

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL

IN RE:
South Carolina Patients' Compensation
Fund, Appellant/Respondent,

CONSENT SCHEDULING ORDER

v.

Case No. 2013-5

Modus21, LLC, Respondent/Appellant.

This matter is before the South Carolina Procurement Review Panel (the Panel) on a request for further administrative review by the South Carolina Patients' Compensation Fund (the PCF) and Modus21, LLC (Modus21) from the May 13, 2013, order of the Chief Procurement Officer. This case involves a contract dispute between the PCF and Modus21. The CPO's decision is twenty-four pages in length. Both parties have filed detailed exceptions to his findings of fact and conclusions of law. Understandably, limiting the issues on appeal can shorten the time for hearing, and the parties have indicated they wish to cooperate to that end.

The Panel, however:

has the authority and retains the discretion to structure its procedures and hear evidence on all of the issues raised before the CPO, even if those issues were not identified [by the parties] in the letters appealing the CPO decision. And, these cases, expressly or by inference, emphasize and reaffirm that when the facts and circumstances so dictate, the Panel has the discretion to limit the testimony to the issues raised in the request for review....

[T]hese cases, read together, affirm the discretion of the Panel to frame the issues and decide the scope of review after considering all of the facts and circumstances of the particular appeal at issue.....

The Panel is thus justified hearing the whole case anew and may consider those issues not specifically raised in the Request for Review Letter. It is reluctant to do so in this case, however, as judicial economies and efficiencies may be served by limiting the issues before the Panel to those in actual dispute....[i]n the interest of fairness to both parties, the Panel will issue a scheduling order simultaneous with this decision that requires the parties to identify the issues in conflict and exchange documents to be introduced before the Panel, thus giving both parties ample notice and opportunity to be heard.

In re: Contract Controversy – Agricultural Biotechnology/Molecular Biology Complex (Ellis Don Construction, Inc.), Panel Case No. 2005-2 (Order of M. Bakker, Hearing Officer) (footnotes and internal citations omitted).

The parties, including the Chief Procurement Officer, have conferred and agreed on certain scheduling and case management matters. With such consent, and pursuant to its

authority under S.C. Code Ann. § 11-35-4410 (4)(a)(i) and other authority and precedent, the Panel, by its Chairman, hereby sets forth the following Conference and Scheduling Order for this hearing:

1. On or before **August 30, 2013**, the PCF shall inform the other parties in writing which of the issues contained in its May 23, 2013, request for review letter, if any, it wants to abandon or modify. This communication shall be served on opposing counsel and filed with the Panel.
2. On or before **August 30, 2013**, Modus21 shall inform the other parties in writing which of the issues contained in its May 22, 2013, request for review letter, if any, it wants to abandon or modify. This communication shall be served on opposing counsel and filed with the Panel.¹
3. On or before **September 6, 2013**, the PCF and Modus21 shall file with the Panel, and serve upon the CPO, a joint statement of the issues to be considered by the Panel on appeal.
4. On or before **September 13, 2013**, the parties shall confer to discuss the issues raised by the stipulations set forth below, to identify any documents on which they may rely and/or introduce at the hearing, and to identify the responsibilities of the parties concerning the stipulations.
5. Motions, if any, are to be filed on or before **October 11, 2013**. Responses to any motions are due by **October 25, 2013**. If desired, the parties may file brief (i.e., no more than 5 pages in length) final replies by **November 1, 2013**. Motions, responses, and final replies are to be served on opposing counsel and filed with the Panel.
6. On or before **November 1, 2013**, the PCF and Modus21 shall file with the Panel, and serve upon the CPO, a joint document detailing any agreed-upon stipulations of fact.
7. On or before **November 1, 2013**, the PCF and Modus21 shall file with the Panel, and serve upon the CPO, a joint document that identifies the witnesses, including reply witnesses, expected to be called by each party, which issues such witnesses will testify to, and a summary of anticipated testimony.² Excepting rebuttal witnesses, any person not on the witness list will not be allowed to testify without approval of the Panel Chairman on motion and with exceptional justification.
8. On or before **November 1, 2013**, the parties shall file a joint document identifying which exhibits and other documentary records contained in the initial record before the Panel may be automatically admitted into evidence. All other documents must be admitted

¹ It is expected that the parties will be specific in their issues before the appeal, either following the format used by the CPO in his decision and/or some other organized format. A mere recital that a party appeals "all the issues before the CPO" would not be consistent with this Scheduling Order.

² The use of pre-filed testimony is greatly encouraged. If used, the testimony should be filed with a copy given to opposing counsel at least 10 days before the day scheduled for hearing. The witness should still appear to declare the document his or her testimony and would be subject to cross-examination. Of course, rebuttal testimony would be given at the time of the hearing.

through witness testimony at the hearing. This document shall also contain each party's objections to the admission of particular exhibits and the legal basis, including appropriate legal citation, of the objections.

9. On or before **November 1, 2013**, each party shall serve the other parties with copies of any additional exhibits they propose to offer at the Panel hearing. Unless the use of the exhibit would be solely for impeachment, an exhibit not previously exchanged by the parties may not be admitted.
10. On or before **November 15, 2013**, the parties shall exchange objections to any proposed additional exhibits. Should the parties disagree regarding the admissibility of an exhibit, they shall prepare an Objection Summary for filing with the Panel on **November 22, 2013**. The Objection Summary should identify the exhibit by party name and descriptive title, note which party or parties object to it, and concisely explain the grounds and legal basis for the objection, including appropriate legal citation. An objection which should have been known to the party, but not properly stated and supported by authority in the Objection Summary may result in waiver of the objection.
11. The parties are to schedule with the Panel's counsel a pre-hearing telephone conference between counsel and the Panel Chairman and Vice Chairman during the week of **November 18, 2013**. This pre-hearing telephone conference will address the time counsel anticipates needing for the hearing and any other unresolved matters.
12. All subpoena requests must be submitted to the Panel's counsel no later than **November 15, 2013**.
13. If desired, the parties may file final pre-hearing briefs on or before **November 22, 2013**.

IT IS SO ORDERED.

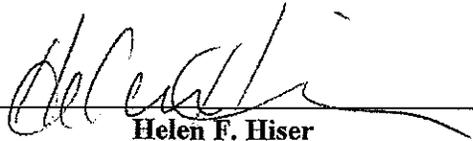
SOUTH CAROLINA PROCUREMENT REVIEW PANEL



BY: C. Brian McLane, Chairman

Date: August 21, 2013.
Columbia, SC

WE SO MOVE AND CONSENT:



Helen F. Hiser

**McANGUS GOUDELICK & COURIE
LLC**

**Attorneys for South Carolina Patents'
Compensation Fund**

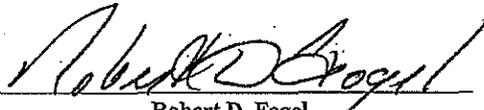
Robert D. Fogel

**LEGARE, HARE & SMITH
Attorney for Modus21, LLC**

**William Dixon Robertson III
Attorney for Chief Procurement Officer**

WE SO MOVE AND CONSENT:

Helen F. Hiser
McANGUS GOUDELOCK & COURIE LLC
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Robert D. Fogel
LEGARE, HARE & SMITH
Attorney for Modus21, LLC

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LEGARE, HARE & SMITH
Attorney for Modus21, LLC

A handwritten signature in black ink, appearing to read "William Dixon Robertson III". The signature is written in a cursive, somewhat stylized font. It is positioned above a horizontal line.

William Dixon Robertson III
Attorney for Chief Procurement Officer