

1 II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

2 No joinder of parties or amendments to pleadings is
3 permitted without leave of court, good cause having been shown.

4 III. JURISDICTION/VENUE

5 Jurisdiction is predicated upon 28 U.S.C. sections 1332(d),
6 and 1453.

7 IV. CLASS CERTIFICATION

8 The Plaintiffs' Motion for Class Certification shall be
9 filed by within one (1) week of the Court's ruling on Defendant
10 Great American Insurance Company's Motion to Dismiss. The Class
11 Certification Hearing is set for **November 14, 2013 at 2:00 p.m.**

12 V. DISCOVERY

13 All discovery, with the exception of expert discovery, shall
14 be completed by **September 30, 2013**. In this context, "completed"
15 means that all discovery shall have been conducted so that all
16 depositions have been taken and any disputes relative to
17 discovery shall have been resolved by appropriate order if
18 necessary and, where discovery has been ordered, the order has
19 been obeyed. All motions to compel discovery must be noticed on
20 the magistrate judge's calendar in accordance with the local
21 rules of this Court.

22 VI. MOTION HEARING SCHEDULE

23 The last day to hear dispositive motions shall be **November**
24 **14, 2013**.

25 All purely legal issues are to be resolved by timely
26 pretrial motions. Failure to comply with Local Rules 230 and
27 260, as modified by this Order, may be deemed consent to the
28 motion and the Court may dispose of the motion summarily.

1 Further, failure to timely oppose a summary judgment motion¹ may
2 result in the granting of that motion if the movant shifts the
3 burden to the nonmovant to demonstrate that a genuine issue of
4 material fact remains for trial.

5 The Court places a page limit of twenty (20) pages on all
6 initial moving papers, twenty (20) pages on oppositions, and ten
7 (10) pages for replies. All requests for page limit increases
8 must be made in writing to the Court setting forth any and all
9 reasons for any increase in page limit.

10 The parties are reminded that a motion in limine is a
11 pretrial procedural device designed to address the admissibility
12 of evidence. The Court will look with disfavor upon
13 dispositional motions presented at the Final Pretrial Conference
14 or at trial in the guise of motions in limine.

15 The parties are cautioned that failure to raise a
16 dispositive legal issue that could have been tendered to the
17 court by proper pretrial motion prior to the dispositive motion
18 cut-off date may constitute waiver of such issue.

19 VII. FINAL PRETRIAL CONFERENCE

20 The Final Pretrial Conference is set for **March 13, 2014** at
21 **2:00 p.m.** At least one of the attorneys who will conduct the
22 trial for each of the parties shall attend the Final Pretrial
23 Conference. If by reason of illness or other unavoidable
24 circumstance a trial attorney is unable to attend, the attorney
25 who attends in place of the trial attorney shall have equal
26

27 ¹ The Court urges any party that contemplates bringing a
28 motion for summary judgment or who must oppose a motion for
summary judgment to review Local Rule 260.

1 familiarity with the case and equal authorization to make
2 commitments on behalf of the client.

3 Counsel for all parties are to be fully prepared for trial
4 at the time of the Final Pretrial Conference, with no matters
5 remaining to be accomplished except production of witnesses for
6 oral testimony.

7 The parties shall file, not later than **February 13, 2014**, a
8 Joint Final Pretrial Conference Statement. The provisions of
9 Local Rules 281 shall apply with respect to the matters to be
10 included in the Joint Final Pretrial Conference Statement. In
11 addition to those subjects listed in Local Rule 281(b), the
12 parties are to provide the Court with a plain, concise statement
13 that identifies every non-discovery motion tendered to the Court
14 and its resolution. Failure to comply with Local Rule 281, as
15 modified by this Pretrial Scheduling Order, may be grounds for
16 sanctions.

17 At the time of filing the Joint Final Pretrial Conference
18 Statement, counsel shall also electronically mail to the Court in
19 digital format compatible with Microsoft Word, the Joint Final
20 Pretrial Conference Statement in its entirety including the
21 witness and exhibit lists. **These documents shall be sent to:**
22 **tlorders@caed.uscourts.gov.**

23 The parties should identify first the core undisputed facts
24 relevant to all claims. The parties should then, in a concise
25 manner, identify those undisputed core facts that are relevant to
26 each claim. The disputed facts should be identified in the same
27 manner. Where the parties are unable to agree as to what
28 disputed facts are properly before the Court for trial, they

1 should nevertheless list all disputed facts asserted by each
2 party. Each disputed fact or undisputed fact should be
3 separately numbered or lettered.

4 Each party shall identify and concisely list each disputed
5 evidentiary issue which will be the subject of a motion in
6 limine.

7 Each party shall identify the points of law which concisely
8 describe the legal issues of the trial which will be discussed in
9 the parties' respective trial briefs. Points of law should
10 reflect issues derived from the core undisputed and disputed
11 facts. Parties shall not include argument or authorities with
12 any point of law.

13 The parties shall prepare a joint statement of the case in
14 plain concise language which will be read to the jury at the
15 beginning of the trial. The purpose of the joint statement is to
16 inform the jury what the case is about.

17 The parties are reminded that pursuant to Local Rule 281
18 they are required to list in the Joint Final Pretrial Conference
19 Statement all witnesses and exhibits they propose to offer at
20 trial. After the name of each witness, each party shall provide
21 a brief statement of the nature of the testimony to be proffered.
22 The parties may file a joint list or each party may file separate
23 lists. These list(s) shall not be contained in the body of the
24 Joint Final Pretrial Conference Statement itself, but shall be
25 attached as separate documents to be used as addenda to the Final
26 Pretrial Order.

27 Plaintiff's exhibits shall be listed numerically.
28 Defendants' exhibits shall be listed alphabetically. The parties

1 shall use the standard exhibit stickers provided by the Court
2 Clerk's Office: pink for plaintiff and blue for defendant. In
3 the event that the alphabet is exhausted, the exhibits shall be
4 marked "AA-ZZ" and "AAA-ZZZ" etc. After three letters, note the
5 number of letters in parenthesis (i.e., "AAAA(4)") to reduce
6 confusion at trial. All multi-page exhibits shall be stapled or
7 otherwise fastened together and each page within the exhibit
8 shall be numbered. All photographs shall be marked individually.
9 The list of exhibits shall not include excerpts of depositions,
10 which may be used to impeach witnesses. In the event that
11 Plaintiff and Defendant offer the same exhibit during trial, that
12 exhibit shall be referred to by the designation the exhibit is
13 first identified. The Court cautions the parties to pay
14 attention to this detail so that all concerned, including the
15 jury, will not be confused by one exhibit being identified with
16 both a number and a letter.

17 The Final Pretrial Order will contain a stringent standard
18 for the offering at trial of witnesses and exhibits not listed in
19 the Final Pretrial Order, and the parties are cautioned that the
20 standard will be strictly applied. On the other hand, the
21 listing of exhibits or witnesses that a party does not intend to
22 offer will be viewed as an abuse of the court's processes.

23 The parties also are reminded that pursuant to Rule 16 of
24 the Federal Rules of Civil Procedure it will be their duty at the
25 Final Pretrial Conference to aid the Court in: (a) the
26 formulation and simplification of issues and the elimination of
27 frivolous claims or defenses; (b) the settling of facts that
28 should properly be admitted; and (c) the avoidance of unnecessary

1 proof and cumulative evidence. Counsel must cooperatively
2 prepare the Joint Final Pretrial Conference Statement and
3 participate in good faith at the Final Pretrial Conference with
4 these aims in mind. A failure to do so may result in the
5 imposition of sanctions which may include monetary sanctions,
6 orders precluding proof, elimination of claims or defenses, or
7 such other sanctions as the Court deems appropriate.

8 VIII. TRIAL BRIEFS

9 The parties shall file trial briefs not later than **February**
10 **27, 2014**. Counsel are directed to Local Rule 285 regarding the
11 content of trial briefs.

12 IX. EVIDENTIARY AND/OR PROCEDURAL MOTIONS

13 Any evidentiary or procedural motions are to be filed by
14 **February 20, 2014**. Oppositions must be filed by **February 27,**
15 **2014** and any reply must be filed by **March 6, 2014**. The motions
16 will be heard by the Court at the same time as the Final Pretrial
17 Conference.

18 X. TRIAL SETTING

19 The trial is set for **May 19, 2014** at **9:00 a.m.** Trial will
20 be by jury. The panel will consist of **eight (8) jurors**. The
21 parties estimate a trial length of **five (5) days**.

22 XI. SETTLEMENT CONFERENCE

23 A Settlement Conference is set before Magistrate Judge
24 Carolyn K. Delaney on **October 11, 2013** at **9:30 a.m.** Each party is
25 directed to have a principal capable of disposition at the
26 Settlement Conference or to be fully authorized to settle the
27 matter on any terms at the Settlement Conference.

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1 Each party is directed to submit to the chambers of Judge
2 Carolyn K. Delaney confidential settlement conference statements
3 not later than October 4, 2013, to ckdorders@caed.uscourts.gov.
4 Such statements are neither to be filed with the clerk nor served
5 on opposing counsel. However, each party shall notify the other
6 party that the statement has been submitted to the judge's
7 chambers.

8 XII. VOLUNTARY DISPUTE RESOLUTION PROGRAM

9 Pursuant to Local Rule 271, parties may stipulate at any
10 stage in the proceedings to refer the action, in whole or in
11 part, to the Voluntary Dispute Resolution Program.

12 XIII. MODIFICATION OF PRETRIAL SCHEDULING ORDER

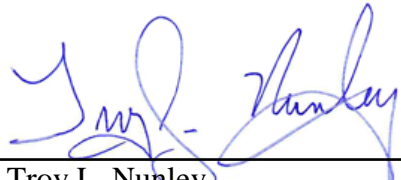
13 The parties are reminded that pursuant to Rule 16(b) of the
14 Federal Rules of Civil Procedure, the Pretrial Scheduling Order
15 shall not be modified except by leave of court upon a showing of
16 **good cause**. Agreement by the parties pursuant to stipulation
17 alone to modify the Pretrial Scheduling Order does not constitute
18 good cause. Except in extraordinary circumstances, unavailability
19 of witnesses or counsel will not constitute good cause.

20 XIV. OBJECTIONS TO PRETRIAL SCHEDULING ORDER

21 This Pretrial Scheduling Order will become final without
22 further order of the Court unless objections are filed within
23 fourteen (14) days of service of this Order.

24 IT IS SO ORDERED.

25 DATED: August 12, 2013

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27 _____
28 Troy L. Nunley
United States District Judge