

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-011712

03/19/2013

HONORABLE ARTHUR T. ANDERSON

CLERK OF THE COURT
L. Nelson
Deputy

WILLIAM STEWART

BENJAMIN ROBERT JEMSEK

v.

BROWN COMMUNITY MANAGEMENT INC,
et al.

NATHAN T METZGER

ALTERNATIVE DISPUTE
RESOLUTION - CCC

JURY TRIAL SETTING

ECB-511

9:02 a.m. This is the time set for Rule 16 Pre-Trial Conference. Plaintiff, William Stewart, is telephonically represented by counsel, Benjamin Robert Jemsek. Defendant, Scottsdale Trails Association, is telephonically represented by counsel, Nathan T. Metzger.

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

Discussion is held regarding case status and future scheduling.

IT IS ORDERED setting the following schedule for disclosure, discovery, and pre-trial procedures unless the parties obtain written modifications from the Court:

- 1) **March 22, 2013** – The parties and counsel shall meet and confer to identify the exact location of the accident that caused Plaintiff's injuries, including visiting the location if necessary;

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- 2) **March 22, 2013** – Plaintiff shall disclose all additional records from Scottsdale Healthcare;
- 3) **March 22, 2013** – Plaintiff shall identify all of Plaintiff’s prior healthcare providers;
- 4) **April 5, 2013** – Defendant shall identify all healthcare providers that they request records from;
- 5) **April 30, 2013** - Plaintiff shall disclose the opinions and reports of his expert witnesses;
- 6) **June 14, 2013** – Defendant shall identify healthcare providers who shall conduct Independent Medical Examinations (IMEs) of Plaintiff and have a schedule in place regarding same;
- 7) **June 17, 2013** - The parties shall participate in a mandatory settlement conference. This case is referred to the Court’s Alternative Dispute Resolution for the appointment of a judge *pro tempore* to conduct a settlement conference. Counsel and/or the parties will receive a minute entry from ADR appointing the judge *pro tempore*. Counsel and any “pro per” parties will contact the appointed judge pro tempore to arrange the date, time, and location for the settlement conference. The judge pro tempore is requested to conduct a settlement conference not later than **June 17, 2013**. The Office of Alternative Dispute Resolution will not do the scheduling of the settlement conference so please do not contact that office. If counsel prefer to use a private mediator to conduct the settlement conference, a Stipulation and Order re: Alternative to ADR must be presented to the Court by no later than 5:00 p.m. on **April 3, 2013**. All counsel and their clients, or non-lawyer representatives who have full and complete authority to settle the case, shall personally appear and participate in good faith in the Settlement Conference. Sanctions may be imposed for failure to participate.
- 8) **June 28, 2013** - The parties shall disclose the names of all non-expert witnesses;
- 9) **August 30, 2013** - Defendant shall disclose the opinions and reports of its expert witnesses;
- 10) **August 30, 2013**- Independent Medical Examinations (IMEs) of Plaintiff shall be completed;

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- 11) **November 1, 2013** - Dispositive motions shall be filed. Pleadings shall comply with the Rules regarding page limitations;

Because of the short time between dispositive motions briefing and Final Trial Management Conference, counsel are encouraged to structure discovery to allow for dispositive motions filing as soon as practicable.

Your cooperation to label motions serially would be most appreciated. For example, the plaintiff's first motion to be filed would be marked, "Plaintiff's Motion #1 - Motion for Summary Judgment." The response to this motion would be marked, "Defendant's Response to Plaintiff's Motion #1 - Motion for Summary Judgment." Conversely, the defendant's first motion would be marked, "Defendant's Motion #1 - Motion to Dismiss." The response to this motion would be marked "Plaintiff's Response to Defendant's Motion #1 - Motion to Dismiss."

- 12) **December 31, 2013** - ALL discovery including written discovery and depositions shall be completed;

All motions shall comply with Maricopa County Local Rule 3.2(f). If a motion to exceed page limitation is accompanied with a proposed filing, counsel do so at their own peril;

- 13) **February 7, 2014** - Motions in Limine and Responses thereto shall be filed. No replies are necessary. Each pleading shall not exceed 5 pages in length;

IT IS FURTHER ORDERED setting a Final Trial Management Conference in this matter on **February 14, 2014, at 9:00 a.m. (30 min.)** in this division. Counsel who will try this case shall appear in person at the Final Trial Management Conference.

IT IS FURTHER ORDERED setting this matter for a 6-day Jury Trial for **February 24, 2014,¹ at 9:30 a.m.** in this division.

**THIS IS A FIRM TRIAL SETTING
NO CONTINUANCE SHALL BE GRANTED**

Trial days are normally 9:30 a.m. to 4:30 p.m., Monday through Thursday.

¹ One day's jury fees will be assessed unless the court is notified of settlement by 2:00 p.m. on the judicial day before trial.

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IT IS FURTHER ORDERED that motions in *limine* shall be filed in accordance with Rule 7.2 of Civil Procedure and as follows:

- A. Motions in Limine shall be consecutively numbered in the caption identifying the party filing it and the subject of the motion; e.g. “Plaintiff’s Motion in Limine No. 1 Re: Defendant’s expert;” or “Defendant’s Motion in Limine No. 1 Re: No mention of insurance.”
- B. Each motion in limine shall deal with one discrete subject.
- C. DO NOT combine a motion in limine with ANY other motion.
- D. DO NOT file a “cross-motion in limine.”
- E. Label responses to motions in limine by identifying the number and subject of the motion being responded to; e.g. “Defendant’s Response to Plaintiff’s Motion in Limine No. 1 Re: Defendant’s expert.”
- F. DO NOT respond to more than one motion in limine in each response.

A joint pretrial statement (JPTS) prepared in accordance with Rule 16(d) is **due 5 judicial days prior to the Final Trial Management Conference**. The following shall be filed with the JPTS:

- A. A list of the names of all witnesses who may testify to be read to the jury.
- B. A set of agreed-upon jury instructions with an additional copy on a disk, in Word format.
- C. Separate sets of requested instructions that have not been agreed upon with an additional copy on a disk, in Word format.
- D. Proposed findings of fact and conclusions of law (if a request for same has been or will be filed).
- E. A stipulated brief summary of the case, which the court can read at the outset of *voir dire*.

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All exhibits shall be exchanged 30 days before trial. Counsel shall confer regarding exhibits so duplicates are avoided and list any stipulations to those exhibits which can be received in evidence. At least **ten days** before trial, counsel or their knowledgeable assistants, shall call the division clerk at (602) 372-3186 to obtain written procedures for marking exhibits. At least **one week** before trial, counsel shall submit all exhibits to the clerk of the division for marking. Original depositions are provided to the clerk for the record and not marked as exhibits.

9:25 a.m. Matter concludes.

TRIAL MANAGEMENT ORDER

PURPOSE: These trial procedures are designed to enhance jury comprehension of the facts and issues; to assist counsel in making the maximum, effective use of their trial time; and to assure the “just, speedy and inexpensive determination” of the parties’ dispute.

IT IS ORDERED:

1. **Voir dire.** Counsel may conduct a limited and reasonable examination of the panel following the Court’s questioning. In the normal case, 15 to 20 minutes is reasonable. Jury “conditioning” will not be allowed. Use of “mini-openings” before voir dire in lieu of a brief statement of the case will be discussed with counsel at the pretrial management conference. Submission of proposed voir dire instructions to the court is **NOT** required.

2. **Time allocations.** The Court may make tentative, reasonable, presumptive time allocations for each side. If so, your time will be charged when you have the floor, e.g., voir dire, opening statement, direct examination, cross-examination, closing argument and lost time caused by failure to have witnesses available. You will be regularly informed of time used and time remaining. *As this case proceeds, the court will consider the necessity of imposing presumptive time limits on the parties.*

3. **Notification of order of proof.** Each side shall notify the other on a “rolling” forty-eight hours’ basis of the order in which witnesses will be called. From time to time, counsel may be asked to inform the jury of their order of proof. (Witnesses may be scheduled out of order on agreement of counsel or, if necessary, by order of Court.)

4. **Absent witnesses.** The Court encourages the use of brief, agreed-upon deposition summaries. If the deposition was videotaped, the Court encourages use of a brief, edited extract

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of pertinent portions of the deposition. Videoconferencing may be arranged at the offering party's expense.

5. Bench conferences are discouraged. They interrupt the trial, show a certain rudeness in excluding the jury and do not fool the jurors, who understand that someone is trying to keep information from them. If counsel wishes to be heard on an objection outside the presence of the jury, he or she need merely indicate such, and the Court will direct inquiring counsel to move to another subject. The matter will be considered at the next available recess. One exception is jury questions. Counsel may be called to the bench when they are submitted.

6. Jury questions will be reviewed with counsel and, if appropriate, answered at the first available opportunity.

7. Introduction of witnesses. If counsel wish, they may introduce each witness to the jury after the witness is sworn and before the witness begins his or her testimony. An introduction might include the witness' name and occupation and a brief summary of the witness's proposed testimony. Alternatively, the Court will not sustain an objection to an opening question such as, "Please tell the jury who you are and why you are here."

8. Expert opinions. Counsel are strongly encouraged to elicit the expert's opinion at the earliest, available opportunity. The hypothetical question has been abolished, and the witness' qualifications should have been established before trial. In the first two to five minutes, the jury should know who the witness is and why the witness is present.

9. Expert witnesses' resumes (brief and descriptive) will be admitted over a hearsay objection. Questions of length and content will be resolved before trial.

10. Objections shall be stated succinctly and clearly without extended comment or argument. The Court will supply the jury with a glossary of terms, which includes a definition of some common objections, at the time the Court reads the preliminary instructions. A copy of the glossary is attached.

11. Permission to approach and/or publish. Counsel need not ask the Court's permission to approach the clerk or a witness, nor need counsel ask the Court's permission to publish or pass an exhibit which has been received in evidence to the jury.

12. Interim commentaries. In cases scheduled for more than 5 court days, counsel may request the opportunity to give 5 minute interim commentaries each week as the case progresses. Commentaries will consist of statements of fact as to evidence presented or to be presented and will not contain argument.

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13. Microphones. Because of the acoustics of our courtroom, it is often difficult to hear a speaker. For the benefit of the jurors and court staff, it is appreciated if all speakers use the assistance of a microphone, whether at the podium or the attorney tables. A microphone is also provided for witnesses.

14. Technology. Counsel are encouraged to make maximum, effective use of the many forms of trial and courtroom technology which are available. Counsel should ensure that the technology is appropriately set up and working properly before its use is attempted in court.

15. Daily schedule. A trial day is from 10:00 a.m. to 4:30 p.m., with lunch usually from noon until 1:30 p.m., one fifteen-minute break in the morning and one in the afternoon.

16. Trial interruptions. Trial will not be interrupted for discussion of legal matters. The Court is available daily before and after trial and during regular recesses to consider such matters.

Glossary: *(to be supplied to the jurors)*

Some Words and Phrases You May Hear

During the trial, you may hear these words or phrases:

“Deposition.” A deposition is the testimony of a witness taken before trial. The witness is placed under oath, and the lawyers may ask questions. The questions and answers are recorded.

“Disclosure.” Our rules require the parties to exchange certain information before trial. An objection of “non-disclosure” is a claim that the other party has not disclosed the information before trial.

“Discovery.” Discovery is another way the parties may obtain information from other parties or third persons before trial. Depositions and interrogatories are examples of discovery.

“Foundation.” An objection to lack of foundation is a claim that more preliminary information is needed before a question can be answered or a document admitted into evidence.

“Hearsay.” Hearsay is an out-of-court statement offered to prove the truth of the contents of the statement. Hearsay is generally not admissible. There are many exceptions to the hearsay rule, and some out-of-court statements are not hearsay.

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“Interrogatory.” An interrogatory is a written question submitted before trial to a party or witness to be answered under oath.

“Leading.” A leading question is one which suggests the answer. The law prefers the answer to come from the witness’s own knowledge and words. Leading questions are sometimes allowed; examples are cross-examination of an opposing party or hostile witness, preliminary questions and questions about technical subjects.

“Rule ____.” Proceedings in court are governed by rules of evidence and rules of procedure. A lawyer may cite a specific rule in arguing for or against an objection.

“Voir dire.” This French phrase means “to tell the truth.” It describes a preliminary examination of a witness or juror sworn to tell the truth. Jury selection is often referred to as “voir dire.” An opposing lawyer may ask to “voir dire” a witness to ask questions about a document or testimony the witness is about to offer.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.