



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman  
William E. Kovacic  
Edith Ramirez  
J. Thomas Rosch  
Julie Brill (recused)

In the Matter of )  
)  
)  
THE NORTH CAROLINA [STATE] BOARD ) PUBLIC  
OF DENTAL EXAMINERS. ) DOCKET NO. 9343  
)  
)  
)

**RESPONDENT’S MEMORANDUM IN SUPPORT OF ITS EXPEDITED  
MOTIONS FOR A LATER HEARING DATE AND  
TO AMEND THE SCHEDULING ORDER**

Respondent, the North Carolina State Board of Dental Examiners (“State Board”), respectfully submits this memorandum in support of its concurrently-filed Expedited Motion for a Later Hearing Date and Expedited Motion to Amend the Scheduling Order entered on July 15, 2010. For the good cause set forth herein, all remaining deadlines set forth in Scheduling Order, including the commencement of the administrative hearing, should be extended by three months. Both parties, along with the identified third-party witnesses, will benefit from this extension of the outstanding Scheduling Order deadlines.

## **I. ARGUMENT**

### **A. The Administrative Law Judge and the Commission May Extend Scheduling Order Deadlines, Including the Commencement Date of the Administrative Hearing, Upon a Showing of “Good Cause.”**

The following deadlines set forth in the Scheduling Order currently are outstanding:

- January 19, 2011 - Complaint Counsel files pretrial brief supported by legal authority.
- January 24, 2011 - Exchange proposed stipulations of law, facts, and authenticity.
- January 26, 2011 - Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists; exchange objections to the designated testimony to be presented by deposition and counter designations.
- January 27, 2011 - Respondent’s Counsel files pretrial brief supported by legal authority.
- February 8, 2011 - File final stipulations of law, facts, and authenticity.
- February 15, 2011 - Final prehearing conference; the parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity and any designated deposition testimony. To the extent the parties stipulate to certain issues, the parties shall prepare a Joint Exhibit which lists the agreed-to stipulations and agreed-to exhibits.
- February 17, 2011 - Commencement of Hearing.

In accordance with the FTC Rules of Practice, “the Administrative Law Judge may, upon a showing of good cause, grant a motion to extend any deadline or time specified in [the] scheduling order other than the date of the evidentiary hearing.” 16 C.F.R. § 3.21(c)(2). Furthermore, “[t]he Commission, upon a showing of good cause, may order a later date for the evidentiary hearing to commence . . . .” 16 C.F.R. §§ 3.21(c)(1), 3.41(b).



Good cause exists when a scheduling order deadline “cannot be met despite the diligence of the party seeking the extension.” *In re Chicago Bridge & Iron Co.*, No. 9300, 2002 FTC LEXIS 69, at \*2 (F.T.C. Oct. 23, 2002); *In re Gemtronics, Inc.*, No. 9330, 2009 FTC LEXIS 193, at \*\*1-2 (F.T.C. Feb. 17, 2009). In the above-captioned proceeding, the reasons set forth below support a finding of good cause to extend the scheduling order deadlines, including the commencement date of the administrative hearing.

**B. Two Dispositive Motions Are Outstanding.**

Currently pending before the Commission are two dispositive motions: the State Board’s Motion to Dismiss and Complaint Counsel’s Motion for Partial Summary Decision, both filed on November 3, 2010 (collectively, the “Dispositive Motions”). The reply briefs to these Dispositive Motions were filed on December 20, 2010. The Commission may not rule upon these Motions until February 3, 2011, or sometime thereafter upon a showing of good cause. *See* 16 C.F.R. § 3.22(a) (providing the Commission 45 days to rule upon the motions, which period shall run from the date that the replies to the dispositive motions are filed).

As set forth above, the administrative hearing in the above-captioned proceeding currently is scheduled to begin on February 17, 2011. The Scheduling Order requires the parties to spend significant resources to meet certain deadlines in the weeks leading up to February 17, 2010. For instance, the parties must prepare and file pretrial briefs; exchange and file proposed stipulations of law, facts, and authenticity; and exchange objections to final proposed witness lists, exhibit lists, and designated testimony to be presented by deposition and counter-designations—all before February 3, 2011. If the

Commission rules in favor of the State Board on either of the Dispositive Motions, the parties will have wasted their resources for naught.

Furthermore, certain decisions about the content of the parties' respective pretrial briefs, proposed stipulations, and objections to trial evidence cannot be made by the parties until they have the benefit of the Commission's rulings on the Dispositive Motions. For instance, the parties risk placing an emphasis on certain legal arguments in their respective pretrial briefs, which may be made moot by the Commission's eventual adjudication of the Dispositive Motions. Also, the parties properly cannot enter into stipulations or make objections about the evidence to be presented at the hearing without an understanding of the legal issues remaining to be tried. The Scheduling Order requires these decisions to be made prior to February 3, 2011, and places the parties in the untenable position of jeopardizing their ability to set forth their best legal arguments at the hearing.

**C. State Board's Motion to Disqualify the Commission and Motion to Change Hearing Location Are Outstanding.**

Also currently pending before the Commission and the Administrative Law Judge ("ALJ") are the State Board's Motion to Disqualify the Commission and Motion to Change Hearing Location, both filed on January 14, 2011. The parties cannot meet the upcoming deadlines set forth in Section I.A, *supra*, without the benefit of the decisions from the Commission and ALJ, respectively, on these motions.

First, the legal arguments that the State Board will raise in its pretrial brief may change, depending on how its Motion to Disqualify the Commission is decided. Second, without the benefit of the ALJ's ruling on the State Board's Motion to Change Hearing Location, the witnesses from both parties are in limbo with regard to their travel plans for



the upcoming administrative hearing. This uncertainty, combined with the fact that the hearing is scheduled to begin in three weeks, is causing an undue burden on the witnesses who currently are being forced to forego professional and personal opportunities that they otherwise could take if the commencement date of the hearing were delayed. Third, the witnesses likely will experience higher costs in travel and lodging if the location of the hearing is decided only days or weeks prior to the hearing.

**D. Discovery Is On-Going.**

On January 13, the State Board filed: (a) its Motion for Leave to Submit Surrebuttal Expert Witness Report and to Strike (In Part) Expert Witness Rebuttal Report of Martin Giniger, D.M.D.; and (b) its Motion to Strike (In Part) Rebuttal Report of Professor John Kwoka. Complaint Counsel filed Oppositions to both of these motions on January 18, 2011. In addition, on January 14, 2011, the parties filed a Joint Motion for Extension of Time, seeking an extension of time for Complaint Counsel to conduct the deposition of the State Board's expert witness, Dr. Haywood, until five business days following the latter of (a) the issuance of the court's Order with respect to the State Board's Motion for Leave to Submit Surrebuttal Expert Witness Report and to Strike (In Part) Expert Witness Rebuttal Report of Martin Giniger, D.M.D., or (b) the filing by State Board of any Surrebuttal Report by Dr. Haywood, pursuant to that Order, if permitted. The current deadline for the completion of expert depositions is January 21, 2011; it is likely that Dr. Haywood's deposition will not be completed until sometime between January 25 and February 4, 2011.

Clearly, discovery in the above-captioned proceeding is on-going. The parties simply cannot submit their pretrial briefs and finalize their stipulations and objections on

proposed trial evidence, as required by the upcoming Scheduling Order deadlines, without the benefit of completed discovery.

**E. State Board's Motion for an Order Compelling Discovery Is Outstanding, and Complaint Counsel Has Raised Discovery Disputes.**

In addition to the motions addressed above, the State Board's Motion for an Order Compelling Discovery, filed January 11, 2011, currently is pending before the ALJ. In that motion, the State Board requests an order compelling Complaint Counsel to supplement its discovery responses to the State Board's First Set of Requests for Admissions, First Set of Interrogatories, and First Set of Requests for Production of Documents. The State Board's pending Motion for an Order Compelling Discovery is predicated on Complaint Counsel's insufficient answers and objections to said discovery requests. *See* 16 C.F.R. § 3.38(a).

Complaint Counsel filed a response in opposition to the State Board's Motion for an Order Compelling Discovery on January 18, 2011. Furthermore, the State Board anticipates Complaint Counsel may raise certain additional discovery disputes before the ALJ by filing its own motion compelling discovery. It is unlikely that the State Board's Motion for an Order Compelling Discovery will be adjudicated before certain key outstanding Scheduling Order deadlines have passed or are imminent.

Requiring the State Board to meet the upcoming deadlines set forth in the Scheduling Order without the benefit of the ALJ's ruling on its Motion for an Order Compelling Discovery will jeopardize the State Board's ability to set forth its best legal arguments at the administrative hearing. Specifically, the State Board cannot reasonably file its pretrial brief, exchange the proposed stipulations, or make the necessary objections to the proposed trial evidence if discovery disputes have not been resolved



fully. Furthermore, to the extent that the on-going discovery disputes are not resolved by the ALJ's adjudication, the State Board intends to pursue all remedies to which it may avail itself so that it will not be prejudiced by Complaint Counsel's inadequate discovery responses at the administrative hearing. To allow sufficient time for these discovery disputes to be resolved, the Scheduling Order should be amended.

**F. Discovery Dispute Negotiations Are at an Impasse, Despite the State Board's Standing Offer to Enter Into Alternating Discussions.**

At all times throughout this proceeding, the State Board has engaged in good-faith efforts to resolve the discovery disputes raised in its Motion for an Order Compelling Discovery. However, on January 11, 2011, the parties reached an impasse, in light of Complaint Counsel's explicit conditioning of further negotiations upon the State Board's waiver of its rights to seek a determination on the discovery disputes from the ALJ or to file a motion to compel discovery. *See* Respondent's Supplemental Statement to Respondent's Motion for an Order Compelling Discovery, filed January 14, 2011 (incorporated herein by reference). Since January 11, 2011, the State Board has stood ready to enter into "Alternating Discussions" with Complaint Counsel to resolve the outstanding discovery disputes, but no such discussions have taken place.

In light of these circumstances, it appears unlikely that any resolution to the outstanding discovery disputes will be achieved in short order. The contentiousness with which the discovery disputes currently are being addressed suggests that an appeal to the applicable adjudicating entity may be forthcoming by either party upon a ruling by the ALJ on the State Board's Motion for Order Compelling Discovery. As such, good cause exists to amend the Scheduling Order.

## II. CONCLUSION

As the foregoing grounds are sufficient to support a finding of good cause, the State Board respectfully submits this memorandum in support of its Expedited Motion for a Later Hearing Date and Expedited Motion to Amend the Scheduling Order entered on July 15, 2010.

This the 18th day of January, 2011.

ALLEN AND PINNIX, P.A.

/s/ Alfred P. Carlton, Jr.

By: \_\_\_\_\_

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## CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of January, 2011, I electronically filed the foregoing with the Federal Trade Commission using the Federal Trade Commission E-file system, which will send notification of such filing to the following:

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W., Room H-159  
Washington, D.C. 20580  
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I hereby certify that the undersigned has this date served a copy of the foregoing upon the Secretary and upon all parties to this cause by electronic mail as follows:

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I also certify that I have sent courtesy copies of the document via Federal Express and electronic mail to:

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
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This the 18th day of January, 2011.

/s/ Alfred P. Carlton, Jr.  
Alfred P. Carlton, Jr.

#### **CERTIFICATION FOR ELECTRONIC FILING**

I further certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and by the adjudicator.

/s/ Alfred P. Carlton, Jr.  
Alfred P. Carlton, Jr.





LEXSEE 2002 FTC LEXIS 69

In the Matter of CHICAGO BRIDGE & IRON COMPANY N.V., a foreign corporation,  
CHICAGO BRIDGE & IRON COMPANY, a corporation, and PITT-DES MOINES,  
INC., a corporation

DOCKET NO. 9300

Federal Trade Commission

*2002 FTC LEXIS 69*

October 23, 2002

**CORE TERMS:** discovery, witness list, revised, good cause, scheduling, deadline, bid, Administrative Law, diligence, learning, e-mail, tank, sequence, delayed, required to provide, designated, scheduled, revision, adding

**ACTION:**

[\*1]

ORDER ON RESPONDENTS' MOTION TO STRIKE WITNESSES

**ALJ:**

D. Michael Chappell, Administrative Law Judge

**ORDER:**

**I.**

On September 26, 2002, Respondents (Chicago Bridge and Iron ("CB&I") and Pitt-Des Moines ("PDM")) filed a Motion to Strike. On October 3, 2002, Complaint Counsel filed its opposition. Complaint Counsel subsequently filed an addendum to its opposition on October 4, 2002. For the reasons set forth below, the motion is GRANTED in part and DENIED in part.

**II.**

Respondents' motion seeks an order preventing Complaint Counsel from calling as witnesses at trial or otherwise presenting testimony from three fact witnesses on the grounds that the three proposed witnesses were not timely disclosed in accordance with the scheduling orders entered in this matter. The identities of these three witnesses were designated as confidential information by the parties in the confidential versions of their pleadings and need not be revealed in this Order for purposes of ruling on Respondents' motion. They are referred to throughout this Order as the first, second, and third witnesses, in alphabetical sequence, which is also the sequence in which they were first disclosed to Respondents [\*2] and the sequence in which they are described in Respondents' motion.

Complaint Counsel asserts that there is good cause for permitting Complaint Counsel to present the testimony of these three CB&I customer witnesses who, only through discovery, Complaint Counsel learned may be able to provide relevant information.

**III.**

Commission Rule 3.21 requires Administrative Law Judges to enter a scheduling order that "establishes a scheduling of proceedings, including a plan of discovery . . ." 16 C.F.R. § 3.21(c)(1). Pursuant to 16 C.F.R. § 3.21(c)(1), Addi-



tional Provision Number Four of the Scheduling Order, entered on February 20, 2002, states that "the final proposed witness list may not include additional witnesses not listed in the preliminary or revised preliminary witness lists previously exchanged unless by order of the Administrative Law Judge upon a showing of good cause." All subsequent revised scheduling orders state that the "Additional Provisions" of the February 20, 2002 Scheduling Order remain in effect. Under the Commission's Rules of Practice, the Administrative Law Judge may grant a motion to extend any deadline [\*3] or time specified in the prehearing scheduling order "only upon a showing of good cause." 16 C.F.R. § 3.21(c)(2).

Pursuant to the Third Revised Scheduling Order, entered on September 10, 2002, Complaint Counsel provided its final proposed witness list by September 16, 2002. Complaint Counsel's final proposed witness list included three additional witnesses who were not designated on Complaint Counsel's preliminary or revised witness lists. Complaint Counsel was required to provide its preliminary witness list on April 23, 2002 and its revised witness list on May 28, 2002. Complaint Counsel informed Respondents of its intent to add one of these three additional witnesses on September 5, 2002, and of its intent to add the other two witnesses on September 13, 2002. Discovery closed in this case on September 6, 2002.

Complaint Counsel did not file a motion to add witnesses, demonstrating good cause, as required by the Scheduling Order. Rather, in response to Respondents' motion to strike, Complaint Counsel argues that it has good cause for adding these witnesses. Specifically, Complaint Counsel asserts that the following circumstances, taken together, demonstrate [\*4] good cause:

. Complaint Counsel became aware of the important potential information from these individuals only recently through discovery and identified these individuals to Respondents as soon as Complaint Counsel reached an opinion that it would likely include these witnesses in its final witness list.

. Complaint Counsel could not have known the importance of the first witness until August 27, 2002, because Respondents delayed production of certain e-mail files, responsive to Complaint Counsel's Second Request for Production of Documents, served on June 7, 2002, until August 27, 2002. Complaint Counsel promptly reviewed the August 27, 2002 document production and discovered two e-mail communications, dated July 17, 2002, from the first proposed witness to CB&I. These e-mail communications alerted Complaint Counsel that the first witness is knowledgeable concerning current competitive conditions in the LNG tank market.

. Complaint Counsel could not have known the importance of the second witness until recently. The second witness is a consultant who is advising a U.S. firm on the purchase of a LNG tank for construction in the United States. Complaint Counsel became [\*5] aware of him at the end of July 2002, based on a telephone conversation with a third party. Complaint Counsel first interviewed the second witness on July 26, 2002. Through a declaration, this witness states that in April 2002, he requested bids for the project. Complaint Counsel states that the subsequent responses to these bids could not have been known to Complaint Counsel when Complaint Counsel submitted its Preliminary Witness List (April 22, 2002) or its Revised Witness List (May 28, 2002).

. Complaint Counsel did not know about the third witness until Complaint Counsel had a conversation in early September 2002 with a third-party witness who informed Complaint Counsel that during a 1998 bid contest for a LNG tank peak-shaving plant, two foreign LNG tank constructors submitted bids that were higher than the bids submitted by CB&I and PDM. The third witness works for a company that received bids from CB&I and PDM.

#### IV.

Good cause is demonstrated if a party seeking to extend a deadline demonstrates that a deadline cannot reasonably be met despite the diligence of the party seeking the extension. *Bradford v. Dana Corp.*, 249 F.3d 807, 809 (8th Cir. 2001); [\*6] *Sosa v. Airprint Systems, Inc.*, 133 F.3d 1417, 1418 (11th Cir. 1998); *Fed. R. Civ. P. 16* Advisory Committee Notes (1983 amendment). For each of these three witnesses, Complaint Counsel's only argument is that it didn't know about this person or his importance until recently.



Since the original Scheduling Order was entered on February 20, 2002, the scheduling order has been revised three times. In the February 20, 2002 Scheduling Order, Complaint Counsel was required to provide its preliminary witness list on April 23, 2002, and its revised witness list on May 25, 2002. Discovery was scheduled to close on June 7, 2002. In the First Revised Scheduling Order, entered May 6, 2002 upon a motion filed jointly by both parties, the dates for preliminary and revised witness lists remained substantially the same, but the close of discovery was extended by one month. The First Revised Scheduling Order required Complaint Counsel to provide its preliminary witness list on April 23, 2002 and its revised witness list on May 28, 2002. Discovery was scheduled to close on July 8, 2002. In the Second Revised Scheduling Order, entered on June 18, 2002 upon [\*7] Respondents' motion, which was opposed by Complaint Counsel, the dates for preliminary and revised witness lists remained the same, but the close of discovery was extended by two additional months, to September 6, 2002. The Third Revised Scheduling Order, entered on September 10, 2002, did not change dates for witness lists or the close of discovery.

The parties, in moving for the first revision of the scheduling order, requested an extension for the close of discovery, but did not seek extensions of time for providing preliminary and revised witness lists. Complaint Counsel, in opposing Respondents' motion for the second revision, did not argue that discovery should not be extended because Complaint Counsel had already served its revised witness list. Thus, although the close of discovery was extended, the deadlines for providing preliminary and revised witness lists remained unchanged.

According to Respondents, Complaint Counsel has been investigating this matter for nearly two years. The Complaint was filed nearly one year ago. Discovery should have been pursued expeditiously soon thereafter, as the parties were forewarned. Chicago Bridge & Iron Co., Docket 9300 (January 4, 2002) [\*8] ("In the event the parties are not able to settle this matter, the discovery and trial schedule issued will meet the October 28, 2002 deadline."). Simply claiming that the importance of these individuals was learned late in the discovery process does not satisfy the "good cause" standard since diligence is required in pursuing discovery. However, if Complaint Counsel's delay in learning about the information that may be provided by these individuals is attributable to Respondents, Complaint Counsel may have demonstrated good cause.

As to the first witness, Complaint Counsel asserts that it was delayed in learning of the information he may provide due to Respondents' delayed response to Complaint Counsel's Second Request for Production of Documents. Based on that representation, Complaint Counsel has demonstrated that Complaint Counsel's delay in learning about the information that the first witness may provide is attributable to Respondents. Accordingly, Complaint Counsel has demonstrated diligence sufficient to show good cause for including the first witness on Complaint Counsel's final witness list.

As to the second and third witnesses, Complaint Counsel makes no claim that its [\*9] delay in learning of these individuals is attributable in any way to Respondents. Complaint Counsel has not demonstrated sufficient diligence to show good cause for including the second and third witnesses on Complaint Counsel's final witness list.

#### V.

For the reasons set forth above, Respondents' motion is GRANTED in part and DENIED in part. Complaint Counsel has demonstrated good cause for adding the first witness described in Respondents' motion, the author of the e-mail communications that were produced by Respondents on August 27, 2002, to Complaint Counsel's final witness list. The deposition of this witness may be taken beyond the discovery deadline.

This Order does not constitute a ruling on the admissibility of exhibits referred to in Respondents' motion or Complaint Counsel's opposition.

ORDERED:

D. Michael Chappell

Administrative Law Judge

Date: October 23, 2002

Legal Topics:

For related research and practice materials, see the following legal topics:  
Administrative Law Agency Adjudication Prehearing Activity





LEXSEE 2009 FTC LEXIS 193

In the Matter of GEMTRONICS, INC., a corporation, and WILLIAM H. ISELY, Re-  
spondents

DOCKET NO. 9330

Federal Trade Commission

2009 FTC LEXIS 193

February 17, 2009

**ACTION:**

[\*1]

ORDER ON COMPLAINT COUNSEL'S MOTION TO AMEND THE SCHEDULING ORDER

**SUBSEQUENT HISTORY:**

Motion to strike denied by *In re Gemtronics, Inc.*, 2009 FTC LEXIS 121 (F.T.C., May 26, 2009)

**PRIOR HISTORY:**

*In re Gemtronics, Inc.*, 2009 FTC LEXIS 192 (F.T.C., Jan. 28, 2009)

**ALJ:**

D. Michael Chappell, Administrative Law Judge

**ORDER:**

**ORDER ON COMPLAINT COUNSEL'S MOTION TO AMEND THE SCHEDULING ORDER**

**I.**

On February 17, 2009, Complaint Counsel submitted a motion to amend the Scheduling Order. Complaint Counsel represents that Respondents do not oppose the motion.

For the reasons set forth below, Complaint Counsel's motion to amend the Scheduling Order is GRANTED in part.

**II.**

Complaint Counsel seeks to extend the deadline for filing motions for summary decisions to March 16, 2009 and proposes to extend by twenty days the remaining deadlines set forth in the Scheduling Order. The Scheduling Order in this case, issued on October 28, 2008, sets February 24, 2009 as the deadline for filing motions for summary decision and April 28, 2009 as the trial start date.

The Scheduling Order may be modified upon a showing of good cause. *FTC Rule 3.21*. Good cause exists when a deadline in a scheduling order "cannot be met despite the diligence of the party seeking the extension." *In re Chicago Bridge & Iron Co.*, 2002 FTC LEXIS 69, \*2 (2002). Complaint Counsel states [\*2] that Respondents did not produce their Answers to Interrogatories until February 3, 2009, that the deposition of Respondent Isely was not conducted until February 4, 2009, and that, because of an accident suffered by the court reporter, the transcript of that deposition was not made available to Complaint Counsel until February 13, 2009. Complaint Counsel asserts that, while it has complied with the dates set forth in the Scheduling Order, Complaint Counsel has been hampered in its efforts to move this case forward by Respondents' postponements of discovery.



Complaint Counsel has demonstrated good cause for an extension of the deadlines set forth in the Scheduling Order. However, Complaint Counsel has not demonstrated that an additional twenty days for all the remaining deadlines, especially the trial date, is necessary. The deadline for filing motions for summary decision is extended to March 16, 2009 and the remaining dates in the Scheduling Order are hereby extended as set forth below. All additional provisions in the October 28, 2008 Scheduling Order remain in effect.

- March 16, 2009 - Deadline for filing motions for summary decision.
- March 16, 2009 - Complaint Counsel provides to Respondents' counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition, copies of all exhibits (except for demonstrative, illustrative or summary exhibits), and a brief summary of the testimony of each witness. Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists and a brief summary of the testimony of each witness.
- March 23, 2009 - Respondents' Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition and copies of all exhibits (except for demonstrative, illustrative or summary exhibits), and a brief summary of the testimony of each witness.
- Respondents' Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists and a brief summary of the testimony of each witness.
- March 25, 2009 - Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).
- March 26, 2009 - Deadline for filing responses to motions for summary decision.
- March 30, 2009 - Deadline for filing motions in limine and motions to strike.
- April 3, 2009 - Deadline for filing motions for in camera treatment of proposed trial exhibits.
- April 10, 2009 - Deadline for filing responses to motions in limine and motions to strike.
- April 10, 2009 - Deadline for filing responses to motions for in camera treatment of proposed trial exhibits.
- April 16, 2009 - Complaint Counsel files pretrial brief, to include proposed findings of fact and conclusions of law. To the extent possible, findings of fact shall be supported by document citations and/or deposition citations. Conclusions of law shall be supported by legal authority.

- April 20, 2009 - Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists. Exchange objections to the designated testimony to be presented by deposition and counter designations.
- April 24, 2009 - Exchange proposed stipulations of law, facts, and authenticity.
- April 27, 2009 - Respondents' Counsel files pretrial brief, to include proposed findings of fact and conclusions of law. To the extent possible, findings of fact shall be supported by document citations and/or deposition citations. Conclusions of law shall be supported by legal authority.
- May 1, 2009 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be offered as agreed by the parties.
- May 5, 2009 - Final prehearing conference to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.
- The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity and any designated deposition testimony. Counsel may present any objections to the final proposed witness lists and exhibits, including the designated testimony to be presented by deposition. Trial exhibits will be admitted or excluded to the extent practicable.
- May 5, 2009 - Commencement of hearing to begin immediately after the final prehearing conference in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580. (The date of the commencement of the hearing and other deadlines listed above are contingent upon scheduling constraints in other dockets. Should the dates change, the parties will be notified as soon as practicable.)

[\*3]

ORDERED:

D. Michael Chappell

Administrative Law Judge

February 17, 2009

**Legal Topics:**

For related research and practice materials, see the following legal topics:

Administrative Law Agency Adjudication Prehearing Activity