

IN THE DISTRICT COURT OF TETON COUNTY, WYOMING
NINTH JUDICIAL DISTRICT

*,)	
)	Civil Action No. 16838
Plaintiff,)	
)	SCHEDULING AND CASE
vs.)	MANAGEMENT ORDER
)	(CIVIL)
*,)	
)	
Defendant.)	

A SCHEDULING CONFERENCE was held between the court’s scheduling clerk and counsel on the * day of *, 2015; counsel appeared as follows: * appeared for Plaintiff and * appeared for Defendant.

IT IS ORDERED:

1. MODIFICATION OF TIMES FOR DISCLOSURES UNDER W.R.C.P. 26(a)(1), (a)(1.1) and 26(e)(1). Self-executing discovery under W.R.C.P. 26(a)(1) and 26(a)(1.1) are expected to have been completed subject to ongoing disclosure pursuant to W.R.C.P. 26(e). Any modifications of times and procedures for disclosures under W.R.C.P. 26(a)(1), 26(a)(1.1) and 26(e) shall be agreed to and submitted to the Court in writing within thirty (30) days.
2. DISCOVERY. The discovery cut-off date is *. No discovery will be permitted beyond the discovery cut-off date without leave of Court. However, the parties may depose expert witnesses up to 3 weeks prior to trial.
3. DISCOVERY DISPUTES. To promote the just, speedy and inexpensive determination of discovery disputes, the Court may decide motions without a hearing upon the written submission of the parties. Failure of a motion to contain a good faith certification of efforts to resolve the discovery dispute without Court intervention will result in automatic denial of the motion. Any response to a discovery dispute motion shall be filed within ten (10) days. Replies to responses are not expected, but if necessary to address new issues raised by the response, a necessary reply shall be filed within three (3) days.
4. DESIGNATION OF EXPERTS. Disclosure of experts shall be made according to the procedure of W.R.C.P 26(a)(2) and in the time periods as follow. Plaintiff shall designate

expert witnesses by *. The Defendant shall designate expert witnesses by *. Rebuttal expert testimony will not be permitted absent good cause shown. These deadlines apply to those specially retained expert witnesses, designated pursuant to W.R.C.P. 26(a)(2)(B)(i), from whom an expert report is required. These deadlines also apply to those witnesses designated pursuant to W.R.C.P. 26(a)(2)(B)(ii), who are expected to provide opinion testimony but from whom no report or disclosure under W.R.C.P. 26(a)(2)(B)(i) is required. The disclosure of W.R.C.P. 26(a)(2)(B)(ii) witnesses shall be accompanied by the summary of the facts or opinions to which the witness is expected to testify and disclose the subject matter on which the witness is expected to present evidence, as specified in W.R.C.P. 26(a)(2)(B)(ii).

5. WITNESSES. The parties shall file a list of the names, addresses and phone numbers of all of their witnesses, *including expert witnesses, along with a summary of the testimony of each*, and provide the same to opposing counsel on or before *. Witnesses shall be designated as “*may call*” or “*will call.*” A party designating any “*will call*” witness shall be responsible for the attendance of such witness at trial, and any opposing party and the Court can rely thereon. Each party shall also designate those witnesses who “*will*” or “*may*” testify by deposition and any and all portions of the deposition testimony shall be designated. Failure to list witnesses according to this paragraph may result in them being stricken.

6. EXHIBITS. All exhibits shall be listed and marked on an index substantially similar to the Exhibit Form attached hereto. On or before *, the parties shall file a list of any exhibits intended for use in the case. Prior to the initial pretrial conference, counsel shall mark exhibits for identification and furnish copies to opposing counsel or if not feasible, make the same available for inspection (copies of exhibits shall not be attached to the pretrial memorandum or filed in the court file). Plaintiff’s exhibits shall be numbered in sequence and defendant’s exhibits shall be lettered in sequence. Unless written objection is filed and served not later than ten (10) days from the date of filing of said exhibit lists, all exhibits which have been noticed will be admissible if relevant. Large numbers of exhibits are not to be lumped under one number or letter. If the exhibits are to be introduced individually at the trial, they are to be listed individually on the exhibit form. The failure to mark exhibits and furnish copies to opposing counsel before the initial pretrial conference may result in any such exhibits being inadmissible at the trial.

7. INITIAL PRETRIAL CONFERENCE. This matter is set for an initial pretrial conference in the District Courtroom of the Teton County Courthouse, Jackson, Wyoming on the *

day of *, 2015 at *.m. One (1) hour is set aside for the hearing. The parties shall attend the pretrial conference along with their attorneys. The provisions of Rule 16, W.R.C.P. are incorporated herein by reference. All parties shall **file** their pretrial memoranda no later than five (5) days prior to the conference. The pretrial memoranda shall include the following:

A. NATURE OF THE CASE. The nature of the case shall be a concise statement of the case, together with any information concerning the formulation and simplification of the issues, including the elimination of frivolous claims or defenses.

B. AMENDMENTS TO PLEADINGS. The parties shall justify the necessity or desirability of amendments to the pleadings and shall submit copies of any proposed amendments. It should be noted that proposed amendments to pleadings at this late stage will be closely scrutinized by the Court and will not be permitted unless absolutely necessary. The parties should amend their pleadings much earlier in the course of the case.

C. STIPULATIONS. The parties shall enter into written stipulations of fact, of issues, and documents which will avoid unnecessary proof and shall submit such stipulations along with the pretrial memoranda. Factual matters to be submitted through an offer of proof shall also be reduced to writing.

*D. FINDINGS. Requests for findings of fact or conclusions of law shall be filed along with the pretrial memoranda.

E. OTHER MATTERS. The parties shall:

i. Advise the Court of all pending matters; such as, but not limited to, motions, discovery, stipulations, issues regarding the conduct of the trial or any other issues which could be addressed prior to the trial, and such other matters as may aid in the disposition of the action.

ii. Advise which witnesses will testify at trial, the scope of their testimony, and confirm that final reports of experts and their qualifications have been exchanged;

iii. Confirm that all efforts of settlement have taken place;

iv. Advise the Court of the proposed schedule for the orderly presentation of evidence at the trial and establishing a reasonable limit on the time allowed for presenting evidence. In considering said schedule, counsel shall consider any issues with regard to the conduct of the trial in order to facilitate the just, speedy, and inexpensive disposition of the

action; and shall consider the avoidance of unnecessary proof of cumulative evidence, and limitations or restrictions on the use of testimony under Rule 702 W.R.E.;

v. Advise the Court of the length of time counsel anticipate using to conduct the voir dire examination, opening statements, closing arguments and the trial in its entirety.

8. MEDICAL EXAMINATION. In accordance with the provisions of Rule 35 W.R.C.P., the Defendant may require the Plaintiffs to submit to a physical examination by experts designated by the Defendant any time before six (6) weeks prior to trial, upon reasonable notice. The Defendant shall designate any additional medical expert witnesses on or before one (1) week after such examination. The Defendant shall deliver to Plaintiffs a copy of a detailed written report of the examining physician or physicians setting out the findings, including results of all tests made, diagnosis and conclusions, together with like reports of all earlier examinations of the same condition. Thereafter Defendant shall be entitled upon request to receive from Plaintiffs a like report of any examination, previously or thereafter made, of the same condition. The Plaintiff may depose such medical experts any time up to three (3) weeks prior to trial.

9. DISPOSITIVE MOTIONS. All dispositive motions, together with briefs and affidavits in support thereof shall be filed on or before *. Any response to motions so filed shall be filed within twenty (20) days of the date of the filing of said motions. Dispositive motions will generally be heard at the pretrial conference unless counsel seek a separate hearing, stating good cause and suggesting the time required for the hearing. If a reply brief is filed, counsel are directed to Wyo. R. App. P. 7.03 (as amended in May 2015), which the Court finds to be useful and appropriate for trial briefs. A reply brief shall be narrowly tailored and is limited to such new issues and arguments raised in the response brief. Counsel should not use the reply brief to repeat arguments and analysis appearing in their opening brief. Failure to comply with this requirement may result in the Court disregarding the reply brief.

10. OTHER PRETRIAL MOTIONS:

A. At least forty-five (45) days prior to the initial pretrial conference counsel shall file all reasonably anticipated motions, including motions *in limine*. Generally, rulings on pretrial motions *in limine* are optional and tentative. Because such motions are asking the court to rule on motions without the benefit of the larger factual picture that develops at trial (they are out of context), the court may reserve ruling until trial subject to a renewed motion at trial. Pretrial

rulings on motions *in limine* are therefore not to be expected unless their necessity is demonstrated by compelling reasons. If the court grants a motion *in limine*, the Court retains discretion to reconsider the ruling upon motion at trial.

Pretrial motions *in limine*, in order for the Court to consider them, shall meet the following requirements:

i. The movant opposing admission of the evidence shall move *in limine* to exclude certain evidence.

ii. The movant shall state they have reason to believe that the responding party possesses the evidence and will offer or mention the evidence at trial.

iii. The movant shall briefly but specifically state the ground on which the evidence is inadmissible.

iv. The movant shall explain why an ordinary trial objection would be inadequate protection for the movant and why an advance ruling by the Court is required.

v. The movant shall present legal argument in favor of the motion.

All motions *in limine* shall include citation to and discussion of the relevant Wyoming Rule of Evidence and any applicable Wyoming law.

vi. The response shall indicate whether the responding party intends to offer or refer to the objected-to evidence. If the responding party expects to offer or refer to such evidence, they shall identify why the evidence is relevant and admissible and shall present legal argument in favor of their position. If the responding party does not expect to offer or refer to such objected-to evidence, they shall indicate their non-objection to the motion *in limine*.

B. Although the parties should feel free to request oral argument on any motion and to give reasons why they believe argument would be helpful to the Court in reaching a decision, they are on notice that the Court may rule on any motion without a hearing as permitted by W.R.C.P. 6. Therefore, the parties are reminded that they should take full advantage of the opportunity to fully brief the issues in their motions, responses, and replies. The written materials should direct the Court to the relevant law and evidentiary support for the motion or opposition thereto. The Court appreciates concise briefing and often finds that less is more. Where extensive briefing cannot be avoided, concise summaries are helpful.

C. Notwithstanding W.R.C.P. 6(c), **any reply briefs, supplemental memoranda or rebuttal affidavits shall be filed not less than one (1) week prior to hearing.**

Late submissions may not be considered by the Court.

D. If a reply brief is filed, counsel are directed to Wyo. R. App. P. 7.03 (as amended in May 2015), which the Court finds to be useful and appropriate for trial briefs. A reply brief shall be narrowly tailored and is limited to such new issues and arguments raised in the response brief. Counsel should not use the reply brief to repeat arguments and analysis appearing in their opening brief. Failure to comply with this requirement may result in the Court disregarding the reply brief.

E. Pretrial motions will be addressed at the initial pretrial conference unless separately scheduled as set forth below. The Court will consider at that time all dispositive motions, general pretrial motions, and any motions *in limine* that are ripe for decision, disposition of which the Court believes would contribute to efficiency in the pretrial and trial process. As noted above, it is anticipated that the Court's ultimate decision on most motions *in limine* will be deferred until trial. Parties should be prepared to argue any pending motions. However, oral argument on pretrial motions will be at the discretion of the Court. If, due to the number or complexity of motions that will be argued at the initial pretrial, counsel anticipate a separate motions hearing or a longer hearing for the initial pretrial conference is required, they shall move the Court as soon as possible and at least thirty (30) days before the initial pretrial conference, stating good cause and suggesting the time required for the hearing.

11. CONTINUANCES. In the absence of emergency or exceptional circumstances, the Court will not consider requests for continuances *unless* there is certification by the moving party that they conferred with the other parties/counsel in the case and represent their consent or objection, if any. If there is objection by any party to a proposed continuance, it shall be filed as soon as possible after the motion for continuance is filed and within five days of filing.

12. JURY INSTRUCTIONS. Proposed jury instructions shall be filed at least four (4) weeks prior to trial, and in accordance with Rule 403 of the Uniform Rules for the District Courts of the State of Wyoming provided, however, that "clean copy" instructions without citation need not be submitted. The submission of proposed instructions shall be as follows:

A. Each party shall file with the Clerk of Court a set of proposed instructions, Plaintiff's numbered and Defendant's lettered, as appropriate, with citation. If not a Wyoming pattern instruction, citations to authority for the proposition of law proffered shall be pinpoint, and shall include an explanatory parenthetical stating the point of law supported by the case and stating

the nature of the case. Failure to so detail the authority for non-pattern instructions shall be considered caused for the Court to disallow the instruction. The parties shall include a cover sheet which contains an index of the instructions by letter or number and the pattern jury instruction number if applicable or other authority, as well as a brief title for each instruction. Each party may submit a proposed instruction setting forth a brief (not more than 3 or 4 sentences) instruction of the parties' contentions in a non-argumentative manner for the Court to consider reading to the entire jury panel before beginning the voir dire examination. The Court reserves the right to decide whether such contention instructions will be given at that time. Each party shall submit a proposed instruction setting forth the burdens of proof of each of the parties, and a proposed verdict form with any special interrogatories. Each party shall provide a copy of the requested instructions to the Court at P.O. Box 1036, Jackson, WY 83001.

B. Counsel shall email to the Court at chammond@courts.state.wy.us, their jury instructions in a Word format.

13. JUROR NOTEBOOK. Counsel shall inform the Court at the pretrial conference of whether they seek to use, pursuant to W.R.C.P. 39.1(b), a juror notebook at trial and what contents they propose for a juror notebook. If counsel wish the Court to consider the use of a juror notebook, the Court will require counsel to meet and confer in advance of trial in an attempt to agree to the contents of the juror notebook. No juror notebook will be permitted for use that has not been approved in advance by the Court.

14. NOTICE TO COURT REPORTER. Any party requesting the reporting of a particular matter by the official court reporter shall provide notice to the official court reporter at least three (3) working days before the matter is set for hearing. The three-day notice requirement will not be waived by the Court. The notice is required for all civil matters including jury trials. *Rule 904 Uniform Rules of the District Courts of the State of Wyoming.*

15. ALTERNATIVE DISPUTE RESOLUTION. Counsel shall confer and agree on a mediator for this case. Counsel and the parties shall make themselves available for mediation on or before * and shall make a good-faith effort to settle this case.

*14. MEDIATION. The Court encourages counsel with their clients to evaluate the merits of their case at the earliest opportunity and seek settlement on terms such as are fair and just. Failure to reach settlement through informal efforts will likely lead the Court to review the matter for Court-ordered mediation pursuant to W.R.C.P. 40. The Court encourages good-faith

settlement efforts and mediation if required. Early and realistic evaluation of the parties' respective cases, and timely settlement and mediation efforts, should serve to advance the purpose of W.R.C.P. 1 to secure the just, speedy and inexpensive determination of every action.

16. SETTLEMENT. In the event that this case settles, the parties shall promptly notify the Court in writing. The parties are informed that there will be no change in the scheduling of this matter by the Court until such time as the settlement is reduced to writing and a stipulation executed by counsel to that effect. There will be no continuances or canceling of the trial date based on telephone calls.

17. TRIAL. A trial date will be set at the initial pretrial conference. The case must be ready for trial in all respects by the time of the final pretrial conference.

DATED the * day of *, 2015.

Timothy C. Day
District Judge