

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

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

.....
P R E T R I A L O R D E R # 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 21 days**, the parties shall file a Joint Statement whether they consent to participate in the court-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 ¶ 2.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).
3. **On or before 21 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.
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 42 days**, should the parties propose a discovery or pretrial schedule that differs from the one below, they shall file with the bankruptcy 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 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 judgment,¹ 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 147 days.**
- f. **On or before 161 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 be in the following form:

- A. Basis of jurisdiction. (including a statement whether this matter is core or noncore). If the matter is noncore, 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.
- B. Statement of uncontested facts.
- C. Statement of facts which are in dispute. [No facts should be disputed unless opposing counsel expects to present contrary evidence on the point at trial, or

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.

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 list each item claimed under a separate descriptive heading, shall provide a detailed description of each item 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 presented and the constitutional, statutory, regulatory and decisional authorities relied upon. (Counsel should include a brief statement regarding which party has the burden of proof on each legal issue).
 - F. Witnesses listed along with a brief statement of the evidence the witness will give. Witnesses shall be classified between those whom any party expects to present and those whom any party may call if the need arises., If not already provided to all parties, the address and telephone number of each witness shall be disclosed.
 - G. A list of all exhibits to be offered into evidence which shall be serially numbered and physically marked before trial in accordance with the schedule. 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. A list of each discovery item and trial deposition to be offered into evidence. (Counsel shall designate by page portion of deposition testimony and by number the interrogatories which shall be offered in evidence at trial).
 - J. Estimated trial time.
 - K. A certification that the parties have attempted good faith settlement discussions without success.
8. A mandatory final pretrial/settlement conference shall be **held on (Date) at (time) in the United States Bankruptcy Court, Gateway Building, Fourth Floor Courtroom, 201 Penn St., Reading, Pennsylvania, 19601.**
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. Each party may file, no later than five (5) days prior to the date of trial, a trial memorandum with service on the opposing part(y)(ies).
11. All trial exhibits shall be pre-marked and exchanged at least three (3) business days prior to the date of trial.
12. **The trial may be continued only in exceptional circumstances on Motion and leave of Court.**

Date:

PATRICIA M. MAYER
U.S. BANKRUPTCY JUDGE