

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

AMERISURE INSURANCE COMPANY,) Case No.: 1:20-CV-01134-DAD-JLT
Plaintiff,)
v.) SCHEDULING ORDER (Fed. R. Civ. P. 16)
R&L CARRIERS, INC, A CORPORATION,) Pleading Amendment Deadline: 2/12/2021
et al.,)
Defendants.)

Discovery Deadlines:
Initial Disclosures: 12/14/2020
Non-Expert: 5/11/2021
Expert: 7/26/2021
Mid-Discovery Status Conference:
2/19/2021 at 8:30 a.m.

Non-Dispositive Motion Deadlines:
Filing: 8/9/2021
Hearing: 9/7/2021

Dispositive Motion Deadlines:
Filing: 10/7/2021
Hearing: 11/16/2021

Settlement Conference:
3/28/2022 at 9:00 a.m.
510 19th Street, Bakersfield, CA

Pre-Trial Conference:
6/6/2022 at 1:30 p.m.
Courtroom 5

1 **I. Magistrate Judge Consent**

2 The Court notes that the parties indicate they consent to magistrate judge jurisdiction. However,
3 until the remaining defendants have appeared, or default judgments have been issued against them, the
4 question of magistrate judge jurisdiction is premature.

5 **II. Pleading Amendment Deadline**

6 Any requested pleading amendments are ordered to be filed, either through a stipulation or
7 motion to amend, no later than **February 12, 2021**. Any motion to amend the pleadings shall be heard
8 by the Honorable Dale A. Drozd, United States District Court Judge.

9 **III. Discovery Plan and Cut-Off Date**

10 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)
11 on or before **December 14, 2020**.

12 The parties are ordered to complete all discovery pertaining to non-experts on or before **May**
13 **11, 2021** and all discovery pertaining to experts on or before **July 26, 2021**.

14 The parties are directed to disclose all expert witnesses, in writing, on or before **May 25, 2021**,
15 and to disclose all rebuttal experts on or before **June 24, 2021**. The written designation of retained and
16 non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and**
17 **shall include all information required thereunder**. Failure to designate experts in compliance with
18 this order may result in the Court excluding the testimony or other evidence offered through such
19 experts that are not disclosed pursuant to this order.

20 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to experts
21 and their opinions. Experts must be fully prepared to be examined on all subjects and opinions
22 included in the designation. Failure to comply will result in the imposition of sanctions, which may
23 include striking the expert designation and preclusion of expert testimony.

24 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement
25 disclosures and responses to discovery requests will be strictly enforced.

26 A mid-discovery status conference is scheduled for **February 19, 2021** at 8:30 a.m. before the
27 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,
28 California. Counsel SHALL file a joint mid-discovery status conference report one week before the

1 conference. Counsel also SHALL lodge the status report via e-mail to JLToorders@caed.uscourts.gov.
2 The joint statement SHALL outline the discovery counsel have completed and that which needs to be
3 completed as well as any impediments to completing the discovery within the deadlines set forth in this
4 order. **Counsel SHALL discuss settlement and certify that they have done so.** Counsel may appear
5 via teleconference by dialing (888) 557-8511 and entering Access Code 1652736, provided the
6 Magistrate Judge's Courtroom Deputy Clerk receives a written notice of the intent to appear
7 telephonically no later than five court days before the noticed hearing date.

8 **IV. Pre-Trial Motion Schedule**

9 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
10 than **August 9, 2021**¹ and heard on or before **September 7, 2021**. Discovery motions are heard before
11 the Honorable Jennifer L. Thurston, United States Magistrate Judge at the United States Courthouse in
12 Bakersfield, California. For these hearings, counsel may appear via teleconference by dialing (888)
13 557-8511 and entering Access Code 1652736, provided the Magistrate Judge's Courtroom Deputy
14 Clerk receives a written notice of the intent to appear telephonically no later than five court days before
15 the noticed hearing date. All other non-dispositive hearings SHALL be set before Judge Drozd.

16 **No motion to amend or stipulation to amend the case schedule will be entertained unless it**
17 **is filed at least one week before the first deadline the parties wish to extend.** Likewise, no written
18 discovery motions shall be filed without the prior approval of the assigned Magistrate Judge. A party
19 with a discovery dispute must first confer with the opposing party in a good faith effort to resolve by
20 agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party promptly
21 shall seek a telephonic hearing with all involved parties and the Magistrate Judge. It shall be the
22 obligation of the moving party to arrange and originate the conference call to the court. To schedule
23 this telephonic hearing, the parties are ordered to contact the Courtroom Deputy Clerk, Susan Hall, at
24 (661) 326-6620 or via email at SHall@caed.uscourts.gov. **Counsel must comply with Local Rule 251**
25 **with respect to discovery disputes or the motion will be denied without prejudice and dropped**

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¹ Non-dispositive motions related to non-expert discovery SHALL be filed within a reasonable time of
discovery of the dispute, but in no event later than 30 days after the expiration of the non-expert discovery
deadline.

1 **from the Court's calendar.**

2 All dispositive pre-trial motions shall be filed no later than **October 7, 2021** and heard no later
3 than **November 16, 2021**, in Courtroom 5 at 9:30 a.m. before the Honorable Dale A. Drozd, United
4 States District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R. Civ. P. 56**
5 **and Local Rules 230 and 260.**

6 **V. Motions for Summary Judgment or Summary Adjudication**

7 **At least 21 days before** filing a motion for summary judgment or motion for summary
8 adjudication, the parties are **ORDERED** to meet, in person or by telephone, to confer about the issues
9 to be raised in the motion.

10 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
11 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole
12 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the
13 issues for review by the court; 5) explore the possibility of settlement before the parties incur the
14 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

15 The moving party **SHALL** initiate the meeting and **SHALL** provide a complete, proposed
16 statement of undisputed facts **at least five days before** the conference. The finalized joint statement of
17 undisputed facts **SHALL** include all facts that the parties agree, for purposes of the motion, may be
18 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
19 statement of undisputed facts.

20 In the notice of motion the moving party **SHALL** certify that the parties have met and conferred
21 as ordered above, or set forth a statement of good cause for the failure to meet and confer. **Failure to**
22 **comply may result in the motion being stricken.**

23 **VI. Pre-Trial Conference Date**

24 **June 6, 2022** at 1:30 p.m. in Courtroom 5 before Judge Drozd.

25 The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule 281(a)(2).**
26 The parties are further directed to submit a digital copy of their pretrial statement in Word format,
27 directly to Judge Drozd's chambers, by email at DADorders@caed.uscourts.gov.

28 Counsel's attention is directed to **Rules 281 and 282 of the Local Rules** of Practice for the

1 Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference.
2 The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the
3 Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the
4 Court to explain the nature of the case to the jury during voir dire.

5 **VII. Settlement Conference**

6 A settlement conference is scheduled for **March 28, 2022** at 9:00 a.m., located at 510 19th
7 Street, Bakersfield, California.

8 Unless otherwise permitted in advance by the Court, **the attorneys who will try the case**
9 **shall appear** at the Settlement Conference **with the parties** and the person or persons having **full**
10 **authority** to negotiate and settle the case **on any reasonable terms**² discussed at the conference.

11 Consideration of settlement is a serious matter that requires preparation prior to the settlement
12 conference. Set forth below are the procedures the Court will employ, absent good cause, in
13 conducting the conference.

14 **At least 21 days before** the settlement conference, Plaintiff **SHALL** submit to Defendant via
15 fax or e-mail, a written itemization of damages and a meaningful³ settlement demand which includes a
16 brief explanation of why such a settlement is appropriate. Thereafter, **no later than 14 days before** the
17 settlement conference, Defendant **SHALL** respond via fax or e-mail, with an acceptance of the offer or
18 with a meaningful counteroffer, which includes a brief explanation of why such a settlement is
19 appropriate. **The parties SHALL continue to exchange counteroffers until it is no longer**
20 **productive.**

21 If settlement is not achieved, each party **SHALL** attach copies of their settlement offers to
22 their Confidential Settlement Conference Statement, as described below. Copies of these documents
23 shall not be filed on the court docket.

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25 ² Insurance carriers, business organizations, and governmental bodies or agencies whose settlement
26 agreements are subject to approval by legislative bodies, executive committees, boards of directors or the like
may be represented by a person whose recommendations about settlement are relied upon by the ultimate
decision makers.

27 ³ “Meaningful” means the offer is reasonably calculated to settle the case on terms acceptable to the
offering party. “Meaningful” does not include an offer which the offering party knows will not be acceptable
28 to the other party. If, however, the offering party is only willing to offer a settlement which it knows the other
party will not accept, this should trigger a recognition the case is not in a settlement posture and the parties
should confer about continuing the settlement conference via stipulation.

CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT

At least five court days before the settlement conference, the parties shall submit, directly to Judge Thurston's chambers by e-mail to JLTOrders@caed.uscourts.gov, a Confidential Settlement Conference Statement. The statement **should not be filed** with the Clerk of the Court **nor served on any other party**, although the parties may file a Notice of Lodging of Settlement Conference Statement. Each statement shall be clearly marked "confidential" with the date and time of the Settlement Conference indicated prominently thereon.

The Confidential Settlement Conference Statement shall include the following:

- A. A brief statement of the facts of the case.
 - B. A brief statement of the claims and defenses, i.e., statutory or other grounds upon which the claims are founded; a forthright evaluation of the parties' likelihood of prevailing on the claims and defenses; and a description of the major issues in dispute.
 - C. A summary of the proceedings to date.
 - D. An estimate of the cost and time to be expended for further discovery, pretrial and trial.
 - E. The relief sought.
 - F. The party's position on settlement, including present demands and offers and a history of past settlement discussions, offers and demands.

VIII. Request for Bifurcation, Appointment of Special Master, or other Techniques to Shorten Trial

Not applicable at this time.

IX. Related Matters Pending

There are no pending related matters.

X. Compliance with Federal Procedure

All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently

handle its increasing case load and sanctions will be imposed for failure to follow both the Federal Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of California.

XI. Effect of this Order

The foregoing order represents the best estimate of the court and counsel as to the agenda most suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by subsequent status conference.

The dates set in this order are firm and will not be modified absent a showing of good cause even if the request to modify is made by stipulation. Stipulations extending the deadlines contained herein will not be considered unless they are accompanied by affidavits or declarations, and where appropriate attached exhibits, which establish good cause for granting the relief requested.

Failure to comply with this order may result in the imposition of sanctions.

IT IS SO ORDERED.

Dated: **November 18, 2020**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE