

\* Rev. 10/04

**PLEASE READ CAREFULLY**

**LEAD COUNSEL IS CHARGED WITH THE DUTY  
OF READING THIS ORDER WITHOUT DELAY  
AND WITH PERSONALLY RESPONDING TO ITS DICTATES.**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Equal Employment Opportunity	)	
Commission	)	CASE NO. 5:04CV1824
	)	
Plaintiff,	)	JUDGE DAVID D. DOWD, JR.
	)	
v.	)	
	)	
Carter-Jones Lumber Company	)	
	)	
Defendant.	)	
	)	
Gerald Price	)	CASE NO. 5:04CV2070
	)	
Plaintiff	)	
	)	
v.	)	<u>ORDER</u>
	)	
Carter Lumber Company, et al	)	<u>CASE MANAGEMENT CONFERENCE</u>
	)	<u>SCHEDULING ORDER</u>
Defendants.	)	
	)	

Case number 5:04CV2070 was transferred to this Court as related to 5:04CV1824.

To ensure the clarity of the record, the Court finds that consolidation is necessary. Case number 5:04CV2070 is CONSOLIDATED with this case for docketing purposes. Case number 5:04CV1824 shall be designated as the lead case. From this point forward, all filed documents must

contain both case numbers in the caption. The parties shall continue to file all documents electronically *in both cases.*

**DATE OF HEARING: December 8, 2004**

**LEAD COUNSEL AND PARTIES MUST BE PRESENT**

**UNLESS EXCUSED BY THE COURT UPON WRITTEN MOTION**

**ELECTRONIC FILING**

Counsel are advised that the Court hereby orders that all further documents, notices and orders in this matter be filed electronically rather than on paper, except as provided for in the Electronic Filing Policies and Procedures Manual, a copy of which accompanies this order. The Manual governs electronic filing in the Northern District of Ohio and also provides helpful information on system requirements and usage. All service of future pleadings, notices, and orders will be done electronically and not by regular mail.

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If it has not already been done, all counsel shall complete Attorney Registration Forms and return them to the Clerk of Court as soon as possible so that attorney user accounts can be established. A registration form can be found in the Policies and Procedures Manual. In addition, counsel can register online at:

[http://www.ohnd.uscourts.gov/Online\\_Forms/ECF\\_Attorney\\_Registration/ecf\\_attorney\\_registration.html](http://www.ohnd.uscourts.gov/Online_Forms/ECF_Attorney_Registration/ecf_attorney_registration.html)

As soon as accounts are established, counsel will be provided with user identification names and passwords which will permit access to the electronic filing system and which shall serve as signatures for any and all documents filed electronically.

Upon receipt of the identification names and passwords, counsel should verify their ability to file and/or retrieve documents electronically using the Court's test system. Test case numbers 97-5001 through 97-5025 have been established for this purpose. Counsel are encouraged to experiment extensively with the test system prior to filing or retrieving documents from the live system. Both the live and test systems can be accessed at:

<http://ecf.ohnd.uscourts.gov>

Counsel can choose to receive notice of filings through Netscape or an Internet Service provider. It is the responsibility of each counsel of record to set up his or her user account to receive e-mail notification (see instructions – Attachment # 1) and to check his or her e-mail box on a regular basis.

The Clerk's Office has established an Electronic Filing Help Desk at 1-800-355-8498 to answer questions and provide assistance should difficulties arise.

### **DIFFERENTIATED CASE MANAGEMENT**

This case is subject to the provisions of Differentiated Case Management (DCM) as generally set forth in the Local Rules of the Northern District of Ohio. The Court will evaluate this case in accordance with LR 16.2(a)(1) and assign it to one of the case management tracks described in LR 16.2(a)(2). At the Case Management Conference the Court will decide, after discussion with counsel,

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whether or not to impose any specific limitations on discovery. All counsel are expected to familiarize themselves with the Local Rules as well as with the Federal Rules of Civil Procedure.

**SCHEDULING OF CASE MANAGEMENT CONFERENCE**

All counsel and/or parties will take notice that the above-entitled action has been set for a Case Management Conference (“CMC”) on December 8, 2004, at 12:00 noon, before Judge David D. Dowd, Jr., Chambers, 4<sup>th</sup> Floor, 402 Federal Building--United States Courthouse, 2 South Main Street, Akron, Ohio.

**LR 16.3(b) requires the attendance of both parties and lead counsel.** “Parties” means either the named individuals or, in the case of a corporation or similar legal entity, that person who is most familiar with the actual facts of the case. “Party” does not mean in-house counsel or someone who merely has “settlement authority.” If the presence of a party or lead counsel will constitute an undue hardship, a written motion to excuse the presence of such person must be filed well in advance of the CMC.

**TRACK RECOMMENDATION**

Pursuant to LR 16.3(a), and subject to further discussion at the CMC, the Court recommends the following track:

<input type="checkbox"/> Expedited	<input checked="" type="checkbox"/> Standard	<input type="checkbox"/> Administrative
<input type="checkbox"/> Complex	<input type="checkbox"/> Mass Tort	<input type="checkbox"/> Reserved for CMC

**CONSENT TO JURISDICTION OF MAGISTRATE JUDGE**

Magistrate Judge Gallas has been assigned to assist in this case. The parties are encouraged to discuss and consider consenting to the jurisdiction of the Magistrate Judge.

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## **PREPARATION FOR CMC BY COUNSEL**

### **(Planning Conference under Fed. R. Civ. P. 26(f))**

The general agenda for the CMC is set by LR 16.3(b)(2). In all cases, including those exempted from initial disclosure by Fed.R.Civ.P. 26(a)(1)(E), counsel (or the party, if unrepresented) must confer prior to the Case Management Conference as required by Fed.R.Civ.P. 26(f).

The Rule 26(f) conference shall be completed by no later than November 17, 2004. Parties represented by counsel are not required to personally participate in this conference.

By December 1, 2004, the parties (through counsel or personally, if unrepresented) shall file a report on their discussion, including a proposed discovery plan, in a form substantially similar to Attachment # 2, signed by all counsel and/or unrepresented parties.

### **DISCLOSURES UNDER FED. R. CIV. P. 26(a)**

       1. This is an ERISA case (Employee Retirement Income Security Act of 1974) and, as such, is not subject to disclosures. See Fed. R. Civ. P. 26(a)(1)(E). Counsel shall instead familiarize themselves with the procedure set forth in Wilkins v. Baptist Healthcare System, Inc., 150 F.3d 609, 619 (6th Cir. 1998) (Gilman, J., concurring). This is the procedure that will be followed in all ERISA matters.

  X   2. The disclosures mandated by Fed. R. Civ. P. 26(a) (as amended 12/01/00) will all apply as set forth in that Rule.

Absent a showing of good cause, by November 24, 2004, the plaintiff must serve on opposing parties the initial disclosures required by Fed. R. Civ. P. 26(a)(1), and must certify such service in writing to the Court by the same date.

Absent a showing of good cause, by December 1, 2004, all other parties must serve on opposing parties the initial disclosures required by Fed. R. Civ. P. 26(a)(1), and must certify such service in writing to the Court by the same date.

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## **FORMAL DISCOVERY STAYED UNTIL CMC**

The moratorium on formal discovery prior to the Rule 26(f) conference, set forth in Fed. R. Civ. P. 26(d), is hereby extended until **after** the CMC. Therefore, prior to the CMC, no party or counsel shall conduct any formal discovery except as is necessary and appropriate to support or defend against any challenge to jurisdiction or claim for emergency, temporary, or preliminary relief. This moratorium in no way affects the disclosures required by Fed. R. Civ. P. 26(a).

## **FILING OF DISCOVERY MATERIALS**

### **(Fed. R. Civ. P. 5(d))**

Unless otherwise ordered by the Court, disclosures under Fed. R. Civ. P. 26(a)(1) or (2) and the following discovery requests shall not be filed with the Clerk's Office until they are used in the proceeding or this Court orders filing: (1) depositions; (2) interrogatories; (3) requests for documents or to permit entry upon land; and (4) requests for admission.

If a party intends to rely on deposition testimony in support of its position on a motion, the Court prefers the filing of the entire deposition rather than excerpts, unless the party truly believes that excerpts are sufficient, and with the proviso that any other party who believes the excerpts offered are not sufficient is free to file the entire deposition. In any event, discovery and disclosure material submitted in support of any party's position shall be filed at the same time as that party's memorandum setting forth its position.

## **DEPOSITIONS PRACTICE**

The Judges of the Northern District of Ohio have adopted LR 30.1 (as amended 9/23/02) which governs the taking of depositions. A copy of the rule is attached (See Attachment # 3). Counsel are expected to comply with the rule in its entirety.

## **OTHER DIRECTIVES**

In all cases in which it is anticipated that a party or parties will seek attorney's fees pursuant to statutory or case-law authority, such party shall file with the Court at or prior to the CMC a preliminary

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estimate and/or budget of the amount of fees and expenses anticipated to be the subject of any such claim. Such estimate shall include, but not be limited to, the following:

<u>Attorney's Fees</u>		<u>Costs</u>	
Preliminary Investigations & Filing of Complaint	\$ _____	Depositions	\$ _____
Procedural Motions Practice	\$ _____	Experts	\$ _____
Discovery	\$ _____	Witness Fees	\$ _____
Dispositive Motions Practice	\$ _____	Other	\$ _____
Settlement Negotiations	\$ _____		
Trial	\$ _____		
<b>TOTAL FEES</b>	<b>\$ _____</b>	<b>TOTAL COSTS</b>	<b>\$ _____</b>

**RESOLUTION PRIOR TO CMC**

In the event that this case is resolved prior to the CMC, counsel should submit a jointly signed stipulation of settlement or dismissal, or otherwise notify the Court that the same is forthcoming.

IT IS SO ORDERED.

November 16, 2004  
Date

/s/ David D. Dowd, Jr.  
David D. Dowd, Jr.  
U.S. District Judge

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