

Form Agreed Order for Minitrial

IN THE _____ COURT
FOR _____ COUNTY, TENNESSEE

)

)

Plaintiff,)

)

v.)

NO. _____

)

)

)

Defendant.)

AGREED ORDER FOR MINITRIAL

This action has been scheduled for Minitrial by agreement of the parties and pursuant to Tennessee Rule of Civil Procedure 16 and Tennessee Supreme Court Rule 31. The Court, by entering this order, is not depriving the parties of their right to proceed to trial in accordance with the applicable law. The pendency of Minitrial shall not interfere with the right and obligation of the parties to proceed with discovery and/or to make such motions to the Court as they may deem appropriate with respect to the preparation of their cases for trial.

It is accordingly ORDERED

1. Institution of Proceeding

The parties shall conduct a Minitrial on or before [_____] in accordance with this Order.

2. The Minitrial Panel

2.1 The Minitrial panel shall consist of one member of management from each party (the "Management Representative"), who shall have authority to negotiate a settlement on behalf of the party represented, and a Neutral Advisor (the "Neutral Advisor").

2.2 Each party shall name its Management Representative within [____] days from the date of this order by written notice to the other party and the Neutral Advisor. Each party thereafter may designate a different Management Representative by written notice to the other party and the Neutral Advisor. Such representative shall not, however, be changed within [____] days before the Information Exchange.

3. The Neutral Advisor

3.1 The Neutral Advisor, who shall be independent and impartial, shall perform the functions stated in this procedure and any additional functions on which the parties may hereafter agree. The Neutral Advisor shall be subject to the Standards of Conduct for Rule 31 neutrals, incorporated into Rule 31 as Appendix A.

3.2 The parties shall attempt to select a Neutral Advisor by mutual agreement.

3.3 If the parties have not agreed on a Neutral Advisor within 15 days from the date of this order, the Court shall appoint the Neutral Advisor from the list of Rule 31 mediators maintained by the ADRC.

3.4 Each party shall promptly disclose to the other party any circumstances known to it which would cause justifiable doubt regarding the independence or impartiality of an individual under consideration or appointed as Neutral Advisor. Any such individual shall promptly disclose any such circumstances to the parties. If any such circumstances have been disclosed, the individual shall not serve as Neutral Advisor unless all parties agree.

3.5 No party, nor anyone acting on its behalf, shall unilaterally communicate with the Neutral Advisor on any matter of substance, except as specifically provided for herein or agreed between the parties.

3.6 The Neutral Advisor shall identify, and the parties shall promptly send to the Neutral Advisor, such materials requested for the purpose of familiarizing the Neutral Advisor with the facts and issues in the dispute. The parties shall comply promptly with any requests by the neutral Advisor for additional documents or information relevant to the dispute.

3.7 The parties may jointly seek the advice and assistance of the Neutral Advisor in interpreting this procedure and on procedural matters.

3.8 The Neutral Advisor's per diem or hourly charge shall be established at the time of appointment. Unless the parties otherwise agree, (a) the fees and expenses of the Neutral Advisor and any other expenses of the proceeding shall be borne equally by the parties, and (b) each party shall bear its own costs of the proceeding.

4. Briefs and Exhibits

Before the Information Exchange, the parties shall exchange and submit to the Neutral Advisor briefs, as well as all documents or other exhibits, upon which the parties intend to rely during the Information Exchange. The parties shall agree upon the length of such briefs and the date upon which such briefs, documents and other exhibits are to be exchanged.

5. Information Exchange

The "hearing" is expected to take the form of an Information Exchange.

5.1 The Information Exchange shall be held before the Minitrial panel at a place and time stated in the initiating agreement or thereafter agreed to by the parties and the Neutral Advisor.

5.2 Each party shall make a presentation of its best case, and each party shall be entitled to a rebuttal. The order and permissible length of presentations and rebuttals shall be determined by agreement between the parties or, failing such agreement, by the Neutral Advisor.

5.3 The Neutral Advisor shall moderate the Information Exchange.

5.4 The presentations and rebuttals of each party may be made in any form and by any individuals as desired by such party. Presentations by fact witnesses and expert witnesses shall be permitted.

5.5 Presentations may not be interrupted except that during each party's presentation, and following such presentation, any member of the panel may ask clarifying questions of counsel or other persons appearing on that party's behalf. No member of the panel may limit the scope or substance of a party's presentation. No rules of evidence, including rules of relevance, shall apply at the Information Exchange.

5.6 If the parties agree, each party and counsel may ask questions of opposing counsel and witnesses during scheduled, open question and answer exchanges and during that party's rebuttal time.

5.7 The Information Exchange shall be not be recorded by any means.

5.8 In addition to counsel, each Management Representative may have advisors in attendance at the Information Exchange, provided that the other party and the Neutral Advisor shall have

been notified of the identity of such advisors at least five days before commencement of the Information Exchange.

6. *Negotiations Between Management Representatives*

6.1 At the conclusion of the Information Exchange, the Management Representatives shall meet one or more times, as necessary, by themselves and shall make all reasonable efforts to agree on a resolution of the dispute. By agreement, other members of their teams may be invited to participate in the meetings.

6.2 At the request of either Management Representative, the Neutral Advisor shall meet with the Management Representatives jointly or separately at the Neutral Advisor's discretion and shall give an oral opinion as to the issues raised during the Information Exchange. The Management Representatives may then attempt to resolve the dispute once again. At the joint request of the Management Representatives, the Neutral Advisor may at any time mediate their negotiations.

6.3 The terms of any settlement are to be set out in a written agreement which is to be signed by the Management Representatives as soon as possible after conclusion of the negotiations and shall, once signed, be legally binding on the parties.

7. *Confidentiality and Admissibility*

7.1 The entire process is a compromise negotiation. All offers, promises, conduct and statements, whether oral or written, made in the course of the proceedings by any of the parties, their agents, employees, experts and attorneys, and by the Neutral Advisor are confidential. Such offers, promises, conduct and statements are privileged under any applicable mediation privilege, are subject to Tennessee Rule of Evidence 408, and are inadmissible and not discoverable for any purpose, including impeachment, in litigation between the parties to the Minitrial or other litigation. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or nondiscoverable as a result of its presentation or use at the Minitrial.

7.2 The Neutral Advisor shall be disqualified as counsel, witness, consultant or expert for any party and as an arbitrator between the parties as to this dispute, and his or her oral and written opinions shall be inadmissible for all purposes in this or any other dispute involving the parties hereto.

ENTER:

JUDGE