

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

: CIVIL ACTION  
:  
:

**PRETRIAL ORDER FOR ARBITRATION CASE**

**NON-JURY**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_,

IT IS ORDERED as follows:

1. All discovery shall proceed forthwith and continue in such manner as will assure that all requests for and responses to discovery will be served, noticed, and completed by the ninety (90) day discovery deadline set forth in the letter Notice of Arbitration served by the Arbitration Deputy Clerk as required by Local Rule of Civil Procedure 53.2, 4, A. No discovery will be allowed after the arbitration except upon order of this Court upon good cause shown as to why the discovery requested could not have been reasonably anticipated and completed prior to arbitration.

2. All dispositive motions shall be filed no later than the end of the aforementioned discovery deadline.

3. In the event there is a duly perfected demand for trial de novo after an arbitration award:

A. Within ten (10) days after the demand for trial de novo is entered on the docket by the Clerk of Court, counsel for each party shall serve upon counsel for every other party:

(1) the original or a copy of each exhibit they expect to offer at the trial de novo in furtherance of their respective contentions. Each party shall mark their trial exhibits in advance of trial with consecutive numbers appropriately prefixed with an identifying letter of counsel's choice (i.e., P-1, P-2; D-1, D-2);

(2) curriculum vitae for each expert witness expected to testify;

(3) a specific designation of each discovery item, including specific lines of deposition testimony, answers to interrogatories, requests for admission, documents, photographs and the like, to be offered into evidence.

B. Not later than twenty (20) days after the demand for trial de novo is entered on the docket by the Clerk of Court, counsel for the parties shall prepare by that date a complete and comprehensive stipulation of uncontested facts and an original and two copies of such stipulation shall be submitted to the Court (Chambers) for approval.

C. Not later than twenty (20) days after the demand for trial de novo is entered on the docket by the Clerk of Court, plaintiff(s) shall file with the Clerk, serve upon defendant(s), and submit in duplicate to the Court (Chambers), the following:

(1) Precise and detailed proposed findings of fact, annotated to the record (the record consisting of items such as expected testimony with the name of the witness, exhibits by number, designated discovery papers, affidavits, and pleadings), and conclusions of law in support of plaintiff's case.

(2) The names and addresses of all witnesses whom the plaintiff(s) actually intends to call at the trial de novo during its case in chief, and in rebuttal if known.

Witnesses shall be listed in the order they will be called. Each witness shall be identified and there will be a brief statement of the evidence that the witness will give.

(3) A trial memorandum setting forth the issues of fact and law with a detailed discussion of legal authorities in support of plaintiff's case.

D. Not later than twenty-five (25) days after the demand for trial de novo is served upon defendant(s), defendant(s) shall file with the Clerk, serve upon counsel for plaintiff(s), and submit in duplicate to the Court (Chambers), the following:

(1) Precise and detailed proposed findings of fact, annotated to the record (the record consisting of items such as expected testimony with the name of the witness, exhibits by number, designated discovery papers, affidavits, and pleadings), and conclusions of law in support of defendant's case.

(2) The names and addresses of all witnesses whom the defendant(s) actually intends to call at the trial de novo during its case in chief, and in rebuttal if known.

Witnesses shall be listed in the order they will be called. Each witness shall be identified and there will be a brief statement of the evidence that the witness will give.

(3) A trial memorandum setting forth the issues of fact and law with a detailed discussion of legal authorities in support of defendant's case.

4. This non-jury case shall be called for trial thirty (30) days after the demand for trial de novo is entered on the docket by the Clerk of Court.

5. Any party having an objection to: (A) the admissibility of any exhibit based on authenticity; (B) the adequacy of the qualifications of an expert witness expected to testify; or (C) the admissibility for any reason (except relevancy) of any item of evidence expected to be

offered; shall set forth separately each such objection, clearly and concisely, in a separate section, in their trial memorandum. Such objection shall describe with particularity the ground and the authority for the objection. Unless the Court concludes at trial that manifest injustice will result, the Court can be expected to overrule any objection offered at trial in respect to any matter covered by (A), (B), and/or (C) above, if the Court concludes that the objection should have been made as required by this Order.

6. No later than the discovery deadline set forth in Paragraph No. 1 above: All parties shall pursuant to Fed. R. Civ. P. 26(a)2(A) and (B), exchange all experts' reports and complete depositions pursuant to Fed. R.Civ. P. 26(b)(4).

7. In the event there is a duly perfected demand for trial de novo after an arbitration award:

A. Any party expecting to offer opinion testimony from lay witnesses pursuant to Federal Rule of Evidence 701 shall declare such intent a written offer of proof filed and served on all opposing parties (with a courtesy copy to Chambers) no later than the date of filing the stipulation of facts required in Paragraph 3B above. Such declaration must include at least the name of each such witness, the opinion to be offered, the basis for the opinion, and if not disclosed by prior discovery, the background, training, experience and contact with the facts of the case sufficient to lay a foundation for the opinion.

B. Any party objecting to the admissibility of any proffered opinion shall include an objection clearly and concisely in their trial memorandum. No party shall include any such objection on the basis that the expert opinion or lay opinion provided is vague, incomplete

or ambiguous unless counsel for the objecting party has attempted to resolve such perceived failings with the offering party and certifies to that effort and the results in the written objection.

8. At the commencement of the trial de novo the Court shall be supplied with a copy of each trial exhibit, in duplicate, appropriately marked with its exhibit number and in addition a list or schedule of such exhibits, in duplicate, which shall briefly describe each exhibit.

9. In the event of a trial de novo, if any party desires an "offer of proof" as to any witness or exhibit expected to be offered, that party shall inquire of counsel prior to the trial de novo for such information. If the inquiring party is dissatisfied with any offer provided, such party shall file a motion seeking relief from the Court prior to trial. **THE COURT WILL NOT INTERRUPT TRIAL PROCEEDINGS ON THE APPLICATION OF ANY PARTY FOR AN "OFFER OF PROOF."**

10. Only the testimony of those witnesses and those exhibits, designated discovery items, and testimony of expert witnesses whose reports, depositions, and qualifications or lay opinion testimony have been furnished in the manner set forth in the Federal Rules of Civil Procedure and this Order, shall be considered by the Court for admission into evidence at trial, unless stipulated to by all affected parties and approved by the Court, or by Order of Court so as to avoid manifest injustice.

11. Presentation of testimony by all witnesses in person in the Courtroom is preferred and expected by the Court. A stipulation of counsel that deposition testimony may be used at trial de novo is not binding on the Court. If any party expects to contend that a witness is unavailable, as defined in Federal Rule of Civil Procedure 32(a)(3), at the time of the trial

de novo, and if the Court rules that deposition testimony may be used, the Court expects use of oral or videotape depositions at the trial de novo of any such witness whose testimony a party believes essential to the presentation of that party's case, whether that witness is a party, a non-party or an expert. The unavailability of any such witness will not be a ground to delay the commencement or progress of an ongoing trial de novo. In the event leave of court is secured and an oral or videotape deposition is to be offered because of the unavailability of a witness, the offering party shall deliver to Chambers (Room 11614) prior to the commencement of the trial de novo, TWO COPIES of the deposition transcript, together with that counsel's certification that all efforts have been made to resolve objections with other counsel. Unresolved objections shall be noted in the margin of the deposition page(s) where a Court ruling is necessary and a covering list of such objections supplied therewith.

12. **EXTENSIONS OF TIME:** Any necessary application for extension of any time deadlines, change in conference(s) or trial date(s) set forth in this Order shall be made by written motion filed in conformity with Local Rule of Civil Procedure 7.1 and served no later than ten days prior to the date sought to be changed or extended. Any such motion shall include a factual verification of counsel or relevant party or witness showing good cause for the request and shall contain a statement of the position of all other parties as to the request.

13. If the parties wish a settlement conference, application should be made by letter to Courtroom Deputy Harry E. Grace who will arrange such conference.

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LOWELL A. REED, JR., S.J.

Form: (8/1/96)