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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT F. LYMAN, et al.,
Plaintiffs,
v.
UNION CARBIDE CORPORATION, et al.,
Defendants.

Case No. [07-cv-04240-WHO](#)

CIVIL PRETRIAL ORDER

A jury trial has been set in this matter for June 16, 2014, beginning at 8:30 A.M. with an attorney conference and jury selection to follow thereafter. A Pretrial Conference has been set for June 2, 2014 at 2:00 P.M.

1. Pretrial Conference and Statement

On or before May 23, 2014, lead trial counsel shall meet and confer with respect to:

- Preparation and content of the joint pretrial conference statement;
- Resolution of any differences between the parties regarding the preparation and content of the joint pretrial conference statement and the preparation and exchange of pretrial materials to be served and filed pursuant to this Order. To the extent such differences are not resolved, the parties will present the issues in the pretrial conference statement so that the judge may rule on the matter during the Pretrial Conference; and
- Settlement.

On or before May 28, 2014, the parties shall file a joint pretrial conference statement containing the following information:

- a. The Action

1 (i) Substance of the Action. A brief description of the substance of claims and defenses
2 which remain to be decided.

3 (ii) Relief Prayed. A detailed statement of all the relief claimed, particularly itemizing
4 all elements of damages claimed as well as witnesses, documents, or other evidentiary material to be
5 presented concerning the amount of those damages.

6 b. The Factual Basis of the Action

7 (i) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably
8 disputable, as well as which facts parties will stipulate for incorporation into the trial record without
9 the necessity of supporting testimony or exhibits.

10 (ii) Disputed Factual Issues. A plain and concise statement of all disputed factual issues
11 which remain to be decided.

12 (iii) Agreed Statement. A statement assessing whether all or part of the action may be
13 presented upon an agreed statement of facts.

14 (iv) Stipulations. A statement of stipulations requested or proposed for pretrial or trial
15 purposes.

16 c. Disputed Legal Issues

17 (i) Points of Law. Without extended legal argument, a concise statement of each
18 disputed point of law concerning liability or relief, citing supporting statutes and decisions setting forth
19 briefly the nature of each party's contentions concerning each disputed point of law, including
20 procedural and evidentiary issues.

21 (ii) Proposed Conclusions of Law. If the case is to be tried without a jury, unless
22 otherwise ordered, parties should briefly indicate objections to proposed conclusions of law.

23 d. Trial Preparation

24 (i) Witnesses to be Called. A list of all witnesses likely to be called at trial, other than
25 solely for impeachment or rebuttal, together with a brief statement following each name describing the
26 substance of the testimony to be given.
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(ii) Exhibits, Schedules and Summaries. A list of all documents and other items to be offered as exhibits at the trial, other than solely for impeachment or rebuttal, with a brief statement following each describing its substance or purpose and the identity of the sponsoring witness. Unless otherwise ordered, parties will indicate their objections to the receipt in evidence of exhibits and materials lodged and that counsel have conferred respecting such objections.

(iii) Estimate of Trial Time. An estimate of the number of court days needed for the presentation of each party's case, indicating possible reductions in time through proposed stipulations, agreed statements of facts, or expedited means of presenting testimony and exhibits.

(iv) Use of Discovery Responses. Counsel shall cite possible presentation at trial of evidence, other than solely for impeachment or rebuttal, through use of excerpts from depositions, from interrogatory answers, or from responses to requests for admission. Counsel shall indicate any objections to use of these materials and that counsel has conferred respecting such objections.

(v) Further Discovery or Motions. A statement of all remaining discovery or motions, including motions in limine.

e. Trial Alternatives and Options

(i) Settlement Discussion. A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.

(ii) Consent to Trial Before a Magistrate Judge. A statement whether reference of all or part of the action to a master or magistrate judge is feasible, including whether the parties consent to a court or jury trial before a magistrate judge, with appeal directly to the Ninth Circuit.

(iii) Amendments, Dismissals. A statement of requested or proposed amendments to pleadings or dismissals of parties' claims or defenses.

(iv) Bifurcation, Separate Trial of Issues. A statement of whether bifurcation or a separate trial of specific issues is feasible and desired.

1 **2. Witnesses**

2 a. Jury Trials. The Pretrial Conference Statement shall include the witness list required in
3 part by 1(d)(1) above. In addition, in the case of expert witnesses, the summary shall clearly state the
4 expert's theories and conclusions and the basis therefore and shall be accompanied by a curriculum
5 vitae; if the expert has prepared a report in preparation for the testimony, a copy thereof shall be
6 furnished to opposing counsel. Witnesses not included on the list may be excluded from testifying.

7 b. Non-Jury Trials. In non-jury cases, any party may serve and lodge with the Court a
8 written narrative statement of the proposed direct testimony of each witness under that party's control in
9 lieu of a summary. Each statement shall be marked as an exhibit and shall be in a form suitable to be
10 received into evidence.

11 **3. Jury Instructions**

12 a. Joint Set of Instructions. The parties shall jointly prepare a set of jury instructions, and
13 shall file the proposed instructions by May 28, 2014. The submission shall contain both agreed upon
14 instructions (which shall be so noted), and contested instructions, all in the order in which they should
15 be read to the jury. Where contested instructions are included, they should be annotated both with the
16 proponent's authority for seeking the instruction and the opponent's reason for opposition. Counsel
17 shall deliver to Chambers a copy of the joint submission, on a CD/DVD in Word format. The label
18 shall include the case number and a description of the documents.

19 b. Substance and Format of Instructions. The instructions shall cover all substantive
20 issues and other points not covered by the Ninth Circuit Manual of Model Jury Instructions. Each
21 requested instruction shall be typed in full on a separate page and citations to the authorities upon
22 which the instruction is based shall be included. Instructions shall be brief, clear, written in plain
23 English, and free of argument. Pattern or form instructions shall be revised to address the particular
24 facts and issues of this case.

25 c. Preliminary Statement and Instructions. If the parties wish to have a preliminary
26 statement read to the jury, and/or preliminary instructions given to the jury, they shall jointly prepare
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1 and file the text of the proposed preliminary statement and/or preliminary instructions by May 28,
2 2014.

3 d. Voir Dire and Verdict Forms. Each party shall serve and file proposed questions for
4 jury voir dire and a proposed Form of Verdict by May 28, 2014.

5 **4. Exhibits**

6 a. Provide Copies of Exhibits to Other Parties. Each party shall provide every other party
7 with one set of all proposed exhibits, charts, schedules, summaries, diagrams, and other similar
8 documentary materials to be used in its case in chief at trial, together with a complete list of all such
9 proposed exhibits. Voluminous exhibits shall be reduced by elimination of irrelevant portions or
10 through the use of summaries. Each item shall be pre-marked with a trial exhibit sticker (not
11 deposition exhibit label), and defendant's exhibit numbers shall be sequenced to begin after plaintiff's
12 exhibit numbers. If there are numerous exhibits, they should be provided in three-ring binders with
13 marked tab separators. All exhibits which have not been provided as required are subject to exclusion.

14 b. Stipulations re Admissibility. By May 28, 2014, the parties shall make a good faith
15 effort to stipulate to exhibits' admissibility. If stipulation is not possible, the parties shall make every
16 effort to stipulate to authenticity and foundation absent a legitimate (not tactical) objection.

17 c. Objections to Exhibits. In addition to the exhibit list, counsel shall confer with respect
18 to any other objections to exhibits in advance of the Pretrial Conference. Each party shall file a
19 statement briefly identifying each item objected to, the grounds for the objection, and the position of
20 the offering party by May 28, 2014.

21 d. Provide Copies of Exhibits to Court. Three sets of exhibits shall be provided to the
22 Court on the Friday prior to the trial date. Each set shall be in binders, marked, tabbed, and indexed
23 and shall be delivered/mailed directly to Chambers. Parties are to comply with Local Rule 16-10(b)(7).

24 e. Disposition of Exhibits after Trial. Upon the conclusion of the trial, each party shall
25 retain its exhibits through the appellate process. It is each party's responsibility to make arrangements
26 with the Clerk of Court to file the record on appeal.
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