

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

,)
)
Plaintiff,)
)
v.) C.A. No. AML CCLD
)
,)
)
Defendant.)

CASE MANAGEMENT ORDER

After consideration of the proposals of the parties, as well as the interests of justice, the Court hereby enters this Case Management Order.

I. GENERAL

A. APPLICATION

This Case Management Order shall apply only to the presently pending Action.

B. SERVICE OF CASE MANAGEMENT ORDER ON NEW PARTIES

Any party joining a new party to the Action shall serve a copy of this Case Management Order with the pleading joining the new party.

C. APPLICABLE COURT RULES

Unless otherwise provided by the Initial Case Management Order, the Superior Court Civil Rules shall apply.

D. DISCOVERY MASTER:

Upon application of any party, the Court may issue an Order of Reference to a Special Master or Commissioner, who shall thereafter handle all matters referred to in that Order of Reference.

II. E-FILING PROCEDURES

The filing and service of documents shall be in accordance with Rule 79.1 of the Superior Court Civil Rules and the Administrative Directive of the President Judge of the Superior Court of the State of Delaware, No. 2007-6, E-File Administrative Procedures, dated December 13, 2007, published by the Prothonotary, except that documents initiating discovery requests (interrogatories, requests for production of documents, and requests for admission) and responses to such discovery requests (excluding the actual production of documents) shall be served electronically through FILE&SERVE.

III. DISCOVERY SCHEDULE

A. DOCUMENT PRODUCTION

1. Requests for production of documents shall be served on or before _____ with all documents to be produced on or before _____.

2. Privilege logs shall be produced in accordance with the Superior Court Civil Rules and Rule 502 of the Delaware Uniform Rules of Evidence so as to be completed on or before _____.

3. **Inadvertent Production of Documents.** In the event a party discovers it inadvertently has produced a document it considers privileged or confidential, or receives a document that it believes was inadvertently produced on the ground that it is privileged or confidential, the parties shall undertake to resolve the inadvertent disclosure issue through the Protective Order entered in this case or, in the absence of such an Order, through the Protocol for the Inadvertent Production of Documents available on the Superior Court Complex Commercial

Division website. The Court will resolve by appropriate motion any issues the parties are unable to resolve.

B. FACT DEPOSITIONS

1. Each party will be limited to taking ___ fact depositions, unless the Court for good cause extends that limit. Each deposition shall be limited to seven hours unless extended by agreement or Court order.

2. Depositions shall proceed as follows: (a) depositions of document records custodians may be noticed for deposition on and after _____ so as to be completed by _____ and (b) all other non-expert depositions may be noticed for deposition on or after _____ so as to be completed by _____.

C. FACT DISCOVERY CUT-OFF

The parties shall conduct fact discovery so that it is completed on or before _____.

D. EXPERT DISCOVERY

Expert Discovery shall commence on _____ and shall be completed no later than _____. Exhibit A hereto shall govern expert discovery.

IV. MEDIATION

Mediation is mandatory in this case and is to be conducted no later than _____. The parties should notify the Court in writing of the date of the scheduled mediation. The parties may be excused from this deadline only by order of the Court. **All** parties necessary for decision making/case resolution must attend and participate in the mediation in good faith, unless expressly excused by the mediator. Representatives of all affected insurers with authority up to policy limits must also be present. Neither the fact nor the result of the mediation shall be admissible at trial. The mediation proceedings shall not be transcribed unless

specifically authorized by the Court for good cause shown.

V. DISPOSITIVE AND DAUBERT MOTIONS

Dispositive and *Daubert* motions may be filed on or before _____. See Section VII, below, regarding briefing such motions and scheduling oral argument.

VI. PRETRIAL STIPULATION AND ORDER; TRIAL

A. TRIAL DATE AND JURY SELECTION

The trial of this Action shall begin on _____ at 9:30 a.m., and continue for _____ days, if necessary. Jury selection will be conducted on _____ at 9:30 a.m.

B. PRE-TRIAL STIPULATION AND ORDER, JURY INSTRUCTIONS, SPECIAL INTERROGATORIES, AND PRE-TRIAL CONFERENCE

1. On or before _____, the parties collectively shall:
 - a. exchange drafts of a Pre-Trial Stipulation and Order that shall address the items set forth in Superior Court Civil Rule 16(c) to the extent not previously resolved; and
 - b. exchange proposed jury instructions and special interrogatories.
2. Immediately following the exchange of the proposed Pre-Trial Stipulation and Order, the parties shall meet and confer in an attempt to reach an agreement on a final Pre-Trial Stipulation and Order, jury instructions and any special interrogatories. On or before _____, the parties shall submit to the Court a proposed Pre-Trial Stipulation and Order. In the event the parties cannot reach agreement on all the terms of the Pre-Trial Stipulation and Order, jury instructions and special interrogatories, a single proposed order shall be filed and any areas of disagreement shall be appropriately noted in the one proposed order submitted and plaintiff shall submit a set of jury instructions and special interrogatories that contain any party's proposal.

3. The Pre-Trial Conference with the Court shall take place on _____ at ___ a.m. Delaware counsel and trial counsel must appear unless expressly excused by the Court.

D. MOTIONS *IN LIMINE*

All motions *in limine* shall be filed no later than _____ and all responses to those motions shall be filed no later than _____.

VII. MOTION PRACTICE

A. All dispositive and *Daubert* motions shall be heard at the Court's convenience. Before filing such motions, counsel must obtain from Judge LeGrow's Administrative Specialist possible dates and times for hearing such motions. The parties shall agree upon a proposed date and time and the motion shall be noticed accordingly.

B. All dispositive motions shall be accompanied by an opening brief supporting the motion. The Court will issue a scheduling letter establishing deadlines for further briefing. Judge LeGrow typically orders briefs in opposition to be filed within four weeks and reply briefs one or two weeks after a brief in opposition. If the parties would prefer a different briefing schedule, please file a stipulated and proposed briefing schedule contemporaneously with the motion. Similarly, if the parties are filing cross-motions for summary judgment, please alert Judge LeGrow's Administrative Specialist so a comprehensive briefing schedule may be entered.

C. Subject to the requirements of this Order, any defendant may file a separate joinder or brief adopting or supporting a motion or opposition of another defendant provided it is served within three (3) business days after service of the motion or opposition and does not exceed three (3) pages, exclusive of appendices.

D. All briefs on dispositive motions shall conform to the requirements of Superior Court Civil Rule 107, including the length of briefs, unless a word limit extension is requested at least 48 hours before the brief's due date.

E. In the case of discovery motions, such motions shall be "speaking motions" limited to ten (10) pages and shall be noticed for presentation on one of the Court's routine motions calendars (Thursdays at 9:00 a.m.) unless the Court orders a different hearing date. Absent leave of the Court, all discovery motions shall be filed no less than fifteen (15) calendar days before the noticed hearing date; responses shall be filed no later than (7) calendar days after the filing of the motion and in no case later than the Friday before the motion's hearing; and no reply submission shall be filed. If the case is referred to a special discovery master, then a modified protocol for discovery motion practice may be entered.

VIII. AMENDMENTS TO THIS ORDER

This Case Management Order may be amended by the Court or supplemented by additional Case Management Orders as deemed appropriate by the Court. Nothing herein shall prevent any party from seeking relief from any provision for good cause shown. Amendments to the deadlines contained in this order shall be proposed in the manner described in Judge LeGrow's judicial preferences, which are available on the Superior Court's website.

IT IS SO ORDERED this ___ day of _____, 201_.

Abigail M. LeGrow, Judge

EXHIBIT A
PROTOCOL FOR EXPERT DISCOVERY

Expert discovery in this Action shall be conducted pursuant to the following protocol:

A. Identification of Expert Witnesses

1. On or before _____ the parties shall identify expert witnesses and submit Superior Court Civil Rule 26(b) statements. On or before _____, any party may designate additional expert witness(es) whose function shall be solely to rebut an opinion taken by a designated expert witness. At the same time a party designates a rebuttal expert witness, the party designating the rebuttal expert witness shall produce corresponding Rule 26(b) statements for that witness.

2. Depositions of expert witnesses shall take place during the period of _____ through _____.

B. Depositions of Expert Witnesses

1. As soon as practicable, the party taking a deposition will advise the other side of its good faith estimate of the amount of time it is anticipated that the testifying expert's deposition will take.

2. Each party will pay its testifying experts' fees and expenses incurred in connection with the deposition of such experts. All costs incurred in the

production of documents discussed herein shall also be borne by the party producing the documents.

3. The parties will make a good faith effort to schedule testifying expert depositions at locations convenient for counsel and the experts. In the absence of any agreement, each deposition will take place in Wilmington, Delaware. If the deposition is taken in Wilmington, Delaware, the deposition will be held at a location to be selected by counsel for the party taking the deposition.

4. Testifying expert witnesses will appear for depositions without the necessity of subpoenas.

C. Document Identification And Production Of Documents Relied Upon By Experts

1. On or before fourteen (14) calendar days before the expert's deposition begins, the party proffering the testifying expert shall provide the other side with a list of the documents reviewed by each testifying expert in his capacity as a testifying expert in this case. The list will include the Bates numbers (if any) or a deposition exhibit number (if any), the date, and a brief description of each document, such as the names of the author and addressee and the title or line reference.

2. On or before fourteen (14) calendar days before each expert deposition begins, the party proffering a testifying expert will produce to the party

taking the testifying expert's deposition the following documents relied upon by a testifying expert in his capacity as a testifying expert in this case:

- a. Documents relied upon by a testifying expert in his capacity as a testifying expert in this case that were obtained by one side from third parties and not produced to the other side in this action;
- b. Documents relied upon by a testifying expert in his capacity as a testifying expert in this case that were produced in this action for which there is no common Bates numbering or a deposition exhibit number;
- c. Documents prepared by a non-testifying expert that were relied upon by a testifying expert in his capacity as a testifying expert in this case;
- d. All publications of any type relied upon by a testifying expert in his capacity as a testifying expert in this case, including by way of example only, documents considered to be “learned treatises” under D.R.E. 803(13). This subparagraph is not intended to include publications that merely form part of the basis of a testifying expert’s education, training and experience in a particular field, but rather, only those on which a testifying expert is relying or about which he will testify at trial. Further, if a publication otherwise required to be produced pursuant to this subparagraph is shown by the party proffering a testifying expert to be readily accessible in its entirety

from other sources, then only the relevant portions thereof must be produced;

e. Notwithstanding any of the provisions set forth herein, no communications between counsel for a party and the party's expert shall be produced; and

f. No party shall be required to produce any work product between the expert witness and the proffering party's counsel.

3. No later than ten (10) days after a party's designation of a testifying expert, each party proffering a testifying expert will produce to the party taking the expert's deposition: (a) the testifying expert's curriculum vitae and (b) a list that will include, at a minimum, the cases, administrative matters or other proceedings in which the expert has given trial or other testimony in public within the last four (4) years, without prejudice to any party's right to request such information for a period not to exceed ten (10) years. If the request for information exceeding four (4) years is opposed, the party seeking such additional information may apply to the Court for relief. The list also will include the name of the matter, the name of the court or other public body, the names of the parties and their attorneys, whether the expert or the party for which he is testifying has a copy of the testimony, and a brief description of the nature of the proceeding.

4. The cost of producing documents, as required herein, for a party's testifying expert, shall be borne by the party designating the testifying expert.