

Group Exercise on Arbitration Hearings

Hearing Issues

1. During opening statements, Software says that its damages total \$32 million. Software's arbitration demand had alleged damages of only \$24 million. Global immediately objected to the increased claim. Software responded that the full extent of its damage could not be known until it received documents from Global after discovery closed that more clearly identified claims that were not paid by Global. How should the Panel handle the new damage claim?
2. The hearing has been scheduled for three consecutive days – the only three-day window that the Panel, counsel, and witness had over four months. Right after lunch on the afternoon of the first hearing day, Software seeks a postponement because the witness it intended to call – its pharmacy claims Vice President – was unable to come to the hearing due to a family emergency. Software states that the Vice President's testimony is critical at this stage of the hearing because it provides key background information on the entire Software/Global relationship and all of Software's claims. Global objects to a postponement and insists that Software get another witness. How should the Panel handle the request for postponement?
3. The Panel issued a subpoena to CMS to attend the hearing and bring documents. The CMS representative did not appear on the morning of the second hearing day, as specified in the subpoena. Both sides want the Panel to issue an order that a local law enforcement agency can use to bring a CMS representative to the hearing. Also, if no CMS representative comes, Global wants the Panel to draw adverse inferences against Software because Global is certain the missing information would show that Software's inaccurate information caused CMS to terminate Global. How should the Panel handle the subpoena, and should the Panel make the adverse inferences?
4. The Panel has allowed Global's expert witness to attend the hearing. You didn't recognize her name on the witness list, but she looks familiar: Her husband (different last name) serves with you on the board of a local non-profit organization. She attended some fundraisers, and you were probably introduced to her at least once and had some casual conversation. How should the Panel members handle this?
5. During Global's case on the morning of the third hearing day, it tenders a witness that was not listed on its pre-hearing witness list. Software objects, claiming surprise and prejudice. Global responds that the non-disclosure of the witness was a simple oversight; that Software has known that the witness was involved in many aspects of

the disputed transaction; and that Software has used many documents that were sent to or by this witness. Should the witness be allowed to testify?

6. Global's counsel draws evidentiary objections from Software for the following: (1) Global's counsel asks one of its witnesses to testify about a conversation the witness had with a CMS representative (who did not testify), and specifically about conversations that the CMS person had with Software personnel; and (2) to support this testimony, Global offers email chains which include exchanges between the CMS and Software employees. Software had also objected to the inclusion of the emails as exhibits in the pre-hearing submissions. How should the Panel handle those objections?
7. On the afternoon of the third hearing day, after emotions have consistently escalated between counsel, Global brings an emergency motion to disqualify Software's counsel. Global's motion is supported by pleadings and materials from a prior lawsuit showing that a lawyer in the law firm representing Software had recently moved from another law firm that represented Global in similar litigation. Software objects, claiming that: (1) the Panel has no jurisdiction to decide the matter, and (2) in any event, Global waived the issue by delaying its presentation, and Software will be unduly prejudiced. Post-hearing briefs and closing arguments still need to be done. How should the Panel handle the motion?