

**CIVIL JUSTICE REFORM ACT OF 1990
EXPENSE AND DELAY
REDUCTION PLAN**



**UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK**

MAY 14TH, 1993

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ATTACHMENTS

- 1) General Order #25
- 2) General Order #30
- 3) General Order #31
- 4) Uniform Pretrial Scheduling Order

P R E F A C E

PREFACE #1

FULFILLMENT OF ADVISORY GROUP RECOMMENDATIONS - CROSS REFERENCE

The following provides a cross reference to illustrate where in the Plan each of the Advisory Group's recommendations is incorporated.

RECOMMENDATION:

INCORPORATED AT:

- | | |
|----|---|
| #1 | § IV(A)(1) at page 26 |
| #2 | §§ IV(A)(2) at page 26; IV(A)(3) at page 26. |
| #3 | § IV(A)(6) at page 27. |
| #4 | §§ (II)(A)(2) at page 2 [Note: General Order 31 divides the district into three divisions]; IV(B)(1) at page 28; II(C)(4) at page 12. |
| #5 | §§ II(G)(1)(a)-(c) at pages 21-22; IV(A)(4) at page 27. |
| #6 | §§ II(D)(5) & (6) at pages 15-16 [Note: The Advisory Group's Recommendation # 6 provides that "oral argument will not be required unless directed by the court." The court finds, however, that given the importance of dispositive motions, the presumption on dispositive motions should be in favor of oral argument]; II(D)(7) at page 16; II(D)(8) at page 16; IV(B)(1) at page 28; II(D)(9) at pages 16-17. |

- #7 §§ IV(B)(1) at page 28 [Note: The NDNY's Local Rules are presently being revised and renumbered to conform with the Federal Rules of Civil Procedure, thus complying with Recommendation #7.]; II(A)(1) at page 2; II(A)(3)-(5) at pages 3-5; II(E)(2) at pages 18-19; II(C)(5) at page 12; II(C)(6) at pages 12-13; II(F)(4)(a) at page 20; II(B)(1) at page 8; II(E)(1) at page 18; IV(B)(1) at page 28.
- #8 §§ IV(B)(1) at page 28; II(A)(2) at page 2; II(C)(2) at page 11; II(C)(3) at page 11 and IV(B)(1) at page 28.
- #9 §§ II(A)(6) at page 6; II(F)(1), (2), (3), & (4) at pages 19-21; II(D)(9) at pages 16-17.
- #10 §§ II(A)(8) at page 7; II(D)(2) at page 14; II(D)(9) at pages 16-17; II(F)(1)-(4) at pages 19-21.
- #11 §§ IV(A)(5) at page 27; IV(B)(1) at page 28; IV(D)(1) at page 29.
- #12 §§ III(A)(1)-(2) at pages 23-25.
- #13 § IV(A)(5) at page 27.

PREFACE #2

FULFILLMENT OF ACT'S RECOMMENDATIONS - CROSS REFERENCE

The following provides a cross reference to illustrate where in the Plan the relevant requirements of the Act, including the recommended six litigation management "principles and guidelines" and five litigation management "techniques," are incorporated.

RECOMMENDATION:

INCORPORATED AT:

- § 471 See generally, Plan, infra; Part I.
- § 472(a) See generally, Plan, infra; Part I.
- § 472(b) & (c) See generally, Civil Justice Reform Act Advisory Group ("Advisory Group") Report.
- § 472(d) § IV(E)(1) at page 29.
- § 473(a)(1) See generally, Part II at pages 2-22. See e.g., §§ II(A)(5) at page 5; § II(A)(7) at pages 6-7; II(B)(1) & (2) at pages 8-9; II(G)(1) at pages 21-22.
- § 473(a)(2)(A) §§ II(A)(2) at page 2; II(A)(3) & (4) at pages 3-4; II(A)(7) at pages 6-7; II(B)(2) at page 9; II(G)(1) at pages 21-22.
- § 473(a)(2)(B) §§ II(A)(6) at page 6; II(A)(7) at pages 6-7; II(A)(8) at page 8; II(B)(2) at page 9; II(D)(9) at pages 16-17; II(F)(1) at page 19; II(F)(2)-(4) at pages 19-21; II(G)(1) at pages 21-22.

- § 473(a)(2)(C) §§ II(A)(5)(a) at page 5; II(A)(7)(c) at page 7; II(C)(1)-(6) at pages 10-13; II(G)(1)(a)-(c) at pages 21-22.
- § 473(a)(2)(D) §§ II(A)(5)(a) at page 5; II(A)(7)(d) at page 7; II(D)(1)-(9) at pages 14-17; II(G)(1)(a)-(c) at pages 21-22.
- § 473(a)(3)(A) §§ II(A)(4)(n) at page 4; II(A)(5)(b) at page 5; II(A)(7)(a) at page 6; II(E)(2) at pages 18-19.
- § 473(a)(3)(B) §§ II(A)(3)-(4) at pages 3-4; II(A)(7)(b) at page 6.
- § 473(a)(3)(C) §§ II(A)(3) & (4)(i) at pages 3-4; II(A)(8)(d) at page 7; II(C)(1)-(6) at pages 10-13; II(G)(1) at pages 21-22.
- § 473(a)(3)(D) §§ II(A)(4)(a) & (5)(a) at pages 4 & 5; II(A)(7)(d) at page 7; II(D)(1)-(3) & (9) at pages 14 and 16-17; II(G)(1) at pages 21-22.
- § 473(a)(4) §§ II(A)(4)(i) at page 4; II(A)(7)(c) at page 7; II(C)(1),(3) & (6) at pages 10-13.
- § 473(a)(5) § II(C)(6)(c) at page 13.
- § 473(a)(6) See §§ III(A)(1) & (2) at pages 23-24 [Note: The district is presently a pilot district court sponsoring a voluntary court-annexed arbitration program. Until such time as court referral to such programs is authorized, this district will continue to offer this voluntary program.].
- § 473(b)(1) § II(A)(3) at page 3.

- § 473(b)(2) §§ II(A)(3) & (4) at pages 3-4.
- § 473(b)(3) §§ II(A)(8) & fn. 1 at page 7; II(D)(2) at page 14; II(F)(3)(b) at page 20.
- § 473(b)(4) §§ II(A)(4)(e)-(h) at page 4 [Note: It is intended that the pretrial conference shall be conducted in most cases by the magistrate judge and, in cases where a bench trial will be held, that the expected trial judge, whether it be a district court judge or a magistrate judge, not conduct the pretrial conference.].
- § 473(b)(5) § II(E)(1) at page 18.
- § 473(b)(6) See generally, Plan, *infra*.
- § 473(c) See generally, Plan, *infra*.
- § 475 § IV(D)(1) at page 29.

CIVIL JUSTICE REFORM ACT OF 1990
EXPENSE AND DELAY
REDUCTION PLAN

I. INTRODUCTION

The purpose of this Plan is to implement procedures to reduce the cost and delay of civil litigation in the United States District Court for the Northern District of New York. In developing this Plan, we, the judges of the Northern District, have considered the techniques and principles suggested in the Civil Justice Reform Act of 1990, 28 U.S.C. §§ 471-482 ("Act"), the Recommendations of the Northern District of New York Civil Justice Reform Act Advisory Group ("Advisory Group"), and the special circumstances of this district. Finding that the interests of justice will be most effectively served by adopting a systematic, differential case management system which tailors the level of individualized and case specific management to such criteria as case complexity, time required to prepare a case for trial, and the availability of judicial and other resources, we have designed the following. We believe that implementation of this Plan will lead to a more efficient and affordable court system while simultaneously ensuring the just, speedy, and fair resolution of all disputes. That being so, it is hereby

ORDERED that the court adopt and implement the following:

II. DIFFERENTIATED CASE MANAGEMENT PLAN

A. REQUIREMENTS OF THE CASE MANAGEMENT PLAN

1. Filing of Complaint.

Upon the filing of a complaint, the Court Clerk's Office ("Clerk") shall issue to the plaintiff General Order #25 (attached) which requires, inter alia, service of process upon all defendants within sixty (60) days of the filing of the complaint. This expedited service requirement is necessary to fulfill the dictates of this Plan and to ensure adequate time for pretrial discovery and motion practice.

2. Assignment of Judge/Magistrate Judge.

Upon filing of a complaint, the Clerk shall assign a district judge and a magistrate judge to preside over each case. The assignment shall be made in accordance with the provisions of General Order 31 (attached). Once assigned, either judicial officer shall have authority to design and issue a case management order in accordance with this Plan.

3. Initial Pretrial Conference.

Except for cases excluded by part II(B) of this Plan, an Initial Pretrial Conference pursuant to Rule 16 of the Federal Rules of Civil Procedure shall be held within 120 days after the filing of the complaint. The date of this conference shall be set by the Clerk upon filing of the complaint through the use of the Clerk's automated scheduling system. The purpose of this conference will be to prepare and adopt a case specific management plan which will be memorialized in a case management order. In order to facilitate the adoption of such a plan, counsel for all parties shall confer among themselves prior to the scheduled conference and shall formulate a proposed discovery - case management plan in accordance with 28 U.S.C. § 473(b)(1) for presentation to the court for use at the Initial Pretrial Conference. In formulating this plan, the parties are directed to utilize the "form plan" contained in the General Order #25 filing packet. The parties' jointly-proposed plan, or if consensus can not be reached, each party's proposed plan, shall be filed with the court at least ten (10) days in advance of the scheduled pretrial conference.

4. Subject Matter of Initial Pretrial Conference.

At the Initial Pretrial Conference, the court shall consider and the parties shall be prepared to discuss the following:

- a. deadlines for: joinder of parties; amendment of pleadings; completion of discovery; and filing of motions;
- b. trial date;
- c. requests for jury trial;
- d. subject matter and personal jurisdiction;
- e. factual and legal basis for claims and defenses;
- f. factual and legal issues in dispute;
- g. factual and legal issues which can be agreed upon or which can be narrowed through motions and which will expedite resolution of the dispute;
- h. specific relief requested, including method for computing damages;
- i. intended discovery and proposed methods to limit and/or decrease time and expense thereof;
- j. suitability of case for voluntary arbitration;
- k. measures for reducing length of trial;
- l. related cases pending before this or other U.S. district courts;
- m. procedures for certifying class actions, if appropriate; and
- n. settlement prospects.

5. Uniform Pretrial Scheduling Order.

Upon completion of the Initial Pretrial Conference, the presiding judicial officer shall issue a Uniform Pretrial Scheduling Order setting forth:

- a. deadlines for: joinder of parties; amendment of pleadings; completion of discovery; and the filing of motions;
- b. a settlement conference pursuant to FRCP 16(d) which will be scheduled by the court approximately two weeks prior to the trial date or sooner if ordered by the court or requested by the parties;
- c. a trial date in accordance with section II(A)(6) of this Plan; and
- d. requirements for all trial submissions.

A "Uniform Pretrial Scheduling Order" is a standard form case management order (attached) approved by the judges of this court which sets forth the requirements of this section. The use of a standard form is to avoid confusion arising from idiosyncratic requirements of different judges and to allow parties to prepare for the procedural requirements in most cases. Case management orders issued for complex cases under section II(A)(7) and for exempted cases under section II(B)(1) will be similar to the Uniform Pretrial Scheduling Order in many respects but will differ as to the particulars of such cases as determined by this Plan.

6. Trial Date.

All cases, except those exempted by section II(A)(7) of this plan, shall be assigned a trial date which is within eighteen (18) months of the date of the filing of the action.

7. Complex Cases.

If the judge or magistrate judge presiding over a specific case determines, in his or her discretion, that the case is of such a complex nature that it cannot reasonably be trial ready within eighteen (18) months from the date the complaint is filed, the judge or magistrate judge shall exempt the case from the dictates of section II(A)(6) of this Plan. In doing so, the judge or magistrate judge shall design and issue a particularized case management order which will move the case to trial ready status as quickly as the complexity of the case allows. To do so, the judge or magistrate judge may:

- a. explore the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;
- b. identify or formulate the principal issues in contention and, in appropriate cases, provide for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

- c. prepare a discovery schedule and plan which identifies and eliminates unnecessary or unduly burdensome or expensive discovery and/or phases discovery into two or more stages;
- d. sets the earliest practicable deadlines for filing motions and a time frame for their disposition; and
- e. such other measure which, in the court's discretion, are appropriate to expedite the resolution of the case.

8. Enforcement of Deadlines.

Deadlines instituted by the court in any case management order -- whether in a Uniform Pretrial Scheduling Order, in a particularized case management order for complex cases under section II(A)(7), or in a category specific standard case management order under section II(B)(2) -- shall be strictly enforced and shall not be modified by the court except upon a showing of good cause by a party¹ or as otherwise dictated by this Plan.

¹ The term "party", as used in this section and in sections II(D)(2), II(F)(2)(b), and II(F)(3)(b), contemplates the ethical duty owed by an attorney to the client to consult with and obtain the later's consent prior to taking any action which potentially delays the disposition of the case.

B. EXEMPTED CASES

1. Exempted Actions.

The following categories of cases are exempted from the preparation of the case management plan described in part II(A) of this Plan:

- a. actions in which one of the parties is incarcerated, unless the court directs otherwise;
- b. prize proceedings in admiralty;
- c. actions for judicial review of administrative decisions of governmental agencies or instrumentalities where the review is conducted on the basis of the administrative record;
- d. actions for seizure and forfeiture, condemnation, foreclosure of mortgages, sales to satisfy liens of the United States, recovery of defaulted student loans, recovery of veterans' benefits, and, recovery of other debts owed to the United States;
- e. actions seeking recovery of overpayment and/or enforcement of judgments;
- f. proceedings in bankruptcy;
- g. proceedings for admission to or to cancel or revoke citizenship;
- h. proceedings to compel arbitration or to confirm or to set aside arbitration awards;
- i. proceedings to compel testimony or the production of documents pursuant to a subpoena issued by a court other than the United States District Court for the Northern District of New York.

2. Treatment of Exempted Actions.

In cases exempt from the procedure for the preparation of a case management plan under part II(A) of this Plan, the court shall issue a standard case management order specifically designed for such category of cases listed in section II(B)(1). These standard case management orders shall ensure that a case will be assigned a trial date within eighteen (18) months from the date of filing unless exempted under section II(A)(7) of this Plan.

C. DISCOVERY

1. General.

In order to fulfill the dictates of this Plan, to accomplish the requirements of the Act, and to provide for the just, speedy, and inexpensive resolution of all disputes, it is incumbent upon all litigants, their counsel, and the court to manage and conduct discovery in the most efficient and fair manner possible. Hence, discovery in the Northern District of New York must be conducted in accordance with the Federal Rules of Civil Procedure; the Local Rules of the Northern District; and General Order 30 (attached). These provide, inter alia, that the parties and their counsel seek cost-effective means to conduct discovery through the voluntary exchange of information among themselves, that they make a good faith attempt to resolve discovery disputes prior to judicial intervention, and that they attempt to avoid unnecessary and groundless discovery motions through discovery conferences with the court. See section II(C)(6), infra.

2. Utilization of Magistrate Judges.

In keeping with General Order 30, and to fulfill the dictates of this Plan, magistrate judges shall conduct all discovery conferences, shall hear all discovery motions, and shall, in their discretion, have the authority to change or amend discovery deadlines.

3. Managing Discovery.

In order to effectively manage discovery, the court shall actively participate in the discovery process by discussing at the Initial Pretrial Conference the types of discovery the parties intend to pursue, methods to limit discovery, and the availability of less costly and time-consuming methods to conduct such discovery. Further, General Order 30 shall be amended to provide that in managing discovery, the assigned magistrate judge may consider directing the parties to avoid unnecessary discovery devices such as interrogatories that merely duplicate anticipated depositions. The judicial officer shall consider these factors in formulating the scheduling deadlines contained in the case management order issued in each case.

4. Venue for Discovery.

General Order 31 shall be amended to provide that "Except when efficiency or justice may otherwise be served, discovery, pretrial proceedings, and the trial itself should be held within the district's division where venue lies, giving due regard to the convenience of the parties and witnesses."

5. Custody of Discovery Materials.

Discovery requests and responses shall be maintained by the parties and shall not be filed with the Clerk unless the court directs otherwise, provided, of course, that discovery material to be used at trial or in support of a motion shall be filed with the court prior to such use.

6. Discovery Motions.

In keeping with the discovery dispute resolution procedures set forth in NDNV Local Rule 7.1(e) (formerly Local Rule 10(K)) and General Order 25, discovery motions pursuant to Fed.R.Civ.P. 26-37 shall not be considered by the court unless the following steps are first taken:

- a. Counsel make a good faith effort among themselves to resolve or reduce all differences relating to discovery.

- b. Counsel confer with the magistrate judge assigned to the case to request a discovery conference on any disputed matter prior to bringing a formal motion. Prior to the conference the moving party shall file a letter brief with the assigned magistrate judge which sets forth the nature of the dispute and a specific verbatim listing of the items of discovery sought or opposed. Immediately following each disputed item counsel shall set forth the reason why the item should be allowed or disallowed.
- c. Counsel include in any request for a discovery conference and with any motion papers an affidavit certifying that counsel has conferred with opposing counsel in a good faith effort to resolve by agreement the issues raised by the motion, that the parties have been unable to reach such an agreement, and setting forth all methods and attempts utilized to resolve such differences prior to court intervention.

In making discovery motions, counsel are directed to NDNY Local Rule 7.1(e) (formerly Local Rule 10(K)) which sets forth specific information which must be contained in discovery motions brought before this court.

D. MOTIONS

1. General.

The proper use of pretrial motions effectively narrows or eliminates disputes short of a trial on the merits. Thus, pretrial motions, employed and managed properly, effectively serve to reduce the cost and time expenditures of litigants, their counsel, and the court, and thereby accomplish the goals of this Plan. In order to attain these goals, the following measures are instituted by the court.

2. Motion Deadlines.

As with all deadlines designated by a case management order, motion deadlines may be extended by a judicial officer only upon a showing of good cause by a party or as otherwise directed by this Plan.

3. Jurisdiction and Venue Motions.

Jurisdiction and Venue motions shall be made within thirty (30) days of the issuance of the case management order.

4. Memoranda of Law.

Upon any motion requiring a memorandum of law under NDNY's Local Rules, the moving party shall file and serve with the motion papers a memorandum of law in support of the motion twenty-eight (28) days prior to the return date of the motion. The opposing party(ies) shall file and serve with the papers in opposition to the motion an answering memorandum of law fourteen (14) days prior to the return date of the motion. Memoranda of Law may not exceed twenty-five (25) pages of text unless, upon application of counsel, the limitation is removed by the court.

5. Oral Argument -- Non-dispositive Motions.

Oral argument will not be held on non-dispositive pretrial motions unless directed otherwise by the court. Where oral argument is not held, the moving party shall be permitted to submit to the court and serve upon opposing party[ies] reply papers without leave of court. Such reply papers must be submitted to the court and served upon the opposing party[ies] at least seven (7) days prior to the noticed return date of the motion. All other reply, sur-reply, and/or rebuttal papers may be submitted only with permission of the court.

6. Oral Argument -- Dispositive Motions.

Oral argument shall be held on all dispositive pretrial motions unless directed otherwise by the court. Where oral argument is held, the moving party[ies] must obtain permission from the court prior to submitting reply, sur-reply, and/or rebuttal papers.

7. Affidavits.

Affidavits shall not be required in support of motions presenting pure questions of law.

8. Proposed Orders.

Parties shall not be required to submit proposed orders at the time that moving or opposition papers are submitted to the court.

9. Disposition of Motions.

Motions shall, where possible, be decided within sixty (60) days of the assigned return date of the motion or, in the event the court orders further briefing, of the last submission of papers. The Clerk shall implement a monitoring system that enables the Clerk to make monthly inquiry to the court regarding all motions which are pending for more than sixty (60) days. In order to help decrease unnecessary costs to

litigants, the court, upon written application by one or more parties, may issue a stay on judicial proceedings if a dispositive or non-dispositive motion has remained pending before the court without decision for more than sixty (60) days after submission of all papers and hearings. Unless determined otherwise by the court, the stay shall have the effect of extending all unmet deadlines contained in the case management order, including the trial date, by a length of time equal to the length of the stay. In cases where a stay is instituted the stay shall be lifted immediately upon the disposition of the motion by the court. In such situations, the court shall add to all unmet deadlines and dates in the case management order, including the trial date, an amount of time equal to the number of days that the action had been stayed. Whereupon the court shall then re-set all unmet deadlines and reschedule the trial date in accordance with this computation and shall notify all parties of the same.

E. SETTLEMENT

1. Settlement Authority.

At any conference in which settlement prospects will be discussed, a representative of the parties who has the authority to bind them in settlement shall be present or immediately available by telephone.

2. Settlement Conference Statement.

One week prior to any settlement conference scheduled by the court, with the exception of the Initial Pretrial Conference discussed in sections II(A)(3)-(4), the parties shall lodge with the court and serve on all parties a Settlement Conference Statement which includes the following:

- a. a brief statement of the facts of the case;
- b. a summary of the proceedings to date;
- c. a brief statement of the claims and defenses in the case including: the statutory or other grounds upon which the claims are founded; an evaluation of the parties' likelihood of prevailing on the claims and defenses; and, a description of the major issues in dispute;
- d. an estimate of the cost and time to be expended for: further discovery; pretrial motions; and trial;
- e. a brief statement of the facts and issues upon which the parties agree;
- f. any discrete issues which, if resolved, would aid in the disposition of the case;
- g. the relief sought; and

- h. the parties' positions on settlement, including present demands and offers, and the history of past settlement discussions, offers, and demands.

By "lodging" the Settlement Conference Statement, it is neither filed nor rendered a public document.

Procedures for lodging documents with the court are set forth in the NDNY's Local Rules.

F. TRIAL

1. Trial Date.

As set forth in section II(A)(6) of this Plan, all cases except for those exempted under section II(A)(7) shall be assigned a trial date within eighteen (18) months of the date the complaint is filed. The trial date may be changed only as set forth in sections II(F)(2) or (3) or section II(D)(9) of this Plan.

2. Advancement or Acceleration of Trial Date.

To better serve the needs of the bar and the litigants before the court, a trial date scheduled under section II(A)(6) of this Plan shall not be advanced except:

- a. upon request and stipulation by all parties involved and consent of the court; or
- b. upon request and a showing of good cause by any party; or
- c. upon request by the court and upon agreement by all parties; or

- d. upon a finding by the court that all allowable discovery has ended; that all motions have been made and that no motion remains pending before the court; that no party will be prejudiced by the acceleration of the trial date; and upon due notice to the parties not less than fifteen (15) days before the accelerated date.

3. Postponement of Trial Date.

To better assist in the expeditious resolution of disputes before the court, to conserve judicial resources, and to serve the needs of the bar and litigants, a trial date scheduled under section II(A)(6) of this Plan shall not be postponed except:

- a. upon request and stipulation by all parties involved and consent of the court; or
- b. upon request and a showing of good cause by any party; or
- c. upon a finding by the court, in its discretion, that postponement is necessary for the effective utilization of judicial resources.

4. Mechanisms to Prevent Postponement.

In order to prevent unnecessary expense and delay in situations where the court elects to postpone a trial date, the parties shall be given the following options and the court shall employ the following mechanisms in an attempt to avoid postponement:

- a. first, the parties shall have the option, upon consent of all parties and upon availability of a magistrate judge, to consent to have the matter tried before a magistrate judge;

- b. second, in the event that the parties do not consent to have the matter tried before a magistrate judge or if a magistrate judge is unavailable, the court shall have the discretion to assign the matter to an available district court judge and have the matter tried by this judge; or
- c. third, the assigned district court judge shall have the discretion to try a case contemporaneously with another trial.

G. PRISONER LITIGATION

1. Specialized Tracking System.

In order to meet the specialized needs of the litigants and the court arising from the overwhelming number of prisoner-instituted civil actions filed annually in the Northern District, the following specialized tracking system shall be instituted to govern the management of such cases:

- a. Upon commencement of a civil action over which the Northern District of New York has both subject matter jurisdiction and venue and which is related to the plaintiff's incarceration, and prior to service of process, the *Pro Se* Staff Attorney(s) shall review the merits of the case and shall report to the court whether a particular case appears to raise meritorious and complicated issues requiring extensive discovery.

- b. Cases which do not raise meritorious and complicated issues requiring extensive discovery shall be assigned by the court to a "Fast Track" for disposition. Fast Track cases shall be set for trial within six (6) to eight (8) months from the date of filing. The judicial officer formulating the case management order under section II(B)(2) for such "Fast Track" cases shall ensure adequate time to complete discovery, dispositive motions, and other pretrial matters prior to the assigned trial date. The trial date for such cases may be adjourned by the court for a period not to exceed eighteen (18) months from the date of filing of the complaint if, in the court's discretion, sufficient dispositive motions have not been made prior to the date set for trial.

- c. Cases which raise meritorious and complicated issues requiring extensive discovery shall be assigned by the court to a "Standard Track" for disposition. Standard Track cases shall be issued a case management order formulated in accordance with section II(B)(2) to ensure a trial date within eighteen (18) months from filing of the complaint.

III. ALTERNATIVE DISPUTE RESOLUTION SYSTEM (ADR)

A. DEVELOPMENT OF AN EXPANDED ADR PROGRAM

1. General/New Objectives.

The Northern District of New York is presently a pilot district court sponsoring a voluntary, court-annexed, non-binding arbitration program. At the commencement of each action, the court shall continue to send notices of the availability of this program to all parties. Further, to increase participation in this program as well as its effectiveness, the court shall pursue certain objectives in an effort to expand the presently instituted ADR program. These objectives shall be to:

- a. reduce case processing time and costs to litigants and the court by enabling litigants to confront the facts and issues of the action before engaging in expensive and time consuming discovery;
- b. reduce burdens on the court so that it can better address those cases that are inappropriate for ADR;
- c. provide litigants with opportunities for remedies that may not be available through the adversarial process;
- d. maximize the effective use of magistrate judges;
- e. provide data about the effective use of ADR; and
- f. explore the possibilities of utilizing ADR to address the large number of prisoner actions filed in the Northern District.

2. ADR Subcommittee of the Advisory Group.

In order to institute the objectives of section III(A)(1) of this Plan, an ADR Subcommittee of the Advisory Group shall be appointed to design and recommend an expanded ADR program for the District. The Subcommittee shall be appointed by the Chief Judge and should include attorneys, representative(s) of litigants regularly appearing before the court, district judge(s), magistrate judge(s), and representative(s) of the Clerk. If necessary, the Subcommittee may include individuals not currently on the Advisory Group. The Subcommittee shall be required to:

- a. develop a training program designed to educate district judges, magistrate judges, attorneys, and litigants about the various ADR options (e.g., arbitration, early neutral evaluation, mediation, summary jury trial, and mini-trial);
- b. recommend methods for early case evaluation, such as two-stage discovery that would allow parties in stage one to conduct the minimal discovery needed before a realistic assessment of the case can be made and that would then require selection of an ADR option before the second stage of discovery (preparation for trial) can be pursued;
- c. establish criteria for identifying those categories of cases, if any, that would be excluded from ADR;
- d. develop a process for training, certifying, and evaluating ADR providers (such as arbitrators, mediators, and evaluators);

- e. develop a method of evaluating the effectiveness of the ADR program; and
- f. recommend amendments to the NDNY's Local Rules needed to implement the program.

B. PRESENT ADR PROGRAM

1. Preservation of Present ADR Program.

The Northern District of New York shall continue to offer the voluntary court-annexed arbitration program until such time as an expanded ADR program is designed and recommended by the Advisory Group Subcommittee.

IV. IMPLEMENTATION OF THE PLAN

A. GENERAL RESOURCES.

Many of the recommendations made to the court by the Advisory Group regarding implementation of this Plan require the allocation of greater judicial resources to the Northern District of New York than presently exist. Of course, the court itself is not in a position to create new resources, but only to more effectively manage resources currently allocated. Nevertheless, we find it is imperative to publicly acknowledge that the following measures are essential to effectively and efficiently fulfill the dictates of this Plan and the Act upon which it is based.

1. Filling Judgeship Vacancies.

Judgeship vacancies left unfulfilled serve only to increase cost and delay in civil litigation before this court. With fewer district court judges handling an increasing docket, each judge and his or her staff must divide their time by a greater denominator. The result is easily calculable and the effect is either delay or injustice - or both. The situation can only be ameliorated by the expeditious appointment of judges to the presently vacant judgeship positions in the Northern District.

2. Additional Funding for Full-Time Magistrate Judge.

The requirements of this Plan and the demands of civil litigation necessitate the use of magistrate judges in many aspects of every case. In order to accomplish the objectives of this Plan, the Northern District must be accorded sufficient funding for the additional full-time magistrate judge already approved by the Judicial Conference.

3. Additional Law Clerks for Magistrate Judges.

The Advisory Group has recommended that an additional law clerk be provided each magistrate judge to assist the magistrate judges in assuming the additional responsibilities bestowed upon them by this Plan.

We concur.

4. Additional Pro Se Staff Attorney.

An additional *Pro Se* Staff Attorney is essential to allow the *Pro Se* Staff Attorney's Office to discharge the additional duties required by this Plan.

5. Full Staffing of Clerk's Office.

In that the administrative support provided by the Clerk's Office is an indispensable element in fulfilling the requirements of this Plan, we believe that additional funding should be allocated to enable the Clerk's staff to reach and maintain the full compliment of duly authorized personnel. Further, we believe that additional funding should be allocated to allow the Clerk's staff to increase in size as the demands of this Plan and the court shall require.

6. Additional Courthouse Facilities.

To serve the needs of the litigants of this District, we find that a convenient courthouse facility is needed in Watertown, N.Y. and that additional courtroom facilities are needed in Albany and Syracuse, N.Y.

B. AMENDMENT OF LOCAL RULES/GENERAL ORDERS

1. General.

Where appropriate, the Northern District of New York Local Rules, and this court's General Orders, shall be amended to include the provisions of this Plan. The Clerk shall develop a plan to promote publication and distribution of these amendments to the general public and the bar.

C. ENFORCEMENT OF PLAN

1. Sanctions for Noncompliance.

Any judicial officer may, within his or her discretion, assess costs, attorney's fees, and other sanctions against any party or attorney for noncompliance with any requirement of this Plan.

D. OVERSIGHT OF THE PLAN

1. Periodic Review.

The court directs the Advisory Group to report periodically to the court, at least once per calendar year, so as to advise the court regarding the cost effectiveness of its civil case management practices, the condition of the court's civil and criminal docket, revisions that may be required in this Plan or Local Rules, and other matters which are pertinent to the court's plan of differentiated case management. The reports of the Advisory Group shall be made available to the public.

E. SUBMISSION OF PLAN

1. Submission of the Plan.

Pursuant to 28 U.S.C. §§ 472(d) and 474(a), this Plan and the Report of the Civil Justice Advisory Group shall be submitted to the Chief Judge of this district for distribution to:

- a. The Director of the Administrative Office of the United States Courts;
- b. The Judicial Council of the United States Second Circuit Court;
- c. The Chief Judges of all other United States District Courts located within the Second Circuit;
- d. The Chief Judge of the United States Court of Appeals for the Second Circuit; and
- e. The Judicial Conference of the United States.

F. EFFECTIVE DATE

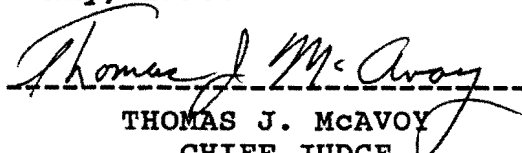
1. Effective Date.

This Plan shall become immediately effective upon execution by the Chief Judge of the Northern District of New York.

V. CONCLUSION

This Plan has been adopted in order to fulfill the objectives and goals set forth in the Civil Justice Reform Act of 1990. The Plan and the Advisory Committee Report on which it is based provide the court, the bar, and the litigants with the essential tools and information to reduce unnecessary cost and delay in civil litigation in this district. Of course, it is far too early to assess the overall effectiveness of the Plan, but it is certain that its success will depend upon the commitment of those for whom the Plan and the Act were promulgated. Because the Report and the Plan represent a cooperative effort, the court calls upon all participants in civil litigation -- the court and its officers and staff, the civil litigants, and the members of the bar -- to assist the court in ensuring "the just, speedy and inexpensive determination of every action."

So ORDERED this 14th day of May, 1993.



THOMAS J. McAVOY
CHIEF JUDGE
NORTHERN DISTRICT OF NEW YORK

ATTACHMENT 1

GENERAL ORDER #25

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

N O T I C E

THE ATTACHED FILING ORDER IS A TIME SENSITIVE DOCUMENT

1. THE SUMMONS, COMPLAINT AND GENERAL ORDER #25 FILING PACKET MUST BE SERVED WITHIN SIXTY 60 DAYS OF THE FILING DATE OF THE COMPLAINT.
2. COMPLETE AND FILE THE ATTACHED CASE MANAGEMENT PLAN NO LATER THAN TEN (10) DAYS BEFORE THE CONFERENCE DATE.

CONFERENCE DATE/TIME: _____

LOCATION: _____

BEFORE MAGISTRATE JUDGE: _____

3. PAY SPECIAL ATTENTION TO:
 - A. FILING LOCATIONS
 - B. MOTION SCHEDULE OF THE ASSIGNED JUDGE AND MAGISTRATE JUDGE
 - C. CONSENT FORM TO PROCEED BEFORE A U.S. MAGISTRATE JUDGE
 - D. CONSENT FORM TO PROCEED INTO COURT- ANNEXED ARBITRATION

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK
GENERAL ORDER #25**

**ORDER DIRECTING THE EXPEDITED SERVICE OF THE SUMMONS
AND COMPLAINT AND FURTHER DIRECTING THAT A RULE 16 STATUS
CONFERENCE BE HELD WITHIN 120 DAYS OF THE FILING OF THE COMPLAINT**

SERVICE OF PROCESS

IT IS ORDERED that: Service of Process be completed within SIXTY (60) days from the filing date of the Complaint with the Clerk of the Court.

The plaintiff is directed to serve copies of this order and the attached materials at once on all parties to this action, and on any parties subsequently joined, in accordance with the provisions of Rules 4 and 5, FRCP. Following service of the Summons and complaint and of the materials contained in this packet, plaintiff shall file a certificate of service with the Clerk of this Court.

MATERIALS INCLUDED WITH THIS ORDER:

- 1.) Judicial Case Assignment Form
- 2.) Notice of Initial Pretrial Conference (Rule 16 Filing Packet)
- 3.) Notice and Consent Form to Proceed before a
United States Magistrate Judge
- 4.) Notice and Consent Form for the Court-Annexed Arbitration
Program.
- 5.) General Orders 28, 30, 34 & 37

CIVIL JUSTICE REFORM ACT

All litigants in Federal Court must comply with the provisions of the Civil Justice Reform Act. This Court will tailor the level of individualized case management needs to such criteria as case complexity, and the amount of time reasonably needed to prepare the case for trial. Counsel together with authorized representatives of the parties are directed to jointly address each item contained in the attached Rule 16 Case Management Plan packet and present the proposed plan to the Court at the initial pretrial conference.

The notice setting the date, time, and location for the initial conference is included as part of this filing order.

The Act further requires the Court to set "early, firm" trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that (i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or (ii) 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."

PRETRIAL & SETTLEMENT CONFERENCE REQUIREMENTS

The Court requires that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters identified by the Court for discussion at the conference and all reasonably related matters including settlement authority.

Settlement Conference Statement: One week prior to any settlement conference scheduled by this Court, the parties shall lodge directly with the Court, a Settlement Conference Statement, which shall include the following.

1. A brief statement of the facts of the case;
2. A brief statement of the claims and defenses, i.e., statutory or other grounds upon which the claims are found; an evaluation of the parties' likelihood of prevailing on the claims and defenses; and a description of the major issues in dispute;
3. A summary of the proceedings to date;
4. An estimate of the cost and time to be expended for further discovery, pretrial and trial;
5. A brief statement of the facts and issues upon which the parties agree;
6. Any discrete issues which, if resolved, would aid in the disposition of the case;
7. The relief sought;
8. The parties' position on settlement, including present demands and offer, the history of past settlement discussions, offers and demands.

The settlement Conference Statement shall be provided to the Court and not filed with the Clerk of the Court.

Copies of the Statement shall be served upon the other parties or counsel at the time the statement is lodged with the Court.

Should the case be settled in advance of the settlement conference date, counsel are required to notify the Court immediately. Failure to do so could subject counsel for all parties to sanctions.

NON FILING OF DISCOVERY MATERIAL

IT IS ORDERED that: this Court having found that no public purpose will be served by the filing of discovery materials with the Clerk of the Court, the parties hereto are directed that they shall not file notices to take depositions, transcripts of depositions, interrogatories, requests for documents, request for admissions, and answers and responses thereto unless the Court orders otherwise; provided, however, that discovery material to be used at trial or in support of any motion, including a motion for summary judgment, shall be filed with the Court prior to such use and provided further that any motion pursuant to Rule 37 of the Federal Rules of Civil Procedure shall be accompanied by the discovery materials to which the motion relates if those materials have not previously been filed with the Court.

PROCEDURE FOR DISCOVERY DISPUTE RESOLUTION

IN ACCORDANCE WITH GENERAL RULE 10(K) OF THE NORTHERN DISTRICT OF NEW YORK: PRIOR TO THE FILING OF ANY MOTION UNDER FEDERAL RULES 26 THROUGH 37, COUNSEL MUST MEET AND DISCUSS THE DISPUTED ISSUES IN DETAIL IN A GOOD FAITH EFFORT TO ELIMINATE OR REDUCE THE AREA OF CONTROVERSY, AND ATTEMPT TO ARRIVE AT A MUTUALLY SATISFACTORY RESOLUTION. IF CONSULTATIONS OF COUNSEL DO NOT FULLY RESOLVE THE DISCOVERY ISSUES, COUNSEL MAY THEN REQUEST A COURT CONFERENCE WITH THE ASSIGNED JUDGE OR MAGISTRATE JUDGE. THE ATTORNEY MAKING THE REQUEST FOR A COURT CONFERENCE MUST FILE AN AFFIDAVIT SETTING FORTH THE DATE OR DATES OF THE MEETINGS AND CONSULTATIONS. THE AFFIDAVIT SHALL BE ACCOMPANIED BY A LETTER BRIEF THAT CONCISELY SETS FORTH THE NATURE OF THE CASE AND A SPECIFIC VERBATIM LISTING OF EACH OF THE ITEMS OF DISCOVERY SOUGHT OR OPPOSED.

IMMEDIATELY FOLLOWING EACH DISPUTED ITEM COUNSEL SHALL SET FORTH THE REASON WHY THE ITEM SHOULD BE ALLOWED OR DISALLOWED. FOLLOWING RECEIPT OF THE REQUEST FOR A DISCOVERY CONFERENCE WITH THE COURT, THE CLERK WILL ADVISE ALL COUNSEL OF A DATE AND TIME FOR THEIR APPEARANCE BEFORE THE COURT.

IN THE EVENT THAT OPPOSING COUNSEL REFUSES TO COMPLY WITH A REQUEST FOR A CONFERENCE UNDER RULE 10(K), THE ATTORNEY SEEKING THE DISCOVERY SHALL APPLY TO THE COURT FOR AN ORDER DIRECTING THE OPPOSING COUNSEL TO APPEAR AT HIS OR HER OFFICE TO DISCUSS THE AREAS OF DISPUTE. THE APPLICATION FOR THE EX PARTE ORDER SHALL CONTAIN AN AFFIDAVIT SETTING FORTH THE ATTEMPTS MADE IN SCHEDULING A MUTUALLY AGREEABLE DATE AND TIME FOR THE 10(K) CONFERENCE AND THE RESULTS THEREOF.

IF THE DISPUTED ISSUE REMAINS UNRESOLVED FOLLOWING THE CONFERENCE WITH THE COURT, COUNSEL WILL BE DIRECTED TO FILE THE APPROPRIATE FORMAL MOTIONS WITH THE COURT.

CASES EXEMPT FROM THE REQUIREMENTS OF RULE 16(b)

IT IS ORDERED that: the following categories of cases are exempt from the requirements of Rule 16(b) of the Federal Rules of Civil Procedure regarding the preparation of a case management plan; the Court will issue standard pretrial scheduling orders on these actions to regulate the progression of the case:

- a) all actions in which one of the parties is incarcerated, unless the Court directs otherwise;
- b) all actions for judicial review of administrative decisions of government agencies or instrumentalities where the review is conducted on the basis of the administrative record;
- c) prize proceedings, actions for forfeiture and seizures, for condemnation, for foreclosure of mortgages or sales to satisfy liens of the United States, actions to redeem judgments due and owing the United States, recovery of overpayment and enforcement of judgments, recovery of defaulted student loans, recovery of overpayment of veterans benefits, and, other contract actions which involve the collection of debts owed to the United States.
- d) proceedings in bankruptcy, for admission to citizenship or to cancel or revoke citizenship;
- e) proceedings to compel arbitration or to confirm or set aside arbitration awards;
- f) proceedings to compel the giving of testimony or production of documents under a subpoena or summons issued by an officer, agency or instrumentality of the United States not provided with authority to compel compliance;

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

1) SETTLEMENT CONFERENCES CONDUCTED BY A JUDGE OR MAGISTRATE JUDGE:

The parties are advised that the Court will honor a request for a settlement conference at any stage of the proceeding.

A representative of the parties with the authority to bind the parties must be present with counsel at any settlement conference.

2) CONSENT TO JURY OR COURT TRIAL BEFORE A MAGISTRATE JUDGE:

By written stipulation, the parties to any civil action may elect to have a magistrate judge (instead of the assigned Article III judge) conduct all proceedings in any civil case, including presiding over a jury or non-jury trial. A trial before a magistrate judge is governed by exactly the same procedural and evidentiary rules as trial before a district judge, and a right to appeal is automatically preserved directly to the United States Court of Appeals under the same standards which govern appeals from district court judgments. Parties often consent to resolution of their civil disputes by magistrate bench or jury trial because magistrate judges have less crowded calendars.

3) COURT-ANNEXED ARBITRATION:

The Northern District of New York through a congressional pilot program, offers all litigants in Federal Court the opportunity to consent to proceed into the Courts Consensual Arbitration Program. Pursuant to Local Rule 50, the parties may consent to have their cases presented to an arbitrator for decision. The cases referred to court-annexed arbitration are heard by qualified individual arbitrators or three-member panels, usually within six months of the filing of the answer. If a party is not satisfied with the arbitrators award, the party must file a written demand for trial de novo within thirty days of the entry of judgment on the arbitration award. If no demand is filed, the award becomes final judgment of the court and is not subject to appellate review.

REVISED GENERAL ORDER 25

ENTERED BY THE COURT ON THIS 1ST DAY OF MARCH, 1992

So Ordered: Neal P. McCurn - Chief U.S. District Court Judge

2/24/93

CIVIL CASE MANAGEMENT PLAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

VS

No. _____ CV _____

IT IS HEREBY ORDERED that, pursuant to Rule 16, Federal Rules of Civil Procedure, and General Order 30 of this Court, a status and scheduling conference will be held in this case before the Honorable _____, United States Magistrate Judge on _____, 19____, at _____ .M at the United States Courthouse, Room No. _____, at _____, New York.

Counsel for all parties or individuals appearing pro se in the above-captioned action are directed to confer in advance of the status conference with respect to all of the agenda items listed below. Not less than ten days before the conference, counsel shall file jointly a status conference statement addressing each agenda item. Plaintiff's counsel shall bear the responsibility for convening all counsel and completing and filing the proposed case management plan.

Matters which the Court will take up at the status conference will include the following:

1) **JOINDER OR PARTIES:** Any application to join any person as a party to this action shall be made on or before the _____ day of _____, 19____.

2) **AMENDMENT OF PLEADINGS:** Any application to amend the pleadings to this action shall be made on or before the _____ day of _____, 19____.

3) **DISCOVERY:** Discovery is to be conducted in accordance with Local Rule 10(k). All discovery in this action shall be completed on or before the _____ day of _____, 19____. (Discovery timetable shall be based upon the complexity of the action.)

4) **MOTIONS:** All motions, including discovery motions, shall be made on or before the _____, day of _____, 19____. Pursuant to the requirements of Local Rule 10(c); all memorandum of law filed shall contain parallel citations wherever possible. (Discovery motions will be heard by the assigned Magistrate Judge)

5) PROPOSED DATE FOR THE COMMENCEMENT OF TRIAL: The action will be ready to proceed to trial on or before the _____, day of _____, (MONTH), 19____. It is anticipated that the trial will take approximately _____ days to complete. The parties request that the trial be held in _____ (CITY). ***THE PROPOSED DATE FOR TRIAL MUST BE WITHIN EIGHTEEN MONTHS OF THE FILING OF THE COMPLAINT.**

6) HAVE THE PARTIES FILED A JURY DEMAND: ____ (YES) / ____ (NO).

7) DOES THE COURT HAVE SUBJECT MATTER JURISDICTION? ARE THE PARTIES SUBJECT TO THE COURT'S JURISDICTION? DO ANY REMAIN TO BE SERVED? _____

8) WHAT ARE THE FACTUAL AND LEGAL BASES FOR PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES? _____

9) WHAT FACTUAL AND LEGAL ISSUES ARE GENUINELY IN DISPUTE? _____

10) CAN THE ISSUES IN LITIGATION BE NARROWED BY AGREEMENT OR BY MOTIONS? ARE THERE DISPOSITIVE OR PARTIALLY DISPOSITIVE ISSUES APPROPRIATE FOR DECISION ON MOTION? _____

11) WHAT SPECIFIC RELIEF DOES PLAINTIFF SEEK? WHAT IS THE AMOUNT OF DAMAGES SOUGHT AND GENERALLY HOW IS IT COMPUTED?

12) WHAT DISCOVERY DOES EACH PARTY INTEND TO PURSUE? CAN DISCOVERY BE LIMITED? ARE LESS COSTLY AND TIME-CONSUMING METHODS AVAILABLE TO OBTAIN INFORMATION?

13) IS THE CASE SUITABLE FOR REFERENCE TO THIS DISTRICT'S VOLUNTARY ARBITRATION PROGRAM? _____(YES)/_____(NO). IF YOUR ANSWER WAS NO PLEASE STATE WHY.

14) IS IT POSSIBLE TO REDUCE THE LENGTH OF TRIAL BY STIPULATIONS, USE OF SUMMARIES OR STATEMENTS, OR OTHER EXPEDITED MEANS OF PRESENTING EVIDENCE? IS IT FEASIBLE AND DESIRABLE TO BIFURCATE ISSUES FOR TRIAL?

15) ARE THERE RELATED CASES PENDING BEFORE THE JUDGES OF THIS COURT?

16) IN CLASS ACTIONS, WHEN AND HOW WILL CLASSES BE CERTIFIED?

17) WHAT ARE THE PROSPECTS FOR SETTLEMENT? HOW CAN SETTLEMENT EFFORTS BE ASSISTED?

18) SUCH OTHER MATTERS AS ANY PARTY CONSIDERS CONDUCTIVE TO THE JUST, SPEEDY AND INEXPENSIVE DETERMINATION OF THIS ACTION.

Please detach this form and return it to the Court ten (10) days in advance of the conference date. Please attach a signature page for all counsel indicating the party or parties that you represent. At the conference, the Court will issue an order directing the future proceedings in this action. The parties are advised that failure to comply with this order may result in the imposition of sanctions pursuant to Federal Rules of Civil Procedure 16(f).

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

CASE ASSIGNMENT FORM

CIVIL ACTION NUMBER:

--

THIS ACTION HAS BEEN ASSIGNED TO THE JUDGE AND MAGISTRATE JUDGE SHOWN BELOW.

ALL CORRESPONDENCE AND FILINGS SHOULD BEAR THE INITIALS OF THE ASSIGNED JUDGE AND MAGISTRATE JUDGE IMMEDIATELY FOLLOWING THE CIVIL ACTION NUMBER.
(IE: CIVIL ACTION NO. 92-CV-0123, HGM-DNH)

*ALL ORIGINAL PAPERS **MUST** BE FILED WITH THE CLERK'S OFFICE WHICH HAS BEEN CHECKED ON SIDE TWO OF THIS FORM.
(REFER TO PAGE #B-2 FOR MAILING ADDRESSES)

THE PARTIES ARE DIRECTED TO FILE A COPY OF ALL FILINGS ON ANY ACTION ASSIGNED TO MAGISTRATE JUDGE HURD. THE COPIES ARE TO BE MAILED DIRECTLY TO THE CHAMBERS OF THE MAGISTRATE JUDGE. * ORIGINAL PLEADINGS MUST BE FILED WITH THE OFFICE AS NOTED ON PAGE #2 OF THIS FORM.

PLEASE REFER TO PAGE #3 OF THE CASE ASSIGNMENT FORM FOR INFORMATION ON MOTION PRACTICE IN THE NORTHERN DISTRICT OF NEW YORK.

ACTION ASSIGNED TO THE JUDGE AND MAGISTRATE JUDGE CHECKED BELOW:

INITIALS

	SENIOR JUDGE NEAL P. McCURN	(NPM)
	SENIOR JUDGE HOWARD G. MUNSON	(HGM)
	CHIEF JUDGE THOMAS J. McAVOY	(TJM)
	JUDGE CON G. CHOLAKIS	(CGC)
	JUDGE FREDERICK J. SCULLIN, JR.	(FJS)
	MAGISTRATE JUDGE RALPH W. SMITH	(RWS)
	MAGISTRATE JUDGE GUSTAVE J. DiBIANCO	(GJD)
	MAGISTRATE JUDGE DAVID N. HURD	(DNH)
	MAGISTRATE JUDGE DANIEL SCANLON, JR.	(DS)

SEND ALL ORIGINAL PAPERS TO THE CLERK'S OFFICE CHECKED BELOW

- CLERK, U.S. DISTRICT COURT
FEDERAL BUILDING AND COURTHOUSE
POST OFFICE BOX 7367
SYRACUSE, NEW YORK 13261-7367

- CLERK, U.S. DISTRICT COURT
FEDERAL BUILDING AND COURTHOUSE
15 HENRY STREET
BINGHAMTON, NEW YORK 13901

- CLERK, U.S. DISTRICT COURT
JAMES T. FOLEY U.S. COURTHOUSE
POST OFFICE BOX 1037
ALBANY, NEW YORK 12201-1037

- CLERK, U.S. DISTRICT COURT
ALEXANDER PIRNIE FEDERAL BUILDING
AND U.S. COURTHOUSE
10 BROAD STREET
UTICA, NEW YORK 13501

* PLEASE FORWARD A COPY OF ALL FILINGS DIRECTLY TO THE CHAMBERS LISTED BELOW ON ANY ACTION WHICH IS ASSIGNED TO MAGISTRATE JUDGE HURD. PLEASE INDICATE ON THE DOCUMENT THAT IT IS A "COPY". THE COPIES ARE TO BE MAILED DIRECTLY TO THE CHAMBERS OF THE MAGISTRATE JUDGE AT THE ADDRESS LISTED BELOW.

MAIL COPIES TO:

THE HONORABLE DAVID N. HURD
UNITED STATES MAGISTRATE JUDGE
ALEXANDER PIRNIE FEDERAL BUILDING & COURTHOUSE
10 BROAD STREET
UTICA, NEW YORK 13501

ALL MOTIONS MUST BE FILED IN ACCORDANCE WITH RULE 10 OF THE LOCAL RULES OF THE NORTHERN DISTRICT OF NEW YORK. (PLEASE ALSO REFER TO GENERAL ORDER #37 - IN THE MATTER OF PAGE LIMITATIONS FOR BRIEFS AND MEMORANDA.)

ALL **NON-DISPOSITIVE** MOTIONS ARE TO BE MADE RETURNABLE ON A SUBMIT BASIS BEFORE THE ASSIGNED **MAGISTRATE JUDGE**. * PLEASE SEND THE ORIGINAL PAPERS TO THE OFFICE OF THE CLERK AS CHECKED ON PAGE #2 OF THIS FORM.

****ALL MOTIONS FILED AND MADE RETURNABLE BEFORE MAGISTRATE JUDGES WILL BE TAKEN ON A SUBMIT BASIS UNLESS: THE PARTIES REQUEST ORAL ARGUMENT AND/OR THE COURT DIRECTS THE PARTIES TO APPEAR FOR ORAL ARGUMENT.**

JUDGE McCURN AND JUDGE MUNSON WILL NOT HAVE REGULAR CIVIL MOTION DAYS DURING THE MONTH OF AUGUST. JUDGE McAVOY WILL NOT HAVE REGULAR MOTION DAYS DURING THE MONTH OF JULY. MOTIONS MAY NOT BE FILED WITHOUT PRIOR APPROVAL OF THE COURT DURING THESE PERIODS.

MONTHLY MOTION SCHEDULES

DISTRICT COURT JUDGES

SENIOR DISTRICT COURT JUDGES

SENIOR JUDGE NEAL P. McCURN
10:00 A.M. - 2ND AND 4TH TUESDAYS
AT SYRACUSE, N.Y.
11:00 A.M. - 1ST TUESDAY
AT ALBANY, N.Y.

CHIEF JUDGE THOMAS J. McAVOY
10:00 A.M. - 2ND MONDAY
AT ALBANY, N.Y.
10:00 A.M. - 4TH FRIDAY
AT BINGHAMTON, N.Y.

JUDGE FREDERICK J. SCULLIN, JR.
10:00 A.M. - 2ND FRIDAY
AT SYRACUSE, N.Y.
10:00 A.M. - 4TH FRIDAY
AT ALBANY, N.Y.

JUDGE CON G. CHOLAKIS
9:30 A.M. - 1ST & 3RD FRIDAY
AT ALBANY, N.Y.

SENIOR JUDGE HOWARD G. MUNSON
10:00 A.M. - 2ND FRIDAY
AT SYRACUSE, N.Y.
11:00 A.M. - LAST MONDAY OF THE
MONTH AT ALBANY, N.Y.

MAGISTRATE JUDGES

MAGISTRATE JUDGE GUSTAVE J. DiBIANCO
10:00 A.M. - LAST THURSDAY OF EACH
MONTH AT SYRACUSE, N.Y.

MAGISTRATE JUDGE DAVID N. HURD
10:00 A.M. - 2ND THURSDAY OF EACH
MONTH AT UTICA, N.Y.

MAGISTRATE JUDGE RALPH W. SMITH
9:30 A.M. 1ST THURSDAY OF EACH
MONTH AT ALBANY, N.Y.

MAGISTRATE JUDGE DANIEL SCANLON, JR.
10:00 A.M. - 3RD THURSDAY OF EACH
MONTH AT WATERTOWN, N.Y.
FEDERAL BUILDING & COURTHOUSE
163 ARSENAL STREET, 2ND FLOOR

**NOTICE OF OPPORTUNITY TO CONSENT TO THE EXERCISE
OF CIVIL JURISDICTION BY A MAGISTRATE JUDGE
AND APPEAL OPTION**

In accordance with the provisions of 28 U.S.C. Section 636(c) and Fed.R.Civ.P. 73, you are hereby notified that the United States Magistrate Judges of this district court, in addition to their other duties, may, upon consent of all the parties in a civil case, conduct any or all proceedings in the case, including a jury or non jury trial, and order the entry of a final judgment.

You should be aware that your decision to consent, to the referral of your case to a United States Magistrate Judge for disposition is entirely voluntary and should be indicated by counsel endorsing the attached consent form for the plaintiff(s) and defendant(s). If the form is executed by all counsel for the parties, it should be communicated solely to the clerk of the district court. ONLY if all the parties to the case consent to the reference to a magistrate judge will either the judge or magistrate judge to whom the case has been assigned be informed of your decision.

Your opportunity to have your case disposed of by a magistrate judge is subject to the calendar requirements of the court. Accordingly, the district judge to whom your case is assigned must approve the reference of the case to a magistrate judge for disposition.

In accordance with 28 U.S.C. Section 636(c)(3) and Fed.R.Civ.P. 73(c), an appeal from a judgment entered by a magistrate judge may be taken to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court. Alternatively, upon consent of all parties, an appeal from a judgment entered by a magistrate judge may be taken directly to a district judge in accordance with 28 U.S.C. Section 636(c)(4) and Fed.R.Civ.73(d). Cases in which an appeal is taken to a district judge may be reviewed by the United States court of appeals for this circuit only by way of petition for leave to appeal.

Copies of the consent form are available from the clerk of the court.

****ATTACHED FOR YOUR CONSIDERATION IS A BLANK CONSENT FORM****

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

Plaintiff

v.

CONSENT TO PROCEED BEFORE A
UNITED STATES MAGISTRATE JUDGE
AND ORDER OF REFERENCE

Defendant

CASE NUMBER: _____

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. 636(c) and Fed.R.Civ.P.73, the parties in this case hereby voluntarily waive their rights to proceed before a judge of the United States District court and consent to have a United States Magistrate Judge conduct any and all further proceedings in the case, including the trial, and order the entry of a final judgment.

Signatures

Date

Unless otherwise indicated below, any appeal shall be taken to the United States court of appeals for this judicial circuit, in accordance with 28 U.S.C. 636(c)(4) and Fed.R.Civ.P.73(d).

ELECTION TO APPEAL TO DISTRICT JUDGE

(DO NOT EXECUTE THIS PORTION OF THE FORM IF THE PARTIES DESIRE THAT THE APPEAL LIE DIRECTLY TO THE COURT OF APPEALS.)

ORDER OF REFERENCE

IT IS HEREBY ORDERED that this case be referred to the Honorable _____ United States Magistrate Judge, for all further proceedings and the entry of judgment in accordance with 28 U.S.C. 636(c), Fed.R.Civ.P.73 and the foregoing consent of the parties.

Date

United States District Judge

NOTE: RETURN THIS FORM TO THE CLERK OF COURT.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

NOTICE TO ALL LITIGANTS

THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK IS PROUD TO BE A MEMBER PILOT COURT SPONSORING A VOLUNTARY COURT-ANNEXED NON-BINDING ARBITRATION PROGRAM.



BECAUSE THE ARBITRATION PROGRAM WAS CHOSEN DUE TO ITS ADJUDICATIVE NATURE, THE PARTIES SHOULD CONSIDER THE COST OF ARBITRATION, A FAIR AND VIRTUALLY FREE FORUM, VERSUS THE MORE COSTLY FULL TRIAL IN FEDERAL COURT.

ALL COUNSEL AND LITIGANTS ARE ENCOURAGED TO TAKE ADVANTAGE OF THIS PROGRAM AND TAKE PART IN THIS INNOVATIVE APPROACH TO RESOLVING CONFLICT.

RULES GOVERNING THE COURT-ANNEXED ARBITRATION PROGRAM CAN BE FURNISHED BY ANY OF THE FOUR STAFFED OFFICES WITHIN THE DISTRICT.

****ATTACHED FOR YOUR CONSIDERATION IS A BLANK CONSENT FORM****

Counsel for Plaintiff
or Plaintiff if appearing
Pro Se.

Counsel for Defendant
or Defendant if appearing
Pro Se.

For purposes of case tracking, the Federal Judicial Center requires all pilot courts to collect the following information on cases that are referred to arbitration.

Information on COUNSEL: Plaintiff

Defendant

Name: _____

Address: _____

Phone # _____

Information on PARTIES: Plaintiff

Defendant

Name: _____

Address: _____

Phone # _____

(Use additional sheet if necessary)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

GENERAL ORDER 28

IT IS ORDERED THAT: All attorneys of record and pro se litigants in the Northern District of New York shall immediately notify the court of any change in address. Such Notice of Change of Address is to be filed with the Clerk of the court, and shall identify each and every action of which the Notice shall apply. FAILURE TO NOTIFY THE COURT OF A CHANGE OF ADDRESS MAY RESULT IN THE DISMISSAL OF ANY PENDING ACTION.

SO ORDERED.

Dated: September 13th, 1991
Syracuse, New York

Neal P. McCurn, Chief Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

GENERAL ORDER 30

The Court wishes to provide early judicial management in civil cases through increased utilization of Magistrate Judges.

Therefore, **IT IS ORDERED** that, the Clerk shall assign a District Judge and a Magistrate Judge to each civil action at the time of filing.

IT IS FURTHER ORDERED that:

(1) The assigned Magistrate Judge will manage all discovery and resolve all discovery motions.

(2) In accordance with FRCP 16, the assigned Magistrate Judge will hold conferences before trial and enter scheduling orders that limit the times (a) to join other parties and to amend pleadings; (b) to file and hear motions; and (c) to complete discovery. The scheduling order may also include dates for a final pretrial conference and other conferences, a trial ready date and a trial date, and any other matters appropriate in the circumstances of the case. The order shall issue as soon as practicable but in no event more than 60 days after the appearance of the defendant. A schedule shall not be modified except by leave of the assigned District Judge or Magistrate Judge.

(3) The assigned Magistrate Judge will explore the possibility of settlement, and will hold settlement conferences.

Date: March 1st, 1992

So Ordered: Neal P. McCurn
Chief, U.S. District Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

N O T I C E

CIVIL RICO STATEMENTS PURSUANT TO GENERAL ORDER #34

Dear Counsel/Litigant;

Please take notice that if your case contains any allegations which are founded under the Racketeer, Influenced and Corrupt Organizations Act (RICO), Title 18:USC Section 1961 et seq., you are required by this Court to file a Civil RICO Statement within thirty (30) days from the filing date of your complaint.

Copies of GENERAL ORDER #34 - CIVIL RICO STATEMENT FILING REQUIREMENTS may be obtained from any office of the U.S. District Court Clerk for the Northern District of New York.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

GENERAL ORDER #37

IN THE MATTER OF:

PAGE LIMITATIONS FOR BRIEFS AND MEMORANDA

IT IS ORDERED THAT:

Briefs and Memoranda submitted to this Court shall contain an accurate statement of the questions to be decided; set forth succinctly the relevant facts and the argument of the party with supporting authorities; and not be excessive in length.

Briefs and Memoranda must be limited to 25 pages of text unless, upon application of counsel, the limitation is removed by the Court. Parallel citations should be included in briefs and memoranda.

SO ORDERED

Dated: February 10, 1993
Syracuse, New York

S/ _____

NEAL P. McCURN
Chief, U.S. District Judge

ATTACHMENT 2

GENERAL ORDER #30

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

GENERAL ORDER 30

The Court wishes to provide early judicial management in civil cases through increased utilization of Magistrate Judges.

Therefore, IT IS ORDERED that, the Clerk shall assign a District Judge and a Magistrate Judge to each civil action at the time of filing.

IT IS FURTHER ORDERED that:

(1) The assigned Magistrate Judge will manage all discovery and resolve all discovery motions.

(2) In accordance with FRCP 16, the assigned Magistrate Judge will hold conferences before trial and enter scheduling orders that limit the times (a) to join other parties and to amend pleadings; (b) to file and hear motions; and (c) to complete discovery. The scheduling order may also include dates for a final pretrial conference and other conferences, a trial ready date and a trial date, and any other matters appropriate in the circumstances of the case. The order shall issue as soon as practicable but in no event more than 60 days after the appearance of the defendant. A schedule shall not be modified except by leave of the assigned District Judge or Magistrate Judge.

(3) The assigned Magistrate Judge will explore the possibility of settlement, and will hold settlement conferences.

Date: March 1st, 1992

So Ordered: Neal P. McCurn
Chief, U.S. District Judge

ATTACHMENT 3

GENERAL ORDER #31

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

OCT 14 1992

General Order Number 31

AT O'CLOCK M.
GEORGE A. RAY, CLERK
BINGHAMTON

CIVIL CASE ASSIGNMENT PLAN

A. Purpose. The purpose of the Assignment Plan is to implement the provisions of 28 U.S.C. Section 137 by providing an equitable system for randomly dividing the caseload among the judges, making necessary adjustments to caseload assignments and providing a basis for monitoring the operation of the case assignment system.

B. Administration.

1. The Assignment Plan shall be administered by the clerk under the supervision of the Chief Judge.

C. Case Numbers.

1. Each case commenced in or transferred to this district shall be assigned a case number by the clerk upon filing. A separate sequence of case numbers shall be maintained for criminal and civil cases. Civil case numbers shall be preceded by the letter "CV" and criminal cases by the letters "CR". Each case number shall consist of the last two digits of the year in which the case is filed followed by a sequential number for each case. On the first business day of each calendar year the sequential number will revert to "1".

D. Assignment of Civil Cases.

1. Civil cases for which venue lies in one of the counties listed shall be assigned to those judges designated to hold court in that location.

a. Albany Civil Filing Division; Albany, Clinton, Columbia, Essex, Greene, Rensselaer, Saratoga, Schenectady, Schoharie, Ulster, Warren, and Washington

b. Binghamton Civil Filing Division (Watertown): Broome, Chenango, Delaware, Franklin, Jefferson, Lewis, Otsego, St. Lawrence, and Tioga

c. Syracuse Civil Filing Division (Auburn & Utica): Cayuga, Cortland, Fulton, Hamilton, Herkimer, Madison, Montgomery, Oneida, Onondaga, Oswego, Tompkins

2. Civil cases shall be assigned blindly and at random by the clerk by means of a manual, automated or combination system approved by the judges of the court. Such system will be designed to accomplish the following:

a. Random and blind assignment of cases.

b. An approximately equal distribution of newly filed cases within each of the categories set forth below to each of the active judges of the court.

1. Contract
2. Real Property
3. Personal Injury
4. Personal Property
5. Civil Rights
6. Habeas Corpus
7. Forfeiture/Penalty
8. Labor
9. Property Rights
10. Antitrust
11. Bankruptcy
12. Social Security
13. Prisoner Civil Rights
14. Tax/Other Actions

c. A high level of security so as to reasonably avoid prediction of the results of any case assignment.

d. A system of credits and debits to adjust for reassignments of cases among and between judges.

E. Reassignment of Cases.

1. **Related Cases.** Upon the filing of a notice of related cases, all involved cases will be submitted by the clerk to the judge to whom the earliest filed case is assigned who shall advise the clerk whether such cases are related. If such cases are related the

clerk shall reassign them to the judge to whom the earliest-filed case is assigned, give the transferee judge a credit in the appropriate category for each case so reassigned and give the transferor judge a debit in the appropriate category for each case so reassigned.

If at the time of filing an action, Section VII of the Civil Cover Sheet (JS-44) indicates that a related action is pending before this Court, the clerk shall assign the action to the corresponding judge as noted on the cover sheet. The new action shall be submitted to the assigned judge with the related case files for review. If the assigned judge determines that the new action is not related to the original case (s), the clerk shall be directed to reassign the case. The clerk shall give the transferee judge a credit in the appropriate category for each case so reassigned and will give the transferor judge a debit in the appropriate category for each case reassigned.

2. Disqualification. If a judge is disqualified to hear a case assigned to him, the clerk shall reassign the case at random, and the clerk shall give the transferee judge a debit in the appropriate category.

3. Reassignment of cases to a different division. Whenever a case is transferred to a different division, the transferring judge may retain the case for further proceedings by him at that location, or the case may be reassigned. In the event the case is reassigned to another judge, a credit will be given in the appropriate category to the transferee judge and a debit in the appropriate category will be given to the transferor judge.

4. Cases may be reassigned between judges on written order signed by the transferring and accepting judges.

5. With the approval of the court, the clerk may make such other assignments, reassignments or related orders as are conducive to the equitable division and just, efficient and economical determination of the business of the court.

F. Senior Judges. A senior judge of this court may participate in the regular assignment of cases to the extent that he is willing and able to do so. The Chief Judge shall issue appropriate instructions to the clerk to effectuate such participation. The Chief Judge may, from time to time, after consultation with the judge to whom a case is assigned, reassign a case to a senior judge who is willing and able to accept such reassignment.

G. Visiting Judges. Whenever a judge is assigned to serve as a visiting judge in this court, the Chief Judge shall, prior to the arrival of such judge, make an order forming his calendar by reassignment from other judges cases designated by them as available for transfer. Selection of cases for this purpose shall be made upon a basis equitable among all the judges of this court and after consultation with them.

H. Newly Appointed Judges. When a judge is appointed to serve on this court, the clerk shall, under the direction of the Chief Judge, prepare a pending caseload for him, representing as nearly as possible the average pending caseload of an active judge at the

time. Upon approval of such caseload by the Chief Judge, such cases will be reassigned to the newly appointed judge.

I. When a judge becomes unavailable for the assignment of cases due to retirement, resignation, illness or death, the Chief Judge shall order the reassignment of such judge's pending cases to the other judges of this court on an equitable basis.

J. Review of Assignments.

1. This Plan is adopted by the court pursuant to 28 U.S.C. Section 137 only to provide for the orderly conduct of its business and does not create any right or privilege to any litigant to demand or challenge the assignment of a case.

K. Reassignment Register and Reports.

1. The clerk shall maintain an assignment register in a form approved by the court containing a record of all cases assigned to each of the judges of the court or to any visiting judge, all reassignments among judges.

2. At the end of each month the clerk shall prepare and distribute to the judges of the court a report showing the number of cases assigned to and pending before each judge and such other information as the Chief Judge may direct.

Dated: October 4, 1992

FOR THE COURT

Neil G. McCann

Chief Judge

ATTACHMENT 4

UNIFORM PRETRIAL SCHEDULING ORDER

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNIFORM PRETRIAL SCHEDULING ORDER

vs.

Civil No. -CV-

Counsel for all parties having reported on the status of this action as directed by the Court, and the Court having considered the positions of the respective counsel regarding a schedule for the progression of the case,

IT IS ORDERED that:

1.) **JOINDER OF PARTIES:** Any application to join any person as a party to this action shall be made on or before the _____ day of _____, 19__.

2.) **AMENDMENT OF PLEADINGS:** Any application to amend any pleading in this action shall be made on or before the _____ day of _____, 19__.

3.) **DISCOVERY** is to be conducted in accordance with Local Rule 10(k). All discovery in this matter is to be completed on or before the _____ day of _____, 19__.

4.) **MOTIONS** are to be filed on or before the _____ day of _____, 19__.

***Discovery motions and non-dispositive motions will be made returnable before and decided by the assigned Magistrate Judge.** No discovery motions shall be made until after a discovery conference to be arranged through the Courtroom Deputy Clerk assigned to the Magistrate Judge. Letter briefs concisely setting forth the contested issue(s) will be submitted five (5) days in advance of the conference. All discovery conference requests must be accompanied by an affidavit showing compliance with this District's Local Rule 10(k). All memoranda filed should contain parallel citations.

5.) **JURISDICTION AND VENUE MOTIONS** are to be filed within thirty (30) days from the date of this order.

Uniform Pretrial Scheduling Order Cont.

6.) SETTLEMENT CONFERENCE: A settlement conference pursuant to FRCP 16(d) will be scheduled by the Court approximately two weeks prior to the trial or sooner if ordered by the Court or requested by the parties.

A representative of each party with settlement authority shall attend the settlement conference or be available by telephone.

7.) TRIAL DATES:

a.) This case has been marked trial ready as of the _____ day of _____, 19____. It is anticipated that the trial will take approximately _____ days to complete.

b.) Trial is scheduled for the _____ day of _____, 19____ at _____ a.m. at the Federal Courthouse in _____, New York.

Trial dates are firm and will only be continued upon extreme and unanticipated emergencies. Trial dates can only be amended by the presiding judge. Counsel and the parties are advised that in the event of an opening in the Court's schedule and the availability of counsel, the trial date may be moved up in accordance with 7(a) above.

Counsel are directed to report to the trial judges chambers at least one-half hour prior to trial commencement to discuss jury selection and any other issues related to trial.

8.) ASSESSMENT OF JUROR COSTS: The parties are advised that pursuant to General Rule 45(b) of the Rules of the Northern District of New York, whenever any civil action scheduled for jury trial is required to be postponed, settled, or otherwise disposed of in advance of the actual trial, then, except for good cause shown, all juror costs, including Marshal's fees, mileage and per diem, shall be assessed equally against the parties and their counsel or otherwise assessed as directed by the court, unless the court and the clerk's office are notified at least one full business day prior to the day on which the action is scheduled for trial in time to advise the jurors that it will not be necessary for them to attend.

Uniform Pretrial Scheduling Order Cont.

9.) **PRETRIAL STIPULATIONS:** A joint pretrial stipulation shall be subscribed by counsel for all parties and shall be filed with the Court in duplicate **FIFTEEN (15) DAYS BEFORE TRIAL**, and shall contain:

- (a) The basis of Federal Jurisdiction;
- (b) A list of all exhibits which can be stipulated into evidence or which will be offered without objection as to foundation.
- (c) Relevant (a) facts not in dispute, (b) facts in dispute, and (c) issues of law to be considered and applied by the court.

10.) **WITNESSES:**

- (a) **FIFTEEN (15) DAYS BEFORE TRIAL** counsel for each party shall file in duplicate a list containing the identity and a descriptive designation of each witness to be called and a brief summary of the testimony to be offered by the witness.
- (b) The unavailability of any witness, expert or otherwise, will not be grounds for a continuance. In order to avoid the possibility of going forward with the trial without the testimony of an unavailable witness, counsel, where appropriate, shall preserve same by written or video-taped deposition for possible use at trial.

Please refer to the enclosed instruction sheet for the use of video taped depositions at trial.

(c) **Special procedures for management of expert witnesses:**

- (1) There shall be early and binding disclosure of the identity of expert witnesses. Such disclosure, including a curriculum vitae, must be made before the completion of discovery. The court will preclude the testimony of a witness not so identified.
- (2) In order to avoid the possibility of the unavailability of an expert witness at the time set for trial, counsel may preserve his or her testimony as outlined in 10(b) above for use at trial. In the absence of same, the trial will proceed without such testimony.

WARNING: EXPERTS WHO ARE NOT DISCLOSED PURSUANT TO THIS ORDER WILL NOT BE ALLOWED TO TESTIFY AT TRIAL.

Uniform Pretrial Scheduling Order Cont.

11.) **EVIDENTIARY ISSUES:** FIFTEEN (15) DAYS BEFORE TRIAL counsel shall file with the Court in duplicate a concise statement of any and all evidentiary issues to be presented upon trial together with a letter brief citing the applicable rules of evidence and case law;

12.) **EXHIBITS:** All exhibits shall be marked for identification prior to the filing of the trial briefs. A complete set of the original exhibits should be presented to the clerk at the beginning of the trial. A complete set of copies should be presented to the Court also.

EXHIBIT LISTS: The exhibits shall be marked on the form prescribed by the Court, a copy of the form is attached to this order. Counsel are to supply all the requested information with the exception of the two "Date Boxes" which should remain blank. The original exhibit list should be given to the clerk along with the exhibits. A copy of the exhibit list should also be given to the Court.

EXHIBIT MARKERS: Counsel should fill in the appropriate markers leaving the "File" and "Deputy Clerk" lines blank. All exhibits shall be assigned numbers by using a prefix of "P" for plaintiff, "D" for defendant, and, "G" for U.S. Attorney.

Plaintiff's exhibits should be denoted as: P-1, P-2, P-3; etc. Defendant's exhibits should be denoted as: D-1, D-2, D-3; etc. Government's exhibits should be denoted as: G-1, G-2, G-3; etc. In cases involving multiple defendants, the exhibits shall be denoted with the initial of the last name of the defendant and its numerical identification number.

Stickers shall be affixed whenever possible to the lower right hand corner of the exhibit. If the exhibit marker is going to cover any information on the exhibit, then affix the marker to the reverse side of the exhibit. Each exhibit shall also have an exhibit number in the upper right hand corner of the exhibit. (P-1, P-2, etc. or D-1, D-2, etc.)

The exhibits shall have been inspected by the opposing party and copied at their expense (unless waived), **NO LATER THAN ONE (1) WEEK PRIOR TO TRIAL.** All documents and/or papers intended as exhibits or to be used during the course of trial, including but not limited to, documents, photographs, charts, diagrams, etc., shall be assembled in **BINDERS** with each document properly marked at the lower right corner for identification purposes as previously directed.

In voluminous cases consult with the clerk of the court for the proper procedure to follow.

WARNING: EXHIBITS WHICH ARE NOT LISTED OR DISCLOSED PURSUANT TO THIS ORDER WILL NOT BE ADMITTED IN EVIDENCE OR USED AT TRIAL IN ANY FASHION.

Uniform Pretrial Scheduling Order Cont.

* NOTE: During the course of trial the clerk shall take charge of exhibits which are received into evidence. At the conclusion of the trial, the clerk will immediately return all of the exhibits to the proper parties. It is the responsibility of the parties to maintain the exhibits and to produce the exhibits for any appeal.

13.) DEPOSITIONS: All depositions to be used at trial shall be filed with the Court. Not earlier than fifteen (15) days and not less than ten (10) days prior to trial, each party shall indicate to the other party the portion of the deposition to be offered. To the extent possible, objections will be resolved between the parties. Areas of unresolved disagreement shall be presented to the Court for ruling prior to the trial.

14.) NON-JURY TRIALS: Fifteen (15) days before trial, counsel for each party shall submit to the Judge in duplicate and to opposing counsel, prepared findings of fact and conclusions of law, exhibit lists (see paragraph 12 above), witness lists (see paragraph 10(a) above), and a trial brief containing argument and citations on all disputed issues of law.

15.) JURY TRIAL: Fifteen (15) days before trial, counsel for each party shall submit to the Judge in duplicate and to opposing counsel, proposed voir dire, requests to charge, a trial brief containing argument and citations on all disputed issues of law, exhibit lists (see paragraph 12 above), witness lists (see paragraph 10(a) above), and Court Ordered Voir Dire (see attachment #1). Attachment Number 1 must be submitted in addition to any proposed voir dire requests. ****FOR JURY TRIALS BEFORE MAGISTRATE JUDGE SMITH, and MAGISTRATE JUDGE DiBIANCO, counsel need not submit proposed voir dire or attachment #1****

DATED: _____, 19____
_____, NEW YORK

U.S. District Judge
U.S. Magistrate Judge

COURT ORDERED VOIR DIRE
TO BE USED BY THE JUDGE AT TRIAL

CASE TITLE _____

CIVIL ACTION NO. _____

ASSIGNED JUDGE OR MAGISTRATE JUDGE _____

ATTACHMENT #(1)

Each attorney is required to submit the following information on behalf of his/her client for use by the Court during Voir Dire and must be filed with the Court fifteen (15) days in advance of the scheduled trial date.

NAMES AND ADDRESSES OF ALL PARTIES TO THE LAW SUIT.

(use additional page if necessary)

YOUR NAME, FIRM NAME, ADDRESS AND THE NAME OF ANY PARTNER OR ASSOCIATE WHO MAY BE AT COUNSEL TABLE DURING THE COURSE OF THE TRIAL.

(use additional page if necessary)

SET FORTH THE DATE OF THE OCCURRENCE, THE PLACE OF THE OCCURRENCE AND A BRIEF STATEMENT OF THE EVENTS CENTRAL TO THE LITIGATION.

(Use additional page if necessary)

Page #2 of Attachment (1)

SET FORTH THE NAMES AND ADDRESSES OF ALL LAY WITNESSES TO CALLED.

(use additional page of necessary)

SET FORTH THE NAMES AND ADDRESSES OF ALL EXPERT WITNESSES TO BE CALLED GIVING A BRIEF DESCRIPTION OF THEIR AREA OF EXPERTISE.

(use additional page of necessary)

SET FORTH A BRIEF DESCRIPTION OF EACH AND EVERY CAUSE OF ACTION IN THE COMPLAINT.

(use additional page if necessary)

Page #3 of Attachment #(1).

SET FORTH A BRIEF DESCRIPTION OF EACH AND EVERY AFFIRMATIVE DEFENSE ASSERTED AS WELL AS A STATEMENT ADDRESSING ANY COUNTERCLAIMS RAISED IN THE ANSWER.

(use additional page if necessary)

PLEASE TAKE NOTICE that any delay in jury selection occasioned by the failure to provide this information will be explained to the jury as to the extent of the delay and the attorney causing same and if the delay causes a one day or more postponement of this trial, appropriate monetary sanctions will be imposed by the Court.

Submitted by: _____

FINAL PRETRIAL ORDER - CONTINUED.

INSTRUCTIONS FOR THE USE OF VIDEO TAPED DEPOSITIONS

COUNSEL ARE TO VIEW ALL VIDEOTAPES WHICH MAY BE OFFERED INTO EVIDENCE AT THE TIME OF TRIAL, AND SUBMIT ALL OBJECTIONS IN WRITING, ALONG WITH THE VIDEOTAPE(S) TO THE COURT FOR RULING PRIOR TO TRIAL. COUNSEL ARE TO SUBMIT THE OBJECTIONS AND VIDEOTAPE(S) AT LEAST FIFTEEN (15) DAYS PRIOR TO THE TRIAL DATE, SO THAT AN EVIDENTIARY HEARING MAY BE SCHEDULED IF NECESSARY.

THE CLERKS OFFICE HAS AVAILABLE A VHS FORMAT VIDEO CASSETTE PLAYER AND TELEVISION FOR USE AT TRIAL. PLEASE BE ADVISED THAT YOU MUST PROVIDE A PERSON TO RUN THE EQUIPMENT DURING THE COURSE OF THE TRIAL.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CASE NO. _____

PLAINTIFF EXHIBIT NO. _____

DATE ENTERED: _____

GEORGE A. RAY, CLERK

BY: _____

DEPUTY CLERK

UNITED STATES DISTRICT
NORTHERN DISTRICT OF NEW YORK

CASE NO. _____

PLAINTIFF EXHIBIT NO. _____

DATE ENTERED: _____

GEORGE A. RAY, CLERK

BY: _____

DEPUTY CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CASE NO. _____

PLAINTIFF EXHIBIT NO. _____

DATE ENTERED: _____

GEORGE A. RAY, CLERK

BY: _____

DEPUTY CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CASE NO. _____

PLAINTIFF EXHIBIT NO. _____

DATE ENTERED: _____

GEORGE A. RAY, CLERK

BY: _____

DEPUTY CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CASE NO. _____

DEFENDANT EXHIBIT NO. _____

DATE ENTERED: _____

GEORGE A. RAY, CLERK

BY: _____

DEPUTY CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CASE NO. _____

DEFENDANT EXHIBIT NO. _____

DATE ENTERED: _____

GEORGE A. RAY, CLERK

BY: _____

DEPUTY CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CASE NO. _____

DEFENDANT EXHIBIT NO. _____

DATE ENTERED: _____

GEORGE A. RAY, CLERK

BY: _____

DEPUTY CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CASE NO. _____

DEFENDANT EXHIBIT NO. _____

DATE ENTERED: _____

GEORGE A. RAY, CLERK

BY: _____

DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

CASE NO. _____ CV _____

PAGE _____ OF _____ PAGES

DATE: _____

PRESIDING JUDGE _____

() PLAINTIFF () DEFENDANT

EXHIBIT NUMBER	DATE		REMARKS	WITNESS	EXHIBIT DESCRIPTION
	MARKED FOR IDENTIFICATION	ADMITTED IN EVIDENCE			

EXHIBITS RETURNED TO COUNSEL (DATE): _____

SIGNATURE _____