

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

)	
CLARENCE B. BYNUM,)	
)	
Plaintiff,)	
)	
v.)	Case No: 1:04CV00259(PLF)
)	
MVM, INC.)	
)	
Defendant.)	
)	

JOINT PRETRIAL STATEMENT

Per the Court’s Order of December 13, 2006, Local Rule 16.5, and Federal Rule of Civil Procedure 26, the parties in the above-captioned action jointly submit this Pretrial Statement for trial, which is set to commence on March 26, 2007.

I. STATEMENT OF THE CASE

A. Nature of the Case

This case concerns race and disability discrimination in employment. Clarence Bynum is an African American man who, after a decorated military and law enforcement career, applied for a Court Security Officers (CSO) position with a private security company, MVM, Inc., in April 2002. MVM contracts with the U.S. Marshals Service (USMS) to provide security services for, among other facilities, the D.C. Superior Court. Mr. Bynum submitted an employment application, underwent a criminal and financial background investigation and passed a physical examination conducted by an MVM

physician. Mr. Bynum also submitted medical documentation as part of MVM's medical review. Several months later, MVM offered Mr. Bynum the position of CSO in September 2002. Mr. Bynum accepted MVM's offer and left the employ of another private security company for which he had been working. Mr. Bynum performed all CSO job functions successfully and with commendation, for nearly a year. In the summer of 2003, MVM required Mr. Bynum to undergo an annual physical review, which encompassed the submission of additional medical documentation and another physical examination by a company doctor. After receipt of these records, MVM fired Mr. Bynum claiming that he was medically disqualified from working as a CSO. Around this same time period, MVM fired at least four other African-American men for medical reasons. MVM fired these African Americans while retaining at least two Caucasian CSO's with similar medical conditions.

Mr. Bynum contends that MVM exhibited a reckless disregard for his statutory rights that resulted in substantial economic losses as well as emotional distress. Moreover, the medical disqualification from MVM has effectively foreclosed future law enforcement career opportunities. To enforce his federal rights, Mr. Bynum filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission, received Notice of Right to Sue, and filed the instant lawsuit.

The defendant asserts that Clarence B. Bynum was hired conditionally, that he misrepresented his medical conditions, that he did not consider himself "disabled" under the Americans With Disability Act, that MVM, Inc. did not consider him "disabled" under the Americans With Disability Act, that MVM, Inc., upon directive from the

United States Marshal Service, removed plaintiff from his employment, that Clarence Bynum does not claim MVM, Inc.'s actions were based upon racial discrimination, that plaintiff did not cooperate in the effort to obtain substitute employment, and that plaintiff failed to mitigate his damages. Further, MVM, Inc. avers denial of proximate cause, and denies plaintiff is entitled to consequential damages as claimed and denies that plaintiff can claim depression without supporting medical testimony and/or future wage without an economist or medical expert and denies nature and extent of claimed injury.

B. Identity of the Parties

The parties in this action are Plaintiff Clarence Bynum, a former employee of MVM, Inc., and Defendant MVM, Inc.

C. Jurisdiction

The Court has jurisdiction over this matter pursuant to 42 U.S.C. § 2000e-5(f)(3); 28 U.S.C. § 1367 (a),(e); 42 U.S.C. § 12117(a); and 29 U.S.C. § 2617(a)(2).

II. STATEMENT OF CLAIMS

Mr. Bynum brings the following claims against MVM, Inc.:

- A. ***Title VII*** – race discrimination for disparate treatment in terms, conditions and privileges of employment (no accommodation), and wrongful termination in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S. C. §§ 2000e *et seq.*
- B. ***Section 1981*** – race discrimination in the making and enforcement of a contract (employment) and in the enjoyment of all benefits, privileges,

terms and conditions of the contractual relationship, in violation of The Civil Rights Act of 1866, 42 U.S.C. § 1981, as reenacted and amended.

- C. *Americans With Disabilities Act* – discrimination based on perceived and “record of” disability by failing to accommodate and wrongfully terminating Mr. Bynum. Plaintiff further claims that MVM is committing a *per se* violation of the ADA by maintaining a policy, which excludes from employment individuals who have “disqualifying” medical conditions. 42 U.S.C. §§122101 et seq.

Defendant brings no counterclaims against Plaintiff.

III. STATEMENT OF DEFENSES

A. Plaintiff's Defenses

1. Continuing to Employ Mr. Bynum Did Not Pose a Direct Threat

Defendant terminated Mr. Bynum because a USMS physician found that he possessed “uncontrolled diabetes,” “elevated blood sugar,” “end organ damage,” and “heart surgery” with “lasting damage to the heart muscle” that posed “a significant risk to the health and safety of [Mr. Bynum] and/or others in the performance of essential job functions.” Defendant cannot demonstrate that Mr. Bynum posed a direct threat to himself or others by simply pointing to the existence of certain medical conditions that they fear may create limitations in the future. First, Mr. Bynum performed successfully in the CSO position for almost a year. His first-line supervisor, Lead CSO Perkins and second-line supervisor and site manager, Lois Epps, attest to Mr. Bynum performing satisfactorily as CSO. If any or all of his conditions would have truly posed a significant

risk of substantial harm to the health and safety of Mr. Bynum or others, this alleged harm would have manifested itself over the year he worked in the job. This did not occur. Rather, Mr. Bynum consistently reported to work and experienced no performance deficiencies – whether health related or not – while working for MVM. Second, Mr. Bynum’s treating physician, Melissa Turner states that Mr. Bynum experienced no symptoms of heart complications at work and that his conditions did not interfere with his ability to work as a CSO. Third, MVM’s reliance on the USMS’ Dr. Chelton’s report is insufficient to establish the direct threat defense. The report was not based on his own examination of Mr. Bynum, or Dr. Nguyen’s contemporaneous physical examination of Bynum or Bynum’s successful heart stress test, but rather on Dr. Chelton’s second-hand review of medical information. Dr. Chelton opinion was replete with speculation and filled with remote possibilities that Bynum’s conditions could develop into limitations in the future. His report was unreliable and speculative. Fourth, MVM made no independent, individualized assessment of Mr. Bynum’s then-present ability to safely perform the essential functions of the job; thus, it cannot prevail on this affirmative defense.

2. Bynum Fulfilled His Duty to Mitigate His Damages

After MVM terminated Mr. Bynum, he sought subsequent, equivalent employment; however, he was unable to secure but one private security officer position in New Orleans, Louisiana in 2005. Given Mr. Bynum’s difficulty finding jobs within the private-security industry, he sought and obtained employment and income outside the industry. He worked as an office manager, a car salesman, wrote published literature,

and started a home-based business. Despite his efforts, he lost substantial income and has not been able to secure employment with a salary comparable to that paid by MVM, Inc. Mr. Bynum believes that MVM's termination based on medical infirmity and his advanced age has made it extremely difficult to find comparable work or start over in a new career.

Contrary to the Defendant's contention, MVM did not extend Mr. Bynum an unconditional offer of re-employment post-termination. MVM offered Mr. Bynum employment at the Immigration and Naturalization Service approximately 10 months after his discharge, and *after* he filed a complaint with the EEOC and engaged in resolution efforts. Moreover, the INS offer was conditioned on Bynum re-applying for the position and passing the customary background checks and physical exam. Under the ADA, if an employee must apply and compete for vacant positions for which they qualify, the employer has not effectuated a reassignment and therefore has not reasonably accommodated that employee. In *Aka v. Washington Hospital Center*, the D.C. Circuit held that "[a]n employee who is allowed to compete for jobs precisely like any other applicant has not been 'reassigned' as a form of reasonable accommodation under the Act.¹

B. Defendant's Defenses

MVM, Inc. denies violation of applicable claimed statutes, denies the factual allegations as stated and avers misrepresentation, lack of proximate cause, failure to

¹ 156 F.3d 1284, 1304-05 (D.C. Cir. 1998).

mitigate damages, and denial of plaintiff's claims of consequential damages and depression. This defendant denies any claim of breach of contract, if alleged.

IV. STIPULATIONS OF FACT AND LAW

A. Agreed-Upon Stipulations of Fact

1. Defendant hired Mr. Bynum in or around September of 2002.
2. Mr. Bynum was given and passed a physical by Dr. Dong Phong Nguyen before he was hired by MVM, Inc.
3. MVM, Inc. had a contract with the US Marshals Service to provide court security services in the Superior Court of the District of Columbia.
4. MVM, Inc. has over 3,000 employees worldwide.
5. MVM, Inc. had over \$200 million in revenue in 2006.
6. Plaintiff was a "employee" within the meaning of Title VII of the Civil Rights Act
7. MVM, Inc. was an "employer" within the meaning of Title VII of the Civil Rights Act
8. Plaintiff was a "employee" within the meaning of the Americans with Disabilities Act
9. MVM, Inc. was an "employer" within the meaning of the Americans with Disabilities Act

B. Stipulations of Law

Plaintiff Clarence Bynum proposed that Defendant, MVM, Inc. agree to the following stipulations of law for trial; however, Defendant did not believe stipulations of law were appropriate:

1. Title VII makes it unlawful for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual on the basis of race, with respect to his terms, conditions, or privileges of employment.²
2. The Civil Rights Act of 1866 states that all persons, regardless of race, shall have the same right to make, perform, modify and terminate contracts, which includes employment contracts, and enjoy all benefits, privileges, terms and conditions of the contractual relationship.³
3. The Americans With Disabilities Act (ADA) provides that employers may not discriminate against an individual with a disability, or a person perceived to be disabled, or a person who has a record of a disability, in regard to job application and testing procedures, hiring, discharge, or any other term, condition, or privilege of employment.⁴
4. Disability is defined as a physical or mental impairment that substantially limits one or more of the major life activities of an individual; or having a record of such impairment; or being regarded as having such an impairment.⁵
5. A qualified individual with a disability is an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the job.⁶
6. The “essential functions” of a job are the fundamental duties that are actually performed by incumbents, and do not include marginal, peripheral, or infrequent functions that can be performed by other employees.⁷
7. It is unlawful under the ADA to fail or refuse to make reasonable accommodations for the known physical or mental limitations of an otherwise qualified individual with a disability unless the employer shows that the accommodation would impose an undue hardship on the operation of its business.⁸
8. The ADA prohibits employers from committing discrimination by utilizing standards, criteria, or methods of administration that: a) have the effect of discrimination on the basis of disability; or b) perpetuate the discrimination of others who are subject to common administrative control.⁹

²42 U.S.C. §§ 2000e, 2000e-2(a)(1).

³42 U.S.C. §§ 1981, 1981(b). *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975).

⁴42 U.S.C. § 12112

⁵42 U.S.C. § 12102(2).

⁶42 U.S.C. § 12111(8).

⁷29 CFR § 1630.2(n).

⁸42 U.S.C. § 12112(b)(5).

⁹42 U.S.C. § 12112(b)(3).

9. Reasonable accommodations include modifications or adjustments to the work environment or the manner or circumstances in which the job is customarily performed that enable persons with disabilities to perform the essential functions of the job and that would enable them to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated employees without disabilities.¹⁰
10. Employers may adopt qualification standards, which include a requirement that an individual not pose a direct threat to the health or safety of persons in the workplace.¹¹
11. “Direct Threat” means a significant risk of substantial harm to the health and safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.¹²
12. Employers must base “direct threat” determinations on an individualized assessment of the individual’s present ability to safely perform the essential functions of the job, including a reasonable medical judgment that relies on the most current medical knowledge and/or the best available objective evidence.¹³
13. Employers with more than 15 employees are covered by Title VII of the Civil Rights Act of 1964 as amended,¹⁴ and the Americans With Disabilities Act.¹⁵

V. WITNESSES

A. Plaintiff’s Witnesses

Plaintiff intends to call at trial the following witnesses:¹⁶

1. Constance Ambush (.5 hour)

Ms. Ambush, sister of Clarence Bynum, will testify about Mr. Bynum’s emotional distress and efforts to secure subsequent employment.

2. Dr. Barson (.50 hour)

¹⁰ 42 U.S.C. § 12111(9); 29 CFR §§ 1630.2(o), 1630.9

¹¹ 42 U.S.C. § 12113(b).

¹² 42 U.S.C. § 12111(3)

¹³ 29 CFR § 1630.2(r).

¹⁴ 42 U.S.C. § 2000e-(b).

¹⁵ 42 U.S.C. § 12111(5).

¹⁶ For many of Plaintiff’s witnesses, he does not have, at present, their home addresses. If and when this information becomes known to Mr. Bynum, he will promptly forward this information to the Defendant.

U.S. Marshals Service
Washington D.C.

Dr. Barnes is expected to testify about his pre-employment medical review of Clarence Bynum and his determination with regard to medical qualification.

3. Clarence Bynum (4 hours)
1500 Woodrow Wilson Drive
Room 35
Jackson, Mississippi 39216

Plaintiff Bynum will testify concerning all allegations of his complaint and his claims for damages.

3. Jessie Bynum (.5 hour)

Jessie Bynum, brother of Clarence Bynum, will testify about Mr. Bynum's efforts to secure subsequent employment, and financial harm caused by Defendant's discriminatory discharge.

4. Dr. L. Chelton (1.5 hour)¹⁷
U.S. Marshals Service
Washington, D.C.

Dr. Chelton is expected to testify about his assessment of Mr. Bynum's medical qualification for a CSO position under the USMS contract with MVM Inc.

5. Cecil Coleman (.5 hour)

Mr. Coleman is expected to testify about his employment with and termination from MVM, Inc. Witness may also testify about MVM's hiring and employment practices as well as the company's relations with its employees.

6. Lois Epps or MVM Company Representative (2 hours)¹⁸
MVM, Inc. (DC Superior Court site)
Washington, D.C.

Ms. Epps is expected to testify about the hiring process, standards and duties for CSO's under MVM's security services contract with the USMS. Ms. Epps is expected to testify about MVM's hiring of Mr. Bynum and his job performance

¹⁷ If Dr. Chelton is permitted to offer "expert" testimony, Plaintiff estimates his examination lasting 2.5 hours.

¹⁸ Because this witness would represent the Defendant, Plaintiff will seek permission to treat the witness as an adverse witness.

while serving as CSO. Ms. Epps can also testify about MVM's records of Mr. Bynum's medical conditions and its perception that Mr. Bynum could not serve as a CSO because of the existence of certain medical conditions. Ms. Epps can testify regarding Mr. Bynum's discharge. Ms. Epps is further expected to testify about MVM's employment of other CSO's, around the time of Mr. Bynum's employment, including the firing of other African American men due to "medical disqualification."

7. Marc Farmer (2 hours)
U.S. Marshals Service
Washington, D.C.

Mr. Farmer is expected to testify regarding the USMS' medical standards for CSO's and its determination that Mr. Bynum was medically disqualified from employment, under its contract with MVM. Plaintiff also anticipates that Mr. Farmer will be able to testify about other MVM CSO's who the USMS found to be medically disqualified.

8. D.K. Harrod (.5 hour)

As Lead CSO, Mr. King is expected to testify about the duties of a CSO working for MVM and his observations of Mr. Bynum's work performance. Witness may also testify about MVM's hiring and employment practices as well as the company's relations with its employees.

9. Thomas King (.75 hour)

As Lead CSO, Mr. King is expected to talk about the duties of a CSO working for MVM and his observations of Mr. Bynum's work performance. Mr. King will also be called to discuss his medical condition and the extent of MVM's knowledge of and reaction to his medical conditions. Witness may also testify about MVM's hiring and employment practices as well as the company's relations with its employees.

10. Claudia Leake (.75 hour)

As a former CSO working alongside Mr. Bynum, Ms. Leake is expected to talk about the duties of a CSO and her observations of Mr. Bynum's work performance. Ms. Leake will also be called to discuss her medical condition and the extent of MVM's knowledge of and reaction to his medical conditions. Witness may also testify about MVM's hiring and employment practices as well as the company's relations with its employees.

11. Roosevelt Lewis (.50 hour)

Mr. Lewis is expected to testify about his employment with and termination from MVM, Inc. Witness may also testify about MVM's hiring and employment practices as well as the company's relations with its employees.

12. Byron Neal (.50 hour)

Mr. Neal is expected to testify about his employment with and termination from MVM, Inc. Witness may also testify about MVM's hiring and employment practices as well as the company's relations with its employees.

13. Dr. Phong Nguyen (1.5 hours)

6800 Little River Turnpike
Annandale, VA 22003

Dr. Nguyen is expected to testify concerning his relationship with USMS and MVM and his physical examination of prospective and current MVM employees for medical suitability for CSO duty. Dr. Nguyen will testify about his examination of Messrs. Bynum, Lewis, Coleman, Neal and King and Ms. Leake and his findings and communications with MVM and/or the USMS regarding his exams.

14. Sheryl A. Pierce (.30 hour)

U.S. Marshals Service
Washington, D.C.

Ms. Pierce is expected to testify about the USMS' contract with MVM and MVM's bid proposal for the contract.

15. John D. Perkins (2 hours)

John Perkins is a Lead CSO for MVM Inc and is also Vice President of the Local Union of the United Government Security Officers of America. Mr. Perkins will testify about his supervision of Mr. Bynum's performance will employed by MVM. He will further testify about MVM's treatment of Mr. Bynum due to his medical conditions, including the circumstances of his discharge. Mr. Perkins will testify about MVM's treatment of Caucasian CSO's with similar medical conditions. Mr. Perkins is also expected to testify regarding the policies, procedures, practices of MVM including its contract with the USGOA, contract with the USMS, compensation and medical review procedures.

16. Brenda Scott (.50)

Landover, Maryland

Ms. Scott, close friend of Mr. Bynum, will testify about the emotional distress suffered by him as a result of Defendant's discriminatory acts.

17. Dr. Melissa Turner (2 hours)

VA Medical Center
50 Irving Street, N.W.
Washington, D.C. 20422

Dr. Turner will testify about Mr. Bynum's health conditions, treatment and limitations. She will also testify about the medical information, opinions and records she shared with the USMS and/or MVM regarding Mr. Bynum. She will further testify about Mr. Bynum's ability to perform the essential functions of the CSO position and that his health conditions did not pose a substantial risk of serious harm to Mr. Bynum or others. Dr. Turner is expected to further testify about Mr. Bynum's mental health post-termination.

18. Any person listed as a witness by Defendant and not objected to by Plaintiff.

Plaintiff expressly reserves the right to call additional witnesses for impeachment and rebuttal purposes. Plaintiff objects to Defendant's witnesses where the nature of their testimony and/or length of their testimony is not identified.

B. Defendant's Witnesses

1. Those persons named on plaintiff's Witness List
2. Tuwana Taft of MVM, Inc. (thirty minutes to testify concerning substitute employment)
3. John Perkins of MVM, Inc. (to testify concerning MVM, Inc.'s practices)
4. Steve Gottrich of MVM, Inc. (to testify concerning MVM, Inc.'s practices)
5. John F. Krause of the United States Marshal Service (to testify regarding the USMS's decision determining that Clarence B. Bynum was terminated due to disability)

6. David Westrate, MVM, Inc. executive
7. Joseph Morway, MVM, Inc. executive
8. Ralph Zurita, MVM, Inc.
9. Jose Morales of MVM, Inc.
10. Stanley Hawkins, ICE project manager.

VI. EXHIBITS

A. Plaintiff's Exhibits

Mr. Bynum may offer the following exhibits at trial in this matter:

DATE	DOCUMENT DESCRIPTION
October 24 1997	Narrative Summary and Operative Report for Clarence Bynum's 1997 Heart Surgery by Dr. Ammar Bafi.
February 4 2000	Final Report – Medical Requirements for Court Security Officers by Federal Occupational Health Law Enforcement Medical Programs
August 31, 2001	MVM Service Contract with U.S. Marshals Service
April 16 2002	Clarence Bynum's EKG
April 22 2003	Draft/dictated ltr from Dr. Turner to Bynum's employer
May 20 2003	Medical Record of Clarence Bynum prepared by Dr. Turner
June 16 2002	Medical Determination Deferred Pending Further Documentation by Dr. Barson
June 27 2002	Ltr from Marc Farmer to Steve Gottrich
July 13 2003	Dr. Turner Letter
July 31, 2003	Clarence Bynum's EKG by Dr. Nguyen
June – October 2003	Clarence Bynum's blood sugar readings
August 13 2003	Medical Disqualification by Dr. L. Chelton
August 28 2003	Medical Record of Clarence Bynum prepared by Dr. Turner
September 5 2003	Memo from Marc Farmer to John Kraus
September 5 2003	Ltr from Sheryl A. Pierce to Joseph Morway
September 5 2003	Clarence Bynum Cardiology Exercise Stress Test
September 11 2003	Ltr from Dr. Turner to Marc Farmer

October 6 2003	Union grievance by Clarence Bynum re: his termination
Feb-March 2004	Paystubs from Unique Service
May 2, 2005	Declaration of John D. Perkins
	Mitigation documents
	Medical Records of Claudia Leake
	Medical Records of Thomas King
	Medical Records of Byron Neal
	Medical Records of Cecil Coleman
	Medical Records of Roosevelt Lewis
	Medical Records of Clarence Bynum
	USGOA-USMS collective bargaining agreement
	Correspondence between Dr. Nguyen and MVM/USMS
	MVM Website documents
	Washington Hospital Cntr Operative Report (Operation Date: 11/12/97)
	Washington Hospital Cntr Discharge Summary (discharge date:11/125/97)
	Clarence Bynum's application of employment with MVM
	Letter of Commendation by Lead CSO Harrod
	Bachelor of Science Degree to Clarence Bynum
	Honorable Discharge Certificate for Clarence Bynum
	Resume of Clarence Bynum

Plaintiff reserves the right to amend this exhibit list as needed upon the discovery of additional evidence and for purposes of rebuttal and/or impeachment.

B. Defendant's Exhibits

The defendant herein, MVM, INC., by and through counsel, Martell, Donnelly, Grimaldi & Gallagher and lists the following exhibits it may use at a Trial of this matter:

1. The D.C. Circuit Contract;
2. Plaintiff's employment application (undated);
3. Judicial Security Division – Medical Review Form;

4. Judicial Security Division – Medical Review Form;
5. Letter of Marc Farmer to MVM, Inc. – June 27, 2002;
6. Medical Review Form of August 13, 2003;
7. MVM memo to USMS – June 29, 2003;
8. Veteran Affairs Memorandum – July 13, 2003;
9. MVM Inc. Memorandum – July 15, 2003;
10. USMS letter of MVM, Inc. – August 7, 2003;
11. USMS memo of August 29, 2003 regarding disqualification;
12. USMS Pierce letter to MVM, Inc. – September 5, 2003;
13. MVM memo to United States Marshal Service dated September 10, 2003;
14. Dr. Turner letter to USMS dated September 11, 2003;
15. Bynum personnel file - (to be supplemented);
16. Medicals;
17. Bynum Affidavit;
18. Tuwana Taft's notes.

VII. DEPOSITIONS

Plaintiff will offer the following excerpts of the deposition of Lois Epps into evidence at trial: P10/Ln5-18, P12/LN10-12, P13/LN3-5, P14/LN6-P15/LN21, P17/LN13-16, P19/LN3-20, P23/LN11-14, P26/LN6-8, P27/LN 20-22, P29/LN6-8, P30/LN16-21, P34/LN18-20, P36/LN19-P37/LN7, P41/LN6-P43/LN15, P44/LN16-P45/LN1, P48/LN5-10, P49/LN1-2,7-8, 10-21, P52/LN7-22.

VIII. DAMAGES

CATEGORY OF DAMAGES	AMOUNT
Mitigated Back Pay through March 2007	\$165,900.00
Front Pay (assuming retirement at age 65) – to be reduced to present value	\$284,400.00
Expenses (Job Search, car rental, out-of-pocket costs, loans)	\$4,825.00
Lost Equity in Home	\$325,000
Lost Furniture	\$12,000.00
Total	\$792, 125.00
Nonpecuniary Compensatory Damages	To be determined by jury at trial
Punitive Damages	To be determined by jury at trial
Attorneys	Final calculation to be made if plaintiff prevails

IX. OTHER RELIEF REQUESTED

Plaintiff requests Judgment in his favor and against MVM, Inc. Plaintiff further requests an Order directing MVM, Inc. to cease and desist all practices and Medical-disqualification policies in violation of the Americans With Disabilities Act, Section 1981 and Title VII of the Civil Rights Act of 1964.

X. ESTIMATE OF TRIAL TIME

Plaintiff estimates that trial time will be 3-4 days.

XI. PARTIES' SETTLEMENT EFFORTS

The parties engaged in good-faith settlement efforts through the Court's mediation program on February 7, 2007. The parties were unable to reach a resolution.

XII. MOTIONS TO BE DECIDED BEFORE TRIAL

Plaintiff's Motions *in Limine*, to be decided by the Court prior to the commencement of trial.

Respectfully submitted,

By: /S/
 Teresa W. Murray

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