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By Telecopier
January 20, 2011

Hon. Frank Maas
United States Magistrate Judge
Southern District of New York
Daniel P. Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

While I recognize that
some fine-tuning may be
necessary as discovery proceeds,
I agree to the defendants'
proposal. F. Maas, USMJ, 1/20/11

Re: *In re Terrorist Attacks on September 11, 2001*, 03 MDL 1570 (GBD/FM)

Dear Judge Maas:

The Defendants' Executive Committee, on behalf of the defendants who are currently subject to discovery ("Defendants"), and the Plaintiffs' Executive Committees, respectfully submit their proposals with respect to the briefing schedule for discovery disputes, and their responses to the other side's proposal.

Defendants' Proposal

Pursuant to Paragraph 5 of the Dec. 10, 2010 Order, Defendants propose the following three-week schedule for briefing of discovery disputes:

- (1) Three weeks (21 calendar days) in advance of the next status conference: Any party seeking to compel discovery shall provide the other parties with its draft letter application to the Court setting forth the nature of the discovery dispute. If the parties have not already conferred about the discovery dispute before the letter application was submitted to the other side, the parties shall do so before the party opposing the discovery can submit its written response to the party seeking to compel discovery.
- (2) Two weeks (14 calendar days) in advance of the next status conference: The party opposing discovery will submit its written response to the party seeking to compel discovery.
- (3) Five business days in advance of the next status conference: The moving party may submit an optional reply brief, and both parties will provide the Court with their submissions.

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The parties may stipulate to a shorter schedule if needed to resolve a pending discovery dispute at the next status conference.

Plaintiffs' Response to the Position of the Defendants' Executive Committee

Plaintiffs believe that a presumptive two week briefing schedule for discovery disputes is appropriate, as it would avoid unnecessary delays in presenting minor discovery disputes to the Court, and could be modified by consent relative to briefing of more complex matters. Plaintiffs have no strenuous objection to the three week schedule proposed by defendants, but do believe adoption of that process will ultimately require modification of the present discovery deadlines, something that likely will be required in any event. In this regard, plaintiffs note that the defendants have interposed objections to virtually every discovery request plaintiffs have served to this point in the litigation, and the progress of discovery is as a consequence directly dependent upon the efficiency of the system for presenting and resolving discovery disputes.

Given the requirement that the parties meet and confer before raising any discovery dispute, a process that often takes several weeks due to the schedules of the attorneys, the defendants' proposed briefing schedule would as a practical matter render it impossible to present any discovery dispute to the Court for resolution in less than a month. To the extent the Court deems argument necessary relative to the dispute in question, the Court and parties would then need to identify a date for a conference concerning the dispute, and in certain cases, the Court may need additional time after the conference to issue its decision on the dispute. For these reasons, plaintiffs believe that the defendants' proposal on briefing of discovery disputes is inherently inconsistent with the aggressive discovery schedule they sought, and which was adopted by the Court.

Plaintiffs' Proposal

In accordance with paragraph 5 of the December 10, 2010 Order, plaintiffs believe a briefing schedule that will allow briefing on discovery disputes to be completed within two weeks is consistent with the aggressive overall schedule for discovery. Consistent with that view, plaintiffs submit the following proposal for briefing of discovery disputes:

1. Any party seeking affirmative relief concerning a discovery matter shall provide its letter brief to the opposing side at least 14 calendar days in advance of the conference at which they seek to have the matter heard, or in the absence of a set conference date, at least 7 days prior to submission to the Court.
2. The party opposing the motion will serve its response within 7 calendar days after receipt of the movant's letter brief.

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3. The letter motion and response will be submitted to the Court on the date the opposing party is required to serve its response in accordance with this schedule.
4. The moving party may thereafter submit an optional reply brief to the Court, not to exceed 3 pages, at least 3 business days in advance of the conference at which the dispute is to be heard.

Defendants' Response to the Position of the Plaintiffs' Executive Committees

Defendants do not believe that a two week briefing schedule for all discovery disputes would allow sufficient time for all parties to address the complex factual and legal issues that may be involved with a discovery dispute, including in a reply brief. In contrast, defendants' proposal allows the parties to stipulate to a shorter schedule for less-complex discovery disputes, but the parties should continue to have the ability to provide this Court with full briefing in advance of the status conference. Further, plaintiffs' proposal would only allow two or three days for a reply brief, which would be submitted less than five days in advance of the status conference, contrary to this Court's express request that the briefing schedule provide for the completion of briefing at least five days in advance of the status conference.

Respectfully submitted,

Alan R. Kabat

Alan R. Kabat
Defendants' Executive Committee

Sean Carter /AK

Sean Carter
Plaintiffs' Executive Committees

cc: Judge George B. Daniels (via federal express)
All MDL 1570 counsel of record (via email)