



UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

THOMAS E. PEREZ, Secretary of Labor,  
United States Department of Labor,  
Complainant,

v.

(Uppercase),  
Respondent.

Docket No. \_\_\_\_\_

**PRETRIAL ORDER**

1.

There are no motions or other matters pending for consideration by the Court except as noted.

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2.

All discovery has been completed, unless otherwise noted, and the Court will not consider any further motions to compel discovery. Provided there is no resulting delay in readiness for trial, Counsel shall, however, be permitted to take the depositions of any persons for the preservation of evidence and for use at trial.

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3.

Unless otherwise noted, the names of the parties as shown in the caption to this Order and the capacity in which they appear are correct and complete, and there is no question by any party as to the misjoinder or non-joinder of any parties.

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4.

Unless otherwise noted, there is no question as to the jurisdiction of the Court; jurisdiction is based upon the following code sections. (When there are multiple claims, list each claim and its jurisdictional basis separately.)

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5.

The following individually-named attorneys/representatives are hereby designated as lead counsel for the party:

Complainant: \_\_\_\_\_

Respondent: \_\_\_\_\_

Other Parties: (specify) \_\_\_\_\_

6.

Normally, the Complainant is entitled to open and close arguments. State below the reasons, if any, why the Complainant should not be permitted to open arguments.

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7.

State whether there is any pending related litigation in the Commission. Describe briefly, including style and docket number.

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8.

Attached hereto as Attachment "A" is Complainant's outline of the case which includes a succinct factual summary of Complainant's cause of action and which shall be neither argumentative nor recite evidence. All relevant rules, regulations, statutes, ordinances, and illustrative case law creating a specific legal duty relied upon by Complainant shall be listed under a separate heading.

9.

Attached hereto as Attachment "B" is the Respondent's outline of the case which includes a succinct factual summary of all general, special, and affirmative defenses relied upon and which shall be neither argumentative nor recite evidence. All relevant rules, regulations, statutes, and illustrative case law relied upon as creating a defense shall be listed under a separate heading.

10.

Attached hereto as Attachment "C" are the stipulated facts. No further evidence will be required as to the facts contained in the stipulation and the stipulation may be moved into evidence at the beginning of the trial or at such other time as is appropriate in the trial of the case. It is the duty of Counsel to cooperate fully with each other to identify all undisputed facts. A refusal to do so may result in the imposition of sanctions upon the non-cooperating Counsel.

11.

The legal issues to be tried are as follows:

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12.

Attached hereto as Attachment "D" for the Complainant, Attachment "E" for the Respondent, and Attachment "X-1", etc. for all other parties is a list of all the witnesses and their addresses for each party. The list must designate the witnesses whom the party *will* have present at trial and those witnesses whom the party *may* have present at trial. Expert (any witness who might express an opinion under Rule 702), impeachment and rebuttal witnesses whose use as a witness can be reasonably anticipated must be included. Each party shall also attach to the list a reasonable specific summary of the expected testimony of each expert witness.

All of the other parties may rely upon a representation by a designated party that a witness *will* be present unless notice to the contrary is given ten (10) days prior to trial to allow the other party(s) to subpoena the witness or to obtain the witness' testimony by other means. *Witnesses who are not included on the witness list (including expert, impeachment and rebuttal witnesses whose use should have been reasonably anticipated) will not be permitted to testify, unless expressly authorized by court order based upon a showing that the failure to comply was justified.*

13.

Attached hereto as Attachment "F" for the Complainant, "G" for the Respondent, and "XX-1", etc. for all other parties are the typed lists of all documentary and physical evidence that will be tendered at trial. Learned treatises which are expected to be used at trial shall not be admitted as exhibits, but a copy shall be provided to the Court and opposing Counsel. Counsel are required to identify all such treatises under a separate heading on the party's exhibit list.

Each party's exhibits shall be numbered serially, beginning with 1, and without the inclusion of any alphabetical or numerical subparts. Adequate space must be left on the left margin of each party's exhibit list for court stamping purposes. A courtesy copy of each party's list must be submitted for the judge.

*Prior to trial, each Counsel shall mark their exhibits as numbered on the attached lists by affixing numbered yellow stickers to Complainant's exhibits, numbered blue stickers to Respondent's exhibits, and numbered white stickers to joint exhibits. When there are multiple Respondents, the surname of the particular Respondent shall be shown above the number on the stickers for that party's exhibits.*

Specific objections to another party's exhibits must be typed on a separate page and must be attached to the exhibit list of the party against whom the objections are raised. Objections as to authenticity, privilege, competency, and, to the extent possible, relevancy of the exhibits shall be included. Any listed document to which an objection is not raised shall be deemed to have

been stipulated as to authenticity by Counsel and shall be admitted at trial without further proof of authenticity.

Unless otherwise noted, copies rather than originals of documentary evidence may be used at trial. Documentary or physical exhibits may not be submitted by counsel after filing of the pretrial order, except upon consent of all Counsel or permission of the court. Exhibits so admitted must be numbered, inspected by counsel, and marked with stickers prior to trial.

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Counsel shall familiarize themselves with all exhibits (and the numbering thereof) prior to trial. Counsel will not be afforded time during trial to examine exhibits that are or should have been listed.

14.

The following designated portions of the testimony of the persons listed below may be introduced by deposition:

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Any objections to the depositions of the foregoing persons or to any questions or answers in the depositions shall be filed in writing no later than the day the case is first scheduled for trial. Objections not perfected in this manner will be deemed waived or abandoned. All depositions shall be reviewed by counsel and all extraneous and unnecessary matter, including non-essential colloquy of counsel, shall be deleted.

15.

Attached hereto as Attachments "H" for the Complainant, "I" for the Respondent, and "XXX-1", etc. for other parties, are any trial briefs which counsel may wish to file containing citations to legal authority concerning evidentiary questions and any other legal issues which counsel anticipate will arise during the trial of the case. Limitations, if any, regarding the format and length of trial briefs is a matter of individual practice which shall be established by the court.

16.

Counsel are directed to submit proposed finding of fact and conclusions of law not later than the opening of trial.

17.

Lead Counsel and persons possessing settlement authority to bind the party met in person on \_\_\_\_\_, 20\_\_\_\_, to discuss in good faith the possibility of settlement of this case. The Court  has or  has not discussed settlement of this case with counsel. It appears at this time that there is:

- A good possibility of settlement.
- Some possibility of settlement.
- No possibility of settlement.

18.

If different than estimated in the joint pretrial stipulation, the Complainant estimates that it will require \_\_\_\_ days to present its evidence. The Respondent estimates that it will require \_\_\_\_ days to present its evidence. The other parties estimate that it will require \_\_\_\_ days to present their evidence. It is estimated that the total trial time is \_\_\_\_ days.

19.

At trial, the parties  require an interpreter from (\_\_\_\_\_) language to English. At trial, the parties  require a hearing impaired translator.

IT IS HEREBY ORDERED that the above constitutes the pretrial order for the above captioned case  submitted by stipulation of the parties or  approved by the court after conference with Counsel.

IT IS FURTHER ORDERED that the foregoing, including the attachments thereto, constitutes the pretrial order in the above case and that it supersedes the pleadings which are hereby amended to conform hereto and that this pretrial order shall not be amended except by Order of the Court to prevent manifest injustice. Any attempt to reserve a right to amend or add to any part of the pretrial order after the pretrial order has been filed shall be invalid and of no effect and shall not be binding upon any party or the Court, unless specifically authorized in writing by the court.

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
JOHN B. GATTO, Judge

Each of the undersigned counsel for the parties hereby consents to entry of the foregoing pretrial order, which has been prepared in accordance with the form pretrial order adopted by this Court.

\_\_\_\_\_  
Counsel for Complainant

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Counsel for Respondent