

Liability and Risk Transfer with Respect to the Insurance of Others, Including Port Service Vendors and Contractors

This session will address the importance of transferring risk to third parties utilizing insurance of others and indemnity language. One port's recent experience with a temporary employee services provider will also be discussed.

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Belt, Suspenders or Both: Can You Have Your Cake and Eat it Too?

Overview:
Indemnity
Additional Insured
Tariff

Indemnity

- What does it mean?
- A duty to make good any loss, damage, or liability incurred by another;
- The right of an injured party to claim reimbursement for its loss, damage, or liability from a person who has such a duty; and
- Reimbursement or compensation for loss, damage, or liability in tort; esp., the right of a party who is secondarily liable to recover from the party who is primarily liable for reimbursement of expenditures paid to a third party for injuries resulting from a violation of a common-law duty. *Black's Law Dictionary* 772 (7th Ed. 1999).

Indemnity

- Undertaking given to compensate for (or to provide protection against) injury, loss, incurred penalties, or from a contingent liability. A shipping company, for example, will ask for a bank's indemnity for releasing a shipment to a consignee who has lost original shipping documents. The bank in turn will require the consignee to sign a counter-indemnity before issuing its indemnity to the shipping company. This way the consignee gets the release of shipment in completion of a transaction, and both the shipping company and the bank are protected in case some dispute arises out of that transaction.

BusinessDictionary.com (2009)

Indemnity

- Handshake
- Types of Indemnity

TOO SIMPLE

Lessee, its successors and assigns, shall indemnify and hold Authority harmless of and from all expenses and liability for and resulting from negligence of Lessee, its agents or employees, in connection with the exercise by Lessee of any of the rights and privileges herein granted.

Indemnity

- Types of Indemnity
 - Duty to Defend

SIMPLE INDEMNITY

OPERATOR will protect, indemnify, defend and hold harmless the Grantee, its Commissioners, employees and agents, from any and all liability, cost, expense, damage or loss of whatever nature, including, but not limited to any and all damages, duties, fines, penalties, taxes, charges or liquidated damages (incurred or paid by Grantee to the U.S. Customs Service, or other regulatory agencies), interest, attorneys' fees and other costs incurred which are directly resulting from, arising out of, in connection with, or related to Operator's failure of performance of its obligations as a Operator or pursuant to the agreement.

Indemnity

- Negligence
 - Your negligence
 - My negligence

**ARTICLE 11
INDEMNITY/RELEASE**

Section 11.01. Indemnity and Release

Lessee will defend, indemnify and hold harmless Authority, its Port Commissioners, directors, managers, employees and agents (hereinafter sometimes collectively referred to as "Authority") from all claims, demands, causes of action, lawsuits, Authority's attorney's fees and all other costs of litigation of any kind or character, liabilities or damages, including, but not limited to, the personal injury, illness or death of any person or persons (whether they be third persons, contractors or contractors employees, or employees of either of the parties to this lease agreement) (hereafter "injuries"), or damage to property, real, personal or otherwise of any party to this lease agreement or any third party (hereafter "property damage"), or any other matters, resulting from, arising out of, or caused, in whole or in part, by Lessee's and Authority's fault of any kind or character, including, but not limited to, that arising out of Lessee's and Authority's tort, willful misconduct, negligence, gross negligence, intentional act or acts, strict liability in tort, strict liability based upon a statute, breach of warranty, express or implied, or breach of this lease agreement, and including such fault caused by Lessee's and Authority's agents, contractors, employees, invitees or licensees, directly or indirectly related to this lease agreement, which occur before, during or after the primary term of this lease agreement, provided, however, Lessee shall be entitled to a credit against such indemnity to the extent, but only to the extent that damages arising out of any claim, demand, causes of action, lawsuits, liabilities or damages of any kind are caused by the negligence, strict liability, breach of warranty or breach of this lease agreement of Authority, its agents, contractors or employees directly or indirectly related to this lease agreement as determined, after all appeals, by a final judgment of a court of competent jurisdiction or as may be agreed between Authority and Lessee.

It is the intention of the parties to this lease agreement that Lessee will indemnify Authority for Lessee's proportionate fault, including, but not limited to, negligence, strict liability, breach of warranty or breach of this lease agreement which arises out of or causes the aforesaid claims, demands, causes of action, lawsuits, liabilities or damages of any kind or character.

Except as otherwise expressly limited in this Article 11, it is the intent of the parties to this lease agreement that all indemnity obligations and liabilities contracted for in this lease agreement be without monetary limit and without regard to the cause or causes thereof (including pre-existing conditions on Authority's Property or as the result of an indemnification agreement with a third party); and

will not be limited by damages paid under the Workers' Compensation Act. The indemnity contained in this Article 11 applies, without limitation, to any violation of any law, rules or regulations referred to in Article 4, Section 4.02 in effect during the term of this lease agreement, and any and all matters arising out of any act, omission, event or circumstance existing or occurring during the term of this lease agreement, regardless of whether the act, omission, event or circumstance constituted a violation of any law, rules or regulations referred to in Article 4, Section 4.02 at the time of its existence or occurrence.

If any action or proceeding is brought against Authority by reason of any claim described in this Article 11, Authority will be represented by its designated Counsel, or another attorney selected by Authority which attorney shall be subject to Lessee's prior written approval, which approval will not be unreasonably withheld, and Lessee will pay Authority's reasonable attorneys' fees and other expenses for the representation and defense of Authority in such action or proceeding.

If Lessee should fail or refuse, after written notice to Lessee that Authority intends to make a settlement of a claim, to participate in the settlement of a claim or lawsuit for damages, then Authority may settle with the claimant without prejudice to Authority's indemnity rights set forth herein, and a settlement after such notice to Lessee will constitute a settlement of the proportionate fault, including but not limited to negligence, of both Lessee and Authority, which settlement may later be apportioned between Authority and Lessee.

Lessee agrees to support the obligations to indemnify and hold harmless Authority by the purchase of insurance, including contractually assumed liability coverage.

Lessee hereby releases Authority, its Port Commissioners, directors, managers, employees and agents for all claims, demands, causes of action, lawsuits, liabilities and damages (including actual, consequential or punitive damages), administrative penalties or fines, liens, forfeitures, attorney's fees or costs of any kind or character, including, but not limited to personal injury, illness or death of any person or persons (whether this be third persons, contractors or contractor's employees, or employees of either of the parties to this lease agreement), or damage to property, real, personal or otherwise, or any other matter, resulting from, arising out of, or caused, in whole or in part, by Authority's fault of any kind or character, including, but not limited to such fault caused by Authority's agents, contractors, employees, invitees or licensees, directly or indirectly related to this lease agreement which occur before, during or after the term of this lease agreement, excluding, however, damages caused by the willful misconduct, gross negligence or sole negligence of Authority's agents, contractors or employees directly or indirectly related to this lease agreement.

Indemnity

- Enforceability

MY CITY
ANY COUNTY TEXAS
GREEN DAY AND CLEANUP OF FISHING AREAS
RELEASE AND INDEMNIFICATION AGREEMENT
FRIDAY, APRIL 17, 2001

Signatures are required for each participant

Sponsoring Organization: _____

Participant Name: _____

Participant's Address: _____

Participant's Email Address: _____

Participant's Telephone Number: _____

In consideration of the privilege of participating in the event, I grant to the MY CITY OF NUECES ANY COUNTY TEXAS ("MY CITY") , its successors and assigns, the right to record, broadcast, and otherwise exploit in any and all media throughout the world, my performance in the event and to use my name, likeness, voice and biographical information concerning me in connection with their promotion of the event.

For the same consideration, I assume all risks associated with participation in the cleanup and hereby release and hold harmless all of the following, who are hereafter called "the indemnified parties", namely the MY CITY, their respective officials, managers, directors, employees, agents, successors, assigns, members and volunteer workers from and against any and all claims, damages, liabilities, costs and expenses, including reasonable attorney's fees, arising out of my participation in the cleanup , including without limitation, any personal injuries or damage to my property which I may incur as a result of participation in the cleanup .

I also agree to and shall indemnify and hold harmless all of the indemnified parties from and against any and all claims, losses, damages, causes of action, suits and liability of every kind including all expenses of litigation, court costs and attorney's fees for injury to or death of any person or for damage to any property arising out of or in connection with the event, whether such injury, death or damages are caused by the sole negligence of the indemnified parties or the joint negligence of the indemnified parties and any other person or entity. I agree that this Waiver, Release and Indemnification Agreement shall be governed by the laws of the State of _____ and that venue for any litigation involving the indemnified parties shall be in a court of competent jurisdiction in ANY County, Texas.

I have read, understand and agree to abide by the rules set forth in the attached Guidelines and Information, which was included with the registration packet.

Participant

Date

If the participant is not of legal age, a parent or guardian must also sign and date this document.

I represent that I am the parent or guardian of the participant named above, that I am of legal age and that I have read and fully understand the foregoing Waiver, Release and Indemnification Agreement and that I do agree to be bound by the term set out above, individually and as participant's parent or legal guardian on behalf of participant, and our respective heirs, executors, administrators and assigns.

Parent or Guardian

Date

Additional Insured

- What does it mean?
- A person who is covered by an insurance policy but who is not the primary insured. - An additional insured may, or may not, be specifically named in the policy. *Black's Law Dictionary* 811 (7th Ed. 1999).
- One or more individuals (other than the individual named in an insurance policy) who are protected also under the terms of the same policy. Additional insureds are added either by endorsement or are referred to in the definition of “insured” in the policy itself. *BusinessDictionary.com* (2009).

INSURANCE

Section 12.01. Insurance

Without limiting the indemnity obligations or liabilities of Lessee, or its insurers, provided herein, Lessee agrees at all times this lease agreement is in effect to carry and maintain at its sole expense policies of insurance ("the Policies") of the types and in the minimum amounts as follows:

A. "All Risks" of Direct Physical Loss, including Flood, on buildings, improvements and betterments situated on the Leased Premises in an amount sufficient to cover 100% of the Insurable Value of the said buildings, improvements and betterments; and in builder's risk completed value form during substantial construction of improvements (including malicious mischief and vandalism); in amounts sufficient to provide coverage for 100% of the Insurable Value of such improvements. Lessee is responsible for insurance for its personal property on the Leased Premises. "Insurable value" means replacement cost value.

B. For all its employees engaged in performing work, workers' compensation required by the Texas Workers' Compensation Code, and employer's liability insurance with limits of at least \$500,000.00 each employee accident and disease, or such similar insurance which is in accordance with state and federal law applicable to said employees.

C. Commercial General Liability (CGL) coverage with policy limits of at least \$1,000,000.00 per occurrence and \$2,000,000 general aggregate at the Leased Premises

D. Business Auto Liability coverage for all owned and non-owned vehicles, with a policy limit of \$1,000,000 (Combined Single Limit.)

E. Umbrella liability coverage limits of not less than \$5,000,000.00 over and above the underlying primary coverage limits stated in subparagraph B, C and D in this Section.

F. Pollution Legal Liability including cleanup and defense costs for premises and operations including pollution of any body of water with limits of not less than \$5,000,000.00 per occurrence.

The minimum insurance protection amounts set forth in the Policies shall be increased from time to time upon request by Authority to an amount, which is commercially reasonable at the time.

Authority shall be furnished, to the attention of Authority's Risk Manager, prior to the presentation of this lease agreement to the Port Commission of Authority for its consideration, as proof of the insurance required of Lessee a certificate or certificates of insurance (and the endorsements required in this paragraph shall be attached to the certificate or certificates of the insurance) describing the Policies, which certificates must be acceptable, in their form and content, to PCCA. The Policies shall be endorsed to provide as follows (or an ISO form endorsement containing the equivalent wording may be used): "Underwriters or the company or companies issuing this policy agree that, if required by written contract, any person, firm or organization is included as an additional insured for claims arising out of acts, or the failure to act, by the named insured and only to the extent required under said written contract." In addition each of the Policies will be endorsed to provide (a) that it will not be suspended, voided, canceled or reduced in coverage or limits without thirty (30) days' prior written notice to Authority, Attention: Risk Manager, and (b) provide that notwithstanding any language in any policy of insurance held by Authority ("Authority Insurance") to the effect that the Authority Insurance is primary, the policy or policies held by Lessee are primary coverage and the Authority Insurance is non-contributory so that Authority Insurance will not share with the Policies. Lessee shall deliver to Authority certificates of renewal at least thirty (30) days prior to the expiration date of each of the Policies and copies of new policies at least thirty (30) days prior to terminating any of the Policies. The deductible or self-insured retention for each of the Policies must be stated in the certificate of insurance provided to Authority if either exceeds \$50,000.00; and, in such event, Authority may decline to approve this lease agreement without any liability to Lessee. The company writing each of the Policies must possess a current rating with A.M. Best Company of at least A: VI. If Lessee neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Authority may procure such insurance at Lessee's expense, and Authority is entitled to reimbursement from Lessee for all amounts spent to procure and maintain the insurance, with interest on such expense at a rate of 10% annually from the date Lessee receives Authority's notice of payment until reimbursement.

Additional Insured

- Types of Endorsements

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – AUTOMATIC STATUS WHEN
REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.
2. "Bodily injury" or "property damage" occurring after:
 - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Additional Insured

- Who Chooses Lawyer?
- Reasonable Fees
- Will Representative Protect Your Interests?
- What Does Policy Say?
- Investigation Costs
- Deductive Costs
- Certificate Insurance / Endorsement

Additional Insured

- Self –Insured

SELF INSURED OPTIONAL LANGUAGE

Operator is self-insured for the risks described in the form of Commercial General Liability referred to in this paragraph, up to the amount of \$1,000,000 per occurrence. In order for Grantee to evaluate and make a decision whether to agree to such self-insurance, Operator, upon written request from Grantee, will produce within 7 days of receipt of Grantee's request, financial statements and any other **required financial information** required to satisfy the Grantee of financial ability to satisfy its self-insurance obligations provided for in this agreement. If Grantee for any reason deems Operator's financial ability to satisfy its self-insurance obligations provided for in this agreement to be inadequate for the obligations provided for in this agreement then, upon written notice from Grantee to Operator that Grantee has deemed Operator's financial ability to satisfy its self-insurance obligations provided for in this agreement inadequate, and Operator does not correct its said financial ability within ten (10) days after receipt of Grantee's notice, then this agreement will be void. Operator agrees that although self-insured, Operator assumes and accepts the obligations, role and responsibilities of an insurance company providing insurance as stated in Commercial General Liability Form ISO Form CG 00 01 12 07, as amended from time to time, including, but not limited to, Grantee being a "named insured" for the risks described in such ISO Form CG 00 01 12 07 up to the amount of \$1,000,000 and \$2,000,000 aggregate to include contractual liability.

Additional Insured

- Review Financial Information
- Incorporate Normal Provisions of Insurance
- Goldman Sachs
- Merrill Lynch
- Bank of America

Tariff

- When all else fails, put in tariff

Tariff

- Sample Provisions

ITEM 615

LIABILITY FOR DAMAGE TO PORT AUTHORITY PROPERTY

Users causing damage to or destruction of Port Authority property shall be liable to the Port Authority for all costs, including attorney's fees, of repair or replacement of all property damaged or destroyed.

If damage is caused to any Terminal Facility or other property of the Port Authority, the User to whom such Terminal Facility or other property has been assigned must make a written report of the occurrence to the Authority's Executive Director, including the date and time the damage occurred, a description thereof, the names, addresses and business connections of such User, and the parties, or persons causing such damage, as well as the names, addresses, and business connections of witnesses to the occurrence, and all other available pertinent facts and information with respect thereto. Such report shall be made within 48-hours following the occurrence that causes the damage; however, a verbal report shall be made immediately to the Harbormaster.

ITEM 304

RESPONSIBILITY FOR DAMAGES

It is understood and agreed that Equipment will be operated under the direction and control of the User and that the User shall be responsible for the operation thereof, and the User assumes all risk for injuries or damages which may arise or grow out of the use or operation of the Equipment.

A charge for the service of Equipment operators is made by Authority as part of the charge for use of the Equipment and it is understood as part of this agreement that Authority acts solely as agent of the User in engaging Equipment operators employed by Authority, such operators shall be under the direction and control of the User and the operators shall be considered as the agent or servant of the User and User shall be responsible for the acts of such operator during the time of Equipment rental or lease. The User shall make a thorough inspection and be satisfied as to the physical condition and capacity of the Equipment as well as the competency of the operator before commencing any use of the Equipment, there being no representation or warranties with reference to such matters.

User assumes sole responsibility and liability for any damage or injury to property (including property of the Port Authority and Equipment itself) and for injury to or death of any person whomsoever (including property of Authority) occasioned by, incident to, arising out of, or connected with the possession, use and operation of Equipment by User and any operator furnished to User. User agrees to protect, indemnify and save Authority harmless from and against any and all liability and expense for or in respect to any claims, demands and suits for damages which may be made or brought against Authority arising out of the use and operation of the Equipment by User, including the acts or omissions of the operator of the Equipment.

This item is not to be construed as requiring any User to indemnify the Port Authority for that portion or percentage of such claim or damage, if any, caused by the negligence of Authority.

ITEM 671 INDEMNITY

Users by their use of the Terminal Facilities or Waterways consent to release and discharge Authority from liability for, and assume the risk of loss or damage to, the property of the User, and the personal injury or death of any person employed by the User, and agree to defend, indemnify, reimburse and hold harmless Authority, its agents, servants, employees and Port Commissioners, from all claims, causes of action, demands, damages and liabilities of any kind or character, including but not limited to claims, causes of action, demands, damages and liabilities in any matter resulting from, arising out of or caused, in whole or in part, by Users fault of any kind, including but not limited to willful misconduct, negligence, gross negligence, deliberate acts, strict liability in tort, breach of warranty, express or implied, or breach of any term or condition of the Authority's tariff, as amended, including that caused by any of the activities of Users agents, contractors, employees, invitees or licensees directly or indirectly related to use of the Terminal Facilities or Waterways by the User, save and except such damages as may be caused by the negligence of the Authority, its agents, contractors, employees, invitees or licensees, it being intended that the User will indemnify Authority for the Users proportionate fault, including but not limited to negligence, which causes such damages. Should the User fail or refuse after written notice to participate in the settlement of a claim for damages, then Authority may settle with the claimant without prejudice to Authority's indemnity rights set forth herein, it being agreed that a settlement after notice to the User will constitute a settlement of the proportionate fault, including but not limited to negligence of both the User and Authority, which settlement may later be apportioned between Authority and the User.

7. STEVEDORE AND FREIGHT HANDLER INSURANCE

As a condition to obtaining a license and subsequent renewals thereof, each person, firm, corporation or other business entity or their subcontractors, including but not limited to, labor contractors, providing stevedoring or freight handling services in or on the Terminal Facilities of the Port Authority, shall keep in force and effect bodily injury and property damage liability insurance covering its operations in or on the Terminal Facilities of the Port Authority. The limits of liability shall not be less than \$5,000,000 per occurrence or per claim and shall include, but not be limited to, Stevedore's Legal Liability, Warehouseman's Legal Liability, Freight Handlers Legal Liability, and shall name the Port of Corpus Christi Authority as an additional insured. Each person, firm, corporation or other business entity providing stevedoring and/or freight handling services shall also carry workmen's compensation including, but not limited to, U. S. Longshoremen and Harborworkers coverage. The policy or policies shall contain a clause that the insurer will not cancel or change the policy or policies without first giving the Port Authority fifteen (15) days written notice. Written proof of insurance as required herein shall be furnished to the Port Authority on forms acceptable to the Port Authority.

Tariff

- Binding?
- Notice
- Litigation

Tariff

- Alternative Dispute Resolution
 - Mediation
 - Arbitration
 - Small Claims Arbitration



Society of Maritime Arbitrators, Inc.

DOCUMENT NO. 2

**RULES FOR SHORTENED ARBITRATION
PROCEDURE
OF THE SOCIETY OF MARITIME
ARBITRATORS, INC.**

**(This Procedure applies to contracts entered into on or after
March 1, 2001)**

[Click here for rules prior to March 1, 2001](#)

Supplement to the Arbitration Clause

"Notwithstanding anything contained herein to the contrary, should the sum claimed by each party not exceed U.S. \$ _____ (insert amount, exclusive of interest on the sum claimed, costs of the arbitration, and legal expenses), the dispute is to be governed by the "Shortened Arbitration Procedure" of the Society of Maritime Arbitrators, Inc. (SMA) of New York, as defined in the Society's current Rules for such procedure, copy of which is attached hereto."

SMA RULES FOR SHORTENED ARBITRATION PROCEDURE

1. Upon giving notice of a claim under these rules, the claimant shall nominate an arbitrator from the SMA roster to act as the sole arbitrator and simultaneously request the respondent's agreement. Failing a response by the respondent within 10 days of this initial nomination, the arbitrator so nominated shall become the sole arbitrator. The arbitrator shall promptly submit his/her disclosure statement to the parties, as required under Section 9 of the standard SMA Rules.
2. If the respondent does not agree to the nominated arbitrator as sole arbitrator, the respondent shall propose three other persons from the SMA roster to serve as sole arbitrator. Failing agreement on a sole arbitrator, either party may request that the President of the SMA appoint the sole arbitrator. This appointment shall be binding upon the parties.

3. Within 15 days of appointment, the arbitrator shall establish a written schedule for the prompt submission of the claimant's initial statement of claim with all supporting documents. The respondent shall submit its response and any counterclaim with all supporting documents within 20 days of receipt of claimant's submissions. In the event of a counterclaim, the first moving party shall respond within 20 days or sooner. At the arbitrator's discretion, the schedule may be varied by a few days. Short replies by both parties to each other's defenses may be exchanged consecutively or simultaneously, at the arbitrator's discretion.

4. The arbitration shall proceed on documents alone.

5. There shall be no discovery except as deemed necessary by the arbitrator.

6. The total items of dispute submitted by both parties under this procedure shall not number more than four, the combined total of which shall not exceed the figure agreed in the contract. At the arbitrator's sole discretion, a reasonable amendment to this limitation may be permitted.

7. The parties may be represented by attorneys or commercial advocates. An allowance towards legal expenses or time and expenses incurred by the parties in the prosecution or defense of the case may be awarded at the discretion of the arbitrator, but any such award shall not exceed \$2,500.

8. The award shall be issued within 30 days of receipt of the final replies or the arbitrator's declaration that the proceeding is closed.

9. The fee and expenses of the arbitrator shall not exceed \$1,500.

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Conclusion

- Power of the Purse
- Who is in the Driver's Seat