

Judge Jan E. DuBois

Judge DuBois received a B.S. from the University of Pennsylvania in 1952, and an LL.B. from Yale University Law School in 1957. From 1957 to 1958, Judge DuBois was law clerk to Honorable Harry E. Kalodner of the United States Court of Appeals for the Third Circuit. From 1958 until 1988, he was in private practice in Philadelphia. He was appointed to the United States District Court for the Eastern District of Pennsylvania on July 27, 1988.

PRETRIAL AND TRIAL PROCEDURES¹

Preliminary Matters

1. *Correspondence With the Court*

Judge DuBois permits correspondence under the circumstances set forth in his standard Notice to Counsel, which is routinely sent to counsel promptly after assignment of a case to Judge DuBois. A copy of the Notice is attached. All other communications with the Court should be by the filing of pleadings, motions, applications, briefs, or legal memoranda.

2. *Communications With Law Clerks*

Judge DuBois permits communications with his law clerks concerning the administrative aspects of cases, but not on scheduling matters or requests for extensions of time which must be directed to Judge DuBois.

3. *Telephone Conferences*

Judge DuBois usually finds telephone conferences a preferred method of handling matters such as discovery disputes, scheduling matters, and requests for extensions of time. A pretrial conference with counsel participating by telephone may be held upon timely request to the Court.

4. *Oral Arguments and Evidentiary Hearings*

Judge DuBois determines in any given case whether to schedule oral argument or an evidentiary hearing. If counsel prefer either an oral argument or an evidentiary hearing, they should request it. The scheduling of all such matters is handled by Judge DuBois' Courtroom Deputy. Judge DuBois does not set aside any certain days or times for oral arguments or evidentiary hearings.

5. *Pro Hac Vice Admissions*

¹A copy of the "Pretrial and Trial Procedures" for Judge DuBois is available on this court's web site at www.paed.uscourts.gov under the heading "Documents" and the subheading "Judges' Procedures."

Judge DuBois does not have a preference as to how counsel should submit a *pro hac vice* motion to the Court.

CIVIL CASES

Pretrial Procedure

1. Pretrial Conferences

Judge DuBois regularly conducts pretrial conferences except in arbitration cases. His pretrial conference policy is set forth in the attached Notice to Counsel. A Conference Information Report (see attached form) and Rule 26(f) report must be forwarded to the Court at least two (2) days before the scheduled Preliminary Pretrial Conference.

2. Pretrial Memoranda

Unless specifically provided for by separate order in a particular case, in jury and non-jury cases Judge DuBois requires the use of the short form pretrial memorandum described in Local Rule of Civil Procedure 16.1(c) with three modifications - he requires that objections to (a) the admissibility of any exhibit based on authenticity; (b) the admissibility for any reason (except relevancy) of any evidence expected to be offered; and, (c) the admissibility of any opinion testimony from lay witnesses pursuant to Federal Rule of Evidence 701, be set forth separately in the Pretrial Memorandum.

Continuances and Extensions

1. General Policy

Judge DuBois has a general policy of adhering to originally scheduled dates unless a compelling reason is presented that justifies a change. This policy applies to briefing schedules, oral argument, evidentiary hearings, discovery deadlines, and trial dates.

2. Requests for Extensions and Continuances

Counsel should advise the Court immediately, and *before the date has run*, of any compelling reason justifying an extension or continuance of any originally scheduled date. Any request for an extension or a continuance may be made by letter, setting forth the reasons and noting the agreement or disagreement of all other counsel, or by telephone conference with all counsel participating.

General Motion Practice

1. Oral Argument on Motions

Judge DuBois schedules oral argument on motions when he believes it will be helpful in the Court's decision-making process.

2. Reply and Surreply Briefs

Reply and surreply briefs should be filed only if absolutely necessary. Requests for time to do so shall be directed to Judge DuBois.

3. Chambers Copies of Motion Papers

Judge DuBois requires that two (2) courtesy copies of motion papers be sent to his chambers when the originals are filed. Any motion papers that include exhibits or attachments should be properly tabbed.

4. Dispositive Motions and Daubert Motions

The Court generally schedules the filing of dispositive motions and *Daubert* motion after completion of discovery. When dispositive motions do not require complete discovery, Judge DuBois orders an earlier filing.

Judge DuBois generally schedules a *Daubert* conference after a *Daubert* motion is completely briefed. At the conference, Judge DuBois determines, inter alia, whether a *Daubert* hearing is required.

5. Motions for Summary Judgment

A motion for summary judgment filed pursuant to Federal Rule of Civil Procedure 56 shall be accompanied by a separate, short and concise statement of the material facts, in numbered paragraphs, as to which the moving party contends there is no genuine issue of material fact to be tried. The response to the motion for summary judgment shall include a separate, short and concise statement of material facts, responding to the numbered paragraphs set forth in the moving party's statement, as to which it is contended that there exists a genuine issue of material fact. The responding party may also set forth, in additional numbered paragraphs, any additional material facts which the responding party contends preclude the granting of a motion for summary judgment.

Statements of material facts in support of, or in opposition to, a motion for summary judgment shall include specific references to the parts of the record that support the statements. All material facts set forth in the moving party's statement will be deemed to be admitted unless controverted in the opposing party's statement.

Discovery Matters

1. Length of Discovery Period and Extensions

In uncomplicated cases, Judge DuBois usually allows four (4) months to complete discovery, measured from the date appearances are filed for all defendants. If counsel have been diligent and genuinely

need more time for discovery, he will usually grant additional time. In arbitration cases, the discovery should be completed by the arbitration date.

2. Discovery Conferences and Dispute Resolution

Judge DuBois prefers that discovery disputes be resolved by discovery conferences, either by telephone or in chambers, if the parties are unable to resolve them without Court assistance. Where the discovery dispute is complex, a motion should be filed.

3. Confidentiality Agreements

Judge DuBois has no standard practice or policy concerning confidentiality orders. He does not favor confidentiality orders that place virtually all discovery materials under a confidentiality nondisclosure status, even those agreed upon by counsel. All confidentiality agreements must comply with the Third Circuit opinion in *Pansy v. Borough of Stroudsburg*, 23 F.3d 772 (1994).

4. Expert Witnesses

The conduct of expert witness discovery is covered by Judge DuBois at the pretrial conference and is the subject of a scheduling order. In most cases, Judge DuBois requires that plaintiffs serve expert reports and/or responses to expert witness discovery before a defendant is required to do so. Generally, Judge DuBois orders that all expert witness discovery be completed by the time fact discovery is concluded.

Settlement

1. General Approach to Settlement

Judge DuBois requires the parties to jointly report by letter to Chambers regarding settlement by a date selected by the parties. In the event a case is not settled by that date, Judge DuBois requires the parties to advise whether they believe a settlement conference before a magistrate judge, mediation under Local Civil Rule 53.3 and the Mediation Protocol Under Local Civil Rule 53.3 or some other form of alternative dispute resolution might be of assistance in resolving the case. If the parties agree on such alternative dispute resolution, Judge DuBois orders it.

2. Referral of Cases to Magistrate Judges for Settlement Conferences and to Mediator under Local Civil Rule 53.3 and the Mediation Protocol Under Local Civil Rule 53.3

Judge DuBois does not generally conduct settlement conferences himself. He favors use of a magistrate judges for settlement conferences or a mediator under Local Civil Rule 53.3 and the Mediation Protocol where the parties agree that such referral might be helpful in resolving the case.

3. Referral to Another District Judge for Settlement Conferencing

Judge DuBois sometimes refers a case to another District Judge for a settlement conference.

Arbitration

1. *General Approach to Arbitration Cases*

Judge DuBois has no standard procedures or practices for arbitration cases except that pretrial conferences are not normally held in such cases and, except in unusual cases, scheduling orders are not issued.

2. *Scheduling of Trial De Novo After Appeal From Arbitration Award*

Once a trial *de novo* is demanded, Judge DuBois schedules a status conference. At the status conference, he issues a scheduling order covering all further proceedings including, but not limited to, limited additional discovery, the filing of pretrial memoranda, and the filing of proposed *voir dire* questions and proposed points for charge or proposed findings of fact and conclusions of law.

Final Pretrial Conferences

The Court schedules final pretrial conferences and requires the filing of final pretrial memoranda only in complex cases or cases in which the Court determines that such proceedings are necessary in order to expedite the trial.

Injunctions

1. *Scheduling and Expedited Discovery*

Judge DuBois will promptly list any injunction matters assigned to him. The scheduling of injunction matters is conducted at an initial conference attended by all counsel. In appropriate cases, Judge DuBois will require expedited discovery.

When plaintiff requests a temporary restraining order, Judge DuBois expects prompt service of the motion and complaint upon the opposing party and notice to opposing counsel unless, for good cause shown, this is impossible.

2. *Proposed Findings of Fact and Conclusions of Law*

Judge DuBois requires submission of proposed findings of fact and conclusions of law in injunction cases as early as possible.

Trial Procedure

1. *Scheduling of Cases*

Judge DuBois routinely places all cases on his trial list. Cases are not assigned a date certain and very rarely are they specially

listed. Counsel whose cases are in the pool must maintain telephone contact with his Courtroom Deputy.

2. Conflicts of Counsel

Counsel should notify Judge DuBois of any professional or personal conflicts affecting the trial schedule by telephoning or writing to his Courtroom Deputy. Busy slips should be timely filed and withdrawn.

3. Cases Involving Out-of-Town Parties or Witnesses

Trial scheduling by Judge DuBois is not generally affected by the presence of out-of-town parties or witnesses. Judge DuBois leaves the scheduling of witnesses to counsel.

4. Notetaking by Jurors

Judge DuBois permits notetaking by jurors.

5. Trial Briefs

Judge DuBois requires the submission of trial briefs in unusual or complex cases and in cases where unusual evidentiary problems are anticipated.

6. Voir Dire

Judge DuBois conducts the voir dire in civil cases and requires the submission of proposed voir dire questions at least three (3) days before the case is placed on his trial list. In appropriate cases a jury questionnaire will be used.

7. Side Bars

Judge Dubois prefers that side bars be infrequent and sought only when truly necessary.

8. In Limine Motions

In limine motions which require resolution in order to allow opening statements and trial to proceed should be filed as early as possible. Other *in limine* motions may be filed before trial or during trial but generally will not be ruled upon until an appropriate time during the trial.

9. Examination of Witnesses Out of Sequence

Judge Dubois will generally grant a request by counsel to take the testimony of a witness out of turn for the convenience of the witness subject to objection by opposing counsel.

10. Opening Statements and Summations

No time limits are placed on opening statements or summations by counsel. However, Judge DuBois believes that twenty (20) to thirty (30) minutes is usually adequate for an opening and thirty (30) to forty-five (45) minutes is usually adequate for a summation in routine cases.

11. *Offers of Proof*

Judge DuBois requires the parties to inquire of each other privately as to offers of proof regarding any witness or exhibit expected to be offered. If counsel cannot resolve such matters, Judge DuBois will rule on them upon application before a witness testifies or an exhibit is offered into evidence.

12. *Examination of Witnesses or Argument by More Than One Attorney*

More than one attorney for a party may examine different witnesses or argue different legal points before Judge DuBois. Ordinarily, more than one attorney for a party may not examine a single witness or argue the same legal point.

13. *Examination of Witnesses Beyond Redirect or Recross*

Judge DuBois has no general policy regarding further examination of a witness after redirect or recross has been completed. Where appropriate, he will allow it.

14. *Videotaped Testimony*

Judge DuBois requires that a list of all objections to videotaped trial testimony and a copy of the transcript be submitted to the Court well in advance of the offering of such evidence.

15. *Reading of Material Into the Record*

Judge DuBois has no special practice or policy for reading stipulations, pleadings, or discovery material into the record. He permits it when appropriate.

16. *Preparation of Exhibits*

Judge DuBois requires that exhibits be marked and exchanged in advance of trial. Two (2) copies of trial exhibits should be provided to the Court on the first day of trial. The trial exhibits should be accompanied by an exhibit list which describes each exhibit. Copies of exhibits used only in cross-examination need not be marked and exchanged in advance of the trial, but copies must be made available for the Court, opposing counsel and the witness at the time of cross-examination.

17. *Offering Exhibits Into Evidence*

Counsel may choose the timing of their offer of exhibits into evidence.

18. *Motions for Judgment as a Matter of Law and Motions for Judgment on Partial Findings*

Motions for judgment as a matter of law in jury trials under Federal Rule of Civil Procedure 50(a) and motions for judgment on partial findings in non-jury trials under Federal Rule of Civil Procedure 52(c) may be oral or written. Judge DuBois will hear oral argument on such motions if counsel request it.

19. Proposed Jury Instructions and Verdicts Forms

Judge DuBois requires proposed jury instructions and verdict forms to be filed with the Clerk, and served on the Court (Chambers) in duplicate, at least three (3) days before the case is placed on the trial list. It is not necessary that counsel submit standard points normally given in civil cases. Judge DuBois will permit submission of supplemental jury instructions up to the time he charges the jury. He will rule on proposed jury instructions at a conference before closing speeches.

If a model jury instruction taken, for instance, from O'Malley, Grenig & Lee, Federal Jury Practice and Instructions, or Sand, Modern Federal Jury Instructions, is submitted, the parties shall state whether the proposed jury instruction is unchanged or modified. If a party modifies a model jury instruction the modification shall be set forth in the following manner: additions shall be underlined and deletions shall be placed in brackets.

20. Proposed Findings of Fact and Conclusions of Law - Non-Jury Cases

Judge DuBois requires that proposed findings of fact and conclusions of law in non-jury cases be filed with the Clerk, and served on the Court (Chambers) in duplicate, three (3) days before the case is placed on the trial list.

21. Stipulations

Judge DuBois requires the parties to meet in an effort to reach agreement on the facts. In the event an agreement is reached, a stipulation of uncontested facts must be filed at least three (3) days before the case is placed on the trial list. Two (2) copies of the stipulation must be served on the Court (Chambers) when the original is filed.

22. Joint Statement of the Case for Reading to the Jury

Judge DuBois requires filing of a joint statement of the case for reading to the jury at least three (3) days before the case is placed on the trial list. The Joint Statement of the Case is read to the jury as part of Judge DuBois' preliminary jury instructions immediately after the jury is sworn and immediately before opening statements. Two (2) copies of the Joint Statement must be served on the Court (Chambers) when the original is filed.

The Joint Statement shall include (a) a brief statement of the facts, (b) the essential elements of plaintiff's causes of action, (c) a brief statement of defendant's position on liability, (d) the essential elements of any affirmative defenses, (e) the essential elements of any counterclaims, crossclaims or third-party claims, and (f) a brief statement of the position of the defendant on any counterclaims, crossclaims or third-party claims. It is generally limited to three (3) pages.

Jury Deliberations

1. *Written Jury Instructions*

Judge DuBois generally gives the jury copies of his charge.

2. *Exhibits in the Jury Room*

Judge DuBois usually permits all exhibits received in evidence to go out with the jury unless there is an objection.

3. *Handling of Jury Requests to Read Back Testimony or Replay Tapes*

In cases where transcripts are available, Judge DuBois will consider reading appropriate portions requested by the jury. He will generally allow audiotapes and videotapes to be replayed in open court if necessary.

4. *Availability of Counsel During Jury Deliberations*

Counsel should be available on ten (10) minutes notice during jury deliberations.

5. *Taking the Verdict and Special Interrogatories*

Judge DuBois usually submits interrogatories to the jury in civil cases.

6. *Polling the Jury*

Judge DuBois has no standard practice for polling the jury in civil cases, but will permit it when requested.

7. *Interviewing the Jury*

After a verdict has been recorded and a jury has been discharged, Judge DuBois usually permits counsel to interview jurors in the Courtroom, or immediately adjacent to the Courtroom. Each juror is told that they are permitted to talk to counsel and others, but they need not do so.

Criminal Cases

1. *Approach to Oral Argument and Motions*

Judge DuBois has no preference regarding oral arguments on motions in criminal cases.

2. *Pretrial Conferences*

Judge DuBois only holds pretrial conferences in complex criminal cases.

3. Voir Dire

In criminal cases, the *voir dire* is conducted by Judge DuBois. Judge DuBois requires the filing of proposed *voir dire* questions by counsel at least two(2)weeks before trial. Two (2) copies of the proposed voir dire questions must be served on the Court(Chambers)when the original is filed.

4. Proposed Jury Instructions and Verdict Forms

Judge DuBois requires proposed jury instructions and verdict forms to be filed with the Clerk, and served on the Court (Chambers) in duplicate at least two (2) weeks before trial. It is not necessary that counsel submit standard points normally given in criminal cases. Judge DuBois will permit submission of supplemental jury instructions up to the time he charges the jury. He will rule on proposed jury instructions at a conference before closing speeches.

If a model jury instruction taken, for instance, from O'Malley, Grenig & Lee, Federal Jury Practice and Instructions, or Sand, Modern Federal Jury Instructions, is submitted, the parties shall state whether the proposed jury instruction is unchanged or modified. If a party modifies a model jury instruction the modification shall be set forth in the following manner: additions shall be underlined and deletions shall be placed in brackets.

5. Trial - Other Procedures

Generally, Judge DuBois utilizes the same procedures in criminal trials that are utilized in civil trials except that criminal trials are scheduled for a date certain.

6. Sentencing Memoranda

Judge DuBois requires the submission of sentencing memoranda by the Government and the defense no less than seven (7) days before sentencing. Two (2) copies must be served on the Court (Chambers), and one (1) copy on the U.S. Probation Officer, when the original is filed.

7. Sentencing Motions

Motions for downward departure under U.S.S.G. § 5K1.1 and 18 U.S.C. § 3553(e) must be filed no less than seven (7) days before sentencing. All other sentencing-related motions must be filed and served no less than fourteen (14) days before sentencing; responses to any such motions must be filed no less than seven (7) days before sentencing. Two (2) copies of all such motions and responses must be served on the Court (Chambers), and one (1)copy on the U.S. Probation Officer, when the originals are filed.

OTHER GENERAL MATTERS

Judge DuBois would like to receive copies of appellate briefs when a decision rendered by him is appealed.

CONFERENCE INFORMATION REPORT
FEDERAL RULE OF CIVIL PROCEDURE 16

CIVIL ACTION NO. _____

JURY TRIAL _____ NON-JURY TRIAL _____ ARBITRATION _____

SERVICE OF PROCESS MADE _____
Date

CAPTION:

TRIAL COUNSEL _____

REPRESENTING _____

LAW FIRM _____

ADDRESS _____

TELEPHONE _____

DISCOVERY:

COMPLETED _____
Yes No

IF NOT, WHEN? _____
Date

SETTLEMENT:

CONFERENCE BEFORE MAGISTRATE JUDGE REQUESTED _____
Yes No

MEDIATION UNDER LOCAL CIVIL RULE 53.3 AND
MEDIATION PROTOCOL REQUESTED _____
Yes No

IF YES TO SETTLEMENT CONFERENCE OR MEDIATION, AFTER WHAT DATE? _____
Date

TRIAL:

READY FOR TRIAL _____
Date

TIME TO PRESENT YOUR CASE _____

TIME FOR ENTIRE TRIAL _____

SPECIAL COMMENTS

DATE _____

SIGNATURE OF COUNSEL

TYPE OR PRINTED NAME

This Form Should Be Faxed to Chambers at 215-580-2141 or Hand Delivered to Chambers, Room 12613, United States Courthouse, Philadelphia, Pennsylvania, at least two (2) days before the scheduled Preliminary Pretrial Conference.

NOTICE TO COUNSEL
SCHEDULING AND DISCOVERY POLICY

1. A Preliminary Pretrial Conference as described in Fed. R. Civ. P. 16(a), (b) and (c) will be held in Chambers approximately 60 to 90 days after an action is filed, or shortly after a case is reassigned to my calendar.

2. Motions to dismiss, transfer, add parties and other threshold motions should be filed, whenever possible, before the Conference. The prospect of motions for summary judgment should be noted at the Conference. Two (2) courtesy copies of motion papers should be sent to chambers when the originals are filed. Any motion papers that include exhibits or attachments should be properly tabbed.

3. The Conference will take twenty (20) to thirty (30) minutes. If it is truly impossible for trial or substitute counsel to attend the Conference, it may be held by telephone upon timely request to the Court. In a complex case, it is required that trial counsel be present.

4. At the Conference the following matters, among others, will be considered and acted upon:

A. Jurisdictional defects, if any;

B. Time limits to join other parties and to amend pleadings;

C. Prospects of amicable settlement;

D. Establishing schedules for remaining pretrial proceedings including discovery, pretrial filings, exchange of exhibits, exchange of expert reports, etc; and,

E. Setting a date for trial.

5. No further conferences will be held unless requested by counsel for exploration of settlement or for trial management or preparation purposes. Conferences of this type are encouraged provided counsel believe they will be useful.

6. In an uncomplicated case, discovery should be completed within 120 days after appearances have been filed for all defendants. The date for completing discovery will be set at the Preliminary Pretrial Conference. In more complex cases, at the Conference counsel will be directed to file a joint discovery schedule setting

forth the dates, time intervals and subjects of discovery to be completed by the deadline.

7. The discovery deadline means that all reasonably foreseeable discovery must be served, noticed and completed by that date. Discovery may take place thereafter only by agreement of the parties, so long as the trial will not be delayed and trial preparation will not unreasonably be disrupted; provided however, that the Court will not entertain Motions to Compel discovery after the deadline date for the failure to timely serve the discovery or file such Motion before the deadline (absent a showing of good cause).

8. When timely discovery is not forthcoming after a reasonable attempt has been made to obtain it, the immediate assistance of the Court should be sought. See Local Rule 26.1(f) & (g). The Court encourages the submission of discovery disputes by telephone conference. Also discovery Motions may be disposed of promptly by a telephone conference in lieu of the usual Motion practice even before a response is filed.

9. Requests for extension of discovery deadlines or trial pool entry dates can be made by letter, stating the reasons and noting the agreement or disagreement of all other counsel, or by telephone conference with all counsel participating.

10. The filing of a Pretrial Memorandum described in Local Rule 16.1(c) will be required. The requirements of Local Rule 16.1(d)(2) will only be utilized when specially ordered by the Court.

11. After Arbitration, requests for trial de novo will result in the case being placed in the trial pool promptly. No discovery will be allowed after the Arbitration except by order of the Court upon good cause shown as to why the discovery requested could not have been reasonably anticipated and completed prior to the Arbitration.

12. Unexcused violations of scheduling orders are subject to sanctions under Fed. R. Civ. P. 16(f), upon Motion or the initiative of the Court.

13. Letters or written communications (which are discouraged) shall be directed to the Court and not to law clerks or to the Deputy Clerk. Telephone calls to law clerks are discouraged. Law clerks are not permitted to render advice to counsel

and have no authority to grant continuances or to speak on behalf of the Court. All scheduling matters should be discussed with Andrew J. Follmer, Deputy Clerk 267-299-7339.

14. For a complete listing of chambers' policies, counsel should consult Judge DuBois's Pretrial and Trial Procedures which is available online at <http://www.paed.uscourts.gov/documents/procedures/notices/dubpol.pdf>.

JAN E. DUBOIS, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION :
Plaintiff, :
vs. :
NO. :
Defendants. :

SCHEDULING ORDER (JURY TRIAL)

AND NOW, this ____ day of _____, 2004, following a Preliminary Pretrial Conference on said date, the parties, through counsel, having reported that they are interested in discussing settlement after completion of certain discovery, **IT IS ORDERED** that the parties, through counsel, shall jointly report to the Court in writing (letter to Chambers, Room 12613) on or before _____, with respect to whether the case is settled. In the event the case is not settled on or before _____, counsel shall include in their joint report a statement as to whether they believe a settlement conference before a magistrate judge or mediation under Local Civil Rule 53.3 and the Mediation Protocol Under Local Civil Rule 53.3 might be of assistance in resolving the case and, if so, on what form of alternative dispute resolution they agree and by what date they will be prepared to begin such proceedings.

IT IS FURTHER ORDERED that the case shall proceed on the following schedule:

1. Initial Disclosure under Federal Rule of Civil Procedure 26(a)(1) shall be completed by_____.
- All remaining fact-discovery shall proceed forthwith and continue in such manner as will assure that all requests for, and responses to, discovery will be served, noticed and completed by _____;
2. All trial exhibits shall be marked and exchanged on or before _____;
3. On or before _____, plaintiff shall identify and submit curriculum vitae for all expert witnesses on liability, injuries and other damages who have not yet been identified. On or before _____, plaintiff shall serve

defendants with reports and/or responses to expert witness discovery for all expert witnesses on liability, injuries and other damages.

On or before _____, defendants shall identify and submit curriculum vitae for all expert witnesses on liability, injuries and other damages. On or before _____, defendants shall serve plaintiff with reports and/or responses to expert witness discovery for all such expert witnesses;

4. If requested by defendants, plaintiff shall present herself for physical and/or mental health evaluations by physician(s) of defendants' choice at a mutually convenient time on or before _____;

5. Any party expecting to offer opinion testimony from lay witnesses pursuant to Federal Rule of Evidence 701 with respect to the issues of liability and damages shall, at the time required for submission of information and/or reports for expert witnesses on liability, injuries and other damages, serve opposing parties with details and/or documents covering the lay opinions of the Rule 701 witnesses;

6. Any discovery depositions of expert witnesses may be taken between _____, and _____;

7. Any motions for summary judgment and Daubert motions shall be filed and served on or before _____. Pursuant to the Court's Pretrial and Trial Procedures, moving parties shall include with any motion for summary judgment a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue of material fact. Responses to any such motions shall be filed and served within the time provided under the Local Civil Rules of this Court. The response to a motion for summary judgment shall include a separate, short and concise statement of material facts, responding to the numbered paragraphs set forth in the moving party's statement, as to which it is contended that there exists a genuine issue of material fact. The responding party may also set forth, in additional numbered paragraphs, any additional material facts which the responding party contends preclude the granting of a motion for summary judgment. Two (2) copies of any such motions and responses shall be served on the Court (Chambers, Room 12613) when the originals are filed;

8. All parties shall prepare and file with the Clerk of Court their Pretrial Memoranda, in accordance with this Order and Local Rule of Civil Procedure 16.1(c) as follows:

a. Plaintiff - on or before _____.

b. Defendants - on or before _____.

One (1) copy of each Pretrial Memorandum shall be served on the Court (Chambers, Room 12613) when the original is filed;

9. The case will be placed on the Court's trial list on _____;

10. Any party having an objection to: (a) the admissibility of any exhibit based on authenticity; (b) the admissibility for any reason (except relevancy) of any evidence expected to be offered; or, (c) the admissibility of any opinion testimony from lay witnesses pursuant to Federal Rule of Evidence 701, shall set forth separately each such objection in their Pretrial Memorandum. Each objection shall describe with particularity the ground and the authority for the objection;

11. If any party desires an "offer of proof" as to any witness or exhibit expected to be offered, that party shall inquire of counsel prior to trial for such information. If the inquiring party is dissatisfied with any offer provided, such party shall file a motion seeking relief from the Court prior to trial;

12. Because a witness may be unavailable at the time of trial as defined in Federal Rule of Civil Procedure 32(a)(3), the Court expects use of oral or videotape depositions at trial of any witness whose testimony a party believes essential to the presentation of that party's case, whether that witness is a party, a non-party or an expert. The unavailability of any such witness will not be a ground to delay the commencement or progress of an ongoing trial. In the event a deposition is to be offered, the offering party shall file with the Court, prior to the commencement of the trial, a copy of the deposition transcript, but only after all efforts have been made to resolve objections with other counsel. Unresolved objections shall be noted in the

margin of the deposition page(s) where a Court ruling is necessary and a covering list of such objections supplied therewith;

13. The parties shall meet to prepare a complete and comprehensive stipulation of uncontested facts pursuant to (d)(2)(b)(2) of Local Rule of Civil Procedure 16.1; two (2) copies of such stipulation shall be submitted to the Court (Chambers, Room 12613) at least three (3) days before the case appears on the trial list. The original shall be filed with the Clerk of the Court;

14. At least three (3) days before the case appears on the trial list, each party shall submit to the Court (Chambers, Room 12613) two (2) copies of (a) proposed jury voir dire questions, (b) proposed jury instructions with pinpoint citations of authority for each point (ONE POINT PER PAGE), (c) proposed jury interrogatories, (d) motions in limine (excepting Daubert motions); and, (e) a trial memorandum on the legal issues involved in the case. The originals shall be filed with the Clerk of the Court.

If a model jury instruction taken, for instance, from O'Malley, Grenig & Lee, Federal Jury Practice and Instructions, or Sand, Modern Federal Jury Instructions is submitted, the parties shall state whether the proposed jury instruction is unchanged or modified. If a party modifies a model jury instruction the modification shall be set forth in the following manner: additions shall be underlined and deletions shall be placed in brackets;

15. At least three (3) days before the case appears on the trial list, the parties shall submit to the Court (Chambers, Room 12613) a joint written statement of the case for reading to the jury at the commencement of the trial which shall cover (a) a brief statement of the facts; (b) a brief statement of plaintiff's causes of action and the essential elements of each cause of action; and, (c) a brief statement of the defenses and the essential elements of each affirmative defense. The statement of the case shall not exceed two (2) pages in length; and,

16. At the commencement of trial, the Court should be supplied with two (2) copies of each exhibit, and three (3) copies of a schedule of exhibits which shall briefly describe each exhibit.

BY THE COURT:

JAN E. DUBOIS, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION	:
Plaintiff,	:
	:
vs.	:
NO.	:
	:
Defendants.	:

SCHEDULING ORDER (NON-JURY TRIAL)

AND NOW, this ____ day of _____, 2004, following a Preliminary Pretrial Conference on said date, the parties, through counsel, having reported that they are interested in discussing settlement after completion of certain discovery, **IT IS ORDERED** that the parties, through counsel, shall jointly report to the Court in writing (letter to Chambers, Room 12613) on or before _____, with respect to whether the case is settled. In the event the case is not settled on or before _____, counsel shall include in their joint report a statement as to whether they believe a settlement conference before a magistrate judge or mediation under Local Civil Rule 53.3 and the Mediation Protocol Under Local Civil Rule 53.3 might be of assistance in resolving the case and, if so, on what form of alternative dispute resolution they agree and by what date they will be prepared to begin such proceedings.

IT IS FURTHER ORDERED that the case shall proceed on the following schedule:

1. Initial Disclosure under Federal Rule of Civil Procedure 26(a)(1) shall be completed by_____.
- All remaining fact-discovery shall proceed forthwith and continue in such manner as will assure that all requests for, and responses to, discovery will be served, noticed and completed by _____;
2. All trial exhibits shall be marked and exchanged on or before _____;
3. On or before _____, plaintiff shall identify and submit curriculum vitae for all expert witnesses on liability and damages who have not yet

been identified. On or before _____, plaintiff shall serve defendants with reports and/or responses to expert witness discovery for all expert witnesses on liability and damages.

On or before _____, defendants shall identify and submit curriculum vitae for all expert witnesses on liability and damages. On or before _____, defendants shall serve plaintiff with reports and/or responses to expert witness discovery for all such expert witnesses;

4. Any party expecting to offer opinion testimony from lay witnesses pursuant to Federal Rule of Evidence 701 with respect to the issues of liability and damages shall, at the time required for submission of information and/or reports for expert witnesses on liability and damages, serve opposing parties with details and/or documents covering the lay opinions of the Rule 701 witnesses;

5. Any discovery depositions of expert witnesses may be taken between _____, and _____;

6. Any motions for summary judgment and Daubert motions shall be filed and served on or before _____. Pursuant to the Court's Pretrial and Trial Procedures, moving parties shall include with any motion for summary judgment a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue of material fact. Responses to any such motions shall be filed and served within the time provided under the Local Civil Rules of this Court. The response to a motion for summary judgment shall include a separate, short and concise statement of material facts, responding to the numbered paragraphs set forth in the moving party's statement, as to which it is contended that there exists a genuine issue of material fact. The responding party may also set forth, in additional numbered paragraphs, any additional material facts which the responding party contends preclude the granting of a motion for summary judgment. Two (2) copies of any such motions and responses shall be served on the Court (Chambers, Room 12613) when the originals are filed;

7. All parties shall prepare and file with the Clerk of Court their Pretrial Memoranda, in accordance with this Order and Local Rule of Civil Procedure 16.1(c) as follows:

a. Plaintiff - on or before _____.

b. Defendants - on or before _____.

One (1) copy of each Pretrial Memorandum shall be served on the Court (Chambers, Room 12613) when the original is filed;

8. The case will be placed on the Court's trial list on _____;

9. Any party having an objection to: (a) the admissibility of any exhibit based on authenticity; (b) the admissibility for any reason (except relevancy) of any evidence expected to be offered; or, (c) the admissibility of any opinion testimony from lay witnesses pursuant to Federal Rule of Evidence 701, shall set forth separately each such objection in their Pretrial Memorandum. Each objection shall describe with particularity the ground and the authority for the objection;

10. If any party desires an "offer of proof" as to any witness or exhibit expected to be offered, that party shall inquire of counsel prior to trial for such information. If the inquiring party is dissatisfied with any offer provided, such party shall file a motion seeking relief from the Court prior to trial;

11. Because a witness may be unavailable at the time of trial as defined in Federal Rule of Civil Procedure 32(a)(3), the Court expects use of oral or videotape depositions at trial of any witness whose testimony a party believes essential to the presentation of that party's case, whether that witness is a party, a non-party or an expert. The unavailability of any such witness will not be a ground to delay the commencement or progress of an ongoing trial. In the event a deposition is to be offered, the offering party shall file with the Court, prior to the commencement of the trial, a copy of the deposition transcript, but only after all efforts have been made to resolve objections with other counsel. Unresolved objections shall be noted in the margin of the deposition page(s) where a Court ruling is necessary and a covering list of such objections supplied therewith;

12. The parties shall meet to prepare a complete and comprehensive stipulation of uncontested facts pursuant to (d)(2)(b)(2) of Local Rule of Civil

Procedure 16.1; two (2) copies of such stipulation shall be submitted to the Court (Chambers, Room 12613) at least three (3) days before the case appears on the trial list. The original shall be filed with the Clerk of the Court;

13. At least three (3) days before the case appears on the trial list, each party shall submit to the Court (Chambers, Room 12613) two (2) copies of (a) proposed findings of fact and conclusions of law, (b) motions in limine (excepting Daubert motions), and (c) a trial memorandum on the legal issues involved in the case. The originals shall be filed with the Clerk of the Court; and,

14. At the commencement of trial, the Court should be supplied with two (2) copies of each exhibit, and three (3) copies of a schedule of exhibits which shall briefly describe each exhibit.

BY THE COURT:

JAN E. DUBOIS, J.