

STATE OF MICHIGAN  
 IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON  
 BUSINESS COURT DIVISION

Case No.            -CB  
 Hon. Richard N. LaFlamme

v.

\_\_\_\_\_ /

Attorney for Plaintiff

Attorney for Defendants

Attending Scheduling Conf. \_\_\_ in person or  
 \_\_\_ via telephone (check one)

Attending Scheduling Conf. \_\_\_ in person  
 or \_\_\_ via telephone (check one)

\_\_\_\_\_ /

CASE MANAGEMENT AND SCHEDULING ORDER

<u>EVENT</u>	<u>DEADLINE</u>
Lay Witness List	
Exhibit List	
Expert Witness List and Disclosure - Plaintiff	
Expert Witness List and Disclosure - Defendant	
Expert Witness Reports - Plaintiff	
Expert Witness Reports – Defendant	
Amendment of Pleadings	
Fact Discovery	
Expert Discovery	
Facilitative Mediation	
Hearings on Dispositive Motions & Motions to Limit/Exclude Experts	
All Other Motions, Including Motions in Limine	
Settlement Conference	
Joint Final Pretrial Order	
Final Pretrial Conference	
Trial	

1. **Lay and Expert Witness Lists** shall be served upon opposing counsel and filed with the Court in the form required by MCR 2.401, and shall separately identify those whom a party expects to present at trial and those it may call if the need arises.
2. **Exhibit Lists** shall be served upon opposing counsel and filed with the Court and shall identify those exhibits a party expects to offer at trial and those that it may offer if the need arises. All exhibits identified shall be digitized and served via disk or email along with the exhibit list, but shall not be filed with the Court.
3. **Expert Witness Reports** shall be served upon opposing counsel but not filed with the Court, shall be prepared and signed by the witness, and shall contain:
  - a. a complete statement of all opinions the witness will express and the basis and reasons for them;
  - b. the facts or data considered by the witness in forming them;
  - c. any exhibits that will be used to summarize or support them;
  - d. the witness's qualifications, including a list of all publications authored in the previous 10 years;
  - e. a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
  - f. a statement of the compensation to be paid for the study and testimony in the case.
4. **Discovery** must be served sufficiently in advance of the deadline so as to allow the opposing party sufficient time to respond prior to the discovery cutoff. Discovery may be conducted after the discovery cutoff date by written stipulation only if the extension of time does not affect dates for any motion cutoff, settlement conference, submission of joint final pretrial order, final pretrial conference, or trial. If an extension of discovery would affect such dates, or if a party seeks adjournment of such dates for other reasons, a written motion demonstrating good cause must be filed as soon as the need for an extension or adjournment becomes apparent. If the parties agree, all written discovery (interrogatories, requests to admit, requests to produce documents, etc.) may be conducted solely via electronic media. Absent agreement, discovery shall be conducted both by standard service and electronically. Electronic discovery shall be served in both a PDF and Word format. Electronic discovery responses, including exhibits, shall be served solely in PDF format.
5. **All pleadings, motions and other papers** filed with the Court, including exhibits, other than the initial summons and complaint, may be served via email in PDF format, with the original filed with the clerk in the usual manner. If a pleading is one to which a responsive pleading is required or permitted, a Word version shall be served with the PDF version, and the responsive pleading shall set forth both the pleader's allegation and the response, seriatim.
6. **Proposed protective orders** containing provisions for the sealing of documents or other matter must contain the language set forth below:

This order does not authorize the filing of any documents or other matter under seal. Documents or other matter may be sealed only if authorized by statute, rule, or order of the Court. A party seeking to file such items under seal shall file and serve a motion that sets

forth (i) the authority for sealing; (ii) an identification and description of each item proposed for sealing; (iii) the reason that sealing each item is necessary; (iv) the reason that means other than sealing are not available or unsatisfactory to preserve the interest advanced by the movant in support of sealing; (v) a memorandum of legal authority supporting sealing. A party shall not file or otherwise tender to the Clerk any item proposed for sealing unless the Court has granted the motion required by this section.

7. **Motion Practice.**

- a. The court requires that a good-faith effort be made to obtain concurrence, which normally involves actual contact with opposing counsel. The moving party must show that reasonable efforts were undertaken to conduct a conference. **At a minimum, absent exceptional circumstances, the Court requires the moving party, at least one week prior to filing any motion, to inform opposing counsel, in writing, of the nature of the motion the moving party intends to file. The motion must recite the efforts undertaken to conduct a conference, the purported justification for filing the motion without one week's prior notice, or the results of the conference if one was held, as the case may be. The failure to certify and establish compliance with this paragraph may result in the motion being stricken.**
- b. Facts stated in the statement of facts must be supported with citations to the pleadings, interrogatories, admissions, depositions, affidavits, or documentary exhibits.
- c. All materials submitted in support of, or opposing, a motion shall be contained in a separate appendix. The appendix shall also include the full text of any unpublished or non-Michigan authority cited unless the source is available electronically on Westlaw in the Michigan database or is available in a free database, in which case a hyperlink to the authority may be included in the brief in lieu of including the authority in the appendix. The Court does not have Westlaw access outside of the MI-CS-ALL database, which contains reported and unreported documents from Michigan state courts, the U.S. Supreme Court, the Sixth Circuit, U.S. district and bankruptcy courts from Michigan, and the Judicial Panel on Multidistrict Litigation. The appendix shall contain a table of contents/index. Each exhibit shall be tabbed with the relevant portion(s) highlighted. When submitting transcripts, counsel shall supply the Court with cited page(s) together with sufficient accompanying pages to provide context. All citations must have page references.
- d. Judge's courtesy copies shall be in digital PDF format only and shall be delivered via email to [nbullinger@mijackson.org](mailto:nbullinger@mijackson.org)
- e. The Court may cancel a scheduled hearing if it appears after review of the briefs that the issues can be decided without oral argument.

8. **Dispositive Motions.** The following requirements for dispositive motions are in addition to the motion practice requirements above.

- a. Motions and briefs shall be combined in a single document titled **Motion And Brief For Summary Disposition**. Similarly, replies and reply briefs shall be combined in a single document titled **Reply And Brief In Opposition To Motion For Summary Disposition**.
- b. The movant's brief must begin with a "Statement of Material Facts." The Statement must

consist of numbered paragraphs describing the facts as to which the moving party contends there is no genuine issue of material fact. Each paragraph must include specific references and citations to record evidence.

- c. The response brief must begin with a "Counter-statement of Material Facts," stating which facts are admitted and which are contested. The paragraph numbering must correspond to the moving party's Statement of Material Facts. If any of the moving party's proffered facts are contested, the non-moving party must explain the basis for the factual disagreement, referencing and citing record evidence. The non-moving party may raise additional material facts not implicated by the moving party's Statement under the separate heading "Statement of Additional Material Facts."
- d. If the non-moving party raises additional material facts not addressed in the moving party's Statement, the moving party must begin its reply brief with a "Reply to Counter-statement of Material Facts," stating which of the non-moving party's additional facts are contested. The paragraph numbering must correspond to the non-moving party's Statement of Additional Material Facts. If any of the non-moving party's proffered additional facts are contested, the moving party must explain the basis for the factual disagreement, referencing and citing record evidence.
- e. Other than the parties' respective statements of undisputed facts, the parties are not required to set forth any additional recitation of facts but may do so if they wish. Any additional recitation of facts, such as in a typical factual background section, does count against the page limits.

#### 9. **Facilitation.**

- a. All cases will be referred to facilitative mediation, unless compelling reasons are provided to the Court that would justify an alternative form of ADR. The parties are strongly encouraged to consider early facilitative mediation, either before discovery or after some initial discovery is conducted. If the parties do not agree to early facilitative mediation, facilitative mediation will be conducted after the close of all discovery and shall be completed by the facilitative mediation deadline.
- b. The parties must complete the Court's form order of reference to facilitation, which is located on the Court's website. Facilitation must be completed at least seven days prior to the Court's scheduled Final Pretrial Conference unless otherwise ordered by the Court.

#### 10. **Settlement Conference.**

- a. The Court conducts a settlement conference in all civil jury cases. Non-jury cases may be referred to a different judicial officer for a settlement conference. If the parties would like the Court to become involved in settlement discussions before this date, the parties shall jointly contact the Court's secretary for civil matters and appropriate arrangements will be made to convene an earlier settlement conference.
- b. The following person(s) and entities must personally attend the settlement conference: (i) trial counsel for each party; (ii) all parties who are natural persons; (iii) any representative, with full and final settlement authority, on behalf of any party that is not a natural person; and (iv) a representative, with full and final settlement authority, on behalf of any insurance carrier that has undertaken the prosecution or defense of the case

and has contractually reserved to itself the right to settle the action.

- c. The Court's mandatory personal attendance policy is not satisfied by trial counsel professing to have full and final settlement authority on behalf of his or her client or a party being available by telephone.

#### 11. **Final Pretrial Conference and Joint Final Pretrial Order.**

- a. The proposed joint final pretrial order (JFPO) must be submitted via email in Word® format to [nbullinger@mijackson.org](mailto:nbullinger@mijackson.org) 1 business day prior to the scheduled conference date.
- b. The proposed JFPO shall not be a vehicle for adding claims or defenses.
- c. Counsel for all parties are directed to confer sufficiently in advance of the scheduled conference date in order to reach any possible stipulations narrowing the issues of law and fact and to discuss non-stipulated issues. It shall be the duty of Plaintiff's counsel to initiate that meeting and the duty of opposing counsel to respond to Plaintiff's counsel and to offer full cooperation and assistance. If, after reasonable effort, any party cannot obtain the cooperation of opposing counsel, it shall be counsel's duty to communicate with the Court.
- d. Plaintiff's counsel is responsible for submitting the proposed JFPO to chambers after receiving proposed language from opposing counsel and reconciling the parties' respective positions.
- e. If there are any pending motions requiring determination in advance of trial, they should be called to the Court's attention not later than the date of submission of the proposed JFPO.
- f. The proposed JFPO must provide for the signature of the Court, which, when signed, will become the order of the Court.
- g. The proposed JFPO shall contain the following:
  - i. **Trial:** The parties shall state whether the case will be tried to a jury or to the Court and the estimated length of trial in terms of number of full days of trial.
  - ii. **Settlement:** Counsel or a party without counsel shall state that they have conferred and considered the possibility of settlement, giving the most recent place and date, and stating the current status of negotiations and any plans for further discussions.
  - iii. **Statement of Claims and Defenses:** **Each claim for affirmative relief (by Plaintiff or Counter-plaintiff) must be separately stated. As to each claim, the proposed JFPO must state: (i) the elements of the claim; (ii) the controlling or most appropriate legal authority in support of every element of the claim; (iii) the elements of every defense to the claim; (iv) the controlling or most appropriate legal authority in support of every element of the defense; and (v) each party's calculation of damages.**
  - iv. **Lay Witnesses:** The parties shall set for the name, address, and telephone number of every lay witness whom each party will call or may call to testify, including rebuttal witnesses, unless the rebuttal witnesses' testimony could not be anticipated before trial. Absent good cause, only those witnesses who are listed will be permitted to testify. Generic categories of witnesses are not permitted. **The subject matter of every witness' testimony shall be set forth with particularity, indicating the specific factual issues about which the witness will testify.**

- v. Expert Witnesses: The parties shall set forth the name, address, telephone number, area of expertise and anticipated testimony of every expert witness whom each party will call or may call to testify, including rebuttal expert witnesses unless the rebuttal witnesses' testimony could not be reasonably anticipated before trial. Absent good cause, only those witnesses who are listed will be permitted to testify.
- vi. All Witnesses: Except as permitted by the Court for good cause, a party may not list a witness unless the witness was included on a timely filed witness list required under this Order. **Only witnesses listed in the JFPO will be permitted to testify at trial, except for rebuttal witnesses whose testimony could not be anticipated before trial, or except for good cause shown.**
- vii. Depositions: All de bene esse depositions shall be listed. Any motions to purge depositions shall be filed by the deadline set forth for all other pretrial motions. Motions to purge filed after the deadline will not be considered unless the Court, for good cause, allows an untimely motion.
- viii. Exhibits: The parties shall prepare a list of all exhibits that will or may be offered in evidence and identify those exhibits, if any, to which any objection will be made. The objecting party must set forth the specific basis for each objection. Failure to object will be deemed a waiver of the objection, unless the Court for good cause allows a late objection. Absent good cause, only those exhibits that have been listed in the proposed JFPO may be offered into evidence, except for rebuttal exhibits which could not be anticipated before trial. A 3-ring punched copy of all exhibits and an index shall be provided to the Court the morning of trial. Counsel are required to pre-mark all proposed exhibits using numbers for Plaintiff's exhibits and letters for Defendant's exhibits. If there are multiple parties the numbering system shall ensure that numbers or letters used by one party are not used by another party. Counsel are required to keep track and maintain custody of all exhibits admitted during trial.
- ix. Evidentiary Issues: The parties shall identify any evidentiary issues likely to arise at trial that are not the subject of a pending motion or identified in the preceding paragraph.
- x. Service of Pleadings, Motions and Discovery Materials: All pleadings, motions and other papers filed with the Court, including exhibits, other than the initial summons and complaint, may be served via email in PDF format, with the original filed with the clerk in the usual manner. If a pleading is one to which a responsive pleading is required or permitted, a Word version shall be served with the PDF version, and the responsive pleading shall set forth both the pleader's allegation and the response, seriatim. All written discovery (interrogatories, requests to admit, requests to produce documents, etc.) shall be conducted solely via electronic media. Such discovery shall be served electronically in both a PDF and Word format. Discovery responses, including exhibits, shall be served solely in PDF format.
- h. Other items to be submitted at the same time as the JFPO:
  - i. Jury Instructions/Verdict Form: Proposed jury instructions and a verdict form must be jointly submitted to chambers with the proposed JFPO. The parties shall jointly prepare and submit a set of: (i) agreed upon jury instructions and (ii) disputed instructions. The parties must make a concerted, good faith effort to narrow the areas of dispute and to discuss each instruction with a view toward

reaching agreement as to an acceptable form. The instructions shall be submitted in the following form: one instruction per page, ready for submission to the jury in paper form without any citation, electronically in Word format, so that the Court can make appropriate changes. In addition, for each disputed instruction, the parties shall submit a single, separate page containing the authority upon which each party relies.

- ii. Statement of Claims and Defenses to be Read to Jury: Counsel shall submit a statement of claims or defenses, no longer than two pages, suitable to be read to the jury during opening instructions.
- iii. Proposed Findings of Fact and Conclusions of Law: In bench trials each party must serve on all other parties and submit to chambers at the time the proposed JFPO is submitted proposed findings of fact (identifying the witnesses and exhibits in support of each finding) and conclusions of law (citing supporting authorities). Proposed findings of fact and conclusions of law shall be submitted and served electronically in Word format, with paper copies filed in the usual manner.
- iv. Sanctions: For failure to cooperate in preparing or submitting the joint final pretrial order or failure to comply strictly with the terms of the joint final pretrial order, the Court may dismiss claims, enter a default judgment, refuse to permit witnesses to testify or to admit exhibits, assess costs and expenses, including attorney fees, or impose other appropriate sanctions.

## 12. Trial.

- a. Trial shall commence at 8:30 a.m. on each scheduled trial date, absent notice to the contrary.
- b. Voir dire questions must be served on all parties and submitted to chambers at least one business day before trial.
- c. The Court will provide the customary opening instructions.
- d. Trial briefs are optional, but if furnished they must be submitted at least one business day before trial.
- e. Parties are encouraged to use electronic aids to display evidence at trial. Parties are responsible for providing equipment for such purpose, other than a screen, projector and overhead visualizer, which are available in the courtroom.
- f. If counsel wishes to publish an exhibit (or any portion thereof) to the jury, counsel must provide enough 3-ring-punched copies for every juror, and shall submit a complete set of all admitted exhibits to the Court before jury deliberations. All documentary exhibits should be published to the jury, except those which are voluminous, in which case excerpts may be published. All documentary exhibits to which no objection is asserted may be published to the jury in advance of opening statements if you wish to refer to them during your opening statement.

**IT IS SO ORDERED.**

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Date

Revised 06/16/2021

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Honorable Richard N. LaFlamme  
Business Court Judge