

New Era ADR Rules FAQs



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In General

Who created New Era ADR in the first place, and why?

New Era ADR was created by four legal industry professionals frustrated that resolving legal disputes in the only forums available at the time – the courts and legacy arbitration forums – automatically meant exorbitant costs, endless time, and massive disruption to lives and businesses. The [founders envisioned a better way](#) to resolve the vast majority of legal disputes. The purpose of New Era ADR then, as it is now and always will be, is to provide a cost-effective, fast, and fair method for receiving enforceable resolutions to legal disputes.

In the United States alone, litigation is a 12-figure business. Average litigation expenses can easily range from the high six-figures into the millions of dollars and sometimes beyond. Additionally, cases can take years to resolve, sapping bandwidth and money that is better used for growth and innovation in companies or on individuals' personal matters. The founders of New Era ADR all dealt with these issues. Disputes happen, but they shouldn't be so acrimonious, cost endless amounts of time and money, or ruin lives and business, and that's why we built New Era ADR.

Read more about our founders' vision [here](#).

How does New Era ADR achieve its purpose of delivering fair, expedited arbitrations?

New Era ADR's approach relies on three main areas: (1) experienced arbitrators and mediators ("[Neutrals](#)"); (2) streamlined [Rules and Procedures](#) (the "[Rules](#)"); and (3) a secure, user-friendly online platform accessible from anywhere (the "[Platform](#)"). These allow New Era ADR to use flat fees throughout (as opposed to charging or paying by the hour), so that *everyone* involved in a dispute is aligned on the same goal of participating in an efficient and fair process.

Which version of New Era ADR's Rules and Procedures apply to a given dispute?

We regularly update our Rules and Procedures, and we've done so since they were first released at New Era's launch in the Spring of 2021. As more cases come to our platform, as laws around arbitration and litigation change, and as we, as a company, continue to challenge ourselves and listen to feedback, we make improvements and clarifications to our Rules to continue to optimize our goal of providing cost-effective, fast, and fair resolutions. You can find a Change Log at the end of our Rules documenting these changes.

Further, to minimize any confusion amongst these changes, Section 2(dd) specifies which version of the Rules are applicable to a given dispute, which is generally "the version of the Rules in effect at the time a

claim is filed with New Era ADR” (and, in the case of mass arbitrations, at the time the first case of the mass arbitration is filed), unless the parties have agreed otherwise.

Does allowing for prepayment of arbitration fees interfere with New Era ADR’s ability to administer fair arbitrations?

No. First, any prepayment of arbitration fees are paid directly to New Era ADR and not to any Neutral. New Era ADR is a digital platform and arbitration administrator; we do not make any legal determinations in the course of administering arbitrations.

Second, New Era ADR Neutrals are non-exclusive, independent contractors of New Era ADR and they receive arbitrations from many different sources. Being independent contractors, Neutrals are not privy to New Era ADR’s commercial relationships with any of its customers, whether they pay in advance or not. In fact, New Era ADR has an internal employee firewall policy in which, in addition to general employee confidentiality obligations, employees are explicitly prohibited from sharing information about New Era ADR’s commercial and business relationships with Neutrals.

And further, if a Neutral learns about a prepayment relationship between a party to their dispute and New Era ADR (from whatever source), that Neutral is obligated to disclose that fact to the parties, who have the right to object to that Neutral’s continued service under Section 2(k)(vi) of the Rules.

Finally, it is important to point out that annual fees paid by companies or organizations to New Era serve to subsidize the cost of the dispute for all parties. The purpose is to provide additional predictability and cost savings – savings that lower the costs for not just the organization but also any consumers, employees, and individuals which may be involved in a dispute with the organization.

Who are New Era ADR’s Neutrals?

New Era ADR has its own bench of Neutrals, each of whom have agreed to be a New Era ADR Neutral, and the number on that bench is consistently growing. As described in more detail below, these Neutrals have entered into non-exclusive, independent contractor agreements with New Era ADR. Although this bench has the requisite experience for nearly all types of disputes, New Era ADR has also successfully connected litigants on our platform with “ad hoc” Neutrals where expertise in a very specific industry or area of law is required.

New Era ADR has specific minimum criteria for being considered for our bench, and [this page provides more detail](#). In short though, New Era ADR strives to provide a diverse bench of experienced legal professionals, many of whom have been arbitrating and mediating for decades (as ex-judges or otherwise). However, we also have many Neutrals who, although practicing law for many years, are

earlier in their careers as arbitrators and mediators. Regardless, before we admit any Neutral to our bench, all Neutral candidates go through a comprehensive vetting process to ensure that they will help provide efficient, fair, and inexpensive decisions. Ultimately though, the parties choose their Neutral through New Era's rank and strike process. New Era's role is simply to provide the diverse panel from which the parties rank and strike.

Are New Era ADR's Neutrals employed by New Era ADR?

No. As mentioned above, New Era ADR's Neutrals are non-exclusive, independent contractors of New Era ADR who all maintain their own independent arbitration, mediation, and/or legal business. We select our Neutrals based on their experience, expertise, and fit for New Era ADR's mission of delivering fast, efficient, and fair resolutions to legal disputes.

How is a Neutral selected for a given dispute under New Era ADR's Rules?

Unless the parties to a dispute have agreed otherwise, all disputes on New Era ADR's Platform ensure that the parties participate equally in selecting a Neutral through a rank-and-strike process. New Era provides the parties with a list of Neutrals for rank and strike according to one or more of the following criteria: (A) requisite experience to preside over the dispute at issue, (B) geographic location, (C) diversity of their background and experience, and (D) any other qualities New Era ADR deems relevant for the particular dispute at issue, in each case. See Section 2(j) of the New Era ADR Rules and Procedures for details on the rank-and-strike process.

Does New Era ADR allow for a party to object to the Neutral who was selected from the rank/strike process, but after adequate disclosures are made?

Yes, Neutrals are required to submit disclosure statements identifying any actual or potential conflicts of interest between themselves and any parties related to the dispute. Each party then has the right to object to a Neutral's service (or continued service), and New Era ADR may replace the Neutral with the next-highest ranked Neutral from the rank-and-strike list if New Era ADR deems it necessary (or applicable law requires it). The Rules and Procedures further outline New Era ADR's obligations to comply with any applicable law with respect to Neutral selection and disqualification. See Sections 2(j) and 2(k).

Does New Era ADR allow for delegation of arbitrability to its Neutrals, and is this allowed under the Federal Arbitration Act?

Yes and Yes. First, Section 2(z) of the New Era ADR Rules and Procedures grants a Neutral the authority to determine jurisdiction and arbitrability issues in a dispute. This is consistent with longstanding principles of arbitration (for example, see AAA Commercial Rule R-7; JAMS Comprehensive Arbitration Rules and Procedures Section 11(b)). Further, as described above, because New Era ADR Neutrals are

not employees of New Era ADR and are, in fact, non-exclusive independent contractors, New Era ADR Neutrals have no incentive to determine arbitrability in favor of New Era. Moreover, our Neutrals are paid on a flat-fee basis regardless of the outcome of an arbitrability decision, so there is also no financial incentive to find for arbitrability in favor of New Era.

For more authority on delegation of arbitrability under the Federal Arbitration Act, see *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524 (2019); *Rent-A-Ctr., West, Inc. v. Jackson*, 561 U.S. 63 (2010); *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995); *Brennan v. Opus Bank*, 796 F.3d 1125 (9th Cir. 2015); *Patrick v. Running Warehouse, LLC*, 93 F.4th 468 (9th Cir. 2024).

How are other threshold issues, like arbitrability, handled under New Era ADR's Rules?

Section 2(r) of the New Era ADR Rules and Procedures outlines New Era's general approach to procedure on the Platform. First, "Parties may offer relevant and material facts and evidence as necessary to facilitate the Neutral's understanding of the dispute, but formal Federal and State Rules of Evidence and Rules of Civil Procedure do not apply."

This means that formal briefing schedules and formal motion practice are not encouraged by rule (although specific exceptions may be made by the Neutral). As such, preliminary and dispositive issues (and any other threshold issues) should be raised with the Neutral at any time during the proceedings through submissions as a part of initial pleadings, the messaging function on the Platform, and/or final argumentation, and the Neutral has the discretion to structure the proceedings and hearing schedule accordingly.

Ultimately, the Neutral is the final authority in determining the cadence and progression of the proceeding, including the hearing schedule, as well as the scope of discovery and the admissibility, weight, veracity, authenticity, relevance and importance of any evidence or arguments submitted.

Does New Era ADR allow for discovery under its Rules?

Yes. Section 2(o) of the New Era ADR Rules and Procedures outlines the rules for discovery on the New Era ADR Platform. In general, parties have a right to discovery seeking non-privileged documents and information in an opposing Party's possession that are (1) relevant to the claims or defenses at issue, and (2) necessary in furthering the Neutral's understanding of the facts and circumstances of a case that enables the Neutral to make an informed decision on the merits. The presiding Neutral will review all requests for production in light of this standard and implement discovery procedures that strike a fair balance between the Parties' right to discovery and an efficient and economical resolution of the dispute.

Discovery is available under all arbitration proceedings on the New Era ADR Platform, including with Virtual Expedited Arbitrations and Virtual Standard Arbitrations. Section 2(o) outlines the differences between the two. Discovery is nonetheless available under both.

Does New Era ADR have page limitations on briefing or evidence submissions?

No, New Era ADR does not impose any page limitations on briefing or evidence submissions. However, Section 2(p) of the New Era ADR Rules and Procedures grants Neutrals the authority to “determine the appropriate limits on the amount of evidence, briefing, and argumentation to be submitted based on the complexity of the issues involved, number of parties, and any other material factors in their discretion.”

How do the parties and the Neutrals communicate to each other during a case?

The New Era ADR Platform contains a messaging function that allows the parties and the Neutral to communicate with each other securely and instantaneously. This can be used to raise threshold issues; submit Specific Discovery Requests (see New Era ADR Rules and Procedures Section 2(o)(iii)); ask questions about process, steps, and procedure; and negotiate a date/time for a hearing; among anything else needing to be discussed. Virtual Arbitrations do not allow for any *ex parte* communication, while Virtual Mediations allow the parties to message the Neutral *ex parte*.

Parties, and the Neutral, can also submit a request to support@neweraadr.com and/or via the Platform Help Button to contact New Era ADR directly at any time.

Do New Era ADR’s Rules allow for appeals?

No. Section 2(r)(v) of the New Era ADR Rules and Procedures states that “[n]o appeal is permitted from the decision(s) granted under these Rules unless otherwise specified in the contractual agreement between the Parties.” Therefore appeal rights, if any, in a dispute must originate in the arbitration agreement between the parties.

Do you ever update your Rules?

Yes. Section 2(dd) of the New Era ADR Rules and Procedures states that New Era ADR may “make changes and amendments to these Rules at its discretion,” but that “New Era ADR will endeavor, however, to make changes only once per calendar quarter and provide additional notice of any changes that substantively affect proceedings on its website.” Generally, the Rules published at the time a case is filed are those that will govern that dispute. See Sections 2(dd)(ii) - (iv).

To be clear, New Era ADR is always evaluating its Rules and Procedures to ensure it is providing the best possible experience, fundamental fairness, and due process for all parties, while maintaining compliance with the constantly evolving legal landscape around arbitration. New Era ADR will always strive for a

best in class experience, which means diligently reviewing and updating our Rules and Procedures at a regular cadence. That said, New Era endeavors to make changes no more than quarterly, and typically less frequently than that, to ensure there is continuity for parties in their proceedings.

Will New Era ADR's process be enforceable in a court of law?

Yes. While we cannot guarantee how any given judge may rule (or how a particular arbitration agreement may be drafted by the parties to that agreement), it is the case that New Era ADR's Rules and Procedures not only comply with general notions of due process under the United States legal system, but also with requirements under the Federal Arbitration Act and court decisions interpreting those requirements, as well as other state and federal court decisions on arbitration process. We also regularly update our rules with advice from outside counsel. Moreover, New Era ADR's Rules and Procedures have been vetted multiple times – oftentimes critically – by numerous attorneys, law professors, Neutrals, and other professionals to ensure not only a fast and fair process, but also enforceability under the laws of the United States.

Mass Arbitrations

Does New Era ADR only administer mass arbitrations?

No. In fact, New Era was originally built to administer only individual arbitrations (see the first FAQ and answer for more detail). However, soon after its initial launch, New Era became the first ADR platform to create a mass arbitration process that is truly merits-driven, benefits both sides, and removes the heavy upfront cost of initiating a mass arbitration.

Mass Arbitrations are a specific category of disputes that must satisfy particular requirements to be treated as such with New Era ADR. Any dispute filed on the New Era ADR Platform will, by default, be considered an individual, bilateral arbitration, generally under our Virtual Expedited Arbitration Rules. It is only if that dispute is one in a part of a group that “(a) number five (5) or more and are against common respondent(s), (b) arise out of Common Issues of Law and Fact, as that term is defined in Section 2(x) [of the Rules and Procedures] below, and (c) are brought by the same law firm or group of law firms acting in coordination” (Section 1(b)(iv)(1) of the New Era ADR Rules and Procedures) do the Mass Arbitration Rules apply.

Even so, each dispute that is a part of a Mass Arbitration on New Era ADR’s Platform will always maintain its individuality and will never be made a part of any class arbitration. The Mass Arbitration Rules simply allow for efficient resolution on the merits for cases that satisfy the definition quoted above.

All of that said, the vast majority of New Era’s business and the overwhelming majority of use-cases in which New Era is adopted is from one-off cases and not mass claims.

To be clear, we are unequivocal in our belief that forcing settlements based purely on economic leverage from upfront fees – and not on the merits of the case – is not beneficial for either businesses or individuals. We believe in resolving cases only on their merits and so we created an economic model, Rules, and a technology platform that can handle mass arbitrations to resolve them efficiently. Our model does not create economic leverage based on upfront fees alone that will force settlements. We want cases to be resolved fairly and efficiently on their merits.

What that means in practice is that a group of claimants with legitimate, merits-based claims can achieve a far quicker favorable resolution on New Era than with any other forum. Likewise, organizations will be able to mount a merits-based defense against claims without having to be concerned with the exorbitant cost of that defense.

If a contract requires a dispute to go through arbitration with New Era ADR, will all disputes arising from that contract use New Era ADR’s mass arbitration rules?

Every filed case defaults to proceeding under New Era ADR’s Virtual Expedited Arbitration Rules for individual, bilateral arbitration. New Era ADR’s Mass Arbitration Rules only apply to disputes that satisfy the requirements for qualifying as a part of a “Mass Arbitration” under New Era ADR’s Rules, as quoted in the question immediately above.

Importantly, the ultimate authority on whether a dispute qualifies as a part of a Mass Arbitration rests with the independent Neutral overseeing the Mass Arbitration, and not with New Era ADR. New Era ADR may make a preliminary and purely administrative designation for the sole purpose of grouping cases to move into the process for substantive determinations by the Neutral, but all final decisions are up to the Neutral.

Which cases qualify for “mass arbitrations” under New Era ADR’s Rules?

Section 1(b)(iv)(1) of the New Era ADR Rules and Procedures defines claims that qualify for Mass Arbitrations under the Rules as any “claims that: (a) number five (5) or more and are against common respondent(s), (b) arise out of Common Issues of Law and Fact, as that term is defined in Section 2(x) [of the New Era ADR Rules and Procedures], and (c) are brought by the same law firm or group of law firms acting in coordination.”

How do mass arbitrations work under New Era ADR’s Rules?

After the initial group of cases that qualify as a Mass Arbitration under New Era ADR’s Rules are each individually filed by the Claimants (or more likely, their attorneys) and individually responded to by the Respondent (or more likely, their attorneys), New Era ADR will group the cases together on the Platform solely for administrative purposes. This grouping is not the same as “batching,” as that term has become known in the mass arbitration context (see below for further explanation of the difference).

Next, the Claimant attorneys, on the one hand, and the Respondent attorneys, on the other hand, will participate in New Era ADR’s Standard Rank/Strike Procedure (see Section 2(j) of the New Era ADR Rules and Procedures) to select a Neutral to oversee the Mass Arbitration. Next, in the same manner, each side will select a Bellwether Case to fully litigate via New Era ADR’s Virtual Expedited Arbitration process (and Rules and Procedures). Initially there will be three Bellwether cases: one selected by the Claimant attorneys, one selected by the Respondent attorneys, and one selected by the Neutral. The Neutral may allow for more Bellwethers if necessary. The decisions from the Bellwether Cases may be relevant later in the process as “Lead Decisions,” discussed in more detail below.

After the Bellwether Cases are fully resolved, the Claimant attorneys and the Respondent attorneys are required to participate in a Mandatory Settlement Conference with the same presiding Neutral overseeing the negotiation. If the parties to the Mandatory Settlement Conference agree to a global settlement, the bulk of the Mass Arbitration will be complete. Even if there is such a settlement, though, individual Claimants may “opt out” of the settlement and choose to have their case litigated on the New Era ADR Platform in the manner described below. Similarly, if there is no settlement reached at the Mandatory Settlement Conference, then all of the cases move to the next stage of the Mass Arbitration.

For those cases that do not reach settlement (whether by “opting out” of a global settlement agreement or by no settlement being reached at all), the final stage of the Mass Arbitration involves the Neutral (or, if the volume of cases requires it, multiple Neutrals) individually reviewing and resolving all of the remaining cases in the Mass Arbitration. These Neutrals may use the Lead Decisions from the Bellwether Cases as “Precedent,” to assist in issuing these decisions. Note though that each Claimant will have received an anonymized version of the Lead Decisions when they were issued (as well as being represented by the same law firm(s) as those who represented the Bellwether Cases), and has the opportunity at this stage to argue “whether or not, and to what extent, the Lead Decisions should be applied as Precedent” to their case, or if “Precedent is contrary to the law.” [Section 6\(b\)\(iii\)\(5\)\(d\)](#) of the New Era ADR Rules and Procedures. Each Claimant has the opportunity to submit argumentation and evidence in support of their position.

If the Neutral decides that an individual Claimant’s case is not subject to the full application of Precedent, “the Neutral will decide the case on an expedited basis after affording the Parties the opportunity to submit evidence and argument,” and the Rules require that the Neutral “afford the Parties procedural safeguards and an opportunity to be heard consistent with those outlined in . . . these Rules.” [Section 6\(b\)\(iii\)\(6\)\(b\)](#) of the New Era ADR Rules and Procedures.

The Neutral may also find that an individual Claimant’s case has no Common Issues of Law and Fact, in which case “the Neutral will order the case removed from the Mass Arbitration . . . [and] will start de novo as a stand-alone Virtual Expedited Arbitration.” [Section 6\(b\)\(iii\)\(5\)\(f\)](#) of the New Era ADR Rules and Procedures.

How does New Era ADR decide which cases belong in the mass arbitration?

[Section 1\(b\)\(iv\)\(1\)](#) of the New Era ADR Rules and Procedures defines claims that qualify for Mass Arbitrations under the Rules as any “claims that: (a) number five (5) or more and are against common respondent(s), (b) arise out of Common Issues of Law and Fact, as that term is defined in Section 2(x) [of the New Era ADR Rules and Procedures], and (c) are brought by the same law firm or group of law firms acting in coordination.”

New Era ADR's Platform will group the cases together that fit this definition and assign them to the same Mass Arbitration on the Platform once again, solely for administrative purposes. Note that New Era ADR makes no determination with respect to whether these cases "arise out of Common Issues of Law and Fact," as that determination is left entirely to the Neutral (and the parties will have multiple opportunities to argue to the Neutral whether, and to what extent, any individual Claimant's case may have Common Issues of Law and Fact, or not, with the rest of those cases in the Mass Arbitration). New Era ADR does not evaluate claims, the facts, or the merits of any case.

Any case that a Neutral determines to share no Common Issues of Law and Fact with the rest is removed from the Mass Arbitration and starts de novo as a stand-alone Virtual Expedited Arbitration on New Era ADR's Platform.

Is that the same as "batching"?

No. "Batching," as that term has become known in the mass claims space, is when a group of cases are "batched" together to be treated and adjudicated as one single case, with one filing, one hearing, one set of evidence submission, etc. The outcome of that single case applies to every claimant in that batch, and no claimants have an opportunity to have their claim considered individually. Batches can have as little as a few or as many as hundreds of individual cases grouped together in one "batch," all receiving identical treatment as if all were one case. Because of this, the creation of batches are not purely for administrative ease, but instead involve decisions based on facts, claims, and merits. This can result in a substantive decision and not simply an administrative grouping.

Because batching treats many individual cases as one collective claim, as applied batching may violate long-standing and fundamental principles of consumer arbitration outlined by the United States Supreme Court (see, e.g., *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011)). In contrast, New Era ADR's Mass Arbitration Rules maintain the individuality of each case, providing each individual Claimant with due process, notice, an opt out right, and an opportunity to be heard, ultimately having each case considered on the merits, all while still providing for an efficient method for resolving a high volume of similarly-situated claims.

What happens to cases that are filed after, or later than, the main group in a Mass Arbitration?

Later filed cases will only be included in a Mass Arbitration if they also fit the definition in [Section 1\(b\)\(iv\)\(1\)](#) of the New Era ADR Rules and Procedures (i.e., five or more cases with Common Issues of Law and Fact filed by the same or group of coordinated law firms). In those instances, the new Claimants would have notice of any decisions rendered in Bellwether Cases or in the Mass Arbitration

more generally in two ways: (1) they will, by definition, be represented by the same law firm(s) as the earlier-filed claims (as well as the Bellwether Cases) and so their attorneys will provide notice, and (2) if a Claimant’s counsel fails to provide their client with notice of the pending mass arbitration or of Bellwether decisions, New Era ADR will provide anonymized Lead Decisions from the Bellwether Cases for a given Mass Arbitration to any Claimant involved in that Mass Arbitration. See [Section 2\(y\)\(ii\)](#) of the New Era ADR Rules and Procedures.

If a later filed case does not meet any of the criteria of the definition of the Mass Arbitration (i.e., it does not contain Common Issues of Law and Fact and/or it is filed by a separate, uncoordinated law firm), it will be considered a new case and treated de novo.

Who determines whether a case belongs in the mass arbitration?

The Neutral. New Era ADR only administratively groups cases that have prima facie evidence that they meet the definition of “Mass Arbitrations” in the New Era ADR Rules and Procedures, and assigns them to the same Mass Arbitration on the New Era ADR Platform purely for administrative purposes. See [Section 1\(b\)\(iv\)\(1\)](#) and [Section 6\(b\)\(ii\)\(3\)](#) of the New Era ADR Rules and Procedures. Ultimately, the Neutral (who will be selected via a rank-and-strike process by the representatives of each side to the Mass Arbitration) determines whether or not each individual case belongs in the Mass Arbitration, and each individual Claimant (and the Respondent) have the opportunity to provide argumentation and evidence in support or disagreement thereof. See [Sections 6\(b\)\(iii\)\(5\)\(d\)](#) and [6\(b\)\(iii\)\(6\)\(b\)](#) of the New Era ADR Rules and Procedures. If the Neutral finds that a case does not belong in the Mass Arbitration, it is removed and started de novo as a new proceeding. [Section 6\(b\)\(iii\)\(5\)\(f\)](#) of the New Era ADR Rules and Procedures.

How does a party argue that it doesn’t belong in the mass arbitration?

After the Bellwether Cases are fully resolved, the Claimant attorneys and the Respondent attorneys are required to undergo a Mandatory Settlement Conference with the same Neutral overseeing the negotiation.

Those cases that do not reach settlement at the Conference (whether by “opting out” of a global settlement agreement or by no settlement being reached at all) each have the opportunity at this stage to argue “whether or not, and to what extent, the Lead Decisions [from the Bellwether Cases] should be applied as Precedent” to their case, or if “Precedent is contrary to the law.” [Section 6\(b\)\(iii\)\(5\)\(d\)](#) of the New Era ADR Rules and Procedures. Each Claimant has the opportunity to submit argumentation and evidence in support of their position. Note also that each Claimant will have received an anonymized version of the Lead Decisions when they were issued, as well as being represented by the same law firm(s) as those who represented the Bellwether Cases.

At this juncture, if the Neutral finds that an individual Claimant’s case does not belong in the Mass Arbitration, “the Neutral will order the case removed from the Mass Arbitration . . . [and] will start *de novo* as a stand-alone Virtual Expedited Arbitration.” [Section 6\(b\)\(iii\)\(5\)\(f\)](#) of the New Era ADR Rules and Procedures.

Does each individual in a Mass Arbitration have an opportunity to be heard?

Yes. [Sections 6\(b\)\(iii\)\(5\)\(d\)](#) and [6\(b\)\(iii\)\(6\)\(b\)](#) of the New Era ADR Rules and Procedures specify when and how each individual Claimant may “opt out” of any potential settlement reached or Precedent being applied to their case by having the opportunity to argue “whether or not, and to what extent, the Lead Decisions [from the Bellwether Cases] should be applied as Precedent” to their case, or if “Precedent is contrary to the law” while the Neutral must “afford the Parties procedural safeguards and an opportunity to be heard consistent with those outlined in . . . these Rules.” This “opt out” opportunity takes place after the Mandatory Settlement Conference and is done by submitting a statement (and any supporting documentation) on the New Era ADR Platform to alert the Neutral as to their position.

How does an individual Claimant receive notice of the Lead Decisions from the Bellwether Cases (which may act as “Precedent”)?

First, notice is provided by the issuance of the Lead Decisions from the Bellwether Cases to the counsel of record for the Claimants via the New Era ADR Platform. By way of reminder, the definition of a “Mass Arbitration” requires all cases to be filed by the same law firm, attorney, or group of attorneys. Counsel of record is expected to then provide further notice by disseminating the decisions to their individual clients at their own discretion. This is true for any later-filed cases as well by definition of a “Mass Arbitration” under the New Era ADR Rules. Additionally, New Era ADR will post anonymized Lead Decisions to the Platform so all parties (including individual Claimants) within the same Mass Arbitration may view them. It should be noted, however, that if a new matter, or matters, is not determined to be a part of the same Mass Arbitration, no notice will be necessary because Precedent cannot apply and the proceeding will proceed *de novo*, on its own, with a new Neutral selection process and everything that comes with a separate Virtual Expedited Arbitration case.

How does the Neutral apply Precedent to the rest of the cases after the Bellwether Cases in a Mass Arbitration?

Assuming no settlement is reached at the Mandatory Settlement Conference, or if so, certain cases have decided to opt out of the settlement, the Mass Arbitration will then move to the final stage. Note also that at this point, each individual Claimant should have received notice of the Lead Decisions from the Bellwether Cases through their representative counsel of record and/or anonymized Lead Decisions posted on the New Era ADR Platform.

In this stage, the Neutral(s) will “***individually decide each claim***” asserted by each party in a Mass Arbitration proceeding, giving due consideration to the facts and arguments advanced by the Parties in each case,” but in doing so, may “consider the analysis and result reached in prior Lead Decisions [for] disputes in the same Mass Arbitration proceeding that remain pending after the settlement conference . . . Sections 6(b)(iii)(5)(a), (b); Section 6(b)(iii)(6)(a) of the New Era ADR Rules and Procedures (emphasis added). However, in all cases, the Neutral is required to “determine whether individualized issues of law, fact, or both preclude reliance on the Lead Decision in whole or part.” Section 6(b)(iii)(5)(c) of the New Era ADR Rules and Procedures.

A party may advance their argument according to Sections 6(b)(iii)(5)(d) and 6(b)(iii)(6)(b) of the New Era ADR Rules and Procedures, which allows each individual Claimant to have the opportunity to argue “whether or not, and to what extent, the Lead Decisions [from the Bellwether Cases] should be applied as Precedent” to their case, or if “Precedent is contrary to the law” while the Neutral must “afford the Parties procedural safeguards and an opportunity to be heard consistent with those outlined in . . . these Rules.”

Does the Neutral apply Precedent all at once to all of the cases remaining after the Mandatory Settlement Conference?

No. Although a Neutral may “consider the analysis and result reached in prior Lead Decisions in deciding disputes in the same Mass Arbitration proceeding” (i.e., apply Precedent), the Neutral “in all events . . . ***must individually decide each claim***” asserted by each party in a Mass Arbitration proceeding, giving due consideration to the facts and arguments advanced by the Parties in each case.” Sections 6(b)(iii)(5)(a), (b); Section 6(b)(iii)(6)(a) of the New Era ADR Rules and Procedures (emphasis added).

Is the Neutral required to apply “Precedent” on all cases remaining after the Mandatory Settlement Conference?

No. Precedent acts as a guide which the Neutral *may* use, in their discretion. And even if it is going to be used, *it can only be applied to cases within the same Mass Arbitration*. See Section 2(y)(iv) of the New Era ADR Rules and Procedures. As described more fully above in this FAQ, cases, including those that are filed later than others, are only in the same Mass Arbitration if they meet the strict definition of a “Mass Arbitration” according to the New Era ADR Rules and Procedures: “claims that (a) number five (5) or more and are against common respondent(s), (b) arise out of Common Issues of Law and Fact, as that term is defined in [the New Era ADR Rules and Procedures], and (c) are brought by the same law firm or group of law firms acting in coordination.” Section 1(b)(iv)(1) of the New Era ADR Rules and Procedures.

The precise language on how a Neutral may apply Precedent is in [Section 6\(b\)\(iii\)\(5\)\(a\)](#) (and reaffirmed in [Section 6\(b\)\(iii\)\(6\)\(a\)](#)) of the New Era ADR Rules and Procedures: “Subject to the procedure provided for in these Rules, a Neutral may consider the analysis and result reached in prior Lead Decisions in deciding disputes in the same Mass Arbitration proceeding that remain pending after the settlement conference and raise Common Issues of Law and Fact. Also subject to the procedure provided for in this Rule, a Neutral may likewise consider the analysis and result reached in prior Lead Decisions in deciding later-filed cases that are added to the same Mass Arbitration proceeding and raise Common Issues of Law and Fact even where such cases are filed after the Lead Decision is issued.”

Is Precedent “binding” on the cases remaining after the Mandatory Settlement Conference?

No. Precedent may influence the decisions on the cases remaining after the Mandatory Settlement Conference only to the extent the Neutral decides, in their own discretion, to rely on it in issuing decisions for such cases and the cases meet all the requirements for Precedent to be applied as set forth in the New Era ADR Rules and Procedures. However, the parties continue to maintain the ability to argue against the application of Precedent to their case, and/or that Precedent was decided incorrectly. See [Sections 6\(b\)\(iii\)\(4\) - \(6\)](#) of the New Era ADR Rules and Procedures.

Can an individual Claimant “opt out” of Precedent and argue against it applying to their case?

Yes. [Section 6\(b\)\(iii\)\(5\)\(d\)](#) specifies each individual Claimant’s “opt out” right: “No later than seven days after the settlement conference, the Parties in each remaining case may provide the Neutral with a statement, along with any supporting evidence, that discusses whether or not, and to what extent, the Lead Decisions should be applied as Precedent in such remaining case. If a Party’s statement argues against the application of the Lead Decision as Precedent, or that the Precedent is contrary to the law, the Party’s statement should identify any issues of law and fact the Party believes are unique to its case or cite the applicable law demonstrating that the Precedent is incorrect”

A Neutral is then required to “individually decide each claim asserted by each party in a Mass Arbitration proceeding, *giving due consideration to the facts and arguments advanced by the Parties in each case.*” [Sections 6\(b\)\(iii\)\(5\)\(b\) and 6\(b\)\(iii\)\(6\)\(a\)](#) of the New Era ADR Rules and Procedures (emphasis added).

How long is it going to take one Neutral to apply Precedent, or hear arguments against its application, to all of the cases in a Mass Arbitration?

The purpose of New Era ADR’s Mass Arbitration Rules and Procedures, and for building the portion of the New Era ADR Platform for Mass Arbitrations, is to provide for an efficient manner to resolve a high

number of similarly situated cases while still providing for due process and respecting such cases' character as individual arbitrations. This is why there are Bellwether Cases, a Mandatory Settlement Conference, the option for Neutrals to apply Precedent from the Lead Decisions to any remaining cases after the settlement conference, and the option for such remaining cases to opt out of a settlement and/or argue that Precedent should not apply to their case (or that they do not belong in the Mass Arbitration at all). Generally, there will be only one Neutral assigned to a Mass Arbitration up to and through the Mandatory Settlement Conference (although special circumstances could call for a panel of three).

However, it may be the case that a large number of cases remain to be resolved after the Mandatory Settlement Conference. In such instances, New Era ADR may, in consultation with the Neutral overseeing the Mass Arbitration and the counsel of record for both parties thereto, bring in more Neutrals to help decide the remaining cases. See [Section 6\(b\)\(iii\)\(1\)\(d\)](#) of the New Era ADR Rules and Procedures. Each Neutral will undergo the same disclosure process and conflicts check as any other Neutral assigned to a case on the New Era ADR Platform, and will be bound by all of the same Rules applicable to any such Neutral. See [Sections 2\(f\) and 2\(k\)](#) of the New Era ADR Rules and Procedures.

What happens if the Mass Arbitration is settled after the Mandatory Settlement Conference?

A Mass Arbitration can be settled at any time during the administration of the entire case, whether before, during, or after the Mandatory Settlement Conference. In each scenario, the result is the same: for those individual cases included in the settlement, the Neutral will help all counsel of record create procedures to ensure that all such cases receive their pro rata share of the compensation or relief. For those cases that “opt out” of the settlement according to [Section 6\(b\)\(iii\)\(4\)\(e\)](#) of the New Era ADR Rules and Procedures, they will be treated the same as any other remaining case would as if there were no settlement under [Sections 6\(b\)\(iii\)\(5\) and 6\(b\)\(iii\)\(6\)](#) of the New Era ADR Rules and Procedures (e.g. individual review, Precedent opt out rights, discretionary use of Precedent by the Neutral, etc.).

Can an individual party opt out of the settlement?

Yes. [Sections 6\(b\)\(iii\)\(4\)\(e\) and \(f\)](#) of the New Era ADR Rules and Procedures state the following: “There need not be unanimity among the Parties to effectuate a settlement. Likewise, any Claimant or Respondent may opt out of the settlement conference or otherwise refuse to settle. Any such opt out or refusal must be identified within 7 days of the end of the settlement conference by notifying New Era ADR and the Neutral on the Platform. Any case not resolved at the settlement conference will proceed toward resolution by the Neutral, who will individually consider and decide the claims raised in each case as provided for in [Section 6\(b\)\(iii\)\(5\)](#) and [Section 6\(b\)\(iii\)\(6\)](#).”