

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-055942

08/01/2019

HONORABLE CYNTHIA J. BAILEY

CLERK OF THE COURT
W. Tenoever
Deputy

GENE D WATSON, et al.

FREDERICK E DAVIDSON

v.

LEISURE WORLD COMMUNITY
ASSOCIATION

KATHERINE J MEROLO

JUDGE BAILEY

**JURY TRIAL SET
FINAL TRIAL MANAGEMENT CONFERENCE SET
DEADLINES AND PROCEDURES**

Northeast Regional Court - Courtroom 108

9:00 a.m. This is the time set for Telephonic Trial Setting Conference. Plaintiffs Gene D. Watson and Ellyn Jane McKinley are represented by counsel, Frederick E. Davidson. Defendant Leisure World Community Association is represented by counsel, Katherine J. Merolo.

A record of the proceedings is made digitally in lieu of a court reporter.

Discussion is held.

Case status is discussed. The Court is advised that the parties participated in a settlement conference but were unable to settle the matter.

The Court will send out an email to all civil judges to see if there is a volunteer willing to conduct a settlement conference.

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The Court notes that Plaintiffs' Supplemental Motion for Summary Judgment and Defendant's Second Motion for Summary Judgment are pending. The Court will await the full briefing on the motions and then set oral argument, if necessary.

TRIAL SETTING

IT IS ORDERED setting this matter for a 7-day **Trial to a Jury** on **March 31 to April 2 and April 6-9, 2020 at 9:00 a.m.** in this division before:

THE HONORABLE JUDGE CYNTHIA BAILEY
MARICOPA COUNTY SUPERIOR COURT
NORTHEAST REGIONAL COURT
18380 NORTH 40TH STREET
COURTROOM 108
PHOENIX, ARIZONA 85032
(602) 506-5121

Trial days are normally 9:00 a.m. to 12:00 p.m. and 1:30 p.m. to 4:30 p.m., Monday through Thursday.

Counsel/parties shall make note that the Court reserves for itself **one (1) day** for the purpose of jury selection and jury deliberations.

THIS IS A FIRM TRIAL SETTING. Motions to continue based on lack of preparation will ordinarily not be granted.

If counsel have any pre-existing conflicts with said trial date, they shall notify the Court, in writing, within five (5) days from today's date.

All court proceedings are recorded digitally and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.

Requests for interpreters, court reporters or video conference must be made at least fourteen (14) days prior to the trial/hearing date.

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Trial time will be divided between Plaintiff and Defendant. “When you are out of time, you are out of words.”

JURY PANEL

A panel of 8 jurors shall decide this matter. The court, after input from the parties at the Final Trial Management Conference, shall determine the number of required alternates. The court intends to order a total panel of 35 jurors for jury selection. If either party believes that this would be inadequate, the issue may be addressed at the Final Trial Management Conference.

One day’s jury fees will be assessed against the parties (evenly divided) unless the Court is notified of settlement by 10:00 a.m. on the judicial day before trial. Counsel are reminded to promptly notify the Court of any settlement pursuant to Rule 5.3(d). The preferred method of communication is via e-mail marked “Urgent” directed to the Judicial Assistant, April Johnson, at ajohnson@superiorcourt.maricopa.gov.

FINAL TRIAL MANAGEMENT CONFERENCE/ORAL ARGUMENT

IT IS FURTHER ORDERED setting a **Final Trial Management Conference** on **February 21, 2020 at 9:00 a.m. (time allotted: 1 hour)** in this division. Trial counsel shall appear *in person* for the conference. Any self-represented party shall appear in person for the conference. This minute entry order sets forth tasks that must be completed by trial counsel. Any party that is self-represented is advised that all tasks imposed upon “counsel” in this minute entry Order apply to self-represented litigants.

Oral Argument on any pretrial motions, including Motions *in Limine*, shall be conducted at the time of the Final Trial Management Conference.

JOINT PRETRIAL STATEMENT

A **Joint Pretrial Statement (JPTS)** must be filed no later than **February 14, 2020**. In addition to the materials required by Ariz.R.Civ.P. 16(f), counsel shall meet prior to the Final Trial Management Conference in order to discuss and prepare the following, which shall be filed with or included in the JPTS:

- A. **Voir Dire**: Proposed agreed-upon *voir dire* questions.
- B. **Witnesses**: Within the Joint Pretrial Statement, there shall be a list of all witnesses each party intends to call at trial in the order in which the party

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intends to call the witness, together with the estimated time needed for direct, cross, and redirect examinations.

- C. **Jury Instructions and Verdict Forms:** A joint set of agreed-upon jury instructions and verdict forms. Each party shall provide separate sets of any requested instructions that have not been agreed upon. (Please review *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993) before requesting non-RAJI instructions.) Recommended Arizona Jury Instructions (please use the most current version) need not be retyped, but may be listed by name and number, such as: (a) RAJI Preliminary 1 -Duty of Jurors; (b) RAJI Standard 2 -Burden of Proof; (c) RAJI Negligence 1 -Violation of Statute.

NON-RAJI INSTRUCTIONS shall be typed in Word Format, numbered consecutively, one per page, with legal authority in support of the instruction. A CD of any non-RAJI instructions shall be provided to this Division. (No CD is required for RAJI instructions.)

- D. **Claims:** A brief statement of the claims for inclusion in RAJI Preliminary 14 – Claims Made and Issues To Be Proved.
- E. **Summary of Case:** A stipulated brief summary of the case, to be read by the court during *voir dire*.
- F. **Deposition Transcripts:** A list, by page and line numbers, of all deposition or other transcribed testimony that may be offered at trial, other than for impeachment, including designations of testimony that a party believes ought in fairness to be introduced pursuant to Ariz.R.Civ.P. 32(a) together with any testimony to be offered by an opposing/other party. The court shall also be provided with copies of those parts of any such testimony to which objection is made, indicating the testimony objected to and the reasons for such objection. ***Any objection not so included is waived.*** Since jurors generally prefer narrative summaries or brief excerpts of questions and answers, the parties should confer and prepare agreed-upon summaries. Counsel shall present original depositions for filing at the same time they present exhibits. Original depositions are provided to the clerk for the record and **are not** marked as exhibits.
- G. **Exhibit List:** A list of all marked exhibits containing a brief description of each exhibit and any objections to such exhibits. ***Any objection not so included is waived.***

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- H. **Expert Disclosures:** Copies of all expert disclosures made pursuant to Ariz.R.Civ.P. 26.1(a)(6).
- I. The number of jurors and alternates agreed on, whether the alternates may deliberate and the number of jurors required to reach a verdict.

DUTIES AT THE FINAL TRIAL MANAGEMENT CONFERENCE

Counsel who will try the case shall appear and be prepared to discuss and resolve:

- A. Allocation of trial time among the parties and, if appropriate, time limits for *voir dire*, opening statements, witness examinations, and closing arguments;
- B. Stipulations regarding witnesses testimony and the admission of exhibits;
- C. Jury instructions, juror notebooks, and verdict forms;
- D. Deposition summaries and excerpts from depositions including objections thereto;
- E. Scheduling, equipment, or interpreter issues;
- F. Status of settlement negotiations;
- G. Motions *in limine*; and
- H. Other matters addressed in the JPTS.

DUTIES PRIOR TO TRIAL

In advance of the Final Trial Management Conference and/or Trial, the parties shall attend to the following:

- A. **Discovery Disputes:** If a discovery dispute needs judicial intervention, the parties must first comply with the “meet and confer” provision of Rule 37. Absent resolution, counsel for the movant shall email the Court’s Judicial Assistant, April Johnson, at ajohnson@superiorcourt.maricopa.gov, and all other counsel to advise them of his/her request for a telephonic hearing. Each party shall thereafter email the Court’s Judicial

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Assistant a summary of the dispute in Times New Roman 13 point font, limited to no more than two pages. The submitted written summary shall include the case number, names of parties and name of party from whom the summary is submitted. All parties shall be copied on the email. The emails will be filed with the Clerk. Once the Court receives a summary from each party and a certification of compliance with Rule 37, the Judicial Assistant will email the parties to schedule a telephonic conference with the Judge. These are generally held within one to three business days.

B. Motions in Limine: The granting or denial of a motion *in limine* turns on whether the admission of evidence reaches the level of reversible error or a mistrial. Said motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 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." Motions *in Limine* are not granted "except upon a clear showing of non-admissibility." The parties shall not file motions denominated as "*in limine*" that are, in substance, late-filed motions for summary judgment.

1. Page Limit and Format: Neither the motion *in limine* nor the response may exceed **three pages**, including the caption. Showing that the motion has merit should not require more than that. Motions *in limine* shall be consecutively numbered in the caption identifying the party filing it and the subject of the motion; e.g. "Defendant's Motion in *Limine* No. 1 Re: Insurance Agreement," and shall deal with one discrete subject per motion. Do not respond to more than one motion in *limine* in each response.

2. Substance: Any motion *in limine* or response to such a motion should begin with a simple declarative sentence that identifies the evidence that is the subject of the motion, with the understanding that the broader the scope of the evidence to be excluded, the less likely it is that a motion *in limine* will be granted. The remainder of the motion or response should then explain why a mistrial or reversible error would or would not result if the motion is denied, with citations to authority that have reached the same conclusion in the same or similar circumstances (this also applies to motions *in limine* based on any failure to disclose, keeping in mind that nondisclosure implicates Ariz. R. Civ. P. 37(c)). If the motion is unable to explain why its denial would result in a mistrial or reversible error, the remainder should then demonstrate persuasively what efficiency, economy, or other benefit is to be gained by granting the motion.

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3. Rule 7.2: Motions *in limine* shall be filed in accordance with Ariz.R.Civ.P. 7.2. Prior to filing any motion *in limine*, the parties through counsel **must meet and confer** to attempt to resolve issues to be raised by such motions, and any motions *in limine* must include a certification that counsel have so conferred.

4. Deadlines: The deadline for motions *in limine* is 30 days before the final pretrial management conference. Responses must be filed no later than 15 days after service of the motion in limine. No replies should be filed, unless requested and approved by the court.

5. Under Advisement: Although motions *in limine* will be considered as quickly as the court's schedule permits, they will not be taken under advisement any sooner than 15 days before the start of the trial, regardless of when they are filed. If the parties believe that a ruling on such a motion early in the case will facilitate settlement, they should notify this division (by telephone at (602) 506-5121 or e-mail to the judicial assistant) and every effort will be made to decide the issue as soon as time allows.

C. Daubert Motions: The deadline for any motion brought for a Daubert hearing or brought under Ariz.R.Evid. 702, is the same as the dispositive motion deadline. Failure to file such a motion by this date shall constitute a waiver of (1) any objection that the expert is not qualified to render expert testimony, and/or (2) any objection that any opinion of the expert should be excluded under Ariz.R.Evid. 702.

D. Exhibits: The following procedure applies as to all exhibits sought to be utilized at trial:

- 1. Due Date:** Exhibits to be offered at trial shall be delivered to the division clerk no later than **March 17, 2020**. If you have any questions regarding the guidelines set forth below or procedures relating to exhibits, contact this division's clerk at (602) 372-7736.
- 2. Organization:** Exhibits should be submitted to the Clerk separated by a tabbed and numbered divider. Staple or otherwise secure each individual exhibit so that pages do not become separated. If an exhibit is too heavy or large for a hanging file folder, place it in a binder. *Exhibits not securely bound or bound with binder clips, paper clips, or rubber bands will not be accepted.*

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The list of exhibits should contain the case number and caption, the scheduled trial date, the party submitting the exhibits, the exhibit number, and a simple description of the exhibit. Keep the descriptions of the exhibits *simple*. Do not use a description that cannot be verified by looking at the document or item. *Do not include Bates numbers* in your description of the exhibits.

Exhibits shall be marked numerically and consecutively beginning with Plaintiff's exhibits and continuing sequentially with Defendant's exhibits (e.g. Plaintiff's exhibits 1, 2, 3, Defendant's exhibits 4, 5, 6). *Do not skip numbers*. Numbers will not be skipped or saved in anticipation of additional exhibits not yet submitted. Any missing or skipped exhibits shall be designated as "*Unused*." Additional exhibits, if necessary, may be marked during the course of trial, although the parties are discouraged from waiting until trial to mark additional exhibits.

Counsel shall eliminate duplication of exhibits; duplicate exhibits *will not* be marked. If duplicate exhibits exist and they are removed by the Clerk and not marked, the Court's numbering will not be consistent with the numbering counsel provided. Counsel shall, therefore, confer regarding exhibits to ensure that there are no duplicates.

3. **Use of Depositions:** Depositions should not be listed on the exhibit description list because depositions are not marked as exhibits. Original depositions shall be provided to the Clerk at the time of trial for filing directly into the court record. Counsel shall retain a copy of the depositions for their use during the trial. The original depositions remain with the Clerk to be used as reference by the trial judge during testimony.
4. **Demonstrative Evidence:** Poster boards and large items may only be used for demonstrative purposes. Counsel shall advise opposing/other counsel of any demonstrative poster boards or other items at least three (3) judicial days prior to trial. Counsel may bring poster boards and large items to court to use during trial. However, if counsel intends any poster boards or large items marked as an exhibit, they must provide the clerk with an 8-1/2 x 11 photograph/copy of the item and include the photograph/copy in the submitted list of exhibits.
5. **Failure to Comply:** If a party fails to comply with the terms set forth about, it may result in that party's exhibit(s) being precluded at trial.

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6. **Disclosure Objections:** If an objection is made at trial relating to untimely or non-disclosure, the burden is on the proponent of the evidence to establish that disclosure was properly made. The parties are strongly encouraged to create their own log for each trial exhibit as to the date and manner of disclosure.

USE OF COURTROOM EQUIPMENT

All parties are expected to be familiar with the workings of the courtroom's electronic equipment. If there is a need to becoming familiar this division's electronic equipment, please make an appointment through this division's judicial assistant, April Johnson, via email at ajohnson@superiorcourt.maricopa.gov, to test the equipment by no later than one week prior to the scheduled proceeding.

COMMUNICATION WITH DIVISION

Preferred communication with this division is via email to the judicial assistant, April Johnson, at ajohnson@superiorcourt.maricopa.gov. For any and all such written communication, all other parties to the case shall be endorsed. The phone number for this division is (602) 506-5121.

TIME ESTIMATE FORM

Counsel shall consider the following in filling out the witness information form and adjust the estimated time accordingly. Trial is held from 9:00 a.m. to 4:30 p.m., Mondays through Thursdays. Each trial day is budgeted to be 6 hours of actual in court time, exclusive of breaks and bench conferences. The Court reserves for itself 6 hours for the Court to do its portion of voir dire, read preliminary and final jury instructions, and for jury deliberations. The parties will then be splitting the remaining time for each party's portion of voir dire, opening statements, witness examinations, and closing arguments. The Court uses a timer to keep track of your time. When you are out of time, you are out of words.

WITNESSES FOR PLAINTIFF:

	WITNESS NAME	DIRECT	CROSS	REDIRECT
1				
2				
3				
4				
5				

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PLAINTIFF'S TOTAL WITNESS TIME ESTIMATE: _____

WITNESSES FOR DEFENDANT:

	WITNESS NAME	DIRECT	CROSS	REDIRECT
1				
2				
3				
4				
5				

DEFENDANT'S TOTAL WITNESS TIME ESTIMATE: _____

TIME ESTIMATE FOR:	PLAINTIFF(S)		DEFENDANT(S)
VOIR DIRE			
OPENING STATEMENT			
CLOSING ARGUMENT	1 st :	2 nd :	

PLAINTIFF'S TOTAL TIME ESTIMATE: _____

DEFENDANT'S TOTAL TIME ESTIMATE: _____

NOTE: if there are multiple parties on the same side who are represented by different attorneys, then each party being represented by different attorneys shall fill out his/her own time estimates.

9:23 a.m. Matter concludes.