

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 27 March 2024

OALJ NO.: 2024-CER-00001

In the Matter of:

ASHLEY GJOVIK,
Complainant,

v.

APPLE INC.,
Respondent.

NOTICE OF ASSIGNMENT, HEARING, AND PRE-HEARING ORDER

This case arises from a complaint filed under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA” or “the Act”), 42 U.S.C § 9610, and the implementing regulations found at 29 C.F.R. Part 24. The case has been assigned to **JERRY R. DeMAIO**, Administrative Law Judge, U.S. Department of Labor, for hearing and decision. All future pleadings, responses, and correspondence should be filed in accordance with the instructions below. Permitted telephone inquiries should be directed to Lorena Quiroz at (617) 223-9355 or Matthew Schmall at (202) 693-7303. *See* 29 C.F.R. § 18.14 regarding *ex parte* communications.

I. HEARING ASSIGNMENT

A virtual formal hearing in the above-captioned proceeding will commence at **10:00 A.M. Eastern Time during the week of March 3, 2025, via Microsoft Teams Software.** The Microsoft Teams link for the hearing will be sent out via email. Continuances will be granted only upon showing of good cause and/or consent of the parties.

II. PRE-HEARING ORDER

1. **APPLICABLE RULES OF PROCEDURE:** Complaint proceedings under the CERCLA are governed by the rules and procedures set forth in 42 U.S.C. § 9610, and the implementing regulations found at 29 C.F.R. Part 24. Except as provided in that part, hearing proceedings will be conducted in accordance with the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges set forth in 29 C.F.R. Part 18, Subpart A. Hearings will be conducted de novo, on the record. 29 C.F.R. § 1982.107(b). The regulations at Part 1982.107(b) and Part 18 vest the

Administrative Law Judge with broad discretion to limit discovery in order to expedite the hearing. *Id.* The formal rules of evidence do not apply, but the regulations at Part 18, Subpart B, outline the applicable rules and are designed to assure production of the most probative evidence. *Id.* Evidence that is deemed immaterial, irrelevant, or unduly repetitious will be excluded. 29 C.F.R. §§ 18.401-18.403. Finally, the adjudication provisions of the Administrative Procedure Act (APA) are incorporated by reference and provide further guidance and authority for formal hearings before the Administrative Law Judge. See 5 U.S.C. § 554.

2. **FILINGS:** All filings (except confidential filings or filings under seal) in this matter shall be completed by email or utilizing EFS if you are a registered user in the EFS system. **Please do not file both by email and EFS.** If you are a registered user in EFS, *it is expected that all of your filings will be made utilizing the EFS system.* To become a registered user in EFS, please visit [eFiling and eServing Gateway](#).

For filing by email, please adhere to the guidance posted at the [OALJ website's section on filing by email](#). The email address for filing is: OALJ-Boston@DOL.gov. In the subject matter of the email, the parties shall indicate the case name, case number, presiding judge, and the nature of the filing (e.g., Complainant's request for extension). Filings should be attached to the email as a non-editable PDF document (.pdf). If the filing has multiple parts, like a motion, memorandum, exhibits, etc., the parties are encouraged to submit the filing as an Acrobat Adobe Portfolio (to create a portfolio in Adobe, go to Tools → Create PDF → Multiple Files → Create PDF Portfolio) or a bookmarked PDF (to bookmark in Acrobat Adobe, go to Tools → Bookmarks). If the parties are unable to create a Portfolio or bookmarks, **separate** files should be attached for each part of the filing. Any attached file should adhere to the following naming format: OALJ Case Number.document being filed (e.g. complainants motion for summary decision, respondents objection to attorney fees, etc.).name of exhibit, if applicable (e.g. Exhibit A). An example involving a motion for summary decision with two (2) exhibits might contain files like this within Portfolio or bookmarked:

1. 2023FRS00000.CI Motion for Summary Decision.pdf
2. 2023FRS00000.CI Memo in Support of Summary Decision.pdf
3. 2023FRS00000.CI Motion for Summary Decision.Exhibit 1.pdf
4. 2023FRS00000.CI Motion for Summary Decision.Exhibit 2.pdf

Motions and other papers shall be digitally signed either with an “/s/” followed by the filers typed name or through a certificate protected signature in Adobe Acrobat software. Affixing such signatures to a filing will constitute a signature for all purposes under 29 C.F.R. § 18.35.

3. **REQUIRED PRE-HEARING ACTIONS:** To facilitate adjudication of this matter and to ensure a prompt disposition, **IT IS HEREBY ORDERED** that the parties take the following actions:

- (A) **Initial Conference:** **Within five (5) days** from the date of this pre-hearing order, the parties shall meet and confer with each other regarding the matters set forth in 29

Fed. R. Civ. P. 26(f)(2). This Initial Conference may be held in person or by telephone or video conference, if the convenience of the parties dictates. The attorneys of record and any unrepresented parties that have appeared in the case are jointly responsible for arranging the conference.

The requirement of Fed. R. Civ. P. 26(f)(2) that attorneys and unrepresented parties submit a written report outlining an agreed upon discovery plan is **not** applicable to this proceeding, **and the filing of such a discovery plan with the Court is not required.** Rather, the initial disclosures described below in Paragraph 3(B) are to be made within the prescribed period, and formal discovery is to be conducted in this matter under 29 C.F.R. Part 18 unless otherwise provided in this prehearing order.

- (B) **Initial Disclosures: Within five (5) days** after the Initial Conference, and without awaiting a formal discovery request, initial disclosures shall be made in accordance with 29 C.F.R. § 18.50(c). Disclosures of expert testimony under 29 C.F.R. § 18.50(c)(2) shall be done **within 15 days** of this Order. **Initial disclosures shall not be filed with the Court.**
- (C) **Thirty (30) days before the scheduled hearing**, discovery shall close.¹
- (D) **Prehearing Exchange and Joint Prehearing Statement:** In lieu of individual Prehearing Statements as required by 29 C.F.R. §18.80, the parties are required to file a Joint Prehearing Statement (JPHS). 29 C.F.R. § 18.80 15.2(d). **Twenty (20) days before the scheduled hearing**, the parties shall confer either in person or telephonically to finalize hearing exhibits and the Joint Prehearing Statement. The Joint Prehearing statement shall include the following information in numbered paragraphs:
 - (i) Stipulated facts which are admitted and require no proof;
 - (ii) Disputed facts;
 - (iii) Issues of law to be determined, with reference to appropriate statutory and regulatory authorities. Evidence at trial will be limited to these issues and to the disputed issues of fact listed in Paragraph 2(D)(ii) above;
 - (iv) A list of proposed witnesses for each party including the name and address of each witness the party expects to call and a brief summary of the testimony each witness is expected to furnish.

With regard to expert witnesses, the expert's written report will be marked as an exhibit of the offering party and received into evidence

¹ Parties are reminded to review the ARB's recent decision in *Fagan v. Dep't of the Navy*, ARB No. 2023-0006 (ARB Feb. 28, 2024), regarding this Tribunal's lack of authority to issue trial subpoenas in a CERCLA case.

as that witness's testimony in chief. Additional direct testimony from the expert will be allowed only if circumstances warrant. It is expected that the qualifications of the expert will ordinarily be stipulated. However, objections to the expert's qualifications will be considered so long as the objections are raised in writing at least five (5) working days from receipt of the material. Following the qualification of the expert and the introduction of his/her report into evidence, the witness will be made available for cross-examination;

- (v) A list of all documents each party expects to offer in evidence (other than those to be used for impeachment) along with a statement of any objections reserved as to admissibility. If no such statement is included, all exhibits will be deemed unopposed; and
- (vi) A realistic estimate as to the time required to present the entire case.

TEN (10) days before the scheduled hearing, the parties shall file a fully executed Joint Prehearing Statement and all exhibits with the Court. The Joint Prehearing Statement shall be signed by all counsel (or *pro se* parties if applicable) involved in the litigation. Failure to cooperate in this process or timely file the Joint Prehearing Statement and Exhibits may result in the case being automatically REMOVED from the trial calendar, exclusion of evidence, or the imposition of other appropriate sanctions depending on the party at fault.

- (E) **Exhibits: At least ten business days (10) days before the hearing**, the parties shall pre-mark and exchange copies of all exhibits, as listed in the Joint Prehearing Statement. Any documentary evidence not timely exchanged will be excluded from the record unless good cause is shown for the failure to produce.

The parties shall avoid duplication of exhibits wherever possible. Exhibits shall be individually marked and paginated as Joint Exhibits (“JX [pg. #]/[total pgs.]”) if both parties are relying on the same exhibit; Complainant Exhibits (“CX[pg. #]/[total pgs.]”); Employer Exhibits (“EX [pg. #]/[total pgs.]”); or Director Exhibits (“DX [pg. #]/[total pgs.]”) as appropriate. All exhibits shall be filed electronically as an Adobe Portfolio or bookmarked, or alternatively, using **separate** files for each exhibit and the naming format described in the FILINGS Paragraph hereof. An example of how trial exhibits should appear is as follows:

- i. 2023FRS00000.Cl. Index of Trial Exhibits.pdf
- ii. 2023FRS00000.Cl. Trial Exhibit 1.pdf
- iii. 2023FRS00000.Cl. Trial Exhibit 2.pdf
- iv. 2023FRS00000.Cl. Trial Exhibit 3.jpg
- v. 2023FRS00000.Cl. Trial Exhibit 4.wav

Each page of multi-page exhibits must be **marked and paginated**. **A complete set of the marked and paginated exhibits together with an index of the exhibits (containing a description of each exhibit, date, and author) for each party shall be electronically filed with the parties' Joint Prehearing Statement, which is due ten (10) days before the scheduled hearing.**

If a format other than PDF is required, parties should seek guidance from the presiding judge before filing. Multimedia exhibits must be submitted via a USB storage device or DVD and addressed to the presiding judge at the following address: **U.S. Department of Labor, Office of Administrative Law Judges, Attn: ALJ Jerry R. DeMaio, 5 Post Office Square, Suite 1830, Boston, Massachusetts 02109.**

4. **MOTIONS.** All motions and other requests for relief from the presiding administrative law judge shall comply with 29 C.F.R. §§18.33-18.35.
 - (A) All motions and other requests for relief, including requests for extensions of time or continuances shall:
 - (i) Be submitted in motion form, with a caption, and not by letter. Filing by facsimile is not permitted unless specifically authorized by statute, regulation, or by the Court;
 - (ii) State whether any other party opposes the motion; and
 - (iii) Contain a declaration that the parties have made a good faith effort but were unable to resolve the dispute giving rise to the motion before filing the motion with the Court. Any motion failing to contain the required declaration shall not be considered.
 - (B) Motions for Summary Decision under 29 C.F.R. § 18.72 shall be filed **at least 60 days prior to the scheduled hearing** in order to afford adequate time for an answer and ruling. Rulings on motions for summary decision or other dispositive motions that are not filed at least 60 days prior to the hearing may, in the discretion of the presiding administrative law judge, be deferred until after the hearing.
 - (C) The answer to any motion must be filed **no later than 14 days** after service of the original motion. Untimely answers may result in the motion being deemed unopposed and allowed.
5. **LEGIBLE COPIES:** The parties shall conduct a review of all documents which are made a part of the formal record. Any documents received into evidence which are not clearly legible will be given no weight.

6. **SPECIAL CONSIDERATIONS**

- (A) **Interpreters:** The parties must advise the presiding judge promptly if an interpreter will be needed at the hearing, and if so, the language and specific dialect of the required interpreter. An interpreter may be requested through OALJ. The parties needing assistance with translation services must inform the presiding judge **no less than thirty (30) days** before the date of the hearing. **FAILURE TO TIMELY REQUEST AN INTERPRETER WILL RESULT IN THE PARTY REQUIRING THE INTERPRETER TO OBTAIN SUCH SERVICES AT THEIR OWN EXPENSE. TRIALS WILL NOT BE CONTINUED FOR FAILURE TO TIMELY REQUEST AN INTERPRETER.**
- (B) **Disability:** If there are any matters in the case that will require special accommodation for a disability during the hearing, please notify the Court **at least fifteen (15) days** prior to the hearing.
- (C) **Security:** If there are any matters in the case that will require special or additional security for the hearing, please notify the Court as soon as practicable, but **no later than fifteen (15) days** prior to the hearing.

7. **PRE-HEARING CONFERENCE:** The Court may hold a prehearing conference prior to the hearing. The parties will be notified of the time, place, and manner of the prehearing conference by separate notice.

8. **MODIFICATION OF PRE-HEARING ORDER:** The parties may seek to modify any of the provisions of this prehearing order, except II.2(D) and (E). Any such request must be made to the Court by joint or unopposed motion.

9. **NAMED PARTIES.** This notice of hearing and prehearing order is being sent to the parties and their counsel as identified by the District Director on the service sheet and any other supplemental information in the file. **All persons served should check the service sheet to ensure that the proper parties have been served.** Any errors should be brought to the attention of the Court as soon as possible.

10. **ALTERNATIVE RESOLUTION**

- (A) **Settlements.** The parties must advise the Court immediately of any settlements reached in this matter. Completed settlement documents must be submitted no later than 30 days after an agreement is reached.

(B) Any request for a Settlement Judge under 29 C.F.R. § 18.13 may be addressed to the appropriate District Chief Judge. Requests for a mediator through the OALJ mediation services may be addressed to Beth Slavet, Senior Counsel for Mediation, at (202) 693-7339. Questions or requests concerning either program may be sent to oalj-settlement-judge@dol.gov, and more information may be found at the [OALJ website's section on settlement judges](#).

11. **CONSEQUENCES OF FAILURE TO COMPLY**: The parties are expected to cooperate with each other, comply with the provisions of this order, and meet all expected discovery deadlines. If a party fails to comply with the provisions of this prehearing order, the aggrieved party may file an affidavit stating the facts which constitute the failure to cooperate. A party's failure, without good cause, to cooperate as required by this order may result in the imposition of appropriate sanctions. Such sanctions may include, but are not limited to exclusion of evidence, dismissal of the claim, or entry of a default judgment.

SO ORDERED.

JERRY R. DeMAIO
Administrative Law Judge

Boston, Massachusetts