

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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GOETZ ENERGY CORP.,

Plaintiff,

v.

LAND AIR EXPRESS OF NEW ENGLAND, LTD.,  
NORTHEAST FREIGHTWAYS, INC.,

Defendants.

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**ORDER**

**16-CV-445V(F)**

This action has been referred to the undersigned, a magistrate judge of this court, by order of Hon. Lawrence J. Vilaro for entry of a scheduling order in accordance with Rule 16 of the Federal Rules of Civil Procedures (“Federal Rules”) and Local Rule of Civil Procedure 16.1.

Each party, including any party appearing for themselves without counsel, shall appear before the undersigned on **February 16, 2017 at 11:00 a.m.** at 500 U.S. Courthouse, 2 Niagara Square, Buffalo, New York for the purpose of entry of a case management order as required by Fed.R.Civ.P. 16(b).

All parties should note that the case is subject to mandatory pretrial mediation as required by the court’s Alternative Dispute Resolution Plan (“the ADR Plan”) approved by the court’s District Judges in their order dated August 23, 2005 as revised January 1, 2008. The parties are urged to consult the ADR Plan as revised and a related document, Alternative Dispute Resolution Procedures, copies of which are available from the Clerk of Court and on the court’s website at [www.nywd.uscourts.gov](http://www.nywd.uscourts.gov).

**The parties’ attention is drawn to the obligation of the parties to select a mediator in accordance with Section 5.4C of the ADR Plan, and propose to the**

**undersigned a timetable to be included in the Rule 16 scheduling order for commencing and completing the mediation. Such dates, in addition to the other relevant timetables for the pretrial phase of this case as requested herein, shall be submitted by the parties to the undersigned along with the proposed Discovery Plan for this case required by Rule 26(f) of the Federal Rules and this order. Accordingly, the parties shall consider and advise the court in the Discovery Plan regarding the extent to which, if any, discovery may be needed to facilitate the mediation required by the ADR Plan.**

As required by Fed.R.Civ.P. 26(f), the parties shall confer at least 21 days prior to the Rule 16(b) hearing as scheduled above for (1) the purposes set forth in Rule 26(f)(2) preparation of the required Proposed Discovery Plan, and (2) to propose to the court a Case Management Order that will establish outside cut-off dates for the further progress of this case including:

- (a) Making all disclosures as required by Fed.R.Civ.P. 26(a)(1).
- (b) Motions to amend the pleadings or add parties.
- (c) Commencement and completion of mediation pursuant to the ADR Plan.
- (d) Commencement and completion of all fact discovery.
- (e) Completion of all expert discovery, if any, by each party including strict compliance with Fed.R.Civ.P. 26(a)(2) regarding the identification and filing reports of testifying experts.
- (f) Motions to compel.
- (g) The filing of any dispositive motions.

Such proposed discovery plan and case management order shall, pursuant to Fed.R.Civ.P. 26(f), be submitted to the court in writing at least 14 days prior to the Rule

16(b) conference as herein provided. **Any failure by a party or the party's attorney to participate in good faith in the development and submission of a proposed discovery plan required by Rule 26(f) or this order may result in the award of expenses and attorney's fees to the other party caused by such failure.**

**Fed.R.Civ.P. 37(g).**

THE PARTIES ARE REQUESTED TO CONSIDER AND ARE ENCOURAGED TO ACT FAVORABLY ON THE ATTACHED CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE IN A CIVIL CASE PURSUANT TO TITLE 28 OF THE UNITED STATES CODE, SECTION 637(c). HOWEVER, NO SUBSTANTIVE ADVERSE CONSEQUENCES WILL RESULT SHOULD THE PARTIES ELECT NOT TO CONSENT. IF THE PARTIES WISH TO CONSENT, ALL PARTIES MUST EXECUTE THE CONSENT FORM AND RETURN IT TO THE CLERK OR THE UNDERSIGNED FOR PROCESSING.

SO ORDERED.

*/s/ Leslie G. Foschio*

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LESLIE G. FOSCHIO  
UNITED STATES MAGISTRATE JUDGE

Dated: January 10, 2017  
Buffalo, New York



6. All motions to join other parties and to amend the pleadings shall be filed on or before \_\_\_\_\_.

7. All fact discovery in this case shall conclude on \_\_\_\_\_. All motions to compel fact discovery shall be filed on or before \_\_\_\_\_.

8. As the ADR program does not stay discovery, Plaintiff shall initiate discovery, through interrogatories and document requests, not later than \_\_\_\_\_ **[45 days from the date of Scheduling Conference]**.

9. Plaintiff(s) shall identify any expert witnesses through interrogatories and provide reports pursuant to FED.R.CIV.P. 26 by \_\_\_\_\_. Defendant(s) shall identify any expert witnesses through interrogatories and provide reports pursuant to FED.R.CIV.P. 26 by \_\_\_\_\_. Motions to compel expert disclosures shall be filed not later than \_\_\_\_\_.

10. Dispositive motions, if any, shall be filed no later than \_\_\_\_\_. Such motions shall be made returnable before the undersigned.

11. Mediation sessions may continue, in accordance with Section 5.11 of the ADR Plan, until **[30 days after dispositive motion deadline]**. The continuation of mediation sessions shall not delay or defer other dates set forth in this Scheduling Order.

12. In the event that no dispositive motions are filed, a final pretrial status conference is scheduled for \_\_\_\_\_ before the undersigned.

No extension of the above cutoff dates will be granted except upon written application to the undersigned, filed prior to the cutoff date, showing good cause for the extension. The attached guidelines shall govern all depositions. Counsel's attention is directed to FED.R.CIV.P. 16(f) calling for sanctions in the event of failure to comply with any direction of this court.

SO ORDERED.

# UNITED STATES DISTRICT COURT

for the  
District of

_____ )	
<i>Plaintiff</i> )	
v. )	Civil Action No.
_____ )	
<i>Defendant</i> )	

## NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE

*Notice of a magistrate judge's availability.* A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

*Consent to a magistrate judge's authority.* The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

<i>Parties' printed names</i>	<i>Signatures of parties or attorneys</i>	<i>Dates</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

### Reference Order

**IT IS ORDERED:** This case is referred to a United States magistrate judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

Date: \_\_\_\_\_

\_\_\_\_\_

*District Judge's signature*

\_\_\_\_\_

*Printed name and title*

Note: Return this form to the clerk of court only if you are consenting to the exercise of jurisdiction by a United States magistrate judge. Do not return this form to a judge.

