

**PRACTICES AND PROCEDURES OF
JUDGE ARTHUR J. SCHWAB
(Effective 9/15/2008)**

I. GENERAL MATTERS

A. Communications with the Court

Communication with the Court shall be in the form of motions, accompanied by a proposed order specifying the relief requested.

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.

C. Filing and Service on CM/ECF

Counsel (not the Court) is responsible for filing of all pleadings, documents or any other material provided to the Court and/or the Office of the Clerk, and service upon opposing counsel or pro se parties. The Court is not responsible for filing and/or service of the pleadings, documents or any other material of the parties. All filings must be made on the CM/ECF. For guidelines and information on CM/ECF, and how to become a registered user of the system, please refer to www.pawd.uscourts.gov and click on CM/ECF Electronic Filing tab (on bottom left side of webpage).

D. ADR

Upon the successful completion of the Alternative Dispute Resolution (ADR) Pilot Program, ADR is now mandatory for all cases in the Western District of Pennsylvania with very few limited exceptions, as outlined in the ADR policy and Local Rule 16.2. For information and to download specific forms on ADR, please refer to www.pawd.uscourts.gov and click on ADR/Alternative Dispute Resolution (first tab on left hand side of webpage).

E. Objections

If counsel at any time has an objection to any procedure, ruling or other action of the Court, it is counsel's responsibility to make an immediate formal objection on the record. If there is no court reporter present and counsel has an objection(s), it is counsel's responsibility to request a court reporter and thereafter place the objection(s) on the record.

F. 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 and the initial status conference will not be conducted over the telephone. (For settlement conferences, both counsel and parties are expected to appear in person.) *See Settlement Conferences infra.*

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

G. Pro Hac Vice Admissions

Pro Hac Vice admissions should be done by written motion. Said motion should include what Court(s) the requesting attorney is admitted to in good standing and a certification indicating they are a registered user of the Western District Electronic Case Filing System.

H. Comments to the Media

Counsel are expected to adhere to the Rules of Professional Conduct in all dealings, including their dealings with the media as they relate to a pending matter.

I. Amendment of these Practices and Procedures

The Court Practices and Procedures are available online and will be updated periodically. Counsel are responsible for ascertaining whether these Practices and Procedures have been amended.

J. Conduct of Attorneys

Counsel shall conform in general with the *Code of Trial and Pretrial Conduct*, published by the American College of Trial Lawyers (2002). See also *Civil Discovery Standards*, published by the Section of Litigation, American Bar Association (2004).

II. MOTIONS PRACTICE

A. Oral Argument

The Court entertains oral argument 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 simultaneously with all motions except discovery motions, motions for extensions of time, and

motions for continuance, for which no briefs are required. There is a page restriction of fifteen (15) pages for all moving and responsive briefs filed with the Court (double-spaced with no less than twelve (12) point font and one inch page margins). The parties must seek leave of Court to file reply and sur-reply briefs and will be limited to five (5) pages if leave is granted.

C. **Chamber Copies of Motion Papers**

Parties are not required to provide the Court with courtesy copies, unless otherwise ordered by the Court.

D. **Responses to Motions - Scheduling**

Parties generally are given fourteen (14) days to file a response to a dispositive motion and ten (10) days to respond to a non-dispositive motion, unless otherwise ordered by the Court.

E. **Magistrate Judge's Report and Recommendation**

Reports and Recommendations to which objections have been filed will not be decided until a 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 will be made solely on the basis of the R & R and the previously filed briefs. Objections and appeals to Magistrate Judge orders on discretionary issues pertaining to discovery disputes are discouraged.

F. **Evidentiary Hearings**

Hearings necessitated by pretrial motions (e.g., suppression of confession or evidence) will be held on the day of trial unless otherwise ordered by the Court.

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 and usually at the pretrial conference. (*See Side Bars, infra.*)

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, B, and C.

2. **Initial Case Management Conference (ICMC)**

An ICMC is scheduled within 30 (thirty) days of the filing of a responsive pleading, if not sooner. Chief trial counsel are required to attend in person and shall obtain full settlement authority prior to the conference. All parties shall be available by telephone.

At the initial status conference, 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.

As outlined in Section I (D), ADR is now mandatory. Accordingly, the parties must agree to submit the case to one or more of the three forms of ADR: mediation, early neutral evaluation (ENE), and/or final and binding arbitration. The parties, shall file, prior to the ICMC, a Stipulation Selecting ADR Process. For information and to download the Stipulation Selecting ADR Process, please refer to www.pawd.uscourts.gov and click on ADR/Alternative Dispute Resolution (first tab on left hand side of webpage).

Additional 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 can be conducted by telephone. (*See Telephone Conferences supra.*)

Also, at the ICMC, a trial date generally will be set, with an appropriate Pretrial Trial Order (see Exhibits B and C).

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 nor 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 conference procedure, at the settlement conference counsel shall be prepared to discuss and agree to ADR options.

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 is not inclined to grant extensions for the filing of motions or briefs. 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.

Extension for dates regarding appearances before the Court will be granted infrequently.

B. **Discovery Matters**

1. **Length of Discovery Period and Extensions**

Generally 150 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. Expert witness discovery is reciprocal.
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 or 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 the 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.

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 serious 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 Western District of Pennsylvania's Local Rules of Practice for Patent Cases.

E. **Trial Procedures**

1. **Scheduling of Cases**

At the initial case management conference, a date for trial generally will be set. There often is one or more trials set 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.

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 such, counsel should be prepared to make all arguments thereon.

In addition, at the pretrial conference, the Court will inform the parties of the number of hours each party will be allotted to present testimony and evidence at trial.

3. **Trial Hours/Days**

Court is in trial session Monday through Thursday, 9:00 a.m. to 4:00 p.m. with breaks when appropriate, unless the jury requests a different schedule. Fridays are reserved for pretrial and status conferences, sentences and evidentiary hearings. Counsel must be available at 8:30 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. Trial briefs should not exceed fifteen (15) pages.

In bench trials, counsel are required to submit proposed findings of fact and conclusions of law. (*See Proposed Findings of Fact and Conclusion of Law infra.*)

5. **Voir Dire**

The Judge 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”).

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 highly disfavored because they waste the jury’s time and unduly extend the length of the trial. Counsel will meet with the Court each day at 8:30 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 back to back.

9. **Opening and Closing Statements**

Up to thirty (30) minutes is allotted to each side for opening and closing statements, depending on the complexity of the case.

10. **Time Limits for Examination of Witnesses**

At the pretrial conference, the Court will set time limits for the examination of witnesses and admission of evidence during trial, after consultation with counsel. This time limit includes each party’s time spent on both direct and cross examinations. However, the time limit does not include the up to thirty (30) minutes permitted for opening statements, and up to thirty (30) minutes for closing statements. The Courtroom Deputy will keep track of each party’s use of time during the trial.

11. **Examination of Witnesses or Argument by More Than One Attorney**

Co-counsel are not permitted to split up the examination of a witness.

12. **Examination of Witnesses Beyond Direct and Cross**

Re-direct and re-cross examination is not permitted without leave of Court.

13. **Videotaped Testimony**

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

14. **Reading of Material into the Record**

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

15. **Exhibits**

All exhibits must be exchanged and marked in advance of trial. One paper copy of each exhibit displayed during trial is to be provided to the Deputy Clerk the morning following its display. In order for the Jurors' Exhibits Binder to be complete when deliberation begins, counsel must be prepared to bring one paper copy of each exhibit to be displayed on the last day of trial to Court the last day of trial. Counsel must provide the Deputy Clerk a binder(s) that will hold the paper copies of the exhibits to be submitted to the jury at the close of trial, and this will constitute the original record for purposes of appeal, if any.

Counsel must also provide eight (8) binders for the jury that contain twenty (20) lines sheets of notebook paper for the jury to take notes.

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.

16. **Directed Verdict Motions**

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

17. **Jury Instructions**

The parties shall meet in an attempt to agree on a joint set of proposed jury instructions. After said meeting, the parties shall file a unified (meaning one) combined set of proposed instructions, along with computer disk/CD containing the instructions in WordPerfect format. The filed set of instructions shall include both the agreed upon instructions and the proposed instructions to which the parties have not agreed. Each agreed upon instruction shall include the following notation at the bottom: "This proposed instruction is agreed upon by the parties." Each instruction to which the parties have not agreed shall indicate at the bottom the name of the party proffering the instruction. Proposed instructions by different parties shall be grouped together.

A charging conference may be held, if necessary, at which time a ruling will be made on each point for charge and a copy of the Court's proposed charge 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.

The Court will not accept separate proposed jury instructions from the parties.

18. **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 ten (10) 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 ten (10) pages.

19. **Offers of Proof**

There should be no requests for offers of proof during trial as the parties will have discussed the witnesses at the 8:30 a.m. conference with the Court.

20. **General Courtroom Rules**

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

21. **Use of Courtroom Technology**

The parties are required to use trial presentation technology and courtroom technology, and trial exhibit summaries (pursuant to Rule 1006 of the Federal Rules of Evidence), to the fullest extent possible in all cases. Should the parties require training or other information on use of the courtroom technology, the parties may contact Sean Fox, of the Information Technology Department, at (412) 208-7468.

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 it is up to them to decide if they choose 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 well in advance of trial is scheduled in each case.
- C. **Guilty Pleas**
There are no special rules regarding guilty pleas and no deadlines for accepting or rejecting plea bargains. Counsel are encouraged to plea bargain 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 copy of the colloquy on request.
- D. **Voir Dire**
The Judge 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. Any supplemental voir dire questions approved by the Court will be asked by the Courtroom Deputy.

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 that day.

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 may be held, if necessary, at which time a ruling will be made on each point for charge and a copy of the court's proposed charge 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.

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**

The brief for the appellant shall be served and filed within 15 days after entry of the appeal on the docket pursuant to Bankruptcy Rule 8007; the brief for appellee shall be served and filed within 15 days after service of appellant's brief. Reply briefs may be filed according to the schedule set forth in Bankruptcy Rule 8009(a)(3), upon notification to the Court that such reply brief shall be filed.

B. **Oral Argument**

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

C. **Other General Practices/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.

EXHIBIT A

(SAMPLE TRACK I CASE MANAGEMENT ORDER)

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

CASE MANAGEMENT ORDER (TRACK I)

AND NOW, this ___ day of _____, 2008, **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) Plaintiff and Defendant will exchange the information required by Federal Rule of Civil Procedure 26(a)(1) by _____. (*14 days after the initial case management conference*)
- (2) The parties shall move to amend the pleadings or add new parties by _____ . (*30 days after the initial case management conference*)

- (3) The parties shall complete fact discovery by _____.
(150 days after the initial case management conference) All interrogatories, depositions, requests of admissions, and requests for production shall be served within sufficient time to allow responses to be completed prior to the close of discovery.
- (4) **EXPERT REPORTS AND DISCOVERY: (If applicable)**
- (a) Plaintiff's expert reports shall be filed by _____.
(120 days after the initial case management conference.)
- (b) Defendant's expert reports shall be filed by _____.
(140 days after the initial case management conference.)
- © All expert depositions shall be completed by _____.
(150 days after the initial case management conference.)
- (5) Responses to motions to compel are due within 10 calendar days of the filing of the motion.
- (6) The parties shall comply with Local Rule 56.1 with respect to making a motion for summary judgment and the filing of a response to the motion. The movant shall file a motion for summary judgment in accordance with the requirements of Local Rule 56.1B on or before _____ *(20 days after the end of fact and expert discovery)*. The opposing party shall file its opposition in accordance with the requirements of Local Rule 56.1C on or before _____ *(within 10 days of filing of the motion for summary judgment)*. On the same date of the filing of

said opposition, the movant shall file a joint concise statement of material facts which combines the movant's concise statement of material facts with the responsive concise statement, e.g., the movant shall combine its separately numbered paragraph (1) with the response to that same numbered paragraph in a revised separately numbered paragraph (1). The joint concise statement shall be prepared so that each response immediately follows the movant's fact to which it responds, and is readily identifiable as a response and not part of the movant's submission. The opposing party shall cooperate with the movant in preparing the joint concise statement of material facts. Briefs supporting or opposing summary judgment motions shall not exceed 15 pages, excluding tables of authorities. Reply and surreply briefs shall not be filed unless approved/requested by the Court.

(7) Plaintiff's pretrial narrative statement shall comply with Rule 16.1.4.A, and be filed by _____. ***(60 days after the end of fact and expert discovery.)***

(8) Defendant's pretrial narrative statement shall comply with Rule 16.1.4.B, and be filed by _____. ***(70 days after the end of fact and expert discovery.)***

_____(9) Material facts not identified in the pretrial narrative statements may be excluded upon objection or *sua sponte*. Witnesses or exhibits not identified in the pretrial narrative statements shall not be admissible at trial, except for an exhibit to be

used solely for impeachment purposes. Plaintiff should use numbers with a “P” prefix to designate exhibits (e.g., P1, P2, . . .); Defendant should use numbers with a “D” prefix to designate exhibits (e.g., D1, D2, . . .).

- (10) The parties shall not amend or supplement their pretrial narrative statements without leave of Court.
- (11) All parties shall file an indication whether or not they are willing to proceed to trial in front of a Magistrate Judge by _____.

(30 days after the initial case management conference.)

Arthur J. Schwab
United States District Judge

cc: All counsel of record

EXHIBIT B
(SAMPLE PRETRIAL ORDER, JURY TRIAL)

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

PRETRIAL ORDER

AND NOW, this ___ day of _____, 2008, the Court **HEREBY ORDERS** as follows:

A. Final Pretrial Orders:

1. **Jury Selection & Trial.** Jury selection and trial are set for _____ at _____, in Courtroom 7C, 7th Floor, United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania.

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 witness' testimony. 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 by _____ . *(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 witness' testimony. 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 by _____ . *(3 weeks before trial)*
- c. All exhibits must be exchanged and marked in advance of trial. One paper copy of each exhibit displayed during trial is to be provided to the Deputy Clerk the morning following its display. In order for the Jurors' Exhibits Binder to be complete when deliberation begins, counsel must be prepared to bring one paper copy of each exhibit to be displayed on the last day of trial to Court the last day of trial. Counsel must provide the Deputy Clerk a binder(s) that will hold the paper copies of the exhibits to be submitted to the jury at the close of trial, and this will constitute the original record for purposes of appeal, if any. Additionally, counsel must also provide eight (8) binders for the jury that contain twenty (20) lines sheets of notebook paper 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) by _____.
(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, by _____. *(2 weeks before trial)* Responses shall be filed by _____. *(10 days before trial)* All briefs supporting or opposing such motions are limited to 5 pages.

5. **Proposed Jury Instructions & Verdict Slips.** Counsel shall meet in an attempt to agree on a joint set of proposed jury instructions. After said meeting, and on or before _____, counsel shall file a unified (meaning one) combined set of proposed instructions, along with computer disk/CD containing the instructions in WordPerfect format. The filed set of instructions shall include both the agreed upon instructions and the proposed instructions to which the parties have not agreed. Each agreed upon instruction shall include the following notation at the bottom: "This proposed instruction is agreed upon by the parties." Each instruction to which the parties have not agreed shall indicate at the bottom the name of the party proffering the instruction. Proposed instructions by different parties shall be grouped together.

_____ 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 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.

_____ The Court will not accept separate proposed jury instructions from the parties.

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 by _____. *(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 by _____.
(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 on _____ at _____, *(1 week before trial)* in Courtroom 7C, 7th Floor, United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania.

B. Trial Procedure

1. **Hours.** Court is in trial session, unless otherwise ordered by the Court, Monday through Thursday, 9:00 AM. to 4:00 PM. 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 thirty (30) minutes is permitted to each side for opening and closing statements, depending on the complexity of the case. 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

8:30 AM. each day (or earlier if necessary to ensure that trial commences on time) each day 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 **8:30 AM.** each morning to address such issues. It is the responsibility of counsel to notify other counsel of the need for a conference at 8:30 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 5:00 PM. 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.** 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.

11. **Use of Technology.** The parties are hereby ordered to use trial presentation technology and courtroom technology, and trial exhibit summaries (pursuant to Rule 1006 of the Federal Rules of Evidence), to the fullest extent possible.

Arthur J. Schwab
United States District Judge

cc: All counsel of record as listed below

EXHIBIT C
(SAMPLE PRETRIAL ORDER, NON-JURY TRIAL)

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

PRETRIAL ORDER (NON-JURY TRIAL)

AND NOW, this ___ day of _____, 2008, the Court **HEREBY ORDERS** as follows:

A. Final Pretrial Orders:

1. **Trial.** Trial of the above captioned matter is set for _____ at _____, in Courtroom 7C, 7th Floor, United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania.

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 witness' testimony. 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 by _____.

(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 witness' testimony. 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 by _____ . *(3 weeks before trial)*

c. All exhibits must be exchanged and marked in advance of trial. Two (2) 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) by _____ .
(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, by _____. (*2 weeks before trial*) Responses to motions in limine shall be filed by _____. (*10 days before trial*) All briefs supporting or opposing such motions are limited to 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 _____ 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 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 _____ 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 consecutively numbered joint stipulations by _____ . *(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 _____, *(1 week before trial)* in Courtroom 7C, 7th Floor, United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania.

B. Trial Procedure

1. **Hours.** Court is in trial session, unless otherwise ordered by the Court, Monday through Thursday, 9:00 AM. to 4:00 PM. with breaks where appropriate. **All counsel are expected to be in their seats and ready to commence at the appointed times.**

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the trial with the actual list of the next day's witness by 5:00 PM. 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.

6. **Use of Technology.** The parties are hereby ordered to use trial presentation technology and courtroom technology, and trial exhibit summaries (pursuant to Rule 1006 of the Federal Rules of Evidence), to the fullest extent possible.

Arthur J. Schwab
United States District Judge

cc: All counsel of record as listed below