CIVIL JUSTICE ADVISORY GROUP

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN FOR IMPLEMENTATION OF THE CIVIL JUSTICE REFORM ACT OF 1990 IN THE DISTRICT OF PUERTO RICO

CIVIL JUSTICE EXPENSE

AND

DELAY REDUCTION PLAN

FOR IMPLEMENTATION OF

THE CIVIL JUSTICE REFORM ACT OF 1990

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CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN FOR IMPLEMENTATION OF THE CIVIL JUSTICE REFORM ACT OF 1990 US DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

I. Introduction

The United States District Court for the District of Puerto Rico, in compliance with the Civil Justice Reform Act of 1990, adopts the following Civil Justice Expense and Delay Reduction Plan and directs that it be implemented as of December 1, 1993. This plan is based on the recommendations contained in the Report of the Civil Justice Reform Act Advisory Group for the District of Puerto Rico which was submitted to this Court on March 12, 1993 and approved by the Court on June 14, 1993, as mandated by statute.[1]

II. Principles and Guidelines of Litigation Management and Cost and Delay Reduction

In enacting this broad and ambitious legislation, Congress sought to improve procedures and the attitude of the Bar and the courts in all types of cases, even those in which the statistics disclosed a relatively good record of efficiency. The Act does not mandate specific procedures to be used by courts in effectuating a system of case management; however, section 473 of the Act lists six principles and six techniques of litigation management and cost and delay reduction which the courts and their advisory groups must consider and may include in the development of their reform plans.

A. The first principle involves "a systematic differential treatment of civil cases that tailors the level of individualized and case specific management"[2] to such criteria as case complexity, amount of pretrial time needed, and availability of judicial resources.

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[1] 28 U.S.C. 471 and 472.

[2] 28 U.S.C. 473(a)(1).

B. The second principle requires the judicial officer to plan the progress of the case by setting firm trial dates, to occur within 18 months of the filing of the complaint, unless the officer makes a certification that the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice, or the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases.[3]

C. The third principle provides that if a judicial officer determines a case to be complex, he or she shall conduct one or more discovery case management conferences to (i) explore settlement, (ii) identify issues, (iii) prepare a discovery schedule and attempt to limit discovery and (iv) set early deadlines for motions and a framework for their disposition.[4]

D. The fourth and fifth principles encourage the parties to voluntarily exchange information through the use of cooperative discovery devices and the preclusion of discovery motions unless the movant certifies that he or she has made a reasonable good faith effort to reach an agreement with opposing counsel on the matters set forth in the motion.[5]

E. The sixth principle directs that appropriate cases be referred to alternative dispute resolution programs such as arbitration, mediation, mini-trial, or summary jury trial.[6]

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[3] 28 U.S.C. 473(a)(2).

[4] 28 U.S.C. 473(a)(3).

[5] 28 U.S.C. 473(a)(4) and (5). It should be noted that the fifth principle is already covered by local rule 311.11.

[6] 28 U.S.C. 473(a)(6).

III. Case Management Plan Techniques

The Act also provides that when formulating case management plans, each court, in consultation with its advisory group, must consider and may include in its plan six suggested techniques for litigation management. These include: (i) the requirement that counsel for each party submit a case management plan at the initial pretrial conference; (ii) the requirement that each party be represented at the pretrial conference by an attorney who has authority to bind that party regarding all matters previously identified by the Court for discussion at the conference; (iii) the requirement that all requests for extension of discovery or trial deadlines be signed by the attorney and the party making the request; (iv) the establishment of a neutral evaluation program for presentation of the legal and factual basis of a case to a neutral court representative; (v) the requirement that a representative of the parties with binding authority be present or available by telephone during any settlement conference; and (vi) any other features that the Court considers appropriate.[7]

In the few years since is passage, the statute has encouraged all participants in the judicial process to consider techniques for making court procedures uniform and for reducing the costs of litigation, both in terms of time and money. If litigation becomes less expensive and protracted, the courts will become more accessible to many *bona fide* plaintiffs whose rights may have languished unattended in the past.

This Plan presents a variety of techniques which shall be employed in improving case management. There is, however, one crucial, overriding principle that must govern any attempt to effectuate a case management method, which is that the early intervention by the Court into each case, judicially-monitored discovery, and the prompt setting of a trial date are <u>essential</u> to effective case management.

The case management technique to be employed in any particular case may also vary depending on the facts and issues presented. Many cases present relatively

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[7] 28 U.S.C. 473(b)(l) - (5).

straightforward disputes which can be disposed of without allowing the parties to indulge in extended and costly discovery. On the other hand, certain cases involve complex factual and legal disputes which require significant discovery and pretrial rulings by the Court. The Plan sets forth three separate types of case management techniques that can be employed under the various circumstances which may be presented.

These recommendations are aimed at solving the problems identified in Part V of the CJRA Report, "Causes of Cost and Delay", which describes a tendency, in a minority of cases, towards a longer life span for civil cases. The Court, having reviewed the recommendations of the Advisory Group, considered each of the principles and techniques cited in the Act and have adopted those described below..

Moreover, the Court weighed the requirements which the Advisory Group did not choose to recommend. For instance, a requirement that all requests for extension of discovery deadlines or for postponement of trial be signed by the attorney and the party was viewed as impractical, as well as undesirable, due the fact that a substantial number of civil cases filed in this district have parties who reside outside the jurisdiction. Also, in some case, attorneys are unable to communicate with the clients because of the non-availability of telephones. Thus, the Group concluded, and the Court agrees, that rather than reduce costs and delay, the adoption of this requirement would only serve to increase them.

In addition, the Court considered the requirement that each party be represented at each pretrial conference by an attorney with authority to bind that party to all matters previously identified by the Court for discussion at the conference.[8] The Advisory Group did not believe it would be appropriate to require that the parties or their representatives be present since conference deals for the most

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[8] Local Rule 314.3 already provides that "The parties' pretrial conference shall be attended by the attorneys who will try the case and who are authorized to make binding stipulations for the parties, as well as enter into settlement discussions.

part with technical matters and generally last no longer than 20-30 minutes. The judicial officer, however, may require their presence if he or she believes it to be beneficial. The Court is in agreement with this position as well.

The Act further requires the Court, in consultation with the Advisory Group to consider, upon notice by the Court, that representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during settlement conferences. The Court is in accord with the Advisory Group that requiring the presence of parties or their representatives at the settlement conference would increase costs of litigation due again to the fact that a sizeable number of parties to civil cases are located off the island; nevertheless, having parties who reside off the island readily accessible by telephone may be a useful and relatively inexpensive means to require their availability at the settlement conference and the Court adopts the Advisory Group's recommendation as to this matter. Notwithstanding the foregoing, the Court may require that parties or their representatives or insureres, regardless of location, attend a conference to consider possibilities of settlement and participate in proceedings as ordered.

IV. Differential Treatment of Civil Cases

The Court adopts the Advisory Group's recommendation for the implementation of a case tracking system, known as differentiated case management (DCM), based on case complexity as a significant step towards maintaining better controls on delay in litigation. Such a system would distinguish among simple cases, standard cases and complex cases.

A. DCM Program and Tracking System

The Clerk of Court shall make an initial classification of civil cases as they are filed, subject to subsequent review by the district judge to whom the case is assigned. As to previously filed cases, the district judge would have the option of moving the case onto the tracking system, with adequate notice to all parties.

All civil cases filed in this District, commencing on December 1, 1993, shall be classified in one of the following three categories.

1. **Expedited Track**: The expedited track would involve relatively simple cases, such as student loans, foreclosures and social security. Such cases would normally be completed within nine months of filing. The discovery cut-off will occur no later than 100 days after filing of the Case Management Order (CMO).

2. **Standard Track**: The great majority of the cases would be on this track, with an expected date of termination of no more than 18 months and discovery cut-off no later than 200 days after filing of the CMO.

3. **Complex**: The goal for completion of these cases would be 36 months. The discovery cut-off date will be established in the CMO.

It is also important to note that some exceptional cases would be removed from ordinary tracking and handled separately. These would include institutional reform cases, mass tort litigation comparable to the San Juan Dupont Hotel fire litigation, and certain cases involving immediate requests for equitable relief.

B. Track Assignment Factors

The following factors shall also be considered when assigning cases to the different tracks:

Expedited:

(1) Legal Issues: Few and clear
(2) Required Discovery: Limited
(3) Number of Real Parties in Interest: Few
(4) Number of Fact Witnesses: Up to five
(5) Expert Witnesses: None
(6) Likely Trial Days: Less than 5
(7) Character and Nature of Damage Claims
(8) Simple Tort

Standard:

(l) Legal Issues: More than a few, some unsettled
(2) Required Discovery: Routine
(3) Number of Real Parties in Interest: Up to five
(4) Number of Fact Witnesses: Up to ten
(5) Expert Witnesses: Two or Three
(6) Likely Trial Days: five to ten
(7) Character of Nature of Damage Claims: Routine

Complex:

(l) Legal Issues: Numerous, complicated and possibly unique
(2) Required Discovery: Extensive
(3) Number of Real Parties in Interest: More than five
(4) Number of Witnesses: More than ten
(5) Expert Witnesses: More than three
(6) Likely Trial Days: More than ten
(7) Character and Nature of Damage Claims: Usually requiring expert testimony

C. Appeal of Track Assignment

The Court may, at its discretion, modify or reassign the case to a different track. The Court will also entertain a motion to change the track assignment for good cause upon certification by the party making the request that reassignment is necessary in the interest of justice.

D. Pretrial Case Management

1. Expedited Track

If, after reviewing the complaint, the Court determines that the case presents a simple dispute which can be quickly resolved, the Court will issue an order directing the defendant to state whether the material facts are in dispute. Examples might include: (i) ordering the defendant to state whether money is owing in a bank foreclosure case; (ii) ordering the defendant to state whether he possesses any evidence to contravene the government's scientific tests in embargo cases brought

by the Food and Drug Administration; and (iii) ordering the defendant to state whether cargo was damaged in a Carriage of Goods by Sea Act case.

If the defendant's response does not effectively dispose of the case, the Court must then proceed to set discovery, pretrial and trial dates, recognizing that the proceedings may likely be streamlined given the simplicity of the case. A typical order in such a case might read as follows:

SCHEDULING ORDER

This is a simple debt case or a case based on a predetermined scientific fact. Under Rule 16 of the Federal Rules of Civil Procedure, as amended, the Court is empowered to schedule and plan the course of litigation in order to achieve a just, speedy, and inexpensive determination of this simple action. Fed. R. Civ. P. 1; Fed. R. Evid. 102. In so doing, the Court advises litigants that we firmly believe in the interplay of Rules 7, 11, 16, and 26, as amended in 1983.

Service of process will be carried out forthwith and the same should be concluded and/or perfected by return of service of process and/or service by publication on or before _____.

In the event that the defendants fail to plead or otherwise defend as required by law, upon expiration of the time for the filing of the responsive pleading, the plaintiff will move for judgment by default or otherwise on or before _____ [5 working days after the expiration of the mentioned period of time]. If a responsive pleading is entered by the defendants, the plaintiff will immediately request a status conference, so that counsel and the Court can plan the future course of this simple litigation, and will serve copy of this Order on the defendant(s). Open-file discovery will be immediately provided to the appearing defendants, who shall be furnished access to every document which might be used at trial to prove the debt or scientific fact. Materiality of any documents will be discussed at trial. A notice attesting to the fact that open-file discovery has been provided should be filed forthwith. If a disagreement among the parties results in the need to file discovery motions, no such motion will be reviewed unless it contains a statement by the movant, pursuant to Local Rule 311.11, that a good faith effort was made with opposing counsel to reach an agreement on the matters set forth in the motion.

In the event that a status conference is held, the parties must appear prepared to discuss settlement, and with plans for the payment of the debt or acceptance of the scientific fact or other alternatives to put an end to the litigation.

Failure on the part of the plaintiff to comply with the terms and conditions of this order will result in an immediate dismissal for lack of diligent prosecution. Fed. R. Civ. P. 41(b).

In a simple debt action, any defendant who denies the averments of the complaint must state within twenty (20) days what amount is owed and what amount is not owed (with a particularized statement of account). In any action in which the defendant challenges scientific data, defendant must state what data is objected to and file an attesting report of an expert.

2. Court-Directed Method

This technique may be used in a case that requires discovery. Upon receiving an answer to the complaint, the Court sets an Initial Scheduling Conference (or Case Management Conference). In the Order setting the Conference date, the Court (i) orders that all defendants who have not yet filed an answer do so within 10 days, (ii) orders the parties to prepare and file memoranda discussing their factual and legal contentions, listing their potential witnesses and documentary evidence, and itemizing all proposed discovery.

During the Conference, the Court first establishes areas in which the parties can enter into stipulations of fact. The parties thereafter enter into such stipulations. They are also required to summarize the legal theories which they believe control the facts of the case. The Court then reviews the lists of witnesses and documents prepared by the parties to establish which items are necessary and sets a comprehensive discovery schedule, including setting specific dates for depositions, for the filing of interrogatories and requests for documents, and for filing dispositive motions and amended pleadings. Further, the Court shall consider and take appropriate action on the need for adopting special procedures for the management of potentially difficult or protracted actions on the complex track that may involve complicated issues, multiple parties, difficult legal questions or unusual proof problems. A date for Pretrial and Trial is set by the Court and instructions issued to the parties on what is required to be prepared for these proceedings. A typical order might read as follows:

INITIAL SCHEDULING CONFERENCE CALL

Under Rule 16 of the Federal Rules of Civil Procedure, as amended, the Court is required to schedule and plan the course of litigation, in order to achieve a just, speedy, and inexpensive determination of the action. Fed. R. Civ. P. 1; Fed. R. Evid. 102. In so doing, the Court advises litigants that we firmly believe in the interplay of Rules 7, 11, 16, and 26 of the Federal Rules, as amended in 1983. These Rules require increased lawyer responsibility coupled with a mandate to the Court to increase the level of judicial management and control of litigation. All documents filed in this case will be read as if containing a warranty certificate as to quality and content. Fed. R. Civ. P. 11. The filings must be prepared to the best of the lawyer's knowledge, information, and belief, formed after reasonable inquiry. Accordingly, it is ORDERED by the Court as follows:

1. Unless already filed, answers to the complaint will be filed within ten (10) days of this date. Any such filing will not be deemed a waiver of any previously filed motions.

2. Counsel will meet with the Court in chambers on _____, at ____, for the following purposes:

a) informing the Court of their contentions, which will include (i) disclosing all material and pertinent facts, (ii) stating their theories of the case, with citations to statutes and case law (see Erff v. Markhon Industries, Inc., 781 F.2d 613, 617 (7th Cir. 1986); Rodrigues v. Ripley Industries, Inc., 507 F.2d 782, 786-87 (1st Cir. 1974); see also Awilda Ramirez Pomales v. Becton Dickinson & Co., S.A., 839 F.2d 1, 3-6 (1st Cir. 1988)), and (iii) entering into stipulations of fact and applicable law;

b) bringing forth evidence to show such facts;

c) assessing any damages claimed;

d) announcing all documentary evidence;

e) announcing all witnesses, including experts, for whom the parties must supply a curriculum vitae and, in case the plaintiffs, an expert report;

f) discussing settlement.

This conference will also serve the purposes of guiding and setting discovery procedure and scheduling this case for Pretrial and Trial.

3. All counsel should anticipate a trial date within ninety (90) days of this date. Once a trial has been set with the concurrence of counsel, no continuance will be granted. Trial will not be continued solely because counsel have agreed to recommend a settlement. A trial date will be passed only if a settlement has been firmly bound.

4. All counsel are admonished to expedite discovery. Interrogatories shall be limited to no more than (number) questions.

5. The parties are each ORDERED to file, two days prior to the conference, a memorandum discussing their factual and legal contentions, listing their witnesses (fact and expert) and documentary evidence, and itemizing all the discovery (including interrogatories, requests for admissions, requests for production, and depositions) which they wish to conduct. Where plaintiff announces expert witnesses, the plaintiff must provide a curriculum vitae and report containing a discussion of elements of cause and effect, diagnosis, and prognosis. The defendant will be required to file similar documents if expert witnesses are to be used to rebut plaintiff's allegations. The memoranda may also include any other matter deemed appropriate. Courtesy copies of the ISC memos must be delivered to the Judge's chambers at least two days before the Initial Scheduling Conference.

6. The objective of the conference scheduled herein is to simplify the issues and to reach agreements as to uncontroverted facts and accepted principles of law applicable to the case. Therefore, counsel attending are expected to be conversant enough with the facts and the law to enter into such agreements. Counsel should be ready to respond to such queries as the Court may deem appropriate, and be prepared to discuss settlement. As required by Rule 16(c), '[a]t least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.' Counsel are reminded that failure to participate in good faith, or participating while being substantially unprepared, are noncompliant acts under Fed. R. Civ. P. 16(f) and 41(b), that may result in sanctions, including the payment of reasonable expenses incurred by the noncompliance or fines levied upon attorneys personally; dismissal of the complaint; the prohibition of certain witness' testimony and the admission of facts. See Boettcher v. Hartford Insurance Co., 927 F.2d 23 (1st Cir. 1991); Vakalis v. Shawmut Corp., 925 F.2d 34, 36 (1st Cir. 1991). Furthermore, sanctions may also be imposed pursuant to Federal Rule of Civil Procedure 11 for filing of complaints not well-founded in fact.

The Court will issue an Initial Scheduling Conference Order (or Case Management Order) following the Conference which summarizes the information covered during the Conference. A typical order might read as follows:

INITIAL SCHEDULING CONFERENCE ORDER

The parties met with the Court on _____, for an Initial Scheduling Conference, represented by counsel:
_____ for plaintiff; _____ for defendant.

[A brief summary of the case is provided. Thereafter, where necessary, the Court sets forth Orders made by the Court during the Conference which are required due to the peculiar or special nature of the case. For example, in a case to determine only damages, the Court might order plaintiff to file a detailed summary of his calculation of alleged damages which defendants may use to guide their discovery.]

I. Agreement of the Parties

The parties stipulated to the following facts:

[listed]

II. Controverted Facts and Issues

[listed]

III. Legal Theories

[listed]

IV. Witnesses

[listed]

Additional witnesses will not be allowed because this will create undue prejudice to the opposing party. If any party wishes to use any additional witnesses, it will be discretionary with the Court, provided that the parties state in writing on or before _____ the following information regarding each additional witness: name and address with a short statement as to the subject matter of their testimony, and proof that the names of these witnesses, or the fact that their testimony was decidedly material, was not known at the time of this Initial Scheduling Conference, and the reason why they were not known. In the case of a proposed expert witness, the party requesting leave to amend the witness list shall also provide a copy of the proposed expert's curriculum vitae and a report summarizing his or her findings and opinions and the grounds for each.

Noncompliance with this Order will result in such witnesses not being allowed to testify at trial. The party informing new witnesses must produce them at its own cost for depositions to be scheduled by the other party, to be taken within two weeks if it desires and the Court approves.

V. Documentary Evidence

[listed]

Additional documentary evidence will not be admitted into evidence without leave of Court, which is to be obtained at least 30 days before trial. If any party wishes to use any document not listed herein, it must serve the document on all other parties and notify the Court of its intent to use the document, explaining its relevance and why its existence or materiality was not known at the time of this Conference. The Court expressly reserves its decision as to whether any document not specifically listed in this Order will be admitted.

VI. Discovery

The parties have agreed that they will conduct only the following discovery:

A. Plaintiff

1. Interrogatories [listed]
2. Depositions [listed]

B. Defendant

1. Interrogatories [listed]
2. Depositions [listed]

All discovery the parties are to conduct has been scheduled herein in accordance with their request. All the depositions are to be taken within the deadline, from day to day until completed, and they are not to be postponed. No further discovery is to be allowed without leave of the Court, and if leave is granted, the rules as herein stated apply to this further discovery. Moreover, no discovery motions will be allowed unless the movant certifies that he or she has made a good faith effort to reach an agreement with opposing counsel on the matters set forth in the motion. Any additional discovery allowed by the Court must be completed by _____. By this deadline, all additional interrogatories and requests for admissions must be answered and all depositions and examinations taken. This means that

interrogatories and requests for admissions must be served at least 30 days prior to the deadline and notice of depositions given within a reasonable time of the deadline.

VII. Schedule with the Court

Pretrial is SET for _____, at ____ p.m. While at the Pretrial Conference, the attorneys are ORDERED to have their clients available by phone, under penalty of fine. Trial is SET for _____, at 9:00 a.m.

Five working days prior to the date of trial, the parties shall:

1) submit proposed jury instructions, if any, together with citations of authorities in support of the proposed instructions;

2) meet and mark all exhibits to be offered at trial, for identification.

Failure to comply with this Order is at the risk of the proponent of the evidence not submitted in accordance with the above requirements.

Any motions for joinder of parties, for amendment of pleadings or third-party complaints must be filed on or before _____. In addition, the Court GRANTS until _____ for the filing of any and all dispositive motions; if not filed by said date, the arguments thereunder shall be deemed waived. Responses shall be filed within ten days as provided for in the Rules. Non-compliance with any Order herein may result in the imposition of sanctions on the non-complying party, attorney, or both, which may include the imposition of a fine.

The dates specified herein were agreed to or otherwise ordered by the Court at the Conference and the parties have been informed by the Court that they have to comply with such schedule regardless of the fact that this Order, in its written form, may not be entered before the event. These dates shall not be changed. If changed, the same is at the risk of the party interested in the information or discovery and in no event shall affect the subsequent course of the action as scheduled herein. Fed. R. Civ. P. Rule 16.

By bringing the parties together with the Court at an early stage in the litigation, all the participants in the case are required to familiarize themselves with the contours of the case. The plaintiff is compelled to establish the facts which it seeks to prove, instead of embarking on a fishing expedition. The defendant is then promptly put in a position to review the plaintiff's claims and prepare a comprehensive defense

strategy. The Court, too, is afforded the opportunity to achieve a broad understanding of the interests and concerns of the parties, which puts it in a better position to rule on discovery disputes and to consider the propriety of any extrajudicial resolution of the case.

While the court-directed method may require a greater commitment of judicial time and effort, it often results in a savings of time and effort, where facts and issues are streamlined. Of course, the court-directed method is an ideal. When presented with constraints of time or with a factual dispute that does not require a full-blown discovery schedule, other methods may be used adequately.

3. Court-Ordered Method

This technique can also be employed in any case requiring discovery. Upon receiving an answer to the complaint, the Court orders the parties to proceed, setting forth a series of deadlines. The Court first orders the parties to exchange memoranda, copies of which must be filed with the Court, summarizing factual and legal contentions, witnesses, documents, and prospective discovery--similar to the memoranda filed with the Court under the court-directed method. The Court then sets deadlines for (i) filing additional or amended pleadings, (ii) conducting discovery and (iii) filing dispositive motions. Further, the Court shall consider and take appropriate action on the need for adopting special procedures for the management of potentially difficult or protracted actions on the complex track that may involve complicated issues, multiple parties, difficult legal questions or unusual proof problems. Pretrial and trial dates are set and the parties are directed to prepare a Pretrial Order, which must contain (i) a summary of the admitted and disputed facts of the case, (ii) summaries of the legal theories of the parties, (iii) lists of witnesses, (iv) lists of exhibits and other relevant information. The Court may also order the parties to conduct some form of settlement discussions. A typical order might read as follows:

SCHEDULING ORDER

Under Rule 16 of the Federal Rules of Civil Procedure, as amended, the Court is required to schedule and plan the course of litigation, in order to achieve a just, speedy, and inexpensive determination of the action. Fed. R. Civ. P. 1; Fed. R. Evid. 102. In so doing, the Court advises litigants that we firmly believe in the interplay of Rules 7, 11, 16, and 26, as amended in 1983. These rules require increased lawyer responsibility coupled with a mandate to the Court to increase the level of judicial management and control of litigation. All documents filed in this case will be read as if containing a warranty certificate as to quality and content. The filings must be done to the best of the lawyer's knowledge, information, and belief, formed after reasonable inquiry. Accordingly, it is ORDERED by the Court as follows:

1. All outstanding pleadings should be filed on or before _____. Any motion to amend pleadings and/or to add parties shall be filed not later than September 11, 1992. In any event, the pleadings' stage should be concluded by _____. Further amendments will only be allowed for good cause shown.

2. Within 20 days of the issuance of this Order, the parties must exchange memoranda setting forth their factual and legal contentions, listing their witnesses (fact and expert) and documentary evidence, and itemizing all the discovery (including interrogatories, requests for admissions, requests for production, and depositions) which they wish to conduct. Where plaintiff announces expert witnesses, the plaintiff must provide a curriculum vitae and report containing a discussion of elements of cause and effect, diagnosis, and prognosis. The defendant will be required to file similar documents if expert witnesses are to be used to rebut plaintiff's allegations. The memoranda may also include any other matter deemed appropriate. Courtesy copies of the memoranda must be filed with the Court.

3. All discovery shall be completed on or before _____. Counsel should become familiar with J. Shapard & C. Seron, Attorneys Views of Local Rules Limiting Interrogatories (Federal Judicial Center 1986). Rather than imposing an arbitrary limit to the number of questions to be included in an interrogatory, the Court urges litigants to realize that we will impose such limitation on interrogatories and requests for admissions on a case-by-case basis if moved by the opposing party based on solid procedural grounds. Discovery by any method should be tailored to the scope and spirit of the rules and nothing else.

4. Any dispositive motion, e.g., motions to dismiss, for judgment on the pleadings, and/or for summary judgment, shall be filed not later than _____. Oppositions to the dispositive motions shall be filed within the term provided to that effect by the Rules of this Court. If a given issue is mature for summary disposition, we expect the parties to file a motion under Rule 56 as soon as the issue ripens.

5. The Pretrial Conference is hereby SET for _____ at _____. The Trial of this cause is hereby SET for _____ at_____. The parties will file a Proposed Pretrial Order which will be the product of their joint work. Counsel are directed to meet at least ten (10) days prior to the date of the pretrial to discuss, not only the contents of the Proposed Pretrial Order, but also the possibility of the extrajudicial determination of the action. If settlement cannot be agreed to, the parties will cover during said meeting the designation and marking of exhibits and depositions, as well as the proposed voir dire and jury instructions in the event that the matter is to be tried before a jury.

The Proposed Pretrial Order shall contain the complete caption of the case and shall set forth the following:

I.

NATURE OF THE CASE

The parties should attempt to agree on the description to be given under the title "Nature of the Case". Issues of jurisdiction shall be included herein. In the event that the parties cannot agree on the content under this subsection, each party should give its version of the nature of the case duly identified as plaintiff's statement of the nature of the case, defendant's statement of the nature of the case, etc.

II.

THEORY OF THE PARTIES

Each party will be identified fully and its theory of the case, including citations of statutes and/or case law, when applicable, will be given. In this respect, be mindful of Erff v. Markhon Industries, Inc., 781 F.2d 613, 617 (7th Cir. 1986), and Rodrigues v. Ripley Industries, Inc., 507 F.2d 782, 786-87 (1st Cir. 1974). See also Awilda Ramírez Pomales v. Becton Dickinson & Co., S.A., 839 F.2d 1, 3-6 (1st Cir. 1988). Attorneys at the pretrial conference must make a full and fair disclosure of their views as to what the real issues of the trial will be, inasmuch as the pretrial order will supersede the pleadings in establishing the issues to be considered at trial.

III.

THE ADMITTED FACTS

The parties are directed to fully stipulate all matters which can be the object of admission and/or stipulation. Whenever it is appropriate, a reference to documents which will be submitted in evidence shall be made in each particular stipulation and/or factual admission.

IV.

THE ULTIMATE FACTS WHICH WILL BE DISPUTED

The parties should attempt to agree on which will be the ultimate facts to be disputed. In the event that they cannot reach said agreement, each party should designate what, in its opinion, are the ultimate facts which the Court will have to pass upon to resolve the controversy.

V.

LIST OF EXHIBITS AND TRANSLATION OF SAME

Not later than ten (10) working days before the date scheduled for the trial, the parties will meet, after having requested the appropriate appointment, with the Courtroom Deputy Clerk assigned to the presiding judge to mark those pieces of documentary and/or real evidence which will be admitted into evidence, as well as those pieces of documentary and/or real evidence over which there is objection, in which case they will be marked as documents for identification.

In this respect, the parties are warned that this process cannot be *pro forma*. If at trial the presiding judge becomes aware of the fact that the parties did not engage in a meaningful marking of exhibits' process in light of the Federal Rules of Evidence, appropriate sanctions will be taken against counsel. See Fed. R. Civ. P. 1 and 28 U.S.C. § 1927.

The Proposed Pretrial Order, under the heading "List of Exhibits and Translation of Same," shall include a list of the exhibits of each party numbered and/or marked in the same fashion as they will be delivered to the Clerk, with an indication as to which are being admitted without objection by opposing counsel.

The parties are aware of the fact that the proceedings in this Court are held in English. That means that particular attention should be given to the Clerk's Notice to Counsel 90-4,

dated April 20, 1990, on the subject of translations and interpreters. Members of the bar are reminded of the provisions of Local Rule 108 which, in essence, do not allow for the filing of documents in Spanish unless duly translated by court interpreters.

VI.

DEPOSITIONS

The parties will list each deposition intended to be used at trial, with designation of portions to be used by the party first offering the same. Objections to the use of depositions or to any designated portion not made at the time of the preparation of the Proposed Pretrial Order will be deemed waived.

VII.

THE POINTS OF LAW TO BE PASSED UPON BY THE COURT

As in other items which could be the object of agreement, the parties are directed to attempt to agree on points of law to be passed upon by the Court. In the event that this is not possible, each party shall state what, in its opinion, are the points of law to be passed upon by the Court. Adequate citations to statutes and/or case law should be given when appropriate.

VIII.

PROPOSED VOIR DIRE AND JURY INSTRUCTIONS

The Proposed Pretrial Order shall incorporate the parties' agreement as to proposed voir dire and proposed jury instructions, both general and specific, related to the particular case in issue. There is no need to propose routine instructions, often referred to as boilerplate instructions. In the event that the parties cannot agree on this subject, each party shall make a part of the Proposed Pretrial Order, under item VIII, its proposed voir dire questions to the jury and all suggested standard or general instructions, as well as specific instructions to be given to the jury. The parties are advised that the Court prefers references to Devitt & Blackmar, Federal Jury Practice and Instructions, and/or Pattern Jury Instructions, 5th, 7th, 9th, and 11th Circuits, and/or Federal Judicial Center Publications.

IX.

TECHNICAL WORDS

A list, in alphabetical order, of technical words that could be used during the trial, must be made a part of the Proposed Pretrial Order. This request is for the benefit of Court personnel, specifically the court reporter and the court interpreter.

X.

WITNESSES

The Proposed Pretrial Order shall contain a list of the potential witnesses to be called by each party, with a brief description of the purpose and/or content of their testimony.

XI.

EXPERT WITNESSES

In the event that expert witnesses are to be utilized by the parties, the Proposed Pretrial Order shall contain written stipulations or statements setting forth the qualifications of the expert witnesses to be called by each party. A brief description of the purpose of the expert testimony will be given as it pertains to each expert witness. The parties should be aware of the fact that Fed. R. Evid. 706 allows the Court to appoint experts on its own motion and/or on motion of any party.

XII.

ITEMIZED STATEMENT OF SPECIAL DAMAGES

In the event that issues of special damages are to be passed upon at trial, an itemized statement of special damages shall be incorporated into the Proposed Pretrial Order. The party or parties not in agreement with the proposed statement of special damages shall include the reasons in opposition under this part of the Proposed Pretrial Order.

XIII.

ESTIMATED LENGTH OF TRIAL

The parties will make an estimate of the probable length of trial.

XIV.

Settlement

The Proposed Pretrial Order must contain the statement that "Possibility of settlement of this case was considered".

RESERVATIONS

6. Unless otherwise disposed of by the Court, each party is limited to a maximum of three (3) expert witnesses. The Court reserves to each party the right to offer rebuttal testimony at trial if necessary. The Court also reserves to each party the right to further supplement the list of witnesses upon application to the Court for good cause shown.

7. The Proposed Pretrial Order may only be modified to prevent manifest injustice. Such modification may be made either on application of counsel for the parties or on motion of the Court.

8. The parties are reserved the right to supplement their request for jury instructions during trial as it pertains to matters that could not be reasonably anticipated.

9. The Proposed Pretrial Order shall contain the full caption of the case, making reference to appropriate name of each party to the controversy as the same stands for trial purposes.

10. The Proposed Pretrial Order shall be filed on or before _____.

11. At the time of pretrial, the parties should be prepared to discuss the possibility of bifurcating liability from damages. This applies both to bench and jury trials. The parties are also instructed to prepare and file with their Proposed Pretrial Order their proposed findings of fact and conclusions of law. This last applies to bench trials.

12. If any party has any serious objection to the deadline imposed herein, said party should inform the Court not later than _____. Otherwise, the Court will assume that the deadlines are agreeable to all parties. If a disagreement among the parties results in the need to file discovery motions, no such motion will be reviewed unless it contains

a statement by the movant, pursuant to Local Rule 311.11, that a good faith effort was made with opposing counsel to reach an agreement on the matters set forth in the motion. Unless by order of the Court, the provisions set hereinabove are binding on the parties and on counsel to the parties.

The Court shall adopt, by local rules, the model standardized forms for use in pretrial matters as set forth above. By adopting these standardized forms, litigants will have the benefit of knowing the course to be pursued as to all cases, beginning with track assignment, continuing through an initial court conference yielding a Case Management Order and then on through the pretrial management as set forth in the CMO.

E. Complex Track

While the techniques described above for the Standard Track may be used in complex cases, the latter often require a number of pretrial conferences and tailor-made provisions for stages of discovery, bifurcated trials and other methods covered in detail in the Manual for Complex Litigation-Second. Rather than attempt to duplicate the provisions of the Manual, this plan encourages the parties and the Court to refer to it for guidance in complex cases.

F. Early Trial Dates

In all civil cases, setting of an early and firm trial date is essential to case management. In expedited track cases, the trial date can be set at the initial conference or in the initial order. In cases where it is impractical to set the trial date at the initial conference or in the CMO, a firm pretrial conference date shall be scheduled. The parties shall be on notice that trial will be held within two months of the pretrial conference.

G. Control of Discovery and Motion Practices

The Act requires each district court to consider "controlling the extent of discovery and the time for completion of discovery and ensuring compliance with appropriate requested discovery in a timely fashion" (Sec. 473(a)(2)(C)). In addition, the Act requires the Court to consider "setting, at the earliest practicable time,

deadlines for filing motions and a time framework for their disposition." (Sec. 473(a)(2)(D), 3(D)).

In light of this mandate, the Court's judges, in their case management orders, shall set such limits as may be appropriate for their individual cases on the number of interrogatories that a party may propound and the number of depositions each party may take, as well as the length of each deposition.

H. Deadlines and Dispositive Motions

Deadlines for discovery and for dispositive motions shall be set at an early stage in the litigation, as part of the Case Management Order. Such deadlines shall be strictly enforced, subject to modification only upon application to the Court, with just cause. Dispositive motions shall be consolidated into no more than one Motion to Dismiss and one Motion for Summary Judgment, eliminating the practice of piecemeal presentation of theories which potentially could dispose of the case.

The Court will, moreover, encourage its judges to rule quickly on discovery disputes, as well as on dispositive motions. Inordinate delay on such rulings leads not only to increased cost and delay, but to unacceptable uncertainty in litigation.

1. Disclosure of Core Information

The Advisory Group's recommendation for the institution of prompt disclosure of core information, requiring the exchange of basic information without the need for a request by opposing counsel is adopted. The requirements for such exchange shall be set forth in the Case Management Order and shall require the provision of names of witnesses, documentary evidence and names of experts to opposing counsel on or before a date certain. A new Local Rule governing such disclosure is set out as Exhibit 1.

2. Videotaped Depositions

The Court also endorses the Advisory Group's recommendation that, in order to reduce the costs involved in compelling witnesses from outside of Puerto Rico to travel to Puerto Rico for depositions or trial, as well as to reduce the costs of

depositions outside of Puerto Rico, the Court shall adopt a Local Rule allowing videotaped depositions as a matter of course in all such circumstances. A new Local Rule on this matter is included as Exhibit 2 of this Plan. In approving this rule, the Court is cognizant of the needs and circumstances of litigants who thus will not be obliged to incur high travel costs to attend depositions.

3. Contributions by Litigants

The proposed local rule regarding mandatory disclosure of core information obliges the litigants to make significant initial disclosures and produce key medical and other records early as a means of reducing cost and delay. This should not be a burdensome obligation on the part of litigants when measured against the potential savings in time and expense for all concerned.

It is also appropriate that various programs adopted by the Court on the recommendation of the Advisory Group may be subject to periodic review and consultation with litigants to determine their level of satisfaction. The Early Neutral Evaluation technique would especially lend itself to such an assessment.

V. Alternative Dispute Resolution/ Early Neutral Case Evaluation

Pursuant to 28 USC §473 (b)(4), this Court shall adopt a system of Alternate Dispute Resolution ("ADR") known as Early Neutral Evaluation (ENE).

Such a program would allow litigants to obtain from an experienced neutral evaluator, a non-binding, reasoned evaluation of their case on the merits, after having provided the Evaluator with essential information concerning their case, including position statements, legal theories and factual versions.

A. Eligible Cases

Any Civil Case which is not on the differentiated case management expedited track, unless the Court finds such a case to be appropriate, will be referred to ENE.

B. ENE Procedures

The ENE procedure shall be undertaken at an early stage of the litigation, within thirty (30) days of the Case Management Order. The parties would be required to present their theories and factual versions to the Evaluator, who would be selected from a list prepared by the Court. Parties would be provided a list of candidates representing one more than the number of parties involved. Each party would have the right to strike one candidate, leaving one which is acceptable to all concerned.

C. ENE Conference

The parties would be required to submit certain basic information for the benefit of the ENE process. The Evaluator would then schedule a short session, designed to identify the principal areas in dispute, the strengths and weaknesses of the positions put forth by the parties, their underlying interests, as well as the possibilities for settlement. Having finished the session or sessions, the Evaluator would offer his/her opinion about the merits of the case and about the settlement value thereof.

D. Duties of the ENE Evaluator

The Evaluator, who must be admitted to practice before the US District Court of Puerto Rico, would function as a facilitator, engaging the parties in meaningful analysis and discussions of their cases and the possibilities for settlement. He/she would have the authority to cite the parties for additional sessions, in the event that such sessions might be helpful in resolution of the case.

E. Confidentiality

This process, although mandatory, would have to take place in the strictest confidentiality. No oral or written reports would be submitted by the Evaluator. Moreover, the ordinary court procedures, including discovery, motion practice and the like, would continue.

Cases shall be referred to ENE commencing on December 1, 1993. A new Local Rule governing the ENE process is included in this Plan as Exhibit 3.

VI. Jury Proceedings

A. Introduction

The Court shall adopt the use of multiple voir dire or pooling with staggered voir dire as a way of expediting trial schedules and economizing on jury costs.

1. Multiple Voir Dire

The use of Multiple Voir Dire is adopted for the District of Puerto Rico. It will work thusly: A sufficient number of jurors are randomly drawn for the first panel and the first jury is selected. Next, a second panel is randomly picked and the second jury is selected and so on until all the juries scheduled for selection on that day are drawn. In sum, voir dire means that a judge selects--on one day--all the juries needed for trials scheduled for an upcoming period.

With multiple voir dire the Court believes that its judges can increase efficiency by placing jurors eliminated from one trial in a jury panel for another. It can speed a trial calendar and also economize on the need for jurors.

2. Pooling

The other method which the Court will test is the use of pooling with staggered voir dire times. Pooling will function, as an example, in the following manner: 100 jurors would be called on a certain day. One or two judges would begin voir dire at 9:00 am; two others would begin at 10:30 am. Each of the two judges would select six to eight jurors and return those not selected to the jury pool. The jury administrator may then use those returned plus new people to create pools for the 10:30 voir dire.

3. Use of Magistrates

Magistrates may also be used for multiple voir dire. That has the benefit of being an efficient way of utilizing the judges' time as well as the jurors. Rule 506.6 of the District's Local Rules allow for the magistrates to select juries in civil cases and the U.S. Supreme Court has recently held that magistrates may conduct voir dire in

felony proceedings with the consent of the litigants. Peretz v. U.S, 111 S. Ct. 2661 (1991).

4. Jury Assessment Costs

The Advisory Group has also noted that when a civil case is settled in advance of the actual trial or settled at trial in advance of the verdict, Local Rule 323 provides that, except for good cause shown, jury costs may be assessed equally against the parties and their counsel, or otherwise assessed as directed by the Court.

The Court has also noticed that, frequently, as a litigation tactic, attorneys will wait until the last possible moments before trial to settle. Clearly, this tactic succeeds in driving up costs to litigants. Therefore, Rule 323 will henceforth be more strictly enforced.

VII. Utilization of Magistrate Judges

A. Introduction

Better utilization of magistrate judges requires: (a) improved contact and communication between judges and magistrate judges with the goal being one of increased uniformity in the utilization of the magistrate judges; (b) more effective use of magistrate judge resources and (c) greater efforts to educate the practicing bar about the work that magistrates may perform.

B. Improved Contact and Communication

1. Formal and Informal Communication

The Court shall develop formal or informal channels for the exchange of ideas on both internal operating procedures and external relations with the bar. Additionally, this will advance the goal of increased uniformity in the utilization of the magistrate judges.

2. Uniformity of Standing Orders

As pointed out in the Advisory Group Report, the standing orders of the Court may be inconsistent with the District's Local Rules, leaving both the magistrate judges

and counsel in a quandary as to what the judge requires. The Court will attempt to establish more conformity of Standing Orders with the local rules or, in the alternative, bring about their incorporation into the local rules. This will alleviate the confusion and ensuing delay which are the apparent result of having two sets of orders.

3. Circulation of Opinions and Resolutions

Moreover, another avenue of assistance which will be followed is for the Court to advise the magistrate judge as to whether his report and recommendation was adopted by the judge, or if not adopted, the reasons for disagreeing with it. This will go far towards eliminating the frustrations of the bar when conflicting decisions are issued on what are essentially similar cases. The circulation of opinions and resolutions of the judges and magistrate judges among all members of the Court would also accomplish these ends.

C. More Effective Use of Magistrate Judge Resources

1. Telephone Conferences

Magistrates judges are responsible for handling many pretrial procedures. Therefore, the Court adopts the Advisory Group's recommendation that the magistrate judges may also decide by telephone if circumstances warrant: (1) an extension of time to answer the complaint; (2) an extension of time to answer discovery requests and (3) an immediate hearing and decision on any other minor discovery matter, i.e., disputes arising during depositions or questions of an urgent nature. A minute entry will be made for the record and recorded on the docket sheet.

2. Motions for Extension of Time

On the subject of motions for extension of time, the District's Local Rule 311.14 shall be amended to include a provision that counsel certify to the Court whether the motion for extension of time is agreeable to opposing counsel. If the motion is unopposed, this will assist greatly in expediting the granting of motions of this nature.

3. Pro Se Law Clerk

The magistrate judges are responsible for handling the major share of social security cases and federal and state habeas corpus petitions, which in SY91, totaled 100. They take up a considerable portion of their law clerks' time, as well. The Court will take the necessary steps to request that the Administrative Office of the US Courts create a position for either a *pro se* law clerk or as an alternative, a law clerk at-large, to be employed by the Court to assist all three magistrate judges with these cases.

D. Greater Effort at Educating the Practicing Bar

Better utilization of magistrate judges can only be accomplished when the practicing bar understands the role of the magistrate judges in the Court.

To this end, the subject of more effective use of the magistrate judges shall be included in any seminar that the Court sponsors in the future and attorneys shall be made aware, through a routine communication from the Clerk of the Court, that parties may consent to trial before a Magistrate Judge.

VIII. Institutional Reform and Mass Tort Cases

A. Paralegal and Legal Assistance

When faced with complex institutional reform and mass tort litigation, the Court shall request that additional paralegal and legal help be assigned to the judge handling the case.

B. Special Master

Specifically, with institutional reform cases, appointment of a Special Master, pursuant to Rule 53 F.R.C.P., a special monitor or similar official, shall be appointed if the judge to whom the case is assigned deems it necessary in order to maintain a current civil docket.

C. Visiting Judges

Moreover, visiting judges shall be requested periodically in order to handle the civil or criminal calendar backlog of judges who are presiding over institutional reform or mass tort litigation, particularly if any litigation coincides with a period when there are one or more vacancies in the District.

D. Reassignment of New Cases

In extreme cases, the judge handling institutional reform or mass tort litigation shall be relieved from new assignments for a period of time; however, reassigning cases already pending before the judge for a lengthy interval will not be employed as it increases cost and delay.

IX. Bankruptcy Appeals

The Court's rulings on bankruptcy appeals shall be circulated among the judges to promote more uniformity, as oftentimes, more than one district judge must rule on appeals taken in the same bankruptcy case. Moreover, the circulation of decisions may assist the Court in avoiding contradictory rulings in a single bankruptcy action.

X. Miscellaneous

A. Visiting Judges

The practice of utilizing visiting judges shall continue, particularly in view of the prospects for delay in replacing judges who retire or take senior status during the next few years.

B. Library

The Advisory Group also has noted that the First Circuit's excellent satellite library, with space allocated for four offices, takes up a large section on the first floor and recommended opening it to attorneys with cases before the District Court. The Court recognizes the merits of the idea and will study the security aspects of making the library available to attorneys who appear in the Court.

C. Criminal Case Management

The Court will look into the matter of establishing criminal case management procedures in an attempt to minimize the impact on the Court's civil calendar.

XI. Other

As a final matter, the Court acknowledges other recommendations made by the Advisory Group in its Report having to do with the Speedy Trial Act, the Sentencing Guidelines, the Administrative Office statistical-keeping procedures and their hiring and training programs for the Clerk's Office staff; however, these issues are better left to the discretion of the US Congress and the Administrative Office for action.

Exhibit 1

Rule 316 · DUTY OF AUTOMATIC DISCLOSURE

.1 · Discovery · Duty of Automatic Disclosure of Core Information

.1(A) · Required Disclosures

.1(A)(1) · Unless otherwise directed by the Court, each party shall, without awaiting a discovery request, disclose to all other parties:

a. the name and last known address of each person reasonably likely to have information that bears significantly on the claims and defenses, identifying the subjects of the information;

b. a general description, including location, of all documents, data, compilations and tangible things in the possession, custody, or control of that party that are likely to bear significantly on the claims and defenses;

c. the existence and contents of any insurance agreement under which any person or entity carrying on an insurance business may be liable to satisfy part or all of the judgment that may be entered in the action, or indemnify or reimburse for payments made to satisfy the judgment, making available such agreement for inspection and copying as under Local Civil Rule 24;

d. any contract between the party and any other party to the action that concerns the dispute;

e. the name of any expert who may be called at trial and report of said expert;

f. any report by an insurance agent or investigator not protected by Federal rule 26(b)(3); and

g. any other documents that the judicial officer determines are appropriate.

.2 · Timing of Disclosures

.2(A) · Unless the Court otherwise directs, these disclosures shall be made (i) by each plaintiff within thirty (30) days after service of an answer to its complaint; (ii) by

each defendant within thirty (30) days after serving its answer to the complaint; and, in any event (iii) by any party that has appeared in the case within thirty (30) days after receiving from another party a written demand for early disclosure accompanied by the demanding party's disclosures. A party is not excused from disclosure because it has not fully completed its investigation of the case, or because it challenges the sufficiency of another party's disclosure, or, except with respect to the obligation under clause (iii), because another party has not made its disclosures.

.2(B) - Disclosure Prerequisite of Discovery - Except by leave of the Court or upon agreement of the parties, a party may not seek discovery from any source before making the disclosures under subdivision (a)(1), and may not seek discovery from another party before the date such disclosures have been made by, or are due from, such other party.

.2(C) - Supplementation of Disclosures - A party who has made a disclosure under subdivision (a) is under a duty to reasonably supplement or correct its disclosures if the party obtains information on the basis of which it knows that the information disclosed was either incomplete or incorrect when made, or is no longer complete or true.

.2(D) - Signing of Disclosures - Every disclosure or supplement made pursuant to subdivision (a) or (c) by a party represented by an attorney shall be signed by at least one attorney of record. A party who is not represented by an attorney shall sign the disclosure. The signature of the attorney or party constitutes the certification under, and is consequently governed by, the provisions of the Federal Rules of Civil Procedure, and, in addition, constitutes a certification that the signer has read the disclosure, and to the best of signer's knowledge, information and belief, formed after reasonable inquiry, the disclosure is complete as of the time it was made.

.2(E) - Duplicative Disclosure - At the time the duty to disclose arises, it may cover matters already fully disclosed in the same civil action pursuant to an order of the Court, to a requirement of law or otherwise. In that event, duplicative disclosure is not required and a statement that disclosure has already been made discharges the obligation imposed under this section.

.3 - Cooperative Discovery Devices

.3(A) - Cooperative discovery arrangements in the interest of reducing delay and expense are mandated.

.3(B) · The parties may, by stipulation, extend the scope of the obligation for self-executing discovery required by section (A).

.4 · Removed and Transferred Actions · In all actions removed to this Court from a state court or transferred to this Court from another federal court, claimants seeking recovery for personal injuries shall provide the information and materials described in subdivision (a) within thirty (30) days after the date of removal or transfer.

Rule 317 · DISCLOSURE OF MEDICAL RECORDS IN PERSONAL INJURY CASES

In addition to and incorporating the provisions set forth in Rule 316, the following is required in actions for personal injury.

.1 · Disclosure by Claimants · Fourteen (14) days after an issue is joined by a responsive pleading, a claimant, or conterclaimant, who asserts a claim for personal injuries shall serve defendant, cross-claim defendant, or counterclaim defendant with:

.1(A) · an itemization of all medical expenses incurred prior to the date of service of the pleading, containing the claim for which recovery is sought. If the claimant anticipates that recovery will be sought for future medical expenses, the itemization shall so state, but need not set forth an amount for the anticipated future medical expenses;

.1(B) · a statement that either:

.1(B)(1) · identifies a reasonably convenient location and date, no more than fourteen (14) days after service of the pleading containing the claim, at which the defendant may inspect and copy, at the defendant's expense, all non-privileged medical records pertaining to the diagnosis, care, or treatment of injuries for which recovery is sought; or

.1(B)(2) · identifies all health care providers from which the claimant has received diagnosis, care, or treatment of injuries for which recovery is sought together with executed releases directed to each provider authorizing disclosure to the defendant or its counsel of all non-privileged medical records in the provider's possession.

.2 · Assertion of Privilege · Insofar as medical records are not produced in accordance with subdivision (a)(2) on the ground of privilege, the claimant shall identify the privileged documents and state the privilege pursuant to which they are withheld.

Exhibit 2

RULE 335 - VIDEOTAPED DEPOSITIONS

In order to reduce the costs involved in compelling witnesses from outside of Puerto Rico to travel to Puerto Rico for depositions or trial, as well as to reduce the costs of depositions outside of Puerto Rico, the following is hereby adopted by this Court:

.1 Fact Witnesses

.1(A) - The testimony of witnesses who must travel from outside Puerto Rico and whose presence in Puerto Rico would entail significant expense may be recorded by videotape.

.1(B) - In the event a party wishes to avail itself of videotaped depositions during trial, names of the deponents and dates of deposition and the order in which they are to be presented, together with the following information as to each shall be presented to the Court at the time of the pretrial conference:

.1(B)(1) - Written transcript page and line designation;

.1(B)(2) - Corresponding videotape counter number designation.

.1(C) - The opposing party shall submit within three (3) days thereafter, any objections and/or counter-designations together with the same information required above as to each deposition.

.1(D) - Parties shall provide the Court with copies of the designated transcript pages together with their "Motion Submitting Designated Testimony for Videotape Deposition" and Motion Submitting Objections and Counter-Designations for Videotape Deposition".

.2 - Expert Witness

.2(A) - The videotaping of the testimony of expert witnesses who are not present in Puerto Rico and who would be obliged to travel to Puerto Rico is encouraged.

.2(B) - Absent good cause shown, if a firm trial date has been set at least forty-five (45) days in advance of trial and the testimony of an expert witness has not been videotaped and the witness is unavailable for the trial, the parties will be required to proceed at trial without the benefit of the expert's testimony.

.3 - Certification of Court Reporter - Only copies of videotaped depositions which have been certified by the court reporter who was present at the videotaped deposition may be used at trial.

Exhibit 3

RULE 336 - EARLY NEUTRAL EVALUATION (ENE)

.1 - Eligible Cases - Any civil case which is not on the Differentiated Case Management Expedited Track will be referred to ENE, unless the Court finds that such a case to be appropriate for ENE.

.2 - Administrative Procedure

.2(A) - ENE procedures shall be undertaken within thirty (30) days of the issuance of the Court's Case Management Order.

.2(B) - An ADR Administrator, who shall be a Court employee, will distribute information advising the parties of the nature and requirements of the program.

.2(C) - Parties shall be provided a list, prepared by the Court and the ADR Administrator, of ENE candidates representing one more than the number of parties involved. Each party shall have the right to strike one candidate, leaving one which is acceptable to all concerned.

.2(D) - The parties shall be required to present their position statements, theories and factual versions of the case in writing and certain basic information, such as relevant documentation, to the Evaluator.

.3 - Description and Duties of Evaluator

.3(A) - The Evaluator must be admitted to practice before the US District Court for the District of Puerto Rico.

.3(B) - He or she shall function as a facilitator in order to:

.3(B)(1) - Engender analysis and discussion of the suit and the strengths and weaknesses of each party's position;

.3(B)(2) - Identify primary issues in dispute;

.3(B)(3) - Clarify the areas of agreement;

.3(B)(4) - Assess the value of the case;

.3(B)(5) - Explore the possibilities of settlement.

.3(C) - After receiving the written position statements and legal and factual theories of each party's case, the Evaluator shall schedule and conduct an informal, non-binding conference with the

parties in order to comply with the functions outlined above, i.e., identifying the principal areas in dispute and the strengths and weaknesses of the parties' respective positions. The Evaluator will have the authority to cite the parties for additional sessions.

.4 Confidentiality

.4(A) - The entire ENE process is confidential. The parties and the Evaluator shall not disclose information regarding the process, including settlement terms, to the Court or to third persons unless all parties otherwise agree.

.4(B) - No oral or written reports shall be submitted to the Court by the Evaluator.

.5 - Conflict of Interest

.5(A) - If at any time, the Evaluator becomes aware of or a party raises an issue with respect to the Evaluator's neutrality because of some interest in the case or because of a relationship or affiliation with one of the parties, the Evaluator shall disclose the facts with respect to the issue to all of the parties.

.5(B) - If a party requests that the Evaluator withdraw because of the facts so disclosed and the information bears on the impartiality or objectivity of the Evaluator, the Evaluator may withdraw and request that the ADR Administrator appoint another evaluator.

.6 - Court Procedures - Ordinary court procedures, including discovery and motion practice shall continue to operate parallel to the ENE process.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

IN THE MATTER OF: *
*
CIVIL JUSTICE REFORM ACT *
EXPENSE & DELAY REDUCTION PLAN *
*
****

MISC. NO. 93-0057(HL)

ORDER

PURSUANT to Title 28, United States Code, section 472(d) and 474(a), the Court hereby RESOLVES that the Civil Justice Reform Act (CJRA) Expense and Delay Reduction Plan be approved and adopted as proposed. The Plan, as adopted on June 14, 1993, has been submitted to the First Circuit Judicial Council and the Chief Judges of all other United States District Courts located within the First Circuit. It will be submitted in accordance with the CJRA to the Administrative Office of the United States Courts and the Judicial Conference of the United States.

IT IS SO ORDERED.

At San Juan, Puerto Rico, this 4th. day of November, 1993.

GILBERTO GIERBOLINI
Chief, U.S. District Judge