


FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

2004 DEC 29 P 12: 24



CASINO CITY, INC. *
 *
 VERSUS *
 *
 UNITED STATES DEPARTMENT *
 OF JUSTICE *
 *

SIGN ACTION
 BY DEPUTY CLERK
 NO. 04-557-B-M3

NOTICE OF UNAVAILABILITY

PLEASE TAKE NOTICE that the undersigned counsel notices the Court and the parties of their unavailability for January 6, 2005 as follows:

1. On August 12, 2004, Magistrate Judge Docia L. Dalby issued an Order wherein a scheduling conference was set for December 16, 2004 at 9:30 a.m.
2. On December 15, 2004, the Court sent out a Notice of Resetting of Scheduling Conference, moving the December 16, 2004 conference to January 6, 2005, beginning at 11:30 a.m.
3. Attorneys Barry Richard and Lauren E. Galeoto must be present for a pre-trial conference scheduled for January 6, 2005 as trial counsel in *Associated Industries Insurance Company v. Department of Labor and Employment Security*, Case No. 01-CA-2573 in the Circuit Court of the Second Judicial Circuit, Leon County, Florida. The pre-trial conference will be held in Tallahassee, Florida, beginning at 11:00 a.m. EST. A copy of the Second Order Setting Pre-Trial Conference and Non-Jury Trial in that proceeding is attached hereto.

INITIALS	DOCKET#
bf	18

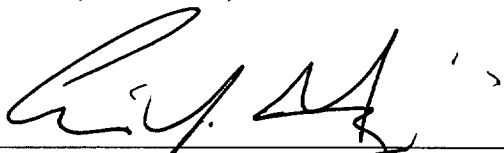
DLD

4. Accordingly, attendance by Mr. Richard (Trial Attorney) and Ms. Galeoto on behalf of Casino City, Inc. on January 6, 2005 in the instant proceeding is not possible.

WHEREFORE, counsel for Plaintiff, Casino City, Inc. requests the conference set for January 6, 2005, before Magistrate Judge Docia L. Dalby be rescheduled for another date in January.

By Attorneys,

TAYLOR, PORTER, BROOKS & PHILLIPS

By: 

FREDERICK R. TULLEY, #7534
LLOYD J. LUNCEFORD, #8439
ERICK Y. MIYAGI, #22533
POST OFFICE BOX 2471 (70821)
451 FLORIDA STREET, 8TH FLOOR
BATON ROUGE, LOUISIANA 70801
TELEPHONE: (225) 387-3221
TELECOPIER: (225) 346-8049

AND

GREENBERG TRAUIG

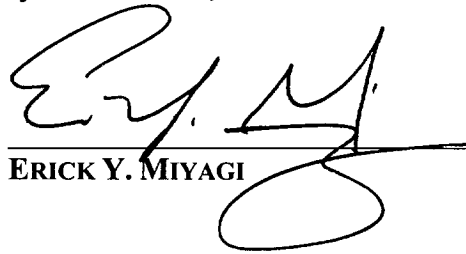
BARRY RICHARD
(FLORIDA BAR NO. 105599)
PATRICK O'BRIEN
(FLORIDA BAR NO. 866970)
LAUREEN E. GALEOTO
(FLORIDA BAR NO. 194107)
101 EAST COLLEGE AVENUE (32301)
POST OFFICE DRAWER 1838
TALLAHASSEE, FLORIDA 32302
TELEPHONE: (850) 222-6891
TELECOPIER: (850) 681-0207

ATTORNEYS FOR CASINO CITY, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been sent by United States Mail, properly addressed and first-class postage prepaid to John J. Gaupp, Assistant United States Attorney, 777 Florida Street, Suite 208, Baton Rouge, Louisiana 70801; and Samuel C. Kaplan, United States Department of Justice, Civil Division, Federal Programs Branch, P.O. Box 883, Washington, D.C. 20044.

Baton Rouge, Louisiana this 29th day of December, 2004.

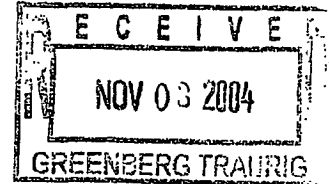

ERICK Y. MIYAGI

IN THE CIRCUIT COURT OF THE SECOND
JUDICIAL CIRCUIT IN AND FOR LEON
COUNTY, FLORIDA

**ASSOCIATED INDUSTRIES
INSURANCE COMPANY**

Plaintiff

CASE NO: 2001 CA 2573



v.

**DEPT OF LABOR AND
EMPLOYMENT SECURITY**

Defendant.

SECOND ORDER SETTING PRE-TRIAL CONFERENCE AND NON-JURY TRIAL

I. NON-JURY TRIAL AND PRETRIAL DATES

This case is set for a non-jury trial during the period of February 1-2, 2005.

Any provisions of this order that refer to jury trials may be disregarded.

1. This case is set for pretrial conference before the undersigned judge of the Second Judicial Circuit, In and for Leon County, Florida, in Chambers, Leon County Courthouse, Tallahassee, Florida, on **January 6, 2005**, at 11:00 a.m. The time reserved for said hearing is **thirty (30) minutes.**

Two days have been reserved for the trial. The parties must be available for the entire trial week; approximately one week prior to the trial, the Court will make every effort to notify the parties regarding the exact days the case will be tried.

Since the trial date has been selected by the parties, it will not be continued unless an emergency arises. Discovery delays or difficulties do not constitute grounds for a continuance. All motions for continuance must be set for hearing, and must state the grounds for continuance with particularity, and in most cases will be resolved without a hearing.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT, PERSONS NEEDING ACCOMMODATIONS TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE COURT ADMINISTRATOR 'S OFFICE NO LATER THAN SEVEN (7) DAYS PRIOR TO THE PROCEEDING AT 850/577-4400.

II. DISCLOSURE OF WITNESSES AND DOCUMENTS

No later than **ninety (90)** days before the pretrial conference for the plaintiff(s) and **forty-five (45)** days for the defendant(s), the parties shall file with the Clerk of the Court and serve on all parties:

(a) A complete list of all witnesses who may be called at trial, designating those witnesses to be called as experts, with the addresses and phone numbers, if known, and a brief summary of the expected testimony. For those witnesses designated as experts, the parties shall also state the area of expertise in which the witness will be tendered, the substance of opinions expected to be offered and a summary of the grounds for each.

(b) A complete list of all documents which may be introduced at trial, with a sufficient description thereof to identify such document.

WITNESSES AND DOCUMENTS NOT IDENTIFIED IN THESE LISTS WILL NOT BE PERMITTED TO BE INTRODUCED OR TO TESTIFY AT TRIAL, EXCEPT BY ORDER OF THE COURT UPON A SHOWING OF GOOD CAUSE.

III. DISCOVERY CUT-OFF DATE

All discovery must be completed not later than **December 21, 2004**. **NO DISCOVERY AFTER THIS DATE WILL BE ALLOWED EXCEPT BY ORDER OF THE COURT UPON A SHOWING OF GOOD CAUSE AND OF DUE DILIGENCE.**

IV. MEDIATION

This case is referred to mediation. A party may be relieved of the obligation to participate in mediation only for good cause shown and by order of the court. The mediation shall be conducted according to Fla.R.Civ.P., Rules 1.700 through 1.730. Additionally, the mediation shall be governed by the following provisions of this Order:

1. *Selection of Mediator.* The parties shall attempt to agree on a mediator within **fifteen (15) days** of the date of this Order. If the parties do not agree on a mediator within the time specified, counsel for the plaintiff shall so advise the court and the court shall name a mediator.

2. *Mediation Date.* The mediator will set a mediation conference within the time permitted by the Rules, or as the parties may agree, but not ***later than ten (10) days before the pretrial conference.*** The parties are advised that mediation does not toll any time requirements of this case. In the event any motions or hearings are currently scheduled in the case before the court, they will be heard as scheduled.

3. *Attendance.* Each party shall be present at the mediation and each of the attorneys who will try the case if it is not settled must also be present. A corporate party must be represented at mediation by an agent with full authority to settle the case. If a party fails to appear at mediation, or appears without settlement authority as required above, the court may impose appropriate sanctions against that party.

4. **Privilege.** All discussions, representations and statements made at the mediation conference shall be privileged as settlement negotiations and nothing related to the mediation conference shall be admitted at trial.

5. **Mediation Report.** At the conclusion of the mediation, the mediator shall send a report directly to the court, with copies to the attorneys and any unrepresented parties.

V. ATTORNEYS TO CONFER

The parties shall meet no later than **thirty (30) days** before the pretrial conference, for the following purposes:

1. To discuss the possibility of settlement.
2. To stipulate to as many facts and issues as possible.
3. To prepare a pretrial stipulation in accordance with Paragraph VI of this Order.
4. To examine all exhibits and documents proposed to be used at trial.
5. To discuss any anticipated legal issues which may arise during trial, including questions of liability and damages, the evidence and proof which either party proposes to present at trial and the law on which the parties will rely.
6. To consider and stipulate to all other matters which may expedite the trial.
7. The plaintiff(s) shall take primary responsibility for preparing the pretrial stipulation and submitting it to the court.

**THIS ATTORNEYS' CONFERENCE IS MANDATORY AND CANNOT BE
WAIVED BY AGREEMENT OF THE PARTIES OR COUNSEL.**

VI. PRETRIAL STIPULATION

The pretrial stipulation shall be signed by all parties or their counsel and shall address each of the following in separate, correspondingly numbered paragraphs:

1. List of any pending motions, indicating when they are scheduled for a hearing.

Motions will not be heard at the Pre-trial Conference. Counsel are required to file all necessary motions and schedule them for hearing prior to the Pre-trial Conference. Any motions arising after the Pre-trial Conference will be heard only upon a showing of good cause.

2. Estimated time for:

- (a) Opening statements;
- (b) Presentation of plaintiff's case (based on average of 5-6hrs per day);
- (c) Presentation of defendant's case (based on average of 5-6hrs per day);
- (d) Closing arguments; and
- (e) Total estimated length of trial.

3. Any scheduling problems or preferences.

4. The witnesses and exhibits each party may offer at the trial, with a notation as to the nature of any objections thereto, and any agreements regarding limitations on the number of witnesses (e.g. experts, "before and after" witnesses, etc.).

5. Deposition testimony that will be offered, and whether approved or objected to, and if objected to, the grounds therefore.

6. Visual aids which may be used in opening or closing, noting whether agreed to or objected to, and if objected to, the grounds therefore.

7. Whether either party requests a view of the scene.

8. Any request for judicial notice.

9. Any special audio or visual aids requested of the Court Administrator.

10. Any need for a translator, interpreter or ADA accommodations.

11. Whether there are any requirements of the Trial Order that have not been complied with and if so, what and why.

12. A concise statement of those facts which are admitted and will require no proof at trial, together with any reservations directed to such admission.

13. A concise statement of those issues of law and fact which are in dispute.

14. Any other matters or issues for the court's attention.

VII. DOCUMENTS TO BE SUBMITTED

No later than the five (5) days prior to the pretrial conference, the parties shall provide the court with the following:

1. The pretrial stipulation referenced above in Paragraph VI.
2. A trial brief or memorandum with citations of authorities and arguments in support of their positions on all disputed issues of law.
3. An agreed upon comprehensive set of jury instructions and any proposed instructions on which there is disagreement. **The jury instructions and verdict form shall be submitted on a 3.5" word processing disk and in hard copy. (Convertible to WordPerfect 9)**

THESE FILINGS AND DEADLINES ARE MANDATORY, AND CANNOT BE ALTERED OR WAIVED BY AGREEMENT OF THE PARTIES OR COUNSEL. FAILURE TO COMPLY WITH THESE REQUIREMENTS MAY SUBJECT THE PARTIES OR COUNSEL TO THE IMPOSITION OF SANCTIONS, INCLUDING CONTEMPT OF COURT.

VIII. PRETRIAL CONFERENCE

The pretrial conference will be conducted for the purpose of allowing the court to briefly review the status of the case, note and consider any scheduling problems or preferences, confirm that the directions in this Order have been complied with, confirm receipt by the Court of all requested documents, and to consider any procedural or other matters which may foster an efficient and orderly conduct of the trial. **Pending motions will not be heard at the pretrial conference.** The attorneys who will conduct the trial are required to be present for the pretrial conference, and shall be

prepared to act with the client's authority in the resolution of all matters contemplated by this order. **Appearance by telephone will not be allowed at the pretrial conference.** Counsel will be prepared to discuss the prospects of settlement with the court. It is the intention of the court to advise the parties as soon as possible after the pretrial conference of a tentative schedule for all cases set for the trial period.

IX. PRETRIAL ORDER

1. Upon the conclusion of the pretrial conference, all parties shall confer and prepare a Pretrial Order for the court's approval. Plaintiff(s) will take the initiative in preparing such order. Such order will be submitted to the court for approval within five (5) days after the pretrial conference, unless otherwise ordered. The Pretrial Order shall incorporate and modify the pretrial stipulation in light of any additional agreements reached and any rulings made at the pretrial conference.

2. If a Pretrial Order is entered by the court, the pleadings will be merged therein, and the Pretrial Order will control the course of the trial and may not be amended except by order of the court in the furtherance of justice.

X. SPECIAL MATTERS

1. *Motions for Summary Judgment* shall be filed no later than sixty (60) days before the pretrial conference, **and must be scheduled for hearing and be heard prior to the pretrial conference.**

Counsel are encouraged to file the motion and schedule hearing in a timely manner; if the parties wait until the 60th day prior to the trial to attempt to schedule the hearing, it is unlikely that hearing time will be available on the Court's calendar.

2. If the case is settled, it is the responsibility of all parties to see that the court is promptly advised. Failure to do so may result in sanctions.

3. Except as specifically indicated otherwise, the term "party", as used in this Order refers to a litigant or counsel for a litigant.

XI. COMPLIANCE AND PROFESSIONAL RESPONSIBILITIES

1. No motion for summary judgment or other motion filed after the date of this Order will be grounds for cancellation or postponement of the pretrial conference or the trial. Parties will be expected to comply with the requirements of this Order as fully and to the same extent as though no such motions had been filed.

2. All parties have a duty to assist the court in seeing that the directions of this order are followed.

3. Violations and failures to comply should be promptly brought to the court's attention for resolution.

4. Should a party or a party's attorney fail to appear at the pretrial conference or to comply with the directions set out in this order, the court may impose sanctions including, but not limited to, judgment of dismissal, default, or contempt.

DONE AND ORDERED in Chambers, Tallahassee, Leon County, Florida this 2 day of

Nov., 2004.


JANET E. FERRIS
Circuit Judge

COPIES FURNISHED TO:

Elizabeth A. Teegan, Esquire
Deputy General Counsel
Hartman Building, Suite 307
2012 Capital Circle, SE
Tallahassee, FL 32399-2189

J. Clifton Cox, Esquire
Assistant Attorney General
Office of the Attorney General
The Capitol - Tax Section
Tallahassee, FL 32399-1050

Barry Richard, Esquire
Greenberg Traurig, P.A.
Post Office Drawer 1838
Tallahassee, FL 32302

pto012573r.wpd