

any summary exhibits included in Tier 1. The parties may cite exhibits in either Tier in their proposed Findings of Fact and Conclusions of Law.

Exhibits to which there are no objections or as to which objections have been overruled are deemed to be in evidence without need of any supporting witness. The purpose of the pretrial conference is to rule on any outstanding objections, after which the exhibits will be in evidence.

Exhibits may be shown to witnesses, and cited and quoted in proposed Findings of Fact and Conclusions of Law and any closing argument.

When the exhibits are provided to the Court, the parties should include exhibit lists that identify each exhibit by number, date, and either the title or an identifying description of the document. The list should also indicate any exhibits to which the other side objects and the grounds for that objection. Each side must provide one set of paper copies of the exhibits in binders, and two sets on disks, hyperlinked to the exhibit list.

Deposition excerpts to which there are no objections or as to which objections have been overruled are to be used as substantive evidence in lieu of live testimony.

Deposition designations should be provided in mini-script format, with contiguous testimony provided contiguously, and not broken up into individual parties' submissions. Counsel may bracket testimony with a highlighter to indicate what each side is proffering.

Admitted excerpts will not be read in court but will be reviewed by the Court. Any deposition excerpts admitted can be cited in the proposed Findings of Fact and Conclusions of Law and quoted in any final argument.

As with the exhibits, each side should deliver one set of binders containing paper copies of the deposition excerpts, as well as two disks containing a list of deposition excerpts hyperlinked to the material.

The binders of the paper copies of the deposition excerpts should include a table of contents that lists the witnesses' names and affiliations and states whether their testimony relates to the national accounts issue, the large employer accounts issue, and/or the monopsony issue.

Stipulations will be treated as admitted evidence without need of a witness or exhibit to support or explain. There will be no need to read stipulations in open court. Stipulations may be cited and quoted in proposed Findings of Fact and Conclusions of Law and any closing argument.

Motions to file exhibits or deposition excerpts under seal: November 4

Written Opening Statements: Written opening statements will not be submitted.

Pretrial Briefs: November 10

Each side may submit one brief, not to exceed 12 pages, setting forth the applicable legal standard to be applied and the party's legal theories. If the parties wish to direct the Court's attention to other U.S. District Court for the District of Columbia decisions, they may provide a list of up to 5 citations; no further explanation of the content of the opinions will be necessary. Note that footnotes, like the text, must be in 12 point font.

Pretrial Conference: November 14

At the pretrial conference, the parties should be prepared to provide the Court with a list of lay and expert witnesses who will be called to testify on the national accounts issue and the estimated length of their testimony and a similar list for the other issues.

Written Direct Testimony: Written direct testimony will not be utilized except that the parties shall provide the introductory background information (address, educational background, employment history, current employment, etc.) for each lay witness, and for each expert witness whose qualifications to testify as an expert are not in dispute, in writing, using a question and answer format. A resume, C.V. or website bio may be attached. Both parties will provide the written background direct for witnesses testifying as to the national account issue at 9:00 a.m. on November 21, and as to the large employer and monopsony issues at 9:00 a.m. on December 12.

Opening Statements: The trial will begin at 9:30 a.m. on November 21 with one opening statement on behalf of the plaintiffs and one on behalf of the defense. Opening statements will be limited to 45 minutes per side, and notwithstanding the bifurcation of the presentation of evidence, counsel should plan to cover all of the issues in the case.

Bifurcation: The presentation of evidence will begin with the allegations concerning national accounts. The Court will hear the government's case in chief on that issue, the defense case, and then any government rebuttal before turning to the trial of the other issues. Proposed Findings of Fact and Conclusions of Law with respect to the national accounts issue will be due on December 2. The Court will not hear evidence during the week of December 5.

Proposed Findings of Fact and Conclusions of Law: By 5:00 p.m. on the date the pleading is due to be filed, each side must deliver two disks containing copies of the pleadings with hyperlinks to any excerpts of testimony, stipulations, or exhibits cited. Each side must specifically cite to every piece of evidence, with cites to page or Bates numbers if applicable, it is asking the Court to rely upon in making its decision.

With that background, the parties are to meet and confer and, with the assistance of the Special Master, advise the Court of their preferences concerning the following issues:

A schedule for the exchange of deposition excerpts, objections, and any excerpts the opposing party believes must be included pursuant to FRE 106.

A schedule for exchanging and resolving any objections to summary exhibits.

A schedule for the exchange of proposed stipulations.

If necessary, the parties may also propose revising the schedule for the exchange of exhibit lists, but they should assume that now that the date for the submission of exhibits, deposition excerpts, and stipulations to the Court has been extended, it will not be extended again. The parties should look at all of these dates in light of the bifurcation of the trial proceedings; anything the parties can do to submit materials related to the national accounts issue before November 4 would be greatly appreciated.

A procedure and schedule for the handling of sealed information that provides for the timely notification of third parties as required by the Protective Order. Exhibit lists submitted to the Court on November 4 should clearly indicate which exhibits are being submitted subject to a motion to seal, and the goal would be to have all sealing issues resolved at or before the pretrial conference.

Limits on and organization of exhibits: It would be helpful to the Court if the exhibits could be organized in a manner consistent with the organization of the trial, separating out those that relate to the national accounts issue. The Court is also inclined to limit the number of total Tier 1 exhibits – either by specifying, for example, that each side could submit 100 Tier 1 exhibits on the national accounts issue and 100 Tier 1 exhibits on the other issues, or by setting a total limit on Tier 1 exhibits if the national account exhibits cannot be easily segregated. (If we bifurcate the exhibits, any exhibits designated as Tier 1 exhibits for the national accounts issue may be cited as evidence on the other issues.) There could be a higher number of Tier 2 exhibits, and it may not be as necessary that those exhibits be separated by issue, although it would be helpful. The Court will await the parties' input before ruling further on these issues.

The parties shall also advise the Court whether they agree that the Special Master should have the authority to resolve any disputes among themselves concerning the deposition designations, summary exhibits, and sealing.

The information agreed upon by the parties (or their respective positions, if they are not in agreement) should be submitted to the Court by Friday, October 7, and the Court will include it in a revised Case Management Order that will reflect all of these changes and additions.

A handwritten signature in black ink that reads "Amy B. Jackson". The signature is written in a cursive style and is positioned above a horizontal line.

AMY BERMAN JACKSON
United States District Judge

DATE: October 4, 2016