

v.

Case No.

_____/

**ORDER SETTING JURY/NON JURY TRIALS, MEDIATION, NON BINDING ARBITRATION
AND OPTIONAL PRETRIAL CONFERENCE**

THIS CAUSE BEING AT ISSUE IT IS HEREBY, ORDERED and ADJUDGED:

1. **Trial Date.** This cause is set for jury/non-jury trial during the two-week trial period beginning on _____ at 9:00 a.m. at the Charlotte County Courthouse, Punta Gorda, Florida. All parties shall be ready for trial at 9:00 a.m. on the first day of said trial period. Parties not represented by an attorney should call the court (941/ 637-2186) at least a week before the above trial period to obtain an exact time and date of trial. **Generally the order in which cases are to be tried will be determined by the judge no earlier than 20 days prior to trial week in the event, however, cases usually will be prioritized at the Optional Pretrial Conference.**

2. **Optional Pretrial Conference.** The court has set an optional pretrial conference for the following time, _____ at 1:30 pm or as soon thereafter as may be heard. Unless counsel submits an original signed stipulated pre-trial order directly to the Judge's office to be received at least three (3) days prior to the conference, using the attached Pre-trial Conference Order form, then counselors trying the case are required to attend the pretrial conference FOR THE PURPOSE OF RESOLVING DISPUTES IN THE FILLING OUT OF THE ATTACHED PRETRIAL CONFERENCE ORDER FORM.

3. **Exchange of Expert & Lay Witnesses.** Within 15 days of the date of this Order, counsel for the plaintiff(s) shall submit to opposing counsel the names and addresses of all witnesses reasonably anticipated to be called on behalf of the plaintiff(s). Within 30 days from the date of this Order, defense counsel shall submit a list of all defense witnesses. The witness list shall contain a plain and concise statement regarding the subject matter of the witnesses testimony. No party shall be permitted to call any witness not so disclosed, without either prior permission of the Court or a written stipulation executed by all parties through their counsel.

4. **Meeting before Pretrial.** The attorneys for all parties are directed to meet, initiated by counsel for the plaintiff, no later than 7 days before the pretrial conference, to:

- a. Mark all exhibits for identification and prepare a chronological exhibit list for use by clerk and court at trial (actual exhibits and documentation evidence shall be available for inspection at this time). Any exhibits not so marked will not be admissible absent a stipulation of all parties.
- b. Agree to admit or not admit evidence and list specific objections, if any.
- c. Stipulate as to any matter of fact and law about which there is no issue to avoid unnecessary proof, i.e., chain of custody or records custodian.
- d. Review all depositions which are to be offered for any purpose other than impeachment to resolve objections to the portions to be offered in evidence.
- e. Discuss the possibility of settlement.
- f. Submit an itemized statement of special damages plaintiff expects to prove.
- g. Discuss and complete any other matters which may simplify the issues or aid in the speedy disposition of this action, its pretrial conference and trial.

- h. Draft one pretrial conference order (using the form attached), signed by all participating counsel, that shall be submitted directly to the court at least 3 days prior to the pretrial conference. In the event the parties are unable to agree on any matter in the pretrial conference order, they shall leave the matter blank and same will be resolved at the pretrial conference with the Court.

5. **Motions.** All motions, except motions in limine, shall be filed and scheduled to be heard prior to the trial, or they are deemed abandoned.

6. **Discovery.** Counsel shall complete all discovery, including but not limited to medical examinations, testing, and inspections, prior to the pretrial conference. The conduct of discovery subsequent to the pretrial conference shall be permitted only on the order of the Court for good cause shown (or by written stipulation signed by all counsel), which will not delay the trial of this cause.

7. **Court Reporting.** If counsel desires that a proceeding be reported by a court reporter, it is the responsibility of counsel to secure said services at their own expense, subject to taxation in accordance with the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions. Counsel should discuss retention of a court reporter in advance of the trial and make appropriate scheduling arrangements so as to ensure the court reporter's timely appearance. Trial will not be delayed due to the failure to make timely arrangements for a court reporter to appear at the duly noticed time.

8. You should be ready to go to trial on day #1 of this trial period, regardless of your position on the docket. The docket will proceed numerically or as otherwise arranged by the Court during the trial period, unless time utilization can be enhanced or scheduling conflicts with other courts occur. The sequencing of cases for trial may be adjusted by the Court. Except for the first case called at the beginning of a week, it will be impossible to predict when your case will be called. Please stay in close contact with the attorneys trying cases ahead of you so that you may estimate when your case will be called. For jury trials, the court will attempt to assign dates certain to cases at the optional pretrial conference. After all #1 positions for the trial period have been filled, the Court will begin assigning dates certain as #2 backup, etc. If your case is not reached it will be rolled to a later docket and move up to a higher priority.

9. **Mediation or/and Arbitration.** All parties are required to participate in mediation in accordance with the Florida Rules of Civil Procedure, Rule 1.700. In the event that all of the parties subject to these proceedings have not been to mediation in the last twelve (12) months or during the course of this case, the parties are ordered to mediation in accordance with the following procedure. In lieu of mediation, the parties may go to non-binding arbitration in the event all parties so stipulate, again in general conformance with the following procedure. ***If, however, the trial of the instant case will require more than five days for trial, the parties are ordered to both mediation AND arbitration.***

10. The plaintiff's attorney is appointed as lead attorney to coordinate the mediation/arbitration conference. Within ten (10) days of the date of this Order, counsel shall consult with each other to select a mutually acceptable mediator/arbitrator, if possible. Upon selection of such mediator/arbitrator, counsel will consult with the mediator/arbitrator to set a mediation/arbitration conference. Plaintiff's counsel shall notify, **in writing**, all counsel of record of the date and time agreed upon for mediation/arbitration. Plaintiff's attorney shall be responsible for rescheduling, if necessary.

11. Failing agreement of counsel as to a mediator, (a) Counsel shall notify the Court, in writing, ***within 10 days of this Order***, so that the Court can appoint a mediator/arbitrator. Counsel shall collectively in a joint letter submit to the Court the names of at least two proposed mediators/arbitrators without designation of which party selected the proposed mediators/arbitrators. The Court will then review the list and either appoint a mediator/arbitrator from the list of proposed mediators/arbitrators, or the Court may independently select its own mediator/arbitrator. (b) ***If the parties fail to notify the Court within 10 days of this Order as to their selection of a mediator/arbitrator, the Court may appoint a mediator/arbitrator sua sponte. PLEASE NOTIFY THE COURT AS SOON AS A MEDIATOR/ARBITRATOR HAS BEEN SELECTED OR IN THE EVENT OF THE FAILURE TO AGREE ON A MEDIATOR/ARBITRATOR.***

12. The following procedures shall apply to the mediation/arbitration conference:
 - a. The appearance of counsel and client(s) is mandatory. If insurance is involved, an adjuster with full and complete authority to settle, preferably the claims handling adjuster, shall be present. Corporate parties shall appear through a management representative with full authority to enter into a full and complete compromise and settlement.
 - b. All parties shall present a brief, written summary of the case to the mediator/arbitrator no later than ten (10) days before the scheduled mediation/arbitration, containing a list of all issues as to each party.
 - c. All discussions, representations and statements made at the mediation conference shall be off the record and privileged pursuant to F.S. 44.102(3).
 - d. The mediator/arbitrator shall be compensated at a rate stipulated to by the parties and the mediator/arbitrator. Mediation/Arbitration fees shall be equally divided and borne by the parties, and any agreed charges for travel and reasonable expenses are also to be equally divided. Where there are multiple parties, the fee shall be the responsibility of the principal parties.
 - e. The mediator/arbitrator has no power to compel or enforce settlement agreements. If a settlement agreement is reached in the case, then, pursuant to Fla.R.Civ.P. 1.730 (b), it is the responsibility of the attorneys to reduce the agreement to writing and to obtain signatures thereto by all parties or to otherwise dictate it to a court reporter (with all parties/counsel assenting to the same on record).

13. Mediation/Arbitration shall begin within 45 days of selection of the mediator/arbitrator. **Completion of mediation or non-binding arbitration as directed herein (or by subsequent order) is a prerequisite to the pretrial conference.**

14. Any party opposing mediation or requesting a deferral of mediation may proceed under FRCP 1.700(c). The absence of any timely filed objection shall constitute consent to the appointment of a mediator/arbitrator.

15. Within fifteen (15) days after the date of this Order (in the absence of a stipulation to arbitrate instead of mediation), any party may file a motion to dispense with mediation and request referral of this case by the Court to non-binding arbitration in accordance with Section 44.103, Florida Statutes and Rule 1.800, Florida Rules of Civil Procedure. A hearing date for the motion shall be obtained by the moving party from the Court at the time the motion is filed and a courtesy copy of the motion and notice of hearing shall be mailed to the Court's judicial assistant. Upon the Court's review of the motion and/or hearing the motion, or upon the written stipulation of all parties, the Court may enter an Order to dispense with mediation and refer the case to non-binding arbitration. (Please note, although captioned "non-binding" arbitration, the rendition of an arbitrator's decision is subject to ratification in a binding judgment in the event an objecting party fails to both timely and correctly act as required by Florida law.)

16. Jury Instructions. (This provision is not applicable to non-jury cases.) On the first day of the trial, each party shall submit to the Court, with copies to opposing counsel, written jury instructions and proposed verdict forms. Each jury instruction shall be on a separate sheet of paper; shall be plainly marked with the name and number of the case; shall contain citations of supporting authorities, if any; shall designate the party submitting the instructions; and shall be numbered in sequence. In order to avoid delay at trial, counsel are encouraged to discuss and attempt to work out an agreement as to proposed jury instructions and verdict form *prior to* the first day of trial in consideration of anticipated or expected testimony, subject to revision/discussion to conform with the evidence of record prior to submission to the jury. This paragraph shall not foreclose the right of any party to modify instructions up to and including the instruction/charging conference at the close of evidence. Any party who intends to request that the Court provide a set of written jury instructions for the jury's consideration, pursuant to Rule 1.470(b), shall be responsible for providing a clean copy of the jury instructions to the Court. Once the instructions and jury verdict are done, it would be helpful to put them on a CD and bring it to the trial to assist in adjustments.

17. Jurors. Counsel for the parties will be required to bring 7 blank notepads and pens to trial for the jury to take notes - Plaintiff's counsel to coordinate. Jurors will be allowed to ask legally permissible questions after live witness testimony in accordance with the Florida Law. Absent extension by the Court, voir dire will generally be

limited to 1 hour maximum per side, exclusive of the Court's inquiry. Voir dire is for selection of a fair and impartial jury, not argument.

18. Representation and Authority. In order for the full purpose of the Pre-Trial procedures to be accomplished, each party shall be represented at all meetings and hearings required herein by the attorney who will participate in the trial of the cause and who is vested with full authority to make admissions and disclosure of facts, and to bind the clients by agreement in respect to all matters pertaining to the trial of the cause and the pretrial conference order.

19. Exhibits. All composite exhibits shall be satisfactorily bound to avoid the loss and disintegration of component parts of pages before presentation to the Court. Exhibits to be introduced which are larger than 8 1/2 x 11" sheet of paper may be used at trial, but if practicable, same shall be reduced to 8 1/2 x 11", and the reduced size copy shall be the exhibit retained by the clerk in the court file. The oversized exhibits so reduced shall be returned to counsel at the close of the trial. It is suggested that a sufficient number of clean duplicate copies be made of any proposed/potential exhibits for all counsel and the Court, which would include ample copies of cases/precedent/statutory provisions that may be argued at trial. Reduction of exhibits to the foregoing size facilitates the use of the overhead projector which allows one to publish and project images of documents/exhibits to overhead monitors and monitors in the jury box. If counsel is unfamiliar with use of the overhead projection system, which is also utilized to play DVD videos to the jury, it is strongly suggested counsel make arrangements with the Clerk of Court prior to and in advance of the trial for a short tutorial so as to avoid delay and/or embarrassment concerning use of the system at trial.

20. Witnesses. The parties shall assure the availability of their witnesses for the entire trial period or to otherwise preserve their testimony for trial as provided by the Florida Rules of Civil Procedure. If a party expects to call an expert or treating physician to testify at trial it is strongly suggested that such witness be deposed by video tape and the testimony transcribed. The court is not inclined to allow a witness to testify "out of order", over objection, or to take a recess or adjust its schedule for the convenience of such a witness. In the interest of time, particularly out of respect and in appreciation of the jury's time dedication, objections raised in deposition transcripts/videos must be resolved prior to the first day of trial, either by written agreement/stipulation or by a timely filed motion to be heard prior to trial, otherwise said objections are waived. Videos (DVD's) shown at trial should be edited, as appropriate, prior to trial in order to avoid excessive pausing, fast-forwarding, rewinding, etc. of the video, which further ensures that the jury may not be inadvertently exposed to inadmissible testimony.

21. Motions and Stipulations for Continuances. This court adheres strictly to Rule of Judicial Administration 2.085(c) and Rule of Civil Procedure 1.460. Accordingly, motions for continuance and stipulations must be in writing and set forth:

- a. The signature of the party/party's authorized representative, as well as the attorney.
- b. A concise statement of the reasons for a continuance. If based on non-availability of a witness, a showing of when it is believed the witness will be available must be stated.

Any stipulation must be approved by the Court and must be heard at least ten (10) days prior to the date set for the optional pretrial conference, unless otherwise permitted by the court. **No motion will be heard that is not in compliance with this order.** The need for additional discovery, particularly on older cases, generally will not suffice as grounds for continuance.

22. Settlement. Counsel shall immediately notify this court in the event of settlement and submit a copy of the stipulation and agreed order thereon (ratification and dismissal) for the Court's entry, along with a final disposition form for the Clerk of Court.

23. Notice. Please review this order to see that it was sent to all proper persons/counsel at proper addresses. **FAILURE TO IMMEDIATELY** notify the Court may result in this matter not being heard at the scheduled time, along with possible sanctions. THANK YOU.

24. Sanctions. Failure to comply with the requirements of this order may subject the party and/or attorney to sanctions commiserate with any non-compliance, which includes (but is not limited to) imposition of monetary sanctions, dismissal, and/or striking of pleadings with entry of default.

DONE AND ORDERED in Chambers, Punta Gorda, Charlotte County, Florida on this ____ day of _____, 2009.

Keith R. Kyle
Circuit Judge of the Twentieth Judicial Circuit

CERTIFICATE OF SERVICE

I do hereby certify that a copy hereof has been furnished to all counsel listed below by U.S. Mail on this ____ day of _____, 2009.

JUDICIAL ASSISTANT

AMERICANS WITH DISABILITIES ACT NOTICE:

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT, PERSONS NEEDING A SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE DEPUTY COURT ADMINISTRATOR WHOSE OFFICE IS LOCATED AT:

CHARLOTTE COUNTY JUSTICE CENTER
350 E. MARION AVE.
PUNTA GORDA, FL 33950

TELEPHONE NO: (941) 637-2281; 1-800-955-8771 (TDD), OR 1-800-955-8770 (V), VIA FLORIDA RELAY SERVICE, NOT LATER THAN TWO (2) DAYS PRIOR TO THE PROCEEDING.

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR CHARLOTTE
COUNTY, FLORIDA
ACTION

CIVIL

v.

Case No.

_____ /

PRETRIAL CONFERENCE ORDER

Set for trial docket beginning _____, 200_.

Present:

_____ for Plaintiff(s).
_____ for Defendant(s).

1. Statement/Summary of the Nature of the Case:

2. Amendments to pleadings:

3. Issues (a. agreed to and b. disputed):

a. _____

b. _____

4. Number of peremptory challenges: _____

5. Admissions and Stipulations to avoid unnecessary proof: _____

6. List of witnesses with addresses (attached). ***Counsel shall list only those witnesses they actually intend or reasonably anticipate to call at trial, including a concise statement of the facts about which the witness will testify,*** by the ____ day of _____, 200_, and will be limited thereby except for good cause. (This is not intended to extend the time frames enunciated in paragraph #3 of the Order Setting Trial, but rather, to identify those

witnesses that will **actually** be called. Do not list witnesses you have no intention or reasonable anticipation of calling.)

7. If applicable, list of itemized statement of special damages claimed by any party (attached).

8. Any problems or special needs for the attendance of witnesses.

9. Stipulations (checked):

- _____ a) Decision by less than 6 jurors if one becomes incapacitated/discharged is OK
- _____ b) Use of expert testimony any time
- _____ c) Waive X-ray technicians (regarding authenticity)
- _____ d) Waive records custodians (regarding authenticity)
- _____ e) Waive photographers (regarding authenticity)
- _____ f) Copies of ordinances or foreign laws (please attach)
- _____ g) Minutes for opening statements (maximum 30 minutes per side absent Court authorization)
- _____ h) Minutes for closing statements (maximum 1 hour absent Court authorization)
- _____ i) Other

10. Judicial notice (requires conformance with the Florida Rules of Procedure):

11. Length of trial: _____

12. Pending Unresolved Motions, if any: _____

13. Settlement possibilities, including whether all parties already have mediated, arbitrated, etc. (and when such events occurred):

14. List of all photographs, documents, and exhibits (attached) reasonably anticipated/expected to be introduced or otherwise used at trial.

15. **Failure to comply with the requirements of this order may subject the party and/or attorney to sanctions commiserate with any non-compliance, which may include (but is not limited to) imposition of monetary sanctions, dismissal, and/or striking of pleadings and entry of default.**

DONE AND ORDERED in Chambers, Punta Gorda, Charlotte County, Florida on this ____ day of _____, 200_.

Keith R. Kyle
Circuit Judge of the Twentieth Judicial Circuit

The undersigned hereby stipulate to entry of this order and understand that they are excused from attending the pretrial conference:

In regards to being excused as noted above, please note, however, that the preliminary sequencing and scheduling of trial dates for cases usually is done at the pretrial conference.