Lake file

L. RALPH MECHAM
DIRECTOR

JAMES E. MACKLIN, JR.
DEPUTY DIRECTOR

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

May 19, 1992

Honorable Howard F. Sachs
Chief Judge, United States
District Court
443 U.S. Courthouse
811 Grand Avenue
Kansas City, Missouri 64106

Dear Judge Sachs:

We have received your court's Civil Justice Reform Act cost and delay reduction plan and have forwarded it to the Court Administration Division, which serves as staff of the Committee on Court Administration and Case Management, for review.

The dedication and industry evidenced by your court and its advisory group in completing the laborious process of committee meetings and plan design in such a short time period is greatly appreciated. We look forward to working with you in implementing and evaluating the impact of this important initiative.

Sincerely,

Ralph

L. Ralph Mecham
Director

good to see you at Dinner!
R

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
443 U.S. COURTHOUSE
811 GRAND AVENUE
KANSAS CITY, MISSOURI 64106

Chambers of
Howard F. Sachs
Chief Judge

(816) 426-6302
FTS 867-6302

May 7, 1992

Honorable L. Ralph Mecham,
Director
Administrative Office of the
United States Courts
Washington, D. C. 20544

Dear Mr. Mecham:

As required by Section 472, Title 28, United States Code, I herewith transmit a copy of the Civil Justice Expense and Delay Reduction Plan adopted by the judges of this court on April 30, 1992.

It may be noted that the Early Assessment Program, which required funding, was placed in effect on January 1, 1992. Revision and adoption of the entire plan was not feasible earlier in light of major changes in pretrial procedure proposed to the Court and the perceived desirability of obtaining unanimous approval of our judges which has now occurred.

Sincerely,

Howard F. Sachs

Enclosure

106091

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION
EN BANC

ORDER

Pursuant to the provisions of the Civil Justice Reform Act of 1990, 28 U.S.C. Sections 471-82, the Court en Banc for the United States District Court, Western District of Missouri, hereby adopts the attachment hereto as the Civil Justice Expense and Delay Reduction Plan for the Western District of Missouri.

HOWARD F. SACHS, CHIEF JUDGE
UNITED STATES DISTRICT COURT
At the Direction of the Court en Banc

Dated: April 30, 1992

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

FOR THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

The following is the Civil Justice Expense and Delay Reduction Plan developed by the United States District Court for the Western District of Missouri as required by the Civil Justice Reform Act of 1990, 28 U.S.C. §§ 471-82. (hereinafter the Act). This plan is based on the Court's review and consideration of the written report and recommendations of an Advisory Committee appointed pursuant to the Act. Before making its recommendations, the Advisory Committee studied case filing trends in the Western District of Missouri between 1971 and November 1991 and interviewed the judges and other court personnel as well as lawyers and litigants involved in cases in the district. Having reviewed and considered the Advisory Committee's report, the Court adopts the following recommendations and proposals.

EARLY ASSESSMENT PROGRAM

The major component of this Court's plan is an Early Assessment Program adopted on October 31, 1991 (amended April 7, 1992) as a demonstration project. The three year project which commenced January 1, 1992, will divert approximately one-third of the civil court filings, excluding certain enumerated categories of cases, to an alternative dispute resolution procedure. The details of this program are outlined in the Early Assessment Program General Order attached to this plan as Exhibit A.

REVISIONS TO THE LOCAL RULES

The Advisory Committee concluded that the Court's current local rules, standing orders and internal operating procedures allow for close judicial supervision of litigation and have contributed to the absence of a civil litigation backlog in the district. However, in an effort to improve efficiency in certain areas highlighted by the Committee's report, the Court has developed the following amendments to the Local Rules. It is anticipated that these proposed changes to the rules or substantially similar ones will be adopted after allowing a comment period.

1. Establishment of Early Trial Settings.

The Advisory Committee recommended that an early trial setting be established at the initial pretrial conference. It was the opinion of the Advisory Committee that an early trial setting provides a deadline for litigation preparation, better focuses the work of the parties and is an incentive to begin discovery more quickly. Whenever possible the judges of the Court are committed to the establishment of early trial settings. To provide the judges with sufficient information for the establishment of a trial date early in the litigation process, Local Rule 15G will be amended to require the parties to provide information concerning the number of days the trial is expected to last. Likewise, corresponding amendments will be made to require that this information be included in section V of Form A of Local Rule 15 (Proposed Scheduling Order).

The proposed changes to Local Rule 15G and Form A are set forth in Exhibits B and E attached hereto.

2. Telephone Discovery Conferences.

Local Rule 15M currently mandates that the parties confer before filing discovery motions. This rule will be amended to require counsel to confer in person or by telephone before bringing the dispute to court. If that conference does not resolve the discovery dispute, counsel must schedule a telephone conference with the Court before filing a discovery motion. It is anticipated that during this conference the discovery dispute will be resolved without the necessity of further action. The proposed changes to Local Rule 15M setting forth the new telephone conference requirement are attached as Exhibit C.

3. Procedures to Expedite Summary Judgment Rulings.

Local Rule 13 will be amended by adding a new section, 13G, to specifically address summary judgment motions. The rule establishes a uniform format for suggestions in support of or in opposition to a motion. The standard format will require separate numbered paragraphs setting forth each disputed or undisputed fact, as well as a citation to the record where the referenced fact may be found. It is anticipated that this format will assist the Court in determining whether any genuine issues of material fact exist. Form A of Local Rule 15 (Proposed Scheduling Order) will also be amended to require the parties to establish a date for the filing of dispositive motions.

Additionally, unless leave of court to the contrary is obtained, all suggestions in support of or in opposition to motions, including summary judgment motions, will be limited to fifteen pages (excluding facts presented in accordance with this plan). Reply suggestions will be limited to ten pages. It is anticipated that reducing the length of suggestions will expedite ruling on motions.

Finally, if summary judgment motions will not be decided within sixty days after the final reply suggestions are filed, oral argument will be scheduled on the motion at the earliest feasible date. It is anticipated that if the motion is not ruled during the oral argument, the Court will advise counsel when a ruling can be anticipated. See Exhibits D and E for the proposed changes to Rule 13 and Form A of Local Rule 15 (Proposed Scheduling Order).

4. Early Designation of Expert Witnesses.

Local Rule 15G(4) which sets forth the information required in the standard pretrial order will be amended to require the parties to specifically designate the date by which each party will designate expert witnesses and the date by which the depositions of all expert witnesses will be concluded. To correspond with the amendments to Local Rule 15G(4), Form A of Local Rule 15 (Proposed Scheduling Order) will also be amended. See Exhibits B and E attached hereto.

SOCIAL SECURITY APPEALS

This Court will request funding from the Administrative Office of the United States Courts to employ an additional law clerk with

medical experience or training to process all Social Security Disability Appeals.

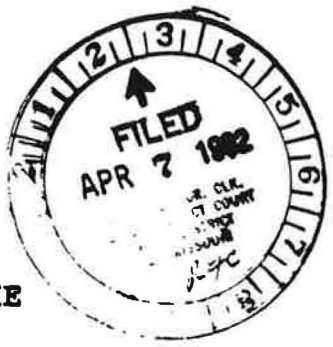
HEARINGS INVOLVING PRISONERS

In an attempt to expedite cases involving inmates in the Missouri Department of Corrections, the Court will request funding to purchase and install video equipment in the federal courthouse in Jefferson City.

CONCLUSION

The Court will continue to consult with and seek input from the Advisory Committee concerning possible expense or delay reduction procedures. Further, the Court will continue to study, evaluate and implement procedures to reduce expense and delay without sacrificing the quality of judicial decisions.

EXHIBIT A



IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
EN BANC

G E N E R A L O R D E R

For good cause appearing, the United States District Court en banc for the Western District of Missouri does hereby unanimously ORDER that Part V; Part VII, A.7; Part VIII, B; Part VIII, B2(b) (2); and Part X of the Early Assessment Program, adopted on October 31, 1991, as the official Demonstration Project of this Court, are hereby amended as set forth in the attachment hereto.

Howard F. Sachs
Chief United States District Judge
At the Direction of the Court
en banc

Kansas City, Missouri
Dated: April 7, 1992

Outline of General Order
EARLY ASSESSMENT PROGRAM

I. Purpose
II. Program Description and Procedure
    A. Case Selection
    B. Early Assessment Meeting
    C. Opting Out
    D. Notice to Parties
III. Administrator
    A. Selection
    B. Responsibilities
IV. Attendance at Program Sessions
    A. Parties
    B. Counsel
    C. Location
V. Confidentiality
    A. General Provisions
    B. Exception
    C. Information Under Oath
    D. Evaluation
    E. No Recording
VI. Evaluation
VII. Alternative Dispute Resolution (ADR) Options and Procedures
    A. Procedures Applicable to Mediation, Non-Binding Arbitration and Early Neutral Evaluation
    B. Description of Specific ADR Options and Procedures
        1. Mediation
        2. Non-Binding Arbitration
        3. Early Neutral Evaluation
        4. Magistrate Settlement
        5. Other Options
VIII. List of Neutrals (Mediators, Arbitrators, Evaluators)
    A. List of Neutrals
    B. Minimum Requirements to be Listed on the List of Neutrals
    C. Selection of Neutrals
    D. Oath
    E. Disqualification
    F. Compensation
    G. Neutrals as Counsel in Other Cases
    H. Reports of Violations
IX. Sanctions

* * *

3/20/92

General Order

United States District Court

Western District of Missouri

Early Assessment Program

Early Implementation Project

I. PURPOSE

The Court recognizes that full formal litigation of civil claims can impose large economic and other burdens on parties and can delay the resolution of disputes. There is presently no procedure in place that encourages the parties to: (1) confront the facts and issues in their case before engaging in expensive and time consuming discovery procedures, or, (2) engage in early discussions of the issues, or, (3) consider the views of the opposing side, or, (4) consider the projected costs of future proceedings in an effort to settle the case before costs and lawyers fees have made settlement more difficult, or (5) consider other methods of resolving their disputes.

Therefore, the Court has decided to implement an experimental program beginning January 1, 1992 and extending through December 31, 1994 designed to give parties the means to resolve their disputes in a faster and less costly manner. This program is called the "Early Assessment Program" (Program).

An evaluation of the Program will be completed at the end of the experimental period to measure its success or failure.

II. PROGRAM DESCRIPTION AND PROCEDURE

A. Case Selection.

1. The following cases are excluded from the Program:

   a. Multi-district cases
   b. Social security appeals
   c. Bankruptcy appeals
   d. Habeas Corpus actions
   e. Prisoner *pro se* cases and other *pro se* cases where motion for appointment of counsel is pending
   f. Class actions
   g. Student Loan Cases

2. Automatic Program Cases. One of every three civil cases filed in the Western Division, except those types of cases excluded, during the period January 1, 1992 to December 31, 1994, shall be randomly assigned to the Program.

3. Voluntary Program Cases. One of every three civil cases filed in the Western Division, except those types of cases excluded, during the period January 1, 1992 to December 31, 1994, shall be randomly assigned to a group of cases that may or may not elect to participate in the Program. From this group of cases the Project Administrator (Administrator) will select cases that appear promising for use of alternative dispute resolution, based on the experience of other Courts and his or her judgment. The Administrator will contact the lawyers and parties in those cases selected to encourage their participation in the Program, but they shall not be required to participate. If they do elect to participate, they shall generally follow the same procedures as those cases automatically assigned to the Program.

4. Control Group Cases. One of every three civil cases filed in the Western Division, except those types of cases excluded, during the period January 1, 1992 to December 31, 1994, shall be assigned to the Control Group. Those cases shall be exempted from any mandated use of alternative dispute resolution. However, the parties may specifically request of the Administrator to be included in the Program, or agree to use some form of alternative dispute resolution on their own.

B. Early Assessment Meeting (Assessment). For those cases automatically assigned to the Program, an Assessment will be held within 30 days after completion of responsive pleadings. An Assessment will be held at a mutually convenient time with the Administrator.

1. The Administrator shall notify the lawyers (or *pro se* parties, if applicable) of the date of the Assessment.

2. The Administrator, at the Assessment, shall advise the parties and their lawyers of the various "alternative dispute resolution" (ADR) options available to them for a resolution of their dispute as set out in paragraph VII.

3. If the Administrator determines, in consultation with the parties, that additional discovery is needed or if the parties, at the Assessment, elect the option of "early neutral evaluation" (ENE) the administrator shall, working with the parties, devise a plan for sharing the important information and/or conducting the key discovery that will equip them, as expeditiously as possible, to enter meaningful settlement discussions, or to posture the case for another session or other form of disposition.

4. Regardless of whether a case enters the ENE program, the Administrator shall also help the parties identify areas of agreement and explore the possibility of settling the case through mediation techniques. If appropriate, and agreeable to the parties and the Administrator, a mediation process may be initiated immediately, or at a later date, with the Administrator serving as mediator.

5. Participants in the Program must select, with the assistance of the Administrator, one of the ADR options. If the parties are unable to agree, the Administrator shall select the ADR option. If the Administrator determines that a second session is necessary before a decision can be reached on the appropriate ADR process, it may be scheduled as soon as possible thereafter.

6. The first session of the ADR process selected typically shall be held not later than 90 days after the Assessment, unless the Administrator, in his or her discretion determines that a later date is necessary.

C. **Opting Out**. Cases will not normally be allowed to opt out of that phase of the Program to which they were originally assigned, primarily because of the experimental nature of the Program and the need for empirical data to test it. Allowing a significant number of cases to opt out may affect the evaluation of the Program. However, there may be cases where good cause can be demonstrated for opting out.

All requests to opt out shall be in letter form and shall set forth in detail the reasons for the request. A letter asking to opt out shall be directed to the Administrator within 10 days of receiving notice that the case is assigned to the Program. Subject to the considerations stated herein, the Administrator may grant or deny the request in his or her discretion. Appeals from the Administrator's decision, while discouraged, may be made by written motion to the Judge to whom the case is assigned.

D. **Notice to Parties**. Notice to parties of case selection for the Program shall be provided as follows:

1. The Clerk shall provide a copy of the Notice to each lawyer filing an action and to each eligible person filing such action *pro se*.

2. The Notice shall be attached by the Clerk to each summons issued in such action;

3. Within 20 days of the filing, the lawyer shall file with the Court a certificate stating that the lawyer has mailed or otherwise provided a copy of the Notice to each party that the lawyer represents in the action, or the guardian or representative of each such party.

4. In each action in which service of process is waived or accepted by a lawyer on behalf of a party, the lawyer for the party shall file, within 20 days of waiving or accepting service, a certificate stating that the lawyer has mailed or otherwise provided a copy of the Notice to each party that the lawyer represents in the action, or the guardian or representative of each such party. The certificate may be contained in the answer or other responsive pleading.

III. PROJECT ADMINISTRATOR (Administrator)

A. Selection. The Administrator shall be selected by the Court.

B. Responsibilities. In addition to any responsibilities or duties noted elsewhere in this General Order, the Administrator shall have the following responsibilities:

1. Administer the Program, including coordination of all activities with the office of the Western District Clerk.

2. Coordinate the selection of cases for the Assessment, and establish procedures to provide a copy of this General Order to the lawyers or a pro se party in cases selected for the Program.

3. Conduct the Assessment. Where requested by the parties, and in his or her discretion, serve as a mediator at the Assessment or at any subsequent session.

4. Assist in monitoring the evaluation of the program, including participation in the development, compilation, and analysis of questionnaires for lawyers and clients.

5. Take original action on requests of parties to be allowed out of the phase of the Program to which they were originally assigned.

6. Report regularly to the Court and the Advisory Group on the status of the Program, making appropriate recommendations for modifications of the Program.

7. Decide, in his or her discretion, at any time in the process, to exempt or withdraw a case from the Program, if for any reason the case is not suitable for the Program.

8. Permit, in his or her discretion, parties to submit written statements, no longer than ten (10) pages, and no sooner than seven (7) days prior to the session, for those ADR processes where written statements are not usually submitted.

9. Collect all files, written statements, and other confidential materials from the neutrals, for storage or destruction.

IV. ATTENDANCE AT PROGRAM SESSIONS

A. Parties.

1. It is the intent of the Court that the parties attend all Program sessions where there will be significant discussion about resolving the case. The parties themselves shall attend all Program sessions unless their attendance has been excused by the

Administrator. This attendance requirement reflects the Court's view that one of the principal purposes of the Program sessions is to afford litigants an opportunity to articulate their positions and to learn about opposing parties' positions.

2. Where attendance of a party is required, a party other than a natural person satisfies the attendance requirement if it is represented by a person or persons, other than outside or local counsel, with authority to enter into stipulations, with reasonable settlement authority, and with sufficient stature in the organization to have direct access to those who make the ultimate decision about settlement. Upon showing of good cause, the Administrator may vary the mandates of this Section 4.A.2.

B. **Counsel**. Each party shall be accompanied at the Program sessions by the lawyer expected to be primarily responsible for handling the trial of the matter. If a natural party is not represented by counsel, that party may appear on his or her own behalf.

C. **Location**. The Program sessions shall be held in meeting space at the United States Courthouse, or in some other neutral location selected by the Administrator, or in a location agreed to by the parties and approved by the Administrator.

V. CONFIDENTIALITY

A. General Provision.

1. This Court shall treat as confidential all written and oral communications, not under oath, made in connection with or during any Program session except as noted in paragraph V.B. and D.

2. As provided in Federal Rule of Evidence 408, any communication not under oath made in connection with this Program shall not be disclosed to anybody unrelated to the Program by the parties, their counsel, neutrals or any other participant in the Program and shall not be used for any purpose, including impeachment of any witness or party in any pending or future proceeding in this Court except by consent of the parties or as allowed under subparagraphs B. or D. below. Communications made in connection with any proceeding in connection with this Program include the Administrator's or any neutrals' comments, assessments, evaluations or recommendations. Neutrals shall not discuss any matter communicated to them during any Program proceeding except with the permission of the parties or as allowed in paragraphs V. B. or D. below.

B. **Exceptions**.

1. The Administrator may attend any Program session and may discuss with any neutral or party any communication, comment, assessment, evaluation or recommendation.

2. The Administrator may require any neutral to provide status reports on any ADR matter.

3. The Administrator and neutrals may communicate to the assigned Judge or the Court en banc regarding non-compliance by parties or lawyers with this General Order.

4. Nothing in A. above shall prevent any party or the Administrator, neutral, etc. from discussing with any other participant in the Program any communication made in connection with the Program.

C. **Information Under Oath**.

Any information furnished under oath, whether by affidavit, testimony or otherwise, may be used for impeachment purposes in this Court or elsewhere. Nothing in this Order is intended to provide any protection from the criminal consequences of making a false statement under oath.

D. **Evaluation**.

Nothing in paragraph V.A. shall be construed to prevent parties, counsel, or neutrals from responding to inquiries by persons duly authorized by the Court en banc to analyze and evaluate the Program. The names of the people responding and any information that could be used to identify specific cases or parties shall be confidential.

E. **No Recording**.

No recording shall be made of any of the meetings or sessions held under the Program, nor shall parties utilize private reporters or any other type of recording technology during the Program meetings or sessions, unless all parties agree, or unless the recording is made under non-binding arbitration described in paragraph VII below, or unless the parties have agreed to binding arbitration.

VI. EVALUATION

An ongoing evaluation of the project shall be undertaken beginning with its initial implementation. The purpose of the evaluation will be to determine the success of the Program in speeding the processing of cases and reducing costs. The evaluation will also measure the satisfaction of parties with the Program. The evaluation will be

performed by an outside group selected by the Court; however, day-to-day analysis and evaluation of the program will be the responsibility of the Administrator. Quarterly and annual reports shall be prepared, with a final report after the conclusion of the Program.

VII. ALTERNATIVE DISPUTE RESOLUTION (ADR) OPTIONS AND PROCEDURES

A. Procedures Applicable to Mediation, Non-Binding Arbitration and Early Neutral Evaluation.

1. In every case in which mediation, non-binding arbitration or early neutral evaluation is selected the Administrator shall:

a. Designate the neutral as set out in paragraph X of the General Order, unless the parties agree on a neutral, drawn from the List of Neutrals.

b. Designate the time period in which the ADR process shall be conducted.

2. Not later than ten (10) days after selection of the neutral, counsel shall file a report with the Administrator stating the agreed-upon meeting date for the ADR process selected.

3. Upon failure of counsel either to file the report or to secure a mutually agreeable date, the Administrator shall fix the date, after consultation with the neutral involved.

4. Failure to comply with the attendance or settlement authority requirements of paragraphs IV.A. B. and C. of the General Order may subject a party to sanctions by the Court.

5. The neutral may, with the consent of all parties and counsel, reschedule the session to a date certain not later than ten (10) days after the scheduled date. Any continuance beyond that time must be approved by the Administrator.

6. Subject to approval of the neutral, the session may proceed in the absence of a party who, after due notice, fails to be present. Upon motion of an attending party or upon the Court's own motion, sanctions may be imposed by the Court on any party who, absent good cause shown, failed to attend the meeting.

7. Within ten (10) days following the conclusion of the session, the neutral shall file a report with the Administrator stating whether all required parties were present and the outcome of the session, in addition to other information the Administrator may require for evaluation purposes.

8. If the parties settle the case prior to the ADR session, the neutral, Administrator and Court shall be advised promptly.

B. **Description of Specific ADR Options and Procedures**.

1. Mediation.

a. Mediation is a process in which a neutral third party assists the parties in developing and exploring their underlying interests (in addition to their legal positions), promotes the development of options and assists the parties toward settling the case through negotiations.

b. The mediator must be a person who possesses the unique skills required to facilitate the mediation process including the ability to help the parties develop alternatives, analyze issues, question perceptions, use logic, conduct private caucuses, stimulate negotiations between opposing sides and keep order.

c. The mediation process does not normally contemplate presentations by witnesses. The mediator does not review or rule upon questions of fact or law, or render any final decision in the case.

2. Non-Binding Arbitration. Non-binding Arbitration is a procedure in which the parties choose a neutral person to hear their dispute and render a decision. An arbitration is typically less formal than a trial, is usually shorter, and is conducted in a neutral setting. An arbitrator may be selected by the parties on the basis of his or her expertise, or on the basis of the mutual respect of the parties for the arbitrator. The decision becomes a final judgment of the Court after 30 days unless a party files an appeal as provided herein. In that event, the case proceeds as scheduled to trial.

a. A list of all exhibits a party intends to offer, a list of all witnesses a party intends to call, and a list of all depositions or portions of depositions a party intends to use, shall be served on each party at least ten days prior to the hearing. A copy of each written exhibit, marked for identification, and a copy of all affidavits a party intends to use must be delivered to each party by the same date. Any exhibit which is not easily or economically copied shall be made available for inspection at any reasonable time.

b. Formal proof of authenticity or foundation for any exhibit listed in accordance with paragraph a. above shall not be required unless the proponent has been notified in writing at least five days prior to the hearing of the precise objection to authenticity or foundation.

c. The arbitrator may refuse to receive an exhibit or to permit the testimony of a witness if a party has failed to comply with paragraph a. or b. above in connection with that exhibit or witness.

d. Each party shall deliver to the arbitrator, and file with the Administrator, at least seven days prior to the hearing, a written statement which sets forth briefly the following:

(1) A summary of the claims made;
(2) The critical fact issues; and
(3) Contested legal issues, with citation of the party's primary authority.

e. Rule 45, Federal Rules of Civil Procedure, shall govern the issuance of subpoenas for attendance of witnesses and for the production of documentary evidence. Testimony at an arbitration hearing shall be under oath or affirmation.

f. The Court contemplates that ordinarily each party's presentation at the arbitration hearing will require no more than two and one-half hours. The presentation of testimony shall be kept to a minimum. Each party's presentation to the arbitrator should be primarily through the statements and arguments of counsel.

g. A party may record the arbitration hearing in any non-disruptive manner. The cost of the recording shall be paid by the party making the recording.

h. A written arbitration award shall be filed with the Administrator and the Court and served upon each party promptly after the hearing is concluded. The arbitration award shall be entered as the judgment of the Court at the end of thirty days after filing unless a party files a statement with the Administrator and the Court that the award is not accepted.

i. A judgment so entered shall be deemed a judgment by the consent of the parties and shall have the same force and effect as a judgment of the Court in any other civil action, except that it may not be appealed. In a case involving multiple claims or parties, any part of an arbitration award for which a party does not file a statement of non-acceptance shall become part of the final judgment in the case with the same force and effect as a judgment of the Court in a civil action, except that it shall not be subject to appeal.

3. Early Neutral Evaluation. Early neutral evaluation is a process in which parties obtain from an experienced neutral (an Evaluator) a non-binding, reasoned evaluation of the case on its merits. After essential information and position statements are

exchanged, the Evaluator convenes a session which typically lasts about two hours. At the meeting, each side briefly presents the factual and legal basis of its position. The Evaluator may ask questions and help the parties identify the parties' underlying interests, the main issues in dispute as well as areas of agreement. He or she may also help the parties explore options for settlement. If settlement does not occur, the Evaluator then offers his or her opinion as to the settlement value of the case, including the likelihood of liability and the likely range of damages. With the benefit of this assessment, the parties are again encouraged to discuss settlement, with or without the Evaluator's assistance. They may also explore ways of narrowing the issues, exchanging information about the case or otherwise preparing efficiently for trial.

The Evaluator has no power to impose a settlement or to dictate any agreement regarding the pretrial management of the case.

a. No later than seven calendar days in advance of the evaluation session, each party shall submit to the Evaluator, and serve on all parties, a written evaluation statement. Such statements may not exceed ten pages and shall conform to the following guidelines: While they may include any information that would be useful, they must (1) give a brief statement of the facts; (2) identify the pertinent principles of law; (3) identify the legal and factual issues that are in dispute; (4) address whether there are any legal or factual issues whose early resolution might reduce the scope of the dispute or contribute significantly to the productivity of settlement discussions; (5) identify any additional discovery that promises to contribute most to equipping the parties for meaningful settlement negotiations; and (6) identify the person(s), in addition to counsel, who will attend the session as the party's representative with decision-making authority. Parties may identify in these statements persons associated with a party opponent whose presence at the evaluation session would improve significantly the prospects for making the session productive; the fact that a person has been so identified shall not be a sufficient basis for compelling the presence of that person at the evaluation session. Parties should attach to their statement any photographs, declarations or other documentary evidence (e.g., contract, medical reports, relevant photos, or statements of key witnesses), the availability of which will advance the purposes of the session and assist the Evaluator as well as the other parties in appreciating the merits of each party's case. Documents shall be indexed so that they are easily assessed by the Evaluator.

These statements shall not be filed with the Court, and the assigned Judge shall not have access to them.

b. The Evaluator shall have considerable discretion in structuring the evaluation sessions. The sessions shall proceed informally. Rules of evidence shall not apply. There shall be no formal examination or cross-examination of witnesses.

c. In each case the Evaluator shall:

(1) permit each party to make an oral presentation;

(2) help the parties identify areas of agreement and, where appropriate, enter stipulations;

(3) assess strengths and weaknesses of the parties' contentions and evidence; and

(4) explore the possibility of settling the case through private caucusing and mediation techniques such as:

(i) Drawing the parties out in private caucus as to their opinions of their chances of success on each important issue, the consequences of an unfavorable verdict on that issue to the value of their case, the number of witnesses needed to be deposed regarding that issue, and the cost and fees entailed in proving that issue through discovery and the trial; and

(ii) Drawing the parties out on their underlying interests and settlement offers they are willing to make at this time and whether those offers can be communicated to the opposing party.

d. If settlement negotiations and mediation do not result in settlement, the Evaluator shall in writing:

(1) estimate, where feasible, his or her view of the likelihood of liability and the dollar range of damages; and

(2) give his or her opinion of the verdict if he or she were the trier of fact.

e. At the close of the evaluation session, the Evaluator shall determine whether it would be appropriate to schedule a follow-up to the session. While the nature of any such follow-up shall be fixed by the Evaluator, in his or her discretion, it might include written or telephonic reports by the parties to one another or to the Evaluator, or, if the parties consent, a second evaluation session or a settlement conference hosted by the Evaluator.

f. Within limits imposed by this General Order, or by the Administrator, Evaluators shall have authority to structure and conduct evaluation sessions and to fix the time and place thereof. Except as described here and in paragraphs d. and e. above, Evaluators shall have no authority to order parties or counsel to take any action outside the evaluation session, to compel parties to produce information, to rule on disputed matters, or to determine what the issues are in the case.

4. Magistrate Settlement.

a. The purpose of the settlement conference is to permit an informal discussion between the lawyers, parties and the magistrate of every aspect of the lawsuit, thus permitting the magistrate privately to express his or her views concerning the actual dollar settlement value or other reasonable disposition of the case.

b. The settlement conference statement (oral) of each party shall be presented to the magistrate, setting forth the positions of the parties concerning factual issues, issues of law, damage or relief requested. Pertinent evidence to be offered at trial, documents or otherwise, should be brought to the settlement conference for presentation to the magistrate if thought particularly relevant.

c. The magistrate may, with the agreement of the parties, converse with any or all sides of the dispute outside the hearing of the other.

d. The failure to attend a settlement conference or the refusal to cooperate fully may result in the imposition of sanctions by the magistrate. The magistrate may issue such other and additional requirements of the parties or persons having an interest in the outcome as he or she shall deem proper in order to expedite the amicable resolution of the case. The magistrate shall not discuss the merits of the case with the assigned Judge but may discuss the status of motions and other procedural matters with him or her.

5. Other Options. The Administrator, in his or her discretion, after consultation with the parties, may select some other form of alternative dispute resolution such as mini-trials, summary jury trials, binding arbitration, or some hybrid form of alternative dispute resolution. However, the Administrator may not select binding arbitration unless all parties agree.

VIII. LIST OF NEUTRALS (Mediators, Arbitrators, Evaluators)

A. List of Neutrals.

The Administrator shall prepare a list of persons who appear to have the minimum requirements for a neutral as described below. The Administrator may add or delete persons from the List of Neutrals. A copy of the List of Neutrals will be furnished upon reasonable request.

Being on the List of Neutrals is not an indication that a person is a qualified neutral. The Court is not certifying or representing that persons on the List of Neutrals are qualified.

B. Minimum Requirements to be Listed on the List of Neutrals.

1. All applicants for the List of Neutrals must complete the required application form (Appendix B); and

2. A person may be placed on the List of Neutrals if:

   a. the person has been a United States District Judge, a United States Appellate Judge, a United States Magistrate, a United States Bankruptcy Judge, a Missouri Circuit Court Judge, or a Missouri Appellate Judge, the person has had arbitration or mediation experience, and the person has not demonstrated any trait or behavior that is reasonably believed by the Administrator to be contrary to the effective and efficient management of this program; or

   b. the person is currently a member of the Missouri Bar and has been a member of a state bar for at least eight (8) consecutive years and is currently admitted to the Bar of this Court; and

      (1) the person shall have completed:

         (a) for mediators and evaluators--sixteen 50-minute Continuing Legal Education hours of training, certified under Missouri Supreme Court Rule 17 or by this Court, or the reasonable equivalent thereof, or

         (b) for arbitrators--four 50-minute Continuing Legal Education equivalent hours of training, certified under Missouri Supreme Court Rule 17 or by this Court, or the reasonable equivalent thereof; and

      (2) the person has not demonstrated any trait or behavior that is reasonably believed by the Administrator to be contrary to the effective and efficient management of this program.

3. The Administrator may remove any person from the List of Neutrals for any reason consistent with the effective management of the program.

C. **Selection of Neutrals.**

1. The parties or their attorneys may select as a neutral any person on the List of Neutrals. If the Administrator approves, in writing and in advance, the parties may select as a neutral a person not on the List of Neutrals.

2. If the parties do not agree on a neutral, the Administrator will give the parties a list of potential neutrals selected by the Administrator. The number of potential neutrals on the list will be twice the number of "sides" in the litigation plus one. (For example, in litigation having two "sides," the list will contain 5 names.) The list of potential neutrals will be dated the date it is delivered to the parties or the date it is mailed to the parties by the Administrator. The parties shall have ten (10) days from the date on the list of potential neutrals to:

   a. agree as to a neutral on the list and to report the selection of the agreed neutral to the Administrator in writing, or

   b. each party may designate a "strike" of the name of two potential neutrals on the list of potential neutrals. The strikes shall be in writing and shall be delivered to the Administrator.

   Unless the parties have agreed on a neutral as set out above, the Administrator shall designate one of the persons remaining on the list of potential neutrals and shall promptly notify the parties and the neutral of the designation.

D. **Oath.**

Each neutral shall take the oath or affirmation prescribed by 28 U.S.C. §453 before acting as a neutral.

E. **Disqualification.**

1. 28 U.S.C. §144 may be utilized to seek the disqualification of a neutral.

2. No person shall serve as a neutral in any action in which any of the circumstances specified in 28 U.S.C. §455 exist and would apply if the neutral were a "judge."

3. Any party who believes that a neutral has a conflict of interest or should be disqualified immediately shall bring the matter to the attention of the Administrator.

F. Compensation.

1. Neutrals shall be compensated no more than the hourly rate listed by them in their application (Appendix B) and shown on the List of Neutrals. If agreed in writing and in advance between the neutral and the parties, the neutral may be compensated at the hourly rate stated in such agreement. Absent agreement to the contrary, or unless the Administrator determines otherwise, the cost of the neutral's services shall be born equally by the parties. Except as provided in this paragraph, a neutral shall not charge or accept anything of value from any source whatsoever for or relating to acting as a neutral.

2. A party may request the service of a neutral who has agreed to serve pro bono, if a party demonstrates to the Administrator an inability to pay the fees of the neutral. The List of Neutrals maintained by the Administrator shall indicate if a neutral has agreed to serve pro bono.

G. Neutrals as Counsel in Other Cases.

Any person who is designated as a neutral pursuant to this General Order shall not for that reason be disqualified from appearing as counsel in any other case pending before the Court.

H. Reports of Violations.

Neutrals and attorneys shall promptly report in writing violations of this General Order to the Administrator and the Court.

IX. SANCTIONS

If a party fails to make a good faith effort to participate in the Program in accordance with the provisions and spirit of this Order, the assigned Judge or Court may impose appropriate sanctions.

EXHIBIT B

15G. Content of the Proposed Scheduling Order.

Within 100 days after the complaint is filed, the parties shall file a proposed scheduling order which shall:

(1) Propose a date limiting joinder of parties;

(2) Propose a date limiting the filing of motions to amend the pleadings (It is suggested that counsel consider in most cases a date approximately 180 days after the filing of the complaint.);

(3) Propose a date limiting the filing and hearing of motions (It is suggested that counsel in most cases consider proposing that (a) all discovery motions be filed on or before the date proposed for the completion of discovery; and (b) subject to the provisions of Rule 12(h)(2), Federal Rules of Civil Procedure, all dispositive motions be filed within 30 days after the date proposed for the completion of discovery.);

(4) Propose a plan for the completion of all pretrial discovery, including the date by which all pretrial discovery shall be completed. As part of the plan for the completion of discovery, the parties should set forth the dates by which each party will designate expert witnesses and the date by which expert witness depositions will be concluded. (Counsel should not propose a date for the completion of discovery which is known to be without any reasonable basis.) See Rules 15H and I; and

(5) Estimate the number of days necessary to try the case with reasons supporting the estimate.

EXHIBIT C

15M. Discovery Motions.

Unless otherwise ordered, the Court will not entertain any discovery motions until the following requirements have been satisfied:

(a) Counsel for the moving party has conferred by telephone or in person with opposing counsel concerning the matter prior to the filing of the motion. Merely writing a demand letter is not sufficient. Counsel for the moving party shall certify compliance with this rule in any discovery motion. See Crown Center Redevelopment Corp. v. Westinghouse Elec., 82 F.R.D. 108 (W.D. Mo. 1979); and

(b) If the issues remain unresolved after the attorneys have conferred in person or by telephone, counsel shall arrange with the Court for an immediate telephone conference with the judge and opposing counsel. No written discovery motion shall be filed until this telephone conference has been held.

EXHIBIT D

13E. Length of Suggestions.

Suggestions shall be concise. A party's primary authorities shall be emphasized. Suggestions in support of or in opposition to a motion shall be no longer than 15 doublespaced typewritten pages, exclusive of facts presented in accordance with Rule 13G, without permission of the Court. Reply suggestions shall be limited to 10 doublespaced pages, unless otherwise authorized by the Court. Suggestions exceeding 10 pages in length shall have a table of contents and table of authorities.

13G. Summary Judgment Motions.

1. The suggestions in support of a motion for summary judgment shall begin with a concise statement of uncontroverted material facts. Each fact shall be set forth in a separately numbered paragraph. Each fact shall be supported by reference to where in the record the fact is established. See Rule 56(e).

Suggestions in opposition to a motion for summary judgment shall begin with a section that contains a concise listing of material facts as to which the party contends a genuine issue exists. Each fact in dispute shall be set forth in a separate paragraph, shall refer specifically to those portions of the record upon which the opposing party relies, and, if applicable, shall state the paragraph number in movant's listing of facts that is disputed. All facts set forth in the statement of the movant shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the opposing party.

All facts on which a motion or opposition is based shall be presented in accordance with Rule 56 of the Federal Rules of Civil Procedure. Affidavits or declarations shall be made on personal knowledge and by a person competent to testify to the facts stated. Where facts referred to are contained in another document, such as a deposition, interrogatory answer or admission, a copy of the relevant excerpt from the document shall be attached.

2. Within 60 days of the filing of the final reply suggestions, the Court shall either enter its order ruling on the motion or shall schedule oral argument on the Motion as soon as possible after the expiration of 60 days.

EXHIBIT E

FORM A. PROPOSED SCHEDULING ORDER

I.

Any motion to join additional parties will be filed on or before _____.

This date is proposed because (state reasons why this date is appropriate for this case):

II.

Any motion to amend the pleadings will be filed on or before _____.

This date is proposed because (state reasons why this date is appropriate for this case):

III.

All other non-dispositive motions will be filed on or before _____. (It may be advisable to propose different dates for different types of Motions. See Local Rule 15G(3)).

This date is proposed because (state reasons why this date is appropriate for this case):

All dispositive motions will be filed on or before _____ _____. (See Local Rule 13G).

This date is proposed because (state reasons why this date is appropriate for this case):

IV.

[READ LOCAL RULES 15H AND 15I BEFORE COMPLETING]

1. All pretrial discovery authorized by the Federal Rules of Civil Procedure will be completed on or before _____.

A. On or before _____ the plaintiff will designate expert witnesses.

B. On or before _____ the defendant will designate expert witnesses.

C. On or before _____ all expert witnesses for all parties will be designated.

D. On or before _____ all depositions of expert witnesses will be completed.

2. The following facts were considered by counsel in arriving at the dates proposed in paragraph 1 above:

3. The following discovery has already been initiated and its current status is:

4. On or before the dates proposed in paragraph 1 above, each party intends to initiate and complete the discovery listed below the name of each party. (Note: It is not sufficient to state only "depositions" without stating who a party plans to depose. Additional depositions may be scheduled before the close of discovery if new witnesses are disclosed.)

V.

It is estimated that this case will take _____ days to try.

A. State the reasons why this number of days is necessary for this case: