



THE RESOLUTION EXPERTS®

JAMS Recommended Arbitration Discovery Protocols for Domestic, Commercial Cases

Effective January 6, 2010

Executive Summary

The Key Element – Good Judgment of the Arbitrator

JAMS arbitrators adapt arbitration discovery to meet the unique facts and circumstances of each case. In doing so, JAMS arbitrators seek to ensure enough discovery to permit a fair result while, at the same time, maintaining a less expensive and more efficient discovery process than would have occurred in court. Exhibit A to the Protocols lists 27 factors which arbitrators might properly consider when making sound subjective judgments as to the appropriate scope of discovery.

First Pre-hearing Conference

At the first pre-hearing conference, JAMS arbitrators discuss the circumstances pertaining to scope of discovery and ensure that the parties understand what the basic ground rules for discovery will be. Absent agreement by the parties to the contrary, such ground rules will typically place more limits on discovery than would have occurred in court, e.g.: (1) Document discovery might be limited to materials which are directly relevant to significant issues in the case, and (2) E-discovery might be limited to information used in the ordinary course of business which is in a format usable by the requesting party and convenient and economical for the producing party.

At the first pre-hearing conference, hearing dates and interim deadlines will normally be set. As stated at the time, these deadlines are thereafter strictly enforced absent an agreement by the parties to the contrary or a compelling showing of good cause.

Depositions

JAMS Rule 17(c) permits one deposition per party and allows any party to apply for additional depositions. JAMS recognizes that in some circumstances, depositions in a complex arbitration can significantly shorten cross examination, as well as the length of the hearing on the merits. Unless carefully controlled, however, depositions in arbitration can become excessively expensive, wasteful and time-consuming. Absent agreement by the parties to the contrary, JAMS arbitrators will place realistic, efficient limits on the number and length of depositions, as well as the time frame in which they occur.

Discovery Disputes

JAMS arbitrators encourage the consensual resolution of discovery disputes. They may place limits on the length of any submissions concerning such disputes, and they resolve such disputes promptly so as not to delay the scheduled progress of the arbitration.

Dispositive Motions

Dispositive motions can sometimes enhance the efficiency of an arbitration if addressed to discrete legal issues. Broader motions, accompanied by lengthy submissions, however, often raise issues of fact and may affect the scope and efficiency of the discovery process. In order to avoid such delay, a JAMS arbitrator will typically pre-screen a proposed dispositive motion and will place limits on the briefing and scope of any permitted motion.

The complete JAMS Recommended Arbitration Discovery Protocols can be accessed at www.jamsadr.com.

Contact Information: www.jamsadr.com or 1-212-607-2799