

ULTIMATE DODGEBALL: HOW TO AVOID DELAYING TACTICS BY ARBITRATION PARTICIPANTS:

DISCOVERY

By

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- I. Some Non-Payers Vague About Their Defenses
 - Critical to Force Articulation of Issues at Organizational Meeting
 - Discovery Limited to Those Issues
 - No Discovery on Other Issues Until Identified to Panel and Opposing Parties
 - Cutoff Date for New Issues
 - Consider Denying Late Addition of New Issues and Discovery Thereon
- II. Standards for Discovery
 - Federal Rules – May Lead to Admissible Evidence – Very Broad
 - You Are an Expert Panel – Use Your Expertise
 - Allow Discovery of Most Probative Evidence
- III. Documents Discoverable
 - Courts Sometimes Do Not Understand Likely Location of Probative Evidence
 - Courts Sometimes Do Not Understand Difficulty of Extracting Evidence
 - Courts Sometimes Have Problems Connecting Evidentiary Dots
 - Use Your Expertise to Pinpoint Probative Evidence and Avoid Excessive Costs
- IV. Course of Dealing Issues
 - Can Require Very Costly Discovery
 - Consider Whether Course of Dealing is Probative

- If Underwriting or Claim Handling in the Field is Probative, Use Samples

V. Excessive Depositions

- Time Consuming, Expensive and Indicative of a Fishing Expedition
- Set Limit on Depositions at Organizational Meeting
- Require Justification of All Depositions to Exceed Limit
- Consider a Final Ceiling with Counsel to Decide Whom to Depose

VI. Panel Remedies for Discovery Delays

- Assess Attorneys' Fees
- Bar Introduction of Documents or Witness Testimony
- Bar Defense or Claim