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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

ALLSTATE INSURANCE COMPANY, )  
Plaintiff, )  
v. )  
UNITED STATES OF AMERICA, )  
Defendant. )

No. CV 08-8034-PHX-SMM

**RULE 16 SCHEDULING ORDER**

On October 27, 2008, a status conference was held in open court. Pursuant to the Court's Order at this status conference, the parties were asked to stipulate to deadlines for the completion of discovery and dispositive motions (Doc. 18). Pending before the Court is the parties Stipulated Motion for Scheduling Order (Doc. 20). In accordance with that Stipulation, the Court orders the following:

**IT IS HEREBY ORDERED GRANTING** the Stipulated Motion for Scheduling Order (Doc. 20).

**IT IS FURTHER ORDERED** that the current provisions of the Federal Rules of Civil Procedure shall apply to all proceedings concerning this case.

**IT IS FURTHER ORDERED** that all Initial Disclosures as defined in Federal Rule of Civil Procedure 26(a), if not already exchanged prior to the time of this Preliminary Pretrial Conference, shall be made **no later than five (5) days** after date of entry of this Order or, in the alternative, no later than     N/A    .

1           **IT IS FURTHER ORDERED** that to satisfy the requirements of Federal Rule of  
2 Civil Procedure 26(a), the parties shall file with the Clerk of the Court a Notice of Initial  
3 Disclosure, rather than copies of the actual disclosures.

4           **IT IS FURTHER ORDERED** that any amendment to the Complaint shall be filed  
5 no later than \_\_\_N/A\_\_\_. Any amendment to the Answer shall be filed no later than  
6 \_\_\_N/A\_\_\_. **IT IS HEREBY ORDERED** that the current provisions of the Federal Rules  
7 of Civil Procedure shall apply to all proceedings concerning this case.

8           **IT IS FURTHER ORDERED** that the Plaintiff(s) shall disclose the identity of any  
9 person who may be used at trial to present evidence under Federal Rules of Evidence 701,  
10 702, 703, 704, and 705 no later than **December 12, 2008.**<sup>1</sup> The Defendant(s) shall disclose  
11 the identity of any person who may be used at trial to present evidence under Federal Rules  
12 of Evidence 701, 702, 703, 704, or 705 no later than **January 23, 2009.** Rebuttal experts if  
13 any, shall be disclosed no later than **February 20, 2009.** No deposition of any expert  
14 witnesses shall occur before the disclosures concerning expert witnesses mandated by this  
15 Order are made.

16           **IT IS FURTHER ORDERED** that the disclosures of the identities of any persons  
17 who may be used at trial to present evidence under Federal Rules of Evidence 701, 702, 703,  
18 704, or 705 shall also include all of the disclosures required by Federal Rule of Civil  
19 Procedure 26(a)(2)(B) if the witness is either (1) retained or specifically employed to provide  
20 expert testimony in the case, or (2) is an agent or employee of the party offering the  
21 testimony whose duties regularly involve giving expert testimony.

22           **IT IS FURTHER ORDERED** that all discovery, including depositions of parties,  
23 witnesses, and experts, answers to interrogatories, and supplements to interrogatories must  
24 be completed by **March 27, 2009.** In no event, however, shall this provision alter the duties  
25 and obligations imposed upon the parties by Federal Rule of Civil Procedure 26(e). This  
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27           <sup>1</sup> The parties are hereby given notice that this Order requires disclosure greater than that  
28 required by Federal Rule of Civil Procedure 26(a)(2).

1 Order contemplates that each party will conduct discovery in such a manner as to complete,  
2 within the deadline, any and all discovery. "Last minute" or "eleventh hour" discovery which  
3 results in insufficient time to undertake additional discovery and which requires an extension  
4 of the discovery deadline will be met with disfavor, and could result in denial of an  
5 extension, exclusion of evidence, or the imposition of other sanctions.

6 **IT IS FURTHER ORDERED** that depositions shall be limited as provided by Rules  
7 30 and 31 of the Federal Rules of Civil Procedure unless the parties otherwise stipulate in  
8 writing when permitted to do so pursuant to the Rules or when granted permission to depart  
9 from the provisions of the Rules by Order of this Court. Notwithstanding any provision in  
10 the Federal Rules of Civil Procedure or the Local Rules, the parties shall conduct no more  
11 than **10 depositions**.

12 **IT IS FURTHER ORDERED** pursuant to Federal Rule of Civil Procedure 30(d)(2)  
13 that there shall be a time limit of **4 hours**<sup>2</sup> to conduct a deposition of any witness in this case.  
14 Additional time shall be allowed where the deponent or a party impedes or delays the  
15 examination. This time limit may only be extended by Order of this Court upon motion of  
16 any party that demonstrates good cause for doing so. Counsel shall conduct themselves  
17 courteously and professionally, especially during the taking of depositions. Any objections  
18 made during the course of a deposition must be in accordance with Rule 26(d)(1) of the  
19 Federal Rules of Civil Procedure.

20 **IT IS FURTHER ORDERED** that notwithstanding any provisions of the Federal  
21 Rules of Civil Procedure or any other provisions of this Order, non-party witnesses shall not  
22 be permitted to attend, either physically, electronically, or otherwise, the deposition of any  
23 other witness in this case without an Order of this Court to the contrary.

24 **IT IS FURTHER ORDERED** that discovery by interrogatory shall generally be  
25 governed by Federal Rule of Civil Procedure 33. However, notwithstanding Federal Rule  
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27 <sup>2</sup> The Court finds that a presumptive limit of four (4) hours is sufficient for depositions  
28 in a standard track civil case.

1 of Civil Procedure 33, there is a limit of **25 interrogatories**, including discrete subparts,  
2 applicable to this case.

3 **IT IS FURTHER ORDERED** that requests for admissions shall be governed by  
4 Federal Rule of Civil Procedure 36. The parties shall serve no more than **25 requests for**  
5 **admissions.**

6 **IT IS FURTHER ORDERED** reminding counsel of their duty under Rule 26(e) of  
7 the Federal Rules of Civil Procedure to supplement all Rule 26(a) disclosures and responses  
8 to discovery requests. Pursuant to Rule 26(e)(1), any additions or other changes to  
9 information previously disclosed must be made prior to the time that Rule 26(a)(3) Pretrial  
10 Disclosures are due. Since this Court effectively requires all Rule 26(a)(3) Pretrial  
11 Disclosures to be contained in the Proposed Final Pretrial Order, this Order contemplates that  
12 all exhibits and witnesses that may be offered at trial will have been disclosed before the  
13 close of discovery as established by the provisions of this Order. This Order therefore  
14 supersedes the "thirty-day before trial" disclosure deadline contained in that Rule. Therefore  
15 (1) failure to have timely supplemented a Rule 26(a) disclosure, including but not limited to  
16 witnesses and exhibits, or (2) a failure to have timely supplemented responses to any valid  
17 discovery requests, or (3) attempting to include any witnesses or exhibits in the Proposed  
18 Final Pretrial Order that were not previously disclosed in a timely manner as to allow for  
19 meaningful discovery prior to the discovery cutoff date as established by this Order, may  
20 result in the exclusion of such evidence at trial or the imposition of other sanctions.

21 **IT IS FURTHER ORDERED** that, **in the event of a discovery dispute, the parties**  
22 **shall contact the Court to request a telephonic conference prior to filing any discovery**  
23 **motions.** The parties shall not contact the Court regarding a discovery dispute unless they  
24 have been unable to resolve the dispute themselves, despite personal consultation and sincere  
25 efforts to do so. The parties shall not file any written materials related to a discovery dispute  
26 or discovery motion without express leave of Court. If the Court does order written  
27 submissions, the movant shall include a statement certifying that counsel could not  
28 satisfactorily resolve the matter despite personal consultation and sincere efforts to do so, in

1 accordance with LRCiv 7.2(j) of the Rules of Practice of the United States District Court for  
2 the District of Arizona.

3 **IT IS FURTHER ORDERED** that all dispositive motions shall be filed no later than  
4 **April 10, 2009**. Such motions must be, in all respects, in full compliance with the Rules of  
5 Practice of the United States District Court for the District of Arizona.

6 **IT IS FURTHER ORDERED** that no submissions to the Court shall contain any  
7 footnotes in excess of five (5) lines.

8 **IT IS FURTHER ORDERED** that all parties are hereby specifically admonished that  
9 failure to respond to a motion by serving and filing an answering memorandum within the  
10 time period expressly provided for in LRCiv 7.2 of the Rules of Practice of the United States  
11 District Court for the District of Arizona may be deemed a consent to the denial or granting  
12 of the motion and the Court may then dispose of the motion summarily.

13 **IT IS FURTHER ORDERED** that the parties shall not notice oral argument on any  
14 motion. Instead, a party desiring oral argument on a motion shall request argument by  
15 placing "Oral Argument Requested" immediately below the title of such motion, pursuant  
16 to LRCiv 7.2(f) of the Rules of Practice of the United States District Court for the District  
17 of Arizona. The Court will then issue a minute order scheduling the oral argument.

18 Oral argument shall be scheduled at the request of a party on all motions to dismiss  
19 and motions for summary judgment. On all other motions on which a party requests oral  
20 argument, the Court will determine whether oral argument is necessary. FURTHER, THE  
21 PARTIES ARE REMINDED THAT OBTAINING A HEARING DATE IS PURELY  
22 ADMINISTRATIVE. ACCORDINGLY, REGARDLESS OF A HEARING DATE, THE  
23 COURT MAY, AT ANY TIME AFTER THE MOTION IS FULLY BRIEFED,  
24 DETERMINE THAT A HEARING IS UNWARRANTED AND RULE ON THE MOTION  
25 WITHOUT ORAL ARGUMENT.

26 **IT IS FURTHER ORDERED** that any and all motions, requests, or stipulations for  
27 extensions of time shall be made in accordance with the provisions of LRCiv 7.3 of the Rules  
28 of Practice of the United States District Court for the District of Arizona. Notwithstanding

1 this directive, however, if such a motion, request, or stipulation seeks an extension of time  
2 in which to file a memorandum in response or in reply to a motion previously noticed for oral  
3 argument, under no circumstances shall such a motion, request, or stipulation seek an  
4 extension that would preclude the Court from having at least thirty (30) days from the due  
5 date for the filing of the reply memorandum to consider the merits of the underlying motion  
6 unless the motion, request, or stipulation also seeks to vacate and reschedule the oral  
7 argument. Any motion, request, or stipulation that so seeks both an extension of time and  
8 rescheduling of a hearing shall contain a memorandum of points and authorities which  
9 demonstrates good cause for the Court to grant the requested extension.

10 **IT IS FURTHER ORDERED** that, if no dispositive motions are pending before the  
11 Court after the dispositive motions deadline has passed, Plaintiff(s) shall file a Notice of  
12 Readiness for Order Re: Final Pretrial Conference within ten (10) days of the dispositive  
13 motions deadline.

14 **IT IS FURTHER ORDERED** that, if dispositive motions are pending before the  
15 Court following the dispositive motions deadline, the Court will issue an Order Re: Final  
16 Pretrial Conference following its resolution of the dispositive motions, if necessary.

17 **IT IS FURTHER ORDERED** that the Order Re: Final Pretrial Conference shall: 1)  
18 set deadlines for the filing of and response to motions in limine; 2) instruct the parties on  
19 their duties in preparing for the Final Pretrial Conference and for trial; and 3) include a form  
20 for the completion of the parties' Proposed Pretrial Form of Order.

21 **IT IS FURTHER ORDERED** that the parties shall keep the Court informed  
22 regarding the possibility of settlement and should settlement be reached, the parties shall file  
23 a Notice of Settlement with the Clerk of the Court.

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**IT IS FURTHER ORDERED** that this Court views compliance with the provisions of this Order as critical to its case management responsibilities and the responsibilities of the parties under Rule 16 of the Federal Rules of Civil Procedure.

DATED this 3<sup>rd</sup> day of November, 2008.



Stephen M. McNamee  
United States District Judge