



UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

**JUDGE GATTO'S  
STANDING ORDER  
ON  
CONVENTIONAL CASE TRACK**

**Table of Contents**

[General Provisions](#)

[Disclosure of Corporate Parents, Subsidiaries, and Affiliates](#)

[Discovery](#)

[Joint Discovery and Trial Plan](#)

[Conference Following Discovery](#)

[Motions](#)

[Generally](#)

[Motions to Compel](#)

[Motions for Summary Judgment](#)

[Motions to Exclude Expert Testimony](#)

[Proposed Pretrial Order](#)

[Settlement Practices](#)

[Electronic Filing](#)

**APPENDIX A – SAMPLE FORMS**

## General Provisions

This *Standing Order on Conventional Case Track* applies to all cases assigned to Judge Gatto on the Conventional Case track in the United States Occupational Safety and Health Review Commission (the Commission or the Court). A copy of this Standing Order and relevant Court developed forms ([Appendix A](#) of the Standing Order) can be obtained by accessing Judge Gatto's *Standing Order on Conventional Cases* link on the Commission's website at: <http://www.oshrc.gov/ALJP/index.html>.

Any reference to "counsel" in this Standing Order or appended forms includes any person licensed and authorized to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution, and to any person who is permitted, in accordance with law, to represent a party in an action pending in the Commission, and to any person proceeding *pro se* in an action pending in the Commission.

The Commission's [Rules of Procedure](#) (Commission Rules), 29 C.F.R. Part 2200, govern all proceedings before the Court. In the absence of a specific Commission Rule, the proceedings shall be governed by the [Federal Rules of Civil Procedure](#) (Fed. R. Civ. P.) and the [Federal Rules of Evidence](#) (Fed. R. Evid.). *See* Commission Rule 2 and Commission Rule 71.

### Disclosure of Corporate Parents, Subsidiaries, and Affiliates

All answers, petitions for modification of abatement period, or other initial pleadings filed by a corporation shall be accompanied by a separate declaration listing all parents, subsidiaries, and affiliates of that corporation, or stating that the corporation has no parents, subsidiaries, or affiliates, whichever is applicable. The declaration shall comply with the requirements of Commission Rule 35.

### Discovery

Unless the Court orders otherwise, all cases are assigned to a **four (4) month** discovery period, commencing after the appearance of the first Respondent by answer to the complaint (or a motion that delays the filing of an answer, such as a motion to dismiss). Discovery must be initiated early enough to permit completion of discovery at least seven (7) days prior to the date set for trial, unless the Court orders otherwise. *See* Commission Rule 52. Responses to initiated discovery must be completed before expiration of the assigned discovery period.

Discovery is not available under the Commission's Rules through depositions except to the extent provided in Commission Rule 56. In the absence of a specific provision, discovery procedures shall be in accordance with the Fed. R. Civ. P., except, Rule 26(a). In conformity with the Commission's Rules, any party may, without leave of the Court, obtain discovery by one or more of the following methods:

- (a) production of documents or things or permission to enter upon land or other property for inspection and other purposes (Commission Rule 53);
- (b) requests for admission to the extent provided in Commission Rule 54; and
- (c) interrogatories to the extent provided in Commission Rule 55.

### **Joint Discovery and Trial Plan**

The purpose of the *Joint Discovery and Trial Plan* is to promote early analysis and planning of the case by counsel and to alert the Court to any specific case management needs. Within **thirty (30) days** after service of the complaint on the Respondent, counsel for the parties are required to confer at the initiation of the Secretary's counsel in an effort to settle the case, discuss discovery, limit issues, and discuss all matters to be addressed in the parties' proposed *Joint Discovery and Trial Plan*. Counsel for each party must inform their client promptly of all offers of settlement proposed at the conference in compliance with Fed. R. Civ. P. 26(f).

Within **forty-five (45) days** after service of the complaint on the Respondent, counsel are required to complete and file the Court's **Joint Discovery and Trial Plan** form. No deviations from this form are permitted, except upon the express prior approval of the Court. The form may be retyped, provided it is not modified in any way.

### **Conference Following Discovery**

Lead counsel and a person possessing settlement authority for Complainant and Respondent are required to confer following the close of discovery to discuss, in good faith, settlement of the case. The results of the conference shall be reported in the last paragraph of the joint proposed pretrial order.

### **Motions**

**Generally.** Any motion filed in this Court shall be made in compliance with the Commission's Rules and the Fed. R. Civ. P. A motion that is not specially limited in time by the Commission's Rules or the Fed. R. Civ. P must be filed within thirty (30) days after the beginning of discovery unless the filing party has obtained prior permission from the Court. The

Court will not respond to correspondence, *e.g.*, letters, from counsel that should properly be the subject of motion practice. Motions which do not meet the requirements outlined in this Standing Order are deemed denied without any further action required by the Court.

A motion will not be entertained unless accompanied by moving counsel's certification that the parties have discussed the matter and that there is either no objection to the motion or that the parties have made a good faith effort to settle the matter and have been unable to do so. A motion shall state with particularity the grounds on which it is based and shall set forth the relief or order sought. A motion shall not be included in another document, such as a brief or a petition for discretionary review, but shall be made in a separate document. A motion must be accompanied by an order prepared for the Court's signature.

The Court will generally permit extensions of time for discovery and other pretrial matters upon a showing that the opposing party will not be prejudiced and that granting the extension will not interfere with the trial date. However, since trial dates are set well in advance, and are set only after submission of a proposed Discovery and Trial Plan, the Court will generally not grant continuances.

**Motions to Compel.** Motions to compel may be filed prior to the close of discovery or, if longer, any time within fourteen (14) days after service of the disclosure or discovery response upon which the motion is based. The deadline for filing all such motions shall be established in the proposed Discovery and Trial Plan.

**Motions for Summary Judgment.** Fed. R. Civ. P. 56 governs motions for summary judgment, which shall be filed as soon as possible, but, unless otherwise permitted by Court order, not later than thirty (30) days after the close of discovery. The party opposing the motion has twenty-one (21) days after service of the motion in which to file a responsive pleading. The deadline for filing all such motions shall be established in the proposed Discovery and Trial Plan.

**Motions to Exclude Expert Testimony.** A party objecting to the admissibility of opinion testimony by an expert witness shall file a written motion seeking exclusion. Failure of an opponent to file such a motion, however, does not relieve the proponent of its burden to establish that the pertinent admissibility requirements are met by a preponderance of the evidence. *See Bourjaily v. United States*, 483 U.S. 171 (1987); *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). *See also, Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999) (noting that the trial judge has the discretion "both to avoid unnecessary

‘reliability’ proceedings in ordinary cases where the reliability of an expert's methods is properly taken for granted, and to require appropriate proceedings in the less usual or more complex cases where cause for questioning the expert’s reliability arises.”).

The motion shall identify with specificity each opinion the moving party seeks to exclude. The motion shall also identify the specific ground(s) on which each opinion is challenged, *e.g.*, relevancy, sufficiency of facts and data, or methodology. *See* Fed. R. Evid. 702. The deadline for filing all such motions shall be established in the proposed Discovery and Trial Plan. Upon the filing of such a motion, the Court, in its discretion, may set a hearing to determine whether the challenged opinions are admissible under the relevant Federal Rules of Evidence. The setting of such hearing does not obviate the need for opposing counsel to respond to such motion.

### **Proposed Pretrial Order**

The Court has developed a **Pretrial Order** form, which counsel are required to jointly complete and file with the Court no later than thirty (30) days after the close of discovery, or entry of the Court’s ruling on any pending motions for summary judgment, whichever is later. Use of the Court’s Pretrial Order form is mandatory. No deviations from this form shall be permitted, except upon the express prior approval of the Court. The form may be retyped, provided it is not modified in any way. At the initiation of the Secretary’s counsel, the parties must arrange a date to confer on preparation of the proposed pretrial order.

**A pretrial conference will not be scheduled, except in extraordinary circumstances.** However, if counsel for either party believes extraordinary circumstances exists that warrant a pretrial conference, a motion must be separately filed. A case shall be presumed ready for trial after the pretrial order is filed unless another time is specifically set by the Court.

### **Settlement Practices**

The parties are to provide the Court, at least three (3) days in advance of trial, notice of whether a case has settled. If the case has not settled, but the parties are still engaged in settlement discussions, they may file a motion seeking a postponement of the trial. If a case has settled, but the Court was not timely informed as required herein and the Judge is already in travel status, the parties must appear at the trial location (unless otherwise ordered) to provide an on-the-record explanation of why the timeframes in these Settlement Practices were not followed, and to memorialize the settlement on the record.

### Electronic Filing

The Commission's Rules contemplate that at the commencement of the case, the parties will confer and agree to electronically file and serve all pleadings and documents. The Rules do not allow one party to electronically file with the Commission and serve a party by another means. If a party does not agree to electronic service, the opposing party may not unilaterally file documents electronically.

However, there may be instances where the parties have not agreed to file and serve all documents electronically, but desire to electronically file and serve a single document, such as a settlement agreement. This is an accepted procedure. When the parties agree in writing to electronically file and serve pleadings and documents, E-file submissions are accomplished by sending an e-mail with the attached pleading(s) or document(s) in Adobe Portable Document Format (PDF) format to: [atlantaoshrcjudges@oshrc.gov](mailto:atlantaoshrcjudges@oshrc.gov). The Court has developed the [Consent to Electronic Filing](#) form for the parties' convenience. The pertinent E-Filing Rules are Commission Rule 7(g) (Service and notice - How accomplished) and Commission Rule 8(g) (Filing - Electronic filing). The Commission's E-Filing Instructions can be found on the Commission's website at: [http://www.oshrc.gov/publications/instructions\\_elecfileing.html](http://www.oshrc.gov/publications/instructions_elecfileing.html).

**SO ORDERED THIS 22<sup>nd</sup> day of November, 2013.**



/s/

---

**JOHN B. GATTO, Judge**

U.S. OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION

1924 BUILDING – ROOM 2R90

100 ALABAMA STREET, S.W.

ATLANTA, GEORGIA 30303-3104

TELE: (404) 562-1640

FAX: (404) 562-1650

NANCY F. SIMS, ADMINISTRATIVE ASSISTANT

## **APPENDIX A – SAMPLE FORMS**

- A. CONSENT TO ELECTRONIC FILING**
- B. ORDER REQUIRING FILING OF DISCOVERY AND TRIAL PLAN**
- C. JOINT DISCOVERY AND TRIAL PLAN**
- D. PRETRIAL ORDER**



UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

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

Complainant,

v.

Matter Description (Uppercase),

Respondent.

OSHRC DOCKET No.

**ORDER REQUIRING FILING OF JOINT  
DISCOVERY AND TRIAL PLAN<sup>1</sup>**

**IT IS HEREBY ORDERED THAT** the above-styled action is assigned to a four (4) month discovery period commencing after the appearance of the first Respondent by answer to the complaint (or a motion that delays the filing of an answer, such as a motion to dismiss). Discovery shall be initiated early enough to permit completion of discovery no later than seven (7) days prior to the date set for trial, unless the Court orders otherwise. *See* Commission Rule 52. Responses to initiated discovery must be completed before expiration of the assigned discovery period.

**IT IS FURTHER ORDERED THAT** within thirty (30) days after service of the complaint on the Respondent, counsel for the parties are required to confer at the initiation of the Secretary's counsel in person in an effort to settle the case, discuss discovery, limit issues, and discuss all matters addressed in the parties' proposed *Discovery and Trial Plan*. Counsel for the parties must inform their clients promptly of all offers of settlement proposed at the conference. This conference shall comply with the requirements of Fed. R. Civ. P. 26(f).

---

<sup>1</sup> The parties are directed to Judge Gatto's *Standing Order on Conventional Case Track*, which applies to all cases assigned to the Conventional Case track. A copy of Judge Gatto's *Standing Order on Conventional Case Track* and relevant Court developed forms (see [Appendix A](#) to the Standing Order) may be obtained by accessing Judge Gatto's *Judge Gatto's Standing Order on Conventional Cases* link on the Commission's website at: <http://www.oshrc.gov/ALJP/index.html>.

**IT IS FURTHER ORDERED THAT** within forty-five (45) days after service of the complaint on the Respondent, counsel are required to complete and file a proposed [Joint Discovery and Trial Plan](#), using the Court's mandatory form. No deviations from this form shall be permitted, except upon the express prior approval of the Court. The form may be retyped, provided it is not modified in any way.

**IT IS FURTHER ORDERED THAT** at the commencement of the case, the parties will confer and hopefully agree to electronically file and serve all pleadings and documents. The Court has developed the [Consent to Electronic Filing](#) form for the parties' convenience. When the parties agree in writing to electronically file and serve pleadings and documents, they must be electronically submitted in accordance with the Commission's Instructions for electronic filing by sending an e-mail with the attached pleading(s) or document(s) in Adobe Portable Document Format (PDF) format to: [atlantaoshrcjudges@oshrc.gov](mailto:atlantaoshrcjudges@oshrc.gov). The Commission's complete Instructions for electronic filing can be found on the Commission's website at: [http://www.oshrc.gov/publications/instructions\\_elecfileing.html](http://www.oshrc.gov/publications/instructions_elecfileing.html).

**SO ORDERED this** \_\_\_\_ day of \_\_\_\_\_, **20**\_\_\_\_\_.

---

**JOHN B. GATTO, Judge**  
U.S. Occupational Safety and  
Health Review Commission



UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

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

Complainant,

v.

OSHRC DOCKET No.

Matter Description (Uppercase),

Respondent.

**CONSENT TO ELECTRONIC FILING**

The parties in the above-captioned case have consented to the electronic filing and service of all submissions in conformity with the Court's E-Filing Rules and instructions.

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

\_\_\_\_\_  
Counsel for Respondent

Date: \_\_\_\_\_

Date: \_\_\_\_\_



UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

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

Complainant,

v.

OSHRC DOCKET No.

Matter Description (Uppercase),

Respondent.

**JOINT DISCOVERY AND TRIAL PLAN**

1.

The proposed date(s) for trial is/are \_\_\_\_\_, 20\_\_\_\_ at 9:00 a.m. in \_\_\_\_\_, \_\_\_\_\_. The parties will be notified at a subsequent date as to the exact court location.

2.

The date by which the parties must exchange in writing the names, organizational affiliations and subject matter areas of expertise of expert witness(es) it may call at the trial is \_\_\_\_\_, 20\_\_\_\_.

3.

The date by which Reports prepared by the expert witness(es) shall be completed and delivered to counsel who retained the expert(s) is \_\_\_\_\_, 20\_\_\_\_.<sup>1</sup>

---

<sup>1</sup> This disclosure shall be accompanied by a mandatory written report prepared and signed by the witness. The report shall contain the subject matter on which the witness is expected to present evidence under Fed. R. Evid. 702, 703, or 705; a summary of the facts and opinions to which the witness is expected to testify and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

4.

The date by which Reports prepared by the expert witness(es) shall be exchanged with opposing counsel is \_\_\_\_\_, 20\_\_\_\_.<sup>2</sup>

5.

The date by which any motion(s) to exclude expert testimony must be filed is \_\_\_\_\_, 20\_\_\_\_.<sup>3</sup>

6.

The nature of the discovery each party intends to a take is:

- a. Complainant: \_\_\_\_\_.
- b. Respondent: \_\_\_\_\_.

7.

The number of interrogatories each party anticipates it will serve on the opposing party is:

- a. Complainant: \_\_\_\_\_.
- b. Respondent: \_\_\_\_\_.<sup>4</sup>

8.

The number of depositions each party intends to notice to the opposing party is:

- a. Complainant: \_\_\_\_\_.
- b. Respondent: \_\_\_\_\_.<sup>5</sup>

---

<sup>2</sup> Absent a stipulation, the exchanges must occur at least 60 days before the date set for trial or for the case to be ready for trial.

<sup>3</sup> The motion shall identify with specificity each opinion the moving party seeks to exclude. The motion shall also identify the specific ground(s) on which each opinion is challenged, *e.g.*, relevancy, sufficiency of facts and data, or methodology. *See* Fed. R. Evid. 702. Upon the filing of such a motion, the Court, in its discretion, may set a hearing to determine whether the challenged opinions are admissible under the Fed. R. Evid. The setting of such hearing does not obviate the need for opposing counsel to respond to such motion.

<sup>4</sup> The number of interrogatories each party may serve on the opposing party shall not exceed 25 questions, including subparts, without an order of the Court. The party seeking to serve more than 25 questions, including subparts, shall have the burden of persuasion to establish that the complexity of the case or the number of citation items necessitates a greater number of interrogatories.

<sup>5</sup> Depositions of parties, intervenors, or witnesses shall be allowed only by agreement of all the parties, or on order of the Court following the filing of a motion of a party stating good and just reasons. All depositions shall be before an officer authorized to administer oaths and affirmations at the place of examination. The deposition shall be taken in accordance with the Fed. R. Civ. P., particularly Rule 30. A motion to take depositions may be filed after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss. Any depositions allowed by the Court may be taken after 10 days written notice to the other party(ies). The 10-day

9.

The number of requested admissions each party anticipates it will serve on the opposing party is:

a. Complainant: \_\_\_\_\_.

b. Respondent: \_\_\_\_\_.<sup>6</sup>

10.

a. The date on or before which a party may file any objection, together with the grounds for it, to the use under Fed. R. Civ. P. 32(a) of a deposition designated by another party under Rule 26(a)(3)(A)(ii) is \_\_\_\_\_, 20\_\_\_\_ (not later than fourteen (14) after service of the disclosure).

b. The date on or before which a party may file any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Fed. R. Civ. P. 26(a)(3)(A)(iii) is \_\_\_\_\_, 20\_\_\_\_ (not later than fourteen (14) after service of the disclosure).

c. The date on or before which a party may file any motion(s) to compel is \_\_\_\_\_, 20\_\_\_\_ (not later than fourteen (14) after service of the discovery response).

An objection not so made, except for one under Fed. R. Evid. 402 or 403, is waived unless excused by the Court for good cause.

11.

The date on or before which motion(s) to amend pleadings shall be filed is \_\_\_\_\_, 20\_\_\_\_.

12.

The date on or before which dispositive or partially dispositive pretrial motion(s), including summary judgment motion(s), shall be filed (not later than thirty (30) days after the close of discovery) is \_\_\_\_\_, 20\_\_\_\_.

---

notice requirement may be waived by the other party(ies).

<sup>6</sup> The number of requested admissions each party may serve on the opposing party shall not exceed 25, including subparts, without an order of the Court. The party seeking to serve more than 25 requested admissions, including subparts, shall have the burden of persuasion to establish that the complexity of the case or the number of citation items necessitates a greater number of requested admissions.

13.

The date by which response(s) to dispositive or partially dispositive pretrial motion(s) shall be filed in the Court (not later than twenty-one (21) days after service of the motion) is \_\_\_\_\_, 20\_\_\_\_.

14.

The date by which the parties shall file a joint proposed [Pretrial Order](#) using the Court's mandatory form (not later than thirty (30) days after the close of discovery, or entry of the Court's ruling on any pending motions for summary judgment, whichever is later) is \_\_\_\_\_, 20\_\_\_\_.

15.

The date by which the parties shall file proposed findings of fact, conclusions of law, and briefs is \_\_\_\_\_, 20\_\_\_\_.

16.

Any other time limits or deadlines the parties suggest as appropriate or necessary for the efficient management of the pretrial and trial activities: \_\_\_\_\_.

17.

Lead counsel for the parties certifies that by signing and submitting this Plan that:

a. A Fed. R. Civ. P. 26(f) conference was held on \_\_\_\_\_, 20\_\_\_\_, and that they participated in settlement discussions. Other persons who participated in the settlement discussions are listed according to party.

For Complainant: Other participants: \_\_\_\_\_

For Respondent: Other participants: \_\_\_\_\_

b. All parties were promptly informed of all offers of settlement and following discussion by all counsel, it appears that there is now:

(\_\_\_\_\_) a possibility of settlement before discovery.

(\_\_\_\_\_) a possibility of settlement after discovery.

(\_\_\_\_\_) a possibility of settlement, but a conference with the judge is needed.

(\_\_\_\_\_) no possibility of settlement.

c. The following specific problems have created a hindrance to settlement of this case.

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

\_\_\_\_\_  
Counsel for Respondent

**SCHEDULING ORDER**

**IT IS HEREBY ORDERED** that the foregoing, including the attachments thereto, constitutes the Court's scheduling order in the above-styled action and shall not be amended except by Order of the Court to prevent manifest injustice.

**SO ORDERED THIS** \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
**JOHN B. GATTO, Judge**  
U.S. Occupational Safety and  
Health Review Commission



UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

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

Complainant,

v.

Matter Description (Uppercase),

Respondent.

OSHRC DOCKET No.

**PRETRIAL ORDER**

1.

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

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, the parties shall, however, be permitted to take the depositions of any persons for the preservation of evidence and for use at trial.

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.

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.)

5.

The following individually-named attorneys are hereby designated as lead counsel for the parties:

Complainant:

-----

Respondent:

-----

Other Parties:

-----

6.

State whether there is any pending related litigation. Describe briefly, including style and civil action number.

7.

Attached hereto as Attachment "C" 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 (*e.g.*, "As to Citation No. \_\_, item \_\_\_\_, Complainant asserts"). 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.

8.

Attached hereto as Attachment "D" 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 (*e.g.*, "As to Citation No. \_\_\_\_, item \_\_\_\_, Respondent contends"). All relevant rules, regulations, statutes, ordinances, and illustrative case law relied upon as creating a defense shall be listed under a separate heading.

9.

Attached hereto as Attachment "E" are the facts stipulated by the parties (*e.g.*, "Respondent admits that it is an employer engaged in a business affecting commerce within the meaning of the Occupational Safety and Health Act. Respondent's notice of contest was timely filed.") No further evidence will be required as to the facts contained in the stipulation and the stipulation may be read 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.

10.

The legal issues to be tried are as follows: (e.g., “Respondent contests Citation No. \_\_\_\_\_, item [s] \_\_\_\_\_. Whether respondent violated 29 C.F.R. §\_\_\_\_. If a violation of 29 C.F.R. § \_\_\_\_\_ is [are] found, whether the violation[s] was [were] serious and whether the proposed penalty[ies] of \$ \_\_\_\_\_is [are] reasonable.”)

11.

Attached hereto as Attachment “F-1” for the Complainant, Attachment “F-2” for the Respondent, and Attachment “F-3”, 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(ies) 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.

12.

Attached hereto as Attachment “G-1” for the Complainant, “G-2” for the Respondent, and “G-3”, 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. Counsel is required to identify all such treatises under a separate heading on the party’s exhibit list.

13.

Exhibits shall be premarked by counsel with the case docket number, with a designation identifying the party or intervenor offering the exhibit, and numbered consecutively. Adequate space must be left on the left margin of each party’s exhibit list for Court stamping purposes. Exhibits shall be sequentially numbered with a label placed in the lower right corner of each exhibit (and on each page thereafter, unless subsequent pages have clearly identified page

numbers which can be referenced on the record). Each exhibit shall be numbered C-1, C-2, C-3, etc. for Complainant's exhibits, and R-1, R-2, R-3, etc. for Respondent's exhibits. If other parties have been recognized in the case, they should follow a similar procedure (U-1, U-2, U-3 for exhibits offered by union representatives participating in the proceeding). The pre-numbered exhibits must be securely placed in a three-ring binder, along with an index page located in the front of the binder. Each party shall prepare the following number of copies of their respective exhibit notebooks: (1) one copy for the Court (to be provided at trial), (2) one copy for the witness stand (to be provided at trial, which shall become the official Court copy), (3) one copy for each opposing party (which should be produced before trial pursuant to the Court's deadlines), and (4) a copy for the party offering the exhibits.

The parties shall confer and consolidate duplicate exhibits and use a joint common numbering system for such exhibits to the extent feasible. Exhibits shall be premarked by counsel with the case docket number, with a designation identifying the party or intervenor offering the exhibit, and numbered consecutively. 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 use by the Court. Copies of each joint exhibit and each party's non-joint exhibits shall be presented to the Court and the opposing party in binders appropriately tabulated using a legal index tab on the right margin. The pages of each exhibit shall be sequentially numbered with Arabic numbers.

14.

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 the parties and shall be admitted at trial without further proof of authenticity.

15.

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 the parties or permission of the Court. Exhibits so admitted must be numbered, inspected by counsel, and marked with stickers prior to trial.

16.

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.

17.

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

18.

Attached hereto as Attachments "H-1" for the Complainant, "H-2" for the Respondent, and "H-3", 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.

19.

a. Lead counsel for the parties certify by their signatures below they certify that after the completion of Discovery, a second Fed. R. Civ. P. 26(f) conference was held on \_\_\_\_\_, 20\_\_\_\_, and that they participated in settlement discussions. Other persons who participated in the settlement discussions are listed according to party.

For Complainant: Lead counsel (signature): \_\_\_\_\_

Other participants: \_\_\_\_\_

For Respondent: Lead counsel (signature): \_\_\_\_\_

Other participants: \_\_\_\_\_

b. All parties were promptly informed of all offers of settlement and following discussion by all counsel, it appears that there is now:

(\_\_\_\_\_) A possibility of settlement before discovery.

(\_\_\_\_\_) A possibility of settlement after discovery.

(\_\_\_\_\_) A possibility of settlement, but a conference with the judge is needed.

(\_\_\_\_\_) No possibility of settlement.

c. Counsel (\_\_\_\_\_) do or (\_\_\_\_\_) do not intend to hold additional settlement conferences among themselves after the close of discovery. The proposed date of the next settlement conference is \_\_\_\_\_, 20\_\_\_\_.

d. The following specific problems have created a hindrance to settlement of this case: ----.

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

\_\_\_\_\_  
Counsel for Respondent

**ORDER**

**IT IS HEREBY 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.

**SO ORDERED THIS** \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

---

**JOHN B. GATTO, Judge**  
U.S. Occupational Safety and  
Health Review Commission