

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re	:	Chapter
	:	
Debtor(s)	:	Bky. No.
_____	:	
	:	
Plaintiff(s)	:	
	:	
v.	:	
	:	
	:	
Defendant(s)	:	Adv. No.
	:	

.....
PRETRIAL ORDER #1
.....

AND NOW, it is hereby **ORDERED** that:

1. If not already filed, any party that is subject to Fed. R. Bankr. P. 7007.1 shall file the required disclosure on or before **(7 days)**.
2. On or before **(14 days)**, counsel shall have held and concluded the mandatory discovery conference pursuant to Fed. R. Civ. P. 26(f), incorporated into these proceedings by Fed. R. Bankr. P. 7026. During said conference, the parties shall discuss how to proceed with general discovery and electronic discovery and shall consider whether the discovery and pretrial schedule detailed below in this order is appropriate in this proceeding. The parties shall also discuss the appropriateness of the Court's annexed mediation program(s).
3. **On or before 21 days**, the parties shall file a Joint Statement whether they consent to

participate in the Court's-annexed mediation program.

- a. If the parties consent to mediation, the Joint Statement shall either:
 - i. request that the court appoint a specific individual to serve as mediator;
 - ii. request that the court appoint a specific individual who has indicated a willingness and ability to serve as mediator, see ¶ 3.b. below, from a list of no more than three (3) names; or
 - iii. advise the court that the parties cannot locate or cannot agree upon an individual to serve as mediator
 - b. Prior to the submission of a Joint Statement that provides a list of one (1) or more mediators acceptable to the parties, the parties shall contact each potential appointee to determine whether the person is willing to serve as mediator and whether that person has preliminarily determined that he or she is not disqualified under L.B.R. 9019-2(i).
4. **On or before (28 days)**, the parties shall provide the initial disclosures detailed in Fed. R. Civ. P. 26(a)(1). Any objections to the propriety of requiring the initial discovery disclosures required by Fed. R. Civ. P. 26(a)(1), see Fed. R. Civ. P. 26(a)(1) (C), shall be set forth in the parties Rule 26(f) Report.
5. **On or before (35 days)**, should the parties propose a discovery or pretrial schedule that differs from the one below, they shall file with the Court a report on discovery, as mandated by Fed. R.Civ. P. 26(f) ("the Rule 26(f) Report"). The parties shall detail those differences in their Rule 26(f) Report, along with the reasons therefor. The Court may, when appropriate, order a hearing based on the information found in the Rule 26(f) Report. If the parties are in agreement with the discovery schedule outlined herein, no Rule 26(f) Report need be filed, unless there are objections to the initial discovery disclosures.
6. The following discovery and trial schedule shall be considered by the parties in

their deliberations at their discovery conference:

- a. All expert witnesses shall be identified and a copy of each expert's report shall be provided to every other party, in accordance with Fed. R. Civ. P. 26(a)(2) on or before **(84 days)**.
 - b. All discovery shall be completed on or before **(105 days)**.
 - c. All motions to amend the pleadings, or for summary judgment¹, shall be filed on or before **(126 days)**. If such a motion or motions is/are filed, the parties are **not relieved** of their obligation to comply with the terms of the balance of this Pretrial Order.
 - d. All discovery disclosures pursuant to Fed. R. Civ. P. 26(a)(3) shall be served on opposing parties and filed with the bankruptcy court on or before **(140 days)**.
 - e. Any objections to Rule 26(a)(3) disclosures shall be served on opposing counsel and filed with the bankruptcy court on or before **(154 days)**.
 - f. On or before **(170 days)**, the parties shall file a joint pretrial statement. The joint pretrial statement shall be signed by all counsel. ***It is the obligation of the Plaintiff's counsel to initiate the procedures for its preparation and to assemble and submit the proposed pretrial statement to the court.*** Plaintiff's counsel shall submit a proposed joint pretrial statement to Defendant's counsel not less than 7 days prior to the deadline for its submission. Counsel are expected to make a diligent effort to prepare a proposed pretrial statement in which will be noted all of the issues on which the parties are in agreement and all of those issues on which they disagree. The proposed pretrial statement shall govern the conduct of the trial and shall supersede all prior pleadings in the case. Amendments will be allowed only in exceptional circumstances and to prevent manifest injustice.
7. The joint pretrial statement shall include the following items:
- A. **Basis of jurisdiction.** A statement setting forth the basis of jurisdiction whether this matter is core or noncore. If the matter is noncore or involves a matter where the Court may not have authority to enter final orders, the parties shall state whether they consent to the Court's entry of a final order pursuant to 28 U.S.C. § 157(c)(2). If the parties disagree, they shall each cite to relevant authority to support their positions.

¹ A motion for summary judgment shall include a separate statement of those material facts that the movant contends are not in dispute with supporting citations to the record. Failure to comply with this requirement shall be grounds for summary denial of the Motion.

- B. Uncontested facts. A statement of any facts pled which are uncontested.
- C. Facts which are in dispute. A statement of the facts opposing counsel expects to present contrary evidence on the point at trial, or genuinely challenges the fact on credibility grounds.
- D. Damages or other relief. A statement of damages claimed or relief sought. A party seeking damages shall for each cause of action pursued, list a detailed description of each item of damages claimed, the legal basis therefore, and state the amount of damages claimed. A party seeking relief other than damages shall list the exact form of relief sought with precise designations of persons, parties, places and things expected to be included in any order providing relief.
- E. Legal issues. For each cause of action and affirmative defense to be pursued, the constitutional, statutory, regulatory and decisional authorities relied upon the elements to be proven at trial and a brief statement regarding which party has the burden of proof on each legal issue).
- F. Witnesses. A list of all witnesses along with a brief statement of the evidence the witness will give. Witnesses shall be classified between those who any party expects to present and those whom any party may call if the need arises. The address of each witness shall be provided to all parties. A witness who can not be located within 100 miles of the Eastern District of Pennsylvania shall be specifically identified for the Court.
- G. Exhibit. A list of all exhibits to be offered into evidence which shall be serially numbered and physically marked before trial. The form of Exhibit List is attached. Documents which a party may offer if the need arises shall be separately identified.
- H. Motion(s) In Limine: The parties shall identify any Motions *In Limine* that they believe need to be resolved prior to trial. The nature of the issue shall be described in sufficient detail to facilitate a discussion of the issue(s) at the final pretrial/settlement conference and to permit the Court to issue an appropriate scheduling order, if necessary, for the filing and resolution of such Motion(s).
- I. Discovery to be submitted. Confirmation of whether the parties intend to offer discovery items and/or depositions into evidence at trial. Prior to Trial, Counsel shall designate the deposition testimony by page/line reference and the number the interrogatory response(s) which shall be offered in evidence at trial.
- J. Estimated trial time. An estimate of the total trial time anticipated by the Parties.
- K. Settlement certification. A certification that the parties have participated in

good faith settlement discussions without success.

8. A mandatory final pretrial/settlement conference shall be held on **(Date) at (time) in Bankruptcy Courtroom No. 2, Robert N.C. Nix Federal Building & Courthouse, 900 Market Street, Second Floor, Philadelphia, Pennsylvania.**
9. If the adversary proceeding is not resolved prior to the conclusion of the final pretrial/settlement conference, the adversary proceeding shall be scheduled for trial at the Court's first available date.
10. All trial exhibits and discovery items to be offered shall be pre-marked and exchanged by counsel at least three (3) business days prior to the date of trial.
11. **The trial may be continued only in exceptional circumstances on Motion and leave of Court.**

Date: _____

DEREK J. BAKER
U.S. BANKRUPTCY JUDGE

Copies to:

Plaintiff's Counsel:

Defendant's Counsel:

Courtroom Deputy