

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-012021

02/05/2009

HON. ROBERT H. OBERBILLIG

CLERK OF THE COURT
A. Marquis
Deputy

TEMPE CITY

JEFFREY T MURRAY

v.

SOUTH HAMPTON GROUP, THE, et al.

ROBERT V KERRICK

JURY TRIAL SET
Pretrial Management Conference Set

Courtroom 202 – OCH

8:48 a.m. This is the time set for a Pretrial Status/Scheduling Conference. Plaintiff is represented by counsel, Jeffrey T. Murray. Defendant The South Hampton Group is represented by counsel, Robert V. Kerrick.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Discussion is held regarding the Joint Request to Modify Rule 16 Scheduling Order.

Good cause appearing, the Court modifies the parties' Scheduling Order as follows:

- Defendant has identified its expert appraisal witness as Peter Martori; Defendant shall produce Mr. Martori's appraisal report, and any other expert reports it intends to rely on at trial, no later than **May 1, 2009.**
- Plaintiff shall identify all expert witnesses it intends to call at trial no later than **May 29, 2009.**

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- The parties shall simultaneously disclose all expert rebuttal reports no later than **July 31, 2009.**
- The parties shall simultaneously identify any other witnesses on **August 31, 2009.**
- The parties agree to participate in non-binding private mediation on or before **October 2, 2009.**
- The parties shall complete all discovery, including all depositions, not later than **October 1, 2009.**
- The parties shall file any dispositive motions on or before **August 15, 2009.**

Pursuant to stipulation,

IT IS ORDERED as follows:

1. Setting a **Final Pretrial Management Conference on October 13, 2009 at 8:30 a.m. (60 minutes)** in this division. All counsel and/or parties representing themselves must appear in person and cannot appear telephonically.
2. Setting a **Four-Day Jury Trial on October 20, 2009 at 9:30 a.m.** before:

JUDGE ROBERT H OBERBILLIG
OLD COURT HOUSE
125 WEST WASHINGTON STREET
SECOND FLOOR – SUITE 202
PHOENIX, AZ 85003
(602) 506-2194

The Court instructs counsel to appear at 9:15 a.m. on the first day of trial.

NOTE: This Court utilizes FTR for an electronic record of the proceedings. However, any party may request the presence of a court reporter by contacting the division three (3) court business days before the scheduled hearing.

DUTIES PRIOR TO THE FINAL PRETRIAL CONFERENCE

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3. **MOTIONS IN LIMINE.** All Motions in Limine shall be filed no later than **5:00 p.m. on September 23, 2009** and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397; 499 P.2d 152 (1972): The primary purpose of a Motion in Limine is to avoid disclosing to the jury prejudicial matters which may compel a mistrial. See also, Ariz. R. Evid. 103(c). A written Response to a Motion in Limine may be filed no later than ten (10) calendar days thereafter. The Court may rule on Motions in Limine without oral argument. No Replies shall be filed. Prior to filing a Motion in Limine, counsel are to confer and attempt to resolve those issues. Counsel shall further certify to the Court the efforts made to resolve those issues before filing a Motion in Limine. The parties must comply with Rule 7.2(a) Ariz.R.Civ.P., prior to filing any Motion in Limine. Any Motion in Limine filed without the movant having first complied with Rule 7.2(a), will be stricken by the Court.
4. **JOINT PRETRIAL STATEMENT.** Counsel shall deliver to the trial judge no later than **5:00 p.m. on October 6, 2009** a copy of the **Joint Pretrial Statement** signed by all counsel.
 - a) **Deposition Summary:** In addition to the information required by Rule 16(d), counsel shall at the Final Pretrial Conference provide to the Court copies of any deposition transcripts to be read to the jury. The offering party will highlight the portions to be read, the other side will highlight Rule 106 additions, and any objections for the court to rule on will be clearly marked in the margin. The parties are encouraged to agree on narrative summaries of deposition testimony, using brief question and answer excerpts only to emphasize very important testimony or to cover areas of testimony that cannot be summarized to the satisfaction of all counsel. No stipulation should be unreasonably refused.
 - b) **Final Trial Witnesses:** In addition to the information required by Rule 16(d), the Joint Pretrial Statement shall include an exhibit titled: **Final Trial Witness List**. This list shall contain the name of each witness a party actually intends to call at trial, the day on which they intend to call each witness and the estimated time needed for direct, cross and re-direct examination.
5. **JURY INSTRUCTIONS; VOIR DIRE QUESTIONS.** Counsel shall meet and agree on as many proposed jury instructions as possible. Counsel shall deliver to the trial judge, with their Joint Pretrial Statement, copies of:

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- a) Proposed voir dire questions.
- b) A joint set of agreed-upon preliminary and final jury instructions and **proposed forms of verdicts**.
- c) Separate sets of requested instructions that have not been agreed upon. Please read *Rosen v. Knaub*, 175 Ariz. 329; 85 P.2d 381 (1993) and the RAJI Civil 3d Statement of Purpose and Approach before preparing requests for non-RAJI instructions.

Recommended Arizona Jury Instructions (RAJI) need not be typed and may be requested in the following manner: RAJI 4th Edition (civil) - Duty of Jurors. Non-RAJI instructions should be typed. Each instruction should cover only one subject.

Any jury instructions not delivered with the Joint Pretrial Statement will be deemed waived by the Court, unless the Court concludes that good cause exists for the untimely submission.

DUTIES AT FINAL PRETRIAL CONFERENCE

- 6. At the Final Pretrial Conference, counsel shall be prepared to discuss:
 - a) Time limits in voir dire, opening statements, examination of witnesses and closing arguments.
 - b) Stipulations for the foundation and authenticity of exhibits.
 - c) Preliminary jury instructions, juror notebooks (counsel shall bring any proposed juror notebooks to the conference), mini opening statements and voir dire.
 - d) Agreed-upon deposition summaries and excerpts from deposition transcripts and the editing of any videotaped depositions.
 - e) Use of short-trial or summary jury trial.
 - f) Any special scheduling or equipment issues.
- 7. Counsel shall call the division clerk at **(602) 506-8946** at least two (2) weeks before trial to make arrangements for delivering exhibits. The exhibits will be marked serially as they are listed in the Joint Pretrial Statement – Plaintiff's first, Defendant's second.

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Please advise the clerk, by signed stipulation or on the record referring specifically to the Joint Pretrial Statement, which exhibits may be marked directly into evidence. Counsel shall also meet and confer to eliminate any duplicate exhibits.

8. One day's jury fees will be assessed unless the court is notified of settlement before 2:00 p.m. on the judicial day before the trial. Counsel are reminded to promptly notify the court of any settlement pursuant to Rule 5.1(c), Ariz.R.Civ.P.
9. The dates set forth in this Order are FIRM dates and will not be extended or modified by this Court absent good cause. Lack of preparation will not ordinarily be considered good cause.

8:59 a.m. Matter concludes.