

EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PLAINTIFF NAME,

Plaintiff(s),

Case No.

v.

F. Kay Behm

DEFENDANT NAME,

U.S. District Judge

Defendant(s).

_____ /

CASE MANAGEMENT ORDER

<u>EVENT</u>	<u>DEADLINE</u>
Initial Disclosures under Fed. R. Civ. P. 26(a)(1)	Four weeks after issuance of the scheduling order
Lay Witness List	Six weeks before close of discovery
Exhibit List	Six weeks before close of discovery
Expert Witness List/Disclosures/Report - Plaintiff	Six weeks before close of discovery
Expert Witness List/Disclosures/Report - Defendant	Two weeks before close of discovery
Fact Discovery	4-9 months after issuance of the scheduling order, depending on the complexity of the case
Expert Discovery	4-9 months after issuance of the scheduling order, depending on the complexity of the case

<u>EVENT</u>	<u>DEADLINE</u>
Dispositive Motions & Motions to Limit/Exclude Expert Testimony	DISPOSITIVE (30 days after close of discovery)
All Other Motions, Including Motions in Limine	Six weeks before the final pretrial conference
Settlement Conference	BY US: Set at least 4 months after dispositive motion deadline BY MJ: To be scheduled by the Magistrate Judge within the 30-day period before the deadline for the Joint Final Pretrial Order.
Joint Final Pretrial Order	Six weeks before the final pretrial conference
Final Pretrial Conference	Three weeks after Final Settlement Conference
Trial - Jury	Monday two weeks following the pretrial conference
Estimated Length of Trial	

1. LOCAL COUNSEL

An attorney admitted to practice in the Eastern District of Michigan who appears as attorney of record and is not an active member of the State Bar of Michigan must specify local counsel with an office in this district. Local counsel must enter an appearance and otherwise comply with Local Rule 83.20(f). All

inquiries regarding admission to this district should be directed to the Clerk's office at (313) 234-5000.

2. DISCOVERY

Discovery must be served sufficiently in advance of the discovery cutoff so as to allow the opposing party sufficient time to respond under the Federal Rules of Civil Procedure prior to the close of discovery. The Court will not order discovery to take place after the cutoff date. **PLEASE NOTE:** Unless otherwise ordered, the Court issues a global referral of all discovery matters to the assigned Magistrate Judge. Before moving for an order relating to discovery, the movant should consult with the assigned Magistrate Judge's chambers on its discovery motion procedures. For discovery matters addressed by Judge Behm, a movant must first confer with opposing counsel and then file a request for a conference with the Court, stating that a conference was held with opposing counsel, and outlining the nature of the unresolved dispute. *See Fed. R. Civ. P. 16 (b)(3)(B)(v)*. Sanctions may be imposed against any party who unreasonably refuses to resolve a discovery dispute.

3. EXTENSIONS OF TIME

Parties may agree to extend the discovery cutoff deadline by filing a stipulation and order with the Court, provided the extension of time does not affect the motion cutoffs, final pretrial conference, or trial dates. Extensions or adjournments of dates other than the discovery cutoff will be considered upon the filing of a motion or stipulation setting forth in detail the factual basis for the request.

4. BRIEFING GUIDELINES AND REQUIREMENTS

The Court does not ordinarily set a briefing schedule for motions. Unless specifically addressed in the Court's Notice of Hearing, the time limits prescribed in Local Rule 7.1(e) apply for filing responses and replies to motions. Sur-replies are generally not permitted. Requests for extensions of time may be made by filing a concise stipulation and order explaining the specific reasons why such an extension is necessary. Such a stipulation and order must be filed at least one week before a brief is due.

All briefs shall strictly comply with Local Rules 5.1 and 7.1. The Court does not routinely grant requests to file longer briefs. Requests to file an oversized brief may be made by filing a concise stipulation and order or *ex parte* motion

explaining the specific reasons why such an extension is necessary. Such a stipulation and order or *ex parte* motion must be filed at least one week before a brief is due.

5. COURTESY COPIES

A courtesy copy of all motions and briefs including exhibits must be sent to the chambers via First-Class Mail the same day the document is e-filed, or hand-delivered not later than the next business day after the document is e-filed. The courtesy copy should consist of the actual e-filed document and contain the electronic file stamp on the top of each page. The courtesy copy **must** be bound on the left side in a book-style manner. The Court will not accept documents loosely secured with a rubber band or binder clip. Exhibits must be labeled and may be printed double sided. **Relevant portions of exhibits must be highlighted.**

6. NOTICE TO COURT OF RESOLUTION OF MOTION

If the parties have resolved an issue that is the subject of a pending motion, the parties must notify chambers in writing by the next business day. The parties email e-mail the Court's Case Manager indicating that the issue has been resolved and that the parties no longer wish to move forward with the motion.

7. CASE EVALUATION/FACILITATION

Parties may stipulate to case evaluation or mediation or request a settlement conference with the Court at any time. In all cases, a brief status conference will be conducted shortly after the close of discovery to discuss settlement options.

8. DISPOSITIVE MOTIONS

When filing motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, parties must proceed in accordance with the following:

Statement of Material Facts on Motion for Summary Judgment

(a) The maker of the motion must include a Statement of Material Facts. In short, concise, and numbered paragraphs, the maker of the motion must set forth the material facts that the moving party contends there is no genuine issue to be tried. Failure to submit such a statement may constitute grounds for striking the motion or denying it.

(b) The party opposing the motion must respond to each numbered paragraph in the moving party's statement. The numbering in the opposing party's response should correspond to the numbering in the motion. The opposing party may add additional paragraphs containing separate, short, and concise statements of additional material facts, if this is necessary to demonstrate there exists a genuine issue to be tried.

(c) Each numbered paragraph in the moving party's Statement of Material Facts will be deemed admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement served by the opposing party.

(d) Each Statement of Material Fact – whether set forth by the maker of the motion or the party opposing the motion – must be followed by citation to interrogatory answers, depositions, documents, affidavits, declarations, stipulations, admissions, electronically stored information, or other information which would be admissible under Federal Rules of Civil Procedure 56(e), in support of each claim or defense asserted.

Attached appendices must contain an index and be tabbed.

Counsel are discouraged from employing lengthy, boilerplate recitations of the summary judgment standard or string citations in support of well-established legal principles. Instead, counsel should focus analysis on a few well-chosen cases, preferably recent and from controlling courts. For cases and other sources cited, the briefs should contain a link to the citation. Cases need not be attached.

9. REQUIREMENTS APPLICABLE TO ALL MOTIONS

The Court requires strict compliance with E.D. Mich. LR 7.1(a), which obligates moving parties to seek concurrence before filing any motion. A moving party must certify compliance with this obligation by setting forth in the first

paragraph of every motion one of the following statements or one substantially similar:

(a) The undersigned counsel certifies that counsel personally spoke to, or met with, opposing counsel, explaining the nature of the relief to be sought by way of this motion and seeking concurrence in the relief; opposing counsel expressly denied concurrence.

(b) The undersigned counsel certifies that counsel communicated in writing with opposing counsel, explaining the nature of the relief to be sought by way of this motion and seeking concurrence in the relief; opposing counsel expressly denied concurrence.

(c) The undersigned counsel certifies that counsel communicated in writing with opposing counsel, explaining the nature of the relief to be sought by way of this motion and seeking concurrence in the relief, and three business days have lapsed without opposing counsel expressly agreeing to the relief, orally or in writing.

(d) The undersigned counsel certifies that counsel made no attempt or a limited attempt to seek concurrence in the relief requested by this motion because of the following exceptional circumstances. [Set forth the exceptional circumstances with specificity.]

The above statements shall be modified appropriately where one or more parties is unrepresented. **The failure to certify compliance with this paragraph will result in the motion being stricken.**

10. FINAL PRETRIAL ORDERS

The Final Pretrial Order must be submitted electronically through CM/ECF on or before the date set by the scheduling order. Counsel is directed to consult and comply with Local Rule 16.2 governing the Joint Final Pretrial Order. The proposed Final Pretrial Order shall strictly comply with the requirements of [Local Rule 16.2](#). Pursuant to Local Rule 16.2(b)(9), any objection based on foundation or authenticity will be deemed waived if not raised before trial.

11. FINAL PRETRIAL CONFERENCE ATTENDANCE

The following persons shall personally attend the final pretrial conference:

- (a) Trial counsel for each party;
- (b) All parties who are natural persons;
- (c) A representative on behalf of any other party who has full settlement authority for the party;
- (d) A representative of any insurance carrier that has undertaken the prosecution or defense of the case and has contractually reserved to itself the ability to settle the action.

Representatives must possess full authority to engage in settlement discussions and to agree upon a full and final settlement. The personal attendance requirement is not satisfied by (1) trial counsel professing to have full authority on behalf of the client or (2) a party being available by telephone, unless the party has obtained prior permission from the Court. The Court will generally only grant such permission upon consent of counsel for all parties.

12. EXHIBITS

(a) Marking of Exhibits: Counsel are required to mark all proposed exhibits in advance of trial. Plaintiff's exhibits shall use numbers and Defendant's exhibits shall use letters. A consecutive numbering and lettering system should be used by each party.

(b) List of Exhibits: A list of proposed exhibits shall be submitted directly to Judge Behm's chambers by each party by the deadline established at the final pretrial conference. However, no later than one week before the final pretrial conference, each party shall make available for inspection all exhibits which that party will introduce at trial. This provision shall not extend the time for disclosure and inspection of material previously ordered herein.

(c) Foundation for Exhibits: When a party has inspected an exhibit that the opposing party intends to introduce in evidence, the authentication of that will be deemed established unless the objecting party files a notice with the Court at or before the final pretrial conference that the foundation of the exhibit will be contested. See [E.D. Mich. L.R. 16.2\(b\)\(9\)](#).

(d) Objections to Exhibits: These guidelines shall not affect the right of a party to object at the time of trial to the introduction of an exhibit other than on the basis of authentication and foundation.

(e) Custody and Record of Admitted Exhibits: Counsel are required to maintain a record of all admitted exhibits during trial. Counsel for each party must keep custody of that party's admitted exhibits during trial. A party who objects to this provision must file a written objection prior to jury selection. [Exhibit Form](#).

(f) Publication of Exhibits During Trial: The Court encourages parties to use electronic projection to publish exhibits during trial in a manner that allows the jury, court, attorneys, and parties to view the exhibit simultaneously. Parties are responsible for providing equipment for such purpose. If photographs and documentary exhibits are not published electronically, then the party must prepare exhibit books for the Court and each juror. Whether or not exhibits are published electronically, a separate exhibit book should be prepared and made available to a witness who is to be questioned about an exhibit. **NOTE:** Please make arrangements with court staff to test equipment ahead of the trial to avoid technical issues and delays.

(g) Preparing Exhibits for Jury Deliberation: Counsel must confer and purge from one set of binders or files all exhibits not admitted during the course of trial. Originals of all exhibits admitted at trial should be ready to be turned over to the jury foreperson prior to closing jury instructions so that jury deliberations are not delayed.

(h) Filing Exhibits: It is the responsibility of the parties to ensure that the record is complete.

(i) Full Disclosure: Computer generated visual or animated evidence, together with underlying data, must be disclosed to opposing counsel at least one week before the start of trial.

(j) Penalty: A party who does not abide by these provisions may be subject to sanctions, including preclusion of the introduction of exhibits at trial by the offending party.

13. JURY INSTRUCTIONS

The parties must meet and confer prior to trial to discuss jury instructions.

By the deadline established in the Scheduling Order, the parties must submit directly to Judge Behm's chambers a single set of proposed, stipulated jury instructions. Counsel are responsible for submitting all instructions related to their specific claims or defenses, and special instructions relating to evidence.

All such instructions are to be submitted in typewritten form, double spaced, and on a USB drive compatible with Microsoft Word version 12.0; each instruction shall contain references to authority (e.g., “Devitt and Blackmar, Section 11.08”), and each instruction shall be on a separate page. In addition, each party must submit separately to Judge Behm's chambers all additional proposed instructions to which any other party objects. These should be submitted in the same form as proposed stipulated instructions. The parties must make a concerted, good faith effort to narrow the areas of dispute and to discuss each instruction with a view to reaching agreement as to an acceptable form. Disputes between counsel regarding proposed jury instructions are initially settled at a hearing on the record.

The Court has its own standard introductory and concluding instructions, and counsel are directed to concentrate on elements of the offense, the defense(s), etc. The jury is charged before final argument.

14. JURY SELECTION

The Court will conduct general *voir dire*, but counsel may conduct their own inquiries of prospective jurors. Contentious or questionable *voir dire* questions must be submitted to the Court in writing at least three days before the start of *voir dire*.