

CAUSE NO. _____

v.

IN THE DISTRICT COURT OF
_____ COUNTY, TEXAS

33rd JUDICIAL DISTRICT

TRIAL MANAGEMENT ORDER

On this date the Court adopts and ORDERS this Trial Management Order for this case.

Settings and Docket Calls

- 1 **Local Rules:** The Local Rules of Practice & Procedure will continue to apply except as modified by this order or an existing docket control order.
- 2 **Existing Docket Control Order:** If a docket control or scheduling order has been entered in this case then that order shall continue to control as to any required action or submission mentioned in this order.
- 3 **Trial Setting.** This case is set for _____ trial on (date) _____ at (time) _____ o'clock ____ .m..
- 4 **Docket Calls.** There will be two docket announcements as follows:
 - 4.1 By 5:00 p.m. on the 2nd Wednesday prior to the trial date a preliminary announcement of readiness will be made **only** by fax to 512-756-8478 or email to admin@dcourt.org.
 - 4.1.1 The announcement shall be in substantially the form as attached hereto.
 - 4.1.2 By agreement, one attorney may announce for all attorneys of record.
 - 4.1.3 If it is anticipated that a pretrial hearing will be necessary it should already have been scheduled or now should immediately be scheduled with the Court Coordinator.
 - 4.2 By 5:00 p.m. on the Wednesday immediately prior to the trial date a final announcement of readiness will be made by fax or email, only. No physical appearance is necessary at this docket announcement unless a hearing has been scheduled.

Reserved for Clerk's File Stamp

Regarding *Daubert* Type Challenges and Dilatory Pleas

5 Counsel are reminded that the Judicial District is a multi-county district having general jurisdiction and the Court does not sit in a given county every day. Therefore, any matter that has the potential for causing a setting to be missed is of grave concern. Therefore, any pretrial motion such as a *Daubert* type challenge, motion for full summary judgment or any plea of a dilatory nature should be heard at the earliest possible time so that if the ruling thereon changes the trial date other cases can be notified to be ready or the Court's time can be otherwise scheduled. Failure to raise such matters in a timely fashion may be good cause for the Court to deny any relief that would impact the trial date.

Submissions Required Prior to Trial

6 No later than 7 days prior to the trial date the following submissions shall be exchanged among all counsel of record with a copy to the Court where indicated:

6.1 (if a jury trial) Requested jury questions, instructions and definitions and a copy to the Court.

6.2 Exhibit lists and two copies to the Court (one of which will be for the Court Reporter).

6.3 Witness lists and two copies to the Court (one of which will be for the Court Reporter).

6.4 A vocabulary (two copies, one of which will be for the Court Reporter) of all words, terms and phrases of a legal, technical, scientific or other specialized nature not used in everyday language.

6.5 (if a bench trial) Proposed Findings of Fact and Conclusions of Law (which pleading should be styled “{name of party}'s Proposed Findings of Fact and Conclusions of Law”). It shall also be furnished electronically to the Court in either Microsoft Word or WordPerfect format either via e-mail or on a CD-rom.

6.6 Motions in *Limine* with a copy to the Court.

6.7 All exhibits which shall be pre-marked and 3-hole punched¹ on the left side in a 3-ring binder notebook with an index and number tabs, and the notebook clearly labeled as to the party submitting the exhibits.

6.7.1 (for bench trials) Include a courtesy copy for the Court.

6.7.2 When a single witness will be examined regarding a large number of exhibits (*e.g.* an expert with many background documents) a separate set (not numbered separately, however) will be furnished for ease and speed of reference by the witness on the witness stand.

¹ Except, as to the original thereof, if the 3-hole punching would destroy a part of the exhibit then it may be placed in a plastic carrier or mounted in another fashion for its protection.

6.8 (courtesy copy for the Court) Copy of your "live" pleading, i.e. your petition, answer, counter-claim, etc. on which the trial is being conducted.

7 Demonstrative Exhibits shall be shown to opposing counsel prior to commencement of *voirdire*.

8 **Automatic Admission of Exhibits**

Unless a written objection to an exhibit when exchanged as provided above is made at least three working days prior to the trial date then the same shall be considered by the Court to have been stipulated to as to both authenticity and admissibility. Limited stipulations (such as to authenticity but not admissibility or admissibility predicated on first authenticating, etc.) may be made in conjunction with an objection.

***Limine* Orders, Instructions & Motions**

9 The Standard Orders in *Limine* attached hereto are hereby granted to each side and shall not be repeated in a party's Motion in *Limine*.

10 Each attorney is responsible to see that all witnesses are available, on time, and appropriately attired. Additionally, each witness shall be instructed on at least the Witness Instructions points attached hereto, as well as on each matter the subject of an Order *In Limine*.

11 Assigned Judge: (fill in if a visiting judge is assigned) _____ has been assigned to this case.

It is hereby **FURTHER ORDERED** that any objection to an assigned judge, if applicable, must be made in writing within 10 days from the date of this order.

Order and Administration of Trial

12 Each party shall be entitled to not more than _____ minutes to conduct that party's *voirdire* examination.

13 Each party shall be entitled to not more than _____ minutes for an opening statement.

14 Each party shall be entitled to not more than _____ hours to conduct direct examination and cross-examination of witnesses including any witness called in a party's case-in-chief and in rebuttal.

- 15 The evidence shall close not later than _____ .m. on (day) _____,
(date) _____.
- 16 If the case following your case is ready when you have used your time, your case is subject to being continued to a later time or date.
- 17 Each party shall be entitled to not more than _____ minutes for a closing statement.
- 18 The Court usually finds that note-taking is an aid to the jury. Notice is hereby given of the Court's intent to allow note-taking and of the instructions the Court will give the jurors both in advance and in the Charge as set forth in the attachment hereto.
- 19 The Court has found that allowing jurors to propose areas of questioning, under a strictly controlled methodology, is an aid to the jurors and to counsel. Accordingly, notice is hereby given of the Court's intent to allow such juror questions in the manner as set forth in the attachment hereto.

Questions concerning implementation of this order may be directed *ex-parte* to the Court Administrator at 512-756-5436 or email to admin@dcourt.org.

Signed on _____.

Guilford L. Jones
Presiding Judge

Attachments which are incorporated into this Order just as if set out in full herein:

Witness Instructions
Standard Orders in Limine
Notice to Counsel and Instruction on Juror Note-taking
Notice to Counsel and Instruction on Juror Submission of Questions

33rd District Court Instructions to Witnesses

Counsel will instruct each witness on the following matters.

These instructions are intended to assist witnesses in understanding something of their role as a witness along with some of the limitations that must of necessity govern their testimony. Counsel **SHALL** utilize these instructions along with other instructions that might aid witnesses in testifying effectively.

- When you speak, **speak slowly and distinctly**.
- Give a **verbal answer** – nods and shakes of the head cannot be recorded accurately.
- If the question requires a **‘yes’ or ‘no’** answer, use those words. The guttural sounds of ‘uh huh’ and ‘unh uh’ are not words in the English language.
- **Speak up**. Sometimes you will hear your own voice back over the speaker. That may make you think you are speaking too loudly and cause you to lower your voice. Don’t do it. If you are too loud then the judge will let you know.
- **Listen carefully to the question** and make sure that you understand it before you try to answer it. If needed, you may ask the lawyer to repeat, to rephrase or to clarify the question, and if you don’t understand the question, you may state that. The attorney will attempt to phrase it in a way that you will clearly understand it. Contrary to television, few if any lawyers purposefully try to confuse a witness with the question.
- **Wait until the lawyer has fully stated the question** before you try to answer. The court reporter has to write down the question and answer and if two people are talking at once it becomes difficult if not impossible to have an accurate record.
- An objection may be lodged by the attorney – either the other attorney or the very one who is asking you a question. **Immediately upon seeing that an objection is being made (the attorney will stand and start off with “objection”) stop your answer** in mid-syllable. Do not attempt to speak over the attorney. The judge will then rule on the objection. If it is sustained then you may not continue your answer. If it is overruled, you will normally be permitted to continue your answer.
- When answering, **answer just the question asked**. Don’t elaborate. Your job is to answer questions, not to make speeches or to try to get every word in that you think may be important. If the opposing lawyer has asked a question that begs for an additional question but is not asking it, the lawyer advancing your testimony will ask that question if it is necessary and proper. Stick to your chore: just answer the question! You will hear an objection of “nonresponsive” if you stray from the topic.
- You are **not required to guess** at an answer such as about times or distances. However, you **may be called upon to make an estimate**. If your response is an estimate you may say so.
- **About “hearsay”** evidence: Basically, anything said to you outside of the courtroom, even if you heard it with your own ears, is hearsay. You can't talk about hearsay, i.e. what someone else told you, except in certain circumstances.

The “Rule”

There is a procedural rule which is referred to as simply “The Rule” which you are hereby **ORDERED** to comply with as follows:

- You are required to **remain outside of the courtroom** and outside of the hearing of the proceedings in the courtroom until it is your turn to testify. (Note: This part of the rule does not apply to parties, the spouse of a party or the designated representative of a corporation or other entity type party.)
- You will be called to the courtroom when it is time for you to testify.
- You are **not to discuss your testimony** with anyone, either ahead of time or after you testify, except for one of the attorneys in the case, until the case is entirely over.
- You are **required to remain in attendance** until specifically excused by the judge.
- If you are released from The Rule remember that other witnesses may still be subject to it and you are not to discuss the case with them.
- If you are excused but to remain subject to recall, you must wait either in the witness holding room or, if permitted by the judge, to remain available by telephone to be within 30 minutes of the courthouse if called back.
- **You must continue to obey the requirements of The Rule until specifically excused from it by the judge presiding over the case.**
- A violation of The Rule is punishable by contempt of court which carries with it a fine up to \$500 and confinement in the county jail for up to six months.

Standard Orders in *Limine*

of the 33rd District Court

- **Insurance.** Unless an insurance company is a named Defendant, that the Defendant is or is not protected, in whole or in part, by liability insurance, or that defense counsel was retained by, or all or any part of the costs of defense, or of any resulting judgment, are or will be paid by an insurance company, or any other matter suggesting an involvement of any insurance company with the defense of the case.
- **Jurors' Connection with Insurance Industry.** Inquiring of potential jurors as to their present or past employment or connection with the insurance industry, or present or past connection of any family member with the insurance industry, except that:
 - If a potential juror's juror information card discloses employment in the insurance industry, such potential juror may be questioned concerning same.
 - Inquiry may be made of potential jurors concerning their experience (or that of members of their family), if any, reviewing, adjusting or allowing/disallowing claims, as long as no express reference is made to "insurance."
- **Liability or Non-Liability for Judgment.** That the named Defendant may or may not have to pay any resulting judgment.
- **Collateral Source.** That any portion of the damages sought by Plaintiff have been, or will be, paid by any collateral source, including but not limited to:
 - health and accident or disability insurance.
 - any employee benefit plan, formal or informal, including payment of wages for time not actually worked.
 - social security or welfare.
 - veterans or other benefits.
 - provisions of medical services free of charge or for less than reasonable and customary charges, provided that the foregoing does not prohibit reference to unpaid charges of any health care provider who actually testifies for Plaintiff (or whose medical records are offered by Plaintiff), or to any letter of protection securing any such charges.
- **Retention of Attorney.** The time or circumstances under which either party consulted or retained an attorney provided that if any attorney referred a party to a health care provider who testifies in the case (or whose medical records are introduced by such party) such fact may be a subject of inquiry.
- **Income Taxes.** That any recovery will or will not be subject to income taxes, in whole or in part.
- **Criminal Offenses.** That any party or witness has been suspected of, arrested for, charged with or convicted of any criminal offense unless there is evidence of a specific conviction that the Court has previously ruled is admissible in the case.
- **Alcohol or Drug Use.** That any party or witness uses or abuses alcohol, tobacco, or any controlled substance, unless and until such alleged use or abuse is shown to be specifically relevant to the matters in controversy.
- **Settlement Negotiations or Mediation.** Any negotiations, offers or demands with respect to any attempted settlement or mediation.
- **Prior Suits or Claims.** That any party has been a party to any prior lawsuit, or has asserted any prior claim, or that any prior claim has been asserted against a party; provided that this clause does not prohibit inquiry about a prior injury that

may have been the subject of a claim, as distinguished from the claim, suit or settlement with reference thereto, if the nature of injuries claimed in the present suit make the same relevant.

- **Ex Parte Statements of Witnesses.** Any reference to any ex parte statement of any witness or alleged witness, other than an adverse party or agent of an adverse party, unless and until such witness has been called to testify and has given testimony conflicting with such ex parte statement. A deposition or a statement in business or medical records that have been proved up as required by the Rules of Evidence is not an ex parte statement.
- **Testimony of Absent Witness.** Any statement or suggestion as to the probable testimony of any witness or alleged witness who is unavailable to testify, or whom the party suggesting such testimony does not, in good faith, expect to testify in the trial. If the party is expected to testify by deposition, this provision does not apply to testimony contained in the deposition expected to be offered.
- **Failure to Call Witness.** Any reference to the failure of an opposing party to call any witness.
- **Photographs.** Showing any documents or photographs to the jury, or displaying same in such manner that the jury or any member thereof can see the same, unless and until the same has been tendered to opposing counsel, and has been admitted in evidence or approved for admission or use before the jury, either by the Court or by all counsel.
- **Requests for Stipulations.** Any request or demand in the presence of the jury for a stipulation to any fact, or that counsel admit or deny any fact.
- **Requests for Files.** Any request or demand in the presence of the jury that opposing counsel produce any document or thing, or that opposing counsel or any party or witness exhibit, turn over or allow examination of the contents of any file or briefcase (except that a party may demand to see a document used by a witness on the stand to refresh his/her recollection, or that a witness testifies that he/she has used previously to refresh his/her recollection).
- **Discrimination.** Any argument that a party should be treated more or less favorably because of such party's race, gender, national origin, nationality, religion, marital status, occupation, or financial status (except in the second phase of a bifurcated trial).
- **Social Cost of Award.** Any argument or suggestion that an award of damages will affect insurance premiums, the price of any goods or services, or the level of taxation.
- **Hardship or Privation.** Any argument or suggestion that a failure to award damages will cause a Plaintiff privation or financial hardship.
- **Golden Rule.** Any argument or suggestion that the jurors should put themselves in the position of a party.
- **Counsel's Opinion of Credibility.** Any expression of counsel's personal opinion regarding the credibility of any witness.
- **Effect of Answers to Jury Questions.** Any argument that any finding or failure to find in response to a particular jury question will, or will not result in a judgment favorable to any party. This provision does not bar argument by counsel that a particular jury question should be answered in a particular way.

Court's Special Instruction to the Jury Prior to Opening Statements

Ladies and Gentlemen of the Jury:

The Court has determined that the taking of notes may be useful to you in this particular case. {During voirdire some of you may have been questioned on your ability to take notes. }

Therefore, you may take notes during the presentation of evidence in this case. However, you may not take notes during the arguments of the lawyers, or when the jury charge is read to you.

Moreover, to ensure a completely fair and impartial trial, I will instruct you to observe the following limitations:

1. Note taking is permitted, but not required. Each of you may take notes. However, no one is required to take notes.
2. Take notes sparingly. Do not try to summarize all of the testimony. Notes are for the purpose of refreshing memory. They are particularly helpful when dealing with measurements, times, distances, identities, and relationships.
3. Be brief. Overindulgence in note taking may be distracting. You, the jurors, must pass on the credibility of witnesses; hence, you must observe the demeanor and appearance of each person on the witness stand to assist you in passing on his or her credibility. Note taking must not distract you from that task. If you wish to make a note, you need not sacrifice the opportunity to make important observations. You may make your note after having made the observation itself. Keep in mind that when you ultimately make a decision in a case you will rely principally upon your eyes, your ears, and your mind, not upon your fingers.
4. Do not take your notes away from court. At the end of each day, please place your notes in the envelope which has been provided to you. A court officer will be directed to take the envelopes to a safe place and return them at the beginning of the next session on this case, unopened.
5. Your notes are for your own private use only. It is improper for you to share your notes with any other juror during any phase of the trial other than jury deliberations. You may, however, discuss the contents of your notes during your deliberations.
6. I will give you more detailed instructions later about the use of your notes during deliberation.

Authority: *Price v. State*, 887 S.W.2d 949 (Crim. App. 1994).

Notice to Counsel of Juror Questions to be Submitted

Counsel are hereby notified that the Court will permit jurors to submit questions for possible asking of a witness according to the following procedures:

1. Jurors will be informed prior to commencement of the evidence of a limited opportunity to submit questions to be propounded to witnesses. They will be further instructed in accordance with the instructions set forth on the following page. The procedure will follow that which was approved in *Hudson v. Markum*, 948 S.W.2d 1, 1997 Tex. App. LEXIS 1431, 97:15 Tex. Civil Op. Serv. 53 (Tex. App. Dallas 1997, writ den.). Juror questions were also discussed and approved in *Fazzino v. Guido*, 836 S.W.2d 271, 276 (Tex. App.– Houston [1st Dist.] 1992, writ denied) (citing *United States v. Callahan*, 588 F.2d 1078, 1085 (5th Cir.), cert. denied, 444 U.S. 826, 62 L. Ed. 2d 33, 100 S. Ct. 49 (1979)).
2. After both counsel have concluded their questions the Court will inquire of the jurors whether they wish to suggest a question to be asked of that witness.
3. Outside the presence of the jury, typically in a sidebar (that may not be of record unless an objection needs to be made on the record), the admissibility of the question will be determined.
4. If the question is determined generally to be admissible, it will be reworded to a permissible form. The Court intends that normally questions will not be propounded over the objection of counsel or in a form not concurred in by all counsel and the Court.
5. The Court will propound the question to the witness.
6. Each side will then be given the opportunity for followup questions limited to the subject matter of the juror's question, first by the side not offering such witness and then by the proponent of the witness.
7. The questions will be retained, whether or not used in questioning, with a notation thereon by the Court as to the asking, or not, of the question.

**Instruction to the Jury
of Juror Questions to be Submitted**

1. The Court wishes to inform you of a limited opportunity to submit questions to be propounded to witnesses. In that regard, you are instructed that:
 - a. Some witnesses may be passed without your being afforded that opportunity.
 - b. It is possible that a question may not be posed if there is a legal objection to it and you should not concern yourself with the fact that it was not used.
 - c. Most questions will be re-worded to proper form.
 - d. The Court will pose the question to the witness, in proper form, and the jury is to draw no inference of the Court's opinion of the witness or the witness's answer or of any portion of the case.
 - e. After the question is posed to the witness by the Court, each attorney will have the opportunity to followup on the same topic.
2. The procedure for this will be as follows:
 - a. After both counsel have concluded their questions the Court will inquire of the jurors whether they wish to suggest a question to be asked of that witness.
 - b. Your question should be written on one of the note cards that we have provided for that purpose. Do NOT place your name on the card.
 - c. Outside of your presence, typically in a sidebar, the Court will consult with counsel.
 - d. If the question is determined to be proper for asking, the Court will propound the question to the witness in a properly worded form.
 - e. Each side will then be given the opportunity for followup questions limited to the subject matter of the juror's question, first by the side not offering such witness and then by the proponent of the witness.