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Attorneys for Defendant

**IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STRIDER CONSTRUCTION CO., INC.,
Plaintiff,
vs.
IDAHO WATER RESOURCE BOARD,
Defendant.

Case No. CV01-22-10932

**DECLARATION OF JENNIFER
REINHARDT-TESSMER IN SUPPORT
OF IWRB'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
PROTECTIVE ORDER**

STATE OF IDAHO)

County of Ada) : ss.

Jennifer Reinhardt-Tessmer, being first duly sworn upon oath, deposes and says:

1. I am an attorney with Kirton McConkie, counsel of record for Defendant, Idaho Water Resource Board (“IWRB”). I am over the age of 18 and base this declaration on my personal knowledge.

2. On August 9, 2023, I contacted counsel for Plaintiff, Strider Construction Co. (“Strider”), to inquire about Strider’s 30(b)(6) witnesses’ availability. IWRB provided three separate dates and asked Strider to indicate if any of these dates would work for either Strider’s counsel or witnesses. A copy of this email is attached hereto as **Exhibit 1**.

3. On August 10, 2023, I indicated that if Strider wished to designate either Kyle or James Gebhardt as 30(b)(6) representatives for Strider, then I would make efforts to combine the personal and 30(b)(6) depositions. *See Exhibit 1*.

4. Counsel for Strider responded on August 15, 2023, by stating that the Gebhardts were free around September 20-21, 2023. *See Exhibit 1*.

5. On August 16, 2023, I informed Strider that IWRB planned to take the 30(b)(6) depositions of Plaintiffs in Boise. *See Exhibit 1*.

6. On August 21, 2023, IWRB issued a notice of 30(b)(6) deposition to the Plaintiff and notices to the Gebhardts, setting the depositions for September 20-21 at Kirton McConkie law office in Boise, Idaho.

7. On August 22, 2023, Strider’s counsel and I had a meet and confer conference to discuss the location of the depositions. Strider’s counsel confirmed Jim Gebhardt would be a 30(b)(6) representative and that Kyle Gebhardt may also be a representative. *See Exhibit 2*.

8. In the August 22nd telephone conference, I reaffirmed my intent to take the 30(b)(6) deposition in person at the forum location. Opposing counsel never stated her client faced a financial or physical impossibility (or any other burden beyond inconvenience) traveling to the forum location for examination, but rather, pushed for a remote deposition instead, which I rejected. I explained to her that I wanted to conduct the 30(b)(6) deposition in person likely for the same reasons she chose to – it was the most important deposition in the case, involving several exhibits and I found it to be more effective in person. As a compromise, I stated I would travel to Seattle for the expert depositions and would be willing to take the deposition of Strider’s Operations Manager, Kyle Gebhardt, at that time if Strider did not end up designating him as a 30(b)(6) witness. My offer was not accepted.

9. Following our call, on August 23, 2023, I sent Strider’s counsel an email confirming our conversation and my offer of compromise and urged her to weigh the cost of motion practice (in the face of opposing authority) against traveling to the forum location for the 30(b)(6) deposition. *See Exhibit 2.* Strider’s counsel never responded to this email.

10. The next communication I received from Strider’s counsel regarding the deposition location was the underlying Motion for Protective Order, filed on September 5, 2023, and setting the matter for hearing on September 19, 2023, the day before the scheduled 30(b)(6) deposition.

DATED this 11th day of September 2023.

KIRTON MCCONKIE

/s/ Jennifer Reinhardt-Tessmer
Jennifer Reinhardt-Tessmer
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September 2023, a true and correct copy of the foregoing was served by the method indicated below, and addressed to the following:

Lindsay (Taft) Watkins
Pro Hae Vice Admission Pending
Kristina Southwell
Pro Hae Vice Admission Pending
AHLERS CRESSMAN & SLEIGHT PLLC
1325 4th Ave., Suite 1850
Seattle, WA 98101
Telephone: (206) 287-9900

- U.S. Mail
- Facsimile: (208) 388-1300
- Hand Delivery
- Overnight Delivery
- iCourt E-File/Serve:
lindsay.watkins@acslawyers.com
kristina.southwell@acslawyers.com

Joe Meuleman
MEULEMAN LAW GROUP PLLC
950 W. Bannock St., Ste. 490
Boise, ID 83702
Telephone: (208) 472-0066
Attorneys for Plaintiff Strider Construction Co., Inc.

- U.S. Mail
- Facsimile:
- Hand Delivery
- Overnight Delivery
- iCourt E-File/Serve:
jmeuleman@meulemanlaw.com

Garrick L. Baxter
Meghan M. Carter
Deputy Attorneys General
Idaho Water Resource Board
P.O. Box 83720
Boise, Idaho 83720-0098
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- Facsimile:
- Hand Delivery
- Overnight Delivery
- iCourt E-File/Serve:
garrick.baxter@idwr.idaho.gov
meghan.carter@idwr.idaho.gov

/s/ Jennifer Reinhardt-Tessmer
Jennifer Reinhardt-Tessmer

EXHIBIT 1

From: [Jennifer Reinhardt-Tessmer](#)
To: [Lindsay Watkins](#)
Cc: [Ammon Hansen](#); [Wade Woodard](#); [Shannon Menard](#); [Madison Hyland](#); [Nicholas Korst](#); [Carter, Meghan](#); [Joe Meuleman](#); [Carolyn McCutchan](#)
Subject: RE: Expert disclosure deadlines and request for depo. dates
Date: Wednesday, August 16, 2023 4:11:00 PM
Attachments: [image003.png](#)
[image005.png](#) [image006.png](#)
[image007.png](#)

Lindsay –

We have a right to set the plaintiff's depo in boise. Your clients initiated the litigation here. If you're arguing just the individual depositions need to occur in Seattle, that would be silly and inefficient, as you've indicated at least Jim is one of the 30(b)(6) deponents. A motion on this issue would be a waste of everyone's time and money.


Jennifer Reinhardt-Tessmer

Shareholder

d 208.370.3323

c 208.957.3939

From: Lindsay Watkins <lindsay.watkins@acslawyers.com>
Sent: Wednesday, August 16, 2023 4:03 PM
To: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>
Cc: Ammon Hansen <ahansen@kmclaw.com>; Wade Woodard <wwoodard@kmclaw.com>; Shannon Menard <smenard@kmclaw.com>; Madison Hyland <mhyland@kmclaw.com>; Nicholas Korst <nicholas.korst@acslawyers.com>; Carter, Meghan <Meghan.Carter@idwr.idaho.gov>; Joe Meuleman <jmeuleman@meulemanlaw.com>; Carolyn McCutchan <carolyn.mccutchan@acslawyers.com>
Subject: RE: Expert disclosure deadlines and request for depo. dates

CAUTION: EXTERNAL

Jennifer,

My comments are below:



Lindsay Watkins

lindsay.watkins@acslawyers.com

AHLERS CRESSMAN & SLEIGHT PLLC
(P) 206.287.9900 | (F) 206.934.1139 | (D) 206.529.3017
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Seattle WA 98101 www.acslawyers.com

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From: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>

Sent: Wednesday, August 16, 2023 2:05 PM

To: Lindsay Watkins <lindsay.watkins@acslawyers.com>

Cc: Ammon Hansen <ahansen@kmclaw.com>; Wade Woodard <wwoodard@kmclaw.com>; Shannon Menard <smenard@kmclaw.com>; Madison Hyland <mhyland@kmclaw.com>; Nicholas Korst <nicholas.korst@acslawyers.com>; Carter, Meghan <[Meghan.Carter@idwr.idaho.gov](mailto: Meghan.Carter@idwr.idaho.gov)>; Joe Meuleman <jmeuleman@meulemanlaw.com>; Carolyn McCutchan <carolyn.mccutchan@acslawyers.com>

Subject: RE: Expert disclosure deadlines and request for depo. dates

Lindsay –

We plan to take the 30(b)(6) and the Gebhardts' depositions in Boise. We will try to arrange for 9/20-21. We also request the evidence be available in that timeframe for inspection (we can discuss specifics as the date approaches). **We would prefer to avoid motion practice on this, but please be advised that we will oppose any note scheduling the deposition in Boise. The Gebhardts are not located in Boise.**

Regarding the expert reports, yes, we agree that both parties would provide reports supporting affirmative claims on 12/4; rebuttal disclosures by both on 12/18.

I will get you dates for November. To clarify, do you plan to have an expert conduct any type of testing or just take photographs? Do you have an estimate for how much time you will need? I will need to arrange in advance. **I will discuss as to more specifics but we will be present for IWRB's inspection and our expert will likely do testing as well. Please let me know the proposed dates and I will follow up.**

We requested the stipulation for a protective order back in June when the documents (there were 1 or 2 I believe) were not public, but now everything is publicly available, so we don't need the stipulation for a protective order. **Please confirm when the documents that were being withheld will be produced.**

Regarding the documents Pita produced, we noted that the documents were void of correspondence between Mr. Rohrbach and him. This correspondence should have been included (and was included, at least in part, in Rohrbach's production). Please advise as to when Mr. Pita can supplement with his complete set of responsive documents. **We will review this request with Mr. Pita.**

Thank you,

Jennifer


Jennifer Reinhardt-Tessmer

Shareholder

d 208.370.3323

c 208.957.3939

From: Lindsay Watkins <lindsay.watkins@acslawyers.com>

Sent: Tuesday, August 15, 2023 4:00 PM

To: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>

Cc: Ammon Hansen <ahansen@kmclaw.com>; Wade Woodard <wwoodard@kmclaw.com>; Shannon Menard <smenard@kmclaw.com>; Madison Hyland <mhyland@kmclaw.com>; Nicholas Korst <nicholas.korst@acslawyers.com>; Carter, Meghan <[Meghan.Carter@idwr.idaho.gov](mailto: Meghan.Carter@idwr.idaho.gov)>; Joe Meuleman <jmeuleman@meulemanlaw.com>; Carolyn McCutchan <carolyn.mccutchan@acslawyers.com>

Subject: RE: Expert disclosure deadlines and request for depo. dates

CAUTION: EXTERNAL

Hi Jennifer,

I am still waiting to get available dates from Tim, but Jim is available on 9/19, 9/20 or 9/21 in Seattle. He is also likely the designated individual for the majority if not all of the 30(b)(6) topics. Kyle is available 9/13 or 9/21 in Seattle. We can also supply a conference room.

For the expert reports, as both parties have claims, we are willing to agree on a revised schedule, provided both Parties exchange expert reports supporting their affirmative claims on 12/4 and then rebuttal disclosures by both parties on 12/18.

For the November inspection, what are the proposed dates? For availability, we would request that occur either the last week of October/first week of November (Oct 30 – Nov 3), or the week of November 13. Please provide an update on proposed dates so we can confirm availability.

Finally, I understand there are still some documents that are being withheld pending the protective order. We have provided that document. Please provide an update on when those documents will be produced.



Lindsay Watkins
lindsay.watkins@acslawyers.com

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From: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>

Sent: Thursday, August 10, 2023 7:40 PM

To: Lindsay Watkins <lindsay.watkins@acslawyers.com>

Cc: Ammon Hansen <ahansen@kmclaw.com>; Wade Woodard <wwoodard@kmclaw.com>; Shannon Menard <smenard@kmclaw.com>; Madison Hyland <mhyland@kmclaw.com>; Nicholas Korst <nicholas.korst@acslawyers.com>; Carter, Meghan <Meghan.Carter@idwr.idaho.gov>; Joe Meuleman <jmeuleman@meulemanlaw.com>; Carolyn McCutchan <carolyn.mccutchan@acslawyers.com>

Subject: Re: Expert disclosure deadlines and request for depo. dates

Not yet.

Jennifer

From: Lindsay Watkins <lindsay.watkins@acslawyers.com>

Sent: Thursday, August 10, 2023 6:39:26 PM

To: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>

Cc: Ammon Hansen <ahansen@kmclaw.com>; Wade Woodard <wwoodard@kmclaw.com>; Shannon Menard <smenard@kmclaw.com>; Madison Hyland <mhyland@kmclaw.com>; Nicholas Korst <nicholas.korst@acslawyers.com>; Carter, Meghan <Meghan.Carter@idwr.idaho.gov>; Joe Meuleman <jmeuleman@meulemanlaw.com>; Carolyn McCutchan <carolyn.mccutchan@acslawyers.com>

Subject: RE: Expert disclosure deadlines and request for depo. dates

CAUTION: EXTERNAL

Jennifer – one initial follow up question, is there a date proposed for the inspection in November?



Lindsay Watkins
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From: Lindsay Watkins

Sent: Thursday, August 10, 2023 4:56 PM

To: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>

Cc: Ammon Hansen <ahansen@kmclaw.com>; Wade Woodard <wwoodard@kmclaw.com>; Shannon Menard <smenard@kmclaw.com>; Madison Hyland <mhyland@kmclaw.com>; Nicholas Korst <nicholas.korst@acslawyers.com>; Carter, Meghan <[Meghan.Carter@idwr.idaho.gov](mailto: Meghan.Carter@idwr.idaho.gov)>; Joe Meuleman <jmeuleman@meulemanlaw.com>; Carolyn McCutchan <carolyn.mccutchan@acslawyers.com>

Subject: RE: Expert disclosure deadlines and request for depo. dates Hi

Jennifer,

Working on this and will get back to you shortly.



Lindsay Watkins

lindsay.watkins@acslawyers.com

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From: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>

Sent: Thursday, August 10, 2023 8:51 AM

To: Lindsay Watkins <lindsay.watkins@acslawyers.com>

Cc: Ammon Hansen <ahansen@kmclaw.com>; Wade Woodard <wwoodard@kmclaw.com>; Shannon Menard <smenard@kmclaw.com>; Madison Hyland <mhyland@kmclaw.com>; Nicholas Korst <nicholas.korst@acslawyers.com>; Carter, Meghan <[Meghan.Carter@idwr.idaho.gov](mailto: Meghan.Carter@idwr.idaho.gov)> **Subject:** RE: Expert disclosure deadlines and request for depo. dates

Lindsay,

On second thought, in lieu of taking Mr. Pita and Rohrbach's depositions on the 19, 20 or 21st, I'd

like to take the deposition of Tim Yedinak on one of those dates. I'll wait to schedule Pita and Rohrbach's until we reach an agreement on expert disclosures. Also, I will be wanting to take the personal depositions of James and Kyle Gebhardt. To the extent Tim, James and/or Kyle are the 30(b)(6) reps, let me know and I can try and combine the personal and 30(b)(6) depositions. Thanks.


Jennifer Reinhardt-Tessmer

Shareholder

d 208.370.3323

c 208.957.3939

From: Jennifer Reinhardt-Tessmer

Sent: Wednesday, August 9, 2023 12:40 PM

To: Lindsay Watkins <lindsay.watkins@acslawyers.com>

Cc: Ammon Hansen <ahansen@kmclaw.com>; Wade Woodard <wwoodard@kmclaw.com>; Shannon Menard <smenard@kmclaw.com>; Madison Hyland <mhyland@kmclaw.com>; Nicholas Korst <nicholas.korst@acslawyers.com>

Subject: Expert disclosure deadlines and request for depo. dates

Lindsay,

In light of the last hearing before the Court on 7/7 and the judge's direction to try and reach a stipulation on Expert Witness Disclosures and Deadlines given the new trial date of 2/26 set forth in the 8/1 amended Scheduling Order, I am reaching out to determine if you would be amenable to moving Plaintiff's deadline to 12 weeks before trial (falling on 12/4); and Defendant's expert disclosure deadline to 12/11 (11 weeks before trial); Plaintiff's rebuttal expert disclosures due 12/18. Depositions of all experts to be completed by 1/26/24. I also propose modifying the Written Discovery deadline, allowing written discovery to be served up until 8 weeks before trial, with responses due on an expedited basis 3 weeks later. Please let me know your thoughts on this proposal.

Also, I am writing to request witness availability for depositions. Specifically, we would like to take the 30(b)(6) deposition of Strider on 8/31, 9/5, or 9/13; and the depositions of Mr. Pita and Mr. Rohrbach on Sept. 19, 20, or 21. Please let me know if any of these dates do NOT work for you and the witnesses.

The 30(b)(6) topics are attached in the draft notice. Thanks,

Jennifer


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EXHIBIT 2

From: [Jennifer Reinhardt-Tessmer](#)
To: [Lindsay Watkins](#)
Cc: [Madison Hyland](#)
Subject: Strider v. IWRB
Date: Wednesday, August 23, 2023 7:44:00 AM
Attachments: [image001.png](#)

Lindsay,

In follow up to our meet and confer conference yesterday afternoon, I want to take the 30(b)(6) conference in person likely for the same reasons you did – it's the main deposition in the case, with several topics and likely to have several exhibits, making an in-person deposition highly preferable. You have indicated Jim Gebhardt will be at least one of the 30(b)(6) representatives and that Kyle may be one of the representatives. I think it makes sense for me to take their individual depositions at the same time they sit for the 30(b)(6) deposition. As I noted in our conversation, I plan on traveling to Seattle for the expert depositions and would be willing to take Kyle's deposition at that time if he ends up not being a 30(b)(6) rep. While you argued that a 30(b)(6) typically takes place at the principal place of business, as I explained, there is an exception if it is a Plaintiff. A party deposing another party generally has the right to choose the location, and deposing the plaintiff in the forum location is certainly reasonable. You indicated you still plan to proceed with a motion. Your motion isn't supported by the law and will well exceed the cost of Plaintiff's travel from Washington to ID to sit for its deposition, so I hope you reconsider.

Jennifer

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Jennifer Reinhardt-Tessmer
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