

(Rev. 3/10/03)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
)	
Defendant.)	

REPORT OF PARTIES' PLANNING CONFERENCE

*[Completed form should be spaced as shown]
[Use separate paragraphs or subparagraphs as necessary if the parties¹ disagree]*

1. **Rule 26(f) Conference.** Pursuant to Fed. R. Civ. P. 26(f), a discovery and case management conference was held on (date), and was attended by *[list appearances]*.
2. **Preliminary Matters.**
 - a. The following persons will appear at the scheduling conference:

[Insert names of all parties and counsel who will appear at the scheduling conference and, if the conference is scheduled to occur by telephone, the telephone numbers where parties and/or counsel may be reached at the designated time.]

¹As used in this report, the term "plaintiff" includes plaintiffs as well as counterclaimants, cross-claimants, third-party plaintiffs, intervenors, and any other parties who assert affirmative claims for relief. The term "defendant" includes defendants as well as counterclaim defendants, cross-claim defendants, third-party defendants, and any other parties who are defending against affirmative claims for relief. However, when the parties actually complete and submit this report, they should accurately describe their posture in the case.

- b. The parties provide the following information regarding themselves and their counsel:

[For each attorney, insert: (1) name; (2) business address; (3) home, business, and cellular telephone and facsimile numbers; and (4) e-mail address. For each party, insert: (1) name; (2) home and business addresses; (3) home and business telephone and facsimile numbers; and (4) e-mail address.]

- c. The parties submit the following summary of the case:

[Insert a summary of the case, not to exceed two pages, which contains information from all parties and incorporates their respective positions. The summary should state: (1) the asserted basis for the court's subject matter jurisdiction; (2) the facts, claims, and theories of recovery by plaintiff; (3) the facts, claims, and theories of defense; (4) the statutes, if any, upon which the claims and defenses are based; (5) under controlling jury instructions or precedents, the essential elements of each claim or affirmative defense in the view of the party asserting such claim or defense; (6) the most important or key factual issues and legal issues that are believed to be involved in the case in light of the above-referenced essential elements; and (7) a breakdown of damages sought.]

[Note: This summary is intended to serve three purposes. First, it provides a means for the court to familiarize itself with the case before the scheduling conference. Second, it should assist the parties and counsel in evaluating how and when to plan for alternative dispute resolution (ADR). Third, if the case cannot be settled fairly quickly, the summary should provide an outline to promote a focused approach to discovery and ultimately simplify the issues to be decided. The summary may provide a framework for a future pretrial order; however, the parties may not cite or formally refer to the summary or seek to use it against another party for any reason.]

3. **Plan for Pre-Discovery Disclosures.** The parties [have exchanged] [shall exchange by (date)] the information required by Fed. R. Civ. P. 26(a)(1). [Optional: In order to facilitate settlement negotiations and to avoid unnecessary expense, the parties have agreed that, without any need for formal requests for production, copies of the various documents described in the parties' respective Rule 26(a)(1)-disclosures shall be [exchanged] [made available for inspection and copying] by (date).]

[Note: The court reminds counsel that Rule 26(a)(1) is now keyed to disclosure of information that the disclosing party “may use to support its claims or defenses, unless solely for impeachment.” As made clear by the advisory committee notes to the 2000-amendments to Rule 26(a)(1), this also requires a party to disclose information it may use to support its denial or rebuttal of the allegations, claim, or defense of another party. Further, counsel should bear in mind that, in addition to other sanctions that may be applicable, a party that without substantial justification fails to disclose information required by Fed. R. Civ. P. 26(a) or Fed. R. Civ. P. 26(e)(1) is not, unless such failure is harmless, permitted to use as evidence at trial, at a hearing, or on a motion any witness or information not so disclosed.]

4. Plan for ADR.

- a. Plaintiff shall submit to defendant a written, good faith settlement proposal by (date). By (date), defendant shall make a written, good faith response to such proposal, either accepting it or submitting a good faith counterproposal to settle the case. By (date), the parties shall send confidential reports, by way of letters to the magistrate judge, stating the efforts to settle the case, current evaluations of the case, views concerning future settlement negotiations, prospects for settlement, a specific recommendation regarding mediation and/or any other ADR method, and an indication (preferably jointly) concerning who has been selected by the parties to serve as a mediator or other neutral in an ADR process.

[Note: In order to facilitate the ADR process, the court expects the parties to complete the exchange of settlement proposals within 30 days after the scheduling conference. The above-described confidential settlement reports to the magistrate judge shall not be filed with the Clerk’s Office.]

- b. To date, the parties have engaged in the following good faith efforts to resolve this matter: *[describe efforts]*.
- c. The parties have agreed on the following alternative dispute resolution procedure, which will be accomplished by *[insert agreed procedure and a date no later than 90 days from the date of the scheduling conference]*:

5. Plan for Discovery. The parties jointly propose to the court the following discovery plan:

- a. All discovery shall be commenced or served in time to be completed by (date).
[Discovery on (issue for early discovery) shall be completed by (date).]

[Note: If counsel request more time for discovery than the four-month period generally provided by D. Kan. Rule 26.1, specific reasons for the request must be provided.]

- b. The parties intend [do not intend] to serve disclosures and discovery electronically, as permitted by this court's General Order No. 03-1, Exhibit 1, Rules 5.4.2 & 26.3.

- c. One or more of the parties anticipate the following problem(s) in discovery, which should be discussed with the court and, if possible, resolved at the scheduling conference:

[List problem(s), the positions and supporting authority of each party, and what efforts have been made to resolve the problems.]

- d. Discovery is needed on the following specific subjects: *[list subjects.]*

[Note: Counsel need only list subjects of discovery beyond those that are implicit in the key factual issues listed in paragraph 2(c) above.]

- e. Maximum of ____ interrogatories, including all discrete subparts, by each party to any other party.

- f. Maximum of ____ depositions by plaintiff and ____ by defendant.

- g. Each deposition [other than _____] shall be limited to ____ hours; the depositions of _____ shall be limited to ____ hours.

- h. Disclosures required by Fed. R. Civ. P. 26(a)(2), including reports from retained experts, shall be served by plaintiff by (date), and by defendant by (date). [Option 1: The parties have stipulated that rebuttal experts will not be permitted in this case.] [Option 2: Disclosures and reports by any rebuttal experts shall be served by (date).]

- i. The parties [agree] [disagree] that physical or mental examinations pursuant Fed. R. Civ. P. 35 are [are not] appropriate in this case. In any event, all Rule 35-examinations shall be completed by (date).

[Note: If the parties presently disagree about the need for or the scope of such an examination, a formal motion to conduct the examination should be filed sufficiently in advance of the deadline set in this subparagraph, in order to allow the motion to be fully briefed by the parties and decided by the court before the examination deadline.]

- j. Supplementations of disclosures under Fed. R. Civ. P. 26(e) shall be served at such times and under such circumstances as required by that rule. In addition, such supplemental disclosures shall be served (dates or intervals), and in any event 40 days before the deadline for completion of all discovery.

[Note: Based on the investigation and discovery conducted as of that date, the supplemental disclosures served 40 days before the deadline for completion of all discovery must identify the universe of all witnesses and exhibits that probably or even might be used at trial; these supplemental disclosures are intended to replace what this court traditionally has called “final witness and exhibit lists.” The rationale for the mandatory supplemental disclosures 40 days before the discovery cutoff is to put opposing counsel in a realistic position to make strategic, tactical, and economic judgments about whether to take a particular deposition (or pursue follow-up “written” discovery) concerning a witness or exhibit disclosed by another party before the time allowed for discovery expires. At the final pretrial conference after the close of discovery, the court will set a deadline, usually about 20 days prior to the trial date, for the parties to file their final Rule 26(a)(3)-disclosures, taking into account how the issues for trial may have been narrowed based on any summary judgment or other pretrial rulings by the court. Counsel should bear in mind that seldom should anything be included in the final Rule 26(a)(3)-disclosures that has not previously appeared in the initial Rule 26(a)(1)-disclosures or a timely Rule 26(e)-supplement thereto; otherwise, the witness or exhibit probably will be excluded at trial. See Fed. R. Civ. P. 37(c)(1).]

- k. [Optional] The parties have agreed that they shall serve preliminary witness and exhibit disclosures pursuant to Fed. R. Civ. P. 26(a)(3)(A) & (C) by (date).

[Note: The court believes that generally such preliminary disclosures are appropriate or helpful only in relatively complex cases, or cases in which substantially longer than four months is anticipated to complete discovery. If such preliminary disclosures are utilized, counsel should endeavor to provide a realistic listing of the witnesses and exhibits that actually are anticipated to be used during trial of the case instead of merely repeating their initial disclosures under Fed. R. Civ. P. 26(a)(1)(A) & (B).]

1. The parties agree [disagree] that there is [is not] a need for discovery in this case to be governed by a protective order. If the parties agree concerning the need for and scope and form of such a protective order, their counsel will confer and then submit a jointly proposed protective order by (date). Such jointly proposed protective orders must include, in the first paragraph, a concise but sufficiently specific recitation of the particular facts in this case that would provide the court with an adequate basis upon which to make the required finding of good cause pursuant to Fed. R. Civ. P. 26(c). If the parties disagree concerning the need for, and/or the scope or form of a protective order, the party or parties seeking such an order shall file an appropriate motion and supporting memorandum by (date).

6. Deadlines for Amendments and Potentially Dispositive Motions.

- a. Any motion for leave to join additional parties or to otherwise amend the pleadings shall be filed by (date).

[Note: The deadline usually should be set two to four weeks after the scheduling conference.]

- b. Provided that such defenses have been timely preserved, any motions to dismiss for lack of personal jurisdiction, venue, propriety of the parties, or failure to state a claim upon which relief may be granted shall be filed by (date).

[Note: The deadline usually should be set four to six weeks after the scheduling conference.]

- c. All other potentially dispositive motions shall be filed by (date).

[Note: The deadline usually should be set approximately two weeks after the final pretrial conference, and approximately four months before trial.]

7. Other Items.

- a. By (date), any party asserting comparative fault shall identify all persons or entities whose fault is to be compared. [The parties agree that principles of comparative fault do not apply to this case.]
- b. The parties [request] [do not request] a status conference prior to the final pretrial conference, in order to discuss the following subjects: *[list]*. [The parties request a status conference in (month and year).]
- c. The parties request that the court hold the final pretrial conference in (month and year).

[Note: As earlier indicated, the court generally schedules the final pretrial conference approximately two weeks after the close of discovery and approximately two weeks before the dispositive motion deadline.]

- d. The case should be ready for trial by (date). At the present time, trial is expected to take approximately (days or weeks).

[Note: Although some members of the court defer setting trials until after dispositive motions have been decided, the court generally sets cases on a trial calendar to commence four to six months after the dispositive motion deadline, and twelve to fourteen months after the date the case was filed.]

- e. The parties are [are not] prepared to consent to trial by a magistrate judge [at this time] [or as a backup if the district judge determines that his or her schedule is unable to accommodate the scheduled trial date].

[Note: Magistrate judges may preside over jury trials. Withholding consent will not have any adverse substantive consequences, but may delay the trial of the action.]

- f. Other matters.

Date: [Insert Date]

[Here, add signatures of each unrepresented party and an attorney for each represented party. These signatures shall be affixed according to the procedures governing multiple signatures set forth in paragraphs II(C)(2)(a) & (b) of the *Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means in Civil Cases* (“administrative procedures guide”). The report shall be submitted electronically in .pdf format as an attachment to an Internet e-mail sent to the e-mail address of the assigned magistrate judge listed in paragraph II(E)(2)(c) of the administrative procedures guide.]