

## IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

, )  
Plaintiffs, )  
 ) C. A. No. KMV  
v. )  
 )  
, )  
Defendants. )

### CASE SCHEDULING ORDER

**IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ that the following schedule will control all future events in the case until trial. Any amendments or modifications to the event deadlines established in this Order will require Court approval. Please see pages 2 through 6 for additional detail.

Trial Date (Jury Trial)	
Motions to Add or Amend	
Plaintiff's Expert Report (or Rule 26(b)(4) Disclosure)	
Defendant's Expert Report (or Rule 26(b)(4) Disclosure)	
Plaintiff's Rebuttal Expert Report	
Discovery Cutoff (Fact and Expert) Deadline	
Status Conference	At Counsel's Request
Filing of Dispositive and <i>Daubert</i> Motions	
Answers to Dispositive and <i>Daubert</i> Motions	
Mediation Deadline	
Interim Status Report	
Motions in Limine	
Answers to Motion in Limine	
Pretrial Stipulation & Special <i>voire dire</i>	
Pretrial Conference	@
Jury Instructions	
Final Status Report	
Routine Motions	Available Thursdays at 9:30

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The Honorable Kathleen M. Vavala

## **SETTLEMENT NEGOTIATIONS**

The parties actively engage in settlement discussions and determine whether the matter may be resolved pursuant to Superior Court Civil Rule 16. If the case settles, Plaintiff's counsel shall notify chambers immediately by email to [Angela.James@delaware.gov](mailto:Angela.James@delaware.gov). The parties must also file a stipulation of dismissal with the Prothonotary within 60 days **of the Court being notified of the settlement**.

## **DISCOVERY**

All discovery shall be initiated such that it will be completed no later than the deadlines. **The Court will not consider a request for an extension submitted after the deadline expires.**

## **MANDATORY ADR**

**All civil actions, with certain limited exceptions, are subject to mandatory non-binding arbitration.** Mandatory ADR is to be conducted no later than the deadline. The parties should notify the Court in writing of the date the ADR is scheduled. **All parties must attend and participate in good faith, unless expressly excused by the Court upon written application.** Insurance adjusters 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.

## **INTERIM STATUS REPORT**

An interim status report is to be filed by Plaintiff's counsel no more than 14 days after the ADR has been conducted, with a copy to Judge's Chambers. This document should reflect input from both parties. Do not include information on offers or demands. The report shall advise the Court on the nature of the matters at issue, the progress of discovery to date, and the result(s) of ADR used to date to resolve the matter.

## **EXPERTS**

Failure to identify experts within the deadlines set forth above will be a sufficient basis to exclude that expert from testifying at trial unless counsel can set forth good cause why the designation did not take place and the opinion was not provided.

## **MOTIONS**

### **Dispositive and *Daubert* Motions**

- All case dispositive and *Daubert* motions shall be filed no later than the deadlines indicated. The Court will not consider motions filed after those dates absent exceptional circumstances.
- **If either party desires argument or a hearing on the motion**, the party must contact [Angela.James@delaware.gov](mailto:Angela.James@delaware.gov) in Judge Vavala's Chambers to obtain a date and time for same.

- The original motion and any response thereto shall be filed with the Prothonotary's Office with a notice page indicating the argument or hearing date and time. Two courtesy copies (with exhibits) of motions and responses must also be delivered to Judge Vavala in Chambers at the time of filing.
- **Responses are due no later than 14 business days (excluding weekends and holidays) after the filing of the motion.** Failure to file a timely response may result in the Court deeming the motion as unopposed.
- **Motions and responses: (a) shall not exceed six pages in length, without prior permission by the Court and (b) must include all supporting authority.**
- **No replies or surreplies** are permitted, without prior permission by the Court.
- Further briefing and or hearings will be as ordered by the Court.

#### **Motions in Limine (other than *Daubert* Motions)**

- All motions in limine (or any motion to exclude all or part of a witness's testimony) shall be filed no later than the deadline indicated. The Court will not consider motions filed after that date absent exceptional circumstances.
- The original motion and any response thereto shall be filed with the Prothonotary's Office with a notice page indicating the argument or hearing date and time. Two courtesy copies (with exhibits) of motions and responses must also be delivered to Judge Vavala in Chambers at the time of filing.
- **Motions in limine must be filed at least 45 days before the Pretrial Conference, shall be noticed for presentation at the Pretrial Conference,** and will be resolved (if appropriate) at that time. If not resolved at the Pretrial Conference, a date and time will be set at the Pretrial Conference for argument in advance of trial.
- **Unless a specific order entered in this case provides otherwise, a response is due no later than seven business days after the filing of the motion in limine.** Failure to file a timely response may result in the Court deeming the motion as unopposed.
- **All motions and responses: (a) shall not exceed six pages in length, without prior permission from the Court and (b) must include all supporting authority.**
- **No replies or surreplies** are permitted, without prior permission from the Court.
- Further briefing and or hearings will be as ordered by the Court.

#### **Routine Civil Motions, including Motions to Continue Trial Dates.**

- **Judge Vavala's weekly routine motion calendar is on Thursday at 9:30 a.m.**
- Please contact Judge Vavala's Civil Case Managers to schedule: [Daviana.Jimenez@delaware.gov](mailto:Daviana.Jimenez@delaware.gov) and [Brian.Bashkow@delaware.gov](mailto:Brian.Bashkow@delaware.gov).
- Pursuant to Super. Ct. Civ. R. 78, **motions must be filed (10) days (excluding weekends and holidays) prior to the noticed hearing.**
- **Responses are due no later than seven days (excluding weekends and holidays) after the filing of the motion or noon on the Friday before the motion date,** whichever date is earlier.

- **The motion and response shall not exceed four pages** in length and shall have a notice indicating the argument or hearing date and time.
- **If no response is filed within the deadline, the Court may deem the motion unopposed, grant the motion before the hearing date, and will so notify the parties.**
- **No Reply is permitted.** Further briefing on the motion will be as ordered by the Court.
- The Court strongly discourages any requests submitted in the form of letters or emails.

### **PRETRIAL STIPULATION**

At least 15 days before the Pretrial Conference, Plaintiff's counsel shall forward to Defendant's counsel a draft of the pretrial stipulation with the information Plaintiff proposes to include. Within five days from the date of receiving that draft, Defendant's counsel shall provide Plaintiff's counsel with comments on the Plaintiff's draft and the information the Defendant proposes to include. **The completed pretrial stipulation must be received by the Court on or before the deadline indicated.**

**The proposed Order shall, at a minimum:**

- cover the matters set forth in Form 46 (pretrial stipulations) contained in the appendix of the Superior Court Civil Rules;
- identify all potential trial exhibits by Bates Number or some other specific description so that the exhibits are readily identifiable;
- indicate whether any motions in limine have been filed and the evidentiary issue sought to be resolved; and
- include any **special voir dire questions** any party proposes to ask of the jury panel.

Failure to comply with deadlines established in this order may result in the Court considering objections waived by the non-complying party and/or the imposition of appropriate sanctions upon the responsible party or parties.

### **EXHIBITS**

Counsel must exchange exhibits and meet and confer to resolve objections. Unresolved objections will be resolved at the Pretrial Conference, if possible. Exhibits must be pre-marked.

Counsel shall collaborate with Judge Vavala's Civil Case Managers, [Daviana.Jimenez@delaware.gov](mailto:Daviana.Jimenez@delaware.gov) and [Brian.Bashkow@delaware.gov](mailto:Brian.Bashkow@delaware.gov), to discuss formatting of the evidence. All trial exhibits should be in a three-ring binder with a table of contents or an exhibit list. The trial exhibits can be in separate binders for each party or a joint binder. After the Prayer Conference, the parties will finalize the binder or binders with the Court Clerk. The binder or binders then will be marked before going back to the jury for deliberation.

## **PRETRIAL CONFERENCE**

**The Pretrial Conference will be held in person unless otherwise agreed. All trial counsel, including any Delaware counsel who has sponsored the admission of pro hac vice counsel, *MUST* attend the Pretrial Conference. If a person elects to represent themselves pro se, they must also attend the Pretrial Conference.**

The **trial fee** shall be paid no later than the Pretrial Conference. If the trial fee is not paid within two business days of the Pretrial Conference, the case will be removed from the Court's trial calendar. A new date will be scheduled upon payment of the fee.

## **JURY INSTRUCTIONS**

Counsel shall meet and confer regarding appropriate jury instructions. Disputes must be noted within the specific proposed instruction with supporting authority and where needed, the proposed alternate instruction. This order shall not prevent the parties from submitting additional proposed instructions that may be justified by the evidence presented at trial.

**Counsel shall provide to the Court one hard copy of the agreed upon set of instructions AND a Microsoft Word (.docx) to [Angela.James@delaware.gov](mailto:Angela.James@delaware.gov) by the deadline indicated.**

## **FINAL STATUS REPORT**

A final status report shall be submitted by letter no later than the deadline and shall advise the Court of the following:

- that all exhibits have been exchanged or reviewed by the parties or counsel, and there are no objections to any exhibits;
- that the parties have consulted with Judge Vavala's Civil Case Managers, [Daviana.Jimenez@delaware.gov](mailto:Daviana.Jimenez@delaware.gov) and [Brian.Bashkow@delaware.gov](mailto:Brian.Bashkow@delaware.gov), to discuss formatting of the evidence;
- that the proposed jury instructions have been exchanged, discussed, exceptions noted, with a copy submitted in the form noted above;
- that any request for special voir dire has been reviewed by the opposing party and there are no exceptions or objections, and that a copy of the requested special voir dire is attached to the letter notifying the Court of the status; and
- that the parties and counsel agree there are no remaining evidentiary or legal issues for the Court to resolve before jury selection and opening statements.

## **FIRM DEADLINES**

Counsel is advised that all the deadlines established by this Trial Scheduling Order are firm. Failure to meet these deadlines, absent good cause shown, may result in the Court refusing to allow extensions regardless of the consequences. Amendments to this Trial Scheduling Order must be

by Order of the Court on appropriate motion or stipulation of the parties using the form included under Judge Vavala's preferences.

**PLEASE ALSO REFER TO:**

**SUPERIOR COURT NEW CASTLE COUNTY  
CIVIL CASE MANAGEMENT PLAN ADOPTED FEBRUARY 17, 2000**