parties or counsel will be present. However, Counsel for the parties agreed to the use of expedited rules to be used in the transmission of documents to the Arbitrator with a copy to the Case Manager.

N. The arbitration is to be binding upon the parties and subject to tender for **confirmation** in accordance with the applicable state or federal law.

O. **Post hearing briefs** are not contemplated; however, should they be requested by the Panel, the parties will follow this procedure:

1. Exchange briefs by _____of no more than 25 pages, excluding exhibits and case authority and submit a copy to the Panel;
2. Exchange reply briefs by _____of no more than 10 pages excluding

exhibits and case authority and submit a copy to the Panel;

P. Hearing Procedures.

1. The parties are encouraged to present evidence using the following guidelines:
 - (a) summaries;
 - (b) stipulations of uncontested facts;
 - (c) timelines;
 - (d) joint exhibit notebooks of concurring documents;
 - (e) Bates or standard numbering systems;
 - (f) itemization of damages;
2. Witnesses may be called out of order and will not be sequestered except upon request of a party.
3. The parties shall make arrangements to schedule the attendance of witnesses so that the matter can proceed without unnecessary delay. During the final hearing, each party shall give the other party at least one day advance notice concerning the identity of the witnesses who will be testifying the following day and the order of the testimony.
4. Prior to final argument the parties will exchange and provide the Panel member with a list of issues and answers they contend are material to their case. The issues will also provide a damage calculation.
5. The arbitrator has no objection to the use of telephonic testimony for distant witnesses or to the presentation of evidence in narrative fashion if all parties are in agreement on each of these matters.
6. **Counsel fee issues** will be addressed at the conclusion of the hearing and may be addressed in the form of post hearing submissions of affidavits and briefs after an **interim order** and as a part of a **final order**.
7. **Hearing schedule.** Hearing breaks will be taken at the request of any party or the Arbitrator and will be expected to last ten minutes. Lunch is expected to last forty-five minutes. In order to expedite the presentation of evidence, the hearing may be extended into the evening hours and/or start early in the morning.
8. **Evidentiary rulings.** The hearing will be conducted as a non-jury hearing and formal objections will be viewed for their informative and guidance use, not as a basis for delaying the presentation of evidence. Arbitration is not a jury trial; it is a means of presenting evidence before an adjudicatory Panel for disposition within a reasonable time frame.
9. **Confidentiality.** Arbitration proceedings are confidential. Persons not associated with the hearing are not entitled to be present at the arbitration.

Q. Each party will be responsible for the payment of any expenses associated with its engagement of a **court reporter**.

R. A telephone conference to review any interim matters including dispositive motions may be scheduled upon request by either party. A **final pre-hearing conference** to address any outstanding matters will be scheduled for:

S. Counsel will confer and enter into any orders necessary to ensure confidentiality.

T. The **hearing closure** will occur when all of the evidence including any counsel fee affidavits have been submitted.

U. A **final order** will be issued within 30 days of the closing of the record.

V. This Order remains in effect unless amended.

Dated: _____, 20__.

Chase B. Saunders

Chase B. Saunders, Arbitrator

3. The parties shall make arrangements to schedule the attendance of witnesses so that the matter can proceed without unnecessary delay. During the final hearing, each party shall give the other party at least one day advance notice concerning the identity of the witnesses who will be testifying the following day and the order of the testimony.

4. Prior to final argument the parties will exchange and provide the Panel member with a list of issues and answers they contend are material to their case. The issues will also provide a damage calculation.

5. The arbitrator has no objection to the use of telephonic testimony for distant witnesses or to the presentation of evidence in narrative fashion if all parties are in agreement on each of these matters.

R. Each party will be responsible for the payment of any expenses associated with the engagement of a court reporter.

S. A telephone conference to review any interim matters including dispositive motions may be scheduled upon request by a party.

T. Counsel will confer and enter into any orders necessary to ensure confidentiality.

U. This Order remains in effect unless amended.

Dated: _____, 20__.

Chase B. Saunders

Chase B. Saunders, Arbitrator