

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Premier Medical Supplies, Inc.,)	CASE NO. 1:07-CV-3809
)	
Plaintiff,)	
)	JUDGE PATRICIA A. GAUGHAN
v.)	
)	
Michael O. Leavitt, Secretary of the)	<u>REPORT OF PARTIES' PLANNING</u>
Department of Health and Human Services,)	<u>MEETING UNDER FED.R.CIV.P.</u>
in his official capacity,)	<u>26(f) AND L.R. 16.3(b)</u>
)	
and)	
)	
Kerry Weems, Acting Administrator of the)	
Centers for Medicare and Medicaid)	
Services, in his official capacity,)	
)	
Defendants.)	
)	

1. Pursuant to Fed.R.Civ.P. 26(f) and L.R. 16.3(b), Michael J. Jordan and Susan E. Keating Anderson, counsel for Plaintiff, and Stephen J. Buckingham, counsel for Defendants, communicated by telephone on February 13, 2008. (Mr. Buckingham's office is located in Washington D.C.)
2. The parties have not yet exchanged the Rule 26 pre-discovery disclosures. It is the position of counsel for Defendants that pre-discovery disclosures are not required under Fed.R.Civ.P. 26 because this litigation is an administrative review case. At this time, Plaintiff's counsel disputes this characterization of the case. The parties have agreed to the following in an attempt to resolve this dispute: by approximately March 17, 2008, counsel for Defendants will make available to Plaintiff's counsel for review the complete administrative record. Upon such review, and no later than April

- 4, 2008, counsel for Plaintiff will confer with defense counsel to determine whether agreement can be reached on this issue. A second CMC is requested with the Court after April 4, 2008 to review this and other issues set forth below.
3. The parties defer a track recommendation pending review of the file as set forth above.
 4. The parties agree that this case is suitable for Electronic Case Filing
 5. The parties agree that this case is not suitable for ADR.
 6. The parties do not consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. §636(c).
 7. Recommended Discovery Plan: the parties cannot recommend a plan at this time pending review of the administrative record. The parties expect to complete this review no later than April 4, 2008, and will then file with this Court an amended Planning Report addressing all items omitted in this Report. As noted above, a second CMC is requested after April 4, 2008.
 8. The parties' recommended cut-off date for amending the pleadings and/or adding additional parties is August 31, 2008. This date has been determined by considering two operative dates which may impact the parties' need to amend their pleadings or add new parties: March, 2008, is the expected period in which contracts will be awarded to DMEPOS suppliers who submitted bids under the Competitive Bidding system being challenged in this lawsuit; and July, 2008, is the expected period in which the contracts will be executed. The parties reserve the right to request an extension of this deadline if either of these periods is extended, or for other good cause.

9. Recommended dispositive motion date: Defendants anticipate filing a Motion to Dismiss on or about February 19, 2008. The parties reserve the right to seek leave of court to file additional dispositive motions.
10. The parties request a second CMC be held on a date convenient to this Court after April 4, 2008, at which time the parties will be prepared to discuss an appropriate date for a Status Conference.
11. Other matters for the Court's attention: Plaintiffs may file a Motion for Preliminary and Permanent Injunctive Relief once the bids are awarded.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing Report of Parties' Planning Meeting Under Fed.R.Civ.P. 26(F) and L.R. 16.3(B) has been filed this 19th day of February, 2008, through the Court's electronic filing system. All parties may access the foregoing via the Court's electronic filing system.

/s/ Michael J. Jordan _____
Michael J. Jordan