



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

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STANDING ORDER ON SETTLEMENT CASES

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General Provisions

This *Standing Order on Settlement Cases* applies to all cases assigned to Judge John B. Gatto (the Settlement Judge) on the Settlement Case track in the United States Occupational Safety and Health Review Commission. A copy of this Standing Order and appended forms (Appendix A of this Standing Order) can be obtained by accessing the link to Judge Gatto's *Standing Order on Simplified Cases* on the Review Commission's website at: <http://www.oshrc.gov/ALJP/index.html>. Any reference to "counsel" in this Standing Order or appended forms refers to any person who is permitted in accordance with law to represent a party in an action pending in the Review Commission, and to any person proceeding *pro se* in an action pending in the Review Commission.

Discovery

Review Commission Rule 120 mandates that the Settlement Judge issue a discovery scheduling order and supervise all discovery proceedings. At the conclusion of discovery the Settlement Judge must conduct settlement proceedings, which shall commence the day after discovery is concluded and shall conclude within sixty (60) days thereafter. *See* 29 C.F.R. § 2200.120. The parties may also agree in writing to use alternative means of dispute resolution (*e.g.*, minitrial or mediation conducted by the Settlement Judge) as authorized by 5 U.S.C. § 556 and 29 C.F.R. § 2200.120.

The parties and their representatives are required to comply with the spirit of the settlement regulations and shall exert a good faith effort to resolve issues in controversy, either in full or in part, in an amicable manner. The parties, their representatives, *and individuals with full settlement authority must be present at all settlement conferences*. Refusal to cooperate fully within the spirit of the settlement regulations may result in the imposition of sanctions.

Prior to any scheduled settlement conference the parties are directed to confer to ensure that whatever exchange of information is needed for all sides to evaluate the case for settlement purposes is completed by the date of the settlement conference. Each party shall also be prepared to discuss the factual predicate for their respective positions on each issue in controversy at the settlement conference.

Unless the Settlement Judge 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). *See* Commission Rule 52. Responses to initiated discovery must be completed before expiration of the assigned discovery period. Discovery is not available under the Review 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 Review Commission's Rules, any party may, without leave of the Settlement Judge, 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 to the extent provided in 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 Settlement Plan

Unless the Settlement Judge orders otherwise, within **forty-five (45) 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 Settlement 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).

Unless the Settlement Judge orders otherwise, within **sixty (60) days** after service of the complaint on the Respondent, counsel are required to complete and file with the Settlement Judge a *Joint Discovery and Settlement Plan*. No deviations from this form are permitted, except upon the express prior approval of the Settlement Judge.

Conference Following Discovery

Lead counsel and a person possessing settlement authority for Complainant and Respondent are required to again confer, following the close of discovery to discuss, in good faith, settlement of the case.

Motions

Generally. Any motion filed with the Settlement Judge 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 Review 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 Settlement Judge. The Settlement Judge 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 Settlement Judge.

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 Settlement Judge's signature.

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 Settlement Plan.

Electronic Filing

The Review 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 (*see* the Consent to Electronic Filing form), 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. 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.

SO ORDERED.



/s/

JOHN B. GATTO, Judge
U.S. OCCUPATIONAL SAFETY AND
HEALTH REVIEW COMMISSION

APPENDIX A - FORMS

A. CONSENT TO ELECTRONIC FILING

**B. ORDER REQUIRING FILING OF PROPOSED JOINT DISCOVERY AND
SETTLEMENT PLAN**

C. JOINT DISCOVERY AND SETTLEMENT PLAN



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 Settlement Judge'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.

Matter Description (Uppercase),

Respondent.

OSHRC DOCKET No.

**ORDER REQUIRING FILING OF JOINT
DISCOVERY AND SETTLEMENT PLAN**

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). *See* Review Commission Rule 52. Responses to initiated discovery must be completed before expiration of the assigned discovery period.

IT IS FURTHER ORDERED THAT within forty-five (45) 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 addressed in the parties' proposed *Joint Discovery and Settlement 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).

IT IS FURTHER ORDERED THAT within sixty (60) days after service of the complaint on the Respondent, counsel are required to complete and file a proposed *Joint Discovery and Settlement Plan*, using the Settlement Judge's mandatory form.¹ No deviations from this form shall be permitted, except upon the express prior approval of the Settlement Judge.

¹ The parties are directed to Judge Gatto's *Standing Order on Settlement Cases*, which is incorporated herein by reference and made a part of this Order. A copy of the *Standing Order on Settlement Cases* and appended forms (*see* Appendix A to the Standing Order) may be obtained by accessing Judge Gatto's *Standing Order on Settlement Cases* link on the Commission's website at: <http://www.oshrc.gov/ALJP/index.html>.

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 using the Consent to Electronic Filing form.

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.

JOINT DISCOVERY AND SETTLEMENT PLAN

1.

The date by which the parties must exchange in writing the names, organizational affiliations and subject matter areas of expertise of expert witnesses it may call at the trial is _____, 20____.

2.

The date by which Reports prepared by the expert witnesses shall be completed and delivered to counsel who retained the experts is _____, 20____.²

3.

The date by which Reports prepared by the expert witnesses shall be exchanged with opposing counsel is _____, 20____.

² 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 nature of the discovery each party intends to take is:

- a. Complainant: _____.
- b. Respondent: _____.

5.

The number of interrogatories each party intends to serve on the opposing party is:

- a. Complainant: _____.
- b. Respondent: _____.³

6.

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

- a. Complainant: _____.
- b. Respondent: _____.⁴

7.

The number of requested admissions each party intends to serve on the opposing party is:

- a. Complainant: _____.
- b. Respondent: _____.⁵

8.

a. The date on or before which a party must 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).

³ The number of interrogatories each party may serve on the opposing party shall not exceed 25 questions, including subparts, without an order of the Settlement Judge. 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.

⁴ Depositions of parties, intervenors, or witnesses shall be allowed only by agreement of all the parties, or on order of the Settlement Judge 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 Settlement Judge may be taken after 10 days written notice to the other party or parties. The 10-day notice requirement may be waived by the other party or parties.

⁵ The number of requested admissions each party may serve on the opposing party shall not exceed 25, including subparts, without an order of the Settlement Judge. 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.

b. The date on or before which a party must 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 must file any motions 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 Settlement Judge for good cause.

9.

The date by which each party must file a separate position paper (not later than fourteen (14) days prior to the date of the proposed settlement conference) is _____, 20____. The position papers shall include the issues in controversy and the factual predicate for each party's position on each issue.

10.

The proposed date or dates to conduct *ex parte* communications with the Settlement Judge is or are (excluding Mondays, unless held in Atlanta, Georgia or conducted telephonically):

a. Complainant: _____, 20____ at _____ (time) in _____ (city), _____ (state) (OR ____ check here if proposed communication is telephonically).

b. Respondent: _____, 20____ at _____ (time) in _____ (city), _____ (state) (OR ____ check here if proposed communication is telephonically).

11.

The proposed date or dates for a settlement conference is or are (excluding Mondays, unless held in Atlanta, Georgia or conducted telephonically) _____, 20____ at _____ (time) in _____ (city), _____ (state) (OR ____ check here if proposed conference is telephonically). If held in person, the parties will be notified at a subsequent date as to the exact Settlement Judge location.

Counsel for Complainant

Counsel for Respondent



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.

SCHEDULING ORDER

IT IS HEREBY ORDERED that the parties' proposed Joint Discovery and Settlement Plan is hereby adopted by the Settlement Judge and constitutes the Settlement Judge's Discovery and Settlement Scheduling Order in the above-styled action, which shall not be amended except by Order of the Settlement Judge to prevent manifest injustice.

SO ORDERED THIS ____ day of _____, 20____.

JOHN B. GATTO, Judge
U.S. OCCUPATIONAL SAFETY AND
HEALTH REVIEW COMMISSION