

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

RICHARD MAX STRAHAN,

Plaintiff,

v.

SECRETARY, MASSACHUSETTS
OFFICE OF ENERGY AND
ENVIRONMENTAL AFFAIRS
("MEOEEA"), et al.,

Defendants.

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Civil Action No. 19-cv-10639-IT

Amended Scheduling and Pretrial Order

October 19, 2020

TALWANI, D.J.

This Amended Scheduling and Pretrial Order is issued after due consideration of the Plaintiff's Proposed Scheduling Order [#245] and the Commonwealth Defendants' Proposed Scheduling Order [#248] and is intended to provide a reasonable timetable for fact and expert discovery and pretrial disclosures in order to help ensure a fair and just resolution of this matter without undue expense or delay. This matter is set for a **bench trial to commence on June 7, 2021, at 9:00 a.m.**

1. Fact Discovery

All written discovery shall be served no later than **November 16, 2020.**

All fact discovery shall be completed no later than **January 22, 2021.**

2. Expert Disclosures and Discovery

Opening expert disclosures required under Fed. R. Civ. P. 26(a)(2) shall be served no later than **February 15, 2021.**

Rebuttal expert disclosures required under Fed. R. Civ. P. 26(a)(2) shall be served no later than **March 15, 2021.**

Expert depositions shall be completed no later than **April 15, 2021.**

3. Initial Pretrial Conference

An Initial Pretrial Conference will be held on **Wednesday April 21, 2021, at 2:30 P.M.**

The parties shall be prepared to discuss:

- A. Any jurisdictional questions;
- B. Any pending motions;
- C. Disputed factual issues to be resolved at trial;
- D. Disputed legal issues that must be resolved in connection with the trial;
- E. An informed estimate of the probable length of the trial based on a trial schedule of 9:00 a.m. to 1:00 p.m.

4. **Pretrial Disclosures**

The parties shall make and file the following pretrial disclosures by no later than **April 28, 2021**:

- A. All pretrial disclosures required by Federal Rule of Civil Procedure 26(a)(3)(A).¹ At trial, exhibits will be identified by a single sequence of numbers, regardless of which party is the proponent of an exhibit. To avoid the burden of renumbering exhibits during the pretrial process or at trial, counsel shall confer in advance of the disclosures required by this paragraph and agree on starting numbers for each side's exhibits, based on an informed estimate of exhibits to be disclosed. For example, in a case with fewer than 50 anticipated exhibits, counsel may agree to start plaintiff's exhibits number 1, and defendant's exhibits at number 25;
- B. As to those witnesses whose testimony the party expects to present by deposition, an identification by inclusive page and lines of deposition transcripts to be offered at trial other than solely for impeachment purposes.

¹ Fed. R. Civ. P. 26(a)(3)(A) requires a party to:

. . . provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

- (i) the name and, if not previously provided, the address and telephone number of each witness--separately identifying those the party expects to present and those it may call if the need arises;
- (ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and
- (iii) an identification of each document or other exhibit, including summaries of other evidence--separately identifying those items the party expects to offer and those it may offer if the need arises.

4. **Objections**

No later than **May 5, 2021**, the parties shall exchange any objections to the use of the evidence identified in the prior section and shall confer concerning such objections as required by Local Rule 16.5(c).

5. **Pretrial Filings**

A. The parties shall file the following items by no later than **May 12, 2021**:

- (1) Any objection to witnesses or lines of deposition transcripts that has not been resolved pursuant to Local Rule 16.5(c). The parties shall model objections to deposition designations on the example provided in **Appendix A**.
- (2) As to all exhibits identified under Section II that a party may still offer in evidence following the conference required by Section III, a joint list of all exhibits, identified and marked by a single sequence of numbers, regardless of which party is the proponent of an exhibit, with gaps as necessary to reflect any documents the parties no longer may offer at trial, and including notation as to those items the party expects to offer and those it may offer if the need arises, and noting as to each document whether the opposing party: (1) objects to the document; (2) may object to the document and reserves its position on the issue at this time; or (3) has no objection to the document. The list shall be filed in the form of the chart in attached **Appendix B**, with notations regarding objections set forth in column 5, and columns 6 through 8 left blank;
- (3) A disc containing courtesy copies of all exhibits, numbered according to the single sequence agreed on by the parties. The exhibits shall be pre-marked with exhibit stickers containing the numbering set forth in the joint list of all exhibits, and should have all prior exhibit numbers or other numbering removed;
- (4) Motions *in limine* or other requests regarding foreseeable evidentiary issues;

B. The parties shall submit the following items by no later than **May 21, 2021**:

- (5) Oppositions to motions *in limine*;
- (6) A Joint Pretrial Memorandum as required by Local Rule 16.5(d), setting forth:
 - (a) a concise summary of the evidence that will be offered by:

- (i) plaintiff;
- (ii) defendant;

- (b) the facts established by pleadings or by stipulations or admissions of counsel;

- (c) any contested issues of fact;

- (d) any questions raised by pending motions (other than motions *in limine*);

- (e) issues of law, including evidentiary questions, together with supporting authority;

- (f) any requested amendments to the pleadings;

- (g) any additional matters to aid in the disposition of the action;

- (h) An informed estimate of the probable length of the trial *if the estimated length of trial has changed since the initial pretrial conference*.

C. A trial brief shall be filed by no later than **May 28, 2021**.

VII. A Final Pretrial Conference will be held on **Wednesday, June 2, 2021, at 2:30 P.M.**

IT IS SO ORDERED.

Date: October 19, 2020

/s/ Indira Talwani
United States District Judge

APPENDIX A

(leave columns 6-7 blank)

USE THIS FORMAT FOR THE DEPOSITION DESIGNATION LIST:

Witness Name

Plaintiffs' Initial Designation	Defendant's Objection	Defendant's Explanation (if necessary)	Defendant's Counter-designation (if necessary)
page:line – page:line	Rule	Argument	page:line – page:line

Witness Name

Defendant's Initial Designation	Plaintiffs' Objection	Plaintiffs' Explanation (if necessary)	Plaintiffs' Counter-designation (if necessary)
page:line – page:line	Rule	Argument	page:line – page:line

APPENDIX B

(leave columns 6-8 blank)

USE THIS FORMAT FOR PREPARATION OF THE EXHIBIT LIST:

1	2	3	4	5	6	7	8
Exhibit Number for Identification	Briefly Describe	Party Offering Exhibit	Does party expect to offer exhibit or may offer if need arises?	Does opposing side object, reserve, or have no objection?			

SAMPLE EXHIBIT LIST

1	2	3	4	5	6	7	8
Exhibit Number for Identification	Briefly Describe	Party Offering Exhibit	Does party expect to offer exhibit or may offer if need arises?	Does opposing side object, reserve, or have no objection?			
1	Hospital record 1/2/2013	Pl.	Offer	No objection			
2	Photo of accident scene	Def.	Offer	Reserved until trial			
3	Police report	Pl.	May offer	Objection			