

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

	)	CASE NO.
Plaintiff,	)	
	)	MAGISTRATE JUDGE
v.	)	GEORGE J. LIMBERT
	)	
	)	<u>TRIAL ORDER</u>
Defendant.	)	

This case is set for jury trial on \_\_\_\_\_ before the Honorable George J. Limbert, United States Magistrate Judge, at the Thomas D. Lambros Federal Building & U.S. Courthouse, 125 Market Street, Youngstown, Ohio. The parties and their counsel shall report to the Court's chambers no later than 8:00 a.m. on the first day of trial.

The final pretrial in this matter is scheduled for \_\_\_\_\_ at \_\_\_\_\_.

**I. PRETRIAL PRACTICE**

**A. Motions Practice**

All motions and related documents must comply with the Federal Rules of Civil Procedure and the Local Rules for the United States District Court for the Northern District of Ohio. Parties must submit a certification along with each motion or document specifying the assigned case track and certifying that the motion or document adheres to the applicable page limitations. The Court will not increase the page limitation except in extreme circumstances. Motions, related memoranda, and all other documents submitted to the Court shall only include text produced in twelve (12) point font.

Any items used to support a motion (*e.g.* deposition transcripts) shall be submitted in their entirety along with the motion, including specific citations to the relevant pages of each item. Parties must consult the Electronic Filing Policies and Procedures Manual to determine whether a particular document is suitable for electronic filing.

**B. Motions to Dismiss and Motions for Summary Judgment**

The Court requires defendants to file an answer to the complaint regardless of whether they have filed, or plan to file, a motion to dismiss. The filing of a motion to dismiss shall not delay the time in which the party must answer the complaint.

**C. Motions in Limine**

All legal issues of importance, including evidentiary issues, which have not been previously resolved shall be raised by written motion **on or before three (3) days prior to the final pretrial conference**. Responses shall be filed twenty-four (24) hours before the final pretrial conference.

**The Court will not hold bench or chamber conferences during the trial to consider legal issues, including evidentiary rulings, that could have been raised before trial without a showing that counsel could not, by the exercise of due diligence, have anticipated them in advance of trial.**

In all cases, Pretrial Statements and Motions *in Limine* are to be exchanged with opposing counsel by hand delivery, fax, or email.

**D. Status and Final Pretrial Conferences**

A status conference and a final pretrial conference will take place in accordance with the Case Management Order. **The Court requires the presence of the following parties at both the status conference and final pretrial conference: (1) all parties; (2) lead counsel; and (3) a representative with final settlement authority.** Final settlement authority means the ability to settle the case in full without further authorization. In the event a representative with final settlement authority is unable to attend either conference in person, counsel must file a motion, showing good cause, more than forty-eight (48) hours before the scheduled conference.

**E. Final Pretrial Proposed Stipulation and Order**

**Parties must electronically file a Proposed Joint Stipulation and Order at least ten (10) days prior to the date of the final pretrial conference.** The form of this order is attached hereto as **Appendix A**.

**1. General Nature of the Claims and the Parties**

Each party shall submit a pretrial statement setting forth the following: (1) the cognizable claims and defenses; (2) the applicable law with specific citations to all statutes and case law to support each claim and defense; (3) the status of settlement negotiations; and (4) the estimated length of trial.

**2. Facts**

**a. Uncontested Facts**

In stating facts proposed to be proved, counsel shall do so in brief, simple, declarative, self-contained, consecutively numbered sentences, avoiding all “color words,” labels, argumentative language and legal conclusions. If a fact is to be offered against fewer than all parties, counsel shall indicate the parties against which the fact will (or will not) be offered. [The facts to be set forth include not only ultimate facts, but also all subsidiary and supporting facts except those offered solely for impeachment purposes.]

The uncontested facts shall be taken at the trial as either an admission under Fed. R. Civ. P. 36 or a stipulation without the need for independent proof. **A COMPREHENSIVE STATEMENT OF ADMITTED OR STIPULATED FACTS SHALL BE FILED SEPARATELY AND MADE PART OF THE RECORD.** To the extent relevant to a resolution of contested issues and otherwise admissible, these facts may be read to the jury. Independent proof of uncontested facts will be allowed only if incidental to the presentation of evidence on contested facts or if such proof will better enable the jury to resolve contested facts.

**b. Contested Facts**

**Plaintiffs' Proposed Facts:** Plaintiff(s) shall submit a narrative statement listing all facts proposed to be proved by them at trial in support of their claim(s) as to liability and damages.

**Defendant's Response and Proposed Facts:** Defendant(s) shall submit a statement:

(i) indicating separately as to each statement of fact whether they contest or do not contest it;

(ii) stating all additional facts proposed to be proved by them at trial in opposition to, or in defense against, the plaintiff's claim; and

(iii) stating all facts proposed to be proven by them at trial in support of their counterclaim(s), cross claim(s), or third party claim(s) IF applicable.

**c. Sanctions**

Unjustified refusal to admit a proposed fact or to limit the extent of disagreement with a proposed fact shall be subject to sanctions under Fed. R. Civ. P. 37(c). Excessive listing of proposed facts [or of the evidence to be submitted in support of or denial of such facts] imposing undue burdens on opposing parties shall be subject to sanctions under Fed. R. Civ. P. 16(f).

**II. TRIAL**

**A. Trial Date**

The Court has set this matter for trial commencing on \_\_\_\_\_, beginning at 8:00 A.M. and concluding at 4:00 P.M. Each day thereafter, the trial will continue promptly at 9:00 A.M. and conclude at approximately 4:00 P.M.

**B. Witnesses and Exhibits**

Each party shall provide opposing counsel and the Court with a list of all witnesses to be called at trial, including potential rebuttal witnesses. A summary of the testimony to be offered

by each witness shall be included (See **Appendix B**). No witness will be permitted to testify at trial if his or her name is not provided to opposing counsel at this time, unless the Court determines that the witness is needed to offer rebuttal testimony which could not have been reasonably anticipated prior to trial or that exceptional circumstances warrant amendment of one or both of the witness lists. Expert witnesses will be bound by the opinions expressed in their reports prepared in accordance with Fed. R. of Civ. P. 26(2)(B) and will not be permitted to offer new matters at trial.

The parties shall exchange and file an index of exhibits along with a brief description of such exhibits in accordance with LR 39.1 (See **Appendix C**). If a party against whom an exhibit is being offered objects to the same, the procedure set forth in Section II(C), immediately below, applies. Exhibits which have not been provided as required by this paragraph will not be received at trial.

**Four copies of the witness list (Appendix B), exhibit list (Appendix C), and trial notebooks shall be submitted to Chambers no later than seven (7) days prior to trial.**

**C. Use of Deposition as Evidence**

Whenever depositions (videotape or written) are to be used at trial, opposing counsel shall submit an index of objections to counsel offering the testimony along with a statement as to the basis of the objection and reference to the specific rule of evidence upon which counsel relies. The proponent shall respond with a statement giving the reasons for admissibility.

Counsel shall consult in an effort to resolve any objections raised. Where objections have been raised and not resolved, those objections shall be noted in the margin of the index. The Court will make every effort to rule on the objections at the final pretrial.

**D. Nonjury Trials**

For matters not submitted to a jury, the Court requires counsel to submit **at least one (1) week prior to the trial**: (1) a statement of the issues; (2) proposed findings of fact; and (3) proposed conclusion of law. The parties must also file any trial briefs not later than one (1) week

prior to the trial date. The proposed findings of fact must cite the particular witness(es) and evidence upon which each proposed legal conclusion is based.

The Court may also order the parties to submit post-trial briefs. These briefs will be limited to specific questions assigned by the Court during or after trial. The Court may also permit counsel to file supplemental findings of fact and conclusions of law following the trial.

The parties must exchange any trial or post-trial briefs, as well as any supplemental findings of fact or conclusions of law.

#### **E. Jury Trials**

Counsel shall prepare a **joint proposed statement** in simple terms describing the nature of the case including the claims and defenses of the parties to be read by the Court during jury orientation and voir dire. This statement will be used to set the context of the trial for the jury.

Each party shall serve and file a **trial brief** on all significant disputed issues of law, setting forth briefly the party's position and the supporting arguments and authorities.

The Court will conduct the initial voir dire of prospective jurors. Counsel will be permitted a reasonable time to conduct supplemental voir dire following the questioning by the Court. **Proposed voir dire questions** are to be submitted by counsel to the Court for review and approval. Counsel will be permitted to ask questions approved by the Court only, unless it develops during voir dire that additional questions on a particular point are necessary to insure impartiality of the jury.

Counsel shall submit **proposed jury instructions, verdict forms and interrogatories** to the Court that are drafted to fit the facts of this case. Counsel should confer regarding their respective proposals in an effort to reach an agreement regarding as many jury instructions as possible. A joint submission shall be made indicating (1) agreed instructions; (2) instructions proposed by plaintiffs, but opposed by defendants; and (3) instructions proposed by defendants, but opposed by plaintiffs. Objecting counsel must state in writing specific objections citing authorities and any alternative instruction counsel considers more appropriate. During trial or at the close of all evidence, the parties may submit supplemental requests for instructions on matters not anticipated prior to trial.

The Court uses as sources for jury instructions, among others, “Federal Jury Practice and Instructions,” O’Malley, Grenig, and Lee, “Pattern Jury Instructions,” for the Sixth Circuit, and Ohio Jury Instructions (most recent editions). The Court is bound by determinations of the Supreme Court of the United States and the United States Court of Appeals for the Sixth Circuit. Where appropriate, determinations by a state supreme court, or, in the absence thereof, determinations by a state appellate court will be used.

**All proposed joint preliminary statements, trial briefs, proposed voir dire questions, and proposed jury instructions, verdict forms and interrogatories shall be submitted at least three (3) days prior to trial.**

### **III. COURTROOM TECHNOLOGY**

Counsel bears the responsibility for developing proficiency with the technology present in the courtroom prior to trial. Counsel are encouraged to visit the Court’s website to obtain information on scheduled training sessions, or contact the Court to schedule time in the courtroom to interact with the technology prior to trial.

### **IV. CONTINUANCES**

No party shall be granted a continuance of a trial or hearing without a written motion from the party or counsel stating the reason for the continuance, endorsed in writing by **all moving parties and their lead counsel** of record, and showing the consent of all other counsel or, if objected to, with the movant’s certification of efforts to obtain such consent.

The Court will not consider any motion for a continuance due to a conflict of trial assignment dates unless a copy of the conflicting assignment is attached. The motion shall be filed within fifteen (15) days of counsel becoming aware of the conflict and not less than thirty (30) days prior to trial.

### **V. COURTROOM CONDUCT AND PROCEDURE**

A. The Trial shall be conducted from 9:00 A.M. to 4:00 P.M., Monday through Friday after the first day of trial.

B. When appearing in this Court, all counsel (including, where the context applies, all persons at counsel table) shall abide by the following:

1. Stand as Court is opened, recessed, or adjourned.
2. Stand when the jury enters or retires from the courtroom.
3. Stand when addressing the Court. When making an objection, state the legal basis only. If a response is necessary, be brief, without making a speech. If it is critical to the case that counsel be heard in more detail, a bench conference may be called to explain the basis for an objection. Otherwise, bench conferences will not be permitted.
4. Stand at the lectern while examining any witness; except that counsel may approach the witness for purposes of handing or tendering exhibits.
5. Stand at the lectern while making opening statements or closing arguments.
6. Address all remarks to the Court, not to opposing counsel.
7. Avoid disparaging personal remarks or acrimony toward opposing counsel and remain wholly detached from any ill feeling between the litigants or witnesses.
8. Refer to all persons, including witnesses, other counsel and the parties by their surnames and not by their first or given names.
9. Only one attorney for each party shall examine, or cross examine each witness. The attorney stating objections, if any, during direct examination, shall be the attorney recognized for cross examination.
10. Prior to testifying, counsel shall place before the witness all exhibits to which he or she will testify; and, at the same time, copies of said exhibits shall be handed to opposing counsel.
11. Diagrams or exhibits should be drawn or marked by the witness before taking the stand.
12. Any witness testifying at the time of recess or adjournment must be back on the witness stand when the Court reconvenes. If a new witness is to be called, he/she must be standing in front of the witness box ready to be sworn.
13. In examining a witness, counsel shall not repeat or echo the answer given by the witness.
14. Gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.



**VI. CHANGE OF ADDRESS**

Counsel will notify the Court and the Clerk of this Court of any address, email, or telephone number changes by electronically filing a notice containing the new information.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

JUDGE

/s/George J. Limbert  
GEORGE J. LIMBERT  
UNITED STATES MAGISTRATE

