

Copy to Mattos  
Looney  
Lee

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
JOHN H. WOOD JR., U. S. COURTHOUSE  
655 E. DURANGO BOULEVARD  
SAN ANTONIO, TEXAS 78206

CHARLES W. VAGNER  
CLERK OF COURT

December 16, 1992

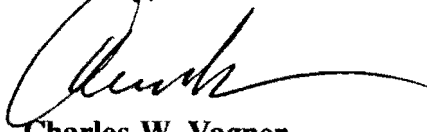
Mr. Abel J. Mattos, Chief  
Court Programs Branch  
Court Administration Division  
Administrative Office of the  
United States Courts  
Washington, D.C. 20544

Dear Abel:

Pursuant to our conversation, I am enclosing a copy of the CJRA Plan adopted by this court.

If you have any questions, or need further information, please give me a call.

Sincerely,



Charles W. Vagner  
Clerk

CWV/lz  
Encl.

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**CIVIL JUSTICE EXPENSE AND  
DELAY REDUCTION PLAN**

United States District Court  
for the Western District of Texas

November 30, 1992

**CIVIL JUSTICE EXPENSE AND  
DELAY REDUCTION PLAN**

United States District Court  
for the Western District of Texas

November 30, 1992

**PLAN FOR REDUCING EXPENSE  
AND DELAY IN CIVIL LITIGATION  
WESTERN DISTRICT OF TEXAS**

FILED

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**Introduction.**

The Civil Justice Reform Act of 1990 requires each ~~Court~~ <sup>BY CHAIRMAN</sup> to Rd adopt a plan for the reduction of expense and delay in civil litigation. Toward this end, Chief Judge Bunton of the Western District of Texas appointed an Advisory Group which included not only trial attorneys but also lay persons representing major categories of civil litigants in this district. The Advisory Group filed a final report on December 31, 1991. The report pointed out that while the reduction of unnecessary cost and delay in civil litigation was important, the quality of justice was even more important, and that the just determination of each and every civil action remained the primary goal (Report of the Advisory Group, December 31, 1991, page 3). The Plan adopted by the judges of this Court seeks to pay heed to this admonition.

**Section I. JUDICIAL INVOLVEMENT BEFORE TRIAL.**

A. Except for those categories of cases listed in Local Rule CV-16(b) and those cases assigned to the Expedited Docket (see Section VI, below) a Scheduling Order will be entered in every case. The judges of the district will adopt and use a uniform Scheduling Order (see Exhibit A).

B. Rule CV-16 of the Local Court Rules of the Western District of Texas will be amended to add the following paragraph:

(d) Within 30 days after the appearance of any defendant, the plaintiff shall submit a proposed scheduling order to the Court. The plaintiff shall confer with any party who has appeared in the action concerning the contents of the proposed scheduling order,

which shall include proposals for all deadlines set out in the scheduling order contained in Appendix B to these rules. The parties shall endeavor to agree concerning the contents of the proposed order, but in the event that they are unable to do so, each party's position and the reasons for the disagreement shall be included in the proposed schedule submitted to the Court. In the event that the plaintiff has not yet obtained service on all defendants, the plaintiff shall include an explanation of why the plaintiff has failed to do so. The scheduling proposals of the parties shall be considered by the trial court, but the setting of all dates and the trial date in particular lies within the province of the Court.

C. Although the Uniform Scheduling Order may be revised from time to time to reflect changed circumstances, it will continue to include the following elements:

1. It will set a specific trial date for the case.
2. It will provide that the pretrial order is due 14 days prior to the scheduled trial date.
3. It will include specific deadlines for the identification of all expert witnesses to be called by any party and disclosure of the subject matter of the expert's proposed testimony.

D. The pretrial order form presently in use (Form PT-1, Appendix B to the Local Rules) will be amended to eliminate the requirement that the testimony of proposed witnesses be summarized.

E. In any case in which the defense of qualified immunity is asserted by any defendant, the party or parties asserting the defense shall raise it by appropriate motion within 90 days after that party's initial pleading. No such motion shall be filed thereafter except by leave of court for good cause shown. A motion not filed within the 90 period will be carried and determined in

the trial, and no interlocutory appeal will be allowed if the effect thereof is to delay the trial.

**Section II. Discovery.**

A. Except for those cases assigned to the Expedited Docket (see Section VI, below), the Scheduling Order in each civil case will require the completion of discovery in not more than six months.

B. Within 20 days after the filing of the defendant's answer, the plaintiff shall file a list of proposed witnesses and, in the case of expert witnesses, a written summary of the expert's expected testimony, as well as a list of proposed trial exhibits. Within 30 days after this disclosure, the defendant will be required to file an identical list of witnesses, including summaries of expert testimony, and list of exhibits.

C. Local Rule CV-36 will be amended to allow thirty (30) specific requests by each party or parties (in the event of substantially similar interests) to each adverse party. The authorized number is being increased from ten to thirty to encourage use of requests for admission in place of the more expensive written or oral depositions. The parties are to use standard definitions in both requests for admission and written interrogatories, and a standard form of protective order (see Exhibit D) when one is deemed appropriate.

D. Standard agreements for the taking of depositions should be utilized, and should include a procedure for presenting objections and claims of privilege. Video taped and audio taped

depositions are permitted with appropriate and timely notice, and participation in depositions by telephone is permitted.

E. Any party filing a written motion relating to discovery must expressly state therein that reasonable and good faith efforts have been made to reach agreement as to all disputes, and must further state why no agreement could be reached.

F. The Advisory Group rejected the suggestion that the client as well as the attorney be required to sign all motions for a continuance or for the extension of discovery deadlines, finding that the proposal reflected a distrust of the attorney-client relationship that was entirely unjustified (Report, p. 75). The Court concurs and finds such a requirement to be inappropriate.

### Section III. Dispositive Motions.

A. Briefs in support of all motions must be concise, and may not exceed ten (10) pages double spaced without leave of Court. The specific authorities relied upon by the party must be expressly stated therein. If an extensive recital of facts is necessary, it must be done in an appendix attached to the brief and properly indexed.

B. The use of short letter briefs for responses and supplemental briefs is encouraged.

### Section IV. TRIAL PROCEDURES.

A. The judges of the district will encourage increased use of deposition evidence to reduce witness costs. To the extent that the use of deposition testimony is restricted by the "unavailability" requirement of F.R.Civ.P. Rule 32, the Court will

suggest appropriate amendments to the Advisory Committee on Civil Rules.

B. The use of bifurcated trials (Rule 42(b), F.R.Civ.P.) will be encouraged where appropriate to reduce costs and delays.

C. All judges of the district will be encouraged to furnish each juror in a civil jury trial with a copy of the Court's charge before it is read to the jury as an aid to jury comprehension of the instructions given.

D. The Court finds it unnecessary to seek additional authority for trial judges to limit the number of trial witnesses or to place time limits on the presentation of cases. Trial courts already possess discretion to limit or prevent cumulative or repetitious testimony, and this discretion will be exercised when appropriate.

**Section V. Alternative Dispute Resolution.**

A. The parties in every case will be required to consider alternative dispute resolution. In proper cases, the Court may require participation in alternative dispute resolution.

B. The Court will implement the expanded ADR program by adopting proposed Local Rule CV-88, attached as Exhibit B.

C. The Court will promote awareness of ADR procedures by:

1. Amending Local Rule AT-(1)(6) to read as follows:

(b) Application for admission shall be made on the form approved by the Court and in compliance with instructions therein. The Clerk shall provide, upon request, the approved application form and instructions. Completed applications shall be filed with the Clerk. Three letters of reference concerning the applicant's character and standing from



licensed attorneys in the Western District of Texas must be included. If the attorney resides in another Federal District, such letters must be from attorneys licensed in that district. In addition, a statement by the attorney which illustrates willingness to appear before the committee or members of the Bar should be provided as well as a statement that he or she are familiar with alternative dispute resolution procedures and will advise his or her client in any actions pending in this Court regarding alternative dispute resolution procedures.

2. Ordering all present members of the bar of this Court to acquaint themselves with ADR procedures and to advise their clients regarding those procedures.

Section VI. Efficient Use of Personnel.

A. The Court will encourage parties in civil cases to consent to trials before Magistrate Judges. At the time of entry of the Scheduling Order, the judge to whom the case is assigned shall notify the parties of the option of consenting to trial by a Magistrate Judge. A suggested form of notification is attached as Exhibit C.

B. A special class of civil cases known as the Expedited Docket will be established. Participation will be by consent of the parties. Parties who consent to participate in the Expedited Docket may or may not also consent to trial by a Magistrate Judge.

C. For those cases placed on the Expedited Docket:

1. No ADR will be required.
2. No Scheduling Order will be entered.
3. No pretrial order will be required.
4. If the parties also consent to trial by a Magistrate Judge, they will be guaranteed a

trial within four months of consent.

5. Any party may move to withdraw consent, but the motion will be granted only for good cause.

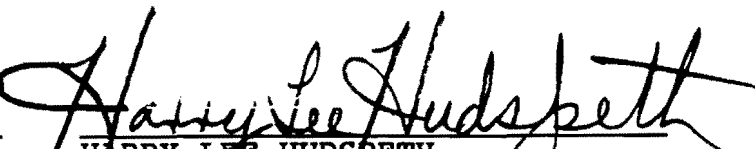
D. Whenever possible, nondispositive motions, including discovery motions, will be referred to Magistrate Judges for disposition.

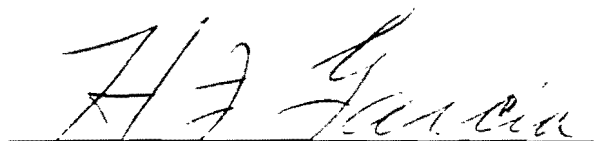
**Conclusion.**

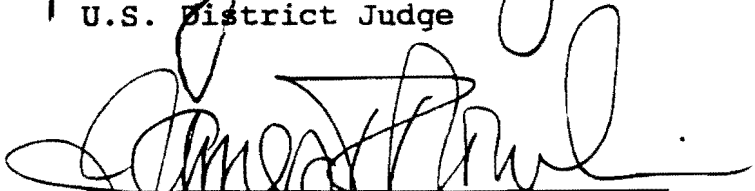
In the spirit of the Civil Justice Reform Act of 1990, and with the goal of attaining its objective of reducing unnecessary cost and delay in civil litigation, this Plan is hereby ADOPTED.


Entered this 30<sup>th</sup> day of November, 1992.

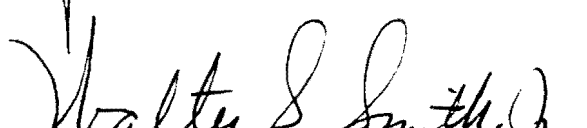
  
LUCIUS D. BUNTON  
Chief U.S. District Judge


  
HARRY LEE HUDSPETH  
U.S. District Judge

  
H.F. GARCÍA  
U.S. District Judge

  
JAMES R. NOWLIN  
U.S. District Judge

  
EDWARD C. PRADO  
U.S. District Judge

  
WALTER S. SMITH, JR.  
U.S. District Judge

  
SAM SPARKS  
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
\_\_\_\_\_ DIVISION

\_\_\_\_\_,  
Plaintiff ,  
v. \_\_\_\_\_,  
Defendant .

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NO. \_\_\_\_\_

**SCHEDULING ORDER**

Pursuant to Rule 16, Federal Rules of Civil Procedure, the Court issues the following Scheduling Order:

1. A report on alternative dispute resolution in compliance with Local Rule CV-88 shall be filed by \_\_\_\_\_.
2. The parties shall file all motions to amend or supplement pleadings or to join additional parties by \_\_\_\_\_.
3. All parties asserting claims for relief shall designate testifying experts and submit a written summary of the expected testimony of each expert by \_\_\_\_\_. Parties resisting claims for relief shall designate their testifying experts and submit a written summary of the expected testimony of each expert by \_\_\_\_\_. All rebuttal experts shall be designated by \_\_\_\_\_.
4. The parties shall complete all discovery on or before \_\_\_\_\_. Counsel may by agreement continue discovery beyond the deadline, but there will be no intervention by the Court

except in extraordinary circumstances, and no trial setting will be vacated because of information obtained in post-deadline discovery.

5. All dispositive motions shall be filed no later than \_\_\_\_\_.

6. This case is set for trial on \_\_\_\_\_ at \_\_\_\_\_ .m. The parties shall file a joint proposed pretrial order at least fourteen (14) days before that date (See Form PT-1, Appendix B to the Local Rules, for a suggested form of Pretrial Order).

SIGNED AND ENTERED this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_\_.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

**RULE CV-88.       ALTERNATIVE DISPUTE RESOLUTION**

**(a)           ADR REPORT.**

Upon order of the Court entered early in the case, the parties shall submit a report addressing the status of settlement negotiations, disclosing the identity of the person responsible for settlement negotiations for each party, and evaluating whether alternative dispute resolution is appropriate in the case. In the event the parties conclude that ADR is appropriate and agree upon a method of ADR and a neutral, they should identify both the method of ADR and the neutral they have selected, the method by which the neutral was selected, and how the neutral will be compensated. If the parties agree upon an ADR method and neutral, the Court will defer to the parties' agreement unless the Court finds that another ADR method or neutral is better suited to the case or the parties.

**(b)           REFERRAL TO ADR.**

The Court on its own motion or upon the motion of either party may order the parties to participate in a nonbinding alternative dispute resolution proceeding, including nonbinding arbitration, early neutral evaluation, mediation, minitrial, or moderated settlement conference. The order may further direct the parties to bear all expenses relating to alternative dispute resolution proceedings in such amounts and such proportions as the Court finds appropriate, but in no event should apportioning of costs constitute a penalty for failing to arrive at a settlement. The alternative dispute resolution proceeding shall begin at a date and time selected by the neutral or neutrals, but in no event later than 45 days after the entry of the order compelling participation in the proceeding.

**(c)           ATTENDANCE.**

Party representatives with authority to negotiate a settlement and all other persons necessary to negotiate a settlement must attend the ADR proceeding.

**(d)           CERTIFICATION OF NEUTRALS.**

The Court will appoint three members to a standing panel on ADR neutrals and designate one member as chairperson. The panel will review applications from providers and annually prepare a roster of those qualified under the criteria contained in this rule. This roster shall be maintained separately from the list of arbitrators maintained in the Office of the Clerk pursuant to Local Rule CV-87.

(1). To be eligible for listing on the roster of neutrals provided for by this rule, neutrals must meet the following minimum qualifications:

a. the person must be a member of the bar of the United States District Court for the Western District of Texas or a member of the faculty of an accredited law school within Texas; and

b. the person must have been a member of the bar of the highest court of any state or the District of Columbia for at least five years; and

c. the person must have completed at least forty hours training in dispute resolution techniques in an alternative dispute resolution course approved by the State Bar of Texas Minimum Continuing Legal Education Department.

A neutral denied listing may request a review of that decision.

(e) **SELECTION OF NEUTRAL.**

Upon entry of an order compelling participation in alternative dispute resolution, the Clerk shall forthwith furnish to each party a list of neutrals. If the compelled procedure is nonbinding arbitration or moderated settlement conference, the list shall include five neutrals whose names have been selected from the roster of neutrals maintained in the Clerk's Office. If the compelled procedure is other than nonbinding arbitration or moderated settlement conference the list shall include three neutrals selected from this same roster. The parties shall then confer with each side entitled to strike one name from the list. The parties may by agreement reject the list furnished by the Clerk and instead select a neutral or neutrals from the roster. Failure of counsel to timely notify the Clerk of their strikes or selection shall result in the selection of the neutrals or neutrals by the Clerk.

The Clerk shall promptly notify the neutral or neutrals selected. If any person selected is unable or unwilling to serve the Clerk shall submit an additional list of names to the parties until a neutral or complete panel of neutrals is selected. When a neutral or full panel of neutrals have been selected and have agreed to serve, the Clerk shall promptly notify the neutral or neutrals and the parties of the selection.

No person shall serve as a neutral if any of the circumstances specified in 28 U.S.C. § 455 of the Judicial Code of

Conduct exist, or if the neutral believes in good faith that such circumstances exist. Any person whose name appears on the roster maintained in the Clerk's Office may ask at any time to have his or her name removed, or, if selected to serve in any case, decline to serve but remain on the roster.

Upon its own motion or upon motion and showing of good cause by any party, the Court may order appointment of a neutral or neutrals from outside the roster of qualified neutrals maintained by the Clerk's Office.

(f) **RELIEF FROM REFERRAL.**

Any party may obtain relief from an order compelling participation in an alternative dispute resolution proceeding upon a showing of good cause. Good cause may include a showing that the expenses relating to alternative dispute resolution would cause undue hardship to the party seeking relief from the order. In that event, the Court may in its discretion appoint a neutral or neutrals to provide ADR services without fee and at no cost to the party or parties.

(g) **CONFIDENTIALITY.**

Except as otherwise provided herein, a communication relating to the subject matter of any civil or criminal dispute made by a participant in an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

(1) Any record made at an alternative dispute resolution procedure is confidential, and the participants or the third party facilitating the procedure may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring the disclosure of confidential information or data relating to or arising out of the matter in dispute.

(2) An oral communication or written material used in or made a part of an alternative dispute resolution procedure is admissible or discoverable if it is admissible or discoverable independent of the procedure.

(3) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the Court having jurisdiction of the proceedings to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the Court or whether the communications

or materials are subject to disclosure.

(h) **SUMMARY JURY TRIAL.**

In cases where alternative dispute resolution procedures have proved unsuccessful and a complex and lengthy trial is anticipated, the Court may conduct a summary jury trial provided that the Court finds that a summary jury trial may produce settlement of all or a significant part of the issues and thereby effect a saving in time, effort and expense for all concerned. The Court should develop procedures for such summary jury trial with the advice of counsel.

(i) **REPORT.**

At the conclusion of each ADR proceeding, the neutral or panel of neutrals shall submit to the Court a notice of outcome, including the style and number of the case and whether the case has settled.

(j) **SANCTIONS.**

The sanctions available under Federal Rule of Civil Procedure 16(f) shall apply to any violation of this rule.



IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
\_\_\_\_\_ DIVISION

_____ ,	§	
	§	
Plaintiff ,	§	
	§	
v.	§	NO. _____
	§	
_____ ,	§	
	§	
Defendant .	§	

**NOTICE OF RIGHT TO CONSENT TO  
TRIAL BY MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636(c)(1), all full-time United States Magistrate Judges are authorized and empowered to try any civil case, jury or nonjury, with the consent of all parties to the lawsuit. Because of the crowded condition of the criminal docket in this District and the difficulty in reaching civil cases for trial, you may wish to consent to the trial of your case by a United States Magistrate Judge.

Your decision should be communicated to the United States District Clerk's Office. Consent forms are available in the Clerk's office. Your consent to trial by a Magistrate Judge must be voluntary, and you are free to withhold consent without suffering any adverse consequences. If all parties do consent to trial of this case by a Magistrate Judge, the Court will enter an order referring the case to a Magistrate Judge for trial and for entry of judgment.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

\_\_\_\_\_  
Date

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
\_\_\_\_\_ DIVISION

\_\_\_\_\_,  
Plaintiff ,  
v. \_\_\_\_\_,  
Defendant .

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NO. \_\_\_\_\_

PROTECTIVE ORDER

Upon motion of all the parties for a Protective Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure,

It is hereby ORDERED that:

1. All Classified Information produced or exchanged in the course of this litigation shall be used solely for the purpose of preparation and trial of this litigation and for no other purpose whatsoever, and shall not be disclosed to any person except in accordance with the terms hereof.

2. "Classified Information," as used herein, means any information of any type, kind or character which is designated a "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") by any of the supplying or receiving parties, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer or otherwise. In designating information as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only"), a party will make such designation only as to that information that it in good faith believes contains confidential information. Information or material which is available to the public, including catalogues,

advertising materials, and the like shall not be classified.

3. "Qualified Persons," as used herein means:

(a) Attorneys of record for the parties in this litigation and employees of such attorneys to whom it is necessary that the material be shown for purposes of this litigation;

(b) Actual or potential independent technical experts or consultants, who have been designated in writing by notice to all counsel prior to any disclosure of "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information to such person, and who have signed a document in the form of Exhibit "A" attached hereto (such signed document to be filed with the Clerk of this Court by the attorney retaining such person);

(c) One (1) "in-house" corporate officer or employee of a corporate party who shall be designated in writing by the corporate party prior to any disclosure of "Confidential" information to such person and who shall sign a document in the form of Exhibit "A" attached hereto (such signed document to be filed with the Clerk of this Court by the party designating such person); and

(d) If this Court so elects, any other person may be designated as a Qualified Person by order of this Court, after notice and hearing to all parties.

4. Documents produced in this action may be designated by any party or parties as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information by marking each page of the document(s) so designated with a stamp stating "Confidential" or

"For Counsel Only" (or "Attorneys' Eyes Only").

In lieu of marking the original of a document, if the original is not produced, the designating party may mark the copies that are produced or exchanged. Originals shall be preserved for inspection.

5. Information disclosed at (a) the deposition of a party or one of its present or former officers, directors, employees, agents or independent experts retained by counsel for the purpose of this litigation, or (b) the deposition of a third party (which information pertains to a party) may be designated by any party as "Confidential" or "For Counsel Only" ("or Attorneys' Eyes Only") information by indicating on the record at the deposition that the testimony is "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") and is subject to the provisions of this Order.

Any party may also designate information disclosed at such deposition as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") by notifying all of the parties in writing within thirty (30) days of receipt of the transcript, of the specific pages and lines of the transcript which should be treated as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") thereafter. Each party shall attach a copy of such written notice or notices to the face of the transcript and each copy thereof in his possession, custody or control. All deposition transcripts shall be treated as "For Counsel Only" (or "Attorneys' Eyes Only") for a period of thirty (30) days after the receipt of the transcript.

To the extent possible, the court reporter shall segregate into separate transcripts information designated as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only"), with blank, consecutively numbered pages being provided in a non-designated main transcript. The separate transcript containing "Confidential" and/or "For Counsel Only" (or "Attorneys' Eyes Only") information shall have page numbers that correspond to the blank pages in the main transcript.

6. (a) "Confidential" information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons. Information designated as "For Counsel Only" (or "Attorneys' Eyes Only") shall be restricted in circulation to Qualified Persons described in Paragraphs 3(a) and (b) above.

(b) Copies of "For Counsel Only" (or "Attorneys' Eyes Only") information provided to a receiving party shall be maintained in the offices of outside counsel for Plaintiff(s) and Defendant(s). Any documents produced in this litigation, regardless of classification, which are provided to Qualified Persons of Paragraph 3(b) above, shall be maintained only at the office of such Qualified Person and only working copies shall be made of any such documents. Copies of documents produced under this Protective Order may be made, or exhibits prepared by independent copy services, printers or illustrators for the purpose of this litigation.

(c) Each party's outside counsel shall maintain a log of all copies of "For Counsel Only" (or "Attorneys' Eyes Only")

documents which are delivered to any one or more Qualified Person of Paragraph 3 above.

7. Documents previously produced shall be retroactively designated by notice in writing of the designated class of each document by Bates number within thirty (30) days of the entry of this order. Documents unintentionally produced without designation as "Confidential" may be retroactively designated in the same manner and shall be treated appropriately from the date written notice of the designation is provided to the receiving party.

Documents to be inspected shall be treated as "For Counsel Only" (or "Attorneys' Eyes Only") during inspection. At the time of copying for the receiving parties, such inspected documents shall be stamped prominently "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") by the producing party.

Nothing herein shall prevent disclosure beyond the terms of this order if each party designating the information as "Confidential" or "For Counsel Only" (or Attorneys' Eyes Only") consents to such disclosure or, if the court, after notice to all affected parties, orders such disclosures. Nor shall anything herein prevent any counsel of record from utilizing "Confidential" or "For Counsel Only" (or "Attorneys' Eyes only") information in the examination or cross-examination of any person who is indicated on the document as being an author, source or recipient of the "Confidential" or "For Counsel Only (or "Attorneys' Eyes Only") information, irrespective of which party produced such information.

9. A party shall not be obligated to challenge the

propriety of a designation as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") at the time made, and a failure to do so shall not preclude a subsequent challenge thereto. In the event that any party to this litigation disagrees at any stage of these proceedings with the designation by the designating party of any information as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only"), or the designation of any person as a Qualified Person, the parties shall first try to resolve such dispute in good faith on an informal basis, such as production of redacted copies. If the dispute cannot be resolved, the objecting party may invoke this Protective Order by objecting in writing to the party who has designated the document or information as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only"). The designating party shall be required to move the Court for an order preserving the designated status of such information within fourteen (14) days of receipt of the written objection, and failure to do so shall constitute a termination of the restricted status of such item.

The parties may, by stipulation, provide for exceptions to this order and any party may seek an order of this Court modifying this Protective Order.

10. Nothing shall be designated as "For Counsel Only" (or "Attorneys' Eyes Only") information except information of the most sensitive nature, which if disclosed to persons of expertise in the area would reveal significant technical or business advantages of the producing or designating party, and which includes as a major portion subject matter which is believed to be unknown to the

opposing party or parties, or any of the employees of the corporate parties. Nothing shall be regarded as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information if it is information that either:

(a) is in the public domain at the time of disclosure, as evidenced by a written document;

(b) becomes part of the public domain through no fault of the other party, as evidenced by a written document;

(c) the receiving party can show by written document that the information was in its rightful and lawful possession at the time of disclosure; or

(d) the receiving party lawfully receives such information at a later date from a third party without restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving party.

11. In the event a party wishes to use any "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information in any affidavits, briefs, memoranda of law, or other papers filed in Court in this litigation, such "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information used therein shall be filed under seal with the Court.

12. The Clerk of this Court is directed to maintain under seal all documents and transcripts of deposition testimony and answers to interrogatories, admissions and other pleadings filed under seal with the Court in this litigation which have been designated, in whole or in part, as "Confidential" or "For Counsel Only" (or



"Attorneys' Eyes Only") information by a party to this action.

13. Unless otherwise agreed to in writing by the parties or ordered by the Court, all proceedings involving or relating to documents or any other information shall be subject to the provisions of this order.

14. Within one-hundred twenty (120) days after conclusion of this litigation and any appeal thereof, any document and all reproductions of documents produced by a party, in the possession of any of the persons qualified under Paragraphs 3(a) through (d) shall be returned to the producing party, except as this Court may otherwise order or to the extent such information was used as evidence at the trial. As far as the provisions of any protective orders entered in this action restrict the communication and use of the documents produced thereunder, such orders shall continue to be binding after the conclusion of this litigation, except (a) that there shall be no restriction on documents that are used as exhibits in Court unless such exhibits were filed under seal, and (b) that a party may seek the written permission of the producing party or order of the Court with respect to dissolution or modification of such protective orders.

15. This order shall not bar any attorney herein in the course of rendering advice to his client with respect to this litigation from conveying to any party client his evaluation in a general way of "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information produced or exchanged herein; provided, however that in rendering such advice and otherwise communicating

with his client, the attorney shall not disclose the specific contents of any "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information produced by another party herein, which disclosure would be contrary to the terms of this Protective Order.

16. Any party designating any person as a Qualified Person shall have the duty to reasonably ensure that such person observes the terms of this Protective Order and shall be responsible upon breach of such duty for the failure of any such person to observe the terms of this Protective Order.

SIGNED AND ENTERED this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE