

Master for procedural call just before the hearing

By Edna Sussman- to be tailored as needed for the case

The panel would like to review procedural matters for the hearing to assure an efficient and fair process.

1. Confirm date, location and time of the hearing. We have June \_\_\_\_\_commencing at 9:30 and are holding \_\_\_\_\_if necessary. Please confirm the dates and confirm where the hearing is taking place.
2. We did not set a page limit for the pre-hearing memoranda which shall contain a discussion of the facts and the law. Do counsel want to agree on a page limit? We suggest a page limit of \_\_\_\_ pages. Please be sure to send hard copies of all authorities relied on, cases, statutes, horn books pages, etc. to the arbitrators. ( if not set in first order)
3. Will any fact witnesses' direct testimony be presented by affidavit? If there will be affidavits for any direct testimony, the affidavits should be delivered to the tribunal with the pre-hearing memoranda. All witnesses must of course be available for cross examination. {This is likely already established in the first order] If affidavits are to be used for the direct, it should be understood that counsel will be permitted a limited "warm up" direct examination of that witness before cross examination. Any to be presented by deposition? Will cross be limited to the direct or anything relevant to the case?
4. Will all witnesses be available for live testimony; if not, is an agreement and arrangements for video conferencing or telephone testimony necessary for any witnesses? If so, are arrangements to be made to have documents available at the witness' location for the examination? Is there agreement as to the presence of an attorney with the witness?
5. Are any expert witnesses to be presented? How will the experts' testimony be presented? Is consideration being given to having the experts there at the same time so that the panel can pose questions to both in the sequence deemed most useful to the panel?
6. Time allocation: should a "chess clock" approach be used to divide the number of hours evenly between the parties? Is there a concern that without such a mechanism one side will be denied an equal opportunity to present its case within the time frame we have allocated for the hearing in this matter?
- 7.. Will there be opening statements? How long? Power points to be used?
8. Who will attend the hearing for each party understanding that each party is entitled to one party representative (and any expert witness) but the parties may agree to have others present? Witnesses sequestered?

9. Review exhibit and admission of evidence process. Demonstratives? Rules of evidence- objections – hearing behavior on objections.
10. Stipulated facts?
11. Will there be a court reporter? If so, have arrangements been made for their presence?
12. Is there a need for a translator? Coordination on selection?
13. Technology needs for the hearing
14. Please advise as to the nature of the award requested by the parties. ( If not already established)
15. Review schedule -Daily list of witnesses schedule for next two days
16. Attorney's fees, costs, sanctions [if appropriate to discuss]
17. Ways to shorten the hearing:
  - a. witness books containing the exhibits to be used with each witness to shorten the time otherwise spent pulling out the relevant exhibit,
  - b. no opening statements,
  - c. resolution of any objections to the admission of broad categories documents before the hearing if there is an issue like that
  - d. delivery to the Tribunal before the hearing of key exhibits as to which there are no objections to admissibility to avoid time spent reading documents into the record with witnesses
  - e. preparing witnesses to just respond to the questions posed to avoid long non-responsive answers, avoiding duplicative testimony
  - f. CV of witnesses
  - g. timeline
  - h. Witness statements
  - i. shortening the "warm up periods,"
  - j. streamlining the experts' testimony through various tools such as no oral direct, having the experts meet alone without counsel and report back to the Tribunal as to the open issues,
  - k. stipulated facts if cost effective- or limited for facts that Panel asks for as to which there is no dispute but would be helpful, e.g. corporate chart, time line, when transactions took place and in what amount, etc.- tailored to case
  - l. length of hearing days, weekends