

Caution from Edna Sussman: This is only a SAMPLE preliminary hearing order that is to revised and tailored to suit the specifics of the case

AMERICAN ARBITRATION ASSOCIATION

Claimants

)

- and -

) Case No.

Respondents.

)

PRE-HEARING ORDER NO. 1

A Preliminary Hearing was held [by telephone conference] on _____ in connection with the above-entitled proceeding. The hearing was attended by _____ on behalf of Claimants and _____ on behalf of Respondents and the Arbitrators.

By agreement of the parties and order of the Arbitrators, the parties are directed to comply with the following:

1. The parties stipulated that the arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association.
2. The parties stipulated that the arbitration shall be governed by the Federal Arbitration Act.
3. The parties accepted the arbitration panel as constituted.

If applicable - {4. As certain operative documents in this case do not contain an arbitration clause and certain persons and entities are named as parties in this proceeding that are not party to an arbitration agreement, the parties will prepare a stipulation, to be executed by all parties, identifying the agreements/issues that they are submitting to arbitration in these proceedings and confirming that all parties named are submitting themselves to the jurisdiction of this arbitration with respect to those issues.} **or can be incorporated into the order without a stipulation.**

If applicable - [The parties further confirm that the reference to mediation in _____ of the _____ does not constitute a condition precedent to these arbitration proceedings [or has been satisfied].

5. **[List any amendments to pleadings being requested and permitted. Ensure that the nature of the claims is set forth in sufficient particularity that intelligent progress can be made] e.g.** Respondents may amend the counterclaim on or before February 5, 2010.] Leave shall be requested from the Arbitrators for any subsequent amendments to the pleadings on a good-cause-shown basis.

6. No motions, other than discovery motions, shall be filed by any party without first submitting a letter to the Arbitrators setting forth the nature of the motion that the party proposes to file and a brief statement of the factual and legal bases for such motion and obtaining approval from the Arbitrators for such filing.

7. **ADD specific issues to be addressed in particular case. E.g.** On or before _____, the parties will confer as to the desirability of bifurcating the proceedings and/or retaining a joint neutral expert. Any issues in this regard that require the Arbitrators' attention shall be brought to the Arbitrators' attention by letter on or before _____. Responding letters may be submitted on or before _____.

8. On or before _____ the parties shall serve written requests for the production of any document or narrow and specific categories of documents which are relevant to the case and material to its outcome.

9. On or before _____ each party shall serve upon the other party written responses to the document requests directed to it.

10. The parties will meet and confer in an effort to resolve any discovery disputes arising out of objections to the requests made. If the parties are unable to resolve any such discovery issues, such disputes shall be presented by the submission of letters setting forth the respective views of the parties on or before _____. Responding letters may be submitted on or before _____. At the discretion of the Arbitrators, such dispute(s) shall be resolved on the basis of the exchange of letters or a telephone conference to be held on _____. With respect to subsequent discovery

disputes, if any, the parties shall meet and confer in an effort to resolve any such disputes and shall present any areas of disagreement to the Arbitrators by letter setting forth their positions. The parties are encouraged to consolidate the disputes into as few separate submissions as possible. **(or can request a Redfern schedule)**

11. On or before _____, each party shall produce:
- a. those documents responsive to the requests directed to it as to which no objection was made;
 - b. those disputed documents which it has been determined must be disclosed;
 - c. those documents on which it relies in support of its case in the arbitration; and
 - [d. a privilege log itemizing any withheld privileged documents.]

[Documents shall be produced on a rolling basis in advance of the final date for production]

12. **[If agreed]** With the consent of the parties, the Chair of the Panel of Arbitrators, or at the Chair's designation either of the other Arbitrators (the "Discovery Master"), shall resolve discovery disputes; provided, however, that at the request of either party or the Discovery Master, the other Arbitrators shall participate in the resolution of such discovery disputes.

13. If any party proposes to offer testimony by an expert at the hearing, such expert shall be identified on or before _____. The parties shall confer and advise the panel as to the date upon which parties shall serve a written report with respect to testimony to be offered by any expert at the hearing **[or better to specify date here]**. The report shall include a statement of all opinions to be expressed and the basis and reasons therefor, the data which the expert considered in forming the opinions, any exhibits to be used as a summary of or in support of the opinions and the expert's qualifications. **[can add dates for expert rebuttals]**.

14. A Preliminary Hearing will be held via telephone conference on _____ at _____ PM Eastern time to review any outstanding issues. **[may also schedule interim calls here if appropriate]**

15. On or before 14 days prior to the hearings the parties shall exchange the exhibits that they propose to offer at the hearing. The parties may agree to reserve documents which they will only use for cross-examination, rebuttal or impeachment and shall advise the Arbitrators of their agreement in this regard on September 23, 2011 at the scheduled call. Any exhibit offered which was responsive to a discovery request served upon a party but which was not produced to the other parties on or before the time set for the completion of discovery will not be received except for good cause shown.

16. On or before 14 days prior to the hearings the parties shall exchange a list of the persons they anticipate calling as lay witnesses to testify on their behalf. Such list shall reflect the name and address of each witness and a brief description of the subject matter of the testimony to be elicited from each such witness.

[If witness statements are used in lieu of direct testimony:

If any party proposes to adduce testimonial evidence of factual witnesses at the hearing, it shall serve written witness statements on or before _____ by way of simultaneous exchange.

Written witness statements shall:

1. be in sufficient detail to stand as the evidence in chief of the witness at the hearing.
2. state the basis of that evidence (own perception or, if on information received, from whom such information was received, when and how);
3. identify in the witness statement and include as exhibits all documents to which the witness refers;
4. contain a statement by the witness confirming the truth of the contents of the witness statement; and
5. be signed by the witness.

No person shall be heard as a witness at the hearing for whom no written witness statement has been served.

Can include a time for rebuttal statements also.

All witnesses whose evidence is relied upon should be available for cross-examination at the hearing, if required by the other party or by the Arbitrators. If a witness who has submitted a witness statement or Expert Report does not appear at the hearing without a valid reason, the Arbitrators shall disregard that evidence unless, in exceptional circumstances, the Arbitrators determine otherwise. Each party shall be responsible to ensure the attendance of the witnesses on whose evidence they rely and, subject always to the Arbitrators power to deal with costs in its Award, for the costs of those witnesses attending the hearing.]

17. The parties shall cooperate in an effort to prepare a statement of stipulated facts to the extent that would be cost effective and will submit that to the Arbitrators on or before 14 days prior to the hearings.

18. On or before 14 days prior to the hearings each party shall provide the Arbitrators and the other parties with its pre-hearing memorandum which will include a discussion of the facts and the applicable law and a copy of any expert reports. The memoranda shall be accompanied by copies of the cases and other authorities upon which the parties rely. Exhibits necessary to understanding the pre-hearing memoranda and not already submitted to the arbitrators may be submitted. [or submit 20 document the parties viewed as most important to their case.]

19. The parties shall cooperate in preparing a joint exhibit book, indexed and pre-numbered, to avoid duplicative documents and an unnecessary number of exhibit books. To the extent necessary, the parties shall prepare a separate exhibit volume, indexed and pre-numbered, consisting of that party's prospective additional hearing exhibits. At the commencement of the

evidentiary hearing, the parties shall provide the Arbitrators with the exhibit volumes, indexed and pre-numbered, shall provide the separate exhibit binder to the other parties and shall have an exhibit set available for use by witnesses.

20. All submissions to the Arbitrators shall be accompanied by copies of any cases and other authorities upon which the parties rely.

21. **[If utilized]** The AAA's Accelerated Exchange Program shall be utilized for transmitting documents to the Arbitrators. Documents shall be delivered to the Arbitrators by e-mail and, if longer than 5 pages, followed by hard copy by overnight service or mail. For purposes of transmitting documents to the Arbitrators, the parties shall utilize the following contact information:

Copies of all documents transmitted to the Arbitrators shall be sent simultaneously to the other parties, and a copy of the transmittal correspondence shall be sent simultaneously to _____, the AAA Case Manager. The Case Manager shall communicate with counsel concerning documents, if any, that may need to be executed to further document this stipulation.

22. The parties will confer as to the requested form of the award to be issued in this case and will advise the panel on or before _____. [or the parties have requested a _____ award]

23. The evidentiary hearings will commence at 9:30 a.m. on _____ with _____ to be held in reserve should an additional day prove to be necessary. The parties will confer and advise the panel of the location for the hearing. If the parties choose to use the offices of the American Arbitration Association, they will make the necessary arrangements directly with the case manager. The parties will make arrangements to schedule the attendance of witnesses such that the proceeding can proceed expeditiously and without any unnecessary delay.

24. The party presenting evidence shall give notice to the other party one day before of the names of the witnesses who will be called to testify the next day and the order in which the witnesses will be called.

25. If a court reporter is to be employed to transcribe the evidentiary hearing, the parties will make the necessary arrangements.

[The language of the arbitration will be English.]

[If a translator is to be employed, the parties will make the necessary arrangements.]

26. All deadlines set forth in this order shall be adhered to strictly unless and until amended by the panel. Late submissions may be subject to consequences which may include a refusal by the panel to accept the submission.

27. The evidentiary hearing dates set forth in this Pre-Hearing Order No. 1 will not be rescheduled absent extraordinary circumstances unrelated to preparedness. This Pre-Hearing Order No. 1 shall continue in effect unless and until amended by subsequent order of the Arbitrators. Any request for a modification of the schedule set forth in this Pre-Hearing Order No. 1 will include a statement as to whether the other party consents to the proposed modification and will confirm that the proposed modification will not require a change in the evidentiary hearing dates.

27. The parties are reminded to update their respective conflict checklists as further information becomes available. The duty to update such checklists will continue up to and including the date that the hearings are declared closed by the Arbitrators. If there is anything known to a party that is relevant in the context of arbitrator disclosure or impartiality, please advise the case administrator as soon as it becomes known.

Dated: _____

_____, chair

Arbitrators