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Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

In re: the EXXON VALDEZ	Case No. A89-095 Civil (Consolidated)
THIS DOCUMENT RELATES TO ALL CASES	

MOTION FOR EXTENSION OF TIME TO ADDRESS FEE AGREEMENT FOR CASE MANAGEMENT TEAM COUNSEL

Co-Lead Counsel request an extension to February 20, 1990 of this court's January 31, 1990 deadline for submission of an agreed upon fee structure for counsel appointed to plaintiffs' case management team in Pretrial Order No. 9. In short, while lead counsel and case management team members have had substantial discussions about and done in-depth research on other courts' treatment of the issue, no agreement has been concluded. This question is a major agenda item for the presently scheduled February 5, 1990 meetings of plaintiffs' case management team.

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While Co-Lead Counsel were optimistic that with additional time an agreement could be reached, candidly this optimism has been somewhat chilled by Messrs. Coe's and Cowan's Certain Plaintiffs' Motion for Reconsideration of this court's Pretrial Order No. 9 and the Superior Court's Pretrial Order No. 6 regarding organization of plaintiffs' counsel (of which lead counsel became aware this date).

Even if no agreement is eventually concluded, an extension of time to permit the February 5, 1990 discussions by plaintiffs' counsel will be beneficial in clarifying and focusing the issues upon which plaintiffs' counsel agree to disagree.

Respectfully submitted this 26th day of January, 1990.

DAVIS WRIGHT TREMAINE

By: _____
David W. Oesting
Co-Lead Counsel

FILED
JAN 30 1990
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

It is so ORDERED.

DATED: 2/1/90

_____
United States District Judge

COHEN, MILSTEIN, HAUSFELD & TOLL

By: _____ for
Jerry S. Cohen
Co-Lead Counsel

PURSUANT TO THIS COURT'S PRETRIAL ORDER, D. OESTING SHALL MAKE SERVICE OF THIS ORDER.

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

In re: the EXXON VALDEZ	Case No. A89-095 Civil (Consolidated)
THIS DOCUMENT RELATES TO ALL CASES	

AFFIDAVIT OF MAILING

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

KIM LAMOUREUX, being first duly sworn, upon oath, deposes and says that she is employed in the offices of Davis Wright Tremaine 550 West 7th Avenue, Suite 1450, Anchorage, Alaska 99501 and that service of:

MOTION FOR EXTENSION OF TIME TO ADDRESS FEE AGREEMENT FOR CASE MANAGEMENT TEAM COUNSEL and ORDER GRANTING EXTENSION OF TIME FOR SUBMISSION OF FEE AGREEMENT

has been made upon all counsel of record based upon the Court's Master Service List of November 28, 1989, postage prepaid on this 26th day of January, 1990.

Kim Lamoureux
KIM LAMOUREUX

SUBSCRIBED AND SWORN TO before me this 26th day of January, 1990.

Debra Lewis
Notary Public in and for Alaska
My Commission Expires: 4/20/93

DAVIS WRIGHT TREMAINE
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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

In re the EXXON VALDEZ	)	No. A89-095 Civil (Consolidated)

DISCOVERY ORDER NO. 1

Request for General Protective Order
and Motions to Intervene

Defendants proposed that the discovery plan now under consideration provide for a general protective order as to all discovery materials. Objections to the proposed general protective order were filed by the Environmental Plaintiffs and the Consolidated Plaintiffs. The discovery plan as amended by the court provides that the matter of the general protective order would be dealt with in a separate order. This is that order.

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In connection with the proposed discovery plan, Dow Jones and Company, Inc., Anchorage Daily News, Inc., The Associated Press, and The Times Mirror Company filed separate motions to intervene for the limited purpose of opposing efforts to deny or restrict public and press access to records or proceedings in this case. Defendants filed notice of their intent to respond to the motions to intervene.

The reasons defendants gave for needing a general protective order were:

(1) The large volume of documents likely to be requested could reveal trade secrets, even though no single document alone might reveal such secrets;

(2) The discovery process in a complex case such as this one would be expedited by eliminating the need for document-by-document determinations;

(3) Public release of the anticipated discovery materials would represent an unjustifiable invasion of defendants' privacy interests;

(4) Basic fairness required that the documents be protected since the case is tinged with sensationalism.

In support of their request for a protective order, defendants relied on Seattle Times Co. v. Rhinehart, 104 S. Ct. 2199 (1984), which involved a protective order for specific information relating to donations to a religious organization. The Court in Seattle Times held that:

> [W]here, as in this case, a protective order is entered on a showing of good cause as required by Rule 26(c), is limited to the context of pretrial civil discovery, and does not restrict the dissemination of the information if gained from other sources, it does not offend the First Amendment.

Seattle Times, 104 S. Ct. at 2209-10 (emphasis added). The protective order involved in Seattle Times was initially denied because the facts stated in support of the motion for the protective order were too conclusory to warrant a finding of good cause. Seattle Times, 104 S. Ct. at 2203. The protective order was subsequently granted on a motion to reconsider after a factual showing of good cause was submitted to the trial court. Seattle Times, 104 S. Ct. at 2204. The factual showing consisted of several affidavits from members of the movant Foundation.

> The affidavits detailed a series of letters
>
> and telephone calls defaming the Foundation, its members, and Rhinehart--including several that threatened physical harm to those associated with the Foundation. The affiants also described incidents at the Foundation's headquarters involving attacks, threats, and assaults directed at Foundation members by anonymous individuals and groups. In general, the affidavits averred that public release of the donor lists would adversely affect Foundation membership and

> income and would subject its members to additional harassment and reprisals.

Seattle Times, 104 S. Ct. at 2204. In affirming the trial court's finding that good cause existed, the Court stated:

> The prevention of the abuse that can attend the coerced production of information under a State's discovery rule is sufficient justification for the authorization of protective orders.

Seattle Times, 104 S. Ct. 2209.

In Cipollone v. Liggett Group, Inc., 785 F.2d 1108 (3rd Cir. 1986), decided after Seattle Times, the court remanded the case for reconsideration of whether sufficient good cause could be shown to justify a broad protective order based on the reason that dissemination would cause annoyance and embarrassment.

> [T]he party seeking the protective order must show good cause by demonstrating a particular need for protection. Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test ....
>
> [A] business will have to show with some specificity that the embarrassment resulting from dissemination of the information would cause a significant harm to its competitive and financial position.

Cipollone, 785 F.2d at 1121. Other courts have also determined that a showing of good cause requires specific demonstrations of fact supported by affidavits and concrete examples rather than by conclusory allegations of potential harm. Deford v. Schmid

Products Co., 120 F.R.D. 648, 653 (D. Md. 1987); Avirgan v. Hull, 118 F.R.D. 257, 261-62 (D. D.C. 1987).

The only evidence the defendants submitted to the court in support of their request for a general protective order was one affidavit from John Q. Anderson, a principal of a non-party management consulting firm. Drawing from experience with certain large antitrust cases, but not from experience with this type of litigation or with defendants' records, Mr. Anderson stated:

> In summary, it is my opinion that disclosure of large quantities of internal business records will likely result in the disclosure of valuable trade secrets relating to costs, business strategy and the like.

While the defendants' reasons for requesting a general protective order in this case might ultimately prove to be good cause, factual substantiation of those reasons has not been established at this time. The defendants have the burden of persuasion, Cipollone, 785 F.2d at 1121, which they have so far failed to carry. The one affidavit submitted is conclusory in nature and insufficient to establish good cause. See Rosenblatt v. Northwest Airlines, Inc., 54 F.R.D. 21, 23 (S.D.N.Y. 1971) ("It is well-established that an attorney's affidavit which merely alleges that discovery will reveal even true secret formulae or trade secrets is insufficient to warrant a protective order.")

Therefore, defendants' request for a general protective order is denied. In view of that decision, the court considers the motions to intervene to be moot.

DATED at Anchorage, Alaska, this 2 day of February, 1990.

United States District Judge

AFFIDAVIT OF SERVICE
On the 2nd day of February, 1990, service of Discovery Order No. 1, Request for General Protective Order and Motions to Intervene has been made upon all counsel of record based upon the court's master service list of November 28th, 1989.

Tracy Royce
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

In re the EXXON VALDEZ	No. A89-095 Civil (Consolidated)

ORDER NO. 21

(Reconsideration re Designation of Lead Counsel)

Direct action and non-class plaintiffs represented by attorneys, Smith, Coe & Patterson, P.C.; Belli, Belli, Brown, Monzione, Fabbro & Zakaria; and Edward J. Reasor & Associates; and plaintiffs represented by attorneys, Allan D. Beiswenger, William Bixby, Peter Byrnes, Robert M. Cowan, Peter Ehrhardt, Martin Friedman, Richard F. Gerry, Raymond A. Gillespie, John Hansen, Michael Hough, Matthew Jamin, David Loutrell, Charlie Coe, Patrick McKay, Michael J. Patterson, Irwin Ravin, Charles Ray, Charles Robinson, Weaverly Shea, Joseph Skrka, Steven Smith, Charlie Tulin, and Philip Weidner, have moved for reconsideration

of the court's Pre-Trial Order No. 9 with respect to the designation of lead counsel for plaintiffs. These two motions do not call to the court's attention any matters which were not taken into consideration in the court's initial determination. The court notes in particular that Mr. Gerry is a member of the Executive Committee which all of the plaintiffs agreed upon, and the court considers lead counsel for the plaintiffs to be obligated to consult with that committee and to coordinate the plaintiffs' side of the case for all plaintiffs, and to receive input in so doing from all plaintiffs' counsel.

The court considers that it made its initial decision on the basis of ample input from plaintiffs' counsel. The court is not persuaded that there is any reason to reexamine that decision. The motions for reconsideration are denied.

DATED at Anchorage, Alaska, this 1 day of February, 1990.

United States District Judge

AFFIDAVIT OF SERVICE
On the 2nd day of February, 1990, service of Order No. 21, Reconsideration re Designation of Lead Counsel has been made upon all counsel of record based upon the Court's master service list of November 28, 1989.

Tracy Royce
Deputy Clerk

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

In re	)	
	)	No. A89-095 Civil
the EXXON VALDEZ	)	
	)	(Consolidated)
	)	

DISCOVERY ORDER NO. 2

Discovery Plan and Referral
to a Discovery Master

(1) The discovery plan, which is annexed hereto, is adopted for the use of parties in coordinating discovery in this case.

(2) David B. Ruskin, Esq., is appointed as a special discovery master in the above entitled matter.

(3) The special master shall be compensated at the rate of $155.00 an hour for performing his responsibilities under this referral.

DATED at Anchorage, Alaska, this 9 day of February, 1990.

United States District Judge

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

In re	)	
	)	No. A89-095 Civil
the EXXON VALDEZ	)	
	)	(Consolidated)
	)	

Discovery Plan
For All Proceedings

I. GENERAL RULES, PROVISIONS AND DEFINITIONS.

A. Definitions.

1. "Copy". As used in this discovery plan, the term "copy" has the meaning set forth in Rule 1001(4) of the Federal Rules of Evidence or Rule 1001(4) of the Alaska Rules of Evidence.

2. "Discovery Information". As used in this discovery plan, "discovery information" is defined to mean any information obtained as the result of discovery in these proceedings. Discovery information includes information disclosed in depositions, in documents

produced under formal and informal requests for production, in interrogatory answers, and in responses to requests for admission. "Discovery information" does not include information known or obtained from sources other than discovery procedures.

3. "Documents". As used in this discovery plan, the term "documents" is defined to mean and include all forms of data compilation defined in Rule 1001(1), Federal Rules of Evidence, or Rule 1001(1), Alaska Rules of Evidence. Nothing in this discovery plan is intended to limit the discovery of items or matters not included within the definition of "document" if such discovery is otherwise allowed by the Federal Rules of Civil Procedure or the Alaska Rules of Civil Procedure.

4. "Proceedings". As used within this discovery plan, the term "proceedings" is defined to mean any federal court proceeding consolidated in In re the EXXON VALDEZ, Case No. A89-095 Civil (Consolidated), or any state court proceeding consolidated in In re EXXON VALDEZ Oil Spill Litigation, Case No. 3AN-89-2533 Civil (Consolidated), or any individual case in either of these consolidated cases.

5. "Original". As used in this discovery plan, the term "original" has the meaning defined in Rule 1001(3) of the Federal Rules of Evidence or Rule 1001(3) of the Alaska Rules of Evidence.

B. Rules of Civil Procedure.

Except as otherwise provided herein or by further order of the court, the Federal Rules of Civil Procedure shall govern the federal court consolidated case and the Alaska Rules of Civil Procedure shall govern the state court consolidated case.

C. Substantive Issues of Law.

Nothing set forth in this discovery plan shall be deemed to affect any substantive right, claim, or defense of any party in these matters or constitute any ruling or order on any question of law.

D. Manual for Complex Litigation 2d.

The court, parties, and Discovery Master shall be guided by, but are not bound by, provisions relating to discovery in the Manual for Complex Litigation 2d. To the extent such provisions are inconsistent with the terms of this discovery plan, this discovery plan shall control.

E. Cooperation of Counsel; Non-Waiver of Privilege.

Counsel for the respective parties are directed to cooperate to the greatest extent possible to promote the expeditious and efficient handling of these proceedings. Among other things, such cooperation shall include, whenever feasible, the preparation and presentation of joint positions, claims, and defenses by the plaintiffs and defendants who are aligned on respective sides. To facilitate this cooperation, the exchange or disclosure of information or documents between or among co-counsel for plaintiffs, or between or among co-counsel for defendants, in the course of such joint preparation

shall not be construed as a waiver of any attorney-client, attorney work-product, or other privilege or any other exemption from any disclosure requirement that may apply to the information or documents so exchanged or disclosed.

F. Parties.

For purposes of this discovery plan, the words "plaintiffs" and "defendants" are used to denote all those parties denominated as such in their pleadings, as a side. If reference is intended to an individual party, that individual party shall be referred to as "party", "plaintiff party", or "defendant party". Thus, for example, the State of Alaska, while currently the subject of a counterclaim, is included herein solely as a plaintiff party. Similarly, while Exxon and other defendants have asserted counterclaims in the litigation, they are referred to in this discovery plan solely as defendant parties. Should a future realignment of the parties occur which substantially affects the intended operation of this discovery plan as agreed upon by the parties, the Discovery Master shall, upon application of a party and in accordance with the dispute resolution procedures set forth herein for resolution of discovery disputes, review this discovery plan to determine whether modifications should be made.

II. GENERAL RULES AND PRINCIPLES REGARDING DISCOVERY.

A. Coordination of Discovery With Law and Motion Proceedings.

The parties are specifically directed to consider the impact that law and motion matters may have upon discovery scheduling. As various orders in these proceedings have

indicated, designated counsel for both sides are to negotiate and attempt to develop a coordinated Law and Motion Scheduling Plan. In determining a schedule for legal motions, the parties shall also coordinate discovery scheduling to defer discovery that may be rendered unnecessary or to expedite discovery concerning issues that may lead to legal rulings narrowing or simplifying this litigation.

B. No Repetition of Discovery Procedures.

The parties are directed to avoid repetitive discovery. No repetitive discovery may be noticed or served absent either prior approval of the party to whom such discovery is directed or prior approval of the Discovery Master upon good cause shown.

Any party seeking discovery shall be responsible first to coordinate its request for discovery with other parties on the same side and all parties on each side have a duty to cooperate. After coordination, the side submitting a discovery request upon any party shall be responsible to attempt to schedule discovery in a manner which eliminates the need for repetitive file searches or other repetitive activities.

C. Supplemental Responses.

The duty of a party to supplement its responses to a request for discovery information shall be governed by Rule 26(e) of the Federal Rules of Civil Procedure or Rule 26(e) of the Alaska Rules of Civil Procedure.

D. Inadvertent Production of Privileged Materials.

1. Inadvertent Productions or Disclosures. A party responding to any request for discovery information shall be responsible to make a reasonable and diligent effort to assert any claims of attorney-client privilege, work-product protection or other recognized evidentiary or discovery privilege when responding to any request for discovery information. However, in the interest of expediting discovery in these proceedings and avoiding unnecessary costs, inadvertent disclosure of privileged information shall not constitute a waiver of any otherwise valid claim of privilege if such claim is asserted by the sooner of either 1) fifteen (15) days after the first notice that the privileged information will be used in depositions or will be submitted to the Discovery Master or the court for use in some proceeding, or 2) eighteen (18) months from the date of entry of the order adopting this discovery plan. Upon assertion of a claim of privilege regarding inadvertent production of a privileged document, any recipient of such document shall either 1) return to the party claiming the privilege all copies of such document, or 2) inform the party claiming the privilege that it disputes the applicability of the claim of privilege. The party claiming the privilege shall apply to the Discovery Master in accordance with the discovery dispute resolution provisions of this discovery plan if it continues to seek return of the privileged material. Prior to a determination of the validity of the claim of privilege by the Discovery

Master, the information for which the claim is asserted shall not be disseminated or published in any way.

2. Limits of Waiver. Failure to assert a privilege as to one document or communication shall not be deemed to constitute a waiver of the privilege as to any other document or communication allegedly so protected, even involving the same subject matter, unless the Discovery Master or this court should rule otherwise.

E. Availability of Discovery.

All discovery generated in these proceedings is deemed to have been taken in each separate consolidated case. In addition, discovery served or noticed in one consolidated proceeding shall be deemed to have been served or noticed in the other consolidated proceeding. All discovery generated in these proceedings shall be available for all permissible uses under both the Alaska and Federal Rules of Civil Procedure and the Alaska and Federal Rules of Evidence. However, by stipulation, the parties have reserved all existing rights under either the Alaska or Federal Rules of Civil Procedure and Evidence to pursue or to object to particular uses of discovery information.

III. DISCOVERY SCHEDULE.

A. Class Certification Discovery.

Discovery relating to certification of classes shall be separately scheduled.

B. Other Discovery.

Other discovery in these proceedings shall be scheduled as provided elsewhere in this discovery plan.

C. Time Period for Discovery.

1. Commencement Date. Discovery may begin upon entry of the order adopting this discovery plan, except as otherwise provided in this discovery plan.

2. Conclusion Date. General discovery will conclude within eighteen (18) months of the entry of the order adopting this discovery plan, unless otherwise directed by the Discovery Master. The Discovery Master is authorized to grant one extension, not to exceed six (6) months, for general discovery. The Discovery Master can grant extensions for specific discovery purposes, which may exceed six (6) months, so long as those extensions are granted no later than eighteen (18) months from the date of entry of the order adopting this discovery plan.

IV. **PROTECTIVE ORDERS REGARDING DISCOVERY MATERIALS.**

A. General Protective Order.

The matter of a general protective order will be the subject of a separate order which will be issued before any party will be required to produce documents pursuant to this discovery plan.

B. Special Protective Order for Confidential Material.

In the absence of an agreement between parties, the issuance of protective orders on specific subjects shall be submitted to the Discovery Master and decided pursuant to

Rule 26(c), Federal Rules of Civil Procedure, or Rule 26(c), Alaska Rules of Civil Procedure.

IV. WRITTEN DISCOVERY.

A. Requests for Production of Documents.

1. Scheduling of Document Requests.

(a) First Set of Document Requests.

(i) Timing. Requests for production of documents shall not be filed until after the submission of answers to the Phase One Interrogatories.

(ii) Scope. The plaintiffs may serve on any defendant party, and the defendants may serve on any plaintiff party, a comprehensive set of document requests regarding matters related to the subject matter of this litigation. In its comprehensive request each side shall make a good faith effort to request all documents which it fairly and reasonably intends to seek during the course of the litigation. The purpose of this comprehensive set of document requests is to attempt to eliminate the need to search files more than one time.

(b) Subsequent Sets of Document Requests.

(i) Timing. The timing of subsequent sets of document requests shall be determined by the agreement of the designated counsel for each side. In the event agreement cannot be reached as to timing, each side shall be entitled to submit the matter to the discovery master for determination. Notwithstanding this provision, nothing herein shall be construed to preclude plaintiffs

or defendants from moving before the Discovery Master to allow the service of subsequent sets of requests before resolution of all outstanding issues regarding the first set of document requests or any other prior sets that have been served.

(ii) Scope. After the initial set of document requests referenced above, which must be comprehensive, any subsequent sets of document requests served on a party shall seek only specific information, the existence of which was not known to the requesting party when its comprehensive document request was made or that was not, in good faith, previously believed to be necessary. The parties shall endeavor to minimize the number of subsequent document requests.

2. Scheduling of Responses to Document Requests.

(a) Responses to Comprehensive Document Requests. Written responses to document requests shall be served within seventy-five (75) days of service of the requests. In addition, all requested documents shall be made available at that time for copying and inspection, subject to the responding party's objection thereto (including but not limited to a statement that such production cannot be completed at that time) or any agreement between counsel.

Within forty-five (45) days of service of any document request, the party from whom production is requested shall serve a Preliminary Response Plan. The Preliminary Response Plan shall, at a minimum, address the following

issues: (i) an estimate of the number of documents which will be produced; (ii) a timetable for production of the documents, including an indication of intention to produce the documents in installments or at one time; (iii) if production is to be in installments, a reasonable description of the volume and documents to be produced in each installment; (iv) a proposed place of production; (v) the manner of numbering of the documents to be produced; and (vi) any objections, including the basis for the objections, to the document requests.

Within fifteen (15) days of service of the Preliminary Response Plan, the designated counsel for the requesting side and counsel for the responding party shall meet and confer (either by telephone or in-person) regarding any issues raised by such Plan. At this conference, the parties shall attempt to prepare an agreed-upon schedule for production and to resolve by written stipulation any other issues raised by the Plan. Issues not resolved or reserved by stipulation may be submitted to the Discovery Master not earlier than seventy-five (75) days following service of the document requests.

(b) Responses to Subsequent Document Requests. Responses to subsequent document requests shall be in compliance with Rule 34, Federal Rules of Civil Procedure, or Rule 34, Alaska Rules of Civil Procedure.

3. Service of Responses. Responses to the comprehensive document requests shall be served upon designated counsel for the requesting side within seventy-five (75) days

of service of the Requests for Production of Documents, and any stipulations obtained in accordance with the Preliminary Response Plan shall be incorporated therein.

4. Numbering of Documents. Any party producing documents shall number all produced documents as provided herein. Copies of any produced documents shall be marked by the producing party with an identifying number using a Bates stamp, computerized label, or similar marking system that: (i) identifies the party, person or entity producing the document, and (ii) provides a unique identification number of the document. An explanation of the numbering system for each party shall be provided by each liaison counsel prior to receipt by a party of any production from a producing party. Documents produced by non-parties shall be numbered with an alphabetic identifier of up to four letters and an accompanying number.

The identifying number assigned to the document shall be used to identify the document for all subsequent pretrial and discovery purposes, provided that once a document has been assigned a deposition exhibit number, it may be cited by such exhibit number.

5. Copying of Documents. Upon notification by the requesting party, the producing party shall have the obligation to copy, at the requesting party's expense, documents to be produced pursuant to a request. Unless otherwise agreed, copies of documents shall be made on 8 1/2 x 11 or 8 1/2 x 13 or 8 1/2 x 14 paper and the charge for copying shall not exceed

10 cents per copy. The requesting party may, at its option and expense, use optical scanning in addition to or instead of requesting copies at the time of production.

6. Illegible Documents. A party shall produce to the requesting party, according to the following procedures, the original or a legible copy of any produced copies that the requesting party deems to be illegible. The requesting party may serve a written notice on counsel for the producing party designating the document deemed illegible. The producing party shall then be required to produce the original or a legible copy of the document so designated not more than thirty (30) days following the date of service of the notice, unless the parties agree otherwise. The original document or a legible copy shall be produced at Anchorage, Alaska, unless otherwise agreed. The requesting party shall be responsible for making any arrangements for copying of the original at that time and promptly returning the original.

7. Stipulations as to Identification and Authentication. To the greatest extent possible, the parties shall stipulate to the foundational requirements for the introduction of documents during discovery and for trial exhibits and shall avoid unnecessary depositions or other discovery devices directed solely to foundational evidence. Where a dispute exists between the parties regarding the need for additional discovery regarding the identification or authentication of documents, the parties shall submit that

dispute to the Discovery Master prior to trial whenever reasonably possible.

8. Document Depositories. Each side shall be responsible for any document depository that side deems necessary or desirable.

B. Interrogatories.

1. Phases. Except as otherwise provided, interrogatories shall be conducted in four (4) phases: (1) witness/document identification; (2) general discovery; (3) contention discovery; and (4) expert discovery. Once discovery has commenced concerning the subject matter specified in any of the four (4) phases provided herein, subsequent interrogatories may make further inquiry about the subject matter of that phase or any preceding phase. Thus, for example, the commencement of a subsequent phase shall not further restrict inquiry otherwise permitted hereunder with regard to the subject matter of an earlier phase.

2. Scheduling of Interrogatories.

(a) First Phase Interrogatories.

(i) Timing. First Phase Interrogatories may be served upon approval of the discovery plan by the court.

(ii) Scope. The plaintiffs may serve upon any defendant party and defendants may serve upon any plaintiff party, interrogatories directed to the identification of witnesses and documents. The number of witness and document identification interrogatories is

subject only to objections of burden or undue expense.

(b) Subsequent Phase Interrogatories. The starting date, and number of interrogatories to each party, for each subsequent interrogatory phase shall be determined by agreement of the designated counsel for each side. In the event that agreement cannot be reached as to the date when a particular phase should commence or the appropriate number of interrogatories, either side shall be entitled to submit the matter to the Discovery Master for determination. Notwithstanding this provision, nothing herein shall be construed to preclude plaintiffs or defendants from moving before the Discovery Master to allow the service of subsequent sets of interrogatories or subsequent phase interrogatories before resolution of all outstanding issues regarding any other prior sets that have been served.

3. Response to Interrogatories. Written responses to interrogatories shall be served within sixty (60) days of service of the interrogatories, subject to the responding party's objection thereto (including but not limited to a statement that such response cannot be completed at that time) or any agreement between counsel. Within thirty (30) days of service of any set of interrogatories, the party from whom discovery is requested shall serve a Preliminary Response Plan. The Preliminary Response Plan shall, at a minimum, address the following issues: (i) identification of interrogatories as to which answers may be compiled from previously produced

documents pursuant to Rule 33(c), Federal Rules of Civil Procedure, or Rule 33(c), Alaska Rules of Civil Procedure; (ii) any objections, including the basis for the objections, to the interrogatories; and (iii) any proposed stipulations of fact in lieu of answers.

Within fifteen (15) days of service of the Preliminary Response Plan, the designated counsel for the requesting side and counsel for the responding party shall meet and confer (either by telephone or in-person) regarding any issues raised by such Plan. At this conference, the parties shall determine to what extent answers shall be served within sixty (60) days of service of the interrogatories, and resolve by written stipulation any other issues raised by the Plan including, for example, alternative schedules or any deferred or reserved objections. Issues not resolved or reserved by stipulation may be submitted to the Discovery Master not earlier than sixty (60) days following service of the interrogatories.

4. Service of Responses. Responses to the interrogatories shall be served upon designated counsel for the requesting side within sixty (60) days of service of the interrogatories, and any stipulation obtained in accordance with the Preliminary Response Plan shall be incorporated therein.

C. Requests for Admission.

1. Scheduling of Requests for Admissions.

(a) Timing. Requests for Admissions may be served upon approval of the discovery plan by the court.

(b) Scope. The plaintiffs may serve upon any defendant party and defendants may serve upon any plaintiff party Requests for Admissions.

2. Responses to Requests for Admissions. Within sixty (60) days of service of any set of Requests for Admission, the party from whom discovery is requested shall serve answers and objections.

V. DEPOSITION DISCOVERY.

The following procedure will be followed for all depositions (including depositions of non-parties).

A. One Deposition Rule.

Except as otherwise provided by this discovery plan, or by order of the Discovery Master or court upon a showing of good cause, no witness may be deposed more than once in these proceedings. Good cause will not be found where the party seeking the order knew or reasonably should have known at the time of the first deposition the facts claimed to necessitate the taking of the subsequent deposition.

B. Notice and Scheduling of Depositions.

1. Commencement of Depositions. Depositions may commence upon approval of the discovery plan by the court, provided, however, that early depositions shall be scheduled with due regard to the benefits of awaiting answers to initial

interrogatories and compliance with comprehensive document requests.

2. Scheduling of Depositions. For purposes of scheduling depositions, the calendar will be divided into "segments," each of which will consist of two weeks. Except as agreed by all parties and except as provided in subsection G, plaintiffs shall only be permitted to schedule depositions during the odd numbered segments, while defendants shall only be permitted to schedule depositions during the even numbered segments. After every two (2) segments (4 weeks), there shall be one (1) week in which no depositions occur, except as provided in subsection G or unless otherwise agreed by the parties.

The parties shall negotiate through designated counsel the deponents and schedule for depositions for each two (2) successive deposition segments. Such schedule shall be completed no later than forty-five (45) days prior to the commencement of the next two (2) deposition segments. The parties shall make reasonable allowance for the availability and convenience of the witness and the requirements of the parties as to the assignment of counsel to handle such depositions.

No later than forty-five (45) days prior to the commencement of the next two (2) deposition segments, each side shall serve upon designated counsel notices of depositions pursuant to Rule 30 of the Federal Rules of Civil Procedure or Rule 30 of the Alaska Rules of Civil Procedure for witnesses

on whom agreement was reached. Such notices shall include the deposing side's estimate of the time required to complete the deposition.

If such negotiation does not result in setting a reasonable and mutually agreeable schedule, either side may issue a mandatory notice of deposition for witnesses on whom agreement was not reached and such notice shall include the deposing side's estimate of the time required to complete the deposition. The side issuing a mandatory notice of deposition shall so indicate in the caption of the notice and recite in such notice the effort made to negotiate a mutually agreeable schedule and the reason that such negotiations were not successful. Any party opposing a mandatory notice must serve upon designated counsel an objection within seven (7) calendar days of service of the notice of mandatory deposition. Resolution of the dispute shall be submitted to the Discovery Master as provided in this discovery plan.

In the event that the Discovery Master fails to rule on or before the fifteenth day prior to the first day of the ensuing two (2) segments, the disputed deposition shall be removed from the calendar for that segment.

No later than fifteen (15) days prior to the first day of the ensuing two (2) segments, plaintiffs' designated counsel and defendants' designated counsel will send a final joint schedule for those segments to the Discovery Master. Thereafter, there will be no changes to the schedule for those segments, except for good cause or as provided in subsection G,

infra. Immediate notice of any such changes will be given by telephone to plaintiffs' designated counsel, defendants' designated counsel and the Discovery Master.

C. Non-Party Witnesses.

For a non-party witness, noticing counsel shall serve upon designated counsel a copy of the subpoena along with a copy of the notice of deposition. If the noticing counsel intends to request any deponent to produce documents at the deposition by subpoena duces tecum or otherwise, the noticing counsel will serve a copy of the request or subpoena duces tecum along with the notice of deposition.

D. Depositions of Corporations and Associations.

Any deposition of a public or private corporation, partnership, association or governmental agency noticed in accordance with this discovery plan must comply with the provisions of Rule 30(b)(6) of the Federal Rules of Civil Procedure or Rule 30(b)(5) of the Alaska Rules of Civil Procedure. Notwithstanding the provisions of section A, supra, regarding the "One Deposition Rule," persons designated by any entity noticed for deposition pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure, or Rule 30(b)(5), Alaska Rules of Civil Procedure, may also be deposed in their individual capacity. However, the provisions of section II.B will apply to such subsequent depositions.

E. Document Requests Directed to Party Deponents.

Except for good cause shown, a party noticing a deposition shall not include a Rule 34, Federal Rules of Civil

Procedure, or Rule 34, Alaska Rules of Civil Procedure, production of documents request in deposition notices. It is intended that, except in special circumstances, document exchanges be accomplished under section V.A of this discovery plan.

F. Place of Depositions.

Except for good cause shown, all depositions in any one track in any segment will be held in the same region. Depositions will be held in the city most convenient to the witnesses to be examined. On the West Coast, depositions may be held in Anchorage, Seattle or Los Angeles. On the East Coast, depositions may be held in New York, Philadelphia or Washington, D.C. In the Midwest, depositions may be held in Houston, Cleveland, Bartlesville or Dallas. (Depositions may be held in other cities where sufficient witnesses reside in or near such cities to justify holding depositions there.)

At any one city, depositions will be held at the place designated by noticing counsel unless otherwise agreed by all attending counsel.

G. Depositions Taking More Than the Estimated Time.

Depositions not completed within the estimated time shall at the option of the witness continue from day to day, holidays and weekends excepted, until completed and without deferral of any other previously scheduled deposition. If the witness is not available to continue beyond the time initially scheduled for his deposition, counsel responsible for that deposition shall schedule a time for the deposition to

continue. The side that scheduled the deposition shall be entitled to have such deposition continued to a specific date during that side's next segment.

H. Holidays.

No deposition may be scheduled on the dates of previously scheduled court hearings, or on legal holidays, as that term is defined in Rule 6(a) of the Federal Rules of Civil Procedure or Rule 6(a) of the Alaska Rules of Civil Procedure. For purposes of this discovery plan, the term "legal holidays" also includes the following: Thanksgiving (Thursday and Friday), Good Friday, Rosh Hashana, Yom Kippur, Alaska Day, Sewards Day, the first two days of Passover, and the two week period beginning on the Monday before Christmas.

I. Time of Depositions.

Depositions may only be scheduled on Monday through Friday during any segment. Depositions may not be scheduled before 9:00 a.m. and may not continue after 5:00 p.m., absent consent from the deponent and all attending counsel. The deposition shall proceed with due diligence. In addition, deposing counsel has the absolute right to extend any deposition up to two (2) hours when counsel, in good faith, believe such extension will avoid the need to continue that deposition on a subsequent day and such continuance will not impose an undue burden on the health of the deponent.

J. Conduct of Deposition.

Both sides shall reach a written agreement among themselves prior to the deposition as to the sequence in which

individual attorneys may examine and that sequence shall be followed. Each attorney must pass the witness before examination may be conducted by any other attorney. The interrogation may not seek to elicit an answer already given at the same deposition. Each attorney shall be responsible to be aware of prior inquiry and testimony and not to duplicate such inquiry.

Each examining attorney must ask all questions on all subject matters before passing the witness and, except for proper re-direct examination, that attorney may not open new subjects or reopen old subjects after passing a witness.

K. Simultaneous Depositions.

Except as agreed by the parties, or as otherwise provided in this discovery plan, or upon order of the Discovery Master or court, no more than two (2) depositions during any segment may be scheduled to take place at the same time.

L. Notice of Intent to Attend a Deposition.

Unless otherwise ordered under Rule 26(c), Federal Rules of Civil Procedure, or Rule 26(c), Alaska Rules of Civil Procedure, depositions may be attended by counsel of record in these proceedings, members or employees of their firms, attorneys engaged by a party to these proceedings for the purpose of the deposition, the individual parties to these proceedings or one representative of any corporate or governmental parties, experts or consultants engaged by counsel or a party to assist in preparation for trial, the deponent and counsel for the deponent. Except by stipulation, only one

attorney may examine or note objections on behalf of any party during the deposition. In addition, nothing in this paragraph shall prohibit any party from seeking a protective order on the grounds that the number of persons attending the deposition is unreasonable. Both sides will make every reasonable effort to restrict the number of persons who attend any deposition. Attorneys' fees for attendance at a deposition may not be awarded to counsel who unnecessarily attend depositions. Any counsel intending to attend a scheduled deposition shall inform liaison counsel or designated counsel within seven (7) days prior to the deposition. Such notice shall also indicate all persons who will accompany counsel. Individuals in excess of the number of persons identified by a party may be excluded if notice was not given in accordance with this section.

M. Document Predesignation.

Unless counsel for the party noticing the deposition and the deponent's counsel shall agree otherwise, the following deposition document predesignation procedure shall be followed.

No later than thirty (30) days prior to a deposition date, the side noticing a deposition shall serve on deponent's counsel and designated counsel of plaintiffs and of defendants, a list of all documents (either by document production number, or, for documents previously used in a deposition by exhibit number) which counsel anticipates using as an exhibit or referring to during the deposition. No later than twenty (20) days prior to a deposition date, all other counsel who intend to conduct any examination of the witness shall serve on

deponent's counsel and on designated counsel of plaintiffs and of defendants, a list of any additional documents (either by document production number or by exhibit number) which counsel anticipates using or referring to during the deposition. No later than seven (7) days prior to a deposition, all counsel who intend to conduct any examination of the witness shall serve on the deponent's counsel and on designated counsel of plaintiffs and of defendants, a list of any additional documents (either by document production number or by exhibit number) which such counsel anticipates using or referring to during the deposition. This final designation may include only documents identified, in good faith, in response to the immediately prior designation. In all cases, if a document intended to be used as an exhibit does not have a document production number or an exhibit number, a copy of such document shall be supplied with the list.

Where the deponent is a non-party to the litigation, counsel designating documents shall be obliged to serve, together with the list referred to above, hard copies of the designated documents upon the witness or the witness' counsel. The cost of making and serving such copies will be borne by counsel designating the documents.

N. Marking of Deposition Exhibits.

Each document marked for identification at the depositions shall be given a unique exhibit number as opposed to any identifying numbers employed in the document production process.

To the extent practicable, each exhibit will be identified by the same number at every subsequent deposition. In the event that an identical document is inadvertently marked at different depositions with two or more exhibit numbers, as soon as practicable thereafter, the party or parties marking the document will choose one exhibit number for the document and advise the court reporter, defendants' liaison counsel and plaintiffs' liaison counsel of the choice. The court reporter will correct the applicable transcripts to reflect the corrected exhibit number.

The index of exhibits annexed to each deposition transcript shall reflect the document production number, as well as the exhibit number, for each marked exhibit.

O. Objections.

1. Procedure. Except as may otherwise be stipulated amongst counsel, Rule 32 of the Federal Rules of Civil Procedure or Rule 32 of the Alaska Rules of Civil Procedure shall govern the matter of all objections at depositions.

All objections to the form of the questions will be preserved by noting with a statement sufficient to enable the interrogating attorney to reformulate the question desired.

The objection of one counsel to a question need not be repeated by any other counsel to preserve that objection on behalf of the party represented by such other counsel.

2. Continuation of Deposition. Counsel may elect to seek an immediate telephone ruling from the Discovery

Master, but, if he is not available, counsel shall be obligated to continue the deposition as to matters not in dispute.

P. Information To Be Available on Assertion of Claims of Privilege.

Where a claim of privilege is asserted during a deposition:

1. The attorney asserting the privilege shall identify during the deposition the nature of the privilege (including work product) which is being claimed and, if the privilege is being asserted in connection with a claim or defense governed by state or federal law, indicate the privilege rule being invoked;

2. If sought, the following information shall be provided at the time the privilege is asserted to the extent the information is readily obtainable from the witness being deposed, unless divulgence of such information would cause disclosure of privileged information:

> (a) For documents: (1) the type of document; (2) the general subject matter of the document; (3) the date of the document; and (4) such other information as is sufficient to identify the document including, where appropriate, the author, addressee, and any other recipient of the document, and, where not apparent, the relationship of the author, addressee, and any other recipient to each other;
>
> (b) For oral communications: (1) the name of the person making the communication and the names of the person present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (2) the date and place of communication; and (3) the general subject matter of the communication;

3. Any objection on the ground of privilege asserted during a deposition may be amplified by the objector subsequent to the deposition;

4. After a claim of privilege has been asserted, the attorney seeking disclosure shall have reasonable latitude during the deposition to question the witness to establish other relevant information concerning the assertion of the privilege, including (a) the applicability of the particular privilege being asserted, (b) circumstances which may constitute any exception to the assertion of the privilege, (c) circumstances which may result in the privilege having been waived, and (d) circumstances which may overcome a claim of qualified privilege.

Q. Telephone Rulings by the Discovery Master.

In the event that counsel should seek a telephone ruling by the Discovery Master, the hearing shall be conducted in such a manner so that all examining counsel attending the deposition and the court reporter can hear and participate in the proceeding. The court reporter shall make a transcript of the conference call proceedings.

R. Videotaped Depositions.

The testimony at any deposition may be recorded by videotaping. Notice of intent to take a videotaped deposition shall be given no later then fifteen (15) days before the commencement of the deposition.

The following procedures will govern all depositions which are videotaped:

1. The deposition of any witness which is videotaped shall also be simultaneously stenographically recorded and later transcribed by a court reporter;

2. The witness shall be first duly sworn on camera by an officer authorized to administer oaths;

3. The deposition shall be recorded in VHS format on equipment furnished and operated by an impartial technician;

4. The background behind the witness shall be of a plain, moderately dark color;

5. A monitor shall be used so that the picture composition is viewable by all counsel;

6. If counsel for the parties and the witness cannot agree upon physical arrangements, such as the placement of the witness, the camera or cameras and/or the microphones, these matters shall be submitted to the Discovery Master for resolution;

7. The video operator shall certify under oath that the proceedings have been recorded accurately and that the videotape accurately reflects such recording;

8. The original videotape recording shall be preserved in the custody of the deposition court reporter, together with the original stenographic transcript, in its original condition, until further order of the court or Discovery Master;

9. It shall be the duty of the court reporter to record when a videotape is changed, when examination by each of the various counsel commences and ends and whenever there

is an interruption of the continuous tape exposure for the purposes of off-the-record discussions, mechanical failures, or other similar technical problems;

10. The videotape operator shall note any objections upon an index listing the pertinent videotape reel and videotape recorder counter number, a copy of which index will be retained with the original recording and will be furnished to defendants' designated counsel and plaintiffs' designated counsel;

11. Prior to the use of any videotaped deposition at trial, the court will rule on objections to questions and to the admissibility of any answers given during the deposition. A copy of the original videotape deposition will be made available, and all the objections, colloquy of counsel, and any question and answer ruled inadmissible will be deleted from that copy. Upon application of any party, the court also will review the videotape of the deposition to determine if the videotape may be viewed by the jury. No videotaped deposition in which any party desires a portion deleted may be exhibited to the jury unless it has first been edited in accordance with this paragraph;

12. The stenographic transcription shall serve as the log of the deposition for the purpose of identifying objections, admissions of exhibits, and questions, testimony, or colloquy which are objected to prior to trial as set forth in subparagraph 11. Any such material objected to shall be specifically identified by the objecting party by reference to

page and line numbers of the transcript and to the index of the videotape described above;

13. The cost of producing the original videotape of a witness' testimony and the cost of one copy for deponent or his counsel shall be borne by the party upon whose request the deposition was videotaped. Any party may order a copy of the original videotape from the videotape operator at its own expense;

14. The cost of presenting the recording in court at the trial shall be borne by the offering party;

15. The original video recording may not be edited or altered.

S. Telephonic Depositions.

The testimony at any deposition may be taken by telephone. Notice of intent to take a telephonic deposition shall be given no later than fifteen (15) days before the commencement of the deposition. If any party objects to the taking of the deposition by telephone, the deposition must be taken in person.

The following procedures will govern all depositions which are taken by telephone:

1. The deposition of any witness which is taken by telephone shall also be simultaneously stenographically recorded and later transcribed by a court reporter;

2. The deposition shall be conducted in such a manner so that all counsel participating in the deposition and the court reporter can hear and participate in the proceeding.

3. The court reporter shall be located with the witness or, by stipulation of all of the parties participating, at the office of one of the attorneys;

4. The court reporter shall first record the identity of all counsel participating in the telephone deposition; and

5. The cost of the telephonic deposition shall be borne by the party upon whose request the deposition was taken by telephone.

T. Recording Transcription and Correction of Deposition Transcripts.

1. Method of Reporting. All depositions shall be recorded by machine stenography and shall also be recorded on audio tape. The reporter shall make available upon request a written transcript and a WordPerfect or ASCII disk of the transcript. The party noticing a deposition shall be responsible to pay the cost of the original transcript.

2. Selection of Court Reporters.

(a) Designated counsel shall prepare a list of mutually agreeable and qualified deposition reporters in each city in which depositions are scheduled. To the extent possible, court reporters familiar with these proceedings who have demonstrated the capacity to deliver accurate transcripts within a reasonable time and at reasonable costs should be employed in subsequent depositions.

(b) The side who arranges for a deposition shall be responsible to arrange for a qualified court reporter and to assure that the court reporter is aware of the court

reporter's duties under this discovery plan. The parties will agree to a written set of instructions to be delivered to court reporters.

3. Consecutive Pagination. Each page of the transcript of any deposition shall include a header containing the following information: volume number (in Arabic numerals); page number; the surname of the witness and the date on which the testimony was given. The following is an example of a header that would comply with this paragraph: Volume 3, page 148, Jefferson, 10/10/90.

4. Consecutive Enumeration of Volumes of Transcript. Regardless of the number of days during the deposition of any one witness and regardless of any adjournments prior to completion of the deposition of any individual witness, there will be assigned a separate and sequential volume number for each day on which testimony is given and the pages of each volume will be numbered sequentially from the first page of the first volume. Where two parts of any volume of a transcript are bound separately in order to comply with a protective order, such volumes shall nevertheless be assigned the volume number for the day on which the protected testimony is given and shall be paginated sequentially with the remainder of the transcript.

U. Correction and Attestation of Transcript by Witness.

Changes by the witness to transcripts of depositions must be made within forty-five (45) days of delivery of the original of the last volume of said deposition transcript. In

the absence of changes or unless signature by the witness has been specifically demanded, signature to deposition transcripts is waived and such transcripts may be used for all purposes as if signed under oath. In any event, transcripts may be used as if signed prior to receipt of signed transcripts.

The transcripts of depositions need only be signed by the witness at the conclusion of the last volume. Court reporters shall be instructed to prepare a certificate for the witness referring to the entire transcript. Witnesses may sign transcripts under penalty of perjury in lieu of attestation before a notary, or may sign a transcript before any notary.

V. Correction of Mistranscription.

1. Suggestions for Correction. Any attorney may request correction of any deposition transcript by submitting suggestions for correction within forty-five (45) days of delivery of the volume of transcript to be corrected. The procedure for making such corrections shall be as follows:

(a) Time to Suggest Correction. Suggestions for correction shall be sent in writing to designated counsel for both sides within forty-five (45) days of delivery of any volume of transcript. Suggestions for correction shall, where necessary, state the basis for making the proposed correction.

(b) Notice of Suggestion to Witness. The attorney representing the witness shall be responsible to advise the witness of any suggestion for correction.

(c) Objections to Suggestions for Correction. If a witness or any attorney disputes a suggestion for

correction, he or she shall so advise designated counsel for both sides in writing within forty-five (45) days of the date of the original suggestion for correction.

(d) Acceptance of Suggested Correction. If no objection to a suggestion for correction is submitted to designated counsel within forty-five (45) days of the date of the original suggestion for correction, such correction shall be deemed authorized ipso facto and the custodian of the original transcript shall post such correction to the transcript.

(e) Acceptance of Objections to Suggested Corrections. If objections to proposed corrections are submitted to designated counsel within forty-five (45) days of the date of the original suggestion for correction, the person who made the original suggestion may notify designated counsel of nonacceptance of the objection within seven (7) days of the date of such objection. Unless written notice of nonacceptance is received within seven (7) days, the objection is sustained and the suggested correction waived ipso facto.

(f) Requests for Review of Notes by Court Reporter. In the event of nonacceptance of an objection, the person who made the original suggestion for correction shall be responsible to request review of the suggested correction by the court reporter.

(g) Review of Request for Correction. If, after consulting his or her original notes and audio tapes, the court reporter concurs in a suggestion for correction, the

court reporter shall so advise designated counsel for both sides and the custodian of the original transcript shall post the correction to the transcript accordingly. If, after review of his or her original notes, the court reporter does not concur in the suggestion for correction, the suggestion shall be deemed rejected.

(h) Settlement of Mistranscription by Discovery Master. Rejection of a suggested correction by the court reporter shall not preclude a timely motion to the Discovery Master to require correction of the transcript.

W. Custody and Conformance of Transcripts by Counsel.

The attorney to whom the original transcript of a deposition is first delivered by the court reporter shall have the following responsibilities:

1. Delivery of Transcript to Witness for Review. Providing the transcript of the deposition to the witness and reminding the witness of his or her right to change or correct the transcript and of the time within which such correction must be made, if at all.

2. Notification of Witness of Suggestions for Correction. Promptly advising the witness of any timely suggestions for correction made by counsel and responses thereto.

3. Advising Designated Counsel of Changes to Transcript. Advising designated counsel for both sides and the court reporter of changes or corrections made by the witness.

Advising designated counsel for both sides of any objection by the witness to suggestions for correction.

4. Obtaining Signature of Witness. Obtaining the signature of a witness to the transcript if required.

5. Conforming Original of Transcript. Posting corrections to the transcript, whether made by the witness or counsel pursuant to suggestions for correction.

6. Delivery of Original Transcript to Liaison Counsel. Finally, delivering the original of the transcript (as corrected or signed as the case may be) to liaison counsel for the side that scheduled the deposition. Originals in the possession of liaison counsel shall be available on reasonable notice for inspection by the opposite side.

X. Court Reporter's Duties.

A court reporter is relieved of all duties as to signature and delivery of the transcript except the following:

1. To promptly and accurately complete the transcript and to furnish the original and copies thereof on ASCII or Wordperfect disk, on the terms agreed between counsel and the reporter;

2. To furnish the original of the transcript to counsel for the party who produced the witness, or in the case of non-party witnesses, to the attorney who conducted the first interrogation at the deposition.

3. To retain his or her original notes and audio tape.

4. To review his or her original notes and audio tapes of the deposition where suggestions for correction are referred to the court reporter and to concur in suggestions for correction, where, in the sole and professional opinion of the reporter, the reporter's notes and audio tapes support the correction, but not otherwise.

Y. Miscellaneous Deposition Procedures.

1. Witness Fees. Any witness fees and expenses required to be paid by the Federal Rules of Civil Procedure or the Alaska Rules of Civil Procedure shall be the responsibility of the party noticing the deposition.

2. Exceptions. Exceptions to the foregoing deposition procedures will be permitted only upon agreement of defendants' designated counsel and plaintiffs' designated counsel, or with approval of the Discovery Master (or court if an appeal is taken) for good cause shown.

VI. RESOLUTION OF DISCOVERY DISPUTES.

A. Compliance Requirements.

Except as may be otherwise provided herein, neither the Discovery Master nor the court shall consider any discovery dispute unless counsel for the moving party shall certify compliance with the following procedures or that a good faith, conscientious effort was made to comply.

Any party seeking or opposing discovery shall be responsible first to coordinate its request or opposition to a request with other parties on the same side and all parties on each side have a duty to cooperate, including in the preparation of motions and accompanying memoranda.

B. Obligation to Confer.

Except upon motion and for good cause shown, before the filing of any motion to resolve a discovery dispute, counsel for the party seeking such an order shall serve upon designated counsel a notice of intent to file a motion to resolve the discovery dispute. Upon receipt of such notice, designated counsel for both sides shall meet in person or by telephone within five (5) days, unless otherwise agreed by the parties, to confer about the dispute and to attempt to resolve their differences. Following such conference, the party seeking an order may prepare a motion and memorandum setting forth the matters on which the sides were unable to agree and serve it on the other side as set forth below.

C. Submission to the Discovery Master.

1. Movant's Motion and Memorandum of Points and Authorities. Unless otherwise agreed, the movant's motion and memorandum of points and authorities in support of its motion for a discovery order shall be served upon liaison counsel and on the designated counsel for the side of the party or parties opposing relief within twenty (20) days from the date of the dispute conference provided for in section B. Such motion and

memorandum shall be filed with the Discovery Master in the first instance.

2. Memorandum of Points and Authorities in Opposition. Unless otherwise agreed, within twenty (20) days of receipt of movant's motion and memorandum, the party opposing the relief requested shall either (a) advise the moving party of its agreement to the relief requested or (b) serve a memorandum of points and authorities in opposition to the proposed discovery motion. Such memorandum shall be served on liaison counsel and designated counsel for the moving side, and shall be filed with the Discovery Master in the first instance.

3. Decision Package for Discovery Master. Unless both sides agree to a different time, within five (5) days of service of the memorandum of points and authorities in opposition, designated counsel for each side shall discuss by telephone or in person whether they can resolve the dispute themselves or need to submit the dispute to the Discovery Master. If the dispute is not resolved, the moving party shall so notify the Discovery Master of the dispute.

4. Scheduling Order by Discovery Master. Within five (5) days after submission of the materials required above, the Discovery Master shall issue a scheduling order specifying:

(a) The date for submission of a reply brief by the moving party, if any is deemed appropriate by the Discovery Master.

(b) The date for submission of any other brief, evidence or supporting material desired or permitted by the Discovery Master (which date may be simultaneous with the filing of movant's reply brief).

(c) Any provisional order concerning the conduct of discovery.

(d) The date for argument or evidentiary hearing, if deemed necessary by the Discovery Master or if requested by both parties.

5. Hearings. All hearings on discovery disputes may be held by conference telephone call or in person, at the discretion of the Discovery Master, depending on the availability of counsel, the nature of the motion and the needs of the Discovery Master.

6. Rulings by Discovery Master. The Discovery Master shall rule upon all discovery disputes presented to him by issuing a written decision which shall be filed with the court and served on liaison counsel and any party's counsel specifically appearing in connection with that ruling, unless all parties stipulate to waive the written ruling or if the Master, in his discretion, determines to rely on an available stenographic transcript of his oral ruling.

7. Expedited Decision-Making by Discovery Master. Notwithstanding any matter set forth above, the Discovery Master may, sua sponte, or upon the oral or written application of any party, expedite briefing and/or hearing on any discovery matter. The party requesting an expedited resolution shall

explain the reasons why it is being requested. Any oral application requesting an expedited resolution may be heard by telephone, with the approval of the Discovery Master.

Unless relieved by order of the Discovery Master for good cause shown, counsel applying for an expedited resolution shall give reasonable advance notice of such application to liaison counsel or the parties.

D. Appeals from Decisions of the Discovery Master.

1. Finality. Unless appealed as provided for herein, the rulings of the Discovery Master on discovery disputes shall be final and shall be deemed the rulings of the court. Failure to appeal such ruling shall not constitute a failure to preserve such issue for purposes of any later appeal.

2. Notice of Appeal. Any party aggrieved by a ruling of the Discovery Master may, within seven (7) days from the date of the Discovery Master's final written decision or the availability of the written or transcribed order, file a notice of appeal with the Discovery Master. Any finding or conclusions, or parts thereof, to which objection is made shall be specifically designated in the notice of appeal. Within five (5) days of the filing of the notice of appeal, the Discovery Master shall transmit all original papers and exhibits previously served upon the Discovery Master, including any transcripts of proceedings or memoranda, to the court for its determination of the appeal.

3. Appellate Procedure. Within ten (10) days after filing of the notice of appeal with the Discovery Master, the party appealing the decision of the Discovery Master shall file an opening brief which shall not exceed twenty (20) pages. The responding party shall file its brief, which shall not exceed twenty (20) pages, within twenty (20) days of the filing of the notice of appeal. Any reply brief shall be filed with the court within twenty-five (25) days of the filing of the notice of appeal and shall not exceed ten (10) pages. No further briefing shall be allowed except with the court's permission.

In the event of simultaneous appeals in the state and federal court, the state judge and the federal judge will coordinate the disposition of the appeals.

4. Extraordinary Circumstances. Upon application and a finding of extraordinary circumstances, the court may, in its discretion, conduct an expedited proceeding to review any ruling of the Discovery Master. The timing and form of the proceeding shall be at the discretion of the court.

E. Docket.

The Discovery Master shall maintain a master docket of all pleadings, briefs, exhibits, decisions, findings or other related determinations, including transcripts of related proceedings. The Discovery Master shall also maintain a miscellaneous docket of all correspondence directed to or transmitted by the Discovery Master.

VII. DISCOVERY MASTER.

A. Selection.

In the event that the Discovery Master selected by the court is unable to carry out his duties, the parties, through designated counsel, shall confer in an attempt to reach agreement on a replacement. To the extent that there is disagreement, each side may simultaneously serve and file no more than three recommendations to the court as to an appropriate replacement. Explanatory memoranda may accompany this initial filing, but shall not exceed five (5) pages in length. Objections to such recommendations, not to exceed five (5) pages in length, may be filed within ten (10) days of service.

B. Powers and Duties.

The Discovery Master shall be empowered to hear, in the first instance, all disputes between the parties concerning discovery matters and to take such steps as are necessary and in accord with the provisions of this discovery plan and the Federal Rules of Civil Procedure or the Alaska Rules of Civil Procedure to resolve such disputes.

C. Compensation.

The Discovery Master shall be compensated at the rate of $155.00 an hour. The Discovery Master shall submit periodic statements for time spent by him on these proceedings to liason counsel for both sides. Such statements may be submitted monthly or quarterly at the option of the Discovery Master. Plaintiffs shall be responsible to pay one-half of the cost of the Discovery Master's services and defendants shall be responsible to pay one-half of the Discovery Master's services,

services, provided, however, that on any matter decided by him, any side or party may move to have the cost of the Special Master's time taxed as a sanction or the Discovery Master may, on his own motion, assess the cost of his time to either side in such proportion as he finds appropriate.

D. Ex Parte Communications.

There shall be no ex parte communications with the Discovery Master.

VIII. ADDITIONAL DISCOVERY PROCEDURES.

All parties shall have the right at any time to submit to the Discovery Master proposed additional rules of procedure. Such proposed rules shall be served upon liaison counsel for each side.

Within fourteen (14) days of service of proposed additional rules, any party may serve upon liaison counsel written objections to the proposed additional rules of procedures. Within fourteen (14) days thereafter, the parties shall confer to resolve, if possible, any disagreements. Thereafter, the proposed rule changes shall be submitted to the Discovery Master and those changes upon which there is disagreement shall be resolved in accordance with section VII of this discovery plan.

X. PRODUCTION/INSPECTION OF PHYSICAL EVIDENCE AND SITES.

In connection with the production of items of physical evidence and inspection of sites, the parties shall cooperate and confer with one another so that appointed counsel, their experts and technicians may have access during

regular business hours to relevant sites and items of physical evidence, subject to reasonable notice in accordance with Rule 34 of the Federal Rules of Civil Procedure or Rule 34 of the Alaska Rules of Civil Procedure. Such access shall include the ability to bring on equipment necessary to measure and photograph as agreed between the parties. Any testing, sampling, or scheduling may be pursuant to agreement of the parties and, if unable to reach agreement, disputed issues shall be submitted to the Discovery Master for resolution in the manner for which provision is made in section VII on this discovery plan.

XI. MISCELLANEOUS.

A. Delivery of Notices.

All documents required to be served under this discovery plan shall be delivered by hand, telecopier, Federal Express Mail or other method which will insure delivery within two (2) business days.

B. Time.

In computing any period of time prescribed or allowed by this discovery plan, the provisions of Rule 6(a) of the Federal Rules of Civil Procedure or Rule 6(a) of the Alaska Rules of Civil Procedure shall be followed.

C. Extension of Time. Upon a showing of good cause, any party may apply to the Discovery Master for an extension of time.