

GROUP EXERCISE ON ARBITRATOR AUTHORITY AND PRELIMINARY HEARINGS

1. Global has filed a Request for Mediation and requests that the Panel Chair mediate the dispute before either party incurs significant attorney fees in discovery. Software consents to mediation but would like to first conduct discovery. Will you, as Panel Chair, agree to mediate this dispute? How do you handle the timing of the proposed mediation?
2. At the prehearing conference, Global advises the arbitrators that it plans to file a Motion for Summary Judgment on its counterclaim that Software is guilty of fraud and negligence. How do you handle this at the preliminary hearing? Does the likelihood of success on the merits influence the decision? Will this dispositive motion assist in streamlining the arbitration?
3. The contract specifies that the arbitration will occur in Washington, D.C. but the parties cannot agree on a facility to hold the arbitration hearing. How do you handle this at the preliminary hearing?
4. The parties dispute which state's law governs the dispute. The contract is silent on this issue. How do you handle this at the preliminary hearing?
5. Global has requested a fraud, waste and abuse audit and pharmacy benefit manager audit of software. Global's counterclaim seeks the right to conduct such audits. The contract allows the audits, but is unclear as to which party will pay for the audits. Both audits requested by Global will take extensive time to complete and will delay the arbitration. Software has objected to both audits requested by Global. How do you handle this at the preliminary hearing?
6. The parties are requesting discovery in excess of one million documents. At the preliminary hearing, after some "nudging" by the Panel Chair, the parties agree to only exchange those documents upon which the parties will rely at the hearing. Global would like to produce its documents in electronic form, but Software objects. How do you handle this?
7. The parties have requested that subpoenas be submitted to CMS for documents and depositions. CMS has stated to both parties that it will provide no documents or witnesses in the proceeding and it will contest any subpoena. How do you handle this issue?
8. Software wants to take in-person depositions of representatives of pharmacies in all states in which Global does business. Global objects, arguing that such testimony would be duplicative and that any depositions taken should be via video conference. How do you handle this at the preliminary hearing?
9. Global wants to depose a former Software employee who was responsible for designing the PBM software and who now lives in India. Global has requested the panel to issue a

subpoena to this employee to appear in the United States and intends to rely on counsel from India to effect the enforcement of the subpoena. Software objects. How do you handle this at the preliminary hearing?