RIchard Hurford
Dispute Resolution Services, P.C.

TYPICAL ARBITRATION PROTOCOLS

Arbitration resolves dispute privately using the services of an independent, neutral decision-maker mutually selected by the parties – the *Arbitrator*. The Arbitrator functions in much the same manner as a judge and determines whether or not a claim should be allowed and, if so, in what amount or circumstances. In so doing, the Arbitrator adheres to the processes and procedures contained in the parties' Agreement to Arbitrate and applicable law.

The Arbitrator's award is most often final and binding. An arbitration award may generally be filed in court and, once *confirmed* by the court, becomes a judgment with the same force and effect as a judgment that results from a trial.

Although the arbitration process is similar to a court proceeding – and the hearing similar to a trial – there are a number of key differences. First, the parties mutually select the Arbitrator who will decide the case unlike being assigned to a judge by a blind draw. Second, the time from case filing to issuance of the arbitration award is generally faster than in court proceedings. With the American Arbitration Association (AAA), the average is less than 300 days and it is our goal to expedite the process as quickly and cost effectively as the parties might agree during the Preliminary Scheduling Conference. Third, all the wide-ranging discovery common in court proceedings is generally not available unless the parties so agree in their Arbitration Agreement and the Arbitrator permits. Fourth, the rules of evidence that govern court trials are generally not followed in arbitration hearings; trustworthy evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs ordinarily will be received, regardless of whether admissible in court. Also, "date certainty" as mutually agreed upon at the Preliminary Scheduling Conference is of significant importance to avoid waste and unnecessary delays; as a result, adjournments of significant dates are the exception rather than routine. Finally, the Arbitrator's award is most often final and binding. As a practical matter there is no appeal form an arbitration award. The grounds for vacating an arbitration award are very limited.

At Richard Hurford Dispute Resolution Services (RHDRS), our role as the Arbitrator is to follow the processes set forth in your Arbitration Agreement, hear the evidence the parties present, and decide the case impartially based upon the law in a timely manner and in the form required by your Arbitration Agreement. We fully understand that it has been selected to make a decision and fully adheres to the Code of Professional Responsibility for Arbitrators that provides:

> An arbitrator must be as ready to rule for one party as for the other on each issue… Compromise by an arbitrator for the sake of attempting to achieve personal acceptability is unprofessional.

DIRECT CONTACTS WITH THE ARBITRATOR ARE PROHIBITED

Direct unilateral, substantive contacts with RHDRS concerning any matter involved in your arbitration are not permitted following the confirmation of our appointment. We will at all times attempt to schedule hearings, joint conference calls, etc., via e-mail as expeditiously as possible to minimize delays and increase efficiency. All papers, inquiries, or requests to address matters in contention that are served upon RHDRS either electronically, by fax, by mail or otherwise are to be contemporaneously served upon all parties in the same manner they are sent to us.

DISCLOSURES

The integrity of the arbitration process depends on the parties and counsel having faith in the impartiality of the arbitrator. RHDRS takes its disclosure obligations very seriously (*see* Revised Code of Ethics for Arbitrators in Commercial Disputes (AAA/American Bar Association) and Section 12 of the *Revised Uniform Arbitration Act*) and RHDRS will make a good faith effort to make all appropriate disclosures in a timely fashion. We disclose everything, and will supplement those disclosures whenever necessary. You are encouraged to share all disclosures with your clients and immediately bring to our attention any concerns that you or they might have as to any disclosure RHDRS makes or any independent information they or you might have that could appear to affect partiality.

LIST OF RELATED ENTITIES AND CONFLICT LISTS

To the extent you have not provided RHDRS with a list of related entities and key potential witnesses, please do so as soon as possible. These lists are for our use only and not provided to opposing counsel. We rely on this information to determine whether there are any potential conflicts of interest or appearance of fairness issues. Your lists should be seasonably supplemented as necessary. It is important that RHDRS know, at the earliest possible time, whether any additional disclosures need to be made.

PRE-HEARING CONFERENCES

A telephone (or in-person) conference to discuss some variation of these policies, or to bring special circumstances to RHDRS' attention, may be arranged at any time. Simply e-mail us and the other party of the need for a conference and briefly set forth the concern and the issue(s) that need to be addressed. A pre-hearing conference will be scheduled as expeditiously as possible and you may assume that RHDRS will receive any papers submitted and will be prepared to address the issues you have identified.

PRELIMINARY SCHEDULING CONFERENCE

RHDRS' preference is to have a Preliminary Scheduling Conference in every case as it is beneficial to discuss any potential conflict of interests, all relevant procedural matters, and anticipated issues and establish a mutually agreed upon schedule of important dates. Most preliminary conferences are satisfactorily handled during a telephone conference call, although an in-person conference will be arranged if requested by the parties.

RHDRS invites and encourages your client/client representative to attend or participate in the initial preliminary scheduling conference, either in person or by phone.

You may expect that during the Preliminary Scheduling Conference, RHDRS will ask the parties to confirm that all conditions precedent to arbitration have been waived or satisfied, the statements of claims and defenses are sufficient to prepare for the hearing on the merits, and the claims asserted are arbitrable. We will also cover many of the matters addressed in these protocols and the processes required by your Arbitration Agreement, including setting a schedule for the exchange of documents and lists of witnesses and exhibits, and, if one has not already been set, a date certain for the Arbitration Hearing. Please be prepared to discuss these matters. RHDRS will prepare a draft Scheduling Order following the Preliminary Scheduling Hearing and send counsel this draft to ensure it accurately sets forth the agreements reached at the Preliminary Scheduling Conference before it is entered.

RHDRS anticipates that ***prior to the date of our Preliminary Scheduling Conference*** counsel will discuss:

- The adequacy of the operative pleadings (demand/complaint, answer), discuss a discovery plan, and address other issues necessary to prepare for the Arbitration Hearing;

- The parties' need for discovery (types of discovery and the time necessary to complete such discovery);

- Whether any party foresees any dispositive motions, the need for a Protective Order, or other requests for interim relief;

- The timing of any ADR activities the parties may desire to pursue prior to the Arbitration Hearing; and,

- The anticipated length of the Arbitration Hearing and a timeframe when the parties, their counsel, and their witnesses will be available for that hearing.

Please be prepared to discuss each of these matters and address any areas of disagreement.

Often, the Demand for Arbitration only specifies a category designation or provides a one-line description of the claim(s). If agreed to by the parties, or determined appropriate by RHDRS,

by a date established in our Scheduling Order, any party seeking affirmative relief or asserting affirmative defenses may be asked to provide a particularized factual allegations and the legal theory underlying any claim or defense asserted as well as a damage model. While this is not an invitation to enlarge or change the claim, it is an opportunity to withdraw any claim or defense that is no longer applicable and allow the parties to focus and refine any needed future discovery.

MOTIONS AND INTERIM RELIEF

The AAA rules do not expressly provide for the type of broad motion practice that is common in court proceedings. Nonetheless, we recognize that in an appropriate case the parties may have matters that need to be addressed by motion. The parties should be prepared at the Preliminary Scheduling Conference to advise RHDRS of those motions, dispositive or otherwise, they anticipate making and whether any party anticipates seeking any interim relief.

If you do have a motion you wish to make, please contact us and the other parties by e-mail and a response deadline and a hearing date will be established. RHDRS ***does*** require that counsel first confer in a meaningful way before a motion is filed.

AMENDMENT OF A CLAIM

Unless your Arbitration Agreement provides to the contrary, once the Arbitrator has been appointed any party wishing to amend its claim to state another or different claim may do so only with the consent of the Arbitrator. If you desire to amend your claim (or counterclaim) to assert another or different claim, after discussing the matter with opposing counsel, do so by motion served on all other parties. Your motion should set forth the nature of the new claim you wish to present and why the claim was not put forward in your demand for arbitration or response. Any such motion, if made, will be heard by RHDRS after a hearing at which all other parties will be given an opportunity to comment and reply.

DISCOVERY

One of the most attractive features of arbitration, and presumably one of the reasons you selected arbitration to resolve your dispute, is its general economy and efficiency as compared to traditional litigation. Experience has shown that discovery is ordinarily the single most expensive aspect of litigation. While a certain amount of discovery is appropriate in most arbitrations (and often, the parties will have expressly restricted the scope of discovery in their Arbitration Agreement), the amount and nature of appropriate discovery is dependent upon many factors, including the amount in controversy and the issues and claims presented. RHDRS encourages all parties to develop a mutually agreeable discovery plan (including the scope of permissible discovery) appropriate to the case and their legitimate needs. Discovery issues will be discussed at the Preliminary Scheduling Conference.

Counsel should also understand that even where the dispute justifies more traditional discovery, RHDRS always encourages the parties to agree to reasonable discovery limitations such as are suggested in CPR's General Provisions of its Economic Litigation Agreement protocol, found at www.cpradr.org/ClausesRules/EconomicalLitigationAgreements/

The following policies will typically be followed *in the absence* of an agreement or applicable law or rule concerning discovery that provides otherwise.

E-Discovery

If you foresee the need for e-discovery, please discuss it with the other party. While every dispute is unique, ordinarily RHDRS will be guided on requested e-discovery along the following lines unless otherwise provided for in the Arbitration Agreement:

- Production of electronic documents will be limited to sources used in the ordinary course of business. Absent a showing of compelling need, no documents are required to be produced from back-up servers, tapes or other media.
- The fact that a document was originally created electronically does not, in the absence of a showing of compelling need, require production of the document in electronic form.
- Absent a showing of compelling need for another format, production of electronic documents will normally be made on the basis of generally available technology in searchable format usable by the party receiving the e-documents and convenient and economical for the producing party.
- Absent a showing of compelling need for metadata, metadata need not be produced with the exception of header fields for e-mail correspondence.
- Where the costs and burdens of e-discovery are disproportionate to the nature and gravity of the dispute or to the relevance (or potential relevance) of the materials requested, RHDRS may either deny such requests or order disclosure on condition that the requesting party advance the reasonable cost of production, subject to a further allocation of costs in the Final Award.

Documents

RHDRS typically requires the timely, mutual exchange of relevant documents, including particularly all documents upon which a party relies. We ask the parties to cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information relevant to the dispute or claim immediately after the entry of the agreed upon Scheduling Order. Contemporaneous with the disclosures referenced below, we expect counsel to complete an initial exchange of all relevant, non-privileged documents, including, without limitation, copies of all documents in their possession or control ***on which they rely in support of their positions***, and the names of all individuals who they may call as witnesses at the arbitration hearing. In certain employment and business cases, RHDRS invites you to consider

the mutual voluntary disclosure protocols required in the Macomb County Business Court. *See* http://circuitcourt.macombgov.org/CircuitCourt-BusinessDocket.

Written Discovery

To the extent you wish to use interrogatories as a discovery device, please discuss the issue with all other parties. RHDRS encourages you to consider mutually agreed upon limits to interrogatory inquiries regarding the existence and whereabouts of documents and witnesses with knowledge or information relevant to issues in the case. Disputes concerning the production of documents are seldom as effective as the agreements made by the parties to resolve such disputes. Such disputes constitute most of the discovery disputes that RHDRS hears.

Identification of Potential Fact Witnesses

RHDRS encourages you to exchange pertinent identifying information (name, address, telephone number) about persons with knowledge or information concerning issues in this case and to agree on a time for the delivery of this information. We generally find that counsel appreciates using the Federal Rules of Civil Procedure for initial disclosures (Rule 26). RHDRS expects you to seasonably supplement any submissions in the event you acquire knowledge or information about other witnesses. The purpose for your disclosure of potential fact witnesses is to enable the other parties to evaluate the need for formal or informal discovery concerning these people, including the potential need to take their deposition. Thus, it is important that your disclosures be as complete as possible and take place sufficiently in advance of the discovery deadline to enable other parties to prepare. *See* comments below concerning late-identified witnesses and exhibits. But you can count on RHDRS requiring within the first thirty days of the case the exchange of appropriately tailored FRCP Rule 26 type initial disclosures.

Expert Witnesses

Where you anticipate presenting expert testimony at the arbitration hearing, RHDRS expects you to notify all other parties of the name, address and qualifications of your expert promptly after you have determined that you will present expert testimony – and in any event sufficiently in advance of the discovery deadline to allow any necessary expert discovery. We also expect that you will promptly (by a date certain) provide all other parties with a copy of your expert's report or analysis and a narrative statement of: (a) the subject matter on which your expert is expected to testify; (b) a summary of the facts relied upon and the expert's opinions; and (c) a brief summary of the base(s) for each opinion. If a deposition of an expert is to be taken, and the expert has prepared a report, RHDRS will typically require that a copy of the expert's report be furnished to all other parties well prior to the deposition.

Depositions

RHDRS encourages you to realistically evaluate both your deposition needs and those of the other parties and to work cooperatively to (a) agree on a deposition schedule and (b) utilize less

formal and expensive processes when appropriate. Again, consider agreeing to limits appropriate to your needs and the nature of the case.

Protective Order

Documents produced for this arbitration and the testimony of witnesses should be used only for purposes of this case. If you believe a protective order is necessary or desirable, please confer with the other parties and propose one. If you are unable to agree a protective order is appropriate or that the form proposed is acceptable, please so advise and RHDRS will arrange a joint conference call or hearing. For your information the Oakland County Business Court has published a form Protective Order that you might want to evaluate and adopt as appropriate. *See http://www.oakgov.com/courts/businesscourt/Pages/default.aspx*

Discovery Disputes

If you and the other parties are unable to agree on a discovery plan, the appropriateness of particular discovery devices, or particular discovery requests or responses, please contact RHDRS by e-mail to schedule a telephone conference call (or, in an appropriate case, an in-person hearing). A formal, written motion, a formal, written response or objection, or a formal in person hearing are not ordinarily required in most instances, but you should be prepared to succinctly demonstrate the necessity of the discovery requested (or, in the case of an objection, the reasons why the requested discovery should not be granted). If particular discovery requests (or responses) are at issue, you should provide RHDRS with a copy of the pertinent parts or subparts in controversy so that we may place the dispute(s) in context. We will rule promptly on any discovery disputes. ***Please do not wait until just weeks or days before the arbitration hearing to raise a discovery dispute or to seek additional discovery.*** RHDRS generally will not find that a discovery dispute is sufficient cause or grounds for postponing an agreed upon Arbitration Hearing date. Also, except in the case of an actual discovery dispute, please do not file discovery requests or responses with RHDRS; they are not evidence unless admitted at a hearing and should not be provided to us until introduced as evidence during the Arbitration Hearing.

WITNESSES AND EXHIBITS

At a reasonable time prior to the Arbitration Hearing, RHDRS expects you to exchange final lists of witnesses who are expected to or will testify at the hearing and lists (and a copy of all documents listed) that will be offered (or reasonably are expected to be offered) at the hearing We encourage you to agree on when the exchange will take place and we will include those dates(s) in our Scheduling Order. In light of the ongoing obligation to supplement the initial witnesses list exchanged shortly after the Preliminary Scheduling Conference, witnesses disclosed *for the first time* on the date set for exchange of final witness lists will ordinarily not be permitted to testify over the objection of an opposing party, although RHDRS will evaluate any potential prejudice and make its decision on a case-by-case basis. The same is true of exhibits (except for demonstrative or rebuttal exhibits and, in some cases, exhibits prepared especially for the Arbitration Hearing).

Witnesses

Each party's witness list should identify the witnesses (name, address, phone number) that party expects to testify at the hearing, identify the general nature of their testimony, and in most cases indicate how the witness will testify at the hearing (in-person, by telephone, by video deposition, by written deposition or by affidavit or declaration). If the witness is expected to testify by affidavit or declaration, a copy of the affidavit or declaration should be delivered to all other parties at least one month before the arbitration hearing, unless a different date is established by our Scheduling Order. A copy of your witness list should be delivered to RHDRS at the same time as you deliver it to your opponent.

Although a witness's testimony may (theoretically) be presented by declaration or affidavit, RHDRS strongly encourages the offeror to have the witness available live or by telephone for cross-examination. If you wish to utilize all or a portion of a deposition transcript as substantive evidence *(i.e.,* in addition to or in lieu of a witness testifying in-person or by telephone), we will expect you to provide all other parties with a copy of the transcript, highlighting those portions you intend to offer, at least one month prior to the arbitration hearing so that all other parties may designate additional portions of the transcript they may rely upon.

Under your Arbitration Agreement and pursuant to the Arbitrator's inherent authority to provide the parties an opportunity for a full and complete hearing, the Arbitrator has the authority to require the attendance of any witness or other person necessary to a full and complete hearing. If that witness or person is employed by or under the control of a party, voluntary compliance is anticipated.

Exhibits

Each party's final exhibit list should at the very least list, and by number or letter, identify all documents that party expects to offer at the hearing. A legible copy of each exhibit must be provided to all other parties along with the list. Please confer with your opponent regarding the numbering of exhibits; *use this opportunity to eliminate duplicate exhibits. A Joint Exhibit Notebook can truly expedite matters significantly.* Exhibits should be pre-marked to the extent possible and should be numbered sequentially. It is suggested that you highlight relevant portions of your exhibits in the Arbitrator's exhibit book. The parties would be well served to not only produce the required exhibits to the Arbitrator, but also specifically point out relevant portions of lengthy documents for the Arbitrator's consideration. You do not really want an Arbitrator hunting for your positions or for alternative bases to make a decision that was not specifically addressed or discussed during the Arbitration hearing.

Supplementation

RHDRS recognizes that even the most skilled and diligent among us cannot anticipate every eventuality and that supplementation of witness or exhibit lists may be necessary and appropriate. Counsel is, however, expected to make a totally good faith effort to timely identify

witnesses and exhibits so as to minimize any potential prejudice to the opposition generated by late disclosure. We will consider foreseeability and prejudice in deciding whether to allow a late designated witness or exhibits. While such may come in, it will only be after a reasonable period of time to overcome the element of surprise or potential prejudice.

Subpoenas

If you desire to issue a subpoena to any person to attend the Arbitration Hearing, or for a deposition or pre-hearing production of documents, please first discuss the matter with the other parties to the case and provide other parties with a draft of the subpoena you desire. For subpoenas to third parties, RHDRS anticipates you will to the extent practicable, before asking us to issue a subpoena, have contacted the third-party to discuss the scope of the subpoena (if for documents) and the timing of the third-party's response or appearance.

CLAIMS AND CONTENTIONS - NARROWING THE ISSUES

RHDRS finds it most helpful (and generally will require) that the parties furnish RHDRS with a pre-hearing stipulation (preferably a joint statement) setting forth those facts that are agreed or stipulated to. While RHDRS does not require, or expect, a pre-hearing stipulation of uncontested facts in *every* case, we would appreciate your serious consideration of preparing such a document and furnishing it to us with any pre-hearing briefs (discussed below). In any event, RHDRS encourages all parties to stipulate to matters, facts, dates, and claims and contentions not in controversy so that we may make the most of the time set aside for our Arbitration Hearing.

ARBITRATION BRIEFS

Although no party is required to submit an arbitration brief, RHDRS normally encourages the parties to submit and exchange *succinct* briefs addressing relevant issues (legal and factual) in the case. Briefs that apply the law to critical factual issues are particularly helpful. Any party desiring to submit an arbitration brief should provide a copy to all other parties and to us directly at least ten (10) business days before the Arbitration Hearing, unless the Scheduling Order establishes a different date. Unless another page limit is agreed upon, *briefs should generally not exceed twenty pages in length.*

String citations to authority (case or otherwise) are not necessary. However, please include with your brief a copy of any key decisional or other authority on which you rely. You will aid RHDRS' understanding of your position and the decision's relevance if you highlight pertinent portions of the case or other authority.

ARBITRATION HEARING

Hearing Date, Continuances & Adjournment Fee

A true advantage of arbitration is that once the hearing date(s) is chosen by the parties, this will be the only matter set and counsel will only prepare once. The Arbitration Hearing is only set after consultation with the parties and their counsel. Because everyone has committed to that date(s) early on, the hearing date(s) will ordinarily be changed only for good cause shown. Even then, RHDRS may require that all *parties* agree in writing to a postponement. A telephonic hearing is nearly always held, and selection of a new date(s) for the hearing will always be first on the agenda. Please confer with the other parties and be prepared to discuss:

1. When this case will be ready for hearing;
2. The number of days reasonably anticipated to be necessary for the hearing (including opening statement and closing argument); and,
3. Your availability for a hearing during the 30 day period surrounding the time when this case is anticipated to be ready for hearing.

Counsel should have their calendars readily available during this discussion.

Please be aware that RHDRS imposes a fee for rescheduling. When you set your Arbitration Hearing date(s), we block out that date and accepts no other assignments. If the dates are re-scheduled at least 30 days before the Hearing Date, we may waive or significantly reduce its adjournment fee. As a courtesy to RHDRS and all parties and witnesses, and to save money for your client, if you foresee a need for a continuance please notify us as soon as the need becomes apparent. We normally will not allow a continuance unless and until counsel and the parties have agreed on new dates for the hearing. It is not RHDRS' practice of leaving a new hearing schedule in limbo.

Location

RHDRS will hold the Arbitration Hearing at any location that is agreeable to the parties The Scheduling Order will identify the location of the arbitration hearing. Please discuss any special hearing needs *(e.g.,* white board, easel and flip chart, overhead projector, video deposition equipment, power point projector, etc.) as soon as possible so that appropriate arrangements can be made. If held at the office of a party, it is anticipated that the party whose office is used will make available, if requested, an independent room that is appropriate and secure for use by the other party for the duration of the Arbitration Hearing.

The Arbitration "Day"

The Scheduling Order will identify the starting time for the arbitration. Unless otherwise agreed to by the parties the typical hearing Day will start promptly at 9:00 a.m. and ordinarily conclude between 4:30 p.m. and 6:30 p.m. We will take reasonable breaks throughout the day. The lunch recess will typically be from noon until 1:30 p.m. to allow the parties, counsel and witnesses sufficient time to eat, return telephone calls and prepare for the afternoon session.

Stenographic Record

If any party desires a stenographic record of the arbitration hearing, that issue should be addressed in the Arbitration Agreement or at the Preliminary Scheduling Conference. RHDRS generally requires that the parties stipulate that any court reporter's transcript will be the Official Record of the hearing and normally asks the court reporter to maintain the official exhibits. As a general rule, where the parties require the issuance of a Reasoned Award or certainly where there are to be Findings of Fact and Conclusions of Law, we will ask for an Official Record to refer to in the preparation of the Award.

Exhibits and Use of Exhibits

Following the entering of the appearances of the parties, the first issue that will typically be addressed when the Arbitration Hearing record is opened is the admissibility of exhibits that have been submitted (jointly or otherwise) and whether there are any preliminary objections to any exhibits offered. The parties are encouraged to agree on the admissibility of as many exhibits as possible and dispose of any authenticity and other foundational issues to the extent practicable.

Opening Statement

Counsel may give a brief opening statement if desired. The opening statement will ordinarily be limited in time as agreed to by the parties.

Presentation of Evidence

You should come to the arbitration hearing fully prepared to put on all of your evidence. As mentioned before, RHDRS encourages you to stipulate to matters or claims not in controversy so that we may make the most of the time available. The Claimant will put on his or her case first, followed by the Respondent. Evidence concerning counterclaims or cross-claims (offensive or defensive) will ordinarily be put on as part of the party's case. Cross-examination will then be conducted and reasonable re-direct and re-cross examination will normally be permitted.

Hearing Management Procedures

In cases where the parties anticipate the Arbitration Hearing will take several days, RHDRS encourages the parties to consider the use of hearing management procedures designed to streamline the hearing process. Some more common options include:

- Use of a chess clock to allocate the parties' time fairly, and/or separate time limits on discrete portions of the hearing (e.g., openings, closings, etc.); or
- A requirement that the direct testimony of all party-controlled witnesses, or perhaps only the expert witnesses, be submitted in writing (and exchanged in advance of the hearing). Where this option is adopted, the party presenting the

witness is ordinarily given an opportunity to introduce the witness by a short (e.g., 30 minutes) live direct examination to introduce the witness and highlight portions of the witness's written narrative. Normal cross and re-direct examination then follows. Many international arbitrations use this procedure.

- The joint presentation of opposing expert witness testimony.

In sum, RHDRS is generally very receptive to practices and processes that will expedite the Arbitration Hearing in a fair and even handed manner. You are encouraged to consider mutually agreeable processes to expedite the hearing to the greatest extent practicable and appropriate to the case.

Order of Witnesses

If a witness's availability is limited to certain times or dates, an advantage of arbitration are those issues can be conveniently addressed. Requests for an accommodation in this regard will be handled on a case-by-case basis but will ordinarily be granted absent a showing of prejudice. You are encouraged to cooperate and agree on such requests. In cases where multiple hearing days are scheduled, RHDRS normally requires the presenting party notify us and all opposing parties, the day before, of the order in which the next day's witnesses are expected to testify.

Rules of Evidence

Unless your arbitration agreement requires the strict application of state or federal rules of evidence, strict adherence to those rules will *not* ordinarily be required. RHDRS generally uses the rules of evidence *as a guide* in determining admissibility of exhibits and the appropriateness of questions and testimony. While the rules governing admission of evidence at the arbitration hearing will be more relaxed than in a court proceeding, counsel will be expected to lay an appropriate foundation and to observe normal witness interrogation rules regarding the form of questions (leading one's own witness on substantive matters, for example, will not ordinarily be permitted). Hearsay evidence will normally be admitted if it is of the sort that business people and others commonly regard as trustworthy and rely on. The key word there is *trustworthy.* Double-and triple-hearsay will not normally be admitted. Bring anticipated evidentiary problems to RHDRS' attention prior to the hearing so that they may be resolved with minimal interruption to the proceeding. If you feel compelled to object to a question at the arbitration hearing, please make your point succinctly.

Use of Depositions

It is the responsibility of the party desiring to offer deposition testimony to provide other parties with a copy of the transcript, clearly marking/highlighting those portions that party desires to offer. Other parties may then mark/highlight the portions of the deposition they wish to offer. You may simply submit the marked/highlighted transcript at the time of the Hearing. Unless you ask RHDRS to read a transcript before the hearing, we normally will read it afterwards as we consider the record and exhibits.

Arbitration Hearing Is a "Closed" Proceeding

The arbitration hearing is not open to the public and will not be opened to the public, unless required by applicable law, except (a) on stipulation of all parties and (b) with RHDRS' permission. Ordinarily, the only persons permitted to be present during the Arbitration Hearing will be counsel, a designated representative of each party (who may also be a witness at the hearing), and the witness testifying. RHDRS will generally permit future witnesses (except the parties' designated representatives and expert witnesses) to sit in during the Arbitration Hearing only where the opposition has no objection.

Closing Argument

If closing arguments are desired you will be provided with a reasonable amount of time for the closing argument. Closing argument will ordinarily take place immediately following the close of the presentation of evidence. If necessary, we will take a short recess following the close of the evidence in order to permit counsel to organize themselves for closing argument. Often argument is presented in writing within a week or two following close of the presentation of evidence. RHDRS encourages you to discuss this subject with all other parties and agree in advance on the type of post-hearing argument or other submission desired (oral or written).

"Close" of the Arbitration Hearing

Ordinarily, RHDRS will close the arbitration hearing upon completion of the parties' closing argument and/or actual receipt of any post-hearing submissions. This formal closure begins the time within which we may make its award. Sometimes, for good cause shown, we may *bifurcate* a hearing or reserve attorney's fees and litigation costs for later. But once closed, a hearing rarely will be reopened.

AWARD

As an aid to preparation of the Award in your case, RHDRS may request each party to prepare a proposed award (claim-by-claim) each party proposes.

Unless your arbitration agreement provides for a different time, RHDRS will make an award 30 days after the arbitration hearing is closed. Unless specified differently in the Arbitration Agreement, the Award we render will not include findings of fact or conclusions of law but will only be very short and simply make an Award‖ based on the evidence presented. If your arbitration agreement requires entry of findings of fact and conclusions of law, RHDRS will typically request each party provide its form of proposed findings and conclusions, which should typically be *ultimate,* not predicate.

In cases where a party may be entitled to an award of attorneys' fees, RHDRS will frequently close the hearing on the merits of the dispute and make *an interim or partial* award on the merits, handling issues concerning attorneys' fees after the partial award on the merits has been made. If there is a contractual or statutory basis for awarding attorneys' fees, we will often ask *all*

parties to provide and exchange with each other very basic information concerning the amount of attorney time (and the book value of same) incurred through the last day of the arbitration hearing.

Unless otherwise agreed to by the parties, the schedule for submitting a fee application and papers in opposition will be established at the close of the Arbitration Hearing or after RHDRS has made a decision on the merits. Your formal attorneys' fee submission should provide sufficient information to evaluate the reasonableness of the attorneys' fees requested. The opposing party will be afforded an opportunity to comment on any request for attorneys' fees and costs.

POST-AWARD PROCEEDINGS

Delivery of RHDRS' *Final Award* will generally terminate the arbitration and our involvement with the arbitration. The very limited grounds for an arbitrator to modify or correct an award, once made, are set forth in the Federal Arbitration Act (9 U.S.C.) and the Revised Uniform Arbitration Act. Generally, RHDRS cannot (and will not) become involved in post-arbitration efforts to enforce or to vacate the Award.

MISCELLANEOUS

Settlement/Mediation

RHDRS always encourages all parties to seriously consider resolving their dispute by settlement either through direct party-to-party (or lawyer-to-lawyer) negotiation or with the assistance of a neutral third party mediator. If your case is resolved by settlement prior to the arbitration hearing, you should promptly notify us. There will be no cancellation fee charged for any settlement communicated to RHDRS at least two weeks before the Hearing date.

Service by Fax or E-Mail

In the absence of an objection by a party, RHDRS generally allows documents to be served or filed by continues fax transmission or by email.

Document Retention

Arbitration is confidential and the proceedings are private. At the conclusion of the case, you have the option of RHDRS returning all papers to you, or having us use a professional shredding service.

CONCLUSION

In selecting Arbitration to resolve your dispute, RHDRS is very respectful of the parties' determination of the optimal process to meet their needs. Parties often select arbitration as a dispute resolution mechanism to provide greater flexibility in designing the process than is available in court. As long as there is compliance with applicable law, we will defer to and be guided by the process and procedures selected by the parties.