

**THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

**CIVIL JUSTICE REFORM ACT OF 1990
EXPENSE AND DELAY
REDUCTION PLAN**



Hon. Sylvia H. Rambo, Chief Judge
Hon. Edwin M. Kosik
Hon. James F. McClure, Jr.
Hon. Thomas I. Vanaskie
Hon. William J. Nealon
Hon. Malcolm Muir
Hon. Richard P. Conaboy
Hon. William W. Caldwell
Lance S. Wilson, Clerk of Court

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Introduction

The United States District Court for the Middle District of Pennsylvania appointed a 16 member Advisory Group in March, 1991 pursuant to Title 28, United States Code, Section 478. The Advisory Group is broadly representative of the District including in membership two senior Judges of the Court, the United States Attorney for this district, a Judge from the Luzerne County Court of Common Pleas, the Vice President of claims for CNA Insurance Company, a Senior Deputy Attorney General for the Commonwealth of Pennsylvania, the Director of Corporate Planning for the AMP Corporation, and other active practitioners with extensive knowledge of the civil and criminal justice system of the District. Under the guidance of Chairman Terry W. Light, the Group met regularly throughout the past two years and submitted to the Court in December, 1992 its Report with 16 recommendations to reduce excessive civil cost and delay in the Middle District of Pennsylvania.¹ The recommendations do not propose significant changes, but suggest a slight "fine-tuning" of an already efficient system.

The Court met late in 1992 to address the 16 recommendations set forth by the Advisory Group. Not all recommendations were approved by the Court, and as a result are not included in the Plan. Specifically, the Court rejected the Advisory Group's proposal to require temporary restraining orders

¹ See, the "Report of the Advisory Group of the United States District Court for the Middle District of Pennsylvania Appointed Under the Civil Justice Reform Act of 1990", December 1992.

(TRO) filed by prisoners with counsel be assigned in all instances to a Judge rather than a Magistrate Judge. Local Rule 72.4 currently states that a TRO may be assigned to a Magistrate Judge for submission of a report and recommendation. The Court feels that Local Rule 72.4 speeds the processing of TRO's and should not be modified. The Court approved the remaining 15 recommendations, recognizing that excessive cost and delay in civil litigation inhibits justice, negatively impacts the economy, and presents challenges to American companies competing in a world market.²

The United States District Court for the Middle District of Pennsylvania, after considering (1) the recommendations of the Civil Justice Advisory Group appointed pursuant to Title 28, United States Code, Section 478; (2) the principles and guidelines of litigation management and cost and delay reduction listed in Title 28, United States Code, Section 473(a); and (3) the litigation management and cost and delay reduction techniques listed in Title 28, United States Code, Section 473(b), and after consulting with the Civil Justice Reform Act Advisory Group in reference to Title 28, United States Code, Section 473(a) and (b), adopts the following Civil Justice Expense and Delay Reduction Plan, pursuant to Title 28, United States Code, Section 471, et seq. With the exception of Health and Human Service cases, prisoner, pro se parties and United States Government loan cases, the Plan shall apply to all civil cases filed on or after

² See, the "President's Council on Competitiveness, Agenda for Civil Justice Reform, 1991".

January 1, 1994, and may, at the discretion of the individual judicial officer, apply to pending cases.

1. **Case Management.** In every civil case the Court requires completion of a joint case management plan for discussion at an initial case management conference.³ Lead counsel shall meet and confer in person regarding the matters set forth on the Court's case management form. At least five days prior to the initial case management conference, counsel shall file a concise case management statement consisting of the completed case management plan.

Within 120 days of the filing of the action in this court, or on the first date thereafter available on the judge's calendar, lead trial counsel shall attend an initial case management conference to arrange differential treatment of the case based on the case type and its facts. Accordingly, the case shall be placed on an appropriate case management track:

1.1. **Fast Track** - The Court issues a standard order referring the case to a Magistrate Judge for recommendations. The order sets forth standard time-frames conducive to the characteristics of the case, setting a trial date goal or disposition of not more than six months from the filing of the action in this court.⁴

³. See, Appendix A for a copy of the case management plan.

⁴. While the CJRA Plan does not apply to Health and Human Service cases, prisoner, pro se parties and United States Government loan cases, the Court anticipates that the majority of fast track cases will consist of procedural-type cases which are not subject to a case management plan. Although, the Court at any time prior or subsequent to completion of the case management statement may consider assigning a civil case to the "fast track".

1.2. **Expedited Track** - The Court issues a scheduling order setting a trial date goal or disposition of not more than eight months from the filing of the action in this court.

1.3. **Standard Track** - The Court issues a scheduling order setting a trial date goal or disposition of not more than fifteen months from the filing of the action in this court.

1.4. **Complex Track** - The Court issues a scheduling order setting a trial date goal or disposition of not more than two years from the filing of the action in this court.

At the initial case management conference the Court will specifically refer to the case management statement to: identify, at least tentatively, the principal factual and legal issues in dispute; consider referring the case to an alternative dispute resolution program; determine whether all parties consent to jurisdiction by a magistrate judge under 28 U.S.C. §636(c); review the parties' compliance with their disclosure obligations and consider whether to order additional disclosures; determine whether to order early filing of any motions that might significantly affect the scope of discovery or other aspects of the litigation; determine the plan for at least the first stage of discovery and impose limitations on each discovery tool and, if appropriate, on subject areas, types of witnesses, and/or time periods to which discovery should be confined; establish

individuals with binding settlement authority; and project a trial date goal.

The Court shall issue a scheduling order subsequent to the case management conference which sets forth or confirms the agreed upon scheduling, discovery, and case management elements.⁵

⁵. See, Appendix B for a copy of the scheduling/case management order.

2. **Alternative Dispute Resolution.** The Court shall adopt an array of alternatives to trial which will include summary jury trials, a settlement officer program, and mediation. Each District Judge shall encourage the use of Alternative Dispute Resolution Programs. In regard to adopting a program of arbitration, the Court directs the CJRA Advisory Group to continue to review arbitration as part of an annual assessment of the civil and criminal dockets pursuant to Title 28, United States Code, Section 475. The Court will consider implementing an arbitration program upon a finding that the caseload of the Middle District warrants such a program, providing that the authorization and funding is available from Congress. The Court shall make available information regarding the ADR programs via the informational pamphlet described in Section 6 of the CJRA Plan.

2.1 **Summary Jury Trials.** Counsel present their case to a jury which returns with an advisory, non-binding verdict. This program is presently in practice in the Middle District and is utilized regularly by Judge Muir. A settlement rate of 81% was experienced in Judge Muir's courtroom as of June 1, 1994, by which date forty-three out of fifty three cases tried to summary juries settled.

The summary jury trial occurs as the last step before an actual jury trial. The primary goal of the summary jury trial is to settle the case.

The process also provides litigants with the opportunity to have their cases assessed by a jury. A secondary goal of the summary jury trial is to provide litigants with their "day in court."

One of the more interesting features of the summary jury trial is that the Court may allow counsel to question the jurors after their verdict to allow counsel and litigants to understand better the verdict and the jury's reasoning.

Other program features which may vary from case to case include:

- ▶ Limiting the amount of time counsel may have to present their cases.
- ▶ Restricting live and/or video taped testimony.

2.2 Mediation. Litigants and counsel meet with an outside neutral attorney who has received formal training in mediation techniques. Any attorney who wants to serve as a mediator must complete the formal training program in mediation techniques before serving as a mediator. The mandatory training of the mediator is a distinguishing feature of the program.

The mediation session is usually most effective after the parties have engaged in or have nearly completed the discovery process. The timing results in the mediation session occurring several months after the filing of the answer.

The primary goal of the mediation program is the settlement of the case. Secondary goals of the mediation program include but are not limited to the following:

1. Improve communications and cooperation among counsel and litigants.
2. Identify any facts upon which the parties may agree.
3. Narrow and isolate dispositive issues.
4. Explore the interests and needs underlying the stated legal position of all parties.
5. Have the parties think creatively about ways to resolve their disputes.
6. Increase the chances of a later settlement.

The services of the mediator shall be provided pro bono. A mediator shall not be called upon to serve more than twice in a calendar year without prior approval of the mediator.

Referral of a case to a mediator is at the discretion of the Court. Parties may request referral or the assigned judge may recommend mediation to counsel. Upon referral, the judge's office selects a mediator from the list of certified mediators for the Middle District.

Other program features include:

- ▶ Counsel and parties with settlement authority must attend the mediation session, unless excused by the mediator for good cause shown and then must be available by phone.
- ▶ The mediation session is conducted in a neutral setting.

A formal training program for the mediators could be developed with a local law school and/or the Pennsylvania Bar Association. The training program would be mandatory and required before placing an attorney on the list of available mediators for the Middle District.

A continuing education program would also be desirable under which the mediators would continue to attend an annual training session on mediation techniques. Completion of this continuing education program would be a requirement for attorneys to remain on the list of mediators.

The actual length and content of the formal training program and the continuing education program remain to be determined.

2.3 Settlement Officer Program. Litigants and counsel meet with either a Senior Judge, a Magistrate Judge or a neutral evaluator appointed by the assigned trial judge for the purpose of discussing settlement. The assigned trial judge decides who the settlement officer will be on a case by case basis.

Referrals to a Senior Judge as a settlement officer would more frequently occur in non-jury cases and after the Middle District has a full complement of District Judges.

In the year 1995, it is envisioned that each location will have the following number of judicial officers:

<u>Scranton</u>		<u>Harrisburg</u>		<u>Williamsport</u>	
District Judges	= 3	District Judges	= 2	District Judges	= 1
Senior Judges	= 2	Senior Judges	= 1	Senior Judges	= 1
Magistrate Judges	= 2	Magistrate Judges	= 1	Part Time M.J.	= 1

The availability of four Senior Judges, with at least one in each location, allows for the flexibility of using a Senior Judge as a settlement officer for complex or specialty type cases.

Referrals to a Magistrate Judge for the purpose to preside as a settlement officer is an option presently available to the Middle District. The use of a Magistrate Judge in this capacity is assumed to be derived from the general authority of the Magistrate Act and of the district Court itself. The Judicial Conference Committee on the Administration of the Magistrate System suggests that such referrals be made pursuant to a local rule.

Referrals to a neutral evaluator are a type of referral available under the settlement officer program. The neutral evaluator is normally an attorney of the local bar or other expert in a particular field whom the assigned judge, with concurrence of all parties, appoints to serve as the settlement officer.

The primary goal of the settlement officer program is settlement. The settlement officer preferably intervenes early in the case process, thereby assuring that if a settlement is reached, the litigants avoid the substantial costs of full discovery and trial.

Secondary goals of the settlement officer program include but are not limited to the following:

1. Improve communications and cooperation among counsel and litigants.
2. Promote voluntary exchange of information.
3. Identify any facts upon which parties may agree.
4. Narrow and isolate dispositive issues.
5. Probe the strengths and weaknesses of the case from all sides.
6. Increase the chances of a settlement at a later date.

The referral of a case to a Senior Judge or Magistrate Judge optimizes the respect which counsel and litigants have for a judicial officer. This referral allows for an improved evolution of realistic appraisals and settlements.

The services of the Senior Judge and Magistrate Judge as a settlement officer are provided at no cost to the litigants. The service of the neutral evaluator is provided pro bono unless a fee for the neutral evaluator has been discussed and resolved with all the parties by the assigned trial judge before the appointment of the neutral evaluator.

Other program features include:

- ▶ Persons with settlement authority must attend, unless excused by the settlement officer for good cause shown, and then must be available by phone for the settlement conference.
- ▶ The settlement conference is conducted in a neutral setting, ideally in the chambers of the settlement officer or a neutral location chosen by the neutral evaluator.
- ▶ Parties may be required to submit a written evaluation before the conference.
- ▶ Settlement officers may employ the technique of "shuttle diplomacy" to reach a desired settlement.
- ▶ The Court may require the settlement officer to prepare a written report and recommendation for the assigned judge.

The experience that a Senior Judge provides to this type of program is unsurpassed and is likely the strongest feature of the program. The experience of the senior judges eradicates the need for their training. This experience will assist in training other settlement officers.

Training of the Magistrate Judges in the techniques of "shuttle diplomacy" and mediation would enhance their effectiveness in the settlement of cases.

The appointment of a neutral evaluator as a settlement officer is usually a result of the assigned judge and parties recognizing that the individual chosen as the neutral evaluator has some special expertise or training on the particular subject matter of the case. Therefore, it is this expertise, and not the settlement skills of the

neutral evaluator that is important for the settlement officer and no structured or formal training is envisioned for the neutral evaluator.

3. **Code of Professional Conduct.** The Court shall adopt a code of professional conduct for the District to improve lawyer collegiality and civility. The Clerk of Court shall incorporate the code of professional conduct into the general and special admissions packet for attorneys applying for practice in the District.⁶ The Code of Professional Conduct shall be published in various law journals and periodicals, as well as sent to attorneys upon a filing of a complaint in federal court. The copy sent to attorneys when a complaint is filed will not include a signature line.

The Court shall establish local training programs that facilitate bench-bar interaction through seminars. The goal of the programs is to enhance collegiality and civility in the District.

4. **CJRA Positions in the Clerk's Office.** The two Civil Justice Reform Act positions, originally created to assist the Advisory Group in the preparation of its report and the Court in developing its expense and delay reduction plan and upholding the requirements of the Act, shall perform the following ongoing functions in support of the Act. The continuance of these

⁶ See Appendix C for a copy of the Code of Professional Conduct.

positions is necessary for the Court to fully comply with the ongoing requirements of the Act.

4.1. Manage the implementation of the District's CJRA Plan including the adoption of a program for alternative dispute resolution, the use of common case management practices, and establishing a differential case management system.

4.2. Investigate and respond to inquiries by attorneys, litigants or the court regarding the status of the CJRA Recommendations.

4.3. Inquire into the status of all cases pending for more than three years and all motions awaiting decision for more than six months including a review of the docket.

4.4. Coordinate with the Circuit Executive's Office quarterly reporting of six month pending motions.

4.5. Administer and evaluate semi-annually the effectiveness of the District's program for alternative dispute resolution including Mediation, Summary Jury Trials, Arbitration, and a Settlement Officer Program proposed in Section 2 of the CJRA Plan.

4.6. Administer and evaluate semi-annually the effectiveness of the District's CJRA case management program including the adoption of a DCM, use of a Case Management Form, and Common Scheduling Practices proposed in Section 1 of the CJRA Plan.

4.7. Serve as an ombudsman to facilitate the implementation and success of the District's CJRA expense and delay reduction plan to include: (1) serving as liaison between members of the bar or litigants; (2) responding to requests for information from litigants; (3) educating the Court, the bar, and public in regard to the CJRA plan and its impact on federal practice.

4.8. Coordinate the annual assessment required by 28 U.S.C. § 475 by providing the Court and the Advisory Group with a comprehensive review of the civil and criminal dockets and a report on compliance with the District's expense and delay reduction plan.

4.9. Support the CJRA Advisory Group to (1) schedule meetings and distribute materials; (2) attend meetings; (3) disseminate information to Advisory Group members; (4) conduct research and studies at the direction of the Advisory Group or Clerk of Court; and (5) draft meeting minutes.

4.10. Coordinate the annual CJRA Bench/Bar seminar as proposed in Section 3 of the CJRA Plan.

4.11. Act as Project Manager for the CJRA Rand Corporation Time Study including (1) acting as liaison among the RAND Corporation, Chambers, and the Clerk's Office; and (2) managing the compilation of data and time study reports for submission to the Rand Corporation and the Federal Judicial Center.

4.12. Perform such other functions as the Clerk of Court deems appropriate in furtherance of the CJRA's objectives.

5. **Discovery.** The Court shall modify Local Rule 26.7 to require the certificate of a good faith effort to be filed at the time of the motion.

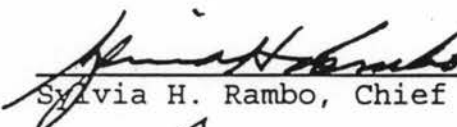
6. **Litigant Education.** The Court shall disseminate to the Bar or public basic case processing information.

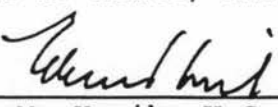
7. **Legislative Impact.** The Court agrees with the Advisory Group's finding that Congress must recognize and acknowledge the impact of legislation on judicial discretion and on cost and delay separate and apart from the efficacy of the courts. The Court advocates that Congress review legislation prior to enactment to study its impact in regard to increased court caseloads and changes in judicial discretion. Such a study should reflect the legislative impact by district.

Conclusion

The Court adopts this Plan in recognition of its responsibility to provide proper and timely judicial relief for aggrieved parties. The Court requests that litigants and their attorneys share in this responsibility by embracing the principles and techniques for enhancing justice prescribed in this CJRA Plan. The Plan is hereby ADOPTED.

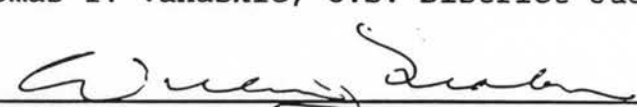
So ORDERED this 9th day of October, 1994.

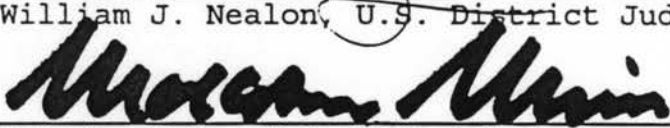

Sylvia H. Rambo, Chief U.S. District Judge

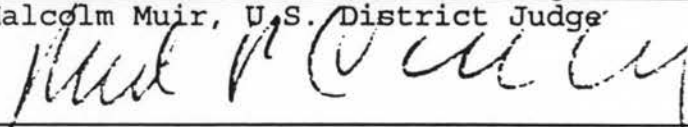

Edwin M. Kosik, U.S. District Judge


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William J. Nealon, U.S. District Judge


Malcolm Muir, U.S. District Judge


Richard P. Conaboy, U.S. District Judge


William W. Caldwell, U.S. District Judge

APPENDIX A

Attorneys for Plaintiff

Attorneys for Defendant

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

) CASE NO.
)
)
)
)
) JUDGE _____
)
)
)
)

JOINT CASE MANAGEMENT PLAN

Instructions: In many cases there will be more parties in the action than there are spaces provided in this form. Each party shall provide all requested information. If the space on this form is not sufficient, the form should be retyped or additional pages attached.

No party may submit a separate Case Management Plan. Disagreements among parties with respect to any of the matters below shall be set forth in the appropriate section.

Having complied with the meet and confer requirements set forth in the LOCAL RULES, or with any orders specifically modifying their application in the above-captioned matter, the parties hereby submit the following Joint Case Management Plan.

1. Principal Issues

1.1 Separately for each party, please give a statement summarizing this case:
By plaintiff(s):

By defendant(s):

1.2 The facts the parties dispute are as follows:

agree upon are as follows:

1.3 The legal issues the parties dispute are as follows:

agree upon are as follows:

1.4 Identify any unresolved issues as to service of process, personal jurisdiction, subject matter jurisdiction, or venue:

1.5 Identify any named parties that have not yet been served:

1.6 Identify any additional parties that:

plaintiff(s) intends to join:

defendant(s) intends to join:

1.7 Identify any additional claims that:

plaintiff(s) intends to add:

defendant(s) intends to add:

2.0 Disclosures

The undersigned counsel certify that they have made the initial disclosures required by Federal Rule of Civil Procedure 26(a)(1) or that they will do so within the time provided by that rule.

2.1 Separately for each party, list by name and title/position each person whose identity has been disclosed.

Disclosed by _____:

<u>Name</u>	<u>Title/Position</u>
_____	_____
_____	_____
_____	_____
_____	_____

Disclosed by _____:

<u>Name</u>	<u>Title/Position</u>
_____	_____
_____	_____
_____	_____
_____	_____

3.0 Early Motions

Identify any motion(s) whose early resolution would likely have a significant effect either on the scope of discovery or other aspects of the litigation:

Nature of Motion

Moving Party

Anticipated Filing Date

4.0 Discovery

4.1 Briefly describe any discovery that has been completed or is in progress:

By plaintiff(s):

By defendant(s):

4.2 Describe any discovery that all parties agree should be conducted, indicating for each discovery undertaking its purpose or what kinds of information will be developed through it (e.g., "plaintiff will depose Mr. Jones, defendant's controller, to learn what defendant's revenue recognition policies were and how they were applied to the kinds of contracts in this case"):

4.3 Describe any discovery that one or more parties want(s) to conduct but to which another party objects, indicating for each such discovery undertaking its purpose or what kinds of information would be developed through it:

4.4 Identify any subject area limitations on discovery that one or more parties would like imposed, at the first stage of or throughout the litigation:

4.5 For each of the following discovery tools, recommend the per-party or per-side limitation (specify a number) that should be fixed, subject to later modification by stipulation or court order on an appropriate showing (where the parties cannot agree, set forth separately the limits recommended by plaintiff(s) and by defendant(s)):

4.5.1 depositions (excluding experts) to be taken by:

plaintiff(s): _____ defendant(s): _____

4.5.2 interrogatories to be served by:

plaintiff(s): _____ defendant(s): _____

4.5.3 document production requests to be served by:

plaintiff(s): _____ defendant(s): _____

4.5.4 requests for admission to be served by:

plaintiff(s): _____ defendant(s): _____

4.6 Discovery of Electronically Stored Information

Counsel certify that they have conferred about the matters addressed in M.D. Pa LR 26.1 and that they are in agreement about how those matters will be addressed in discovery.

Counsel certify that they have conferred about the matters addressed in M.D. Pa. LR 26.1 and that they are in agreement about how those matters will be addressed in discovery with the following exceptions:

5.0 Protective Order

5.1 If entry of a protective order is sought, attach to this statement a copy of the proposed order. Include a statement justifying the propriety of such a protective order under existing Third Circuit precedent.

5.2 If there is a dispute about whether a protective order should be entered, or about certain terms of the proposed order, briefly summarize each party's position below:

6.0 Scheduling

6.1 Final date for joining additional parties:

_____ Plaintiff(s)

_____ Defendants(s)

6.2 Final date for amending pleadings:

_____ Plaintiff(s)

_____ Defendants(s)

- 6.3 All fact discovery commenced in time to be completed by:

- 6.4 All potentially dispositive motions should be filed by: _____
- 6.5 Reports from retained experts due:
from plaintiff(s) by _____
from defendant(s) by _____
- 6.6 Supplementations due _____
- 6.7 All expert discovery commenced in time to be completed by _____
- 6.8 This case may be appropriate for trial in approximately:
__ 240 Days from the filing of the action in this court
__ 365 Days from the filing of the action in this court
__ Days from the filing of the action in this court
- 6.9 Suggested Date for the final Pretrial Conference:
_____ (month/year)
- 6.10 Trial
- 6.10.1 Suggested Date for Trial:
_____ (month/year)

7.0 Certification of Settlement Authority (All Parties Shall Complete the Certification)

I hereby certify that the following individual(s) have settlement authority.

Name

Title

Address

()__ - __ Daytime Telephone

Name

Title

Address

()__ - __ Daytime Telephone

8.0 Alternative Dispute Resolution ("ADR")

8.1 Identify any ADR procedure to which this case already has been assigned or which the parties have agreed to use.

ADR procedure_____

Date ADR to be commenced_____

Date ADR to be completed_____

8.2 If the parties have been unable to agree on an ADR procedure, but one or more parties believes that the case is appropriate for such a procedure, identify the party or parties that recommend ADR and the specific ADR process recommended:

8.3 If all parties share the view that no ADR procedure should be used in this case, set forth the basis for that view:

9.0 Consent to Jurisdiction by a Magistrate Judge

Indicate whether all parties agree, pursuant to 28 U.S.C. § 636(c)(1), to have a magistrate judge preside as the judge of the case with appeal lying to the United States Court of Appeals for the Third Circuit:

All parties agree to jurisdiction by a magistrate judge of this court: __ Y __ N.

If parties agree to proceed before a magistrate judge, please indicate below which location is desired for the proceedings:

___ Scranton/Wilkes-Barre

___ Harrisburg

10.0 Other Matters

Make any other suggestions for the case development process, settlement, or trial that may be useful or necessary to the efficient and just resolution of the dispute.

11.0 Identification of Counsel

Counsel shall be registered users of the court's Electronic Case Files System (ECF) and shall file documents electronically in accordance with the Local Rules of Court and the Standing Order RE: Electronic Case Filing Policies and Procedures. Electronic filing is required unless good cause is shown to the Chief Judge why counsel cannot comply with this policy. Any request for waiver of electronic filing must be filed with the Clerk's Office prior to the case management conference. The Chief Judge may grant or deny such request.

Identify by name, address, and telephone number lead counsel for each party. Also please indicate ECF User status below.

Dated:

- _____
Attorney(s) for Plaintiff(s)
- ECF User(s)
 - Waiver requested (as separate document)
 - Fed.R.Civ.P.7.1 (statement filed if necessary)*

Dated:

- _____
Attorneys(s) for Defendant(s)
- ECF User(s)
 - Waiver requested (as separate document)
 - Fed.R.Civ.P.7.1 (statement filed if necessary)*

* Fed.R.Civ.P.7.1 requires a nongovernmental corporate party to file a statement with the initial pleading, first entry of appearance, etc., that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock, or state there is no such corporation.