

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PRAETORIAN INSURANCE
COMPANY,

Plaintiff,

v.

WESTERN MILLING, LLC,

Defendant.

Case No. 1:15-CV-00557 DAD EPG

**ORDER SETTING MANDATORY
SCHEDULING CONFERENCE**

DATE: 4/21/2016

TIME: 9:00 A.M.

COURTROOM: 10 (6th Floor)

**ERICA P. GROSJEAN
U.S. MAGISTRATE JUDGE**

Pursuant to the reassignment of this matter to District Judge Dale A. Drozd, and as the matter is no longer stayed, the Court sets a Mandatory Scheduling Conference as noted above.

Appearance at Scheduling Conference

Attendance at the Scheduling Conference is *mandatory* for all parties. Parties may appear by their counsel, if represented. If a party is not represented by counsel, they must appear personally at the Scheduling Conference. **Telephonic appearances are not available for pro se parties, i.e., those not represented by counsel.** Trial counsel should participate in this Scheduling Conference whenever possible.

If one or more parties are represented by counsel and wish to appear telephonically,

1 counsel shall contact Amanda Martinez, Courtroom Deputy Clerk, at (559) 499-5962 sufficiently
2 in advance of the conference so that a notation can be placed on the court calendar. If more than
3 one party is appearing telephonically, counsel shall decide who will be responsible for arranging a
4 one-line conference call and shall initiate the call at the designated time. *After all parties are on*
5 *the line*, the call should then be placed to Judge Grosjean's chambers at (559) 499-5960.
6 Additionally, counsel are directed to indicate on the face page of their Joint Scheduling Report
7 that the conference will be telephonic.

8 **Joint Scheduling Report**

9 A Joint Scheduling Report, carefully prepared and executed by all counsel shall be
10 electronically filed in CM/ECF, one (1) full week prior to the Scheduling Conference and shall be
11 emailed in Word format to epgorders@caed.uscourts.gov. The Joint Scheduling Report shall
12 indicate the date, time, and courtroom of the Scheduling Conference. This information is to be
13 placed opposite the caption on the first page of the Report.

14 At least twenty (20) days prior to the Mandatory Scheduling Conference, trial counsel for
15 all parties shall conduct a conference at a mutually agreed upon time and place. This should
16 preferably be a personal conference between all counsel but a telephonic conference call
17 involving all counsel/pro se parties is permissible. The Joint Scheduling Report shall contain the
18 following items by corresponding numbered paragraphs:

- 19 1. Summary of the factual and legal contentions set forth in the pleadings of each
20 party, including the relief sought by any party presently before the Court.
- 21 2. Summary of major disputed facts and contentions of law.
- 22 3. A proposed deadline for amendments to pleadings. Any proposed amendment to
23 the pleadings shall be referenced in the Scheduling Conference Report. If the matter cannot be
24 resolved at the Scheduling Conference, the moving party shall file a motion to amend in
25 accordance with the Local Rules of the Eastern District of California.
- 26 4. The status of all matters which are presently set before the Court, e.g., hearings of
27 motions, etc.
- 28 5. A complete and detailed discovery plan addressing the following issues and

1 proposed dates:

- 2 a. A date for the exchange of initial disclosures required by
3 Fed. R. Civ. P. 26(a)(1) or a statement that disclosures have already been
4 exchanged;
- 5 b. A firm cut-off date for non-expert discovery. When setting this date, the
6 parties should consider that discovery cutoffs requires that motions to
7 compel be filed and heard sufficiently in advance of the deadline so that the
8 Court may grant effective relief within the allotted discovery time;
- 9 c. A firm date for disclosure of expert witnesses, required by Fed. R. Civ. P.
10 26(a)(2), including a date for disclosure of rebuttal experts;
- 11 d. A firm cut-off date for all expert witness discovery;
- 12 e. Any proposed changes in the limits on discovery imposed by
13 Fed. R. Civ. P. 26(b); 30(a)(2)(A), (B); 30(d); or 33(a);
- 14 f. Whether the parties anticipate the need for a protective order relating to the
15 discovery of information relating to a trade secret or other confidential
16 research, development, or commercial information;
- 17 g. Any issues or proposals relating to the timing, sequencing, phasing or
18 scheduling of discovery; and
- 19 h. Whether the parties anticipate the need to take discovery outside the United
20 States and, if so, a description of the proposed discovery.

21 **Additional Disclosures Related to Electronic Discovery**

22 1. Discovery Relating to Electronic, Digital and/or Magnetic Data. Prior to a
23 Fed. R. Civ. P. 26(f) conference, counsel should carefully investigate their respective
24 client's information management system so that they are knowledgeable as to its
25 operation, including how information is stored and how it can be retrieved. Counsel shall
26 also conduct a reasonable review of their respective client's computer files to ascertain the
27 contents thereof, including archival and legacy data (outdated formats or media), and
28 disclose in initial discovery (self-executing routine discovery) the computer-based

1 evidence which may be used to support claims or defenses.

2 2. The parties shall meet and confer regarding the following matters during
3 the Fed. R. Civ. P. 26(f) conference, and address the status of Electronic Discovery and
4 any disagreements in their Statement, including:

5 a. Preservation: The parties shall attempt to agree on steps the
6 parties will take to segregate and preserve computer-based
7 information in order to avoid accusations of spoliation.

8 b. Scope of E-mail Discovery: The parties shall attempt to
9 agree as to the scope of e-mail discovery and attempt to agree upon
10 an e-mail search protocol. The parties should seek to agree on
11 search terms, custodians, and date ranges in advance of the
12 Conference so that any disputes can be addressed at the Conference.

13 c. Inadvertent Production of Privileged Information: The
14 parties should confer regarding procedures for inadvertent
15 production of privileged electronic material, including any
16 obligations to notify the other party, and procedures for bringing
17 any disputes promptly to the Court.

18 d. Data Restoration: The parties shall confer regarding whether
19 or not restoration of deleted information may be necessary, the
20 extent to which restoration of deleted information is needed, and
21 who will bear the costs of restoration; and the parties shall attempt
22 to agree whether or not back-up data may be necessary, the extent
23 to which backup data is needed and who will bear the cost of
24 obtaining back-up data.

25 6. Dates agreed to by all counsel for:

26 a. Filing non-dispositive and dispositive pre-trial motions (except motions *in*
27 *limine* or other trial motions). When formulating the dates for these
28 deadlines, the non-dispositive filing deadline shall be at least eight (8)

1 weeks prior to the dispositive motion filing deadline. The dispositive
2 motion filing deadline shall be at least twelve (12) weeks prior to the
3 proposed Pre-Trial Conference date, and the hearing on dispositive motions
4 shall be at least sixty (60) days before the proposed Pre-trial Conference
5 date.

6 b. A Pre-Trial Conference Date.

7 c. A Trial date. This date should be at least sixty (60) days after the proposed
8 Pre-Trial Conference date.

9 7. The parties are encouraged to discuss settlement, and must include a statement in
10 the Joint Scheduling Report as to the possibility of settlement. The parties shall indicate when
11 they desire a settlement conference, e.g., before further discovery, after discovery, after pre-trial
12 motions, etc. Among other things, counsel will be expected to discuss the possibility of settlement
13 at the Scheduling Conference. Note that, even if settlement negotiations are progressing, counsel
14 are expected to comply with the requirements of this Order unless otherwise excused by the
15 Court. If the entire case is settled, counsel shall **promptly** inform the Court. In the event of
16 settlement, counsel's presence at the conference, as well as the Joint Scheduling Report, will not
17 be required.

18 8. A statement as to whether the case is a jury or non-jury case. The parties shall
19 briefly outline their respective positions if there is a disagreement as to whether a jury trial has
20 been timely demanded, or as to whether a jury trial is available on some or all of the claims.

21 9. An estimate of the number of trial days is required. If the parties cannot agree,
22 each party shall give his or her best estimate.

23 10. The parties' position regarding consent to proceed before a United States
24 magistrate judge. Note that the parties need not make a final decision on the issue of consent
25 until after the Scheduling Conference, but should state their current position in this Statement and
26 expect to make a final decision soon after the Scheduling Conference.

27 The parties may wish to consider that, when a civil trial is set before the district judges in
28 the Fresno Division, any criminal trial that conflicts with the civil trial will take priority, even if

1 the civil trial was set first. Continuances of civil trials under these circumstances may no longer
2 be entertained, absent good cause, but the civil trial may instead *trail* from day to day or week to
3 week until the completion of either the criminal case or the older civil case.

4 Parties are free to withhold consent or decline magistrate jurisdiction without adverse
5 substantive consequences.

6 11. Whether either party requests bifurcation or phasing of trial or has any other
7 suggestion for shortening or expediting discovery, pre-trial motions or trial.

8 12. Whether this matter is related to any matter pending in this court or any other
9 court, including bankruptcy court.

10 **Scheduling Order**

11 Following the Scheduling Conference, the Court will issue a Scheduling Order with the
12 benefit of the input of the parties. Once issued, the dates in the Scheduling Order shall be firm
13 and no extension shall be given without permission from the Court.

14 **Lack of Participation in the Joint Scheduling Report**

15 If any party fails to participate in the preparation of the Joint Scheduling Report, the non-
16 offending party shall detail the party's effort to get the offending party to participate in the Joint
17 Scheduling Report. The non-offending party shall still file the report one (1) full week prior to
18 the Mandatory Scheduling Conference and shall list the non-offending party's position on the
19 listed issues and proposed dates for a schedule. Absent good cause, the dates proposed by the
20 non-offending party will be presumed to be the dates offered by the parties. The offending party
21 may be subject to sanctions, including monetary sanctions to compensate the non-offending
22 party's time and effort incurred in seeking compliance with this Scheduling Order.

23 **Important Chambers' Information**

24 The parties are directed to the Court's website at www.caed.uscourts.gov under **Judges;**
25 **Grosjean (EPG); Standard Information (in the area entitled "Case Management**
26 **Procedures")** for specific information regarding Chambers' procedures. Information about law
27 and motion, scheduling conferences, telephonic appearances, and discovery disputes is provided
28 at this link.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Sanctions for Failure to Comply

Should counsel or a party appearing pro se fail to appear at the Mandatory Scheduling Conference, or fail to comply with the directions as set forth above, an ex parte hearing may be held and contempt sanctions, including monetary sanctions, dismissal, default, or other appropriate judgment, may be imposed and/or ordered.

IT IS SO ORDERED.

DATED: 3/3/2016

/s/ ERICA P. GROSJEAN
UNITED STATES MAGISTRATE JUDGE