

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MICHAEL J. QUILLING, RECEIVER	§	
FOR SARDAUKAR HOLDINGS, IBC,	§	
AND BRADLEY STARK,	§	
	§	
Plaintiffs,	§	
	§	Civil Action No. 3:05-CV-2122-BH (H)
v.	§	
	§	ECF
JEFFREY MARK SCHONSKY,	§	
	§	
Defendant.	§	Consent Case

ORDER REGARDING CASE MANAGEMENT AND SCHEDULING

Pursuant to the District Court's *Order of Transfer*, filed January 4, 2006, this matter has been transferred to the undersigned United States Magistrate Judge for the conduct of all further proceedings and the entry of judgment in accordance with 28 U.S.C. § 636(c). This order controls the case management and scheduling of this consent case.

I. CASE MANAGEMENT

A. Pleadings

1. All pleadings **must include the identifying notations "BH" at the end of the case number and "Consent Case" under the case number**, as demonstrated above in the style of this case. These notations assist the District Clerk's office in properly routing pleadings to this court. Because this case will be designated as an Electronic Case Files (ECF) case, **the notation "ECF" should also appear under the case number**.

2. All pleadings **must** clearly identify the filing party and the subject matter of the pleading. Examples of appropriately-titled pleadings are as follows:

Plaintiff's Motion to Compel Production of Documents and Brief in Support

Defendant's Response to Plaintiff's Motion for Leave to Amend Complaint and Brief in Support

B. Brief in Support Required

Local Rule 7.1 of the Local Civil Rules for the Northern District of Texas requires the filing of briefs in support of most motions. Pursuant to subsection (d), briefs shall contain a "party's contentions of fact and/or law, and arguments and **authorities.**" (emphasis added). Briefs containing authorities greatly assist the Court in making rulings more expeditiously. Pleadings which do not comply with the briefing requirements of the Local Rules, including, but not limited to Local Rule 7.1, may be unfiled via a "Notice of Deficiency" form order.

C. Hand Delivery of Documents

This case has been designated as an Electronic Case Files (ECF) case. Although Miscellaneous Order 61, Rule 1 permits a judge to require hand delivery of a copy of any document filed in an ECF case, the Court will **not** require hand delivery of any documents filed electronically. However, if an exhibit or attachment exceeds the electronic file size limitation and must be submitted and served conventionally pursuant to Miscellaneous Order 61, Rule 5, or if the document exceeds 25 pages in length, a copy of the document **must also be hand-delivered on that same day** to the undersigned Magistrate Judge's chambers on the 15th Floor, Room 1567.

D. Good Faith Conference Before Filing Motions

1. Rule 7.1(a) of the Local Civil Rules for the Northern District of Texas requires that the parties confer before filing certain types of motions. Genuine, good-faith efforts by the parties

to resolve their disputes before seeking Court intervention often result in greater control over the outcome, acceptable compromise, or appreciably narrowed issues; these efforts also result in cost savings for the litigants. The Court recognizes that opposing parties will have reasonable disagreements throughout litigation that will require the Court's resolution. However, the parties must comply with Local Rule 7.1(a) and *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 289-90 (N.D. Tex. 1988) (discussing proper utilization of then Local Rule 5.1(a), which is now Local Rule 7.1(a)), in an earnest attempt to ensure that the issues presented to the Court are unbridgeable and supported by reasonable yet differing positions. The parties are therefore directed to confer in good faith prior to filing a motion.

2. During the conference, the parties should engage in an item-by-item discussion of each issue in dispute. If unresolved issues remain after the conference, the moving party shall proceed to file a motion. The motion must include a certificate of conference which sets forth the date of the conference, the length of the conference, and the names of the persons who attended or participated in the conference. Motions which do not comply with this requirement may be unfiled via a "Notice of Deficiency" form order.

3. **Any party, including the moving party, who refuses to confer as directed in these instructions may be subject to sanctions.**

E. Special Instructions for Discovery Disputes

1. This Court encourages the use of informal preliminary telephone conferences as a means of resolving *narrow* discovery and pleading disputes in an expeditious and economical manner prior to the filing of a formal motion. This type of conference is especially effective for scheduling disputes and disputes which occur regarding or during depositions.

2. After conferring as required in Section D above, and prior to filing a motion, the parties may request a telephonic conference with the Court by calling Courtroom Deputy Lisa Martin at **214-753-2167** or by calling Chambers at **214-753-2392**. If the Court is unavailable, a conference call will be scheduled as soon as possible. If the Court determines during the conference that the issue is more appropriately determined after briefing, the Court may direct that a formal motion be filed.

II. SCHEDULING

Pursuant to Federal Rule of Civil Procedure 16(b), the Court establishes the following schedule for this case. This case is set for jury trial on **June 4, 2007**. This is a special setting and will not be reset.

A. *Pretrial Deadlines*

1. No later than **October 9, 2006**, all motions for leave to join parties and motions to amend to pleadings must be filed.

2. All discovery shall be initiated in time to be **completed** by **January 8, 2007**. Accordingly, motions to compel discovery must be filed at least 30 days prior to the discovery deadline to allow the Court sufficient time to make a determination prior to the expiration of the discovery period.

3. Plaintiff shall designate its expert witnesses and provide expert reports to the defendant no later than **November 6, 2006**. Defendant shall designate its expert witnesses and provide expert reports to the plaintiff no later than **December 4, 2006**. Objections to expert witnesses under *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), shall be filed no later than **December 19, 2006**. **Objections not filed shall be deemed waived.** *Daubert* motions will be heard by the court prior to the date of trial in jury trials. *Daubert* motions will be addressed

during the course of the trial in non-jury trials.

4. No later than **January 22, 2007**, the parties are to engage in mediation.¹ A party with full settlement authority up to the limits of the opposing party's demand must be present throughout the discussions. The parties are to notify the Court the results of the mediation within seven (7) days.

5. No later than **February 5, 2007**, all dispositive motions shall be filed.

B. Pretrial Materials

1. The parties shall comply with Rule 26(a)(3) of the Federal Rules of Civil Procedure regarding pretrial disclosures of witnesses no later than **May 7, 2007**. The list shall divide the persons into groups of "probable witnesses," "possible witnesses," "experts," and "record custodians" and shall include a general description of the nature of the testimony to be covered by each witness. This list shall include those witnesses who will appear by a deposition and a corresponding designation of the deposition excerpts that will be offered.

2. The parties shall comply with Rule 26(a)(3) of the Federal Rules of Civil Procedure regarding pretrial disclosures of exhibits no later than **May 7, 2007**. The list of exhibits shall separately identify each document or exhibit that the party expects to offer and those that the party may offer if the need arises. Exhibit lists must contain a brief description (*e.g.*, July 1, 1997 contract between X and Y) of each exhibit, sufficient to allow the opposing party to identify the exhibit, and must separately list each exhibit by the number that will be used at trial. Each party shall also exchange a complete set of marked exhibits. If, after review of the exhibits, the parties determine that both intend to use the same exhibit, that exhibit shall be renumbered as a "Joint Exhibit" to

¹If the parties participate in mediation they may choose their mediator. If the parties cannot agree on a mediator, they must notify the Court and the Court will choose one.

prevent duplication.

3. In addition to providing the disclosures required by Rules 26(a), (3)(A), (B), and (C), the parties shall, within seven (7) days after making their pretrial disclosures, file with the Court: (i) any objections under Rule 32(a) to the use of a deposition designated by any other party under Rule 26(a)(3)(B), and (ii) any objection, together with the grounds therefore, that may be made to the admissibility of materials identified under Rule 26(a)(3)(C) or to witnesses under Rules 26(a)(2)(A) and 26(a)(3)(A). The challenged deposition excerpts and exhibits, if any, must be attached to the objections filed with the Court. **Objections not disclosed as required in this paragraph shall be deemed waived.** When a jury trial has been requested, objections will be heard by the court at the pretrial conference. In the case of a bench trial, any objections will be addressed during the course of the trial.

4. By **May 21, 2007**, the following pretrial materials shall be filed:²

(a) A joint pretrial order shall be filed by Plaintiff's attorney that covers ~~of~~ **fact** matters listed in Local Rule 16.4. The statement of stipulated facts should include those facts agreed to by the parties. While the Court is aware that the parties may disagree concerning the interpretation to be given the facts, it expects the parties to make a good faith effort in preparing the stipulations to narrow the issues to be determined at trial. If an attorney for either party does not participate in the preparation of the joint pretrial order, the opposing attorney shall file a separate pretrial order with an explanation of why the joint order was not submitted. *See* FED. R. CIV. P. 16(f). When the joint pretrial order is approved by the Court, it will control all subsequent proceedings in the case.

²Deadlines in this *Order* are dates for the filing of pretrial material, NOT mailing dates.

(b) The requested jury instructions (annotated)³ or, in a non-jury case, the proposed findings of fact and conclusions of law shall be filed by each party. These documents shall be submitted to the Court in hard copy and on computer disk in WordPerfect format.

(c) Proposed voir dire questions (to be asked by the Court). The parties will be permitted to address the jury panel for a limited time during the voir dire portion of the trial.

(d) If either party wishes to utilize a jury questionnaire, the proposed questionnaire must be submitted to the Court at this time with a certificate of conference indicating whether opposing counsel objects to all or part of the questionnaire.

(e) All motions in limine.

5. **SANCTIONS WILL BE IMPOSED IF THESE REQUIREMENTS ARE NOT MET:** If *Plaintiff* does not timely file the required (or other) pretrial material, the case will be dismissed. If *Defendant* does not timely file the required (or other) pretrial material, a default will be entered or defendant will not be permitted to present witnesses or exhibits at trial. Fines or other sanctions, if appropriate, may also be imposed under FED. R. CIV. P. 16(f). **Failure to list a witness, exhibit, or deposition excerpt** shall be grounds for exclusion of that evidence. This does not apply to testimony, exhibits, or deposition excerpts offered for impeachment; and the use of unlisted witnesses, exhibits, or depositions excerpts for rebuttal shall be permitted if the attorneys could not have reasonably anticipated their need for that evidence.

C. Pretrial Conference

A final pretrial conference is set for **May 31, 2007, at 10:00 A.M.** Each party shall be

³"Annotated" means that each proposed instruction or conclusion of law shall be accompanied by citation to statutory or case authority (and/or pattern instructions). It is not sufficient to submit a proposed instruction or conclusion of law without citation to supporting authority. Because Fifth Circuit and Supreme Court cases are the only precedent binding on this Court, the parties should -- to the extent possible -- rely on these sources (and/or Fifth Circuit pattern instructions in proposing jury instructions).

represented by at least one attorney who will conduct the trial and who has the authority to enter into stipulations and admissions that would facilitate the admission of evidence and reduce the time and expenses of trial. FED. R. CIV. P. 16(d). At the pretrial conference, the parties shall submit to the Court final exhibit lists, including a list of joint exhibits, and furnish to the Court a complete set of marked exhibits. Counsel should also be prepared to submit to the Court a list of exhibits, to which no objection has been filed. These exhibits will be pre-admitted at the conference. The Court expects the parties to confer and agree to admit the majority of their exhibits prior to trial. Counsel should also be prepared to discuss and to present authority in support of their motions in limine and their objections to exhibits or other evidence. Counsel should make every effort to resolve these evidentiary disputes before the pretrial conference.

Any questions regarding this order may be directed to Courtroom Deputy Lisa Martin at **214-753-2167** or to Chambers at **214-753-2392**

SO ORDERED, on this 5th day of January, 2006.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE