

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

Plaintiff,)
vs.) 4:
Defendant.)
ORDER
SETTING SCHEDULE FOR
PROGRESSION OF CASE

IT IS ORDERED:

1) **Trial** is set for the * **2000 jury/non-jury session**, for a duration of * trial days, in Courtroom 1, United States Courthouse, Lincoln, Nebraska.

2) **The Final Pretrial Conference** with the undersigned magistrate judge is set for *, **2000, at *.m.** in chambers, 566 Federal Building and United States Courthouse, Lincoln, Nebraska. The final pretrial conference shall be attended by lead counsel for represented parties. Counsel shall complete prior to the pretrial conference, all items as directed in NELR 16.2. By the time of the pretrial conference, full preparation for trial shall have been made so that trial may begin at any time during the session indicated above. The trial date will be determined at the conference, if not theretofore determined by the parties' responses to paragraph 17, below.

3) The pretrial conference will include a **discussion of settlement**, and counsel shall be prepared through investigation, discovery and communication with clients and insurers, if any, to discuss fully the subject of settlement, including realistic expectations about liability, obstacles to agreement, offers made, offers which can be made at the conference, and recommendations for further negotiations and conferences.

4) **Mandatory Disclosures.** The mandatory disclosures described in Fed. R. Civ. P. 26(a)(1) shall be completed by all parties on or before *

5) **Limits on Discovery.** Each party is limited to serving * interrogatories on any other party. The plaintiffs as a group, the defendants as a group, and the third party defendants as a group are each limited to taking * depositions in this case, without leave of court.

6) **Deposition Deadline.** All depositions, whether or not they are intended to be used at trial, shall be completed by

* All interrogatories, requests for admission and requests for production or inspection, whether or not they are intended to be used at trial, shall be served sufficiently early to allow rule time response before that date. Counsel may stipulate to extensions of time to respond to discovery requests in accordance with Fed. R. Civ. P. 29, as amended, but such extensions shall not extend any of the dates in this order; any requests for extensions of any of the deadlines herein shall be made by appropriate motion and order.

7) Any **motions to compel discovery** shall be filed not later than thirty (30) days prior to the date set forth above for completion of depositions as to matters which are then ripe for decision; discovery matters arising after that date may be the subject of motions to compel discovery until the date set for completion of depositions. Counsel are reminded of the provisions of NELR 7.1(i).

8) The **filing of disclosures** under Fed. R. Civ. P. 26(a)(1), (2), and (3), as well as the filing of discovery documents, depositions, and disclosures required by this order shall be governed by NELR 26.1.

9) **Withholding Documents from Disclosure or Discovery.** If any document is withheld from production or disclosure on the grounds of privilege or work product, the producing party shall disclose the following information about each such document withheld: a description of the document withheld with as much specificity as is practicable without disclosing its contents, including (a) the general nature of the document; (b) the identity and position of its author; (c) the date it was written; (d) the identity and position of its addressee; (e) the identities and positions of all persons who were given or have received copies of it and the dates copies were given to them; (f) the document's present location and the identity and position of its custodian; (g) the specific reason or reasons why it has been withheld from production or disclosure.

10) **Disclosure of Expert Witnesses.**¹ Each plaintiff, counter-claimant, and cross-claimant shall, as soon as practicable but not later than sixty (60) days prior to the date set for the completion of depositions, serve all opposing parties with the statement required by Fed. R. Civ. P. 26(a)(2) regarding each expert witness it expects to call to testify at trial pursuant to the provisions of Rule 702, 703 or 705, Fed. Rules of Evidence. Each defendant, counter-defendant, and cross-defendant

¹ Generally, a treating physician shall not be deemed to be "retained or specially employed to provide expert testimony in a case" pursuant to Fed. R. Civ. P. 26(a)(2)(B), but a treating physician must be identified pursuant to Fed. R. Civ. P. 26(a)(2)(A).

shall serve its statement of the expert witnesses it expects to call to testify pursuant to Rule 702, 703 or 705, Fed. Rules of Evidence, pursuant to Fed. R. Civ. P. 26(a)(2) as soon thereafter as practicable, but not later than thirty (30) days prior to the date set for the completion of depositions. If necessary to refute the disclosed opinions of an expert witness of an opponent, a party may disclose additional expert witnesses not later than fifteen (15) days prior to the date set for completion of depositions, provided that the disclosing party then provides all of the information described in Fed. R. Civ. P. Rule 26(a)(2) and makes the expert witness available for deposition prior to the date set for completion of deposition. Supplementation of these disclosures, if originally made prior to these deadlines, shall be made on these deadlines as to any information for which supplementation is addressed in Fed. R. Civ. P. 26(e). The testimony of the expert at trial shall be limited to the information disclosed in accordance with this paragraph.

11) **Pretrial Disclosures:** Pursuant to Fed. R. Civ. P. 26(a)(3), each party shall provide to all other parties the following information regarding the evidence that it may present at trial other than solely for impeachment purposes as soon as practicable **but not later than the date specified:** **a. Nonexpert Witnesses - (thirty (30) days prior to the date set as the deposition deadline):** The name, address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises. **b. Deposition Testimony and Discovery - (five (5) working days before the final pretrial conference):** 1) The portions of each deposition, designated by page and line, that it intends to offer and 2) each discovery response of another party it intends to offer. **c. Trial Exhibits - (five (5) working days before the final pretrial conference):** A list of all exhibits it expects to offer by providing a numbered listing and permitting examination of such exhibits designating on the list those exhibits it may offer only if the need arises. **d. Waiver of Objections:** Any and all objections to the use of the witnesses, deposition testimony, discovery responses, or exhibits disclosed pursuant to the above subparagraphs, including any objection pursuant to F.R.Civ.P. 32(a) that a deponent is available to testify at the trial shall be made a part of the pretrial order. Failure to list objections (except those under Fed. R. Evid. 402 and 403) shall be deemed waived, unless excused by the court for good cause shown.

12) **Motions for Summary Judgment. (a) Qualified Immunity.** Any motion for summary judgment or partial summary judgment based upon qualified or "good faith" immunity to claims brought pursuant to 42 U.S.C. § 1983 shall be filed within sixty (60) days of the date of this order, in the absence of which such a defense shall be deemed waived and abandoned, the defendant then having submitted to suit. **(b) All other** motions for summary judgment shall be filed not later than thirty (30) days prior to

the date set for completion of depositions. See NELR 56.1 and 7.1.

13) **Motions in Limine.** Any motion *in limine* challenging the admissibility of testimony of an expert witness under Rule 702, Fed. Rules of Evidence shall be filed not later than five (5) working days following the deadline for completion of depositions, in the absence of which any objection based upon said rule shall be deemed waived. ***See Kumbo Tire Co., Ltd. v. Carmichael***, 119 S.Ct. 1167, (1999); ***Daubert v. Merrell Dow Pharmaceuticals***, 509 U.S. 579 (1993). Any other motions *in limine* shall be filed on or before the date of the final pretrial conference.

14) **Adding Parties; Amending Pleadings.** Any motions to add parties or to amend pleadings to this action shall be filed within ninety (90) days.

15) **Certifying Class Actions.** Any motion to certify this case as a class action shall be filed within ninety (90) days of the date of this order, in the absence of which any claim in the pleadings that this is a class action shall be deemed abandoned, and the case shall proceed, for purposes of Fed. R. Civ. P. 23 as if a motion for class certification had been filed and denied by the court.

16) The parties' stipulations and agreements reflected in their planning report filed with the Court, insofar as they do not conflict with this order, are adopted.

17) Report on Length of Trial and Settlement; Scheduling Trial.

(a) Counsel for each party shall inform the court, by letter delivered to the undersigned not later than the first working day of the second month preceding the month at which the case is set for trial, of the number of trial days expected to be necessary to complete the trial of the case if settlement is not reached.

(b) Counsel for the parties shall confer with respect to the settlement of this matter without trial, and counsel for each party shall inform the undersigned by the same letter of the status of such settlement negotiations, including demands made, counter-demands and counter-offers made, obstacles to settlement, the likelihood of resolution of the matter without trial, and counsel's candid opinion on the probabilities of settlement if a separate settlement conference with the parties and counsel were convened. In the event counsel for any party is of the belief that a settlement conference should be convened, a request therefor should be included in the letter.

(c) Counsel should also discuss whether mediation, arbitration, summary jury trial, or other alternative dispute resolution techniques may provide a reasonable chance of settlement. Counsel are directed to the court's Mediation Plan, copies of which are available from the clerk. Requests to refer this case to mediation shall be made to the undersigned by letter; no filing is necessary.

(d) In the same letter counsel shall advise the undersigned of any scheduling conflicts known at the time of the letter that would interfere with the setting of the trial during any portion of the month in which it is set. In the absence of any indication of conflicts, trial counsel will be presumed to be available for trial at ANY time the case may be scheduled during the designated trial term.

18). **Motions to alter dates.** All requests for changes of date settings shall be directed to the magistrate judge by appropriate motion, including all requests for changes of trial dates.

DATED

BY THE COURT:

David L. Piester
United States Magistrate Judge

Rev: 02/98 (Para. 11(d))
04/99 (Para. 13)
11/18 (Para. 13)
04/00 (Para. 1)