BIOGRAPHY and COURT PRACTICE
JUDGE KIM R. GIBSON

The Honorable KIM R. GIBSON was born in Trenton, New Jersey on May 29, 1948, the son of James Russell and Eleanor Martha Gibson. He is married to the former Rebecca L. Arbogast and has six children, Laura, Erin, Adam, Matthew, Sean and Connor, and one granddaughter, Abigail Gibson.

Judge Gibson graduated from the United States Military Academy at West Point in 1970 with a Bachelor of Science degree and was awarded a Juris Doctor degree *magna cum laude* from Dickinson School of Law in 1975. He was an editor of the *Dickinson Law Review*. He entered active duty in the United States Army in June 1970 and following completion of airborne and ranger training, he served as an armor officer until October 1975 and as a JAG officer until August 1978. Following his release from active duty he continued to serve in the United States Army Reserve and retired as a Colonel, JAG, USAR in 1996. In 1991 he and his JAG Detachment were activated during the first Gulf war.

Judge Gibson was in private practice as a sole practitioner in Somerset, Pennsylvania from 1978 through 1997. During that time he served as a public defender, attorney for Children and Youth Services, solicitor for a school district and various municipalities and as solicitor for Somerset County. He was elected to the Somerset County Court of Common Pleas in 1997. During his time on the common pleas bench, he was instrumental in establishing Victim Impact Panels and a juvenile drug court (only the second such court in Pennsylvania).

He was appointed to the United States District Court for the Western District of Pennsylvania by President George W. Bush on September 23, 2003.

In addition to being a Little League coach/manager for many years, Judge Gibson is the Co-chairman of the Flight 93 Task Force which is a group composed of representatives from all over the nation tasked by congress with the goal of establishing a permanent national memorial to the passengers and crew of Flight 93 and a national park at the site where Flight 93 crashed in Somerset County on September 11, 2001. He resides with his family in Somerset Township, Pennsylvania.

PRACTICES AND PROCEDURES OF

JUDGE KIM R. GIBSON

(Effective January 2004)

I. GENERAL MATTERS

A. Communications with the Court

The Court has a preference for communications to be in the form of motions so that they can be docketed. However, in an emergency situation Judge Gibson will permit communication by correspondence or telephone provided all parties receive notice.

B. Communications with Law Clerks

Communications with law clerks concerning the administration, not the merits of a case, are permissible. Such inquiries include those pertaining to the status of any pending matter. Law clerks are not permitted to provide legal advice concerning any matter.

C. Telephone Conferences

Requests for attorneys and parties to participate in conferences by telephone will be considered on a case by case basis. However, unless otherwise ordered by the Court, settlement conferences, case management conferences, and status conferences will not be conducted over the telephone.

When a telephone conference is permitted, counsel shall initiate the conference and contact the Court only after all parties are on the line.

D. Pro Hac Vice Admissions

Pro Hac Vice admissions should be done by motion, however, the motion need not be in

writing.

E. Comments to the Media

No special policy is in effect and the Rules of Professional Conduct govern.

II. MOTIONS PRACTICE

A. Oral Argument

Oral argument is entertained only on selected, factually and legally complex matters, but not otherwise. An order will be issued should the Court deem oral argument necessary.

B. Briefs

Briefs in support of a motion shall be filed at the same time as the motion with respect to all motions except discovery motions, motions for extensions of time, and motions for continuance, for which no briefs are required. Reply briefs and sur-reply briefs are not to be filed without leave of Court.

C. Chamber Copies of Motion Papers

Counsel are requested to send courtesy copies of all dispositive motions and briefs to chambers. Voluminous appendices and/or exhibits should be omitted as they are available from the Clerk of Courts' file.

D. Responses to Motions-Scheduling

Responses for motions in limine shall be filed within 7 days from the date of service of the motion. Responses to motions for summary judgment shall be filed within 30 days from the date of service of the motion. Responses to all other motions shall be filed within 20 days from the date of service of the motion. In the event that different response periods are set forth in the case management order, then the period in that order shall govern.

E. Magistrate Judge's Report and Recommendation

Reports and Recommendations to which objections have been filed generally will not be decided until a timely response is filed by the non-objecting party (or opposite party if both object). Briefs not in excess of ten (10) pages are encouraged. If no objections have been filed, a decision is made solely on the basis of the R & R and the briefs already filed. Objections and appeals to Magistrate Judge orders on discretionary issues pertaining to discovery disputes are discouraged.

F. Evidentiary Hearings

In both civil and criminal matters which require an evidentiary hearing on a pretrial motion, Judge Gibson will normally schedule the hearing in advance of trial and as soon as possible after all motions and briefs have been filed.

G. Motions In Limine

Deadlines for filing motions in limine, with their supporting briefs, will be set forth in the pretrial order. Unless there is a good reason not to do so, motions in limine will be ruled upon in advance of trial. (See Side Bars).

III. CIVIL CASES

A. Pretrial Procedures

1. Local Rule 16.1

The Court utilizes a standard form case management order based on L.R. 16.1. Each case is designated as Track I or Track II. Other than the requirements of L.R. 16.1, no additional items are included in the order. Copies of the standard form case management and pretrial orders are attached hereto as Exhibits A and B.

2. Initial Status/Case Management Conference

An initial status/case management conference is scheduled within 30 days of the filing of a responsive pleading. At least seven days prior to this initial conference counsel and unrepresented parties are jointly responsible for filing a proposed case management order (see Exhibit A) and a discovery plan (see Exhibit D for a sample plan). Chief trial counsel are required to attend and shall obtain full settlement authority prior to the conference. All parties shall be available by telephone.

At the initial status/case management conference, or shortly thereafter, the L.R. 16 Order (Case Management Order) is issued after discussion with lead trial counsel as to the length of time necessary for discovery, handling of expert witnesses and other matters. Settlement and ADR options also will be discussed in depth. In addition, the Court may ask the parties to agree to submit the case to final and

binding arbitration or trial before a United States Magistrate Judge. Accordingly, counsel shall speak with their clients about both of these issues prior to attending the conference and be prepared to respond.

Additional status/case management conferences take place on request of counsel and in all cases prior to the trial date to discuss settlement and/or trial. Chief trial counsel are encouraged to request the assistance of the Court on any matter, as conferences to handle routine problems, such as discovery issues, can be conducted by telephone, provided counsel coordinate and initiate the call.

3. Settlement Conferences

The Court entertains settlement conferences on a regular basis. At least three working days prior to the conference, the parties should submit brief letters to the Court detailing the relative strengths and weaknesses of their case, as well as settlement postures. The letters will not be filed or shared with opposing counsel. Accordingly, candor is expected.

Chief trial counsel and the client with full settlement authority shall attend all settlement conferences, in person. In cases in which there is insurance coverage (or the possibility of insurance coverage), a representative(s) from the carrier(s) shall attend the settlement conference. That carrier representative(s) must have full settlement authority on behalf of the carrier(s) to the full extent of the insurance policy(ies).

Consistent with the initial status/case management conference, at the settlement conference counsel shall be prepared to discuss, in detail, ADR possibilities. The Court may ask the parties to agree to submit the case to final and binding arbitration or trial before a United States Magistrate Judge. Accordingly, chief

trial counsel shall speak with their clients about both of these issues prior to attending the conference and be prepared to respond. Mini-trials may be conducted when the parties genuinely believe it will assist settlement.

Finally, at all settlement conferences chief trial counsel shall be prepared to discuss any dispositive motions as well as counsels' predictions for the amount of time necessary to try the case.

4. Extensions and Continuances

The Court generally is not inclined to grant extensions for the filing of motions or briefs, however, upon the showing of good cause they will usually be granted, provided dilatory practice is not present. Any request for an extension must take the form of a written motion (accompanied by a proposed order), and the motion must include a statement regarding opposing counsel's position on an extension.

Specific restrictions will be placed on further extensions when the case is not moving at a reasonable pace. Extension for dates regarding appearances before the Court will be granted infrequently.

B. Discovery Matters

1. Length of Discovery Period and Extensions

Generally one hundred twenty (120) days is permitted for discovery unless the parties indicate that a different time frame is needed and the Court approves that time frame. Extensions of time for discovery are permitted for cause shown, provided that the case has been advanced by counsel during the initial period of discovery.

2. Expert Witnesses

Discovery depositions of expert witnesses are nearly always permitted after completion of fact discovery. Expert witness discovery is reciprocal. Expert reports are required in accordance with the Federal Rules of Civil Procedure. Discovery concerning experts shall be completed in a timely manner so as to permit the filing of motions under F.R.E. 104(a) and 702 (*Daubert* motions) sufficiently prior to trial in order to permit hearing by the Court at a time prior to trial so as not to delay trial.

3. Deposition Disputes

For discovery disputes that arise during a deposition, the attorneys together may contact the Court to determine whether the Court wishes to resolve the matter at that time.

4. Stay of Discovery

The filing of a dispositive motion does not automatically stay discovery. A stay may be sought by motion, but will only be granted if the right to relief under the dispositive motion is clear or there is some other good reason. In some cases, discovery may be limited to those facts in support of or in opposition to the dispositive motion (e.g., a motion to dismiss on grounds of lack of in personam jurisdiction).

5. Limitations on Discovery

No standard form restrictions on the number of interrogatories or length of depositions are employed beyond those set forth in the Federal Rules of Civil Procedure. However, the parties are expected to use their common sense and

discretion in discovery matters, and the court will entertain motions to limit discovery when the request propounded is unreasonable.

6. Rule 11 & Rule 37 Motions/Sanctions

The Court expects counsel to avoid the necessity for filing of Rule 11 and/or Rule 37 Motions through the exercise of good professional judgment, common courtesy and civility. However, counsel fees and costs will be awarded in appropriate circumstances. Briefs are required.

C. Injunctions and Temporary Restraining Orders

Ex parte contact with the Court should be avoided. Therefore, in an injunction and/or temporary restraining order, the moving party must establish that good faith efforts were made to contact the opposing party or its counsel prior to seeking relief, supported by the F.R.Civ.P. 65(b) Affidavit regarding the same. Otherwise, the Court will not hold a hearing on the matter or issue a temporary restraining order.

The moving papers in support of a motion for a temporary restraining order or preliminary injunction should include affidavit(s) in support of the motion with all relevant agreements attached to the affidavit(s). Any response to the motion for temporary restraining order or preliminary injunction must be accompanied by affidavits(s).

All requests for injunctions and temporary restraining orders are handled as expeditiously as possible and the Court will, in its discretion, and after review of the pleadings and affidavit(s), determine whether or not to conduct a hearing and, if so, the scope of the testimony.

D. Patent Cases

All patent cases before the Court shall follow the Northern District of California's Local Rules of Practice for Patent Cases. These Local Rules can be found at http://wwww.cand.uscourts.gov.

E. Trial Procedures

1. Scheduling of Cases

At or before the pretrial conference, a date for trial will be set. There will generally be one or more backup cases scheduled for the same date. Vacation schedules, family conflicts and personal conflicts are accommodated where possible, but counsel must notify the Court of any such conflict as soon as possible. Counsel in backup cases will be provided as much advance notice as possible.

2. Pretrial Conference

At the pretrial conference, witness lists, exhibits, motions in limine, jury instructions, voir dire, verdict slips and any other pretrial matters will be discussed, in detail, and generally ruled upon as soon as possible. As such, counsel should be prepared to make all arguments thereon. Any unresolved *Daubert* motions will also be addressed.

In addition, at the pretrial conference, the Court will inform the parties of the number of days each party will be allotted to present testimony and evidence at trial. This Court will issue a Pretrial Order in the format set forth in Exhibit B (jury trial case) or Exhibit C (non-jury trial case).

3. Trial Hours/Days

Court is in trial session Monday through Friday, 9:30 a.m. to 4:30 p.m. with breaks when appropriate. Counsel must be available at 9:00 a.m. (or earlier if necessary to ensure that trial commences on time) to meet with the Court concerning scheduling, trial problems, and to obtain advance rulings on evidentiary or other issues.

4. Trial Briefs

Trial briefs are optional, but appreciated. There are no filing date restrictions, but the briefs are much more useful and more likely to be given serious consideration if filed at least ten (10) days before trial.

In bench trials, counsel are required to submit proposed findings of fact and conclusions of law.

5. Voir Dire

The Courtroom Deputy generally conducts voir dire in civil cases.

Unless otherwise ordered by the pretrial order, counsel are permitted to supplement the standard questions. Counsel shall attempt to obtain consent of opposing counsel prior to submission of any such supplemental voir dire. Those supplemental voir dire questions to which counsel have agreed upon shall state ("Consented To By Counsel"). The Court will determine which, if any, supplemental voir dire questions will be permitted.

6. Note Taking by Jurors

Jurors are permitted to take notes and are provided with notebook paper to do

so.

7. Side Bars

The Court believes counsel should be considerate of the use of jurors' time. Consequently, side bars are discouraged because they waste the jury's time and unduly extend the length of the trial. Counsel are expected to file motions in limine and supporting briefs regarding any evidentiary matters in a timely manner in accordance with the final pretrial order. Counsel will meet with the Court each day at 9:00 a. m. (or earlier if necessary to ensure that trial commences on time) to raise points of evidence or other issues that would otherwise necessitate a side bar conference. Failure to raise the issue at that time will generally result in a disposition of the in-Court objection in the presence of the jury.

8. Examination of Witnesses Out of Sequence

Where appropriate, witnesses may be examined out of sequence upon request of a party. Witnesses may be examined in any order to which counsel agrees. For example, counsel could agree that expert witnesses for each side will testify immediately after each other.

9. Opening and Closing Statements

Up to one hour is allotted to each side for opening and closing statements, depending on the complexity of the case. Normally not more than one-half hour is required for each side.

10. Examination of Witnesses or Argument by More Than One Attorney

Co-counsel generally are not permitted to split up the examination of a witness or the presentation of an argument.

11. Examination of Witnesses Beyond Direct and Cross

Re-direct and re-cross examination are permitted on a very limited basis, provided counsel has satisfied the Court that it is necessary.

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12. Videotaped Testimony

The Court has no special procedures regarding videotaped testimony except those set out in the local rules.

13. Reading of Material into the Record

Counsel can devise their own methodology for reading material into the record, provided opposing counsel agrees.

14. Exhibits

All exhibits must be exchanged and marked in advance of trial. All objections are to be made and ruled upon prior to trial. Copies are to be provided for the Court in binders properly labeled ("Plaintiff's Exhibits" and "Defendant's Exhibits") at least three (3) days in advance of trial, unless otherwise ordered by the Court. In addition, counsel shall be prepared to compile and agree to a single exhibit binder ("Joint Exhibit Binder") containing the most significant exhibits that will be submitted to the jury at the close of trial. Counsel shall plan to submit twelve (12) copies of the Joint Exhibit Binder (eight (8) for the jury and four (4) for the Court).

Voluminous data shall be presented by summary exhibits pursuant to Fed.R.Evid. 1006, and voluminous exhibits shall be redacted to eliminate irrelevant material

(which shall remain available for examination by opposing counsel). Where copies of documents are offered, the originals shall be available for examination, unless waived by stipulation.

Counsel are not to take time during trial to exchange exhibits with each other as this will have been accomplished pretrial. With advance notice and approval of the Court, visual aids and exhibits may be used during opening statements. Exhibits need not be offered into evidence in numeric order.

Once a disposition of the case has been reached, counsel are to make arrangements for retrieval of their exhibits immediately. Failure to do so may result in the destruction of the exhibits.

15. Directed Verdict Motions

The Court's only requirements for directed verdict motions are set forth in the Federal Rules of Civil Procedure.

16. Jury Instructions and Verdict Forms

All parties are required to submit proposed jury instructions and verdict slips at least one week prior to trial, along with computer disk/CD containing the instructions in Work Perfect format. A charging conference will be held, at which time a ruling will be made on each point for charge and a copy of the court's proposed charge will be provided to counsel. Counsel are required to state objections to the proposed charge at the charging conference and to supply proposed alternate language, together with case authority. Counsel will also be requested to approve the form of the verdict slip at the charging conference.

17. Proposed Findings of Fact and Conclusions of Law (Non-Jury trial only)

Plaintiff shall file and serve a courtesy copy, on computer disk/CD formatted in WordPerfect format, of consecutively numbered proposed findings of fact and conclusions of law. Plaintiff's proposed findings of fact shall address each contested issue of fact remaining. Each proposed finding of fact shall be supported by clear and explicit reference to the parts of the record relied upon to support it. Each proposed conclusion of law shall be supported by citation to appropriate authority. With the proposed findings of fact and conclusions of law, Plaintiff also shall file and serve a brief in support of judgment integrating the proposed findings of fact with the proposed conclusions of law and demonstrating why the relief requested should be granted. The supporting brief shall not exceed fifteen (15) pages.

Defendant shall file and serve a courtesy copy, on computer disk/CD formatted in WordPerfect format, of consecutively numbered counter findings of fact and consecutively numbered counter conclusions of law, corresponding to the same numbered findings of fact and conclusions of law proposed by Plaintiff. Each proposed counter finding shall be supported by clear and explicit reference to the parts of the record relied upon to support it. Each proposed counter conclusion shall be supported by citation to appropriate authority. With the proposed counter findings and counter conclusions, Defendant also shall file and serve a brief in support of judgment integrating the counter proposed findings of fact with the counter proposed conclusions of law and demonstrating why the relief requested by Defendant should be granted. The supporting brief shall not exceed fifteen (15) pages.

18. Offers of Proof

There should be no requests for offers of proof during trial as the parties will have discussed the witnesses at the 9:00 a.m. conference with the Court.

29. General Courtroom Rules

Counsel can conduct the trial in any manner they see fit, provided it is done with courtesy and civility and consistent with the Rules of Professional Conduct.

F. Jury Deliberations

1. Written Jury Instructions

The jury will be provided with a copy of the jury instructions.

2. Exhibits in the Jury Room

Generally, the jury will be given all admitted exhibits for use in deliberations.

3. Jury Requests to Read Back Testimony or Replay Tapes During Deliberations

Requests to read back testimony or replay tapes during deliberations generally will be denied.

4. Jury Questions

All written questions submitted by the jury are supplied to counsel. Counsel and the Court will meet to discuss and hopefully agree on a reply. In most cases, the jury will then be summoned to the courtroom where a verbal reply will be read. A written reply is also provided where appropriate.

5. Availability of Counsel During Jury Deliberations

Trial counsel need not remain in the courtroom area, but must be available by telephone so that they can promptly return to the courthouse upon being contacted by the Court.

6. Interviewing the Jury

Interviewing of jurors post-verdict is discouraged, but the jury is told that each juror may decide himself or herself whether to be interviewed.

IV. CRIMINAL CASES

A. Motions

Motions for extension of time to file pretrial motions are generally granted, especially if there is a significant amount of discovery material, the case involves a wiretap or a complex factual situation. Appropriate language excluding delays from the operation of the Speedy Trial Act should be included in the proposed order accompanying the motion.

B. Pretrial Conferences

A status conference is scheduled in each case well in advance of trial.

C. Guilty Pleas

There are no special rules regarding guilty pleas and no deadlines for accepting or rejecting a plea arrangement. Counsel are encouraged to explore a plea arrangement as early as

possible to avoid tying up trial time. The Court follows a written colloquy for entry of the plea. Counsel may have a general format copy of the colloquy on request.

D. Voir Dire

Judge Gibson conducts the voir dire in criminal cases. Counsel may supplement any standard voir dire with questions they propose.

Unless otherwise scheduled in the pretrial order, proposed voir dire questions are to be submitted to the Court at least one (1) week prior to trial.

E. Trial

Counsel may decide when or if they will present an opening statement. Defense counsel may not open both before and after the prosecution.

Sidebars are disfavored and will not be permitted if it is to decide an issue that could have been decided before or after trial.

Unless otherwise scheduled in the pretrial order, motions in limine are to be filed, together with supporting brief, at least two (2) weeks in advance of trial.

Transcripts of tape recorded conversations are permissible.

The government is encouraged to turn over Jencks Act material as early as possible, and generally no later than the date jury selection begins.

All Brady/Kyles material within the possession or control of the government or its agents should be disclosed well in advance of trial, and the government is under a continuous

obligation to disclose such material to the defense.

Special interrogatories to the jury will be submitted upon request of counsel in appropriate cases.

A copy of the jury instructions will be provided to the jury.

Unless otherwise ordered, counsel are required to submit proposed jury instructions at least two (2) weeks prior to trial, along with a computer disk/CD containing the instructions in WordPerfect format. A charging conference will be held, at which time a ruling will be made on each point for charge and a copy of the court's proposed charged will be supplied to counsel. Counsel are required to state objections to the proposed charge at the charging conference and to supply the alternate language, together with case authority.

F. Objections to Pre-sentence Investigation Report

Objections to the pre-sentence investigation report must be submitted by counsel well in advance of the sentencing hearing if counsel expect to receive tentative findings and conclusions from the Court. Counsel should refer to the Local Rules of Criminal Procedure for guidance.

Generally, tentative Findings and Conclusions Concerning Disputed Facts or Factors will be provided to counsel in advance of the sentencing hearing.

The parties will be notified in advance and provided with reasons in cases when a downward or an upward departure is contemplated.

V. BANKRUPTCY APPEALS (TO THE DISTRICT COURT)

A. Filing and Scheduling

Briefs are to be filed within thirty (30) days by the appellant and thirty (30) days thereafter by the appellee.

B. Oral Argument

Oral argument is not generally scheduled, but may be granted upon request.

C. Other General Practice/Procedures

Briefing schedules and other deadlines imposed by the Federal Rules of Bankruptcy Procedure will be modified where appropriate on the request of the party.

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JONES	)	
	)	
Plaintiff,	)	Civil Action No. 00-000
v.	)	
	)	
SMITH	)	
	)	

Defendant.)

CASE MANAGEMENT ORDER

AND NOW, this, ___ day of _____, 200_, **IT IS ORDERED** that this action is placed under Local Rule 16.1 of this Court for pretrial proceedings and all provisions of the Rule will be strictly enforced. This action is designated a Track I case under Local Rule 16.1.3.

IT IS FURTHER ORDERED that counsel shall confer with their clients prior to all case management, status, or pretrial conferences to obtain authority to participate in settlement negotiations to be conducted by the Court. Counsel are encouraged to instruct the principals to be available by telephone to facilitate the amicable resolution of all litigation.

IT IS FURTHER ORDERED that compliance with provisions of Rule 16.1 shall be completed as follows:

(1) The parties shall move to amend the pleadings or add new parties by _____. (**30 days before the end of discovery**)

(2) The parties shall complete discovery by _____. All interrogatories, depositions, requests for admissions, and requests for production shall be served within sufficient time to allow responses to be completed prior to the close of discovery.

(3) Responses to motions to compel are due within ten (10) calender days.

(4) Motions for summary judgment with evidentiary material and accompanying brief, if appropriate, shall be filed by _____. (**30 days after the end of discovery**) **Responses to motions shall be filed within 30 days of filing such motion**. Briefs supporting or opposing summary judgment motions shall not exceed 25 pages, excluding

tables. Reply briefs shall not be filed unless requested by the Court.

(5) Plaintiff's pretrial narrative statement shall comply with Rule 16.1.4.A, and be filed by _____. (**21 days after the close of discovery**)

(6) Defendant's pretrial narrative statement shall comply with Rule 16.1.4.B, and be filed by _____. (**42 days after the close of discovery**)

(7) Material facts not identified in the pretrial narrative statements may be excluded upon objection or by the Court *sua sponte*. Witnesses or exhibits not identified in the pretrial narrative statements shall not be admissible at trial, except an exhibit to be used solely for impeachment purposes. Plaintiff should use numbers to designate exhibits; Defendant should use letters.

(8) The parties shall not amend or supplement their pretrial narrative statements without leave of Court.

(9) All parties shall file a joint statement with the clerk of Court indicating whether or not they are willing to proceed to trial in front of a Magistrate Judge by _____. (**56 days after the close of discovery**)

(10) **EXPERT'S REPORTS AND DISCOVERY**: (**if applicable**)

(a) Plaintiff's expert reports shall be filed by _____.

(b) Defendant's expert reports shall be filed by _____.

(c) All expert depositions shall be completed by _____.

(11) The Court shall conduct a pretrial conference on _____ (date), at

_____ (time) 104 Penn Traffic Building, 319 Washington Street, Johnstown, PA 15901. Chief trial counsel must attend. The parties, or those with final full settlement authority for the parties, shall attend.

(Date to be left blank for the Court to fill in at case management conference or at a later date if appropriate.)

BY THE COURT:

_____

UNITED STATES DISTRICT JUDGE

The Honorable Kim R. Gibson

cc: All counsel of record.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JONES	)	
Plaintiff,	)	
v.	)	Civil Action No. 00-000
SMITH	)	

Defendant.)

PRETRIAL ORDER (JURY TRIAL)

AND NOW, this ____ day of _____, 200_, the Court **HEREBY ORDERS** as follows:

A. **Final Pretrial Orders**:

1. **Jury Selection & Trial**. Jury selection and trial are set for _____ at _____, 104 Penn Traffic Building, 319 Washington Street, Johnstown, PA 15901.

2. **Exchange of Witness Lists and Exhibits**.

a. Plaintiff shall serve and submit to the Court its list of trial witnesses, listing separately the witnesses it will call and the witnesses it may call if needed (other than purely for impeachment). For each witness listed, Plaintiff shall provide an offer of proof explaining the substance of the testimony of the witness. The offers of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Plaintiff's witness list and offers of proof shall be due one (1) month before trial.

b. Defendant shall serve and submit to the Court its list of trial witnesses, listing separately the witnesses it will call and the witnesses it may call if needed (other than purely for impeachment). For each witness listed Defendant shall provide an

offer of proof explaining the substance of the testimony of the witness. The offers of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Defendant's witness list and offers of proof shall be due three (3) weeks before trial.

c. **All exhibits must be exchanged and marked in advance of trial**. Copies are to be provided for the Court in binders properly labeled ("Plaintiff's Exhibits" and "Defendant's Exhibits") at least two (2) days in advance of trial, unless otherwise ordered by the Court. In addition, counsel shall be prepared to compile and agree to a single exhibit binder ("Joint Exhibit Binder") containing the most significant exhibits that will be submitted to the jury at the close of trial. Counsel shall plan to submit twelve (12) copies of the Joint Exhibit Binder (eight (8) for the jury and four (4) for the Court). Each Joint Exhibit Binder shall contain twenty (20) lined sheets of lined notebook paper provided for the jury to take notes.

d. Voluminous data shall be presented by summary exhibits pursuant to Fed.R.Evid. 1006, and voluminous exhibits shall be redacted to eliminate irrelevant material (which shall remain available for examination by opposing counsel). Where copies of documents are offered, the originals shall be available for examination, unless waived by stipulation.

3. **Designation of Discovery Excerpts to be Offered at Trial**. The parties shall submit designation of excerpts from depositions, interrogatory answers, and responses to requests for admission to be offered at trial (other than for impeachment) at least two (2) weeks

before trial.

4. **Motions.** The parties shall file all motions in limine, including motions under Fed.R.Evid. 104(a) and motions to limit or sever issues, together with supporting briefs or memoranda of law at least two (2) weeks before trial. Responses shall be filed at least ten (10) days before trial. All briefs supporting or opposing such motions are limited to five (5) pages.

5. **Proposed Jury Instructions & Verdict Slips**. All parties are required to submit proposed jury instructions and verdict slips at least one week prior to trial, along with computer disk/CD containing the instructions in Work Perfect format. A charging conference will be held, at which time a ruling will be made on each point for charge and a copy of the court's proposed charge will be provided to counsel. Counsel are required to state objections to the proposed charge at the charging conference and to supply proposed alternate language, together with case authority. Counsel will also be requested to approve the form of the verdict slip at the charging conference.

6. **Proposed Voir Dire**. Counsel are permitted to supplement the standard questions provided that the proposed supplemental voir dire questions are submitted to the Court in writing at least ten (10) days before trial. Any supplemental voir dire questions approved by the Court will be asked by the Courtroom Deputy.

7. **Joint Stipulations**. The parties shall file joint stipulations at least ten (10) days before trial. All possible stipulations shall be made as to:

   a. Facts;

   b. Issues to be decided;

c. The authenticity and admissibility of exhibits;

d. Expert qualifications and reports;

e. Deposition testimony to be read into the record; and

f. A brief statement of the claims and defenses to be read to the jury to introduce the trial.

Counsel shall meet at a mutually convenient time and place to produce the joint stipulation in time for filing as ordered.

8. **Final Pretrial Conference**. A final pretrial conference shall be held at least one (1) week before trial at 104 Penn Traffic Building, 319 Washington Street, Johnstown, PA 15901.

9. **Courtesy Copies**. Courtesy copies of all items required to be filed and served pursuant to this order shall be delivered to chambers forthwith.

B. **Trial Procedure**

1. **Hours**. Court is in trial session, unless otherwise ordered by the Court, Monday through Friday, 9:30 a.m. to 4:30 p.m. with breaks where appropriate. All counsel are expected to be in their seats and ready to commence at the appointed times.

2. **Exhibits**. Because counsel will have previously marked and exchanged all exhibits and provided a copy to the Court, it will not be necessary during the trial to show exhibits to opposing counsel prior to using them.

3. **Approaching the Witness**. It will not be necessary for counsel to request permission to approach a witness.

4. **Opening and Closing Statements**. Up to one hour is permitted to each side for opening

and closing statements, depending on the complexity of the case. Normally not more than one-half hour is required for each side. Counsel may use exhibits or charts in opening argument provided that the same have been provided to opposing counsel beforehand and either agreement was reached or the Court has ruled upon the matter.

5. **Side Bar Conferences**. The Court believes that counsel should be considerate of the jurors' time. Consequently, side bar conferences are highly disfavored because they waste the jury's time and unduly extend the length of the trial. Counsel will meet with the Court at 9:00 a. m. each day (or earlier if necessary to ensure that trial commences on time) to raise points of evidence or other issues that would otherwise necessitate a side bar conference. Failure to raise the issue at that time will generally result in a disposition of the in-court objection in the presence of the jury. If necessary, counsel and the Court may amplify their objections and rulings on the record after the jury has been excused for a break, for lunch or for the day.

In addition, it is expected that counsel will anticipate evidentiary issues requiring lengthy argument and will take up such matters out of the presence of the jury. The Court will be available at 9:00 a.m. each morning to address such issues. It is the responsibility of counsel to notify other counsel of the need for a conference at 9:00 a.m. and all other counsel will be expected to be there at the appointed time for argument. THE COURT WILL NOT DELAY THE PROCEEDINGS TO RESPOND TO LAST MINUTE REQUESTS FOR CONFERENCES TO DISCUSS MATTERS WHICH, IN THE EXERCISE OF REASONABLE DILIGENCE, COULD HAVE BEEN HEARD AT

THE MORNING CONFERENCE.

6. **Witness List**. Prior to the commencement of the trial, counsel shall provide opposing counsel with a complete witness list, and shall provide opposing counsel throughout the trial with the actual list of the next day's witness by 5:30 p.m. in the order they are expected to be called. The same procedure will be employed by both sides at the end of each trial day. Counsel should be sure that they have adequate witnesses to fill the time allotted each day.

7. **Note Taking**. The jury shall be permitted to take notes.

8. **Jury Questions During Deliberations**. During deliberations all written questions submitted by the jury are supplied to counsel. Counsel and the Court will meet to discuss and hopefully agree on a reply. The jury is then summoned to the Courtroom in most cases and the verbal reply is given to them. A written reply is provided where appropriate.

9. **Jury Instructions**. A copy of the jury instructions shall be provided to the jury for use during its deliberations.

10. **Jury Access to Exhibits**. Unless otherwise advised by counsel, it will be assumed that all admitted exhibits will be sent out with the jury.

BY THE COURT:

_____

UNITED STATES DISTRICT JUDGE
The Honorable Kim R. Gibson

cc: All counsel of record.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JONES	)	
	)	
Plaintiff,	)	Civil Action No. 00-000
v.	)	
	)	
SMITH	)	
	)	
Defendant.	)	

PRETRIAL ORDER (NON-JURY TRIAL)

AND NOW, this _____ day of _____, 200_, the Court **HEREBY ORDERS** as follows:

1. **Trial**. Trial of the above captioned matter is set for _____ at _____, 104 Penn Traffic Building, 319 Washington Street, Johnstown, PA 15901.

2. **Exchange of Witness Lists and Exhibits**.

   a. Plaintiff shall serve and submit to the Court its list of trial witnesses, listing separately the witnesses it will call and the witnesses it may call if needed (other than purely for impeachment). For each witness listed, Plaintiff shall provide an offer of proof explaining the substance of the testimony of the witness. The offers of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Plaintiff's witness list and offers of proof shall be due one (1) month before trial.

b. Defendant shall serve and submit to the Court its list of trial witnesses, listing separately the witnesses it will call and the witnesses it may call if needed (other than purely for impeachment). For each witness listed Defendant shall provide an offer of proof explaining the substance of the testimony of the witness. The offers of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Defendant's witness list and offers of proof shall be due three (3) weeks before trial.

c. **All exhibits must be exchanged and marked in advance of trial**. Copies are to be provided for the Court in binders properly labeled ("Plaintiff's Exhibits" and "Defendant's Exhibits") at least two (2) days in advance of trial, unless otherwise ordered by the Court.

d. Voluminous data shall be presented by summary exhibits pursuant to Fed.R.Evid. 1006, and voluminous exhibits shall be redacted to eliminate irrelevant material (which shall remain available for examination by opposing counsel). Where copies of documents are offered, the originals shall be available for examination, unless waived by stipulation.

3. **Designation of Discovery Excerpts to be Offered at Trial**. The parties shall submit designation of excerpts from depositions, interrogatory answers, and responses to requests for admission to be offered at trial (other than for impeachment) at least two (2) weeks before trial.

4. **Motions.** The parties shall file all motions in limine, including motions under Fed.R.Evid.

104(a) and motions to limit or sever issues, together with supporting briefs or memoranda of law at least two (2) weeks before trial. Responses shall be filed at least ten (10) days before trial. All briefs supporting or opposing such motions are limited to five (5) pages.

5. **Proposed Findings of Fact and Conclusions of Law.**

a. On or before _____, Plaintiff shall file and serve a courtesy copy, on computer disk/CD formatted in WordPerfect format, of consecutively numbered proposed findings of fact and conclusions of law. Plaintiff's proposed findings of fact shall address each contested issue of fact remaining. Each proposed finding of fact shall be supported by clear and explicit reference to the parts of the record relied upon to support it. Each proposed conclusion of law shall be supported by citation to appropriate authority. With the proposed findings of fact and conclusions of law, Plaintiff also shall file and serve a brief in support of judgment integrating the proposed findings of fact with the proposed conclusions of law and demonstrating why the relief requested should be granted. The supporting brief shall not exceed fifteen (15) pages.

b. On or before _____, Defendant shall file and serve a courtesy copy, on computer disk/CD formatted in WordPerfect format, of consecutively numbered counter-findings of fact and consecutively numbered counter-conclusions of law, corresponding to the <u>same</u> numbered findings of fact and conclusions of law proposed by Plaintiff. Each proposed counter finding shall be supported by clear and explicit reference to the parts of the record relied upon to

support it. Each proposed counter-conclusion shall be supported by citation to appropriate authority. With the proposed counter-findings and counter-conclusions Defendant also shall file and serve a brief in support of judgment integrating the counter-proposed findings of fact with the counter-proposed conclusions of law and demonstrating why the relief requested by defendant should be granted. The supporting brief shall not exceed fifteen (15) pages.

c. Counsel shall specify in the proposed findings or proposed counter-findings all facts to be proved at trial. Proof of facts not specified may be excluded upon objection or by the Court *sua sponte.*

6. **Joint Stipulations**. In addition to the above proposed findings of fact and conclusions of law, the parties shall file connectively numbered joint stipulations at least ten (10) days before trial. All possible stipulations shall be made as to:

a. Facts;

b. Issues to be decided;

c. The authenticity and admissibility of exhibits;

d. Expert qualifications and reports; and

e. Deposition testimony to be read into the record.

Counsel shall meet at a mutually convenient time and place to produce the joint stipulation in time for filing as ordered.

7. **Final Pretrial Conference**. A final pretrial conference shall be held on _____ at _____, at least one week before trial in 104 Penn Traffic

Building, 319 Washington Street, Johnstown, PA 15901.

8. **Courtesy Copies**. Courtesy copies of all items required to be filed and served pursuant to this order shall be delivered to chambers on a computer disk/CD formatted in WordPerfect format.

BY THE COURT:

_____
UNITED STATES DISTRICT JUDGE
The Honorable Kim R. Gibson

cc: All counsel of record.

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SMITH	)	
	)	
Plaintiff,	)	Civil Action No. 00-000
v.	)	
	)	
JONES	)	
	)	
Defendant.	)	

DISCOVERY PLAN

1. Rule 26(a) required disclosures shall be served on or before _____.

2. Plaintiff's document requests shall be served on or before _____. Plaintiff seeks the following general categories of documents: [list]. Defendant's responses shall be served on or before _____. Responsive documents will be produced at [location] on or before _____.

3. Defendant's document requests shall be served on or before _____. Defendant seeks the following general categories of documents; [list]. Plaintiff's responses shall be served on or before _____. Responsive documents will be produced at [location] on or before _____.

4. Plaintiff's interrogatories shall be served on or before _____. Plaintiff seeks the following general categories of document: [list]. Defendant's responses shall be served on or before _____.

5. Defendant's interrogatories shall be served on or before _____. Defendant seeks the following general categories of documents: [list]. Plaintiff's responses shall be served on or before _____.

6. Any follow-up interrogatories and/or document requests shall be served on or before _____. Responses shall be served on or before _____ and responsive document, if any, shall be produced on or before _____.

7. Requests for admission shall be served on or before _____. Responses shall be served on or before _____.

8. Identification of Deponents:

Name/Title of Deponent	Party Deposing	Topics
[List]		

9. Identify unique discovery issues or problems, if any, including the topics contemplated in Fed.R.Civ.P. 26(f).

10. Identify actual or anticipated discovery disputes (**Brief** description of issue(s)-NOT advocacy.)

Signed:_____ _____

Counsel for Plaintiff Counsel for Defendant

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 00-00J
	)	
DEFENDANT'S NAME	)	JUDGE GIBSON
	)	
	)	

ORDER

AND NOW, this day of , 200_, this matter coming before the Court on the Defendants' Application for Extension of Time to File Pre-Trial Motions, Pursuant to LCrR 12(B), **IT IS HEREBY ORDERED** that the Defendants' Motion is GRANTED.

IT IS FURTHER ORDERED that the extension of time caused by this continuance be deemed excludable delay under the Speedy Trial Act 18 U.S.C. § 3161 et seq. Specifically, the Court finds that the ends of justice served by granting this continuance outweigh the best interest of the public and the Defendant to a Speedy Trial, 18 U.S.C. § 3161(h)(8)(A), since, for the reasons stated in Defendants' Motion, the failure to grant such continuance would reasonably deny counsel for the Defendant reasonable time necessary for effective preparation, taking into account the exercise of due diligence. 18 U.S.C. § 3161(h)(8)(B)(iv).

IT IS FURTHER ORDERED that any pretrial motions referred to in Local Criminal Rule 12.1 are due on or before , , 200_.

BY THE COURT:

_____

KIM R. GIBSON,
UNITED STATES DISTRICT COURT JUDGE