United States of America

**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

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| --- | --- |
| SECRETARY OF LABOR,  Complainant, |  |
|  |
| v. | Docket No. Click or tap here to enter text |
| Click or tap here to enter text,  Respondent. |  |

**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 or non-attorney representatives are hereby designated as lead counsel for the parties:

Complainant: Click or tap here to enter text.

Respondent: Click or tap here to enter text.

Other Parties (specify): Click or tap here to enter text.

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.

7.

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

8.

The legal issues to be tried are as follows: Click or tap here to enter text

9.

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.

10.

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, ordinances, and illustrative case law relied upon as creating a defense shall be listed under a separate heading.

11.

Attached hereto as Attachment “C” are the facts stipulated by the parties. 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 noncooperating counsel.

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. Counsel are required, however, to identify all such treatises under a separate heading on the party’s exhibit list.

The parties shall have a joint duty to consolidate duplicate exhibits using a joint common numbering system for such exhibits to the extent feasible. Exhibits shall not include alphabetical or numerical subparts (e.g., A, B, C, I, ii, iii etc.). Rather, if subparts are necessary, separate exhibits must be used in lieu thereof. Prior to trial, each party shall number their exhibits using exhibit stickers, marked with the docket number, with a designation identifying the party or intervenor offering the exhibit, and numbered consecutively. Each page of each exhibit shall be numbered consecutively, preferably with a Bates stamp. *The pre-numbered exhibits must be securely placed in a trial exhibit notebook and each exhibit separated by a tab labeled with the exhibit number.* *The trial notebooks shall be presented to the court reporter at trial, along with a courtesy copy for the judge.*

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, privilege, competency, and, to the extent possible, relevancy by the parties and shall be admitted at trial without such further proof.

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 must be numbered, inspected by counsel, and marked with stickers prior to trial. 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.

No later than **14 days before trial**, the parties must each deliver a copy of each exhibit in Adobe Portable Document Format (.pdf) to the court reporter AND to the court’s Legal Assistant by email attachment in Adobe Portable Document Format (.pdf). The electronic pdf version of each exhibit must mirror the original paper version in all respects, including clarity and color.

If the trial is scheduled as a virtual trial rather than in-person, in lieu of the above instructions, no later than 14 days before trial, the parties must each deliver:

A copy of each exhibit in Adobe Portable Document Format (.pdf) by email attachment in Adobe Portable Document Format (.pdf), or by mail on a CD or flash drive to the opposing party. The electronic pdf version of each exhibit must mirror the original paper version in all respects, including clarity and color;

Their original trial exhibit notebooks to the court reporter, along with copies of each exhibit by email attachment in Adobe Portable Document Format (.pdf), or by mail on a CD or flash drive. The electronic pdf version of each exhibit must mirror the original paper version in all respects, including clarity and color. At trial, exhibits shall be viewed from the provided copies and will not be viewed using the screen sharing function;

A copy of each exhibit in Adobe Portable Document Format (.pdf) by email attachment to the Court’s Legal Assistant. The electronic pdf version of each exhibit must mirror the original paper version in all respects, including clarity and color; and

The party calling a witness must deliver to the witness a copy of each exhibit to be addressed with the witness by email attachment in Adobe Portable Document Format (.pdf) or on a CD or flash drive. The electronic pdf version of each exhibit must mirror the original paper version in all respects, including clarity and color.

14.

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. Pretrial briefs are helpful nut not required. The parties will still be required to file post-trail briefs.

15.

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 no later than seven (7) days before the first day of 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. **However, even if the parties consent to the use of a deposition to present testimony, the court will not permit such use unless the proponent first establishes by a properly supported motion filed at least 30 days before trial that the deposition meets all of the requirements of Federal Rule 32(a).**

16.

Pursuant to LR 16.3, lead counsel and persons possessing settlement authority to bind the parties met in person on Click or tap to enter a date., 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.

() Little possibility of settlement.

() No possibility of settlement.

17.

If different than estimated in the parties’ Joint Preliminary Report and Discovery Plan: Complainant estimates that it will require Click or tap here to enter text. days to present its evidence;

If different than estimated in the parties’ Joint Preliminary Report and Discovery Plan: Respondent estimates that it will require Click or tap here to enter text. days to present its evidence;

If different than estimated in the parties’ Joint Preliminary Report and Discovery Plan: Other parties estimate that it will require Click or tap here to enter text. days to present their evidence.

If different than estimated in the parties’ Joint Preliminary Report and Discovery Plan: the parties estimate the total number trial days will be Click or tap here to enter text. days.

If different than estimated in the parties’ Joint Preliminary Report and Discovery Plan: the parties () do () do not require an interpreter from (Click or tap here to enter text.) (language) to English. Each party is responsible for securing Language Access Services required for their witnesses. However, upon timely notice to the Commission no later than seven (7) days before the first day of trial, the Commission will provide such services to a party (not a party’s witnesses).

18.

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.

|  |  |
| --- | --- |
| /s/ Click or tap here to enter text. | /s/ Click or tap here to enter text. |
| Counsel for Complainant | Counsel for Respondent |

**IT IS HEREBY ORDERED** that the above constitutes the pretrial order for the above captioned case submitted by stipulation of the parties.

**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.

**IT IS FURTHER ORDERED** 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**.

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**Judge John B. Gatto**

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Atlanta, GA