

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

BARBARA ANN WILSON,
Plaintiff,

vs.

2:10-cv-2386-KOB


THE CITY OF BIRMINGHAM,
ALABAMA, et al,
Defendants.

ORDER RESETTING PRETRIAL CONFERENCE

Now before the court is Defendants' Motion to Continue Pretrial Conference (doc. 43). The court finds that the motion is due to be and is hereby **GRANTED** as unopposed. The Pretrial Conference is **RESET** for **Thursday, February 16, 2012, at 10:00 AM**, in fifth floor chambers, Hugo L. Black U. S. District Court in Birmingham, Alabama. By notifying chambers not less than two working days prior to the scheduled pretrial, attorneys located outside the division or district may request to participate by telephone as long as one attorney per side is present for the pretrial. Counsel of record are requested to notify any attorneys subsequently making appearances in this case of the scheduled conference. Counsel are further directed to review and comply with the attached instructions. Counsel are reminded of the requirement of presenting a joint proposed pretrial order to the court on or before **Friday, February 10, 2012**.

The court anticipates that this case will be scheduled for a jury trial on **Monday, April 23, 2012, at 9:00 AM**, Hugo L. Black U.S. Courthouse, Birmingham, AL.

DONE and **ORDERED** this 26th day of January, 2011 .


KARON OWEN BOWDRE
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA**

**PRETRIAL INSTRUCTIONS
READ CAREFULLY**

This case is set for a pretrial hearing pursuant to Rule 16 of Federal Rules of Civil Procedure. A conference-type hearing will be held in the court's chambers in the Federal Courthouse **in the city specified and at the time indicated on the attached Order.**

The hearing will be addressed to consideration of the matters provided in Rule 16 of the Federal Rules of Civil Procedure, including -- but not limited to -- the issues for trial, pending motions, and settlement possibilities.

Counsel attending the conference are expected to be well informed about the factual and legal issues of the case and to have authority to enter appropriate stipulations and participate in settlement discussions. **Counsel appearing at the conference may be required to proceed at trial notwithstanding the naming of others as designated trial counsel.**

Promptly upon receipt of this notice, Plaintiff's counsel is to initiate discussions with other counsel aimed at ascertaining the undisputed facts and at clarifying each party's contentions. **At least five business days in advance of the conference, Plaintiff's counsel¹ is to submit in WordPerfect format to the judge's office by email (Bowdre_chambers@alnd.uscourts.gov a proposed joint Pretrial Order,** furnishing other counsel with a copy. In most cases the proposed order, with only minor insertions and changes, will be adopted by the court and signed at the close of the pretrial conference. The standard Exhibit A to the Pretrial Order to the sample order need not be reproduced by counsel unless counsel propose significant changes.

IMPORTANT

PARTIES WHO DO NOT TIMELY COMPLY WITH INSTRUCTIONS REGARDING PREPARATION OF PROPOSED PRETRIAL ORDERS WILL BE SUBJECT TO SANCTIONS, INCLUDING DISMISSAL OR DEFAULT JUDGMENT.

A sample of a proposed pretrial order is attached at the end of these instructions to illustrate the format preferred by the court and the substance of an order in a typical case. Each order must, of course, be tailored to fit the circumstances of the individual case. **Pretrial orders in non-jury cases should typically establish a procedure and schedule for preparation of a detailed statement of agreed facts so that evidence at trial can be limited to the particular facts, if any, in actual dispute (a**

¹In the event that Plaintiff is proceeding *pro se*, the burden of complying with the court's requirements for submission of a proposed pretrial order shifts to Defendant.

provision establishing such a procedure is shown on the sample order).

Counsel drafting this proposed order should consider the utility this document will provide for the litigants, the jury, and the court alike. The court anticipates using the pretrial order to (1) identify and narrow the legal and factual issues remaining for trial, and (2) provide jurors with the legal and factual context of the dispute. This order should **not** revisit at length arguments made in previous filings with the court, nor serve as another venue for adversarial posturing. Pretrial orders should be simple, short, and informative.

The objective is to produce the highest quality of justice in the shortest time and with the lowest cost consistent with justice. If, in a particular case, the indicated pretrial procedure frustrates this objective or creates problems, counsel are encouraged to confer with one another and contact the court with suggested alternative procedures.

SAMPLE PROPOSED PRETRIAL ORDER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

THOMAS S. SMITH,)	
)	
Plaintiff,)	
)	
vs.)	CV 01-BE-1998-S
)	
COLLINS CONSTRUCTION CO., INC.;)	
et al.,)	
)	
Defendants.)	
_____)	
)	
ELIZABETH D. SMITH,)	
)	
Plaintiff,)	
)	
vs.)	CV 01-BE-1999-S
)	
COLLINS CONSTRUCTION CO., INC.;)	
et al.,)	
)	
Defendants.)	

PRETRIAL ORDER

A pretrial conference was held in the above case on December, 16, 2001, wherein the following proceedings were held and action taken:

1. Appearances. (Note: **Counsel appearing at the conference may be required to proceed at trial notwithstanding the naming of others as designated trial counsel.**)

Appearing at the conference were:

[LEAVE SPACE FOR COMPLETION BY THE COURT]

2. Jurisdiction and Venue. Subject matter jurisdiction exists under 28 U.S.C. § 1332 by reason for the amounts in controversy and the admitted diversity of citizenship. Personal

jurisdiction and venue are not contested.

3. Consolidation. These actions (CV 01-BE-1998-S and CV 01-BE-1999-S) involve common questions of law and fact and hereby ORDERED CONSOLIDATED under Fed. R. Civ. P. 42 for further proceedings and trial.

4. Parties and trial counsel. The parties before the court are correctly named as set out below and the designated trial counsel for the parties are as set out below:

Note: Counsel appearing at the conference may be required to proceed at trial notwithstanding the naming of others as designated trial counsel.

	Parties:	Trial Counsel:
Plaintiffs:	THOMAS S. SMITH	Robert Stephens (Brown, Brownlee & Stephens) and Gene Baird (Baird & Jones)
	ELIZABETH D. SMITH	Same Counsel
Defendants:	COLLINS CONSTRUCTION CO., INC.	James Johnson and Robert Donovan (Phillips & Randall)
	JAMES K. ADAMS	Same Counsel

5. Pleadings. The following pleadings, with modifications contained in this Order, have been allowed: Complaint (as amended June 5, 2001) on behalf of each Plaintiff; Answer on behalf of Defendants to each complaint. The answers filed to the original complaints suffice as answers to the amended complaints, without refileing.

6. Statement of the Case.

(a) Agreed Summary. [The agreed summary should be concise and appropriate for the court to use in advising the jury during voir dire regarding the basic nature of the case.] This case arises out of a collision between two vehicles which occurred August 5, 1999, at the intersection of 21st Street and 5th Avenue South in the city limits of Birmingham, Alabama. An automobile owned and then being operated by Plaintiff Thomas S. Smith (and in which his wife, Plaintiff Elizabeth D. Smith, was a passenger) was proceeding northward on 21st Street (a one-way street for northbound traffic). A truck owned by Defendant Collins Construction Co., Inc., and being operated by Defendant, James K. Adams, was proceeding eastward on 5th Avenue South (two-way traffic). A standard traffic control device (green/yellow/red lights) governed traffic entering the intersection and was functioning on this occasion. Both drivers claim to have had the green light. The Corporate Defendant admits that Defendant Adams was its employee and was acting within the line and scope of such employment at the time of the accident.

(b) Stipulated Facts. [List as many relevant facts on which the parties agree and on which no proof is required.

- 1.
- 2.
- 3.

(c) Contested Issues of Fact. [List all factual issues in controversy that are necessary for a final determination of the case.]

- 1.
- 2.
- 3.

(d) Agreed Applicable Propositions of Law. [List the basis principles of law that the parties agree are essential to a determination of the case; e.g., the elements of plaintiff's claim and defendant's defenses. **These statements of law should be suitable for use by the court in preliminary instructions to the jury.**]

- 1.
- 2.
- 3.

(e) Plaintiffs' Positions. Plaintiff Thomas S. Smith seeks \$75,000 in compensatory damages for his own personal injuries, medical expenses and lost wages; for property damage to his automobile; and for his wife's medical expenses (past and future) and the loss of her services and consortium (past and future). Plaintiff Elizabeth D. Smith seeks \$125,000 in compensatory damages for her personal injuries and disfigurement (past and future). Plaintiffs claim that these damages were proximately caused by the negligence of Defendants, asserting that Defendant Adams was negligent in (1) violating Ala. Code § 32-5A-31 (running yellow or red light) and/or (2) failing to exercise ordinary care under the circumstances. Plaintiffs withdraw any contention of wanton misconduct on the part of Defendants. Plaintiff Thomas S. Smith denies he was contributorily negligent in causing the accident.

(f) Defendants' Positions. Defendants deny any negligence on the part of Defendant Adams and contest the amount of damages claimed by Plaintiffs. As to the claims made by Plaintiff Thomas S. Smith, Defendants assert that Thomas Smith was himself contributorily negligent by (1) violating Ala. Code § 32-5A-31 and/or (2) failing to exercise ordinary care under the circumstances. Defendants withdraw any contention of contributory negligence on the part of Plaintiff Elizabeth D. Smith.

7. Discovery and other pretrial procedures.

(a) All discovery in this case was completed by November 5, 2001. No further discovery is required.

(b) The Standard Pretrial Procedures specified on Exhibit A to Pretrial Order hereto are adopted as part of this order.

(c) Pending motions:

[LIST PENDING MOTIONS HERE; LEAVE SPACE FOR COURT RULING]

(d) Motions in limine shall be filed at least two weeks in advance of the scheduled trial date and shall be accompanied by supporting memoranda.

(e) The November 15, 2001 deadline for filing any dispositive motions has passed and all motions have been ruled upon.

8. Trial [Jury Case].² At least **five business days** prior to trial, the parties shall present to the court any special questions or topics for **voir dire** examination of the jury venire, and, to the extent the same can be anticipated, any requests for **instructions to the jury** (including extracts of any statutes on which instructions are requested). (See specific requirements for Jury Instructions in Exhibit A.) By the date set for trial, the parties shall file and serve any requested **special verdict forms** or **interrogatories for submission to the jury**. These submissions should be served on opposing counsel and emailed in WordPerfect format to chambers (Bowdre_chambers@alnd.uscourts.gov).

9. **Advisory for Limiting Personal Information in Transcripts and Exhibits.**
The judiciary's privacy policy restricts the publication of certain personal data in documents filed with the court. The policy requires limiting Social Security and financial account numbers to the last four digits, using only initials for the names of minor children, and limiting dates of birth to the year. However, if such information is elicited during testimony or other court proceedings, it will become available to the public when the official transcript is filed at the courthouse unless, and until, it is redacted. The better practice is for you to avoid introducing this information into the record in the first place. Please take this into account when questioning witnesses, presenting documents, or making other statements in court. If a restricted item is mentioned in court, you may ask to have it stricken from the record or partially redacted to conform to the privacy policy, or the court may do so on its own motion.

10. This case is set for jury trial in _____ on _____ . Counsel reasonably anticipate the case should take _____ days to try.

²For non-jury cases, the two sections on the following pages should be substituted for Paragraph 8.

ORDERED this _____ day of _____, 2002, that the above provisions be binding on all parties unless modified by further order for good cause shown.

KARON OWEN BOWDRE
UNITED STATES DISTRICT JUDGE

* For non-jury cases, the following should be substituted for Paragraph 8:

Non-Jury Case

1. Proposed Facts

(a) By twenty-five calendar days prior to trial, plaintiffs' counsel shall submit to defendants' counsel a statement setting forth the principal facts proposed to be proved by plaintiffs in support of their claims as to liability and damages. These facts should be set out in short, separately numbered paragraphs.

(b) By fifteen calendar days prior to trial, defendants' counsel shall return the statement of principal facts to plaintiffs' counsel, indicating thereon those factual contentions of the plaintiffs with which they disagree and including any additional facts defendants propose to prove.

(c) By seven calendar days prior to trial, plaintiffs' counsel shall indicate on the statement of principal facts those additional factual contentions of defendants with which plaintiffs disagree and shall file with the court the modified statement of principal facts, serving a copy thereof on opposing counsel. The final product should have all agreed facts, regardless of by whom proposed, collected under one heading and have the respective additional disputed facts proposed by the parties collected under separate headings. The final product should be submitted to the court by email (Bowdre_chambers@alnd.uscourts.gov) in WordPerfect format.

(d) In stating facts proposed to be proved, counsel shall do so in simple, declarative, consecutively numbered sentences, avoiding "color words," labels, and legal conclusions. In indicating disagreement with a proposed fact, counsel shall do so by deletion or interlineation of particular words and phrases so that the nature of the disagreement will be clear. Objections to the admissibility of a proposed fact (whether as irrelevant or on other grounds) may be made at trial and, without court order, may not be used to avoid indicating agreement or disagreement with the truth of the proposed fact.

2. Proposed Conclusions of Law

(a) By twenty-five calendar days prior to trial, plaintiffs' counsel shall submit to defendants' counsel a statement setting forth the principles of law, with citation to authority, that plaintiffs contend are applicable to the case. These principles should be set out in short, separately numbered paragraphs.

(b) By fifteen calendar days prior to trial, defendants' counsel shall return the statement of principles of law, indicating thereon those principles of law of the plaintiffs with which they disagree, and including and additional principles of law on which defendants rely.

(c) By seven calendar days prior to trial, plaintiffs' counsel shall indicate on the statement of principles of law those additional principles of law of defendants with which plaintiffs disagree and shall file with the court the modified statement of principles of law, serving a copy

thereof on opposing counsel. The final product should have all agreed principles of law, regardless of by whom proposed, collected under one heading and have the respective additional disputed principles proposed by the parties collected under separate headings. The final product should be submitted to chambers by email (Bowdre_chambers@alnd.uscourts.gov) in WordPerfect format.

3. **Advisory for Limiting Personal Information in Transcripts and Exhibits**

The judiciary's privacy policy restricts the publication of certain personal data in documents filed with the court. The policy requires limiting Social Security and financial account numbers to the last four digits, using only initials for the names of minor children, and limiting dates of birth to the year. However, if such information is elicited during testimony or other court proceedings, it may become available to the public. The better practice is for you to avoid introducing this information into the record in the first place. Please take this into account when questioning witnesses, presenting documents, or making other statements in court. If a restricted item is mentioned in court, you may ask to have it stricken from the record or partially redacted to conform to the privacy policy, or the court may do so on its own motion.

EXHIBIT A -- STANDARD PRETRIAL PROCEDURE

1. **Damages**. Thirty calendar days prior to the date set for the trial, the parties shall file and serve a list itemizing all damages and equitable relief being claimed or sought; such list shall show the amount requests and, where applicable, the method and basis of computation.
2. **Witnesses – Exchange of Lists**.
 - (a) **Expert Witnesses**. Thirty calendar days prior to the date set for trial, the parties shall file and serve a list stating the names and addresses of all expert witnesses who have previously been identified in accordance with Fed. R. Civ. P. 26(a)(2) and whose testimony may be offered at trial.
 - (b) **Other Witnesses**. Thirty calendar days prior to the date set for trial, the parties shall file and serve a list stating the names and addresses of all witnesses (other than expert witnesses) whose testimony they realistically expect to offer at trial. The list of witnesses exchanged should not include the name of any witnesses not previously identified, but should represent a narrowing of previously-identified witnesses.
 - (c) **Contents of Lists**. The parties shall appropriately indicate on their witness lists: (1) the "primary" witnesses – those witnesses whose testimony the party expects to offer; (2) the "optional" witnesses – those witnesses whose testimony the party expects will not be needed, but the party has listed to preserve its right to offer such testimony should the need arise in the light of developments at trial, and (3) those witnesses the party expects to present by means of depositions with a listing of the specific pages from the depositions to be used.

Unless specifically agreed by the parties or allowed by the court for good cause shown, the parties shall be precluded from offering substantive evidence through any witness not included on the party's witness list. The listing of a witness does not commit the party to have such witness available at trial or to call such witness to testify, but it does preclude the party from objecting to the presentation of such witness's testimony by another party.

As to any witnesses shown on such list to be presented by deposition, within ten business days after the filing of such list, an opposing party may serve a list of additional pages of the deposition to be used, and may serve and file a list disclosing any objections to the use of such deposition testimony under Rule 32 or Rule 26(a)(3)(B). Any objections to deposition testimony should be accompanied by excerpts from the depositions including the testimony to which the objection relates. Objections not made within such time, other than objections under Fed. R. Evid. 402 and 403, shall be deemed waived, unless such failure to timely object is excused by the court for good cause shown.

3. Exhibits.

- (a) **Exchange of lists.** Thirty calendar days prior to the date set for trial, the parties shall file and serve a list providing an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those exhibits that the party expects to offer and those exhibits that the party may offer if the need arises. Unless specifically agreed by the parties or allowed by the court for good cause shown, the parties shall be precluded from offering as substantive evidence any exhibit not so identified.

Courtesy copies of Exhibit lists should be submitted to chambers by email (Bowdre_chambers@alnd.uscourts.gov) in WordPerfect format.

- (b) **Objections and Stipulations.** Upon receipt of Exhibit lists, the parties should immediately meet and confer regarding any objections to the listed exhibits. Most objections should be cured by discussion, and the parties should stipulate as to the admissibility of as many exhibits as possible.

As to any document or other exhibit on which agreement cannot be reached, including summaries of other evidence shown on such list, at least ten business days before trial, an opposing party shall serve and file a list disclosing any objection, together with the grounds therefor, that may be made as to the admissibility of exhibits identified on such list. Objections not so disclosed, other than objections under Fed. R. Evid. 402 and 403 are waived, unless such failure to timely object is excused by the court for good cause shown. The court generally rules on objections to exhibits outside the presence of the jury and will do so prior to opening statements, to the extent possible.

- (c) **Counsel requiring authentication** of an opponent's exhibit must notify offering counsel in writing within five business days after the exhibit is identified and made available for examination. Failure to do so is an admission of authenticity
- (d) **Marking.** Each party that anticipates offering more than five exhibits as substantive evidence shall premark such exhibits in advance of trial, using exhibit labels and lists available from the Clerk of Court. The court will provide up to 100 labels; if any party needs more labels, that party must use labels of the same type as those supplied by the court. Counsel must contact the courtroom deputy for the appropriate exhibit list form for use at trial. The court urges counsel to be judicious in determining which documents actually are relevant to necessary elements of the case.
- (e) **Examination by Opposing Party.** Except where beyond the party's control or otherwise impractical (e.g., records from an independent third-party being obtained by subpoena), each party shall make such exhibits available for inspection and copying. The presentation of evidence at trial shall not ordinarily be interrupted for opposing counsel to examine a document that has been identified and was made available for inspection.

- (f) **Court's Copies.** In addition to the premarked trial exhibits mentioned above, the Court requests for the bench an exhibit notebook of anticipated trial exhibits (to the extent possible and practical). The notebook should include a copy of the exhibit list referenced in "d" above.
- (g) **Juror's Notebooks.** Only in extraordinary circumstances will the court allow the use of juror notebooks. Any such request should be made in writing at least 30 calendar days before trial.
- (h) **Use of Exhibits at Trial.** No exhibit can be shown to the jury or read aloud until after the exhibit has been admitted into evidence.
- (i) **Special and Visual Exhibits.** Should either side desire to present exhibits or other documents via projection onto a screen or monitor or by enlargement, or other special means to present the Exhibit to the jury, counsel shall advise opposing counsel at the same time as submission of Exhibit List which documents it plans to so present. However, no exhibit should be projected prior to admission by the court. No other document should be projected without first obtaining consent of the opposing party and permission of the court.

THE PARTIES ARE REMINDED THAT THEY WILL NOT BE ALLOWED TO USE AT TRIAL ANY WITNESS OR EXHIBIT NOT DISCLOSED IN ACCORDANCE WITH FED. R. CIV. P. 26(a) OR 26(e), UNLESS EXTREMELY GOOD CAUSE SHOWN AND THE OFFERING PARTY CAN SHOW THAT ITS FAILURE TO DISCLOSE WAS HARMLESS. See Fed. R. Civ. P. 37(c)(1).

4. Use of Depositions at Trial.

- (a) The court will accept the parties' agreement to use a deposition at trial even though the witness is available. Otherwise, parties must follow Fed R. Civ. P. 32.
- (b) Before trial, counsel must provide the courtroom deputy or law clerk with a copy of all depositions to be used as exhibits at trial.
- (c) To the extent possible, counsel will designate the portion of any deposition counsel anticipates reading by citing pages and lines in the final Witness list. Objections, if any, to those portions (citing pages and lines) with supporting authority must be filed within **ten business days** after filing of witness list as stated in paragraph 2.

- (d) Use of videotape depositions is permitted to the extent the parties agree on admissibility or edit to resolve objections.
- (e) In a non-jury trial, for any deposition offered as a trial exhibit, counsel shall attach to the front of the exhibit a summary of what each party intends to prove by the deposition testimony, with line and page citations.

5. Trial Submissions to Court.

Ten business days prior to the scheduled trial date, each party will submit the following to the court's chambers:

- a. A listing of any special evidentiary or other anticipated legal problems with citation to legal authority that supports the party's position.
- b. Parties may, if they desire, file trial briefs. Any such briefs must be filed at least ten business days prior to trial. Opposing parties may respond to such trial briefs at least five business days prior to trial. The briefs, if any, should not exceed ten typed pages and must otherwise comply with this court's Exhibit A to scheduling Order, and must be submitted in WordPerfect by email to chambers (Bowdre_chambers@alnd.uscourts.gov).

Five business days prior to the scheduled trial date, each party will submit the following to the court's chambers:

- a. Any special questions or topics for voir dire examination of the jury venire.

6. Jury Charges.

At least five business days prior to the scheduled trial date, the parties must file a **single, joint proposed jury charge**, including all necessary instructions, or definitions applicable to the specific issues of the case. The court's standard instructions may be found on the court's website (www.alnd.uscourts.gov/bowdre/BowdrePage.htm) and need not be submitted to the court.

- a. **Each** requested **instruction** must be numbered and presented on a separate sheet of paper with authority cited.
- b. In joint, proposed jury materials, counsel are to include all necessary instructions or definitions, specifically including (1) the *prima facie* elements of each cause of action and defense asserted; (2) legal definitions required by the jury; (3) items of damages; and (4) methods of calculation of damages. Counsel are to use the 11th Circuit Pattern Jury Instructions, or appropriate state pattern jury instructions, as modified by case law or statutory amendments, wherever possible. Any deviations must be identified, and accompanied with legal authorities for the proposed deviation.

- c. Even if the parties, in good faith, cannot agree on all instructions, definitions or questions, the parties should nonetheless submit a single, **unified** charge. Each disputed instruction, definition, or question should be set out in bold type, underlined or italics and identified as disputed. Each disputed item should be labeled to show which party is requesting the disputed language. Accompanying each instruction shall be all authority or related materials upon which each party relies.
- d. **The parties shall also submit a WordPerfect version of the proposed jury charges to chambers by email to Bowdre_chambers@alnd.uscourts.gov.**

7. **Court's Expectations.**

- a. The court will expect all parties to be ready for trial as of the trial date set in the Pretrial Order unless continuance is requested within ten business days after the date the court enters the Pretrial Order. Continuances based on inadequate preparation will not be considered favorably.
- b. The court calls to the attention of all parties the various time requirements in the Pretrial Order and Exhibits. The court strictly adheres to these time requirements to avoid last minute requests for rulings.
- c. Any case announced settled after the Pretrial Conference but before the scheduled trial date will be dismissed with prejudice and with costs taxed as paid on the scheduled trial date unless a different stipulated judgment form is submitted on or before the scheduled trial date.