

**TRIAL PROCEDURES FOR JUDGE PEPPER'S COURT**  
**December 2009**

When it becomes clear that an adversary matter will go to trial, the Court will schedule a final pretrial conference date and a trial date. At the time it schedules these two dates, the Court will expect the parties to be able to predict how much time the trial likely will take. At the time it schedules the trial and final pre-trial dates, the Court will issue a pre-trial order memorializing the following schedule:

**A     DISCOVERY**

**No later than forty-two (42) days before the final pretrial conference**, the parties shall complete all discovery. The Court may extend the discovery period by agreement of the parties, or, for good cause, on motion of a party providing that motion is made *before* the time for completing discovery expires.

**By the above discovery deadline**, each party must disclose to the opposing party the identity of all *expert* witnesses expected to be called at trial. The Court expects that parties who propose to call expert witnesses will comply with Fed. R. Civ. P. 26(a)(2), requiring that in addition to the identity of the expert witness, the party provide a written report from the expert containing certain specific information about the expert's expected testimony.

**No later than thirty-five (35) days before the before the final pretrial conference**, the parties shall disclose to the opposing party the identities of all *non-expert* witnesses expected to be called at trial.

**B.     DISPOSITIVE MOTIONS**

**No later than twenty-eight (28) days before the final pretrial conference**, all motions for summary judgment must be served and filed. A party who files a motion for summary judgment must attach a brief, stating the factual and legal reasons the movant is entitled to relief. Responses to such motions are due **seven (7)** days after the motion is filed, and replies are due **seven (7)** days after the response. Parties must attach to the brief copies of cases cited in the brief, or must provide the copies in a separate appendix. The parties should be prepared to argue such motions at the final pretrial conference, unless the Court schedules an earlier date for the arguments.

**C.     MOTIONS IN LIMINE**

**No later than seven (7) days before the date scheduled for trial**, any motions *in limine* or other motions relating to the trial must be served and filed.

D. **SETTLEMENT CONFERENCE**

**No later than fourteen (14) days before the final pretrial conference**, the parties shall meet with each other at their mutual convenience to explore the possibility of settlement and to prepare the pretrial report. The burden of arranging such a meeting lies primarily with the plaintiff.

E. **PRETRIAL REPORT**

**No later than seven (7) days before the final pretrial conference**, the parties shall file with the court a brief, written pretrial report.

1. The principal burden of preparing and timely filing the pretrial report rests with the plaintiff.
2. The parties are to work together to prepare a single pretrial report. If, however, after making diligent efforts to agree, the parties cannot agree on the contents of the report, each party shall submit a brief separate report or partial separate report.
3. The pretrial report shall contain the following:
  - a. A statement of contested facts, stating each party's position with respect to particular factual disputes that the Court must decide;
  - b. The names and addresses of each party's prospective witnesses (which, as noted above, already should have been disclosed to opposing counsel). The Court ordinarily will not allow witnesses not listed in the pretrial report absent unusual circumstances;
  - c. The names and addresses of any proposed expert witnesses (which, again, should have been disclosed to opposing counsel previously), together with a narrative of each expert's background and experience;
  - d. If relevant, an itemized statement of damages or a statement of each party's position respecting damages;
  - e. An statement of the agreed issues of law applicable to the case, and a statement of each party's position with respect to contested issues of law;
  - f. A certification by each party that the parties have made a good-faith attempt to settle, but that no settlement could be achieved;
  - g. A list of all exhibits the parties expect to introduce at trial. If a party objects to the admission of an exhibit, the report shall identify the objecting party and the grounds for the objection; and

- h. An agreed statement as to the Court's jurisdiction, or a statement of each party's position on the Court's jurisdiction. Such a statement should include whether the issue at trial is a core bankruptcy issue or a non-core issue, and a statement as to whether each party consents to entry of final judgment by the bankruptcy court.
  - 4. Each party may, but is not required to, file with the pretrial report and serve on the opposing party a short (15 pages or less) brief on any disputed legal and/or factual issues, specifically identifying the provisions of the Bankruptcy Code and other applicable law involved. The party must attach to the brief copies of the cases cited in the brief. Parties may also include in such a brief proposed findings of fact and conclusions of law.
- F. **Prior to the morning of trial**, each party shall disclose to the opposing party all documents which may be used for any purpose, including impeachment, at the trial. The party must provide copies of such documents to the opposing party or, if the document are voluminous, provide the opposing party with the opportunity to copy any of the documents. If a party does not disclose a document prior to the morning of trial and the opposing party objects, the Court may refuse to admit that piece of evidence.

The Court requires the parties to pre-mark exhibits, in accordance with the numbering procedure described in the pretrial scheduling order.