Consumer Product Safety Commission

Pt. 1025, App. I

the decision of this Commission will only address the allocable portion for which this Commission is responsible to the eligible prevailing party.

(h) Agency review. (1) Either the applicant or complaint counsel may seek review of the initial decision on the fee application, or the Commission may decide to review the decision on its own initiative, in accordance with 16 CFR 1025.54, 1025.55 and 1025.56.

(2) If neither the applicant nor Commission complaint counsel seeks review and the Commission does not take review on its own initiative, the initial decision on the application shall become a final decision of the Commission 30 days after it is issued.

(i) Judicial review. Judicial review of final Commission decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

(j) Payment of award. An applicant seeking payment of an award shall submit to the Secretary of the Commission a copy of the Commission’s final decision granting the award, accompanied by a verified statement that the applicant will not seek review of the decision in the United States courts.

(Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.) The Commission will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding. Comments and accompanying material may be seen in or copies obtained from the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, during working hours Monday through Friday.

APPENDIX I TO PART 1025—SUGGESTED FORM OF FINAL PREHEARING ORDER

Case Caption

A final prehearing conference was held in this matter, pursuant to Rule 21 of the Commission’s Rules of Practice for Adjudicative Proceedings (16 CFR 1025.21), on the day of , 19 , at

o'clock. Counsel appeared as follows:

For the Commission staff:

For the Respondent(s):

Others:

1. Nature of Action and Jurisdiction. This is an action for and the jurisdiction of the Commission is invoked under United States Code, Title Section and under the Code of Federal Regulations, Title . Section . The jurisdiction of the Commission is (not) disputed. The question of jurisdiction was decided as follows:

2. Stipulations and Statements. The following stipulation(s) and statement(s) were submitted, attached to, and made a part of this order:

(a) A comprehensive written stipulation or statement of all uncontested facts;

(b) A concise summary of the ultimate facts as claimed by each party. (Complaint Counsel must set forth the claimed facts, specifically; for example, if a violation is claimed, Complaint Counsel must assert specifically the acts of violation complained of; each respondent must reply with equal clarity and detail.)

(c) Written stipulation(s) or statement(s) setting forth the qualifications of the expert witnesses to be called by each party;

(d) Written list(s) of the witnesses whom each party will call, written list(s) of the additional witnesses whom each party may call, and a statement of the subject matter on which each witness will testify;

(e) An agreed statement of the contested issues of fact and of law, or separate statements by each party of any contested issues of fact and law not agreed to;

(f) A list of all depositions to be read into evidence and statements of any objections thereto;

(g) A list and brief description of any charts, graphs, models, schematic diagrams, and similar objects that will be used in opening statements or closing arguments but will not be offered in evidence. If any other such objects are to be used by any party, those objects will be submitted to opposing counsel at least three days prior to the hearing. If there is then any objection to their use, the dispute will be submitted to the Presiding Officer at least one day prior to the hearing;

(h) Written waivers of claims or defenses which have been abandoned by the parties.
The foregoing were modified at the pretrial conference as follows:

To be completed at the conference itself. If none, recite “none”.

3. Complaint Counsel’s Evidence. 3.1 The following exhibits were offered by Complaint Counsel, received in evidence, and marked as follows:

(Identification number and brief description of each exhibit)

The authenticity of these exhibits has been stipulated.

3.2 The following exhibits were offered by Complaint Counsel and marked for identification. There was reserved to the respondent(s) (and party intervenors) the right to object to their receipt in evidence on the grounds stated:

(Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality)

4. Respondent’s Evidence. 4.1 The following exhibits were offered by the respondent(s), received in evidence, and marked as herein indicated:

(Identification number and brief description of each exhibit)

The authenticity of these exhibits has been stipulated.

4.2 The following exhibits were offered by the respondent(s) and marked for identification. There was reserved to Complaint Counsel (and party intervenors) the right to object to their receipt in evidence on the grounds stated:

(Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality)

5. Party Intervenor’s Evidence. 5.1 The following exhibits were offered by the party intervenor(s), received in evidence, and marked as herein indicated:

(Identification number and brief description of each exhibit)

The authenticity of these exhibits has been stipulated.

5.2 The following exhibits were offered by the party intervenor(s) and marked for identification. There was reserved to Complaint Counsel and respondent(s) the right to object to their receipt in evidence on the grounds stated:

(Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality)

NOTE: If any other exhibits are to be offered by any party, such exhibits will be submitted to opposing counsel at least ten (10) days prior to hearing, and a supplemental note of evidence filed into this record.

5.3 The following exhibits were offered by the respondent(s), received in evidence, and marked as herein indicated:

(Identification number and brief description of each exhibit)

The authenticity of these exhibits has been stipulated.

5.4 The following exhibits were offered by the respondent(s) and marked for identification. There was reserved to Complaint Counsel and respondent(s) the right to object to their receipt in evidence on the grounds stated:

(Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality)

Note: If any other exhibits are to be offered by any party, such exhibits will be submitted to opposing counsel at least ten (10) days prior to hearing, and a supplemental note of evidence filed into this record.

6. Additional Actions. The following additional action(s) were taken:

(Amendments to pleadings, agreements of the parties, disposition of motions, separation of issues of liability and remedy, etc., if necessary)

7. Limitations and Reservations. 7.1 Each of the parties has the right to further supplement the list of witnesses not later than ten (10) days prior to commencement of the hearing by furnishing opposing counsel with the name and address of the witness and general subject matter of his/her testimony and by filing a supplement to this pretrial order. Thereafter, additional witnesses may be added only after application to the Presiding Officer, for good cause shown.

7.2 Rebuttal witnesses not listed in the exhibits to this order may be called only if the necessity of their testimony could not reasonably be foreseen ten (10) days prior to trial. If it appears to counsel at any time before trial that such rebuttal witnesses will be called, notice will immediately be given to opposing counsel and the Presiding Officer.

7.3 The probable length of hearing is ___ days. The hearing will commence on the ___ day of __________ , 19__, at ___ o’clock ___ m. at ___.

7.4 Prehearing briefs will be filed not later than 5:00 p.m. on (Insert date not later than ten (10) days prior to the hearing.) All anticipated legal questions, including those relating to the admissibility of evidence, must be covered by prehearing briefs.

This prehearing order has been formulated after a conference at which counsel for the respective parties appeared. Reasonable opportunity has been afforded counsel for corrections or additions prior to signing. It will control the course of the hearing, and it may not be amended except by consent of the parties and the Presiding Officer, or by order of the Presiding Officer to prevent manifest injustice.

______________________________
Presiding Officer.
Dated: _________________________
Approved as to Form and Substance
Date: _________________________

______________________________
Complaint Counsel.

______________________________
Attorney for Respondent(s)

*Attorney for Intervenors

NOTE: Where intervenors appear pursuant to §1025.17 of these Rules, the prehearing order may be suitably modified; the initial page may be modified to reflect the intervention.