

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	3:10-cv-08142-JWS
)	
JOSEPH J. LIPARI, <i>et al.</i> ,)	ORDER FOR PRE-TRIAL
)	PROCEEDINGS, FINAL PRE-TRIAL
Defendants.)	<u>CONFERENCE, AND TRIAL</u>
_____)	

SUMMARY OF PRE-TRIAL DEADLINES

TRIAL by JURY is scheduled to begin on **January 14, 2013**, at the **Sandra Day O'Connor Courthouse** in **Phoenix**, Arizona, at **9:00 AM** and is anticipated to conclude by **January 17, 2013**. The final pre-trial conference will be held on **January 14, 2013**, at **8:30 AM** in **Phoenix**, Arizona. The following summarizes the pre-trial proceedings deadlines:

<i>Date</i>	<i>Action</i>
11/5/12	Single, joint statement of issues to be filed and served
11/5/12	Joint statement of uncontested facts to be filed and served
11/5/12	Final revised witness lists to be filed and served
11/5/12	Plaintiff and counsel to meet to review trial exhibits
*	Three days after exhibit review, exhibit list to be filed and served
11/12/12	Objections to exhibits to be filed and served
11/19/12	Arguments and authorities in favor of admission of exhibits to be filed and served
12/17/12	Motions as to known, difficult evidentiary matters to be filed and served
12/17/12	Trial briefs to be filed and served; if trial by jury, proposed jury instructions to be filed and served
*	Notification of "last-minute" settlement due no later than noon on the last business day before commencement of trial.

Counsel shall read this order in its entirety.

In preparation for a final pre-trial conference, counsel will discuss among themselves, by telephone or in person, as soon as possible after receipt of this order and from time to time thereafter as counsel deems appropriate, the following subjects for the purpose of completing the development of this case by the dates hereinafter specified.¹

(1) Issues. The parties will prepare and file a single, joint statement of issues on or before **November 5, 2012**. At a minimum, the joint statement of issues must identify the legal elements which a party is required to prove in order to establish each claim, affirmative defense, or cross- or counterclaim asserted by the party. If the statement of issues is not concurred in by all counsel in all respects, a brief statement of the disagreement as to any issue or issues will be included.

(2) Statement of Uncontested Facts. On or before **November 5, 2012**, the parties will prepare and file a joint statement of uncontested facts which will be offered by plaintiff as the first evidence in the case. The emphasis in the statement of uncontested facts should be upon the inclusion of all possible non-controversial background material which will serve to put into proper context the issues to be litigated. It is the intent of the court that this statement includes all facts upon which a party intends to rely and which the opposing party does not intend to controvert. In the preparation of the statement of uncontested facts, and unless the parties all concur in a different, effective procedure, the parties will each prepare a statement of facts which they intend to prove at trial, from which each side can identify those facts that are not to be controverted. Those uncontroverted facts will be incorporated into the joint statement of uncontested facts. It is intended that the statement of uncontested facts be read into the record. Therefore, it will be entirely factual and will not contain matters of law, claims or arguments.

¹The parties should not assume that they are at liberty to stipulate to a change of the dates set herein. If the parties do so stipulate, the court reserves the right to vacate the trial date if the changes in compliance dates deprive the court of adequate time to complete its trial preparation.

(3) Witnesses. On or before **November 5, 2012**, each party will serve and file a final, revised witness list, which may include only persons who have been previously disclosed as potential witnesses in a timely filed prior witness list. This final witness list will disclose those witnesses whom the party will in fact call at trial. Only those witnesses so listed will be permitted to testify at trial. Witnesses will be listed in the order in which it is expected they will be called.

As to each witness so listed (even though the witness may have been deposed), counsel will disclose a brief summary of the testimony expected to be elicited from that witness at trial. The disclosure will be specific and not general, the purpose being to avoid surprise and delay at trial and to give opposing counsel an adequate basis for developing cross-examination.

Expert witnesses will be identified as such and as to their area(s) of expertise, and a statement of each expert's qualifications will be appended to the witness list. The statement of qualification of experts will be sufficiently detailed to permit opposing counsel to serve and file objections on or before the date specified hereinafter for the filing of objections to proposed exhibits. Any dispute as to qualifications will be resolved at or before the final pre-trial conference.

Witnesses whose depositions will be offered in lieu of live testimony will be identified. In lieu of a statement of testimony which counsel expects to elicit from such witnesses, the party will specify the inclusive pages from the deposition which are proposed to be offered. Objections to such testimony, as well as any desired counterdesignation of deposition testimony, will be served and filed on or before the date specified hereinafter for the filing of objections to proposed exhibits. Any objections to proposed deposition testimony (including objections to counterdesignations) will be resolved at or prior to the final pre-trial conference.

Copies of depositions which are to be used for any purpose at trial will be provided to the assigned judge and opposing counsel at the time and in the manner hereinafter specified for exhibits.

(4) Exhibits. On or before **November 5, 2012**, counsel shall meet to review trial exhibits. Plaintiff shall arrange the time and place for this exhibit review. At the

time set, all exhibits shall be available for inspection by opposing counsel, provided that large or bulky exhibits which cannot be readily transported shall be made available at a reasonable time and location prior to the meeting.

Prior to the exhibit review, parties shall obtain from the deputy clerk or other appropriate source exhibit labels which counsel shall affix to their proposed exhibits, marking the same with numbers for plaintiff and letters for defendant in the approximate order of anticipated use of the exhibits. Depositions and deposition excerpts which are to be used for any purpose at trial shall be marked as exhibits and included on an exhibit list, although they will be read (or shown if video) in court, not sent to the jury for use during deliberations.

The parties shall stipulate at the exhibit review meeting to admissibility of those exhibits for which there will be no objection, and these shall be marked "**ADM.**" Exhibits not admitted by stipulation shall be marked for identification only, "**ID.**" Exhibits marked "**ADM**" are evidence, without need for foundation or further offer at trial, and no objections shall be heard regarding their admissibility.

Within three (3) days after the exhibit review session, each party shall serve and file an exhibit list identifying by number or letter those exhibits marked for admission and those marked for identification, and briefly describing each exhibit.

A copy of all exhibits which can be photocopied, including depositions, shall be sent to the assigned judge for use by the court, and a copy shall be provided to opposing counsel. The copies for the court and opposing counsel shall be photocopied subsequent to the exhibit review meeting bearing all of the information required by the preceding paragraph. Original labels should not be used on the court's copy of exhibits.

Exhibits not presented according to this rule will not be admitted except by order of the court upon a showing of good cause. Original exhibits shall be retained by the parties between the marking session and trial, and will not be stored by the court.

Counsel shall maintain custody of all exhibits during trial, shall see that they are properly marked, and shall keep them organized for ready access by opposing counsel, the court, and witnesses during trial. All exhibits admitted on a party's behalf shall be immediately available at the conclusion of trial for submission to the jury or the

court during deliberations. Prior to submission of the exhibits to the jury, counsel shall meet with the in-court clerk and shall review all parties' exhibits to assure that all admitted exhibits are segregated for submission, and no non-admitted exhibits are submitted.

Immediately after a jury verdict or findings of fact by the court, the exhibits shall be returned to the custody of respective counsel and shall be retained by them pending appeal and final disposition of the case.

On or before **November 12, 2012**, the parties will serve and file all objections to exhibits, and in particular will identify any exhibit as to which authentication will be required. Absent such notice, formal authentication will be deemed waived. Objections will be concise, and appropriate authorities will be cited. The offering party's arguments and authorities in favor or admission of each such exhibit will be served and filed by **November 19, 2012**. Objections to exhibits will ordinarily be resolved at or before the final pre-trial conference.

(5) Motions. The time for the filing of pre-trial motions has expired; however, motions as to known, difficult evidentiary matters will be served and filed not later than **November 5, 2012**.

(6) Settlement. The court must be advised of a "last-minute" settlement no later than **noon** (Arizona time) the last business day before the commencement of trial; otherwise, jury costs are incurred by the court and may be taxed to the parties.

(7) Final Pre-Trial Conference. The final pre-trial conference is scheduled for the general purpose of reviewing compliance with this order and, in particular: limiting and defining the issues; settling and, if possible, expanding the agreed statement of facts; resolving any remaining objections and other matters relative to witnesses and exhibits; and disposition of any final motions.

(8) Trial Briefs, Jury Instructions, Proposed Voir Dire. Each party will serve and file a trial brief on or before **December 17, 2012**. Such brief will contain a short, plain, and candid statement of the party's position and authorities as to each contested issue of law. It will disclose and brief those theories of the case which a party will urge at trial. Except as will be incidentally necessary, the briefs will not contain a statement

of, nor will they argue, the facts of the case. Such briefs will be no longer than fifteen (15) letter-size pages.

If this case is scheduled for a trial by jury, each party will prepare, serve, and file--on or before the date specified for the filing of trial briefs--proposed jury instructions.

If this case is scheduled for a trial by jury, counsel will please serve and file proposed *voir dire* questions on or before **December 17, 2012**.

(9) Trial. Trial by **jury** in this case is scheduled to commence on **January 14, 2013** (if this date is not one suggested by the parties, it is the closest date available), at **PHOENIX, Arizona**, and is expected to be completed on **January 17, 2013**. Unless otherwise ordered, trial will commence at **9:00 AM** the first day of trial and at **9:00 AM** each day thereafter and will adjourn for the day at **4:30 PM**, except in unusual circumstances.

Unless otherwise ordered, a half hour per side shall be allowed for opening statements, and an hour per side for closing arguments. Where multiple parties are on the same side, they may divide their time by agreement. A side entitled to rebuttal argument may divide its time as it chooses between argument in chief and rebuttal. Exhibits shall not be displayed in opening statement unless leave has been granted, or the exhibit has been admitted pursuant to stipulation or order.

(10) Other Matters. Such other matters as counsel may desire to take up at the pre-trial conference should be discussed by them in advance, and the court will consider any other matters that will facilitate or expedite the disposition of the case.

IT IS ORDERED:

(1) A final pre-trial conference in this case will be held on **January 14, 2013**, at **8:30 AM**, at the United States District Courthouse in **PHOENIX, Arizona**.

(2) The parties will prepare, serve or exchange, and file or lodge with the court on or before the dates above specified all of the documents above specified. These dates will not be subject to change by stipulation of the parties, and may be changed only by order of the court for good cause shown. Both the final pre-trial conference date and the trial date set for this case are contingent upon timely compliance with this order by the parties. Any party should expect to pay costs to the

opposing party or to the court if it is found that he or she has without good cause failed to comply with this order. See Rule 16(f), Federal Rules of Civil Procedure.

(3) To the extent that stipulation of the parties and/or earlier orders of the court require additional or more detailed filings or additional procedures, those earlier stipulations and/or orders will remain in effect. However, to the extent any such prior stipulation or order conflicts herewith, this order will control.

DATED this 22nd day of June 2012

/s/ JOHN W. SEDWICK
UNITED STATES DISTRICT JUDGE