

## **Framework for Mass Arbitration Proceedings**

### **ADR-MDL™**

A “Mass Arbitration” is deemed to exist when 20 or more individual claims by employees or consumers are submitted by or with the assistance or coordination of the same law firms or organizations that are subject to a common set of factual and legal issues. FedArb’s framework provides individual arbitrations with nominal front-end filing fees for consumers and employees. FedArb’s framework (1) establishes an MDL type panel (“ADR-MDL™”) to deal with issues common to all claims in order to promote efficiency, and consistency; and (2) deals with individual issues by a combination of a claims form and (where necessary) by individual arbitrations by respected former jurists. Absent the parties’ agreement, all setup, administrative and arbitrator fees will be paid by the Company, with individual claimants paying a nominal \$50 filing fee.

**Need to Contact FedArb:** Companies electing to use FedArb’s Framework need to contact FedArb to (1) advise that they intend to use FedArb to resolve claims by their employees or consumers, including Mass Arbitrations, (2) submit their claim form so that FedArb can integrate it into FedArb’s automated case management system, and (3) pay a one-time technology integration fee.

**Mass Arbitration Filing Fee/Claimant Submissions:** Law firms representing a group of claimants shall pay a \$50 filing fee on behalf of each claimant (which fee may be reduced or waived under applicable law) and shall electronically submit a completed claims spreadsheet as agreed to with each Company. Incomplete claims will not be accepted for filing. The Company will pay a \$150 filing fee for each claim; provided, however, that after 1,000 recognized claims are filed, the filing fee to the Company will drop from \$150 to \$100 for each additional claim. The Company will also pay all administrative fees and set up fees for the MDL proceedings, as well as the costs and fees for any individual arbitrations.

**Non-Mass Arbitration Filing Fee/Individual Claimant Submission:** Individuals wishing to submit a claim shall pay a \$50 filing fee (which fee may be reduced or waived under applicable law) and each claimant shall fully complete and electronically submit a claims submission form available as directed by each Company. Incomplete claims will not be accepted for filing. The Company will pay a \$1,500 filing fee for each such claim as well as the costs and fees for any individual arbitrations. Such arbitrations will proceed using FedArb’s arbitration rules unless (1) more than 20 individual claims involving substantially identical factual and legal claims are filed, in which case all such individual claims will proceed under FedArb’s Mass Arbitration Framework; (2) the claim is under \$100,000, in which case the matter will proceed using FedArb’s FastTrack expedited arbitration rules; or (3) the arbitration agreement specifies that the arbitration is to be conducted pursuant to the rules of another arbitral institutions (such as CPR, JAMS, AAA, etc.), in which case FedArb will administer the arbitration using those arbitration procedures, while still using FedArb’s fee structure.

**MDL Framework:**

In a Mass Arbitration, all individual arbitrations will be stayed and an ADR-MDL™ Panel will be established, as follows:

- The Company will pay FedArb a one-time ADR-MDL™ setup fee (based on the number of arbitrations and complexity of the issues) for an MDL type proceeding to resolve common issues.
- If there are multiple law firms representing claimants in a mass arbitration, the ADR-MDL™ Panel (or FedArb if the ADR-MDL™ panel is not yet constituted) will appoint lead plaintiffs' counsel for the purpose of the MDL proceeding in the event the law firms fail to agree upon lead counsel.
- Procedure to establish the ADR-MDL™ Panel. FedArb, with input from the parties identified above, will create a three (3) judge panel of former federal judges from FedArb's roster with relevant expertise who will bill at their normal rate; provided, however, that if there are fewer than 50 claims and the aggregate claimed damages is less than \$250,000, then the parties may agree that the panel will be a single FedArb panelist.
- An administrative fee of 6% of the fees billed by the ADR-MDL™ Panelists will be paid to FedArb by the Company.

The ADR-MDL™ panel will decide issues common to all claims (for example, discovery, legal, procedural and common factual issues). In addition, the ADR-MDL™ panel will render a decision on damage formulae that are common to, and will be binding on, all current and future such claimants. To the extent that there are individual facts and circumstances that need to be resolved, every attempt will be made to resolve individual facts by use of a claim form. However, if individual adjudications are required, then these claims will be remanded for resolution by individual arbitrations as set forth below.

**Arbitrations:** If after the ADR-MDL™ panel's final decision, individual facts require individual adjudication, then FedArb will work with the parties to create a roster of 5 or more FedArb panelists (as the situation may require) with relevant expertise to act as arbitrators based on the geographic distribution of claims. The designated arbitrator will deal with each case within 90 days after it is remanded by the ADR-MDL™ panel for any individual resolution. Arbitrators will be randomly assigned and will bill the Company at their normal hourly rate.

**Administrative Fee:** For each arbitration hearing, FedArb will receive a \$1,500 administrative fee, with one third (\$500) to be paid upon the assignment of an arbitrator; one third (\$500) within ten (10) business days prior to the hearing date, and one third (\$500) after the arbitration is concluded, at which time all arbitrator's fees and expenses will also be due.

**Key arbitration assumptions:**

1. Parties will use FedArb's FastTrack expedited arbitration rules (limited briefing, limited discovery, no post hearing briefs). FedArb can also administer arbitration procedures by

CPR, JAMS, AAA or other similar entities, while still using FedArb's framework and fee structure.

2. Issues common to all cases resolved by the ADR-MDL™ panel will be dispositive.
3. To the extent these Mass Arbitration procedures conflict with FedArb's general arbitration rules or the rules the arbitration is being conducted under, these Mass Arbitration procedures supersede and govern with respect to the timing and amount of fees.
4. Video conferencing will be used unless compelling facts and circumstances dictate otherwise, or unless the claim is for an amount in excess of \$250,000.

**Settlement**--Nothing in this framework shall prohibit the parties from settling any individual case or groups of cases.

**Modifications to Mass Arbitration Framework**--FedArb reserves the right in its sole discretion to change the elements of this framework and any FedArb fees at any time. These modifications and FedArb fees shall govern any arbitration prior to the Claimant submitting a valid claim form or where the applicable FedArb fees have not already been triggered.

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