



Sample Procedural Order

(Dates have been preserved to indicate time sequence.)

Pleadings

- 1) The Pleadings shall be limited to the Notice of Arbitration and Answer to Notice of Arbitration, which have already been exchanged.

Exchange of Evidence

- 2) The evidence of both sides shall be presented in the form of witness statements, which shall be in writing and sworn or affirmed by the witnesses.
- 3) A party that requires evidence from a witness from whom a witness statement cannot be obtained shall, at or before the time that a witness statement from that witness would have been due, seek directions from the tribunal as to how and when the evidence of the witness in question shall be obtained and submitted to the tribunal.
- 4) The witness statements submitted by each party shall include all the evidence that party seeks to put forward through its witnesses.
- 5) The witness statements delivered by each party shall attach or be accompanied by all of the documents on which that party intends to rely at the hearing.
- 6) Expert reports shall be delivered on the same schedule as witness statements, unless leave is obtained from the arbitrator to deliver them on a different schedule. Such leave will not be granted, in the absence of extraordinary circumstances, if it would delay the final hearing.
- 7) On or before April 23, 20-- the Claimant shall deliver its witness statements, reports and documents.
- 8) On or before May --, 20-- the Respondent shall deliver its responding witness statements, reports and documents.
- 9) On or before May 21, 20-- the Claimant shall deliver its reply witness statements, reports and documents, if any. The reply witness statements, reports, and documents may include

evidence in respect of any information or documents obtained pursuant to the process set out in paragraph 12 below, which the Claimant did not have an opportunity to address in its witness statements, reports and documents delivered on April 23, 20--.

- 10) Any witness statement a party needs to file in response to disclosure of documents, or information, or a witness statement from the other side that the party did not have a reasonable opportunity to address, may be filed by agreement of the parties or, failing agreement, pursuant to further direction. No further witness statements shall be delivered prior to the hearing without agreement of the parties or leave.
- 11) All statements, reports and documents shall be delivered by sending a copy by e-mail to the other party and the arbitrator, by 5 pm Eastern Time of the day in question, with an additional hard copy being delivered to the arbitrator within 24 hours.

Discovery Requests

- 12) Either side may, at any time, request in writing information or documents from the other side relevant to the issues raised by the pleadings or the witness statements. Such requests, in addition to specifying the information sought, should be confined to information and documents not otherwise available to the party making the request. Any unreasonable delay in making a request for information may be denied, if granting the request would cause unjustified delay in the arbitration schedule.
- 13) Requests for information or documents shall be responded to promptly as they are received.
- 14) Any disputes regarding information or document requests, which counsel are unable to resolve after reasonable attempts to do so, shall be raised with the arbitrator by e-mail and dealt with on a conference call, without a formal motion unless so directed by the arbitrator.
- 15) No issue should be raised with the arbitrator before it has been discussed between counsel. All communications with the arbitrator shall be copied to the other side. However, it is not necessary to obtain the approval of the other side for the content of any communication to the arbitrator.
- 16) Requests for further discovery may include requests to conduct examinations for discovery. However, unless consented to by the other party, requests for examinations for discovery will only be granted if it is demonstrated that there is a specific need for further information before the hearing and that the information requested can only be reasonably obtained in the manner requested.
- 17) In the absence of extraordinary circumstances no requests for information, documents and discovery shall be made after June 2, 20--.

- 18) By no later than June 13, 20-- each party shall notify the other of the documents, information or discovery it has obtained from the other side which it intends to use or place in evidence at the hearing.

Pre-Hearing Delivery of Material

- 19) On or before June 27, 20-- the parties shall provide to the arbitrator:
- a) Copies of all witness statements exchanged between the parties;
 - b) Copies of expert reports exchanged between the parties;
 - c) A joint brief containing all documents produced by both sides, in chronological order, indexed and tabbed;
 - d) Information or discovery from one side which the other side intends to refer to or rely upon at the hearing;
 - e) Copies of any key cases or other authorities with important passages highlighted and tabbed;
 - f) A hearing schedule setting out the proposed order of proceeding at the hearing, including the order in which the witnesses will be examined and the anticipated time required for the examination of each witness.
- 20) If the parties are unable to agree as to any of the above, one or both of them shall initiate a meeting or conference call with the arbitrator to resolve the issue.
- 21) On or before July 10, 20-- the parties shall deliver any pre-hearing memorial, factum or other written submissions that a party wishes to submit.

The Hearing

- 22) The hearing shall take place on weekdays from July -- to July 18.
- 23) The hearing will conclude with oral submissions by both parties. Either party may also submit written closing submissions at or shortly after the hearing, at such time as can be agreed by the parties or as directed by the arbitrator.
- 24) The hearing may be at any location upon which the parties agree. A transcript of the hearing shall be maintained if it is requested by any party. Costs relating to the hearing facility and transcripts shall be borne by the party requesting the transcription, subject to reallocation among the parties in any cost order made by the arbitrator.
- 25) A witness who has provided a statement or report shall be made available for cross-examination at the hearing unless the other side agrees otherwise. If a witness is unavailable for cross-examination, e.g. due to death or disability, the admission into evidence and the weight to be attached to the statement shall be in the discretion of the arbitrator.

- 26) At the evidentiary hearing, witnesses may be briefly examined by the party that submitted their statements or reports, only for the purpose of introducing the witness and highlighting key aspects of the witnesses' evidence, without adding any new evidence of substance. Such introductory examinations shall not take more than fifteen minutes and shall be followed by a cross-examination of the witness by the other side and re-examination, if required.
- 27) By agreement of the parties or direction of the arbitrator, the cross-examination of any witness or witnesses may take place at a time and place other than the hearing referred to below. However, unless both parties consent, the arbitrator shall be present at any such cross-examination.
- 28) No document may be put to a witness in cross-examination unless it was produced prior to the hearing in accordance with the directions above.

Further Directions

- 29) Further directions may be sought by either party at any time as the need arises.

William G. Horton, C. Arb., FCI Arb
Arbitrator
March 15, 20--