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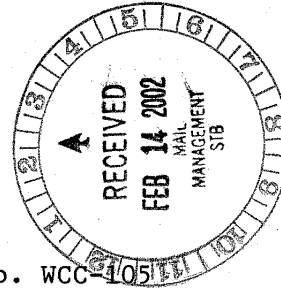
204772

BEFORE THE
SURFACE TRANSPORTATION BOARD

DHX, INC.,
Complainant,
v.

MATSON NAVIGATION COMPANY
AND
SL SERVICES, INC.
a.k.a
SEA-LAND SERVICE, INC.,
Defendants.

STB Docket No. WCC-10511



ENTERED
Office of the Secretary
FEB 14 2002
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Public Record

COMPLAINANT'S MOTION TO ESTABLISH PROCEDURAL SCHEDULE

COMES NOW, Complainant, DHX, Inc., by and through its counsel, and submits this motion requesting that the Board establish an appropriate procedural schedule for this proceeding. The Board, by Order served January 28, 2002, directed that the parties confer and jointly propose a procedural schedule. The counsel for the parties have discussed this matter and have been unable to agree upon a schedule. Hence this motion.

This complaint case represents the fifth complaint proceeding filed with this Board since the Board was tasked with regulation of carriage in the United States domestic off-shore trades. These non-contiguous trades are (i) Alaska trade, (ii) Puerto Rico trade, (iii) Hawaii trade, and (iv) Guam trade. Prior to the enactment of the ICC Termination Act of 1995, the regulation of these off-shore trades was split between the Federal Maritime Commission and the Interstate Commerce

Commission. The FMC regulated these trades pursuant to the Inter-coastal Shipping Act of 1933 and had developed an extensive knowledge of the trades, the economics of each trade, the activities and practices of the ocean carriers involved in the trades, and the nuances of each trade. The Interstate Commerce Commission was essentially involved in these matters due to jurisdictional and policy issues. Compare, Joint ICC/FMC Policy Statement, 10 I.C.C.2d. 243 (1991). In reality, the bulk of the I.C.C.'s exposure to these trades involved the carriers' efforts to use I.C.C. jurisdiction to evade regulation by the FMC.

These cases that have been filed with the Board provide a "window" on the workings of these trades and an exposure to economic markets that are admitted oligopolies. A brief review of the files in the filed STB complaint cases will reflect that the parties and the issues are quite contentious. The instant proceeding is not anticipated to be any different.^{1/}

The Board, in a decision served December 21, 2001, denied the motions of defendants to dismiss the involved complaint. The Board's decision looked to the gist of the complaint of DHX, Inc. and properly noted that the gravamen was that DHX was alleging that defendants were engaging in unreasonable business practices as well as a variety of other "unreasonable, unfair and destruc-

1/

An example of this is docket WCC-104, Trailer Bridge v. Sea Star Line, which remains in the discovery phase some 2.5 years after filing. The Board suspended the procedural schedule in that case by order served April 28, 2000 because of contentious discovery issues. The docket in WCC-102, Ocean Logistics v. NPR, Inc. et al., raised very serious legal questions and the parties jointly established a lengthy schedule. The lengthy schedule actually facilitated a settlement. However, the acrimony between the employees of the parties was minimal which contributed as well.

tive practices" (Order at page 3). The Board not only noted the complaint about unreasonable rate increases, but also noted as follows:

"Finally, DHX argues that the defendants have engaged in a variety of unreasonable, unfair, and destructive practices to reduce or eliminate the effectiveness of the competitive tools that freight forwarders have developed in order to compete with steamship lines in the solicitation of full-container business".
(Order at page 4)

The Board further stated THAT IN ORDER FOR DHX to prevail

"...DHX will have to flesh out the specific rates for specific shipments that it asserts are unreasonable, and will have to support with particularity its general claim that the carriers' practices are unlawful."
(Order at page 2).

The above statements by the Board clearly suggest that the Board understood the gist of the DHX complaint. Based upon the recent communications from defendants, it is the position of the defendants that DHX be obligated to file an amended and more particularized complaint, that defendants be permitted to then file "new" answers presumably raising new affirmative defenses (or even new motions to dismiss), after which the defendants would most generously afford DHX 60 days for discovery. Counsel for DHX was obligated to decline defendants proposal as grossly inadequate, inconsistent with sound procedure under the circumstances of this case, and patently prejudicial to the complaint. Attached hereto and identified as Attachment Nos. 1, 2 and 3 are Complainant's proposal (#1), defendants' replies (#2) and Complainant's response (#3).^{2/}

^{2/} DHX provided a detailed outline of the unfair practices known to date as well as a statement of the practice issues that seem to be involved. That letter was sent on January 30th and is not germane to the issues of this motion and is therefor not included as an attachment.

4.

The Board's Order notes that DHX is challenging rates and practices in the "U.S./Hawaii trade"(Order at page 2). The Complaint details a pattern of price matching between the defendants as well as identical tariff filings. The Hawaii trade is split between the defendants on a 70/30 basis (Matson /Sea-Land). There is no price nor service competition based upon the carriers' activities. In fact, the carriers have represented that the Hawaii trade is a "Tariff Trade". This means that the carriers contend and represent that they offer nor do they provide any rates/services except according to published tariffs. The carriers have consistently declined to offer any forms of volume pricing nor service contracts under §§14101(b). The fact of the matter is that forwarders, such as complainant, are required to deal with the carriers "according to the tariff" but that these carriers do engage in "off-tariff" activities, including pricing and services. These unfiled rates and services were alluded to by Mr. Dechter in his affidavits. A sample of this off-tariff activity is the joint service activities of defendants that were disclosed in a recent article in the Journal of Commerce. The rates these carriers charge each other do not seem to appear in any tariff. The JOC article is attached hereto and identified as Attachment No. 4. Simply, the history in the domestic off-shore trades is that where there is no price and service competition in a "Tariff Trade", off-tariff activities exist. These unfiled rates are created so that other shippers, including forwarders, can not take advantage of these prices.

5.

Likewise, such unfiled pricing arrangements are also done so that a competitor can not 'match' or meet the market rate. This depresses competition completely. It is submitted that forwarders represent the only real and legitimate "competition" for the carriers in the Hawaii trade. As such, the carriers operations under unfiled rates is likewise an unreasonable practice and is also evidence (on a comparative basis) of unreasonable rates.

The above discussion is necessary to demonstrate that this proceeding will, like the others, be contentious and will be difficult. The carriers, on the other hand, would like to use an abbreviated discovery period in order to either minimize or exclude complainant from development of these particular patterns of unfair and destructive practices.

THE PROPOSED SCHEDULE

Defendants have proposed a discovery schedule that matches the time frames contained in 49 CFR 1111.8 (2000 ed.). Those very limited time frames were designed for railroad stand alone cost rate cases and based upon STB compliance with the provisions of §§10704(c), 49 U.S.C. Such time frames are quite inappropriate to a water carrier complaint case which involves serious complex legal issues and facts. This does not begin to address the point that witnesses, documents and other evidence are all located on the "otherside" of the country.

Defendants, in addition to proposing the use of an inappropriate time schedule, have objected to the commencement of discovery and have expressed the requirement that Complainant provide a detailed amended complaint. This is akin to demanding

an amended complaint/bill of particulars AFTER a party has already answered the original complaint. Clearly, since the defendants filed a motion to dismiss, or in the alternative, for summary judgment, they understood the gist of the complainant's claims. Such a procedure is not only inconsistent with sound procedure but is the type of litigation tactic addressed under Rule 12(g) of the Federal Civil Rules. Fed.R.Civ.Proc. 12(g) is designed to preclude repetative motions which act a dilatory tactics. Proper procedure is for defendants to commence discovery and to simply request that complainant provide specificity.

The procedural schedule that was proposed by the Complainant was not only reasonable, but considered optimistic. The issues between "competitors" in the Trailer Bridge v. Sea Star case concerning access to business records will be raised in the instant case. Counsel for Complainant has also found that third party cooroboration of evidence and representations is also necessary to the integrity of the evidence. All of these matters will take time.

Complainant proposed a 180 day period for completion of discovery which then included a joint "pre-trial" type statement by the parties. This is the same as is used in general civil practice. In fact, cases with issues as complex as those contained in this case are made subject to extended schedules. Attached hereto and identified as Attachment No. 5, is a typical Scheduling Order recently issued (case picked at random) by the Superior Court of the District of Columbia. The "Tracks" are set by the court based upon the elements contained in D.C.

7.

Superior Court Civil Rule 40-II. The factors include the number of witnesses, documentary evidence/exhibits, nature of the legal and factual issues involved, extent to which discovery may require court supervision, projected length of any trial as well as any other factor the court deems relevant. It is noted that under Rule 26 of the Superior Court Civil Rules, discovery may commence upon filing of the complaint. Complainant has included the first page of the court complaint showing a filing date of October 19, 2001. The total period, under normal civil practice, would be approximately 9 months for discovery.^{3/} Complainant has not requested any time that is greater than that which is the normal period of discovery in civil litigation in the courts. The Board, while an administrative agency, is performing an adjudicative function very similar to that of a court and the Board should operate under a similar time frame, unless otherwise directed by federal law.

In addition to accommodating the distance issues involved in this case, the Complainant has further proposed that the parties be required to prepare a Joint Statement of Undisputed Facts which would be similar to a Joint Pre-Trial Statement.

3/

Track 1 cases involve suits for liquidated damages, i.e. collections of accounts while Track 2 normally involves uncomplicated contract/lease disputes and personal injury cases without serious injuries/death. Even Track 2 cases are afforded 8 months from the date of filing. Complainant has suggested a six month period to run from the date of issuance of the STB's procedural order. This is the same period as is the normal practice under Track 3.

8.

This will work to the benefit of the parties and to the Board in that it will substantially narrow fact disputes, reduce the legal issues, and reduce the time spent by the Board in its review of this case. Such Joint Statements save time and resources for all parties involved as well as the Board. Such a procedure will advance the handling and eventual disposition of this case.

Lastly, Complainant sought the requirement that all parties provide an index regarding matters which were considered confidential. Defendants failed to address this request. It is respectfully requested that such an index and document description requirement be adopted as well.

PRAYER

It is hereby respectfully requested that the Board adopt the procedural schedule as proposed by Complainant on January 30, 2002 (a further copy which is attached hereto and is now identified as Attachment No. 6).

Respectfully submitted,

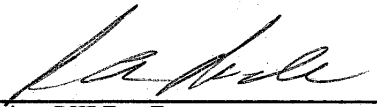


RICK A. RUDE, Esq.
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Falls Church, VA. 22046
(Tele. 703) 536-3063
(Fax. 703) 536-4841

Certificate Of Service

I hereby certify that a copy of this document has been served, by first class mail, postage prepaid, upon all counsel of record for defendants in this proceeding.

Dated this 14th day of February 2002.



RICK A. RUDE, Esq.

Richard A. Allen, Esq.
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Rick A. Rude

Attorney at Law

*207 Park Avenue
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Falls Church, Virginia 22046*

30 January 2002
Via FAX

Mr. Richard A. Allen
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Mr. C. Jonathan Benner
TROUTMAN SANDERS
401 - 9th Street, N.W.
Suite 1000
Washington, D.C. 20004

Re: DHX, Inc. advs. Matson Navigation Company and SL
Services, Inc. dba Sea-Land Service, Inc.
STB Docket WCC-105
Proposed Procedural Schedule

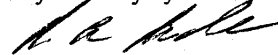
Dear Sirs:

The Board has granted the extension request in which to submit a proposed procedural schedule. The time for submission is now extended to February 15, 2002.

I have reviewed the documents in the file on this case and have likewise met with DHX personnel and discussed the proceeding. I am attaching a proposed schedule which I do believe is appropriate to the case and the issues involved. The issues include not only those raised by the complaint and the affidavits filed by DHX and Matson, but further do include my review and clarification of the matters raised. I will shortly be forwarding correspondence in which I will outline the issues.

If there are any suggested revisions to the attached proposed schedule, please advise. Awaiting your response, I remain,

Very truly yours



Rick A. Rude
Counsel for DHX, Inc.

RR/mp
encl.

STB DOCKET WCC-105 PROPOSED PROCEDURAL SCHEDULE

- 1) discovery to run for a period of 180 days from the date of the issuance of/service of the procedural order. The service date provides a date 'certain' from which to measure the period.
- 2) If there is a discovery dispute, resulting in a motion to compel or protective order, the above discovery period is to be extended in an amount of time equal to the delay that results from the involved motion. This precludes any 'obstruction' from being used to 'run-the-clock'.
- 3) Documents and information that is realistically considered to be 'confidential business information' shall be identified by way of a 'Vaughn Index' and be accompanied by a proposed protective order. Any proposed order shall include a provision that the recipient may object to the designation of confidentiality and that upon motion by the recipient the producing party retains the full burden of proof as to the need for confidentiality and that the documents or information actually qualify as privileged under the Board's Rules and Fed.R.Civ.Proc. 26(c).
- 4) That at the close of the discovery period, the parties prepare and file a Joint Pretrial Stipulation of Undisputed Facts. This is to be filed 30 days after the close of discovery.
- 5) Complainant, 40 days after the submission of the Joint Stipulation shall file its Opening Statement(s) and Argument.
- 6) Defendants, 40 days after the filing of Complainant's Opening Statement(s) and Legal Argument shall submit their Reply Statements and Legal Argument.
- 7) Complainant shall file its Rebuttal Statement(s) and Legal Argument within 30 days of receipt of Defendants' Statements.
- 8) Any party may submit a Request for Oral Hearing within 20 days after the filing of Complainant's Rebuttal but such Oral Hearing shall be limited to cross-examination of witnesses and their Statements.
- 9) In the event there is oral cross-examination, the parties shall submit Proposed Findings of Fact within 30 days after receipt of any hearing transcript.
- 10) Any and all of the above may be revised or extended upon a showing of good cause by any party.
- 11) Dispositive motions may be filed at any time after the close of discovery but not so as to interfere with the filing of any party's Opening Statements.

ATTACHMENT NO. 2

TROUTMAN SANDERS LLP

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A LIMITED LIABILITY PARTNERSHIP

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Fax: 202-654-5647

February 1, 2002

VIA FACSIMILIE and REGULAR MAIL

Mr. Rick Rude
Attorney at Law
207 Park Avenue, Suite 103
Falls Church, VA 22046

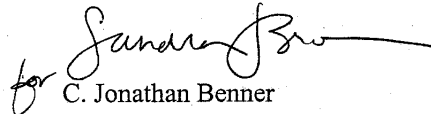
Re: DHX, Inc. v. Matson Navigation Company and Sea-Land Service, Inc.,
STB Docket No. WCC-105

Dear Rick:

Thank you for your letter of January 30, 2002 in which you propose a procedural schedule for the above referenced proceeding. I am not enthusiastic about an attenuated discovery schedule. Moreover, I do not want to commence discovery before the issues have been framed by an exchange of a revised, clearly focused complaint and the answers of respondents. The Surface Transportation Board's December 21, 2001 decision regarded the pending complaint as "fundamentally flawed" with "substantial shortcomings." Thus, an amended complaint must be the first order in any proposed procedural schedule.

I have communicated with Matson's counsel, Dick Allen, on a procedural schedule and it is my understanding that he will suggest an alternative schedule.

Yours very truly,


for C. Jonathan Benner

cc: Richard A. Allen, Esq. (via fax only)
Robert S. Zuckerman, Esq. (via fax only)

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RICHARD A. ALLEN

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February 1, 2002

BY FACSIMILE AND U.S. MAIL

Rick A. Rude, Esquire
207 Park Avenue
Suite 103
Falls Church, Virginia 22046

Re: *DHX, Inc. v. Matson Navigation Company and Sea-Land Service, Inc.*,
STB Docket No. WCC-105

Dear Mr. Rude:

Matson has considered the proposed procedural schedule you sent us on January 30, 2002 and submits the following in response.

Given the Board's decision served December 21, 2002, Matson believes that a schedule for the remainder of this proceeding must begin with DHX filing a revised complaint that sets forth with much greater clarity and particularity the specific rates of Matson (and Sea-Land) that DHX contends are unlawful, the specific practices it contends are unlawful and, in each case, the essential grounds for the claim.

In its December 21, 2001 decision, the Board agreed with the carriers that the complaint filed by DHX is "fundamentally flawed," both in focusing on the rates for overflow containers and in asserting that rates are unreasonable because they exceed the ZOR. For those reasons, the Board said: "DHX must, to support a rate reasonableness complaint, indicate which particular multi-container rates it is challenging and why those rates, if outside of the ZOR, are unreasonable." As the Board also indicated, the complaint does not make clear the extent to which DHX is challenging the carriers' practices, which practices are being challenged, and the bases for those challenges. Unless the complaint is revised to make those matters reasonably clear, it fails to give the carriers adequate notice of the claims against them and fails to provide any meaningful basis for determining whether discovery requests are proper.

Accordingly, Matson proposes a schedule that requires DHX to file a revised and particularized complaint by March 1, 2002 and requires Matson and Sea-Land to file their

ZUCKERT SCOUTT & RASENBERGER, L.L.P.

Rick A. Rude, Esq.
February 1, 2002
Page 2

respective answers by March 21, 2002. Once a revised complaint and answers are filed, we see no reason for extending discovery beyond what is normally contemplated by the Board's rules or otherwise protracting the proceeding. We also do not think requiring the parties to file a joint stipulation of undisputed facts would be useful, but would in fact only produce needless delays. The parties will be free to argue in their submissions what is or is not disputed.

We therefore propose the following procedural schedule:

March 1, 2002	DHX files a revised complaint setting forth its claims with adequate specificity.
March 21, 2002	Matson and Sea-Land file answers to the revised complaint.
May 1, 2002	DHX files its opening statement and evidence.
June 10, 2002	Matson and Sea-Land file their responsive statements and evidence.
July 22, 2002	DHX files its rebuttal statement.

We propose the foregoing schedule on the understanding that any party will remain free to file dispositive and other motions (*e.g.*, motions pertaining to discovery) at any time and to request the Board to adjust the schedule as may be appropriate in light of such motions.

We look forward to your response.

Sincerely,



Richard A. Allen
Counsel for Matson Navigation, Inc.

cc: Armand M. Pare, Esq.
Kevin C. O'Rourke, Esq.
C. Jonathan Benner, Esq.

ATTACHMENT NO. 3

Rick A. Rude

Attorney at Law

207 Park Avenue

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11 February 2002

Via FAX

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Mr. C. Jonathan Benner
TROUTMAN SANDERS LLP
401 - 9th Street, N.W.
Suite 1000
Washington, D.C. 20004

Re - DHX, Inc. v. Matson Navigation et al.
STB Docket No. WCC-105
Proposed Discovery Schedule

Dear Jon:

I am in receipt of your correspondence and am responding in writing to avoid any misunderstanding of our communications. I have been involved in several other complaint cases before the STB and have found, in each case, a high level of delay. The 'objections' were either immaterial or di minimus in nature. As I indicated in my cover letter of February 1st, I do not anticipate that the instant proceeding will be any different from the others. I proposed a schedule that I believed would permit enough time for discovery. I can not permit myself to be placed at a serious disadvantage in obtaining discovery from the carriers. The 'problem' in the instant matter appears to be that the carriers want to 'eat-up' discovery time by having the complainant refile an amended complaint. I reviewed the documents that were filed, and I did indeed spend the time to consider whether or not the carriers understood the gist of the complaint. The complaint really involves a pattern of business practices which result in discriminatory costs and prices to the forwarders. Mr. Dechter complained of a wide variety of things (tariffed and untariffed). Since the carriers contend that Hawaii is a "tariff" trade, I rather doubt that the 'deals' that exist will be readily and easily admitted.

Part of the difficulty of this case is that business practices is a broad term. It includes any and all matters which impact the costs to or prices paid by the shipper. I did not want to address the 'legal' issues but it seems that I must if there is any mutual resolution of this schedule. These

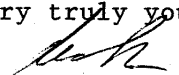
Mr. C. Jonathan Bener
11 February 2002
Page Two

matters are generally "in-house" and only exposed by way of discovery. It has been represented to DHX by Matson that DHX should not be in the full containerload business. The pricing actions, both tariffed and apparently off tariff inducements, are intended to exclude forwarders from the full load market. CSX Lines has an admitted policy of price parallelism. The effect is that Matson only need 'publish' and CSX will match. That is not 'competition' as it deprives the public of a 'choice'. The inter-action between Matson and CSX will be a focal point as it involves the question of whether or not there is really a competitive market and the mirrored pricing actions again go to the motivation involved.

I did speak with Ms. Brown and found her to be quite knowledgeable on this matter. However, I am getting the distinct impression that somehow the defendants believe that I am unfamiliar with procedure and would agree to redoing a complaint based upon a question would be procedurally addressed through discovery at this stage. I have spoken with Dick Allen and have expressed to him my concerns that I can not conduct my discovery within the time frames suggested by defendants. Since we are talking about carrier business practices, including unfiled/unpublished rates, I have not found carriers to be forth coming about those matters. As a side point, I did refer Dick Allen to the court's opinion in Northern Pacific Railway Co. v. United States, 41 F.Supp. 439 (D. Mn. 1941) as containing the elements of carrier unreasonable or unfair practices. I consider that case to set the limits on the practice issue but the actions which tend to exclude forwarders from the full containerload business are also covered by the National Transportation Policy as applied to the specific statute.

I indicated to Dick Allen that I was of the opinion that there are a number of activities and actions that have taken place which are discriminatory as applied to specific groups of shippers. These actions were not taken for legitimate transportation reasons. I am of the understanding from Dick Allen that he is not ready to modify the position taken in his letter of February 1st. However, I have not obtained your position. I remain,

Very truly yours,


Rick A. Rude

RR/mp
cc
Richard A. Allen, Esq.
Bradley J. Dechter

ATTACHMENT NO. 4



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July 20, 2001

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Did you know??



CSX, Matson in U.S.-Hawaii deal

Updated 10:01 a.m. ET, Fri Jul 20, 2001

BY CHRIS DUPIN
JoC ONLINE

CSX Lines has entered into an agreement to ship Hawaii-bound cargo on Matson Navigation Co. vessels.

Starting on August 1, CSX will ship some boxes on Matson's midweek service out of Southern California. CSX, which offers weekly sailings to Hawaii from Long Beach every Friday and had offered sailings every other Wednesday, will now offer sailings every Wednesday.

Previously, CSX had trucked boxes up to Oakland to catch Wednesday sailings by CSX vessels to Hawaii from northern California.

Tom Cowan, a senior vice president at CSX Lines, said the company may continue to dray some boxes to Oakland, but would now have the option of putting boxes on Matson vessels. He would not disclose how many slots CSX will purchase from Matson on a weekly basis.

Cowan also said that CSX is evaluating the future deployment of the CSX Producer, the 1,500 TEU ship that currently operates the midweek sailings out of Long Beach.

Matson spokesman Jeff Hull said the two companies have a long history of cooperation, and that the agreement was an "extension" of that cooperation.

Chris Dupin can be reached at cdupin@joc.com.

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7/20/2001

ATTACHMENT NO. 5

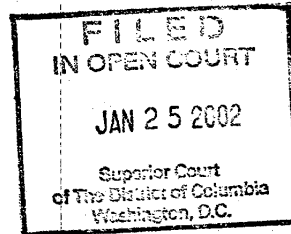


Superior Court of the District of Columbia

Civil Division
Washington, D.C. 20001

01/25/02

SCHEDULING ORDER



Case : 01ca007880

Caption: Cannon, T. et. al. vs. Broner, F. et. al

This ORDER is your official notice of dates and required Court appearances. It may not be modified except by leave of Court upon a showing of good cause; stipulations between counsel shall not be effective to change any deadlines in the order absent court approval. Failure to comply with all terms may result in dismissal, default judgment, refusal to let witnesses testify, refusal to admit exhibits, the assessment of costs and expenses, including attorney fees, or other sanctions.

01/25/02
DATE

JUDGE A. Franklin Burgess JR

Joint Pretrial Statement ☒ Separate Pretrial Statement ☐

ADR Selected: ☒ Mediation ☐ Case Evaluation ☐ Arbitration *

	TRACK 1	TRACK 2	TRACK 3	TRACK 4
DEADLINE FOR DISCOVERY REQUESTS	02/25/02	03/25/02	04/25/02	_____
EXCHANGE WITNESS LISTS	02/25/02	03/25/02	04/25/02	_____
PROPONENT'S RULE 26(b) (4) STATEMENT	03/02/02	03/25/02	05/09/02	_____
OPPONENT'S RULE 26(b) (4) STATEMENT	03/16/02	04/25/02	06/13/02	_____
DISCOVERY CLOSED	03/25/02	05/25/02	07/25/02	_____
DEADLINE FOR FILING MOTIONS	04/10/02	06/10/02	08/10/02	_____
DISPOSITIVE MOTIONS DECIDED	05/10/02	07/10/02	09/10/02	_____
ADR (Mediation/Case Evaluation)	05/25/02 -06/25/02	07/25/02 -08/25/02	09/25/02 -10/25/02	_____
PRETRIAL (ADR date plus approximately)	/ / 30 DAYS	/ / 60 DAYS	/ / 60 DAYS	_____

The Civil Arbitration Rules govern arbitration procedures. The filing parties must mail a copy of the complaint and answer to the arbitrator within 14 days of arbitrator assignment. Any party to a non-binding arbitration may file a demand for trial de novo with the Multi-Door Dispute Resolution Division within 15 days after the arbitration award date. In the event that a demand for a trial de novo is filed, the attached Post-Arbitration Scheduling Order shall be effective.



Superior Court of the District of Columbia

Civil Division
Washington, D.C. 20001

SCHEDULING CONFERENCE REGISTER FOR ATTORNEYS AND PRO SE PARTIES 01/25/02 F

CASE : 01ca007880

CAPTION: Cannon, T. et. al. vs. Broner, F. et. al

Please CHECK name of parties for correctness and completeness.

Please VERIFY your OWN name, address and telephone - write in any corrections and initial them.

Each attorney and pro se party MUST SIGN to acknowledge receipt of the Scheduling Order. (For cases ordered into arbitration, your signature also acknowledges receipt of the Post-Arbitration Scheduling Order).

ROLE NAME/ADDRESS

SIGNATURE

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IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

THOMAS J. CANNON
1344 Spring Road, N.W.
Washington, DC 20010

and

ROSETTA CANNON
1344 Spring Road, N.W.
Washington, DC 20010

Plaintiffs,

v.

FRANK BRONER, M.D.
901 A Street, N.E.
Washington, DC 20002

and

MEDLANTIC HEALTHCARE GROUP, INC.
d/b/a/ WASHINGTON HOSPITAL CENTER
110 Irving Street, N.W.
Washington, D.C. 20010

Serve On:

Resident Agent - CT Corporation Systems
1025 Vermont Avenue, N.W.
Washington, D.C.

Defendants.

COMPLAINT

COME NOW the Plaintiffs, Thomas Cannon and Rosetta Cannon, by and through their counsel, Shulman, Rogers, Gandal, Pordy & Ecker, P.A. and hereby sue Defendants, Frank Broner, M.D. and Medlantic Healthcare Group, Inc., d/b/a Washington Hospital Center and for their cause of action state as follows:

ADMINISTRATIVE
DIVISION

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ATTACHMENT NO. 6

STB DOCKET WCC-105 PROPOSED PROCEDURAL SCHEDULE

- 1) discovery to run for a period of 180 days from the date of the issuance of/service of the procedural order. The service date provides a date 'certain' from which to measure the period.
- 2) If there is a discovery dispute, resulting in a motion to compel or protective order, the above discovery period is to be extended in an amount of time equal to the delay that results from the involved motion. This precludes any 'obstruction' from being used to 'run-the-clock'.
- 3) Documents and information that is realistically considered to be 'confidential business information' shall be identified by way of a 'Vaughn Index' and be accompanied by a proposed protective order. Any proposed order shall include a provision that the recipient may object to the designation of confidentiality and that upon motion by the recipient the producing party retains the full burden of proof as to the need for confidentiality and that the documents or information actually qualify as privileged under the Board's Rules and Fed.R.Civ.Proc. 26(c).
- 4) That at the close of the discovery period, the parties prepare and file a Joint Pretrial Stipulation of Undisputed Facts. This is to be filed 30 days after the close of discovery.
- 5) Complainant, 40 days after the submission of the Joint Stipulation shall file its Opening Statement(s) and Argument.
- 6) Defendants, 40 days after the filing of Complainant's Opening Statement(s) and Legal Argument shall submit their Reply Statements and Legal Argument.
- 7) Complainant shall file its Rebuttal Statement(s) and Legal Argument within 30 days of receipt of Defendants' Statements.
- 8) Any party may submit a Request for Oral Hearing within 20 days after the filing of Complainant's Rebuttal but such Oral Hearing shall be limited to cross-examination of witnesses and their Statements.
- 9) In the event there is oral cross-examination, the parties shall submit Proposed Findings of Fact within 30 days after receipt of any hearing transcript.
- 10) Any and all of the above may be revised or extended upon a showing of good cause by any party.
- 11) Dispositive motions may be filed at any time after the close of discovery but not so as to interfere with the filing of any party's Opening Statements.