

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-020764

06/04/2004

HON. JONATHAN H. SCHWARTZ

CLERK OF THE COURT
D. Glab
Deputy

FILED: 06/08/2004

ARIZONA STATE, et al.

BRYAN B PERRY

v.

K C K INVESTMENTS L L C, et al.

JAMES T BRASELTON

ORDER SETTING FIRM TRIAL and TRIAL MANAGEMENT CONFERENCE

1:32 p.m. This is the time set for telephonic hearing. Plaintiff is represented telephonically by counsel, Bryan B. Perry. Defendant is represented telephonically by counsel, James T. Braselton.

A record of the proceeding is made by CD/videotape in lieu of a court reporter.

A discussion is held.

The Court orders as follows:

1. Defendant's appraisal report will be disclosed by September 4, 2004.
2. Plaintiff's rebuttal report will be disclosed by November 4, 2004.
3. All discovery, including depositions, will be completed by December 15, 2004.
4. The parties agree to private mediation. Mediation will occur before December 1, 2004.

IT IS ORDERED setting a trial to a jury on February 17, 2005 at 9:30 a.m. before:

HONORABLE JONATHAN H. SCHWARTZ
SUPERIOR COURT OF ARIZONA

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EAST COURT BUILDING
101 WEST JEFFERSON
COURTROOM 413 - 4TH FLOOR
PHOENIX, ARIZONA 85003-2202
602 506-3541

THIS IS A FIRM TRIAL SETTING. Trial length: four days to a jury.

IT IS FURTHER ORDERED that a Trial Management Conference (TMC) is set for January 27, 2005 at 8:30 a.m. in this division. Allotted time: 15 minutes.

IT IS ORDERED denying the stipulation to continue the case on the inactive calendar as moot since the case is now on the active calendar (trial date set).

The TMC shall be governed by the Trial Management Orders set forth below.

IT IS ORDERED that the Joint Pretrial Statement (JPTS) in accordance with Rule 16(d), A.R.Civ.P., is due in this division by 5:00 p.m., five (5) judicial days before the Trial Management Conference (TMC).

IT IS FURTHER ORDERED with the JPTS, Counsel shall deliver to this division, copies of the following:

A. A jointly-completed time and witness estimate list. (A sample form is incorporated in this order). The Court will use the list to predict the length of the trial for the jurors and to direct counsel to follow the trial time limits established. Any time limitation set will be reasonable presumptive limits subject to modification upon a showing of good cause. Counsel are reminded, that excluding breaks, a typical jury trial day is approximately four and a half hours.

B. A joint set of agreed-upon preliminary and final jury instructions. This does not include Preliminary Civil RAJI or Standard Civil RAJI 1 – 15 which the Court will be given without request. Unless counsel indicate they will be unable to do so, the proposed jury instructions will be submitted both in hard copy and on computer disk.

C. Separate sets of requested instructions that have not been agreed upon. These jury instructions will also be submitted both in hard copy and on computer disk. Please read *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993), and the RAJI Civil 3d Statement of Purpose and Approach before preparing the request for non-RAJI instructions.

D. Proposed Findings of Fact and Conclusions of Law, if a request has been or will be filed. The proposed Findings of Fact and Conclusions of Law will be submitted both in hard copy and on computer disk. If proposed Findings of Fact and Conclusions of Law are not received, the request shall be deemed waived.

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E. Proposed *voir dire* questions which the Court may give.

F. In jury trial cases the parties shall jointly prepare a brief summary of the case which the Court will read to the jury at the commencement of *voir dire*.

G. The Court encourages use of juror notebooks in appropriate cases. Stipulating the contents in evidence is necessary. Key exhibits may be included, along with diagrams, photographs, timelines, non-argumentative summaries of positions of liability and damages and other information helpful to jurors.

H. Counsel are to identify in/with the memorandum all deposition or other transcribed testimony that may be offered at trial. The proposed testimony is to be identified by reference to page and line numbers. Objections, if any, to such testimony, and the reasons for such objections, are also to be set forth.

I. Any motions *in limine* shall be filed forty (40) days before the trial 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. Rules of Evidence, Rule 103(c). A written response to a motion *in limine* may be filed no later than thirty (30) days before trial. No replies shall be filed. The Court will decide motions *in limine* at the trial management conference. If oral argument is requested, oral argument will be held at the trial management conference.

J. All dispositive motions must be filed ninety (90) days before trial.

K. The Court will hear and rule upon objections to exhibits at the TMC. The rulings will be stated on the record. All objections to known exhibits and witnesses must be made before or during the Trial Management Conference or will be deemed to have been waived.

IT IS FURTHER ORDERED that counsel, at the TMC, shall be prepared to discuss:

1. Time limits in *voir dire*, opening statements, examination of witnesses and closing arguments.
2. Stipulations for the foundation and authenticity of exhibits.
3. Jury instructions (preliminary and final), juror notebooks (counsel shall bring any proposed jury notebooks to the conference), mini-opening statements and *voir dire*.

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4. Agreed-upon deposition summaries and excerpts from deposition transcripts and the editing of videotaped depositions.
5. Narrative summaries with brief excerpts of deposition question and answer testimony are preferred at trial rather than the reading in of pages of testimony.
6. Use of "short trial" or summary jury trial.
7. Any special scheduling or equipment issues.
8. Status of settlement of the case.

L. COUNSEL WHO WILL BE THE TRIAL LAWYERS ON THE CASE ARE REQUIRED TO ATTEND THE TRIAL MANAGEMENT CONFERENCE.

M. FAILURE OF TRIAL COUNSEL TO ATTEND THE TRIAL MANAGEMENT CONFERENCE MAY RESULT IN PERSONAL SANCTIONS.

N. IF THE CASE IS SET FOR A JURY TRIAL, 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 TRIAL.

E-Courtroom Policies

Courtroom 413 is an E-Courtroom and provides state of the art equipment for case presentation. E-Courtrooms do not have a court reporter. If you wish to have a court reporter for your trial, you must notify the division 48 hours prior to the beginning of trial.

There is a \$20.00 fee for a copy of a **daily** recorded proceeding. A person desiring a copy CD or videotape will fill out a form and pay the applicable fee at the Self Service Center. The fee receipt will be attached to the form. The form and receipt will be shown to the courtroom clerk (person creating the CD/videotape) who will prepare the copy in the customary manner.

TIME ESTIMATES FOR TRIAL

CAUSE NUMBER _____
CASE CAPTION _____
PLAINTIFF'S COUNSEL _____
DEFENDANT'S COUNSEL _____

(NOTE : Add additional lines as needed for additional parties and or witnesses.)

Opening Statement and Closing Argument

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PLAINTIFF'S OPENING STATEMENT	
DEFENDANT'S OPENING	
PLAINTIFF'S CLOSING	
DEFENDANT'S CLOSING	
PLAINTIFF'S REBUTTAL	

Estimate of time for Witness Examination

PLAINTIFF'S WITNESSES	DIRECT EXAMINATION	CROSS EXAMINATION	REDIRECT EXAMINATION

DEFENDANT'S WITNESSES	DIRECT EXAMINATION	CROSS EXAMINATION	REDIRECT EXAMINATION

The foregoing are based on the best estimates of counsel of the time reasonably needed to complete the necessary examination of the witnesses listed.

Counsel for Plaintiff

Counsel for Defendant

1:46 p.m. Hearing concludes.