

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 PRAETORIAN INSURANCE
12 COMPANY,

13 Plaintiff,

14 v.

15 A R BUSINESS GROUP, INC.,

16 Defendants.
17

No. 2:13-cv-02639-MCE-EFB

AMENDED PRETRIAL
SCHEDULING ORDER

18 After review of the docket, the Court makes the following orders.

19 I. DISCOVERY

20 All discovery, with the exception of expert discovery, shall be completed by
21 **May 16, 2016**. In this context, "completed" means that all discovery shall have been
22 conducted so that all depositions have been taken and any disputes relative to discovery
23 shall have been resolved by appropriate order if necessary and, where discovery has
24 been ordered, the order has been obeyed. All motions to compel discovery must be
25 noticed on the magistrate judge's calendar in accordance with the local rules of this
26 Court.

27 ///

28 ///

1 II. DISCLOSURE OF EXPERT WITNESSES

2 All counsel are to designate in writing, file with the Court, and serve upon all other
3 parties the name, address, and area of expertise of each expert that they propose to
4 tender at trial not later than **May 20, 2016**.¹ The designation shall be accompanied by a
5 written report prepared and signed by the witness. The report shall comply with Fed. R.
6 Civ. P. 26(a)(2)(B).

7 Within twenty (20) days after the designation of expert witnesses, any party may
8 designate a supplemental list of expert witnesses who will express an opinion on a
9 subject covered by an expert designated by an adverse party. The right to designate a
10 supplemental expert for rebuttal purposes only shall apply to a party who has not
11 previously disclosed an expert witness on the date set for expert witness disclosure by
12 this Pretrial Scheduling Order.

13 Failure of a party to comply with the disclosure schedule as set forth above in all
14 likelihood will preclude that party from calling the expert witness at the time of trial. An
15 expert witness not appearing on the designation will not be permitted to testify unless the
16 party offering the witness demonstrates: (a) that the necessity for the witness could not
17 have been reasonably anticipated at the time the list was proffered; (b) that the Court
18 and opposing counsel were promptly notified upon discovery of the witness; and (c) that
19 the witness was promptly made available for deposition.

20 For purposes of this Pretrial Scheduling Order, an “expert” is any person who may
21 be used at trial to present evidence under Rules 702, 703, and 705 of the Federal Rules
22 of Evidence, which include both “percipient experts” (persons who, because of their
23 expertise, have rendered expert opinions in the normal course of their work duties or
24 observations pertinent to the issues in the case) and “retained experts” (persons
25 specifically designated by a party to be a testifying expert for the purposes of litigation).

27 ¹ The discovery of experts will include whether any motions based on Daubert v. Merrell Dow
28 Pharmaceuticals, Inc., 509 U.S. 579 (1993) and/or Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999)
are anticipated.

Each party shall identify whether a disclosed expert is percipient, retained, or both. It will be assumed that a party designating a retained expert has acquired the express permission of the witness to be so listed. Parties designating percipient experts must state in the designation who is responsible for arranging the deposition of such persons.

All experts designated are to be fully prepared at the time of designation to render an informed opinion, and give their bases for their opinion, so that they will be able to give full and complete testimony at any deposition taken by the opposing party. Experts will not be permitted to testify at the trial as to any information gathered or evaluated, or opinion formed, after deposition taken subsequent to designation.

Counsel are instructed to complete all discovery of expert witnesses in a timely manner in order to comply with the Court's deadline for filing dispositive motions.

III. MOTION HEARING SCHEDULE

The last day to hear dispositive motions shall be **July 1, 2016**. All papers should be filed in conformity with the Local Rules. However, with respect to Motions for Summary Judgment only, the parties shall comply with the following filing deadlines:

Motion for Summary Judgment	filed at least 8 weeks prior to hearing
Opposition and any cross-motion	filed at least 5 weeks prior to hearing
Reply and opposition to cross-motion	filed at least 3 weeks prior to hearing
Reply to cross-motion	filed at least 1 week prior to hearing

Absent leave of the Court, all issues the parties wish to resolve on summary judgment must be raised together in one (1) motion or cross-motion. Should the parties wish to file additional motions for summary judgment, they must seek leave of the Court.

///

///

1 The parties are directed to the Court's website for available hearing dates.
2 (www.caed.uscourts.gov → choose Judges → choose Judge England → choose
3 Standard Information)

4 All purely legal issues are to be resolved by timely pretrial motions. When
5 appropriate, failure to comply with Local Rules 230 and 260, as modified by this Order,
6 may be deemed consent to the motion and the Court may dispose of the motion
7 summarily. With respect to motions for summary judgment, failure to comply with Local
8 Rules 230 and 260, as modified by this Order, may result in dismissal for failure to
9 prosecute (or failure to defend) pursuant to this Court's inherent authority to control its
10 docket and/or Federal Rule of Civil Procedure 41(b). Further, failure to timely oppose a
11 summary judgment motion² may result in the granting of that motion if the movant shifts
12 the burden to the nonmovant to demonstrate that a genuine issue of material fact
13 remains for trial.

14 The Court places a page limit for points and authorities (exclusive of exhibits and
15 other supporting documentation) of twenty (20) pages on all initial moving papers, twenty
16 (20) pages on oppositions, and ten (10) pages for replies. All requests for page limit
17 increases must be made in writing to the Court setting forth any and all reasons for any
18 increase in page limit at least seven (7) days prior to the filing of the motion.

19 For the Court's convenience, citations to the Supreme Court Lexis database
20 should include parallel citations to the Westlaw database.

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

25 ///

26 ///

27
28 ² The Court urges any party that contemplates bringing a motion for summary judgment or who
must oppose a motion for summary judgment to review Local Rule 260.

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

4 IV. FINAL PRETRIAL CONFERENCE

5 The Final Pretrial Conference is set for **November 17, 2016** at 2:00 p.m., in
6 courtroom 7. At least one of the attorneys who will conduct the trial for each of the
7 parties shall attend the Final Pretrial Conference. If by reason of illness or other
8 unavoidable circumstance a trial attorney is unable to attend, the attorney who attends in
9 place of the trial attorney shall have equal familiarity with the case and equal
10 authorization to make commitments on behalf of the client.

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

14 The parties shall file, not later than **October 27, 2016**, a Joint Final Pretrial
15 Conference Statement. The provisions of Local Rules 281 shall apply with respect to
16 the matters to be included in the Joint Final Pretrial Conference Statement. In addition
17 to those subjects listed in Local Rule 281(b), the parties are to provide the Court with a
18 plain, concise statement that identifies every non-discovery motion tendered to the Court
19 and its resolution. Failure to comply with Local Rule 281, as modified by this Pretrial
20 Scheduling Order, may be grounds for sanctions.

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

25 The parties should identify first the core undisputed facts relevant to all claims.
26 The parties should then, in a concise manner, identify those undisputed core facts that
27 are relevant to each claim.

28 ///

1 The disputed facts should be identified in the same manner. Where the parties are
2 unable to agree as to what disputed facts are properly before the Court for trial, they
3 should nevertheless list all disputed facts asserted by each party. Each disputed fact or
4 undisputed fact should be separately numbered or lettered.

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

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

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

18 Plaintiff exhibits shall be listed numerically. Defendants' exhibits shall be listed
19 alphabetically. The parties shall use the standard exhibit stickers provided by the Court
20 Clerk's Office: pink for plaintiff and blue for defendant. In the event that the alphabet is
21 exhausted, the exhibits shall be marked "AA-ZZ" and "AAA-ZZZ" etc. After three letters,
22 note the number of letters in parenthesis (i.e., "AAAA(4)") to reduce confusion at trial. All
23 multi-page exhibits shall be stapled or otherwise fastened together and each page within
24 the exhibit shall be numbered. All photographs shall be marked individually. The list of
25 exhibits shall not include excerpts of depositions, which may be used to impeach
26 witnesses. In the event that Plaintiff and Defendants offer the same exhibit during trial,
27 that exhibit shall be referred to by the designation the exhibit is first identified.

28 ///

1 The Court cautions the parties to pay attention to this detail so that all concerned will not
2 be confused by one exhibit being identified with both a number and a letter.

3 The Final Pretrial Order will contain a stringent standard for the offering at trial of
4 witnesses and exhibits not listed in the Final Pretrial Order, and the parties are cautioned
5 that the standard will be strictly applied. On the other hand, the listing of exhibits or
6 witnesses that a party does not intend to offer will be viewed as an abuse of the Court's
7 processes.

8 The parties also are reminded that pursuant to Rule 16 of the Federal Rules of
9 Civil Procedure it will be their duty at the Final Pretrial Conference to aid the Court in: (a)
10 the formulation and simplification of issues and the elimination of frivolous claims or
11 defenses; (b) the settling of facts that should properly be admitted; and (c) the avoidance
12 of unnecessary proof and cumulative evidence. Counsel must cooperatively prepare the
13 Joint Final Pretrial Conference Statement and participate in good faith at the Final
14 Pretrial Conference with these aims in mind. A failure to do so may result in the
15 imposition of sanctions which may include monetary sanctions, orders precluding proof,
16 elimination of claims or defenses, or such other sanctions as the Court deems
17 appropriate.

18 V. TRIAL BRIEFS

19 The parties shall file trial briefs not later than **October 27, 2016**. Counsel are
20 directed to Local Rule 285 regarding the content of trial briefs.

21 VI. EVIDENTIARY AND/OR PROCEDURAL MOTIONS

22 Any evidentiary or procedural motions are to be filed by **October 27, 2016**.
23 Oppositions must be filed by November 3, 2016, and any reply must be filed by
24 **November 10, 2016**. The motions will be heard by the Court at the same time as the
25 Final Pretrial Conference.

26 ///

27 ///

28 ///

1 VII. TRIAL SETTING

2 A one (1) day bench trial is set on **January 9, 2017**, at 9:00 a.m., in courtroom 7.

3 VIII. SETTLEMENT CONFERENCE

4 At the Final Pretrial Conference, the Court may set a settlement conference if the
5 parties so request. In the event no settlement conference is requested, the parties are
6 free to continue to mediate or attempt to settle the case with the understanding that the
7 trial date is a firm date.

8 In the event a settlement conference is set by the Court, counsel are instructed to
9 have a principal with full settlement authority present at the Settlement Conference or to
10 be fully authorized to settle the matter on any terms. At least seven (7) calendar days
11 before the settlement conference, counsel for each party shall submit to the chambers of
12 the settlement judge a confidential Settlement Conference Statement. Such statements
13 are neither to be filed with the Clerk nor served on opposing counsel. Each party,
14 however, shall serve notice on all other parties that the statement has been submitted. If
15 the settlement judge is not the trial judge, the Settlement Conference Statement shall not
16 be disclosed to the trial judge.

17 Notwithstanding the foregoing, the parties may request a settlement conference
18 prior to the Final Pretrial Conference if they feel it would lead to the possible resolution of
19 the case. In the event an early settlement conference date is requested, the parties shall
20 file said request jointly, in writing. The request must state whether the parties waive
21 disqualification, pursuant to Local Rule 270(b), before a settlement judge can be
22 assigned to the case. Absent the parties' affirmatively requesting that the assigned
23 Judge or Magistrate Judge participate in the settlement conference AND waiver,
24 pursuant to Local Rule 270(b), a settlement judge will be randomly assigned to the case.

25 IX. VOLUNTARY DISPUTE RESOLUTION PROGRAM

26 Pursuant to Local Rule 271 parties will need to lodge a stipulation and proposed
27 order requesting referral to the Voluntary Dispute Resolution Program.

28 ///

1 X. MODIFICATION OF THE AMENDED PRETRIAL SCHEDULING ORDER


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

8 XII. OBJECTIONS TO PRETRIAL SCHEDULING ORDER

9 This Pretrial Scheduling Order will become final without further order of the Court
10 unless objections are filed within seven (7) court days of service of this Order.

11 IT IS SO ORDERED.

12 Dated: April 27, 2016

13
14 
15 MORRISON C. ENGLAND, JR., CHIEF JUDGE
16 UNITED STATES DISTRICT COURT
17
18
19
20
21
22
23
24
25
26
27
28