

**COMMERCE CASE MANAGEMENT PROGRAM PROTOCOLS
FOR ALTERNATIVE DISPUTE RESOLUTION PROCEDURE USING
THREE JUDGE PANEL AND COMMON LAW ARBITRATION
(“ABRAMSON PROTOCOLS”)**

These procedures are intended to provide the parties with a means to obtain a judicial resolution of the disputed legal issues, after which the parties will litigate their case to a final resolution through private arbitration. The factual issues, and the application of the law to the facts, will be decided in the arbitration, but the law will be decided by the Court.

The procedures described below shall be available to parties with matters assigned to and/or pending in the Commerce Case Management Program, subject to the following terms and conditions:

1. **Joint agreement of all parties.** All parties are in agreement to use these procedures. The Judge to whom the case is initially assigned off the wheel (the “Assigned Judge”) shall determine whether or not to permit the parties to utilize the procedure set forth herein. The Assigned Judge’s determination is final and not subject to review.

2. **Three Judge Panel to decide legal issues.** There shall be a three Judge panel (the “Three Judge Panel”), consisting of the three Judges in the Commerce Case Management Program, that will determine in a written opinion legal issues specified by the parties, the Assigned Judge and/or the Three Judge Panel. The Panel’s legal determinations will then be applied in a private common law arbitration process for final resolution of the disputes between the parties.

3. **Limits on appeal.** The Three Judge Panel’s Opinion shall be final and non-appealable. The parties shall agree that there are no legal issues between them that have not been submitted to the Three Judge Panel.

4. **How to present legal issues to Panel.** The legal issues to be decided by the Three Judge Panel shall include all legal issues in the dispute that the parties shall agree will be dispositive of the entire matter. These legal issues must be jointly prepared and submitted to the Three Judge Panel, as forth below. This will not limit the Assigned Judge and/or the Three Judge Panel from identifying additional issues. Upon leave of the Three Judge Panel, the parties may jointly identify additional issues to the Court prior to submitting their Briefs.

5. **Judicial settlement conference before going to arbitration.** As soon as feasible after the Three Judge Panel issues its Opinion, the Assigned Judge shall conduct a settlement conference among the parties. If the matter is not settled, within forty-five (45) days of the settlement conference, the parties shall promptly begin the arbitration process.

6. **Arbitration requirements.** The Arbitrator(s) shall be required pursuant to the parties’ arbitration agreement to apply the law as set forth the by the Three Judge Panel in its Opinion. The Arbitrator(s) shall render a decision within thirty (30) days after the conclusion of the arbitration proceedings. The Arbitrator(s) decision shall be in writing and shall include a

separate determination as to each of the Counts in the Complaint and Counterclaim and a separate explanation of how the Arbitrator(s) resolved the facts on each legal issue ruled upon by the Court. The explanation need not be lengthy or in the form of a judicial opinion, but shall be sufficient to inform the parties of the basis for the Arbitrator(s) conclusions. Arbitrators need not be limited to the legal profession. Unless the parties agree otherwise, they shall equally share all fees and costs associated with the arbitration.

7. **Common Law Arbitration.** The arbitration agreed to and provided for herein is subject to 42 Pa.C.S. § 7341 (“Common Law Arbitration”). It shall not be a basis for relief assert that an arbitration award was not in accord with the Panel’s Opinion. The Court exhorts the parties, without requiring it, to select arbitrators who will agree to abide by The Code of Ethics for Arbitrators in Commercial Disputes.

8. **Contents of request to use Protocols.** Parties seeking to utilize the procedure herein shall jointly sign and submit a written request to the Assigned Judge, following Form A. The parties shall jointly set forth the following in their Request:

- a. A statement of why the case would benefit from the Protocols;
- b. The identity of the arbitrator(s)¹;
- c. A copy of the arbitration agreement;
- d. The specific legal issues that the Panel is being asked to decide;
- e. Whether the parties mutually agree that any discovery is necessary, and if so, their agreement on the scope of discovery²; and
- f. Whether the parties wish the Arbitrator(s) to adhere to the Pennsylvania Rules of Civil Procedure and/or the Pennsylvania Rules of Evidence.

9. **Stipulation and Order governing procedure.** If accepted, the Assigned Judge shall issue a Stipulation and Order, following Form B. The parties, through counsel, shall execute the Stipulation and jointly submit it to Catherine Hart, the Court Administrative Officer of the Commerce Case Management Program, in Room 521 of City Hall. It shall thereafter be signed and entered as an Order of Court by the Assigned Judge. The Court and the Assigned Judge shall retain jurisdiction of the matter to enforce the Stipulation and Order.

The Stipulation and Order shall:

- a. if applicable, provide dates for the completion of discovery, setting forth the discovery agreed upon by the parties;
- b. set forth the specific legal issue(s) outlined by the parties, and any other issue(s) the Assigned Judge deems necessary;
- c. set forth the date on which the parties’ Briefs and Reply Briefs are due. Each party’s first brief is to be submitted on the same date. Reply Briefs shall only be

¹The arbitrators must be already selected before requesting use of the Protocols.

²If there is to be discovery, the parties are expected to be cooperative and act promptly and in good faith with each other in propounding and responding to discovery. Any discovery disputes will be resolved through Discovery Court practice by the Assigned Judge

submitted if the party is raising new analysis or argument that has not been addressed in that party's initial brief. The briefing schedule shall include the page length for each brief; and

10. **Oral argument.** The Stipulation and Order shall also set forth a date, time and place for oral argument before the Three Judge Panel. The parties may jointly inform the Assigned Judge that they do not want oral argument, either in the initial request or after filing briefs. The choice of whether to hold oral argument remains with the Three Judge Panel.

11. **The Panel's Opinion.** The Three Judge Panel shall issue an Opinion deciding each legal issue before it. The Opinions of the Three Judge Panels shall be written on a rotating basis. If the Three Judge Panel determines that it cannot rule on a legal issue absent evidence, it shall make an appropriate Order directing how the parties should address that issue.

12. **New legal issue arising during arbitration.** If a new legal issue arises during the arbitration, then the parties shall bring this to the attention of the Assigned Judge, and shall confer with the Assigned Judge concerning whether or not a supplemental Opinion is needed to address this issue.

13. **Entry of judgment after arbitration.** After an arbitration decision is rendered, the successful party, or parties if the decision is mixed, shall promptly, within at least ten (10) business days of receiving the Arbitrator(s) decision, petition to have the award entered as a judgment upon the docket. The Assigned Judge shall retain jurisdiction, shall entertain the petition, and any judgment entered shall not be appealable.