TRIAL GUIDELINES

1. Daily Schedule

Unless notified to the contrary, the jury portion of the trial will be conducted each trial day from 9:30 a.m. (10:00 a.m. on Mondays) to 12:15 p.m. and from 1:30 p.m. to 4:15 p.m. Trials will convene promptly at the designated time on each trial day.

Matters to be discussed outside the presence of the jury will not ordinarily be considered during the hours designated for a jury trial, and side-bar discussions are discouraged. Any matters to be considered outside the presence of the jury should be scheduled for 9:00 a.m. with notice given on the preceding trial day to the court and all counsel.

2. Motions

Undisposed of motions and other pretrial issues will be resolved at or prior to the beginning of the trial. However, it is the responsibility of counsel to bring them to the attention of the court.

3. Voir Dire

The judge conducts voir dire in civil and criminal cases. He permits counsel to submit special questions to him before voir dire begins. At the conclusion of his questions, he usually will allow counsel to ask additional questions directly to the panel or to any individual member of the panel.

4. Openings and Closings

No time limits are placed on opening statements or summations by counsel. However, fifteen (15) minutes is usually adequate for an opening statement and thirty (30) to forty-five (45) minutes is usually adequate for a summation. Opening statements are not for argument, but are for presentation of an outline of what the parties intend to prove.

5. Witnesses

The court intends to start on time and expects counsel, witnesses and parties to be available when needed. Do not run out of witnesses. Failure to have witnesses available during trial may result in the preclusion of their testimony.

The judge will generally grant a request by counsel to take the testimony of a witness out of turn for the convenience of the witness subject to objection by opposing counsel. A doctor's testimony will be taken, whenever possible, at a time convenient to the doctor, even if it means interrupting the testimony of another witness.

More than one attorney for a party may examine different witnesses or argue different legal points. Ordinarily, not more than one attorney for a party may examine a single witness or argue the same legal point.

Examination of witnesses beyond redirect and recross will be allowed only rarely.

6. Objections and Side-bars

Objections should be stated in just a few words or by rule number. Extensive argument on objections in the presence of the jury is forbidden. If counsel feels that extensive argument will be needed, he or she should advise the court in advance so that it can be scheduled for argument outside the presence of the jury at 9:00 a.m. on one of the trial days.

The judge permits, but tries to limit, side-bar conferences because they distract the jury and interrupt the flow of the trial.

7. Offers of Proof

The attorneys should inquire of each other privately as to offers of proof regarding any witness or exhibit expected to be offered. If counsel cannot resolve such matters, the court will rule on them before a witness testifies or an exhibit is offered into evidence and at a time when the jury will not be inconvenienced.

8. Stipulations

Offers to stipulate shall not be made in the presence of the jury, unless they have previously been agreed to informally between the attorneys in the absence of the jury. Stipulations may be oral, but preferably they should be in writing and received as an exhibit.

9. Videotaped Testimony

Counsel are required to discuss in advance of trial all objections to the presentation of videotaped testimony and attempt to resolve all conflicts. If they cannot resolve their differences, counsel should present any outstanding disagreements to the court in accordance with the procedure established in the scheduling order. The videotape should then be edited to eliminate pauses and speed-ups to the maximum extent such final editing is possible. Videotape playback equipment should be brought into the courtroom at the beginning of the morning or afternoon session at which the videotape will be played. It must never block the view of counsel or the jury when not in use.

10. Reading to the Jury

There is no special practice or policy for reading stipulations, pleadings, or discovery material into the record.

11. Exhibits

Exhibits must be pre-marked and pre-exchanged. A bench copy of trial exhibits should be provided to the court on the first day of trial. The trial exhibits should be accompanied by an exhibit list which describes each exhibit.

As long as each exhibit is offered and admitted into evidence before it is shown to the jury, the judge has no particular preference as to when counsel should offer exhibits into evidence. At the conclusion of a party's case-in-chief, counsel should make sure that all exhibits intended to be offered into evidence either have been or are offered into evidence.

Once an exhibit has been admitted into evidence, it must remain on the evidence table accessible to all counsel and witnesses. To the extent practicable, the court also prefers that all exhibits which have been identified by a witness also remain on the exhibit table.

Once an exhibit has been admitted into evidence, all parts of the exhibit may be referred to throughout the trial and during summations. However, the court will consider separately whether or not the exhibit will be sent out with the jury during deliberations.

Unless there is objection from opposing counsel placed on the record, exhibits are released at the close of trial to the custody of the party who offered them and must be picked up within 48 hours or they will be destroyed.

12. Comments to the Jury

Except during opening statements, closing statements and, where warranted, voir dire, counsel may not speak directly to the jury without the permission of the judge.

13. Courtroom Movement

Counsel may move about the courtroom freely without asking permission. It is specifically not necessary to ask permission to approach a witness or to move the lectern, easel or a blackboard. If counsel is standing near a witness for the purpose of pointing something out on an exhibit, opposing counsel may also be present to observe firsthand what is being pointed out. However, neither counsel should stand between the witness and the jury.

14. Exhibits to the Jury

After the close of the charge, counsel will review the exhibits among themselves to determine which exhibits will go out with the jury. Any disputes will be resolved by the court.

15. Jury Requests

If the jury requests that testimony be read back or that tapes be replayed, the judge will confer with counsel, consider the extent of the jury's request, and, if it is reasonable, comply with it.

16. Deliberations

Counsel should be available on fifteen (15) minutes' notice during jury deliberations. As a practical matter, this means that counsel must stay in or very near the courthouse or have an associate present.

17. Verdict

The courtroom deputy will take the verdict. Special interrogatories are submitted to the jury in most civil cases.

18. Polling the Jury

Polling of the jury is normally unnecessary in a civil case, but will be permitted if requested. Polling of the jury is always allowed in criminal cases.

19. Interviewing the Jury

After a verdict has been recorded and a jury has been discharged, counsel may interview jurors. The jurors are told that they are permitted to talk to counsel and others, if they desire, but they need not do so.

THE JUDGE EXPECTS PUNCTUALITY FROM COUNSEL AND COURTESY REGARDING EACH OTHER, BOTH IN THE PRESENCE OF THE COURT AND OTHERWISE. HE IS OF THE VIEW THAT VIGOROUS, ROBUST ADVOCACY NEED NOT BE RUDE.

JUDGE WILLIAM H. YOHN JR.
(COURTROOM 14-B)
ROOM 14613
U.S. COURTHOUSE
601 MARKET ST.
PHILA., PA 19106

October, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

: CIVIL ACTION

V. : NO.

:

SCHEDULING ORDER

AND NOW, this day of , 200 , **IT IS ORDERED** as follows:

1. Counsel are encouraged to request a voluntary settlement conference as early in the discovery process as they feel it will be productive. A settlement conference will be scheduled upon agreement of all counsel. Unless the court authorizes an exception, such agreement constitutes counsel's certification that there is a reasonable possibility of settlement and that the party represented by counsel will engage in good faith negotiations to resolve the litigation. All settlement conferences in non-jury cases will be conducted by Magistrate Judge Elizabeth T. Hey.

If a settlement conference has not been previously requested, plaintiff's counsel is directed to contact Magistrate Judge Elizabeth T. Hey in the week prior to the close of discovery to schedule a mandatory settlement conference which will be held within the two (2) weeks after the close of discovery. All settlement conferences in prisoner pro se cases will be conducted by telephone.

At any settlement conference, counsel shall have his/her client or a person authorized by his/her client with unlimited authority to settle at the conference or available by telephone during the entire conference.

Discovery

2. All discovery shall proceed forthwith and continue in such manner as will assure that all requests for, and responses to, discovery will be noticed, served and completed by . Discovery may take place thereafter by agreement of the parties without court approval, so long as the trial will not be delayed and trial preparation will not unreasonably be disrupted. No discovery may take place during the trial unless directed by the court.

In all pro se cases, the defendant shall, within thirty

(30) days from the date of this order, take the oral deposition of the pro se plaintiff, unless the court excuses such discovery upon motion made and good cause shown by any defendant governed by this requirement. The taking of this preliminary deposition of a pro se plaintiff shall not preclude a defendant from taking a later deposition if it is otherwise permissible under the Federal Rules of Civil Procedure.

3. Plaintiff shall comply with the requirements of Fed.R.Civ.Proc. 26(a)(2) for disclosure of expert testimony forty (40) days prior to the close of the discovery period.

4. Defendant shall comply with the requirements of Fed.R.Civ.Proc. 26(a)(2) for disclosure of expert testimony twenty (20) days prior to the close of the discovery period.

5. All parties shall file with the Clerk of Court and opposing counsel the pretrial disclosure required by Fed.R.Civ.Proc. 26(a)(3)(A) and (C) by the close of the discovery period. No witness, expert or fact, not listed may be called to testify during the party's case in chief.

Motions

6. All motions to amend the complaint, join or add additional defendants or name John Doe defendants shall be filed within 60 days of the date of this order. All motions for summary judgment or partial summary judgment shall be filed and served on or before . All motions in limine shall be filed and served at least five (5) business days before the trial date. All other motions shall be filed and served prior to the close of the discovery period. Any motions filed in violation of this order shall be deemed waived unless good cause is shown.

No brief filed in support of or in opposition to any motion shall exceed twenty-five (25) pages in length without prior leave of court. The moving party may file a reply brief, limited to a maximum of seven (7) pages, within five (5) business days of the filing of the opposing party's response.

7. In addition to a brief, any party filing a motion for summary judgment or partial summary judgment shall file a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the party contends there is no genuine issue to be tried. The party must support each of the material facts with specific citations to the underlying record, and attach a copy of the relevant portions of that record, if practicable and not already of record. Failure to submit such a statement of material facts with citations may constitute ground for denial of the motion.

The opposing party shall file a separate, short and concise statement, responding to the numbered paragraphs in the moving party's statement, of the material facts as to which the opposing party contends there is a genuine issue to be tried and shall conform to the record citation requirements listed above. All factual assertions set forth in the statement required to be served by the moving party shall be deemed admitted unless controverted by the statement required to be served by the opposing party.

Trial

8. All parties shall prepare and file with the Clerk of Court and opposing counsel their pretrial memoranda, in accordance with Local Rule 16.1(c)(1)(2)(3)(6) and (7) as follows:

A. Plaintiff - at least twenty (20) days prior to the trial date.

B. Defendant - at least ten (10) days prior to the trial date.

9. Any party having an objection to the admissibility of any exhibit based on authenticity or the adequacy of the qualifications of an expert witness expected to testify, shall set forth separately each such objection in their pretrial memorandum. Such objection shall describe with particularity the ground and the authority for the objection.

10. The case is scheduled for trial on _____ at 10:00 a.m. This scheduling order will be the only written notice counsel will receive of the date this case will be tried. Counsel and all parties shall be prepared to commence trial on this date and the court will make every effort to commence trial on this date consistent with its other obligations. The order in which cases are listed in the Legal Intelligencer for that date has no relevancy to the order in which they will be called for trial.

Ordinarily cases will begin trial on the date scheduled. In the event the court is unable to begin the trial within two (2) weeks of that date, counsel will be given the option of remaining on the standby list until the case can proceed to trial or continuing the case to a new fixed date in the future. A copy of the court's trial guidelines is available from the courtroom deputy upon request.

11. Because a witness may be unavailable at the time of trial as defined in Federal Rule of Civil Procedure 32(a)(3), the court expects use of oral or videotape depositions at trial of

any witness whose testimony a party believes is essential to the presentation of that party's case, whether that witness is a party, a non-party or an expert. The unavailability of any such witness will not be a ground to delay the commencement or progress of the trial. Any oral or videotape deposition for use at trial shall be held at least five (5) business days before the trial date.

12. Any party who contends or will contend that the proposed testimony of any expert witness requires a Daubert hearing shall notify the court by letter at least thirty (30) days prior to the trial date so that the hearing can be held prior to trial and without impinging upon the jury's time.

In the event a deposition is to be offered at trial, the offering party shall file with the court, prior to the commencement of the trial, a copy of the deposition transcript, but only after all efforts have been made to resolve objections with other counsel. Portions of the deposition offered by the plaintiff shall be marked in blue; portions offered by the defendant, in red. Where a court ruling is necessary, the basis for unresolved objections shall be stated in five (5) words or less in the margin of the deposition page(s) and a covering list of such objections supplied therewith.

13. **(JURY CASES ONLY)** All proposed jury instructions shall be numbered and shall have citations of authority for each point (one point per page). If a model jury instruction is submitted, for instance, from the Third Circuit Model Jury Instructions or O'Malley, Federal Jury Practice and Instructions, (6th Edition) or Pennsylvania Suggested Standard Civil Jury Instructions, counsel shall state whether the proposed jury instruction is modified or unchanged. If counsel modifies a model jury instruction, additions shall be underlined and deletions shall be placed in brackets. If a model jury instruction is unchanged, it may be submitted by title and paragraph reference only.

At least fifteen (15) business days before the trial date, counsel shall exchange proposed jury instructions and proposed jury interrogatories. Counsel for the plaintiff is directed to initiate the scheduling of a meeting of all counsel to be held at least ten (10) business days before the trial date, at which counsel shall meet, discuss and submit to the court one complete set of agreed upon jury instructions and jury interrogatories. The original shall be filed with the Clerk of Court. If a good faith effort is not made to comply with this directive, the trial may be continued or sanctions imposed on individual counsel.

If the parties are unable to agree upon certain jury

instructions or jury interrogatories, at least five (5) business days before the trial date, the party proposing the instruction or interrogatory shall submit to the court one (1) copy of the proposed instruction or interrogatory and its citation of authority and the party opposing the instruction or interrogatory shall submit to the court one (1) copy of its specific objection, citation of authority and proposed alternative. The originals shall be filed with the Clerk of Court.

At least five (5) business days before the trial date, each party shall file a trial memorandum on the legal issues involved in the case and that party's proposed voir dire questions. The originals shall be filed with the Clerk of Court.

At least five (5) business days before the trial date, each party shall submit to the court a one page or less summary in non-legalese language of its contentions with reference to the facts, theories of liability and damages. Prior to the beginning of voir dire, the other party may file objections or alternatives to this summary. The summary will be used by the court in its preliminary and final instructions to the jury to familiarize the jurors with the general framework of the factual issues in the case.

14. **(NON-JURY CASES ONLY)** At least fifteen (15) business days before the trial date, counsel shall exchange proposed findings of fact and conclusions of law.

Counsel for the plaintiff is directed to initiate the scheduling of a meeting of all counsel to be held at least ten (10) business days before the trial date at which counsel shall meet, discuss and submit to the court one (1) complete set of agreed upon findings of fact and conclusions of law. The original shall be filed with the Clerk of Court. If a good faith effort is not made to comply with this directive, the trial may be continued or sanctions imposed on individual counsel.

With reference to those findings of fact and conclusions of law upon which the parties are not able to agree, at least five (5) business days before the trial date each party shall submit to the court two (2) copies of that party's proposed disputed findings of fact and conclusions of law, and a trial memorandum on the legal issues involved in the case. The original shall be filed with the Clerk of Court.

15. All trial exhibits, except for impeaching documents, shall be premarked and exchanged by counsel prior to the commencement of trial. Defense counsel shall not mark or use any exhibit which is an additional copy of an exhibit which has been listed by plaintiff's counsel. Defense counsel shall use

plaintiff's exhibit throughout the trial. At the commencement of trial, counsel shall supply the court with a bench copy of each exhibit, the duplication of which is practicable (two (2) copies in non-jury trials), and two (2) copies of a schedule of all exhibits which shall briefly describe each exhibit. Counsel shall also prepare a binder of their exhibits to be placed on the witness stand and used by all witnesses.

At the time of its use, counsel shall supply the court and opposing counsel with a copy of each impeaching document, the duplication of which is practicable.

_____

William H. Yohn Jr., Judge

NOTICE TO COUNSEL REGARDING THE COURT'S SCHEDULING AND DISCOVERY POLICY

1. Pursuant to Fed.R.Civ.P. 16(b) and (c), the court will schedule a preliminary pretrial conference shortly after a defendant has filed an appearance or pleading, or shortly after a case has been reassigned to its calendar.

2. Threshold motions such as to amend, to transfer, to remand, or to add parties should be filed, whenever possible, before the pretrial conference.

3. The conference will usually be held in chambers and last 15 - 30 minutes. The court may decide to conduct the conference by telephone or via mail. In complex cases, the court requires trial counsel to be present or, in extraordinary situations and where counsel are located significantly outside the greater metropolitan Philadelphia area, to be available by telephone.

4. At the conference, the following matters, among others, will be considered and acted upon:

A. Jurisdictional defects;
B. Time limits for the joinder of parties and/or the amendment of pleadings;
C. Prospects of an amicable settlement;
D. Establishment of a schedule for remaining pretrial proceedings such as discovery, additional motions, pretrial filings, the exchange of exhibits, and the exchange of expert reports; and
E. Setting a date for trial.

5. A mandatory settlement conference will be held at the close of discovery. No other conferences will be held unless requested by counsel for the exploration of settlement, for trial management, or for preparation purposes. Conferences are encouraged provided counsel believe they will be useful.

6. In most cases, discovery should be completed within 120 days after service of the complaint. Counsels' joint proposed discovery plan under Fed.R.Civ.P. 26(f) should set forth the dates, time intervals, and subjects of discovery to be completed by the discovery deadline.

7. All reasonably foreseeable discovery must be noticed, served, and completed by the discovery deadline. Discovery may take place thereafter by agreement of the parties without court approval so long as the trial is not delayed and trial preparation is not unreasonably disrupted. The court will not entertain motions to compel discovery after the date of the discovery deadline except upon the showing of good cause for the failure to timely file or serve such motions.

8. When timely discovery is not forthcoming after a reasonable attempt has been made to obtain it, parties should first seek to resolve disputes under Local Rule 26.1(f), then seek the assistance of the court. The court encourages the submission of discovery disputes by

telephone conference. If a discovery motion is filed, it may be acted upon before a response is filed with or without a telephone conference.

9. Requests for extension of discovery deadlines or trial dates may be made by letter or telephone conference. A letter must state the reasons an extension is required, note the agreement or disagreement of all other counsel, and specify the period of delay requested. A telephone conference requires the participation of all counsel. Requests not in compliance with these requirements will be denied. Requests will not ordinarily be granted unless made within 30 days of the date of the scheduling order.

10. The filing of a Pretrial Memorandum as described in Local Rule 16.1(c) is required. Local Rule 16.1(d)(2) will only be utilized when specially ordered by the court.

11. After arbitration, requests for trial de novo will result in a prompt date for trial. No discovery or motions, except motions in limine, will be allowed after arbitration except as ordered by the court upon the showing of good cause as to why the discovery or motion requested could not have been reasonably anticipated and completed before arbitration.

12. Unexcused violations of scheduling orders are subject to sanctions under Fed.R.Civ.P. 16(f), upon either the motion of a party or the initiative of the court.

13. Letters or other written communication shall be directed to the court and not to law clerks. Telephone calls to law clerks are strongly discouraged. Law clerks are not permitted to render advice to counsel and have no authority to grant continuances or to speak on behalf of the court.

14. This court urges the use of Electronic Case Filing ("ECF"). ECF provides greater efficiency and timeliness in the filing of pleadings, automatic e-mail notice of case activity, as well as electronic storage of documents for remote access by the Court, the bar and the litigants. Attorneys are urged to register for Electronic Case Filing ("ECF") Filing Users in accordance with Rule 5.1.2 of the Local Rules of Civil Procedure, referencing the Procedural Order on Electronic Case Filing.

Counsel are advised that changes to their telephone and FAX number(s) are to be submitted both to the Clerk's Office and to Thomas J. McCann, Deputy Clerk to the Honorable William H. Yohn, Jr., Room 14613 U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106.

15. All inquiries concerning the status of cases as trial dates approach should be directed to Rita L. Polkowski, Secretary to the Honorable William H. Yohn, Jr., at (215) 597-4361.

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William H. Yohn, Jr., Judge