

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

In re FEDEX GROUND PACKAGE)	
SYSTEM, INC., EMPLOYMENT)	CAUSE NO. 3:05-MD-527 RM
PRACTICES LITIGATION)	(MDL-1700)
)	
)	THIS DOCUMENT RELATES TO
)	ALL CASES

SUPPLEMENTAL SCHEDULING ORDER

On October 24, 2005, this Court conducted an interim pretrial conference and on November 15, 2005, issued its initial scheduling order which established various deadlines. On November 28, 2005, this Court conducted a telephonic Rule 16(b) preliminary pretrial conference at which time it addressed the remaining deadlines and discovery limitations. Therefore, this Court now enters the following supplemental scheduling order governing the proceedings in this case.

I. AMENDMENTS TO THE INITIAL SCHEDULING ORDER

A. Motions to Remand

Any motion to remand shall be made no later than **December 15, 2005**. Due to the upcoming holiday season, response briefs shall be filed by **January 6, 2006**, and reply briefs shall be filed by **January 18, 2006**.

B. Fed. R. Civ. P. 12 Motions

Should any defendant decide to file a motion to dismiss any or all portions of a complaint or amended complaint to which defendants have not yet filed a responsive pleading, or move for judgment on the pleadings, such motions shall be filed by **February 8, 2006**.

II. CLASS CERTIFICATION

A. Non-Expert Discovery

The parties will have until **June 1, 2006**, to conduct non-expert discovery designed to create an evidentiary record upon which plaintiffs' class certification motions can be briefed and decided as to all cases pending in this MDL proceeding.

B. Expert Discovery

In accordance with Fed. R. Civ. P. 26(a)(1) and (b), and this Court's November 15, 2005 initial scheduling order, all parties shall disclose all experts and witnesses upon whom they will rely upon for the motions for class certification by **January 8, 2006**. In addition, Plaintiff shall serve their expert reports or affidavits upon which they rely in support of their class certification motions by **June 1, 2006**. Defendants shall have until **June 30, 2006**, to depose Plaintiffs' class certification experts.

Defendants have until **June 30, 2006**, to serve any expert reports or affidavits upon which they rely in opposing plaintiffs' class certification. Plaintiffs shall have until **August 1, 2006**, to depose Defendants' class certification experts.

C. Staging

Because of the large amount of labor that will be required to adequately address the issues pertinent to each case, the parties agree that the staggering of class certification is the most efficient way for the court to review the motions. Therefore, Plaintiffs shall file their motions to certify proposed classes in this MDL proceeding in three phases. Each phase shall be comprised, so near as mathematically possible, of 1/3 of the cases for which class certification will be sought. The first phase of motions shall be filed by **August 8, 2006**. The second

phase of motions shall be filed by **September 1, 2006**. The final phase of motions shall be filed by **September 22, 2006**. Plaintiffs shall identify to Defendants which cases will comprise each phase at least seven days in advance of filing their motion for class certification for that particular phase.

For each phase, Defendants shall have **45** days from Plaintiffs' deadline to file briefing setting forth their arguments in opposition to plaintiffs' motions, and the evidentiary basis thereof. Plaintiffs will then have **30** days thereafter to file any reply memoranda in support of their class certification motions.

For each brief, Plaintiffs shall be permitted **20** pages for a memorandum setting forth support for class certification in the cases pending in this MDL proceeding for which such certification is sought. Defendants' opposition shall be limited to **30** pages per brief. The reply memoranda shall be limited to **20** pages each and shall be confined to responding to arguments made in Defendants' opposition memoranda.

III. DISCOVERY

Discovery for purposes of class certification and discovery for purposes of the merits of Plaintiffs' claims will take place concurrently. Consequently, all discovery relating to independent contractor/employment status and summary judgment shall be completed by **August 1, 2006**.

A. Non-Testimonial Discovery

Prior to **February 15, 2006**, the parties will confine themselves to non-testimonial discovery (*e.g.*, document requests, interrogatories, requests for admissions).

Defendants' Co-Lead Counsel, on behalf of defendants in this proceeding, may serve on each plaintiff interrogatories (not exceeding **10** in number) and requests for admissions (not exceeding **5** in number, not including requests for document authentication or admissibility). Plaintiffs' Co-Lead Counsel may serve on each defendant interrogatories (not exceeding **10** in number) and requests for admissions (not exceeding **5** in number, not including requests for document authentication or admissibility), on behalf of each plaintiff.

The Court expects that in formulating discovery requests, the parties will take account of the discovery taken in previous cases and will avoid duplicative discovery.

B. Testimonial Discovery

Deposition notices for corporate designees will describe "with reasonable particularity the matters" on which the examination is requested. If more than one subject area is covered by any 30(b)(6) notice, each such subject area will count as one deposition for purposes of the limitations placed on depositions for the case, despite the fact that they are contained in one deposition notice. The witness produced to respond to the notice will have appropriate knowledge of the subject matter and be properly prepared to answer questions about that issue. If the witness produced does not have sufficient knowledge of the issue, regardless of the number of witnesses that must be produced to properly address the matter noticed, the deposition will be considered one deposition for purposes of the limitations on depositions.

Counsel for Plaintiffs are entitled to take **75** depositions. Defendants' Co-Lead Counsel shall, on behalf of all Defendants, be entitled to depose **each Named Plaintiff** (currently 148) and take an **additional 25** depositions. No more than **50** of Defendant's depositions may last the

full eight hours. Unless by agreement of counsel, the remaining depositions will be limited to four hours.

III. SUMMARY JUDGMENT/EXPERT WITNESSES

Summary judgment generally shall be divided into two phases: summary judgment or adjudication on issues relating to independent contractor/employment status and summary judgment or adjudication as to other issues. No other summary judgment motions may be filed without leave of Court.

A. Summary Judgment/Adjudication on Issues Relating to Independent Contractor/Employment Status

In accordance with Fed. R. Civ. P. 26(a)(1) and (b), and this Court's November 15, 2005 initial scheduling order, all parties shall disclose all experts and witnesses upon whom they will rely in the summary judgment phase of proceedings relating to independent contractor/employment status by **January 8, 2006**. Movants shall serve any expert reports or affidavits upon which they rely in that phase of proceedings no later than **June 1, 2006**. Opponents shall have until **June 30, 2006**, to depose such expert(s). Opponents shall serve any expert reports or affidavits upon which they rely in that phase of proceedings no later than **June 30, 2006**. Depositions of such experts must take place no later than **August 1, 2006**.

Movants shall have until **September 1, 2006**, to file motions for summary judgment or summary adjudication, including memoranda in support thereof. Opponents shall have until **October 16, 2006**, to file memoranda in opposition to such motions. Movants shall have until **November 15, 2006**, to file replies to the memoranda in opposition to such motions.

Memoranda in support of motions for summary judgment shall not exceed **30** pages. Memoranda in opposition to such motions shall not exceed **25** pages. Reply memoranda in

support of such motions shall not exceed **20** pages. Reply briefs shall be limited to arguments made in the opposition briefing.

B. Additional Summary Judgment Briefing

The parties shall meet and confer as to an appropriate schedule for summary judgment/summary adjudication motions on grounds other than employment status.

IV. NUMBERING OF DOCUMENTS

The parties shall develop and use a system for identifying, by unique number or symbol, each document produced or referred to during the course of litigation. Each producing party shall give each page of any document it produces a unique number, using a consistent numbering system that identifies the producing party. All reasonable efforts should be made to avoid having the same page assigned more than one identifying number except when there is a need to account for different copies of the same document or page (for example, because of special notations being placed on the document). With respect to documents previously produced in *Estrada*, they shall be renumbered for purposes of this litigation, so long as the number associated with their initial production remains visible.

In the event that documents produced by persons or entities who are not parties to this action are not, when produced, identified by a unique numbering system, the party at whose request production was made shall be responsible for numbering the documents in accordance with the above terms.

V. DOCUMENT AUTHENTICATION

Any party that produces documents and records in discovery that were either authored by

that party or are shown on the document as having been received by that party shall, by doing so, admit that such documents and records are authentic, unless a party otherwise so specifies on a document-by-document basis, within 30 days of such production. However, such admission shall not be binding on another party.

VII. OTHER MATTERS

A. Rules Applicable to Discovery

1. Local Rules

This Court's local rules shall control this action. However, if any provision in this order is contrary to the local rules, this Order takes precedence.

2. Pending Requests

All pending discovery requests in any of the constituent actions to this proceeding shall be deemed withdrawn without prejudice to being re-served in accordance with the provisions of this Order.

B. Rules Applicable to Depositions

Plaintiffs' Co-Lead Counsel and Defendants' Co-Lead Counsel (or their designees) shall attempt to establish by mutual agreement a schedule for depositions that reflects a sequencing that is consistent with (a) the availability of documents from among those produced by the parties and third parties, (b) the objective of avoiding the need to subject any person to repeated depositions, and (c) efficiency. Disputes concerning the timing and scheduling of depositions may be presented to the Court. The Court expects that the use of formal notices of depositions or subpoenas with respect to party witnesses will be unnecessary in this case – that is, party witnesses will be produced in accordance with whatever schedule is developed. The parties shall

coordinate the scheduling of third-party witnesses. Absent the parties' agreement to the contrary, or for good cause shown to the Court, depositions shall take place in the city where the deponent resides.

The court anticipates that no witness will be deposed on the same subject more than once in this litigation. If a party seeks to take a second deposition of a witness, it shall provide the opposing party its basis for an exception to the rule along with a list of the subject matters as to which interrogation is sought. Second depositions on new subject matter shall be permitted by consent of the parties or upon order of this court authorizing such deposition based upon a showing of good cause. An individual designated and tendered by the defendants in response to a Rule 30(b)(6) deposition notice may be re-deposed at a later time upon notice by plaintiffs on new subject matter, and such deposition may proceed without plaintiffs obtaining leave of court. However, such deposition would count against the deposition limits set forth above.

C. Rules Concerning Privilege Issues

1. Generally

A party who, relying on any privilege or the work product doctrine, does not produce all documents that would have been produced but for the claim of privilege or work-product, must state that it is invoking a privilege. A party who invokes a privilege must specify which privilege or doctrine it is invoking.

2. Exempted Documents

Documents that were created or generated subsequent to the filing of the constituent actions to this proceeding, or the filing of other actions asserting allegations similar to those asserted in the constituent actions, and which concern or relate to the defense of a specific

lawsuit and are privileged as communications or work product relating to these actions, need not be identified under this section.

D. Alternative Dispute Resolution

Prior to briefing on summary judgment issues, the parties shall confer with the court as to the appropriateness of alternative dispute resolution. Whether the deadlines of this Case Management Order should be modified to allow for alternative dispute resolution will be addressed at the conference with counsel.

SO ORDERED.

Dated this 29th Day of November, 2005.

s/Christopher A. Nuechterlein
Christopher A. Nuechterlein
United States Magistrate Judge