

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Magistrate Judge Michael J. Watanabe**

**Civil Action No.** 09-cv-02429-REB-MJW

FTR - Courtroom A-502

**Date:** December 16, 2009

Courtroom Deputy, Ellen E. Miller

Parties

Counsel

CHEVRON U.S.A., INC.,

Joshua C. Krumholz (by telephone)

Rachel A. Yates

Plaintiff(s),

v.

GREGORY D. TIMM,  
CARY L. CARPENTER, and  
ALLEN VAN WYHE,

- - Not served - -  
Kyle J. Geditz

Defendant(s).

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**COURTROOM MINUTES / MINUTE ORDER**

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**HEARING: RULE 16(b) SCHEDULING CONFERENCE**

**Court in session:** 9:20 a.m.

Court calls case. Appearances of counsel. Also present is defendant Allen Van Wyhe.

It is noted defendant Gregory D. Timm has not been served. Discussion is held regarding Plaintiff's Motion for Substituted Service. With no objections,

**It is ORDERED:** Plaintiff Chevron's MOTION FOR SUBSTITUTED SERVICE ON DEFENDANT GREGORY TIMM [Docket No. 21, Filed December 16, 2009] is **GRANTED** for reasons as set forth on the record.

Plaintiff shall serve the Summons and Complaint, a copy of the Courtroom Minutes/Minute Order, and the Order granting the Motion for Substituted Service.

Mr. Geditz on behalf of defendants Carpenter and Van Wyhe makes an Oral Motion to Withdraw defendants' pending motions. With no objections,

**It is ORDERED:** Defendants ORAL MOTION TO WITHDRAW PENDING MOTIONS is **granted**.

**It is ORDERED:** The parties' STIPULATED MOTION FOR EXTENSION OF TIME TO ANSWER OR OTHERWISE RESPOND TO THE COMPLAINT [Docket No. 10, filed November 18, 2009] is **WITHDRAWN**.

**It is ORDERED:** Defendants Carptenter and Van Wyhe's MOTION FOR A MORE DEFINITE STATEMENT [Docket No. 12, Filed December 01, 2009] is **WITHDRAWN.**

For the purposes of discovery, the parties are determined to be "party groups" as follows:  
Plaintiff Chevron U.S.A. is one "party group"  
Defendants Cary L. Carpenter and Allen Van Wyhe are one "party group"  
Defendant Gregory D. Timm is one "party group"

The following will confirm the actions taken and dates set at the scheduling conference held this date:

Defendants Carpenter and Van Wyhe shall make their initial Rule 26(a)(1) disclosures **on or before DECEMBER 18, 2009.**

Parties shall file a Motion for Protective order and proposed Protective Order **on or before DECEMBER 28, 2009.**

Joinder of Parties/Amendment to Pleadings: **FEBRUARY 01, 2010**

Discovery Cut-off: **JUNE 30, 2010**

Dispositive Motions Deadline: **JULY 30, 2010**

Each "party group" shall be limited to two (2) expert witnesses, without further leave of Court. Parties shall designate experts **on or before APRIL 01, 2010**  
Parties shall designate rebuttal experts **on or before MAY 03, 2010**

Interrogatories, Requests for Production, and Requests for Admissions shall be served on or before **MAY 27, 2010.**

Each "party group" shall be limited to twenty-five (25) Interrogatories, twenty-five (25) Requests for Production, and twenty-five (25) Requests for Admissions, without leave of Court.

Each side shall be limited to ten (10) fact depositions. Each deposition shall be limited to one (1) day of a maximum of seven (7) hours, absent leave of Court. All depositions, fact and expert witnesses, shall be completed **no later than JUNE 30, 2010.** Parties shall include the deposition schedule in the Scheduling Order in its final form to be filed on or before December 28, 2009.

No **SETTLEMENT CONFERENCE** is set at this time.

A **STATUS CONFERENCE** is set **JANUARY 11, 2010 at 8:30 a.m.**  
in Courtroom A-502, Fifth floor, Alfred A. Arraj United States Courthouse, 901 19<sup>th</sup> Street, Denver, Colorado 80294. Topics of discussion will include (1) any amendments needed to the Scheduling Order with defendant Timm (2) need to set a settlement conference.

**FINAL PRETRIAL CONFERENCE** set for **SEPTEMBER 13, 2010 at 9:00 a.m.**  
in Courtroom A-502, Fifth floor, Alfred A. Arraj United States Courthouse, 901 19<sup>th</sup> Street, Denver,  
Colorado 80294.

The proposed final pretrial order shall be filed, and then sent as a Word or WordPerfect  
attachment to [Watanabe Chambers@cod.uscourts.gov](mailto:Watanabe_Chambers@cod.uscourts.gov), **on or before SEPTEMBER 08, 2009.**

**In the subject line** of the e-mail, counsel shall list the case number, short caption, and  
“proposed final pretrial order.” (See [www.cod.uscourts.gov](http://www.cod.uscourts.gov) for more information.)

Valid photo identification is required to enter the courthouse. In accordance with Fed.R.Civ.P.  
16(d), the conference shall be attended by at least one of the attorneys who will conduct the trial  
for each of the parties and by any unrepresented parties.

**TRIAL:** The following are currently set before The Honorable Robert E. Blackburn:

Trial Preparation Conference: October 08, 2010 at 9:30 a.m.

Five (5) day trial to a jury: October 25, 2010 at 8:30 a.m.

Parties are directed to [www.cod.uscourts.gov](http://www.cod.uscourts.gov) and shall fully comply with the procedures of the  
judicial officer assigned to try this case on the merits.

Absent exceptional circumstances, no request for rescheduling any appearance in this court will  
be entertained unless a written request is made FIVE (5) business days in advance of the date  
of appearance.

Scheduling Order is approved with interlineations. Parties shall submit the Scheduling Order in  
its final form for the Court’s signature **on or before DECEMBER 28, 2009**, *nunc pro tunc* to  
December 16, 2009.

Hearing concluded.

**Court in recess:** 10:12 a.m.

Total in-court time: 00:52

To order a transcript of this proceedings, contact Avery Woods Reporting Service.

(303) 825-6119 Toll Free 1-800-962-3345. FAX (303) 893-8305 [www.AveryWoods.net](http://www.AveryWoods.net)

• PLEASE NOTE •

When submitting **Confidential Settlement Statements** to Magistrate Judge Watanabe via e-mail as a PDF attachment, the parties are required to enter in the **Subject line**:

1. Case Number
2. Date of the Settlement Conference
3. Short caption
4. "Plaintiff Confidential Settlement Statement"  
OR  
"Defendant Confidential Settlement Statement"

*EXAMPLE: 00-cv-00123-LTB-MJW Settlement Conf. JUNE 12, 2009 at 1:30 p.m.  
Fargo v. Smith Plaintiff CSS*

When submitting **Proposed Final Pretrial Order** to Magistrate Judge Watanabe via e-mail , the parties are required to enter in the **Subject line**:

1. Case Number
2. Date of the Final Pretrial Conference
3. Short caption

**PLEASE NOTE ANY ADDITIONAL INFORMATION REQUIRED BY JUDGE BLACKBURN BY REVIEWING JUDGE BLACKBURN'S PROCEDURES ON THE COURT WEBSITE.**

- Information is available at [www.cod.uscourts.gov](http://www.cod.uscourts.gov)

**Forms**

Standardized Order Forms:

**Appendix G**

**INSTRUCTIONS FOR PREPARATION OF  
FINAL PRETRIAL ORDER**

Counsel and any *pro se* party are directed to meet in advance of the pretrial conference and jointly to develop the contents of the proposed final pretrial order, which shall be presented for the court's approval no later than five days before the final pretrial conference. Also, attention is directed to Fed. R. Civ. P. 16(d), which provides, in pertinent part, that "[t]he conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties."

Listed on the following pages is a format for matters to be included in the final pretrial order. For convenience of the court, counsel, and any *pro se* party, the sequence and terminology in this format should be used in the preparation of the final pretrial order. The bracketed and italicized information on the form explains what the court expects.

**Final pretrial orders shall be *DOUBLE-SPACED* in accordance with D.C.COLO.LCivR 10.1E., even though the instructions in the following format for the proposed scheduling order are single-spaced.**

(Rev. 04/15/02)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.

Plaintiff(s),

v.

Defendant(s).

**FINAL PRETRIAL ORDER**

**1. DATE AND APPEARANCES**

**2. JURISDICTION**

*[Include a statement of the basis for subject matter jurisdiction with appropriate statutory citations. If jurisdiction is denied, give the specific reason for the denial.]*

**3. CLAIMS AND DEFENSES**

*[Summarize the claims and defenses of all parties, including the respective versions of the facts and legal theories. Do not copy the pleadings. Identify the specific relief sought. Eliminate*

*claims and defenses which are unnecessary, unsupported, or no longer asserted.]*

#### **4. STIPULATIONS**

*[Set forth all stipulations concerning facts, evidence, and the applicability of statutes, regulations, rules, ordinances, etc.]*

#### **5. PENDING MOTIONS**

*[List any pending motion to be decided before trial, giving the filing date and the filing date of any briefs in support or opposition. Include any motions on which the court expressly has postponed ruling until trial on the merits. If there are no pending motions, please state, "None."]*

#### **6. WITNESSES**

a. List the nonexpert witnesses to be called by each party. List separately:

(1) witnesses who will be present at trial (see Fed. R. Civ. P. 26(a)(3)(A));

(2) witnesses who may be present at trial if the need arises (see Fed. R. Civ. P. 26(a)(3)(A)); and

(3) witnesses where testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony. See Fed. R. Civ. P. 26(a)(3)(B).

b. List the expert witnesses to be called by each party. List separately:

(1) witnesses who will be present at trial (see Fed. R. Civ. P. 26(a)(3)(A));

(2) witnesses who may be present at trial (see Fed. R. Civ. P. 26(a)(3)(A)); and

- (3) witnesses where testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony. See Fed. R. Civ. P. 26(a)(3)(B).

*[With each witness' name, set forth (1) the witness' address and telephone number if not previously disclosed, (2) a short statement as to the nature and purpose of the witness' testimony, and (3) whether he or she is expected to testify in person or by deposition.]*

## **7. EXHIBITS**

*[a. List the exhibits to be offered by each party and identify those to be stipulated into evidence. This list should be specific enough so that other parties and the court can understand, merely by referring to the list, each separate exhibit which will be offered. General references such as "all deposition exhibits" or "all documents produced during discovery" are unacceptable.]*

- (1) Plaintiff(s):
- (2) Defendant(s):
- (3) Other parties:

*[The following paragraph shall be included in the final pretrial order.]*

b. Copies of listed exhibits must be provided to opposing counsel and any pro se party no later than five days after the final pretrial conference. The objections contemplated by Fed. R. Civ. P. 26(a)(3) shall be filed with the clerk and served by hand delivery or facsimile no later than 11 days after the exhibits are provided.

## **8. DISCOVERY**

*[Use the following language:]*

Discovery has been completed.

*[Unless otherwise ordered, upon a showing of good cause in an appropriate motion, there will*



*be no discovery after entry of the final pretrial order.]*

## **9. SPECIAL ISSUES**

*[List any unusual issues of law which the court may wish to consider before trial. If none, please state, "None."]*

## **10. SETTLEMENT**

*[Include a certification by the undersigned counsel for the parties and any pro se party that:]*

- a. Counsel for the parties and any pro se party met (in person) (by telephone) on \_\_\_\_\_, 200\_\_, to discuss in good faith the settlement of the case.
- b. The participants in the settlement conference, included counsel, party representatives, and any pro se party.
- c. The parties were promptly informed of all offers of settlement.
- d. Counsel for the parties and any pro se party (do) (do not) intend to hold future settlement conferences.
- e. It appears from the discussion by all counsel and any pro se party that there is *[select one]*:
  - (a good possibility of settlement.)
  - (some possibility of settlement.)
  - (little possibility of settlement.)
  - (no possibility of settlement.)
- f. The date of the next settlement conference before the magistrate judge or other alternative dispute resolution method.
- g. Counsel for the parties and any pro se party considered ADR in accordance with D.C.COLO.LCivR.16.6.

## **11. OFFER OF JUDGMENT**

*[The following paragraph shall be included in the final pretrial order:]*

Counsel and any pro se party acknowledge familiarity with the provision of rule 68 (Offer of Judgment) of the Federal Rules of Civil Procedure. Counsel have discussed it with the clients against whom claims are made in this case.

## **12. EFFECT OF FINAL PRETRIAL ORDER**

*[The following paragraph shall be included in the final pretrial order:]*

Hereafter, this Final Pretrial Order will control the subsequent course of this action and the trial, and may not be amended except by consent of the parties and approval by the court or by order of the court to prevent manifest injustice. The pleadings will be deemed merged herein. This Final Pretrial Order supersedes the Scheduling Order. In the event of ambiguity in any provision of this Final Pretrial Order, reference may be made to the record of the pretrial conference to the extent reported by stenographic notes and to the pleadings.

## **13. TRIAL AND ESTIMATED TRIAL TIME; FURTHER TRIAL PREPARATION PROCEEDINGS**

*[State:*

- 1. whether trial is to the court or a jury or both,*
- 2. estimated trial time,*
- 3. situs of trial, and*
- 4. any other orders pertinent to the trial proceedings.]*

*[Counsel and the parties should note that the procedures for setting and conducting trial and for further conferences before trial vary according to the district judge assigned to the case. The judges all have written procedures which can be obtained from the clerk's office.]*

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_.

BY THE COURT:

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United States Magistrate Judge

APPROVED:

(Name)  
(Address)  
(Telephone Number)  
Attorney for Plaintiff (or Plaintiff, Pro Se)

(Name)  
(Address)  
(Telephone Number)  
Attorney for Defendant (or Defendant,  
Pro Se)

*[Please affix counsels' and any pro se party's signatures before submission of the final pretrial order to the court.]*