

This is the sample expert discovery stipulation referenced in Section C(5)(e)(ii)(C) (“Expert Reports”), page 16 of the Guidelines on Best Practices for Litigating Cases Before the Court of Chancery. It should be modified to fit the circumstances and used in conformity with the Guidelines.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

_____,)
)
Plaintiff,)
)
v.) C.A. No. _____ - ____
)
_____,)
)
Defendant.)

**STIPULATION AND [PROPOSED] ORDER
GOVERNING EXPERT DISCOVERY**

WHEREAS, the parties agreed to, and the Court entered on _____, 20__, a case scheduling order to govern the above-captioned action, which provides for the presentation of expert testimony; and

WHEREAS, the parties have discussed and agreed upon the proposed procedures to govern discovery in connection with expert witnesses in this action as set forth below.

IT IS HEREBY STIPULATED AND AGREED, by the parties hereto, through their undersigned counsel, subject to the approval of the Court, pursuant to Court of Chancery Rules 26 and 29, that the following procedures shall govern discovery in connection with expert witnesses in this action:

1. With respect to any person whom a party to this action expects to call as a witness at trial or any hearing to present evidence under Rules 702, 703, or 705

of the Delaware Uniform Rules of Evidence (an “Expert”), the party shall, in accordance with the deadlines agreed upon and ordered in the Stipulation and Order Governing Case Schedule, designate its Expert or Experts. Such designation shall include, at a minimum, the following:

- (a) The identification of each Expert by name and title;
- (b) The Expert’s *curriculum vitae*; and
- (c) A summary of the subject matters on which each Expert will testify.

2. Any report from an Expert (each an “Expert Report”) shall include, at a minimum, the following:

- (a) A complete statement of all opinions to be expressed by the Expert and the basis and reasons therefor;
- (b) A list of the documents, data, and other information on which the Expert relied in forming the opinions reflected in the Expert Report;
- (c) A list of the documents, data, and other information, other than that encompassed by subparagraphs (a) and (b) above, on which the Expert intends to rely upon in testifying in this matter;
- (d) A list of any exhibits used in the Expert Report. This shall not preclude the Expert from using demonstrative exhibits when testifying at trial so long as such demonstrative exhibits are provided to all parties in accordance with such schedule as may be agreed by the parties or established by the Court;
- (e) A statement of the qualifications of the Expert;
- (f) A list of all articles, treatises, books, working papers or other publications authored by the Expert within the preceding 10 years and, upon request, copies of all such (or relevant portions of such) publications so listed;

- (g) A list of all articles, treatises, books, working papers, or other publications authored or co-authored by the Expert at any time relating to the subject matter on which the Expert is offering an opinion in the above-captioned action, and upon request, copies of all such (or relevant portions of such) articles or working papers so listed;
- (h) A statement of the compensation paid or to be paid to the Expert by the party sponsoring that Expert or by any other individual or entity in connection with his or her work in the above-captioned action (including payments by or to outside data consultants reviewing work product to assist in the Expert's analysis); and
- (i) A list of any other litigation or any administrative proceeding, in which the Expert has submitted an expert report or has testified as an expert in a deposition, hearing or at trial, within the preceding five years, including, to the extent not otherwise prohibited by confidentiality obligations, the names of the parties, the court in which the action was filed, or, if transferred, the court where the action was transferred, the docket number, and any other information necessary to identify the litigation or proceeding.

3. Notwithstanding anything in Paragraph 2, discovery shall not be permitted into the following:

- (a) Draft reports, draft studies, draft affidavits, or draft work papers; preliminary or intermediate calculations, computations, analyses, or data; or other preliminary, intermediate, or draft materials prepared by, for, or at the direction of an Expert unless the Expert relies on the aforementioned as a basis for his or her opinion(s);
- (b) Any notes or other writings taken or prepared by or for an Expert in connection with this matter, including, but not limited to, e-mail (or other electronic communication), correspondence or memoranda to or from, and notes of conversations with, the Expert's assistants and/or clerical or support staff, other Experts, non-testifying expert consultants, or attorneys for the party

offering the testimony of such Expert, unless the Expert relies on the aforementioned as a basis for his or her opinion(s);

- (c) Materials or information that may have been reviewed or considered but not relied upon by the Expert; and
- (d) Written or oral communications between or among the Expert, any person at the Expert's firm and any party or counsel or other agent for the party on whose behalf the Expert was engaged, except to the limited extent that an Expert expressly relies on a communication of a matter of fact from such counsel, agent, or party in the Expert Report or in testimony.

4. Documents and other written materials referred to in Paragraph 2 shall be identified at the time the Expert Report is delivered to the opposing party by Bates number if such documents have been produced in this litigation, and otherwise shall be identified with reasonable particularity. Copies of such documents, if they have not been produced in this litigation, shall be produced at the time the Expert Report is delivered to the opposing party; provided, however, that a party may prepare and use additional demonstrative exhibits during the course of any trial or hearing (including recesses) so long as such demonstrative exhibits are provided to all parties in accordance with such schedule as may be agreed by the parties or established by the Court.

5. In responding to the discovery required by Paragraphs 2 and 4 hereof, a party need not produce, but must nevertheless identify, (i) transcripts of depositions taken in this action, by name of deponent and date of deposition; (ii) exhibits from depositions, by exhibit number, taken in this action; and (iii) publicly available

regulatory filings. Spreadsheets, data sets, and like supporting materials, which the Expert relied on in forming the opinions reflected in the Expert Report, shall be produced in native electronic and fixed formats. Native format documents may be stripped of their metadata, provided that formulae, hidden columns, and algorithms in native format documents that are required to derive the results displayed therein are preserved.

6. Any fees charged by an Expert for responding to discovery, including time spent at depositions, shall be paid by the party who has retained the Expert; provided, however, that nothing herein shall preclude or constitute a waiver of any party's right to seek recovery of any fees or expenses paid in connection with the work of any Expert retained in connection with the above-captioned action, including in any fee and expense request made in connection with any settlement or final judgment in the above-captioned action, or any party's right to oppose any such request.

7. Nothing herein shall limit or waive any party's rights to object for any reason to (i) the admission, in whole or in part, of any opposing party's Expert Report into evidence, (ii) the qualification of any person to serve as an expert witness, or (iii) the admission of some or all of any Expert's testimony.

8. Nothing herein shall be deemed to authorize or permit discovery of facts known or opinions held by an Expert who has been retained or specially

employed by a party exclusively in anticipation of and connection with litigation or preparation for trial or any hearing and who the party will not call as an expert witness at trial or any hearing.

9. The scope of a party's rebuttal Expert Report shall be limited to rebutting positions taken in the opposing Party's opening Expert Report, and no party may submit a rebuttal report on a topic not addressed by the other party in an opening Expert Report.

10. No subpoena for deposition or documents need be served on any Expert. Instead, the party who retained the Expert shall make the Expert available for a deposition at a time and place mutually agreeable to the parties and in accordance with the case scheduling order.

11. This Stipulation and Order applies solely to discovery of or from Experts in their capacity as experts and does not apply to discovery of fact witnesses. [None of the individuals or entities that served as Defendant's legal or financial advisors in connection with any of the transactions that are the subject of this action shall constitute Experts or be subject to the terms of this Stipulation and Order.]

12. This Stipulation may be amended only by a subsequent written stipulation between the Parties or upon order of the Court for good cause shown.

[COUNSEL]
Attorneys for Plaintiff

[COUNSEL]
Attorneys for Defendant

SO ORDERED this _____ day of _____, 20__.

[Vice] Chancellor