

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10, SUBREGION 11**

<b>MORGAN CORP.</b>	)	<b>Case 10-CA-250678</b>
	)	
<b>and</b>	)	
	)	
<b>RUSSELL PAUL BANNAN, an</b>	)	
<b>individual</b>	)	
	)	
<hr style="width:100%; border: 0.5px solid black;"/>	)	

**MOTION IN OPPOSITION TO ORDER DATED JUNE 15, 2020 SETTING  
TRIAL VIA VIDEO USING ZOOM TECHNOLOGY**

Respondent, Morgan Corp., (“Respondent” or “Morgan”) pursuant to Board Rules 102.16, 102.24 and 102.35 hereby files this motion in Opposition to the Regions’ Order setting the July 14, 2020 trial to be conducted remotely via video using zoom technology. In the alternative, Respondent moves that the trial be rescheduled to September 22, 2020 at 10:00 a.m. and on consecutive days thereafter until concluded, where live oral testimony can be presented by the parties before the assigned Administrative Law Judge.

At a telephone status conference held on June 12 before Judge Steckler, counsel for the General Counsel indicated that the Region would be requesting that the trial set for July 14, be held by video through zoom technology. No other specifics were provided. Counsel for the General Counsel indicated that request would be filed early the week of June 15, 2020. Respondent indicated it was opposed to that request based generally on credibility concerns that it believes will be critical to this trial.

The Order in question was served upon Respondent at approximately 5:32 PM on June 15, 2020 (Exhibit “A”). The June 15, Order relies on Board rule 102.35(c).

That Rule specifically provides as follows:

**(c)** Upon a showing of good cause based on compelling circumstances, and under appropriate safeguards, the taking of video testimony by contemporaneous transmission from a different location may be permitted.

**(1)** Applications to obtain testimony by videoconference must be presented to the Administrative Law Judge in writing, and the requesting party must simultaneously serve notice of the application upon all parties to the hearing. The application must set forth the compelling circumstances for such testimony, the witness's name and address, the location where the video testimony will be held, the matter concerning which the witness is expected to testify, the conditions in place to protect the integrity of the testimony, the transmission safeguards, and the electronic address from which the video testimony will be transmitted. Such application and any opposition must be made promptly and within such time as not to delay the proceeding.

Other than reciting the COVID-19 situation, none of the core requirements of Board Rule 102.35(c), were met by the Region. More specifically:

1. No application to obtain testimony by videoconference was presented to the Administrative Law Judge in writing.
2. With no application, none of the following has been provided
  - a. the compelling reasons for the testimony,
  - b. the witnesses name and address,
  - c. the location where the video testimony will be held,
  - d. the matter concerning which witness is expected to testify,
  - e. the conditions in place to protect the integrity of the testimony,
  - f. the transmission safeguards, and
  - g. the electronic address from which the video testimony will be transmitted.

While the May 11, 2020 *Morrison Healthcare*, 369 NLRB No. 76 (2020) permits hearings by videoconferencing in certain circumstances, it contemplates the

requirements of the Rule be adhered. They were not and as such the June 15, 2020 Order to conduct the trial by videoconference should be denied and a new trial date set where live oral testimony can be presented by the parties before the assigned Administrative Law Judge.

Dated this 16th day of June, 2020.

Respectfully submitted,

*s/Richard J. Morgan* \_\_\_\_\_

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<b>individual</b>	)	
	)	
	)	
_____	)	

I do hereby certify that I served a copy of the following document upon parties of record via email and by depositing a copy in the U.S. Mail, postage paid, to the following address(es) this 16th day of June, 2020:

Document: Respondent’s Motion in Opposition to Order dated June 15, 2020  
Setting Trial via Video using Zoom Technology

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