

Form Agreed Order for Non-Binding Arbitration

IN THE _____ COURT
FOR _____ COUNTY, TENNESSEE

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Plaintiff,)

)

v.)

NO. _____

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)

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Defendant.)

AGREED ORDER FOR NON-BINDING ARBITRATION

By agreement of the parties, this case has been scheduled for Non-Binding Arbitration ("NBA") pursuant to Tennessee Rule of Civil Procedure 16 and Tennessee Supreme Court Rule 31.

The entry of this order does not affect the parties' rights to proceed to trial in accordance with applicable law. Unless otherwise ordered by the Court, discovery shall proceed as scheduled by the parties. Unless otherwise ordered by the Court, this order shall not preclude the parties from proceeding with discovery or from filing appropriate motions with the Court.

It is accordingly ORDERED

1. NBA Session

An NBA Session shall be conducted in this case within sixty (60) days of the date of this memorandum and order. The session will be conducted in accordance with the procedure, directions and conditions noted in this memorandum and order.

2. Appointment of Arbitrator

The Court hereby appoints [_____] as Arbitrator(s).

For purposes of determining whether the Arbitrator has or represents any conflicting interests, the standards set forth in ____ TCA ____ for disqualification of any justice, or judge will be applied. If the Arbitrator believes that he or she has or represents conflicting interests, that fact shall promptly be disclosed to all counsel and to the Clerk in writing. Any party who believes that the assigned Arbitrator has or represents conflicting interests shall provide written notice to the Clerk of same within ten (10) calendar days of learning of the potential conflict, or shall be deemed to have waived any opposition.

3. Written Pre-NBA Statements

(a) Form of Pre-NBA Statements

No later than ten (10) calendar days prior to the NBA Session, each party shall submit directly to the Arbitrator, and shall serve on all other parties, a written Statement. Such Statement shall be double spaced and shall not exceed fifteen (15) pages (not counting exhibits and attachments).

(b) Required Contents of Pre-NBA Statements

While the Statements may and should include any information that would be useful, they must: (1) identify the person(s), in addition to counsel, who will attend the NBA Session as the representative of the party with full decision-making authority; (2) describe briefly the substance of the suit and; (3) delineate the primary disputed factual issues and legal issues; (4) identify witnesses to be called at the NBA hearing and; (5) identify exhibits to be presented at the hearing.

(c) Identification of Other Persons Whose Presence is Thought to be Desirable

The parties may identify in these Pre-NBA Statements persons connected to a party opponent (including a representative of the party opponent's insurance carrier) whose presence at the NBA Session would improve substantially the prospects for making the NBA Session productive; the fact that a person has been so identified, however, shall not, by itself, result in an instruction compelling that person to attend the NBA Session.

Persons other than the parties, their representatives, their counsel, representatives of their insurance carriers, and the Arbitrator may attend the Session only with the consent of the Arbitrator.

The Arbitrator will have the ability to request the presence of non-parties but does not have the authority to compel their attendance.

(d) Attachments to Pre-NBA Statements

The parties shall attach to their written Pre-NBA Statements copies of documents out of which the suit arose, e.g., contracts, or the availability of which would materially advance the purposes of the Session, e.g., medical reports or documents by which special damages might be determined.

(e) Filing of Pre-NBA Statements Prohibited

The written Pre-NBA Statements shall not be filed with or provided to the Court or clerk, and the judge assigned to this case shall not have access to them. Instead, the Pre-NBA Statements shall be sent directly to the Arbitrator with copies to adversary counsel.

4. Attendance at the NBA Session

(a) Parties to Attend

The parties themselves shall attend the NBA Session unless excuse is provided in this section. This requirement reflects the Court's view that one of the principal purposes of the NBA Session is to afford litigants an opportunity to articulate their positions and to hear, first hand, both their opponent's version of the matters in dispute and a neutral assessment of the relative strengths of every party's case. A party other than a natural person (e.g., a corporation or association) satisfies this attendance requirement if it is represented at the NBA Session by a person (other than outside counsel) with authority to enter stipulations (of fact, law, or procedure) and to bind the party to terms of a settlement. A party that is a governmental or unit need not have present at the NBA Session the persons who would be required to approve a settlement before it could become final (e.g., the members of a city council or the chief executive of a county or major agency), but must send to the session a representative, in addition to trial counsel, who is knowledgeable about the facts of the case and the party's position and is the person who has the authority and responsibility to make recommendations to the ultimate decision-making body. . In cases involving insurance carriers, representatives of the insurance companies, with authority, shall attend the NBA Session.

(b) Attorneys to Attend

Each party shall be accompanied at the NBA Session by the lawyer expected to be primarily responsible for handling the trial of the matter.

(c) Excuses for Non-Attendance

A party or lawyer will be excused from attending the NBA Session only after a showing that attendance would impose an extraordinary or otherwise unjustifiable hardship. A party or lawyer seeking to be excused must petition the Arbitrator in writing, no fewer than 15 calendar days before the date set for the NBA Session. Any such petition shall be in the form of a letter to the Arbitrator, a copy of which shall be sent to all parties, and which shall set forth all considerations that support the Request and shall state realistically the amount in controversy in the case. The Arbitrator shall rule on obligations for excuse for non-attendance. A party or lawyer who is excused from appearing in person at the NBA Session shall be available to participate by telephone.

5. Procedure at the NBA Session

The Arbitrator shall schedule the actual date, time and place of the hearing after consultation with the clerk and the parties, _____ days before the hearing. The hearing will be held generally in a lawyer's conference room or courtroom within the courthouse at which the action is pending, except that the Arbitrator may designate another location upon agreement of the parties.

Arbitration hearings are intended to be brief, evidentiary outlines of the case and not formal trials. Each side will be limited to an opening statement not to exceed ten minutes, unless there is a conflict of interest between the parties of such sides, in which event each party with a conflict of interest may make a separate opening statement of _____ minutes. Closing argument shall be _____ minutes per side, unless there is a conflict of interest between the parties of such sides, in which event such party with a conflict of interest may make a separate argument of _____ minutes. Rebuttal is allowed as a part of plaintiffs' allotted time. In the event that a party fails to appear, argument will be heard and evidence received from those parties appearing.

The Arbitrator shall have considerable discretion in structuring and conducting the NBA Session, and the NBA Session shall proceed informally. Rules of Evidence shall not apply, and there shall be no formal examination or cross-examination of witnesses.

6. Discovery

Discovery shall proceed as in any other civil action. The court will require that discovery be completed in a diligent and expeditious fashion. Except in exceptional circumstances, no

additional discovery will be permitted when a trial de novo has been demanded after an Arbitration award.

7. Ex Parte Communication

There shall be no ex parte communication between an Arbitrator and any counsel or party on any matter relating to the action except for purposes of scheduling or continuing the hearing.

8. Record

No official record of the Arbitration hearing will be made. Any party desiring the attendance of a reporter shall make the necessary arrangements with a reporting agency. The costs of the reporter's attendance fee, record, and all transcripts thereof, shall be prorated equally among all parties ordering copies, unless they shall otherwise agree, and shall be paid for by the responsible parties directly to the reporting agency.

9. Testimony

All witnesses shall testify under oath or affirmation administered by the Arbitrator or any other duly qualified person. Fed.R.Civ.P. 45 shall apply to subpoenas for attendance of witnesses under these rules.

10. Attendance of Parties

Individual parties or authorized representatives of corporate parties shall attend the Arbitration hearing unless excused in advance by the Arbitrators for good cause shown.

11. Failure of Parties to Attend

The Arbitration hearing may proceed in the absence of a party who, after due notice, fails to be present; but an award of damages shall not be based solely upon the absence of a party.

12. Failure to Proceed

If a party fails to participate in the Arbitration process in a meaningful manner, the Arbitrator may impose appropriate sanctions against the party or his attorney.

13. Authority of Arbitrators

The Arbitrator or Arbitration Panel shall swear witnesses and receive evidence. At the Arbitration hearing, the Arbitrator or Chief Arbitrator shall rule on all objections, motions and admissions of evidence.

14. Arbitration Award

The Arbitrator shall issue and mail to the parties an award within 15 days of the date of the closing of the hearing or the receipt of posthearing briefs, whichever is later. The original copy of the award shall be mailed to the prevailing party.

15. Award Procedure

If the parties have stipulated in writing that the award shall be final and binding, the clerk shall enter the judgment on the award when filed. Otherwise, the award shall be a nullity.

16. Sealing the Award

The issuance of award must be confidential and remain so. Binding the parties to confidentiality must be done by means of completing a form prior to the Arbitration commencing.

17. Entry of Judgment on Award

Upon stipulation of the parties, the clerk shall, in accordance with Rule 58, Tennessee Rules of Civil Procedure, enter the award as the judgment of the court. The judgment so entered shall have the same force and effect as a judgment of the court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

18. Limitation on Evidence

At the trial de novo, the court shall not admit evidence that there has been an Arbitration proceeding, the nature or amount of the award, nor any other matter concerning the conduct of the Arbitration proceeding, except that testimony given at an Arbitration hearing may be used for any purpose permitted by the Federal Rules of Evidence, or the Federal Rules of Civil Procedure.

19. Costs

Unless permitted to proceed in forma pauperis, the party demanding the trial de novo, other than the United States or its agencies or officers, shall deposit with the clerk a sum equal to the Arbitrator fees and expenses (or the maximum fees payable to the Arbitrator if the Arbitrator has not yet submitted a voucher), which shall constitute advance payment of such fees and expenses.

The clerk shall tax as costs against the party who demanded trial de novo the fees and expenses paid to the Arbitrator, unless:

(a) the party demanding the trial de novo obtains a final judgment, exclusive of interests and costs, more favorable than the Arbitration award, or

(b) the case is settled prior to trial, but only if the clerk is notified of settlement 10 days or more before the date set for trial, or

(c) the court determines that the demand for the trial de novo was made for good cause.

ENTER:

JUDGE