

Judge James Knoll Gardner

Judge Gardner was born on September 14, 1940 in Allentown, Pennsylvania. He received a B.A. *magna cum laude* from Yale University in 1962 and a J.D. from Harvard Law School in 1965. From 1966 to 1969 Judge Gardner served on active duty with the United States Navy Judge Advocate General's Corps, and he served in the Navy Reserve from 1969 to 1993, including sitting as an Appellate Judge on the United States Navy & Marine Corps Court of Military Review. He retired in 1993 with the rank of Captain. From 1965 to 1966, and 1969 to 1970, Judge Gardner was an associate in the law firm of Duane, Morris & Heckscher in Philadelphia, Pennsylvania. From 1972 to 1981, Judge Gardner served in the Lehigh County District Attorney's Office, initially as an Assistant District Attorney, and subsequently as First Assistant District Attorney. From 1970 to 1981, he also maintained a general civil practice as a partner in the firm of Gardner, Gardner and Racines in Allentown, Pennsylvania. From 1981 to 2002, Judge Gardner served as a Judge of the Court of Common Pleas of Lehigh County, Pennsylvania, and he served as President Judge from 1997 to 2002. In 1996 and 1997, Judge Gardner served as President of the Pennsylvania Conference of State Trial Judges. Judge Gardner was appointed to the United States District Court for the Eastern District of Pennsylvania on October 2, 2002.

PRELIMINARY GENERAL MATTERS

1. *Chambers*

Judge Gardner's primary chambers and courtroom are located in the federal courthouse in Allentown, Pennsylvania. Judge Gardner's mailing address is United States District Court for the Eastern District of Pennsylvania, Edward N. Cahn United States Courthouse, 504 West Hamilton Street, Suite 4701, Allentown, Pennsylvania, 18101. Chambers telephone numbers are (610) 434-3457 (Secretary, Cheryl E. Sinclair, and Law Clerks) and (610) 434-3765 (Courtroom Deputy Clerk, Teri L. Lefkowitz). The fax number is (610) 434-3459.

2. *Courtrooms*

Judge Gardner's primary courtroom is Courtroom B, on the fourth floor of the federal courthouse in Allentown. Judge Gardner also presides regularly at the James A. Byrne United States Courthouse at 601 Market Street, Philadelphia, Pennsylvania. Trial and Hearing Attachment Orders will specify the location of the proceeding. Courtroom assignments vary in the federal courthouse at Philadelphia. A member of Judge Gardner's staff will advise counsel and unrepresented parties of the specific Philadelphia courtroom assignment as soon as it is known.

3. *Jury Selection & First Day of Jury Trials*

Currently all juries are selected at the United States Courthouse in Philadelphia. On jury selection days, counsel for the parties and unrepresented parties should be prepared to make their opening statements and, if time permits, to present witnesses. Customarily, jury selection, and the

rest of the first day of a jury trial, will take place in Philadelphia, and the second and subsequent days of the trial will occur in Allentown.

4. *Magistrate Judge Assignment*

Magistrate Judge Arnold C. Rapoport is assigned to Judge Gardner. Magistrate Judge Rapoport's chambers and courtroom are located in the federal courthouse in Allentown. His chambers is located in Suite 3401. Other than the suite number, Magistrate Judge Rapoport's mailing address is the same as Judge Gardner's mailing address. Magistrate Judge Rapoport's chambers telephone number is (610) 776-0369. His fax number is (610) 776-0379.

5. *Correspondence with the Court*

Judge Gardner permits correspondence from counsel and unrepresented parties in the following circumstances: (a) when letters of transmittal accompany documents required to be sent to, or filed with, the Court or in another official office in the courthouse; (b) when specifically requested by the Court to communicate information to the Court by letter; (c) when requesting permission to exceed the page limitation for briefs or to file reply or surreply briefs; and (d) to advise the Court that a case has been settled, dismissed, or otherwise finally resolved.

Other correspondence is not prohibited. However, all requests for a judicial ruling, order, decree, extension, continuance, or other formal judicial relief shall be made by the filing of a motion, petition, application, or other appropriate pleading, accompanied by a proposed order and a brief or memorandum of law, or other similar filing provided for in the Federal Rules of Civil or Criminal Procedure or the Local Rules of Civil or Criminal Procedure for the United States District Court for the Eastern District of Pennsylvania. Ordinarily, Judge Gardner will not entertain, or grant, such requests made by letter.

Moreover, unless otherwise authorized by statute, caselaw, or rule of Court, correspondence with the Court about a case or other matter pending before Judge Gardner is not appropriate unless copies of the letter and all enclosures are simultaneously provided to at least one counsel of record for each party and to all unrepresented parties. The letter to Judge Gardner should indicate that those copies have been provided to each of those persons.

6. *Communication with Law Clerks*

Counsel may speak directly to Judge Gardner's law clerks regarding scheduling and similar administrative matters, with the understanding that counsel must carefully observe ethical considerations and avoid discussion of the merits of pending cases or any proposed or pending motion with any member of Judge Gardner's staff. Law clerks may advise counsel and unrepresented parties concerning Judge Gardner's requirements, policies, procedures, and practices, but may not give substantive, procedural, or legal advice to counsel. Counsel and unrepresented parties may relay information concerning a case to the Court through the law clerks, but only after all counsel of record and all unrepresented parties have been advised of the intention to communicate that information to the Court.

7. Telephone Conferences

Judge Gardner permits, and utilizes, telephone conferences in appropriate circumstances. Ordinarily, Judge Gardner will require the lead trial counsel of record for each party and all unrepresented parties to participate in all telephone conferences concerning a case or other matter pending before Judge Gardner. No substitutions will be permitted unless authorized by Judge Gardner at least forty-eight hours prior to the conference. Unless directed otherwise by Judge Gardner, only one counsel will speak on behalf of each represented party. Customarily, it is not necessary for more than one counsel per party to be listening in on the conference call. Frequently, one of Judge Gardner's law clerks will listen to telephone conference calls by speaker phone or telephone extension. (See the attached sample Rule 16 Telephone Conference Scheduling Order.)

8. Pro Hac Vice Admissions

Judge Gardner requires a formal motion and proposed Order for *pro hac vice* admission to be filed by any attorney not formally admitted to practice before the United States District Court for the Eastern District of Pennsylvania. The motion must be signed by an attorney admitted to practice before the United States District Court for the Eastern District of Pennsylvania and filed prior to the day the attorney seeking admission first appears in Court or participates in a telephone conference.

9. Courtesy Copies of All Papers Filed

Judge Gardner welcomes and requests receipt in his chambers in Allentown of courtesy *paper* copies of all papers filed in all matters pending before him, regardless of whether the original papers were filed electronically or in hard copy, including all complaints, counterclaims, cross-claims, amendments, motions, petitions, applications, answers, replies, briefs, memoranda of law, and supporting exhibits.

10. Courtesy Copies of Appellate Briefs

Judge Gardner appreciates receiving courtesy copies of all appellate briefs concerning any case or decision of Judge Gardner which is appealed.

CIVIL CASES

Pretrial Procedures

1. Rule 16 Status Conferences & Conference Memoranda

A status conference pursuant to Federal Rule of Civil Procedure 16 will normally be conducted by Judge Gardner shortly after the case has been assigned, or reassigned, to him. The conference is usually held after the issue has been joined or the pleadings are otherwise closed.

Counsel and unrepresented parties will be notified of the date, time, location, and requirements for the status conference by the entry of a formal Scheduling Order. Counsel and unrepresented parties shall be prepared to discuss the items enumerated in the Scheduling Order. Not later than seven days prior to the conference, counsel and unrepresented parties shall provide Judge Gardner with an informal memorandum, which shall not exceed two pages in length and which shall include the information specified in the Scheduling Order. (See the attached sample Rule 16 Telephone Conference Scheduling Order.)

Ordinarily deadlines will be set at the status conference for completion or amendment of pleadings, discovery, expert reports, dispositive motions, and motions *in limine*. Customarily, a trial date will be set at the conference. In that regard, trial counsel are required to have their trial schedules and appointment calendars with them at the Rule 16 status conference.

Customarily, the dates and deadlines set at the Rule 16 status conference will be memorialized in a Rule 16 Status Conference Order. However, counsel and the parties will be bound by all dates and deadlines set at the status conference, whether or not such an Order is filed or received prior to the expiration of those dates and deadlines.

Lead trial counsel of record for each party and each unrepresented party shall attend the Rule 16 conference. No substitutions will be permitted unless authorized by Judge Gardner at least forty-eight hours prior to the conference. Co-counsel for a party may attend in addition to the lead trial counsel, but ordinarily Judge Gardner will permit only one counsel per party to speak on behalf of the client at the conference. Parties who are represented by an attorney of record are ordinarily not permitted to attend the conference (even if the client is also an attorney), whether in person or by speaker phone.

Counsel and unrepresented parties shall be prepared to discuss settlement at the Rule 16 conference, unless the matter is to be tried without jury before Judge Gardner. (Non-jury cases may be referred to Magistrate Judge Rapoport for a settlement conference.)

At the discretion of Judge Gardner status conferences may be held in the courtroom, in chambers, or by telephone conference call. Normally status conferences are not proceedings of record, or otherwise recorded.

At his discretion, Judge Gardner may schedule additional status conferences, on his own initiative, or at the request of counsel or unrepresented parties.

Unless the case is particularly complex, status conferences customarily last approximately 30 minutes.

2. *Pretrial Conferences & Trial Memoranda*

As noted above, many pretrial dates and deadlines are set in a Rule 16 Status Conference Order. In addition, a Jury Trial Attachment Order or Non-Jury Trial Attachment Order will be

issued. These Attachment Orders contain all of the deadlines customarily set at a pretrial conference. (See the attached samples of Judge Gardner's Trial Attachment Orders.)

Such deadlines include the deadlines for submitting trial memoranda, which shall include, among other things, witness lists, exhibit lists, and an itemized statement of damages and other relief sought. In jury trials, the trial memoranda shall also include proposed *voir dire* questions and a proposed verdict slip (including any requested interrogatories to the jury). In non-jury trials, the trial memoranda shall also include proposed findings of fact and conclusions of law.

The Jury Trial Attachment Order also contains deadlines for requesting points for charge and for making objections to such requests. Both Jury Trial, and Non-Jury Trial, Attachment Orders include deadlines for requesting a hearing concerning the proposed testimony of any expert witness pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993).

Because pretrial matters are covered extensively by these Pretrial Orders, a formal pretrial conference (as opposed to Rule 16 status conferences, discussed above) may not be scheduled. However, Judge Gardner may, nevertheless, schedule formal pretrial conferences in complex or other appropriate cases. In addition, Judge Gardner may meet informally with trial counsel and unrepresented parties, either by telephone or in person, during the week prior to trial or immediately prior to jury selection to discuss *voir dire* and other trial procedures.

3. *Witness Lists*

In their trial memoranda, counsel shall list those witnesses whom they intend to call in their cases-in-chief. Plaintiff's rebuttal witnesses and defendant's surrebuttal witnesses need not be listed. Listing a witness does not constitute a certification that the witness will testify or be present at trial. Unless authorized by Judge Gardner for good cause shown, witnesses not listed may not be called by that party in its case-in-chief.

4. *Common Deficiencies in Pretrial Memoranda*

Judge Gardner considers the most common deficiency in pretrial memoranda to be overkill, which is typically exhibited by listing hundreds of exhibits and dozens of witnesses, when considerably fewer witnesses and exhibits will actually be presented at trial.

5. *Continuances*

All requests for continuances of scheduled proceedings must be made on a continuance form approved by Judge Gardner. (See the attached sample Application for Continuance.) Oral or letter requests for continuance will not be considered. Approved continuance forms are available in Judge Gardner's Chambers, in the Office of the Clerk of Court in the Allentown federal courthouse (telephone (610) 434-3896), or on the Internet at <http://www.paed.uscourts.gov> (click [single left click] on "Judges' Procedures").

Continuance forms must be signed by one counsel of record for each party and by all unrepresented parties. Prior to submitting the continuance form, applicants for continuance must obtain a new date and time for the proceeding from Judge Gardner's secretary or Courtroom Deputy Clerk, and insert the new date and time where indicated in the Court-Order portion at the bottom of the continuance form. Obtaining a new date and time does not imply that the continuance will be granted. However, failure to do so may result in denial of the request.

Because trial dates are ordinarily set many months in advance with the approval of all counsel and unrepresented parties, continuance of the trial date should not be expected. Scheduled oral arguments, hearings, and trial dates are strictly enforced, and continuances are unlikely absent extraordinary circumstances. Obtaining new counsel will not ordinarily justify a continuance, nor justify revisiting prior deadlines or rulings.

The unavailability of a witness at the time of trial in the manner defined in Federal Rule of Civil Procedure 32(a)(3), or otherwise, will not be a ground to delay the commencement, or progress, of a trial. In such circumstances, Judge Gardner anticipates the use of oral or videotape depositions at trial of any unavailable witness whose testimony a party believes essential to a presentation of that party's case, whether that witness is a party, a non-party, or an expert.

6. *Extensions*

Requests for extensions of discovery, pleading, or briefing deadlines must be made by motion or stipulation. Judge Gardner may grant a first request for extension which is unopposed and which does not affect the deadline for filing dispositive motions or the trial date. Motions or stipulations for extensions shall include all current deadlines, the number of previous extensions, and all currently scheduled trial, hearing, and argument dates.

If unopposed, requests for extensions of briefing schedules may be made informally through Judge Gardner's law clerks, but only after counsel has obtained, or attempted to obtain, the agreement of all parties.

7. *Motions in Limine*

Judge Gardner does not require motions *in limine*. He neither encourages, nor discourages, the filing of such motions. However, Judge Gardner sets specific deadlines for the filing of motions *in limine*. Customarily this deadline is set at the initial Rule 16 Status Conference. The deadline for filing motions *in limine*, accompanied by a brief, is usually five to seven weeks before trial.

At the discretion of Judge Gardner, motions *in limine* may be disposed of prior to trial, or at trial. They may be disposed of on briefs, or after hearing, or oral argument. The filing of a formal motion *in limine* is not a prerequisite to making an objection to inadmissible evidence or testimony at time of trial.

Because the purpose of a motion *in limine* is to dispose of evidentiary matters out of the hearing of the jury, motions *in limine* are not appropriate, and customarily will not be heard, in connection with non-jury trials.

Motion Practice

1. *Stipulations*

Judge Gardner encourages the parties to stipulate to as many facts as possible, as early as possible, in each legal proceeding -- whether oral argument, hearings, non-jury trials, or jury trials. Judge Gardner also encourages stipulations concerning the applicable law and the procedures to be followed.

Whenever possible, stipulations should be reduced to writing and accompanied by a brief proposed Order approving the stipulation. Unless otherwise directed by Judge Gardner, written stipulations must be signed by one counsel of record for each party and all unrepresented parties. All parties in the case must execute the written stipulation, whether or not they have an interest in the subject matter of the stipulation.

Counsel's signature on the stipulation constitutes a representation that his or her client fully understands, and agrees to, the stipulation. When oral stipulations are placed on the record during legal proceedings, Judge Gardner will customarily conduct a colloquy on the record with each party, whether or not represented by counsel, to ascertain whether the party understands and agrees to the stipulation.

2. *Oral Argument, Evidentiary Hearings, and Submission on Briefs*

Judge Gardner determines in the case of all motions and petitions whether to schedule oral argument or an evidentiary hearing, or whether to decide the matter based upon the briefs of the parties and the record. Counsel may request oral argument, a hearing, or acceptance of the issue on briefs and the record. However, Judge Gardner will determine which procedure to follow.

Counsel and unrepresented parties will be advised of the date, time, and location of all hearings, arguments, and trials by means of an Attachment Order issued by Judge Gardner. (*See the attached samples of Judge Gardner's Attachment Orders.*)

Judge Gardner will generally conduct oral argument on motions involving complex matters and on many dispositive motions. Not later than seven calendar days before the argument date, each party shall submit to Judge Gardner a written summary of the issues and of that party's argument, which summary shall not exceed two pages in length.

Ordinarily each party shall have twenty minutes to present oral argument, unless more time is allotted, or less time is directed, by Judge Gardner. Irrespective of any time limit, counsel are expected to present argument in a concise manner and to be prepared to answer questions by the Court concerning the argument and the case.

Rebuttal and surrebuttal argument is ordinarily not permitted unless requested by the Court.

At the conclusion of oral argument, hearing, or trial without jury, in open court, on the record, and in the presence of counsel and the parties, Judge Gardner frequently announces his decision and reasons, including citation of legal authority. This may be accomplished by dictating a formal Order and Bench Opinion, or by means of an informal narrative explanation. At the conclusion of oral argument, Judge Gardner may take a recess for deliberation before reopening Court to announce his decision. Counsel are invited, but not required, to remain and be present for the announcement of the decision and analysis.

Because Judge Gardner frequently announces his decision at the conclusion of oral argument, hearing, or non-jury trial, counsel should not expect to be permitted to submit additional documents, briefs, citations, or arguments subsequent to the proceeding.

3. *Briefs*

Pursuant to Rule 7.1 of the Local Rules of Civil Procedure for the United States District Court for the Eastern District of Pennsylvania, the movant's brief shall be filed at the time the motion or petition is filed. Response briefs shall be filed fourteen calendar days after service of the movant's brief.

Briefs and response briefs shall not exceed twenty-five pages, absent leave of Court. Requests to present a brief in excess of twenty-five pages shall be made either by formal motion and proposed Order, by letter request to the Court, or by oral request to the law clerk assigned to the matter being briefed. Judge Gardner will grant permission only for good cause shown.

4. *Reply Briefs and Surreply Briefs*

Reply briefs and surreply briefs are not allowed, unless requested, or permitted, by Judge Gardner. If permitted, reply briefs and surreply briefs shall not exceed seven pages, absent leave of Court. Requests to file a reply brief or surreply brief or to exceed the page limit shall be made either by formal motion and proposed Order, by letter request to the Court, or by oral request to the law clerk assigned to the matter being briefed. Judge Gardner will grant permission only for good cause shown.

5. *Proposed Order*

Each motion, petition, answer or reply shall be accompanied by a proposed Order in the following format:

[Caption]

ORDER

NOW, this [leave date blank] day of [insert month], [insert year], upon consideration of [here insert the exact title of the motion, petition, answer or reply] filed [here insert the date of filing], [here add, as appropriate, either “which motion is unopposed,” or “upon consideration of the briefs of the parties,” and if oral argument has been scheduled, add: “and after oral argument held [here insert date, month and year of oral argument],”

IT IS ORDERED that the (motion) (petition) is (granted) (denied).

BY THE COURT:

James Knoll Gardner
United States District Judge

6. *Legal Citations*

Citation of all legal authority -- including published and unpublished opinions, statutes, codes, regulations, executive orders, legislative history, and other sources -- in briefs, memoranda of law, pleadings, and other documents shall conform with the standards promulgated in *A Uniform System of Citation*, commonly referred to as “The Bluebook”, published by The Harvard Law Review Association, Eighteenth Edition (2005), or the most recent subsequent edition.

Opinions of the United States Supreme Court shall be cited to the United States Reports (“U.S.”), the Supreme Court Reporter (“S.Ct.”), and the Lawyers’ Edition Reports (“L.Ed.”), in that order. Where applicable, citations to state court opinions shall include parallel citations to the official and unofficial reporters (*e.g.*, “Pa.” and “A.2d”).

Pinpoint citations shall be provided for all direct quotations from an opinion, and are encouraged for all references to a lengthy opinion (*e.g.*, “224 F.Supp.2d 950, 959 (E.D. Pa. 2002)”).

All statutes located in titles of the Pennsylvania statutes which have been officially codified shall be cited in the following format: 42 Pa.C.S.A. § 913. Use the full citation of the legislative act for reference to all statutes located in titles of the Pennsylvania statutes which have not been codified, in the following format: Act of April 3, 1987, P.L. 43, art. VI, sec. 342, as amended, 43 P.S. § 7342.

7. *Citation of Unpublished Opinions*

Unpublished opinions which are available through the LexisNexis or Westlaw computer legal research programs may be cited to its computer location in the following format: *Smith v. Jones*, 2002 U.S. Dist. LEXIS 15425, August 15, 2002; 2002 WL 121 (3d Cir. 2002).

Unpublished opinions which are not available through LEXIS or Westlaw may be cited in the following format: *Smith v. Jones*, No. Civ. A. 05-1234 (Gardner, J.)(E.D. Pa. January 3, 2005). Attach to the brief or other document a complete copy of any unpublished opinion not available through LEXIS or Westlaw.

Do not cite, or rely upon, any unpublished opinion where rules of the jurisdiction promulgating the opinion prohibit citation of, or reliance upon, such opinion.

8. *Courtesy Copies of Motion Papers*

Judge Gardner welcomes and requests receipt in chambers of courtesy copies of motions, petitions, applications, answers, replies, briefs, memoranda of law, proposed Orders, and supporting exhibits in matters pending before him.

Discovery

1. *Mandatory Informal Discovery Disclosures*

Counsel and unrepresented parties must comply with Federal Rule of Civil Procedure 26 concerning mandatory informal self-executing disclosures prior to the Rule 16 status conference.

2. *Discovery Deadlines*

Judge Gardner expects discovery to commence at the close of the pleadings, and counsel and unrepresented parties should commence discovery before the initial Rule 16 status conference. Judge Gardner establishes discovery deadlines at the initial Rule 16 status conference. He does not usually conduct separate discovery conferences, but he may do so in special circumstances or complex cases.

3. *Discovery Period*

Judge Gardner generally permits 90 to 120 days to complete all discovery including interrogatories, requests to produce documents, depositions, and independent medical examinations. Judge Gardner may establish longer discovery periods in special circumstances or exceedingly complex cases. All liability and damages discovery shall be completed during a single discovery period. Judge Gardner does not normally establish separate liability and damages discovery periods.

4. *Expert Discovery*

At the Rule 16 status conference, Judge Gardner establishes deadlines to identify expert witnesses and to provide a curriculum vitae and a signed, written expert report from each expert witness. Plaintiff's expert reports are generally due on the last day of the discovery period; defendant's expert reports, thirty days after that; and third-party defendant's expert reports, thirty days after that. Customarily, Judge Gardner does not permit rebuttal expert reports. In appropriate cases, Judge Gardner may permit a brief separate subsequent discovery period for deposing expert witnesses.

5. *Discovery Disputes*

On January 2, 2003, Judge Gardner promulgated a Standing Order providing that if discovery disputes cannot be amicably resolved, or if additional depositions or other discovery is required, such disputes or requests shall immediately be brought to the attention of Magistrate Judge Rapoport by letter or other informal means. Any party contending that an Order of the Magistrate Judge is clearly erroneous or contrary to law may file a Petition to Reconsider, together with a proposed Order, directed to Judge Gardner, pursuant to 28 U.S.C. § 636(b)(1)(A). A copy of the Standing Order is attached. The Standing Order is also available on the internet at <http://www.paed.uscourts.gov>.

6. *Confidentiality Agreements*

In matters concerning trade secrets, rights of privacy, privileged information, or similar confidential matters, the parties are encouraged to execute written confidentiality agreements, and may submit such agreements, together with a proposed Order, by stipulation to Judge Gardner for approval.

7. *Daubert Hearings*

Any party who contends, or may contend, that the proposed testimony of any expert witness requires a hearing at, or before, trial to challenge the qualifications of an expert to render certain opinions, or to challenge the methodology of the expert, or to make other challenges, pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), shall notify the Court of this contention in writing at least sixty days prior to the trial date, or at such other time as directed by Judge Gardner. (*See* the attached samples of Judge Gardner's Attachment Orders.)

Settlement

1. *General Approach to Settlement*

Judge Gardner strongly encourages settlement in civil cases. He believes that Court involvement often facilitates settlement agreements.

Judge Gardner refers many cases to Magistrate Judge Rapoport for settlement conferences. At the request of the parties, or *sua sponte*, Judge Gardner personally conducts settlement negotiations in some jury trial cases. In non-jury cases, settlement conferences are handled by Magistrate Judge Rapoport. Occasionally, a case will be referred to another District Court Judge or Magistrate Judge for settlement.

2. *Alternative Dispute Resolution*

Pursuant to Rule 53.3 of the Local Rules of Civil Procedure for the United States District Court for the Eastern District of Pennsylvania, Judge Gardner requires the parties to consider the use of an alternative dispute resolution (“ADR”) process at an appropriate stage in the litigation. ADR processes include mediation, conciliation, private arbitration, and Court-Annexed Mediation under Local Rule 53.3.

Arbitration

1. *Consensual Arbitration*

In all appropriate cases, Judge Gardner encourages the parties to consent to federal arbitration pursuant to the provisions of Rule 53.2(3)(B) of the Rules of Civil Procedure of the United States District Court for the Eastern District of Pennsylvania.

Except where prohibited by law, Judge Gardner will approve agreements of the parties to submit cases to federal arbitration containing any one or more of the following provisions: (1) subject to the statutory monetary jurisdictional limitation on arbitration awards; (2) waiving the statutory monetary jurisdictional limitation on arbitration awards; (3) agreeing to the finality of the award of the arbitrators and waiving the right to demand a trial *de novo* before the District Court after arbitration; (4) waiving pretrial discovery, in whole or in part, prior to arbitration; (5) waiving the application of certain evidentiary rules at the arbitration hearing; and (6) other appropriate agreements.

Ordinarily, federal arbitrators are not empowered to award injunctive or declaratory relief, even by consent.

2. *Non-Consensual Arbitration*

In appropriate cases Judge Gardner will direct the parties to submit to federal arbitration, either *sua sponte* or upon the request of one or more parties, over the objection of a party or parties. All such non-consensual arbitrations shall be conducted subject to the statutory monetary jurisdictional limitation on arbitration awards, the right of all parties to demand a trial *de novo* before the District Court after arbitration, and all procedural and evidentiary rules applicable to federal arbitration, unless otherwise agreed to by all parties.

3. *Scheduling Arbitration Hearing*

Judge Gardner will consider the agreements and preferences of the parties, the schedule of the Court, and the interests of justice and efficient case administration in determining whether to schedule arbitration hearings before commencement of discovery, during the discovery period, or after completion of discovery. If the scheduling of the arbitration hearing occurs before, or during, the Rule 16 Status Conference, Judge Gardner may also schedule a trial date at the status conference, to be utilized in the event any party makes a timely demand for a trial *de novo* before the District Court after arbitration.

Injunctions

1. *Temporary Restraining Orders*

Consistent with the nature of the emergency involved, Judge Gardner will promptly schedule hearings and/or arguments on requests for Temporary Restraining Orders. Except in cases where the nature of the emergency precludes it, Judge Gardner requires the petitioner to notify the respondent of the nature of the request for a Temporary Restraining Order; and to serve the petition and proposed Order upon the respondent, if practical; and to provide the respondent with notice of the date, time and location of the hearing or argument.

2. *Filing Requirements*

Except in cases of the most extreme emergency, Judge Gardner will not entertain a petition for a Temporary Restraining Order unless a case has been formally commenced by the filing of a separate complaint seeking permanent injunctive relief or other permanent equitable relief. The petition for a Temporary Restraining Order must be filed under the same caption and case number as the complaint for permanent relief.

3. *Preliminary Injunctions*

In cases seeking a preliminary injunction (as opposed to an emergency petition for a Temporary Restraining Order), a hearing and/or argument will be scheduled in due course consistent with the nature of the relief requested. As in the case of a request for a Temporary Restraining Order, a petition seeking a preliminary injunction must be accompanied by a separate complaint seeking permanent relief under the same caption number.

4. *Service*

The complaint, petition for preliminary injunction, proposed Order, and notice of hearing or argument must be formally served on all parties as in the case of other civil litigation.

5. *Proposed Findings of Fact & Conclusions of Law*

Prior to the hearing (or argument, if there is no hearing) in all preliminary injunctions and final injunctions, Judge Gardner requires all parties to submit proposed findings of fact, conclusions of law, and a legal memorandum or brief.

6. *Expedited Discovery*

In appropriate cases, Judge Gardner permits expedited and intensive discovery in injunctive matters.

7. *Consolidation of Hearings on Preliminary & Final Injunctions*

When appropriate and consistent with the nature of the case, Judge Gardner favors advancing and consolidating the trial of the action on the merits of the request for a final injunction with the preliminary injunction hearing pursuant to Federal Rule of Civil Procedure 65(a)(2).

CIVIL & CRIMINAL TRIAL PROCEDURE

Trial Attachment Procedures

1. *Scheduling of Trials*

Each jury and non-jury trial on Judge Gardner's calendar is attached to a specific trial term. Ordinarily the trial date is set at the initial Rule 16 Status Conference. Whenever possible, Judge Gardner accommodates the professional and personal schedules of trial counsel in assigning cases to a particular trial term.

2. *Trial Terms*

Customarily, cases will be tried during a one, or two-week trial term. Both jury and non-jury cases are assigned to the same trial term. Ordinarily, both civil and criminal cases are assigned to the same trial term. Pursuant to federal law, criminal cases take precedence over civil cases.

3. *Trial Continuances*

Because all case-related deadlines are customarily set at the initial Rule 16 Status Conference -- including deadlines for amendment of pleadings, discovery, expert witness disclosure, dispositive motions, and motions *in limine* -- counsel generally have six to twelve, or more, months advance notice of the trial date. Because Judge Gardner will ordinarily not schedule a trial unless counsel certify their availability for that date; because counsel have sufficient advance notice to resolve witness scheduling conflicts, or to preserve the testimony of unavailable witnesses for presentation at trial by means of videotaped, or oral, depositions; continuances of trial are rarely granted, and only for the most unexpected, or unforeseen reasons.

Problems locating witnesses, witness scheduling problems, unavailability of witnesses, discovery problems, withdrawal or dismissal of counsel, recent entry of appearance by new counsel, continuing medical problems of plaintiff in a personal injury case, and similar circumstances, ordinarily will not result in postponement of trial.

4. *Disposition of Trials*

Because statistically a high percentage of cases settle at or before trial, it is necessary to somewhat overbook the number of cases scheduled during a trial term. However, Judge Gardner does not excessively overbook the cases. The customary experience is that all cases listed for a particular trial term will be reached during that trial term.

5. *Cases Not Reached*

If for any reason a case is not reached (by commencement of jury selection, or by starting a non-jury trial) during the trial term, counsel and the parties will be released from their trial attachment at the end of the last day of the trial term. In that event, the case will be reattached, with priority, for the next trial term for which all counsel are available.

6. *Completion of Cases*

Customarily, a jury trial which has commenced, but is not completed, by the end of a trial term, will continue into the next week, and beyond, if necessary, until its conclusion. A non-jury trial which has commenced, but not concluded, before the end of the trial term, will, at the discretion of Judge Gardner, continue uninterrupted into the next week, or be rescheduled for completion at a future date.

7. *Order in Which Cases are Called*

Cases are not necessarily called for trial in the order in which they are attached for trial. The cases scheduled for each trial term will be prioritized by Judge Gardner approximately one week prior to commencement of the trial term.

Criminal cases will be disposed of before civil cases are reached. Ordinarily, any case not reached in a previous term (for reasons other than a continuance) will be tried before any cases on the list for the first time are reached.

Factors considered by Judge Gardner in prioritizing cases for the trial term include the age of the case, the length of the trial, the complexity of the case, circumstances involving parties, witnesses and counsel who reside outside of the Eastern District of Pennsylvania, and other relevant factors.

Ordinarily, all cases attached for trial in the first week of a multi-week trial term will be disposed of before any cases attached for the second week of the term are reached.

8. *Communication with the Court Concerning Trial Schedule*

Lead trial counsel for each represented party and each unrepresented party are directed to contact Judge Gardner's chambers by telephone each business day, commencing Wednesday of the week immediately preceding their trial attachment. In these daily calls counsel and unrepresented parties will be advised of the order in, and estimated date on, which their case will commence. Counsel and unrepresented parties shall keep their clients and witnesses on standby, and continue the daily calls until advised of a specific time and date to appear to commence the trial.

9. *Location of Jury Trials*

Currently, juries for all trials throughout the Eastern District of Pennsylvania are selected at the James A. Byrne United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania. Accordingly, the first day (including, but not limited to, jury selection) of all jury trials will take place in that federal courthouse in Philadelphia.

Counsel and unrepresented parties will be advised in advance of a specific courtroom assignment for the first day of trial in Philadelphia. If such notification is not received, counsel and unrepresented parties should contact Judge Gardner's chambers in Allentown at (610) 434-3457, or inquire on the first day of trial at the jury selection office in Philadelphia (Room 2208 (next to the snack bar)) for the courtroom assignment.

Depending upon the time of completion of jury selection, counsel should be prepared to give their opening statements and to begin witness presentation on the first day of trial in Philadelphia.

After completion of the first day of the jury trial in Philadelphia, the case will ordinarily resume the next business day, and proceed until its conclusion, at the federal courthouse in Allentown. However, in the event jury selection is not completed on the first day, jury selection will resume in Philadelphia on the second day of trial, and the trial will remain in Philadelphia until the end of the day on which jury selection is completed. On the next business day after completion of jury selection, the trial will resume in Allentown until its conclusion.

10. *Location of Non-Jury Trials*

Unless otherwise directed by Judge Gardner, all non-jury trials will be tried in their entirety in Courtroom B on the fourth floor of the Edward N. Cahn United States Courthouse at 504 West Hamilton Street, Allentown, Pennsylvania.

Courtroom Protocol

1. *Counsel Tables*

In civil proceedings plaintiffs are assigned the counsel table on the left (from the perspective of the judge). Defendants and third-party defendants are assigned the counsel table on the right. Additional counsel tables may be added to accommodate a large number of parties.

In criminal proceedings defendants are assigned the counsel table closest to the entrance to the prisoner's retaining cell. The government is assigned the other counsel table.

In argument court, counsel occupy the counsel tables. In all other court proceedings, counsel and the parties occupy the counsel tables.

2. *Presence of Parties During Court Proceedings*

The parties are expected to be present for all courtroom proceedings of record except argument court. The parties are welcome, but not required, to attend argument court.

Parties desiring to be excused from part, or all, of a courtroom record proceeding shall request in advance from Judge Gardner permission to be excused and formally waive their presence on the record.

3. *Voir Dire*

Judge Gardner always conducts the preliminary, introductory, and informational portion of *voir dire*. Case-specific *voir dire* is sometimes conducted by Judge Gardner and sometimes, at Judge Gardner's discretion, by counsel. This subject is normally discussed at the final pretrial conference. Objections to proposed *voir dire* questions will be heard, and rulings made, at the final pretrial conference.

4. *Length of Opening Statements & Closing Arguments*

Judge Gardner will generally impose an appropriate time limit for opening statements and closing arguments after considering the requests of counsel and the type and complexity of the case.

5. *Order of Presentation*

In the absence of contrary agreement approved by the Court, the parties' opening statements, cases-in-chief, rebuttal cases, and closing arguments shall be presented in the order in which the parties appear in the caption of the case. For this purpose, multiple parties may be grouped according to their similarity of interest in the litigation. In the event of such grouping, the order of a group's presentation shall be determined by the caption placement of the first party in that group to be listed in the caption.

The order of closing arguments in a civil case shall be plaintiff's closing, followed by defendant's closing, followed by plaintiff's rebuttal argument. The order of closing arguments in a criminal case shall be the government's closing, followed by defendant's closing, followed by the government's rebuttal argument.

6. *Order of Examination of Witnesses*

In the absence of contrary agreement approved by the Court, witnesses shall be cross-examined in the order in which the parties appear in the caption (in circular fashion).

In other words, in a case with three parties (a plaintiff, defendant, and third-party defendant), in plaintiff's case-in-chief the order of examination of witnesses shall be: direct examination by plaintiff, cross-examination by defendant, cross-examination by third-party defendant. In defendant's case-in-chief, the order of examination of witnesses shall be: direct examination by defendant, cross-examination by third-party defendant, cross-examination by plaintiff. In third-party defendant's case-in-chief, the order of examination shall be: direct examination by third-party defendant, cross-examination by plaintiff, cross-examination by defendant.

7. *Location of Counsel During Interrogation of Witnesses, Opening Statements & Closing Arguments*

Counsel may interrogate witnesses from counsel table (standing or seated), from a lectern, from the far end of the jury box, standing next to an easel when questioning about an exhibit placed on the easel, or briefly next to the witness stand when handing a document or exhibit to a witness and referring to it.

Because Judge Gardner's courtroom is equipped with an electronic sound recording system, counsel must be located near a microphone. Microphones will be placed at counsel tables, the lectern, the witness stand, and standing floor microphones will be placed where needed.

Counsel may make opening statements and closing arguments to the jury from behind the lectern, beside the lectern, or standing at a floor microphone in front of the center of the jury box without a lectern. Counsel may not touch the jury box rail or place notes, documents or exhibits on it.

If opening statements and closing arguments are invited in a non-jury trial, counsel shall make those addresses from behind the lectern.

8. *Avoiding Down Time*

Judge Gardner expects counsel to have a sufficient number of witnesses present each trial day to fill each day with testimony and to avoid "down time" at trial.

9. *Notetaking by Jurors*

Judge Gardner does not usually permit notetaking by jurors. However, in complicated or lengthy cases, or at the request of counsel, he may permit notetaking in appropriate circumstances.

10. *Sidebars*

Judge Gardner requests or permits sidebar conferences as needed. Only one attorney per client or client group will be permitted to speak at sidebar. When the sidebar discussion concerns an objection made during the testimony of a witness, the attorney addressing that objection at sidebar for each client group shall be the attorney who is conducting the direct or cross-examination of that witness.

Requests to approach sidebar shall be kept to a minimum. Such requests will be granted only when the law requires a matter to be discussed out of the presence of the jury, in circumstances where Judge Gardner requires sidebars (such as requests to display weapons, illegal drugs, contraband, physical features, or to present a demonstration), or where otherwise appropriate in the discretion of Judge Gardner.

Ordinarily, objections to testimony or exhibits will be briefly made, argued and ruled upon in the presence of the jury without approaching sidebar.

In non-jury trials sidebar conferences will not often be appropriate or necessary.

Witnesses

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

Judge Gardner will not permit more than one attorney for a party to examine the same witness. The attorney examining, or cross-examining, a witness will be the only attorney making, or responding to, objections concerning that witness on behalf of that attorney's client.

2. *Examination of Witnesses Beyond Redirect & Recross*

Judge Gardner does not have any specific policy concerning examination of witnesses beyond redirect and recross. The rules of evidence will be followed concerning the scope of cross-examination, re-direct, re-cross, and subsequent examination, if any.

3. *Examination of Witnesses Out of Sequence*

Judge Gardner will permit counsel to call witnesses out of turn, even during another party's case if necessary, for the convenience of the witnesses upon agreement of opposing counsel or when appropriate in his discretion.

4. *Approaching Witnesses*

In a jury trial, counsel must request advance permission from Judge Gardner each time counsel wishes to approach a witness during testimony.

In a non-jury trial or hearing, counsel must request advance permission from Judge Gardner the first time counsel wishes to approach a witness during testimony that day. If permission is granted, counsel may approach the witness in a non-jury trial or hearing thereafter that day without seeking permission each time.

5. *Requesting Witnesses to Step Down from the Witness Stand*

In a jury trial, counsel must request advance permission from Judge Gardner each time counsel wishes a witness to step down from the witness stand to demonstrate something to the jury or to draw or mark something at the easel. Permission to draw or mark something at the easel may be requested in the presence of the jury. Permission for the witness to demonstrate something shall be made in advance at sidebar out of the hearing of the witness and audience.

If permission to draw or mark is granted, the witness shall complete the drawing or marking without comment and then step aside from the easel for questioning. If a witness is permitted to demonstrate something, the demonstration will be carried out only in the precise manner approved in advance by Judge Gardner.

6. *Displaying Physical Features*

Any party wishing to display scars, injuries, birthmarks, tattoos, or other physical features of a person to the jury shall request permission from Judge Gardner in advance at sidebar out of the hearing of the jury and audience. After giving each party an opportunity to object and be heard, Judge Gardner will rule on such requests. If permitted, such physical features will be displayed to witnesses or jurors only in the precise manner approved in advance by Judge Gardner.

Pre-Recorded Testimony

1. *Videotaped Testimony & Oral Trial Depositions*

Judge Gardner requires that prior to trial, he be provided with the original and one copy of the complete transcript of any videotaped testimony which will be played at trial and any oral deposition which will be read at trial. Portions of the videotaped or oral deposition which plaintiff intends to offer at trial shall be marked on the copy in blue; portions intended to be offered by defendant, in red.

In addition, at trials conducted in Allentown, counsel must supply their own video playback equipment and operator. Sufficient equipment shall be provided to enable Judge Gardner, all jurors, counsel, parties and the audience to clearly see and hear the videotaped testimony. The equipment must be set up in the courtroom when court is not in session, at a time pre-approved by Judge Gardner.

2. *Transcripts & Video Cassettes*

Judge Gardner will seek the agreement of counsel and the parties to substitute the original transcript of the videotaped or oral deposition in the record as the official record of the trial

testimony of the deponent, in lieu of transcription of the testimony of that witness by the court reporter or the Court's typist.

At the conclusion of the trial, counsel for any party presenting videotaped testimony shall take possession, and maintain custody, of the videotape cassette of that testimony until the final disposition of all appeals and retrials, if any.

3. *Objections to Videotaped Testimony & Oral Trial Depositions*

Prior to commencement of trial, parties intending to offer videotaped testimony or oral trial depositions shall make reasonable efforts with all counsel and unrepresented parties to resolve each objection made on the record at the time of the deposition. Ordinarily, objections not made on the record at the time of the videotaped, or oral, trial deposition will be deemed to be waived.

Where a Court ruling is necessary, the basis for unresolved objections shall be written in ten words or less in the margin of the copy of the deposition, accompanied by a separate written index of such objections.

4. *Reading Materials into the Record*

Parties desiring to read stipulations, pleadings, discovery materials, or other matters, into the record shall provide Judge Gardner and all parties in advance of the reading with a copy of the matters to be read. Parties intending to read such materials into the record shall make reasonable efforts to obtain the agreement of all other parties. A record will be made of such agreements. Any unresolved objections shall be argued and ruled upon before the reading is permitted.

Any reasonable proposal concerning the reading procedure, to which there is no objection, will be approved. Subject to any objections, counsel may provide the readers, do the reading, or request Judge Gardner to do the reading. However, counsel should not request members of Judge Gardner's staff to read materials into the record.

5. *Manner of Reading Materials into the Record*

All materials shall be read clearly and accurately in a professional, not overly-dramatic, fashion. Unless otherwise prohibited by the rules of evidence, prior to the formal reading, counsel shall briefly identify the source of the material being read, the identity of any persons being quoted (including the attorney-questioner and witness), and the date and location of the original testimony or deposition being read.

When testimony is read, two readers may be provided: one to read the attorney's questions, and the other to read the answers of the witness. The person portraying the witness may sit on the witness stand, if desired.

If only one person is provided for reading testimony, the reader shall state "Question" before each question and "Answer" before each answer.

6. *Submission of Materials Read into the Record*

All materials read into the record shall be marked as exhibits and formally offered into evidence. If only a portion of such exhibit is being read or offered into evidence, the proponent of the exhibit shall clearly delineate for the record (by page and line number, or other appropriate designation) which portions are being read into the record and which portions are not.

Exhibits

1. *Preparation of Exhibits*

Before commencement of trial, exhibits shall be pre-marked and exchanged by counsel and unrepresented parties. Prior to opening statements, the parties shall provide Judge Gardner with a copy of each exhibit together with an index briefly describing each exhibit.

2. *Offering Exhibits into Evidence*

Prior to trial, counsel and unrepresented parties shall attempt to agree to the admission of as many exhibits as possible.

To the extent possible, exhibits should be pre-numbered prior to trial. It is not required that exhibits be presented in numerical order during trial. Nor is it necessary that all pre-marked exhibits be utilized at trial.

Whether or not pre-marked, no exhibit may be referred to at trial until it has been presented to the court reporter for dating, initialing, and recording and, if not already done, for assignment of a number and affixing an evidence sticker or tag.

Counsel are encouraged to meet with the court reporter prior to the commencement of each court session for the tagging, dating, initialing and recording of each exhibit to be presented that morning or afternoon for the first time.

3. *Displaying Exhibits to the Jury During Trial*

In the absence of agreement, no exhibit may be referred to at trial until shown to all counsel and unrepresented parties for examination and possible objection. No exhibit or portion thereof may be shown or read to the jury until after the exhibit has been formally offered and received in evidence, and a request has been made and granted to display or publish the exhibit.

With advance permission of Judge Gardner, an exhibit may be read to the jury, displayed on an easel, projected on a movie screen, displayed on a video or VCR screen, displayed in a shadow box (X-Rays), demonstrated by a witness, or personally examined by the jurors in the jury box. Only Judge Gardner or members of his staff will hand exhibits to the jury or retrieve them from the jury.

4. *Weapons, Ammunition, and Other Dangerous Items as Evidence*

No firearms, explosives, weapons, ammunition or dangerous items shall be brought into the courtroom as evidence without first presenting them to the United States Marshal in an unloaded or disengaged condition. The Marshal will inspect the items and render all firearms, explosives and other similar items inoperable.

With approval of the Marshal, the items may be transported to the courtroom by the Marshal, court security officer, law enforcement case agent or counsel. All such items shall be concealed in an evidence envelope, box, bag, briefcase or other appropriate container until such time as Judge Gardner grants permission to display the items in the courtroom. Such permission shall be requested in advance at sidebar out of the hearing of the jury and the audience.

5. *Illegal Drugs & Other Contraband as Evidence*

No illegal drugs or other contraband will be brought into the courtroom without first advising the United States Marshal and, if the Marshal requests, presenting the items to the Marshal for inspection. Thereafter the items may be transported to the courtroom by the same category of individuals authorized to transport firearms into the courtroom.

All such items shall be concealed in appropriate containers in such a fashion as to prevent spillage or other destruction or modification of the evidence, and until Judge Gardner grants permission to display the items in the courtroom.

Permission to display any such item shall be requested of Judge Gardner in advance at sidebar out of the hearing of the jury and audience. Judge Gardner will inspect the item before granting permission to display it. Such items will be displayed to witnesses, the jurors, or others in the courtroom only in the precise manner approved in advance by Judge Gardner.

Ordinarily jurors will not be permitted to touch or handle such items. However, with advance permission of Judge Gardner requested out of the hearing of the jury, the items may be displayed to the jury in such fashion as approved by the Court.

6. *Custody of Weapons, Ammunition, Other Dangerous Items & Contraband During and After Trial*

All firearms, explosives, weapons, ammunition, dangerous items or contraband referred to during trial, whether or not admitted into evidence, shall remain in the custody of the law enforcement case agent or other appropriate law enforcement official, or other authorized person, both during trial, and during recesses and adjournment of the trial. After conclusion of the trial those items shall remain in the custody of the appropriate official until after the appeal period expires (if no appeal is taken), and until the final disposition of all appeals and retrials (if an appeal is taken).

The custodian shall secure the items in an evidence locker or other appropriate secure storage facility with limited access, shall maintain a written chain of custody record, and shall not permit the evidence to become lost, destroyed, damaged, altered or modified in any fashion.

Prior to conclusion of the trial, the party who offered those exhibits into evidence shall provide the court reporter with 8-1/2" x 11" color photographs of the exhibits for retention in the record in lieu of the actual items.

7. *Custody of Tangible Property, Blow-Ups, Enlargements, & Other Large Items After Trial*

At the conclusion of the trial, counsel for any party which offered into evidence tangible property, blow-ups or enlargements, or other large or bulky items, shall take possession and maintain custody of those items until the final disposition of all appeals and retrials, if any.

Prior to conclusion of the trial, the party who offered those exhibits into evidence shall provide the court reporter with 8-1/2" x 11" color photographs of the exhibits for retention in the record in lieu of the actual items.

8. *Custody of Exhibits After Trial*

At the conclusion of trial, any exhibits not returned to counsel or the parties will remain in the possession of the court reporter for a period of sixty days if no appeal is taken, or for sixty days after disposition of all appeals and retrials, if any. Counsel and unrepresented parties shall have thirty days after expiration of this time period in which to retrieve their trial exhibits. Any exhibits not retrieved by that time will be destroyed by the court reporter.

Trial Submissions

1. *Trial Briefs*

Trial briefs will not be required, unless Judge Gardner specifically directs their production in order to address some unique or complex issue. However, the materials and information required by the Trial Attachment Order must be provided by the deadlines established in that Order.

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

In non-jury trials, counsel for plaintiffs shall initiate a meeting of all counsel of record and unrepresented parties to be held at least forty days before commencement of trial, at which counsel shall meet and discuss and submit to the Court at least thirty days before commencement of trial, one complete set of agreed-upon findings of fact and conclusions of law.

If the parties cannot agree upon one complete set of findings of fact and conclusions of law, they are required to submit to the Court at least thirty days before commencement of trial, one set of those findings and conclusions which have been agreed upon, and each party shall submit to the

Court at least fifteen days before commencement of trial, proposed findings of fact and conclusions of law which are not agreed upon, and a legal memorandum in support thereof.

The original of each document shall be filed with the Clerk of Court. If a good faith effort is not made to comply with these directives, sanctions may be imposed, the trial may be continued, or both.

3. *Proposed Jury Instructions*

In civil jury trials, counsel for the parties and unrepresented parties are required to jointly submit one set of agreed-upon jury instructions. To accomplish this, the parties are required to serve their proposed instructions upon each other one month prior to trial. The parties shall then meet, confer, and submit to the Court one complete set of agreed-upon jury instructions. Sanctions may be imposed if a good faith effort to comply with this directive is not made.

If the parties cannot agree upon one complete set of jury instructions, they are required to submit one set of those jury instructions which have been agreed upon, and each party shall submit a supplemental set of jury instructions which are not agreed upon.

These joint instructions and supplemental instructions must be filed two weeks prior to trial. Each party shall then file, one week before trial, its objections to the non-agreed upon instructions proposed by all other parties. All objections shall be in writing and shall set forth the objectionable proposed instruction in its entirety.

The objection shall specifically set forth the objectionable material in the proposed instruction. The objection shall contain citation of legal authority explaining why the instruction is improper and a concise statement of argument concerning the instruction. Where applicable, the objecting party shall submit a correct alternative instruction covering the subject or principle of law, with citation of legal authority supporting the alternative instruction.

All proposed supplemental jury instructions shall be numbered and shall have citation of authority for each point (one instruction per page). If a model jury instruction is submitted, for example, from *Pennsylvania Suggested Standard Civil Jury Instructions*, or from Sand, Siffert, Reiss and Batterman, *Modern Federal Jury Instructions*, LexisNexis (originally published in 1984 and updated annually), counsel shall indicate whether the proposed jury instruction is modified or unchanged.

If counsel modifies a model jury instruction, additions shall be underlined and deletions shall be placed in brackets. If a model jury instruction is unchanged, it shall be submitted by title and paragraph number reference only, and shall not be retyped verbatim.

4. *Jury Interrogatories*

In all civil jury trials, Judge Gardner requires each counsel to submit a proposed verdict slip not later than five weeks before trial. In most civil trials Judge Gardner provides the jury with a verdict slip containing written jury interrogatories which the jury must answer.

After the jury responds to the written interrogatories and delivers the completed verdict slip to the clerk in the courtroom, Judge Gardner will mold the verdict on the record as appropriate considering the jury's interrogatory responses.

Motions During Trial

1. *Motions for Judgment as a Matter of Law & Motions for Judgment on Partial Findings*

Motions for judgment as a matter of law in jury cases, and motions for judgment on partial findings in non-jury cases, may be made orally, or in writing, at the appropriate time or times during trial. Judge Gardner will customarily hear oral argument and decide such motions at the time they are made.

Jury Deliberations

1. *Written Jury Instructions*

Judge Gardner does not give the jury or counsel a copy of his jury charge.

2. *Exhibits in the Jury Room*

No exhibit will be submitted to the jury during deliberations which was not admitted into evidence during the trial. However, admission of an exhibit into the record during trial and submission of an exhibit to the jury during deliberations are two separate procedures. Merely because an exhibit has been received into evidence during trial does not necessarily mean that it will be submitted to the jury during deliberations.

A separate request to submit admitted exhibits to the jury during deliberations must be made at the charge conference conducted prior to closing arguments. After hearing and deciding any objections, Judge Gardner will indicate which exhibits will be sent to the jury during deliberations. Judge Gardner will also discuss and decide during the charge conference whether approved exhibits will be automatically sent to the jury room at the beginning of deliberations, or only if and when the jury requests to see particular exhibits.

Firearms, explosives, other weapons, dangerous items, illegal drugs, other contraband, or perishable goods will ordinarily not be sent to the jury deliberating room.

3. *Handling Jury Requests*

The jury is instructed to communicate all requests during deliberations to Judge Gardner in writing. All written requests will be made part of the record.

Prior to responding, Judge Gardner discusses the request with counsel and the parties on the record and out of the hearing of the jury in an effort to reach agreement on the preferred way to respond. In the absence of agreement, Judge Gardner will respond to the request in a manner which he deems appropriate.

4. *Jury Requests to Rehear Testimony*

If the jury requests to re-hear testimony presented at trial, Judge Gardner will discuss the request with counsel and the parties on the record and out of the hearing of the jury. He will discuss whether or not it is appropriate to grant the request in whole or in part, and how much, if any, of the testimony shall be played for the jury on the Court's electronic court-reporting equipment.

If Judge Gardner grants any jury request to re-hear audiotape or videotape recordings previously admitted into evidence, the recordings will be replayed for the jury in the courtroom in the presence of the parties and their attorneys, unless the parties agree to permit the jury to hear or watch the recordings privately in the courtroom or jury room. The parties are responsible for providing appropriate equipment and an operator for the playing of any audiotapes or videotapes, both during trial and during deliberations.

5. *Availability of Counsel and the Parties During Jury Deliberations*

At the commencement of jury deliberations counsel shall provide Judge Gardner with the cell phone number for a working cell phone in their possession.

During deliberations, counsel and the parties shall remain in the courthouse, or within four blocks of the courthouse. With the exception of incarcerated criminal defendants, counsel shall be aware of the whereabouts of their clients at all times during deliberations and are responsible for the prompt return of their clients to the courtroom upon being summoned to respond to a jury request or to receive the verdict.

At all times during deliberations, counsel shall advise Judge Gardner's courtroom deputy of counsel's whereabouts inside the courthouse or on the outdoor courthouse plaza immediately adjacent to the courthouse. No counsel shall be permitted to depart from the courthouse or beyond the area of the courthouse plaza, without first obtaining the personal permission of Judge Gardner (not a staff member or deputy) and then informing the courtroom deputy of their destination and of the fact that they have obtained Judge Gardner's permission to go there.

At all times during deliberations when counsel are outside of the courthouse they shall be in possession of their cell phones, which shall be turned on, operational, and ready to receive calls without delay.

6. *Polling the Jury*

If there is a request to poll the jury, the jury will be polled on the record by Judge Gardner or a courtroom deputy.

7. *Interviewing the Jury*

Immediately prior to their discharge, the jury will be told that they are now at liberty to discuss the case if they wish to, but that it is their personal choice whether or not to talk about the case, and that they are under no obligation to do so. In addition the jurors will be instructed that while they may discuss their own thoughts and impressions, they may not disclose the thoughts impressions, views, discussions, or statements of any other jurors, or reveal the details of the confidential jury deliberations, unless directed by the Court to do so.

Subject to those limitations and consistent with those instructions, Judge Gardner does not prohibit jurors from discussing the case with counsel, after they have been formally discharged as jurors in the case, nor require them to do so.

CRIMINAL CASES

1. *Criminal Jury Trial Attachment Order*

In all criminal cases, Judge Gardner will file a Criminal Jury Trial Attachment Order. (*See* the attached sample of Judge Gardner’s Criminal Jury Trial Attachment Order.) This Order will schedule a date formally attaching the case for trial. It will establish deadlines for filing and responding to pretrial motions. It will schedule a hearing on all pretrial motions.

The attachment Order will set deadlines for submitting proposed jury instructions, and for filing objections to proposed jury instructions. The Order will establish a deadline for submitting proposed jury selection *voir dire* questions, and for objecting to proposed *voir dire*.

Finally, the attachment Order will set deadlines for each party to submit a brief two-page written summary of its contentions regarding the facts and that party’s theories concerning the case. The Order will also establish a deadline for all other parties to submit written objections or alternatives to this summary.

2. *Oral Argument*

Judge Gardner will grant or require oral argument on motions in criminal cases if he determines that it will assist him in deciding the motions, regardless of whether or not argument has been requested by counsel.

3. *Hearings*

Hearings on all pretrial motions will be conducted, and decisions rendered, in advance of trial.

4. *Pretrial Conferences*

Judge Gardner holds pretrial conferences in criminal cases as needed or at the request of counsel.

5. *Plea and Sentencing Memoranda*

Judge Gardner invites the submission of guilty plea and sentencing memoranda at change-of-plea and sentence hearings, respectively. These memoranda should be submitted to Judge Gardner not later than five business days before the plea or sentencing hearing, as appropriate.

6. *Written Guilty Plea Agreement*

In cases where the parties have executed a written guilty plea agreement and accompanying acknowledgment-of-rights document, the United States Attorney assigned to the case shall submit a copy of the final version of the fully executed originals to Judge Gardner in chambers not later than five business days before the change of plea hearing. Government counsel shall present the fully executed originals of those documents to Judge Gardner on the record at the guilty plea hearing.

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

JOHN SMITH,)
) Civil Action
 Plaintiff) No.
)
 vs.)
)
 JANE DOE,)
)
 Defendant)

RULE 16 TELEPHONE CONFERENCE SCHEDULING ORDER

NOW, this ____ day of _____, 200 __,

IT IS ORDERED that a Rule 16 conference by telephone conference call is scheduled on _____, 200 __, at ____ o'clock __.m. with Judge James Knoll Gardner.

IT IS FURTHER ORDERED that lead trial counsel for plaintiff¹ shall initiate the telephone conference call with lead trial counsel for all other parties and with all unrepresented parties. Counsel for plaintiff shall initiate the call five minutes in advance of the scheduled conference, and when all counsel and unrepresented parties are on the line, shall call chambers at (610) 434-3457.

IT IS FURTHER ORDERED that the lead trial counsel of record for each party, and each unrepresented party, shall participate in the conference. No substitutions will be permitted unless authorized by Judge Gardner at least 48 hours prior to the conference.

IT IS FURTHER ORDERED that at the conference counsel² and unrepresented parties shall be prepared to discuss (where applicable) the following:

1. Deadlines (if applicable) for:
 - (a) filing and responding to pleadings;
 - (b) amendment of pleadings;
 - (c) discovery, including the submission of expert reports;

¹ If there are multiple plaintiffs represented by different counsel, counsel for plaintiffs shall determine which plaintiff's counsel shall initiate the call. If there are both represented and unrepresented plaintiffs, the call shall be initiated by counsel for one of the represented plaintiffs. If the only plaintiff, or each of multiple plaintiffs, is unrepresented, the call shall be initiated by an unrepresented plaintiff

² Ordinarily, only one counsel per party will be permitted to speak at the conference.

- (d) motions, and cross-motions, for summary judgment, and responses;
 - (e) other dispositive motions;
 - (f) motions *in limine*;
 - (g) pre-trial memoranda.
2. Proposed trial dates. (Counsel shall have their trial calendars available).
 3. Length of trial.
 4. Attachments of trial counsel before other courts in this and other jurisdictions during the trial term.
 5. Witness availability.
 6. Other scheduling considerations.
 7. Whether the case shall be tried with or without a jury.
 8. Number of jurors.
 9. Juror *voir dire*.
 10. Legal issues to be resolved prior to trial.
 11. Any unique or unusual factual, legal, or procedural, aspects of the case.
 12. Logistical problems requiring court attention.
 13. Settlement negotiations history (in jury trial cases).
 14. Settlement (in jury trial cases).
 15. Status of pending motions.

IT IS FURTHER ORDERED that counsel and unrepresented parties shall provide Judge Gardner³ by mail, delivery service, or fax to be received by Judge Gardner and served on all opposing counsel and unrepresented parties not later than seven days prior to the conference, an informal memorandum which shall not exceed two pages in length and which shall include the following information:

1. A brief statement of the facts.
2. The party's liability contentions.

³ The memoranda may be forwarded to Judge Gardner by mail at Edward N. Cahn United States Courthouse, 504 West Hamilton Street, Suite 4701, Allentown, PA 18101 or by fax at (610) 434-3459.

3. The party's damages contentions.
4. Enumeration of all special or liquidated damages claimed.
5. History of settlement negotiations, including all demands and offers.⁴

IT IS FURTHER ORDERED that continuances will be granted only in extraordinary circumstances. Continuance requests shall be signed by one counsel of record for each represented party and by each unrepresented party. Continuance requests shall be submitted at least ten days prior to the conference on a form approved by Judge Gardner.

By:

CHERYL E. SINCLAIR
Civil Deputy Clerk to
Judge James Knoll Gardner
Phone: (610) 434-3457

⁴ History of settlement negotiations shall be provided only in cases in which a jury trial has been requested. Settlement negotiation history should not be provided in cases in which the trial will be conducted without a jury.

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

JOHN SMITH,)
)
 Plaintiff) Civil Action
) No.
 vs.)
)
 JANE DOE,)
 Defendant)

JURY TRIAL ATTACHMENT ORDER

NOW, this ____ day of _____, 200__,

IT IS ORDERED that a jury trial of the within case shall commence before [**Judge Gardner**] [**the undersigned**] on [**day of week**], [**date**], 200__, at ____ o'clock [**a.m./p.m.**], or as soon thereafter as the schedule of the court permits, with the selection of a jury at the James A. Byrne United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania. After completion of jury selection, the trial shall continue in Courtroom B, Edward N. Cahn United States Courthouse, 504 West Hamilton Street, Allentown, Pennsylvania. This Order shall serve as a formal attachment for trial.

IT IS FURTHER ORDERED that counsel for the parties¹ are required to jointly submit one set of agreed-upon jury instructions. To accomplish this, the parties are required to serve their proposed instructions upon each other one month prior to trial. The parties shall then meet, confer, and submit to the court one complete set of agreed-upon jury instructions. Sanctions may be imposed if a good faith effort to comply with this directive is not made.

If the parties cannot agree upon one complete set of jury instructions, they are required to submit one set of those jury instructions which have been agreed upon, and each party shall submit a supplemental set of jury instructions which are not agreed upon.

These joint instructions and supplemental instructions must be filed two weeks prior to trial. Each party shall then file, one week before trial, its objections to the non-agreed upon instructions proposed by all other parties. All objections shall be in writing and shall set forth the objectionable proposed instruction in its entirety. The objection shall specifically set forth the objectionable material in the proposed instruction. The objection shall contain citation of legal authority explaining why the instruction is improper and a concise statement of argument concerning the instruction. Where applicable, the objecting party shall submit a correct alternative instruction covering the subject or principle of law, with citation of legal authority supporting the alternative instruction.

¹ Whenever used in this Order, the terms "counsel" and "counsel for the parties" shall also refer to any unrepresented parties

All proposed supplemental jury instructions shall be numbered and shall have citation of authority for each point (one instruction per page). If a model jury instruction is submitted, for example, from *Pennsylvania Suggested Standard Civil Jury Instructions*, or from Sand, Siffert, Reiss and Batterman, *Modern Federal Jury Instructions*, LexisNexis (originally published 1984 and updated annually), counsel shall indicate whether the proposed jury instruction is modified or unchanged. If counsel modifies a model jury instruction, additions shall be underlined and deletions shall be placed in brackets. If a model jury instruction is unchanged, it shall be submitted by title and paragraph number reference only, and shall not be retyped verbatim.

IT IS FURTHER ORDERED that on or before [**five weeks before trial date**], counsel for the parties and all unrepresented parties shall submit to [**Judge Gardner**] [**the undersigned**] and serve on all counsel of record and unrepresented parties a trial memorandum which shall include:

(a) A list of all exhibits to be used at the trial. Not later than one month prior to trial all exhibits shall be pre-marked and counsel and unrepresented parties shall exchange with each other copies of all documentary and photographic exhibits and shall provide an opportunity for opposing counsel to view any models or videotapes.

(b) A list of the name, address, and field of expertise of each expert witness to be called at trial by the party.

(c) A curriculum vitae for each expert witness listed.

(d) A list of the name and address of each fact witness to be called at trial, together with a brief statement of the nature of his or her expected testimony. (Unless authorized by [**Judge Gardner**] [**the undersigned**] for good cause shown, witnesses not listed may not be called by that party in its case-in-chief.)

(e) An itemized statement of claimant's damages and/or other relief sought.

(f) A statement of any anticipated significant and/or unique legal and procedural issues on which the court will be required to rule, together with counsel's single best authority on each such issue.

(g) Names and addresses of all parties at the time the cause of action arose and presently.

(h) Name, address and telephone number of trial counsel, and, if applicable, the name and telephone number of the firm with which he or she is affiliated.

(i) Proposed voir dire questions.

(j) Proposed verdict slip.

(k) Any other matters of importance for the efficient trial of the case.

IT IS FURTHER ORDERED that not later than three weeks prior to trial, counsel for the parties and all unrepresented parties shall submit to [Judge Gardner] [the undersigned] and serve on all counsel of record and unrepresented parties any objections to proposed voir dire questions and the proposed verdict slip. Objections not made pursuant to this provision may be deemed waived.

IT IS FURTHER ORDERED that any party who contends that the proposed testimony of any expert witness is inadmissible in whole or in part, pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), shall file a *Daubert* motion and proposed Order, accompanied by a brief, at least sixty days prior to the trial date.

IT IS FURTHER ORDERED that not later than three weeks prior to trial any party having an objection to: (a) the admissibility of any exhibit based on authenticity, (b) the adequacy of the qualifications of an expert witness expected to testify, (c) the admissibility for any reason (except relevancy) of any item of evidence expected to be offered, or (d) the admissibility of any opinion testimony from lay witnesses pursuant to Federal Rule of Evidence 701, shall set forth separately in writing each such objection, clearly and concisely. The objection shall describe, with particularity, the grounds for the objection and the authority relied upon.

IT IS FURTHER ORDERED that unless stipulated to by all affected parties and approved by the court, or by Order of court so as to avoid manifest injustice, only those exhibits, discovery items and expert witnesses identified in the manner set forth in this Order shall be considered by the court for admission into evidence at trial.

IT IS FURTHER ORDERED that the unavailability of a witness at the time of trial in the manner defined in Federal Rule of Civil Procedure 32(a) (3), will not be a ground to delay the commencement, or progress, of a trial. In such circumstances, the court anticipates the use of oral or videotape depositions at trial of any unavailable 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.

IT IS FURTHER ORDERED that any party offering a deposition at trial shall provide the court, prior to commencement of trial, with the original and a copy of the deposition transcript, but only after all efforts have been made to resolve objections with all counsel and unrepresented parties. Portions of the deposition offered by plaintiff shall be marked on the copy in blue; portions offered by defendant, in red. Where a court ruling is necessary, the basis for unresolved objections shall be written in ten words or less in the margin of the copy of the deposition, accompanied by a separate written index of such objections.

IT IS FURTHER ORDERED that at least ten business days before commencement of trial, each party shall submit to the court a written summary, not to exceed two pages in length, in plain language, of its contentions regarding the facts and that party's theories concerning liability and damages. Not later than five days prior to the beginning of *voir dire*, all other parties may submit in

writing objections or alternatives to this summary. The summary may be used by the court in jury voir dire and in its preliminary and final instructions to the jury to familiarize the jurors with the general framework of the factual and legal issues and contentions in the case.

IT IS FURTHER ORDERED that counsel shall familiarize themselves with the Local Rules of Civil Procedure of the United States District Court for the Eastern District of Pennsylvania. Failure to comply with the within Order or the Local Rules may result in the imposition of sanctions.

IT IS FURTHER ORDERED that continuances will be granted only in extraordinary circumstances. Continuance requests shall be filed by one counsel of record for each represented party and by each unrepresented party. Continuance requests shall be submitted at least ten days prior to the commencement of trial on a form approved by **[Judge Gardner] [the undersigned]** .

By:

CHERYL E. SINCLAIR
Civil Deputy Clerk to
Judge James Knoll Gardner
Phone: (610) 434-3457

or

BY THE COURT:

James Knoll Gardner
United States District Judge

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

JOHN DOE,)
)
 Plaintiff) Civil Action
) No.
 vs.)
)
 JANE DOE,)
)
 Defendant)

NON-JURY TRIAL ATTACHMENT ORDER

NOW, this ____ day of _____, 200__,

IT IS ORDERED that a non-jury trial of the within case shall commence before **[Judge Gardner] [the undersigned]** on **[day of week], [date], 200__**, at ____ o'clock **[a.m./p.m.]** in Courtroom B, Edward N. Cahn United States Courthouse, 504 West Hamilton Street, Allentown, Pennsylvania, or as soon thereafter as the schedule of the court permits. This Order shall serve as a formal attachment for trial.

IT IS FURTHER ORDERED that on or before **[five weeks before trial]**, counsel for the parties¹ shall submit to **[Judge Gardner] [the undersigned]** and serve on all counsel of record and unrepresented parties a trial memorandum which shall include:

(a) A list of all exhibits to be used at the trial. Not later than one month prior to trial all exhibits shall be pre-marked and counsel shall exchange with each other copies of all documentary and photographic exhibits and shall provide an opportunity for opposing counsel to view any models or videotapes.

(b) A list of the name, address, and field of expertise of each expert witness to be called at trial by the party.

(c) A curriculum vitae for each expert witness listed.

(d) A list of the name and address of each fact witness to be called at trial, together with a brief statement of the nature of his or her expected testimony. (Unless authorized by **[Judge Gardner] [the undersigned]** for good cause shown, witnesses not listed may not be called by that party in its case-in-chief.)

(e) An itemized statement of claimant's damages and/or other relief sought.

¹ Whenever used in this Order, the terms "counsel" and "counsel for the parties" shall also refer to any unrepresented parties

(f) A statement of any anticipated significant and/or unique legal and procedural issues on which the court will be required to rule, together with counsel's single best authority on each such issue.

(g) Names and addresses of all parties at the time the cause of action arose and presently.

(h) Name, address and telephone number of trial counsel, and, if applicable, the name and telephone number of the firm with which he or she is affiliated.

(i) Any other matters of importance for the efficient trial of the case.

IT IS FURTHER ORDERED that counsel for plaintiff(s) shall initiate a meeting of all counsel of record and unrepresented parties to be held at least forty days before commencement of trial, at which counsel shall meet and discuss and submit to the court at least thirty days before commencement of trial, one complete set of agreed-upon findings of fact and conclusions of law. If the parties cannot agree upon one complete set of findings of fact and conclusions of law, they are required to submit to the court at least thirty days before commencement of trial, one set of those findings and conclusions which have been agreed upon, and each party shall submit to the court at least fifteen days before commencement of trial, proposed findings of fact and conclusions of law which are not agreed upon, and a legal memorandum in support thereof. The original of each document shall be filed with the Clerk of Court. If a good faith effort is not made to comply with these directives, sanctions may be imposed, the trial may be continued, or both.

IT IS FURTHER ORDERED that any party who contends that the proposed testimony of any expert witness is inadmissible in whole or in part, pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), shall file a *Daubert* motion and proposed Order, accompanied by a brief, at least sixty days prior to the trial date.

IT IS FURTHER ORDERED that not later than three weeks prior to trial any party having an objection to: (a) the admissibility of any exhibit based on authenticity, (b) the adequacy of the qualifications of an expert witness expected to testify, (c) the admissibility for any reason (except relevancy) of any item of evidence expected to be offered, or (d) the admissibility of any opinion testimony from lay witnesses pursuant to Federal Rule of Evidence 701, shall set forth separately in writing each such objection, clearly and concisely. The objection shall describe, with particularity, the grounds for the objection and the authority relied upon.

IT IS FURTHER ORDERED that unless stipulated to by all affected parties and approved by the court, or by Order of court so as to avoid manifest injustice, only those exhibits, discovery items and expert witnesses identified in the manner set forth in this Order shall be considered by the court for admission into evidence at trial.

IT IS FURTHER ORDERED that the unavailability of a witness at the time of trial in the manner defined in Federal Rule of Civil Procedure 32(a) (3), will not be a ground to delay the commencement, or progress, of a trial. In such circumstances, the court anticipates the use of oral or videotape depositions at trial of any unavailable 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.

IT IS FURTHER ORDERED that any party offering a deposition at trial shall provide the court, prior to commencement of trial, with the original and a copy of the deposition transcript, but only after all efforts have been made to resolve objections with all counsel and unrepresented parties. Portions of the deposition offered by plaintiff shall be marked on the copy in blue; portions offered by defendant, in red. Where a court ruling is necessary, the basis for unresolved objections shall be written in ten words or less in the margin of the copy of the deposition, accompanied by a separate written index of such objections.

IT IS FURTHER ORDERED that at least ten business days before commencement of trial, each party shall submit to the court a written summary, not to exceed two pages in length, in plain language, of its contentions regarding the facts and that party's theories concerning liability and damages. Not later than five days before commencement of trial, all other parties may submit, in writing, objections or alternatives to this summary.

IT IS FURTHER ORDERED that counsel shall familiarize themselves with the Local Rules of Civil Procedure of the United States District Court for the Eastern District of Pennsylvania. Failure to comply with the within Order or the Local Rules may result in the imposition of sanctions.

IT IS FURTHER ORDERED that continuances will be granted only in extraordinary circumstances. Continuance requests shall be filed by one counsel of record for each represented party and by each unrepresented party. Continuance requests shall be submitted at least ten days prior to the commencement of trial on a form approved by **[Judge Gardner] [the undersigned]**.

By:

CHERYL E. SINCLAIR
Civil Deputy Clerk to
Judge James Knoll Gardner
Phone: (610) 434-3457

or

BY THE COURT:

James Knoll Gardner
United States District Judge

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

UNITED STATES OF AMERICA)	
)	Criminal Action
)	No.
vs.)	
)	
JOHN DOE,)	
)	
Defendant)	

CRIMINAL JURY TRIAL ATTACHMENT ORDER

NOW, this ____ day of _____, 200__,

IT IS ORDERED that a jury trial of the within case shall commence before **[JudgeGardner][the undersigned]** on **[day of week], [date], 200__**, at ____ o'clock **[a.m./p.m.]**, or as soon thereafter as the schedule of the court permits, with the selection of a jury at the James A. Byrne United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania. After completion of jury selection, the trial shall continue in Courtroom B, Edward N. Cahn United States Courthouse, 504 West Hamilton Street, Allentown, Pennsylvania. This Order shall serve as a formal attachment for trial.

IT IS FURTHER ORDERED that on or before _____, 200__, defendant shall file and serve any motions pursuant to Federal Rule of Criminal Procedure 12(b) in accordance with Rule 12.1 of the Local Rules of Criminal Procedure for the Eastern District of Pennsylvania.

All motions shall be filed with the Clerk of Court, served upon counsel for all parties, and a copy sent to the undersigned. Each motion shall be accompanied by a memorandum of law containing a brief recitation of the applicable facts and a concise statement of the legal contentions, together with the legal authorities relied upon.

IT IS FURTHER ORDERED that within five days after receipt of a motion, any party desiring to oppose such motion shall file and serve on all parties, the Clerk of Court and the undersigned a legal memorandum in opposition to such motion pursuant to Local Rule 12.1.

IT IS FURTHER ORDERED that a hearing on all motions is scheduled before **[Judge Gardner][the undersigned]** on _____, 200__, at ____ o'clock __m. in Courtroom B, Edward N. Cahn United States Courthouse, 504 West Hamilton Street, Allentown, Pennsylvania.

IT IS FURTHER ORDERED that on or before **[two weeks before trial]**, counsel for the parties¹ shall file and submit proposed jury instructions to the undersigned and serve them on all counsel.

All proposed jury instructions shall be numbered and shall contain citation(s) of legal authority for each point (one instruction per page). If a model jury instruction is submitted counsel shall cite the source of the model instruction and shall indicate whether the proposed jury instruction is modified or unchanged. If counsel modifies a model jury instruction, additions shall be underlined and deletions shall be placed in brackets. If a model jury instruction is unchanged, it shall be submitted by title and paragraph number reference, and shall not be retyped verbatim.

IT IS FURTHER ORDERED that on or before **[one week before trial]**, each party shall file and submit to **[Judge Gardner][the undersigned]** and serve on all counsel any objections to the jury instructions proposed by all other parties. All objections shall be in writing and shall set forth the objectionable proposed instruction in its entirety. The objection shall specifically set forth the objectionable material in the proposed instruction. The objection shall contain citation(s) of legal authority explaining why the instruction is improper and a concise statement of argument concerning the instruction. Where applicable, the objecting party shall submit a correct alternative instruction covering the subject or principle of law, with citation(s) of legal authority supporting the alternative instruction.

IT IS FURTHER ORDERED that on or before **[two weeks before trial]**, all counsel and unrepresented parties shall file and submit to **[Judge Gardner][the undersigned]** and serve on all counsel proposed jury selection *voir dire* questions.

IT IS FURTHER ORDERED that on or before **[one week before trial]**, each party shall file and submit to **[Judge Gardner][the undersigned]** and serve on all counsel any objections to the *voir dire* questions proposed by any other party. All objections shall be in writing and shall set forth the objectionable *voir dire* question in its entirety. The objection shall specifically set forth the objectionable material in the proposed *voir dire* question. The objection shall contain citation(s) of legal authority explaining why the proposed *voir dire* question is improper and a concise statement of argument concerning the objection. Objections not made pursuant to this provision may be deemed waived.

IT IS FURTHER ORDERED that at least ten business days before commencement of trial, each party shall submit to the court a written summary, not to exceed two pages in length, in plain language, of its contentions regarding the facts and that party's theories concerning the case. Not later than five days prior to the beginning of *voir dire*, all other parties may submit in writing objections or alternatives to this summary. The summary may be used by the court in jury *voir dire* and in its preliminary and final instructions to the jury to familiarize the jurors with the general framework of the factual and legal issues and contentions in the case.

¹ Whenever used in this Order, the terms "counsel" and "counsel for the parties" shall also refer to any unrepresented parties

IT IS FURTHER ORDERED that counsel shall familiarize themselves with the Local Rules of Criminal Procedure of the United States District Court for the Eastern District of Pennsylvania. Failure to comply with the within Order or the Local Rules may result in the imposition of sanctions.

IT IS FURTHER ORDERED that continuances will be granted only in extraordinary circumstances. Continuance requests shall be filed by one counsel of record for each represented party and by each unrepresented party. Continuance requests shall be submitted at least ten days prior to the commencement of trial on a form approved by the undersigned.

IT IS FURTHER ORDERED that if a defendant is currently incarcerated, the defendant or his counsel shall notify the undersigned in writing immediately so that the necessary procedures can be taken to have the defendant present in the courtroom for any proceedings.

By:

TERI L. LEFKOWITH
Criminal Deputy Clerk to
Judge James Knoll Gardner
Phone: (610) 434-3765

or

BY THE COURT:

James Knoll Gardner
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA
JAMES KNOLL GARDNER, DISTRICT JUDGE

APPLICATION FOR CONTINUANCE

INSTRUCTIONS:

- 1 Please type or print legibly
- 2 Counsel of record and unrepresented parties must sign
- 3 Applying counsel or unrepresented party shall (a) complete Sections I, II and III; (b) obtain a new date certain from Judge Gardner's chambers; (c) obtain agreement of all counsel and unrepresented parties to the new date; and (d) insert new agreed date and time on the "DATE/TIME" line in section V
- 4 Other counsel of record and unrepresented parties shall complete Section IV, indicating whether "UNOPPOSED" or "OPPOSED", and specifying the reasons for any opposition
- 5 This form may be submitted in multiple parts

I. APPLICATION IS MADE TO CONTINUE THE FOLLOWING CASE(S):

CASE NO:

VS

COMPANION CASE NO(S):

CASE SCHEDULED ON DATE _____ TIME _____

BEFORE JUDGE JAMES KNOLL GARDNER

TYPE OF PROCEEDING (CHECK BELOW)

<input type="checkbox"/> ARGUMENT	<input type="checkbox"/> NON-JURY TRIAL	<input type="checkbox"/> RULE 16 OFFICE PRE-TRIAL CONFERENCE	<input type="checkbox"/> SENTENCING
<input type="checkbox"/> HEARING	<input type="checkbox"/> PLEA HEARING	<input type="checkbox"/> RULE 16 TELEPHONE STATUS CONFERENCE	<input type="checkbox"/> SETTLEMENT CONFERENCE
<input type="checkbox"/> JURY TRIAL	<input type="checkbox"/> RULE 16 OFFICE STATUS CONFERENCE	<input type="checkbox"/> RULE 16 TELEPHONE PRE-TRIAL CONFERENCE	<input type="checkbox"/> OTHER

**II. NUMBER OF PREVIOUS CONTINUANCES _____ BY PLAINTIFF _____ BY DEFENDANT _____
BY THIRD PARTY PLAINTIFF _____ BY THIRD PARTY DEFENDANT _____**

III. APPLICATION IS MADE FOR THE FOLLOWING REASON(S):

APPLYING PARTY: PLEASE PRINT AND SIGN DATE REPRESENTING
Telephone: _____

IV. APPLICATION IS UNOPPOSED/OPPOSED FOR THE FOLLOWING REASON(S):

OPPOSING PARTY: PLEASE PRINT AND SIGN DATE REPRESENTING
Telephone: _____

OPPOSING PARTY: PLEASE PRINT AND SIGN DATE REPRESENTING
Telephone: _____

V. ACTION TAKEN BY THE COURT: NOW, _____

APPLICATION IS GRANTED AND THE CASE IS CONTINUED APPLICATION IS DENIED
 NO FURTHER CONTINUANCES

TO _____
DATE/TIME

JUDGE

