



UiO • **Scandinavian Institute of Maritime Law**
University of Oslo

Norwegian Arbitration Day 2020

Evidence disclosure

Significance for the case planning

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Introduction

- Previous speakers have dealt with specification requirements and costs involved in connection with evidence.
- I'll concentrate on importance of disclosure and evidence for the case planning.

Arbitration process

- The arbitration process is basically divided into the **prehearing** and the **hearing** phase. Proper management of the prehearing phase assures that the actual hearing of the case is conducted in a predictable, transparent, cost-efficient and fair manner.
- Agreement on management of the case must be reached at an early stage of prehearing phase.

CMC – Minutes

- The purpose of the CMC is to assure a **prudent** and **cost-effective** resolution of the litigation. Both sides should at this meeting give information on the types of evidence they want to utilize.
- This is important for the scheduling of phases. Not only with respect to time but to assure a fair trial.

CMC cont.

- Establishing of dates for presentation of:
- list of witnesses,
- written statements by witnesses,
- use of expert witnesses and/or availability of their reports,
- other types of evidence (and availability for the other party)
- **cut off** time for presentation of new evidence.

Necessary to assure fair trial on a correct factual basis.

Noma - Rules on the taking of evidence

- Give the parties good guidance on the taking of evidence.
- But also empower the tribunal to make orders relating to evidence, but in order for the tribunal to **order** a party to produce documents this must have been agreed to.

Noma Rules on evidence

- Rule 5 deals with experts appointed by one of the parties.
- Rule 6 deals with inspection by the tribunal – at the request of a party

Noma Rules om evidence

- Article 8 deals with admissibility and assessment of evidence.

Guidelines issued by Noma regulates evidence in

Point 10. Production of evidence

- Noma Rule 10.6 empowers the tribunal to require the parties to produce evidence within a timelimit.
- Noma Rule 10.7 empowers the tribunal to determine “the admissibility, relevance, materiality and weight of the evidence offered”.

Norwegian code on arbitration sec 28 on Evidence

- Para1: The parties are responsible for substantiating the case and are entitled to present such evidence as they wish.

Norwegian code on arbitration sec 28 on Evidence

- Para 2: The arbitral tribunal may disallow evidence that is *obviously irrelevant* to the determination of the case. The arbitral tribunal may limit the presentation of evidence if the extent of such presentation is *unreasonably disproportionate* to the importance of the dispute or the relevance of the evidence to the determination of the case.

Norwegian Code on Arbitration – sec. 29, 30

- Deal with experts (29) but also with assistance from the ordinary courts (30).

Basic requirements in connection with arbitration

- Predictability, transparency, cost-effectiveness and fairness. All impact the introduction and use of evidence in an arbitral process.
- More important in connection with arbitration than in litigation before the ordinary courts, as an arbitration case will only be heard once.

Predictability and transparency

- There should be no surprises at the hearing with regard to evidence. All evidence should be made known during the pretrial phase. The cutoff date for new evidence is important to achieve these goals.

Cost-efficiency

- Arbitration is a costly way of settling a dispute, but may be time-efficient mean to solve the dispute. And it should be conducted in a cost-effective manner
- Costs involved in the preparation and presentation of evidence should be proportionate.

Conclusion

- In order to assure a just settlement by the arbitrators all evidence should be made known and available during the preparatory stage.
- Evidence should be limited to what is necessary to sustain ones claims and rebut the allegations by the other party.