

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2011-055739

05/30/2013

JUDGE PRO TEM COLLEEN L. FRENCH

CLERK OF THE COURT  
K. Hartley  
Deputy

TE BOUTIQUE INC

DONALD J NEWMAN

v.

RON ACKERLUND, et al.

THOMAS GEORGE STACK

VACATING FINAL PRETRIAL MANAGEMENT CONFERENCE AND  
TWO-DAY TRIAL AND RESETTING  
FINAL PRETRIAL MANAGEMENT CONFERENCE  
AND THREE-DAY JURY TRIAL DATE

Courtroom 112 NE

8:34 a.m. This is the time set for a Telephonic Pretrial Status/Scheduling Conference for the purpose of discussing the previously scheduled Two-Day Jury Trial set for July 1, 2013. Appearing on behalf of Plaintiff is counsel, Donald J. Newman. Appearing on behalf of Defendant is counsel, Thomas George Stack.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Discussion is held regarding case status and scheduling.

**IT IS ORDERED** vacating the Pre-Trial Management Conference previously set for June 14, 2013 and resetting same for **July 31, 2013 at 8:30 a.m. (30 minutes allotted)**. The Pretrial Management Conference shall be governed by the Pretrial Management Orders issued this date. **Trial counsel** and/or the parties shall attend this conference in person.

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**IT IS FURTHER ORDERED** vacating the Two-day Jury Trial previously set to commence on July 1, 2013 and resetting this matter for a **Three-Day Jury Trial** to begin **August 12 -14 at 9:00 a.m.** before:

**HONORABLE THOMAS LECLAIRE  
SUPERIOR COURT OF ARIZONA  
NORTHEAST REGIONAL COURT CENTER  
18380 NORTH 40<sup>TH</sup> STREET  
COURTROOM 112  
PHOENIX, ARIZONA 85032  
(602) 372-3849**

NOTE: Due to Judge McVey's retirement effective January 28, 2013 and judicial rotations effective July 1, 2013, all matters scheduled from January 21, 2013 through June 28, 2013, will be held before Judge Pro Tem Colleen L. French. All matters scheduled after June 28, 2013, will be held before the Honorable Thomas LeClaire. All in person hearings will be held in Courtroom 112 of the NE Court Complex, 18380 N. 40<sup>th</sup> St., Phoenix, AZ.

**THIS IS A FIRM TRIAL SETTING.**

Please note that normal trial days in this division are Monday through Thursday. Each day shall commence at 9:00 a.m. The lunch break will be taken at 12:00 p.m., with the afternoon session to begin promptly at 1:30 p.m. A fifteen (15) minute break will be taken both mid-morning and mid-afternoon, with the trial day to end at 4:30 p.m.

**IT IS FURTHER ORDERED** all trial exhibits shall be submitted for marking not later than **5:00 p.m. on July 31, 2013.**

No information disclosed after the dates contained in the order may be used at the trial absent court order on motion and affidavit.

The proceedings will take place in the Superior Court's new "e-courtroom." A record of the proceedings will often, but not always, be made by FTR in lieu of a court reporter. If a court reporter is required, the Court must receive a written request prior to the Trial Management Conference set. Failure to timely request a court reporter will be deemed consent to proceed without a court reporter. Should you want an unofficial copy of the proceedings, the parties or counsel may request a CD of the proceedings for a \$20.00 charge. If a CD is requested, please obtain a form from the Self Center to request a daily copy of a court hearing or trial proceeding

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being conducted and pay the applicable fee. Should an official transcript be required, you may request that the court prepare it. The party ordering the transcript must pay for it.

If the parties are not familiar with the courtroom's technology, they are encouraged to set up an appointment with the court's technology liaison at 602.372.7877.

8:43 a.m. Matter concludes.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however; subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

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**PRETRIAL STATEMENT ORDERS**

**1. IT IS ORDERED** that the Joint Pretrial Statement (JPTS) in accordance with Rule 16(d), Arizona Rules of Civil Procedure (ARCP) is due in this division by **5:00 p.m., July 24, 2013.**

**2. IT IS FURTHER ORDERED** the Joint Pretrial Statement shall contain the following:

(A) Stipulations of material fact and law;

(B) Such contested issues of fact and law as counsel can agree are material or applicable;

(C) A separate statement by each party of other issues of fact and law believed by that party to be material;

(D) A list of witnesses intended to be used by each party during trial. Each party shall list any objections to a witness and the basis for that objection. No witness shall be used at the trial other than those listed, except for good cause shown. Witnesses whose testimony will be received by deposition testimony only will be so indicated;

(E) Each party's final list of exhibits to be used at trial for any purpose, including impeachment. Plaintiffs shall deliver copies of all of their exhibits to all parties twenty days before the final pretrial conference. All other parties shall deliver copies of all their exhibits to all parties fifteen days before the final pretrial conference. Any exhibit that cannot be reproduced must be made available for inspection to all parties on or before the deadlines stated above. Each party shall list any objections to an exhibit and the basis for that objection. No exhibit shall be used at the trial other than those listed, except for good cause shown. The parties shall indicate any exhibits which the parties stipulate can be admitted into evidence, such stipulations being subject to court approval;

(F) A statement by each party indicating any proposed deposition summaries or designating portions of any deposition testimony to be offered by that party at trial, other than for impeachment purposes. Deposition testimony shall be designated by transcript page and line numbers. A copy of any proposed deposition summary and written transcript of designated deposition testimony should be filed with the Joint Pretrial Statement. Each party shall list any objections to the proposed deposition summaries and designated deposition testimony shall be used at trial other than that designated or counter-designated or for impeachment purposes;

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(G) A brief statement of the case to be read to the jury during voir dire. If the parties cannot agree on this statement, then each party shall submit a separate statement to the judge who will decide the contents of the statement to be read to the jury;

(H) Technical equipment needed or interpreters requested;

(I) The number of jurors and alternates agreed upon, whether the alternates may deliberate, and the number of jurors required to reach a verdict;

(J) Whether any party will invoke *Rule 615 of the Arizona Rules of Evidence* regarding exclusion of witnesses from the courtroom; and

(K) A brief description of settlement efforts.

3. **IT IS FURTHER ORDERED** at the time of the filing of the joint pretrial statement, the parties shall file (A) an agreed-upon set of jury instructions, proposed verdict forms, and voir dire questions and (B) any additional jury instructions, verdict forms, and voir dire questions requested, but not agreed upon, (C) a statement by each party on how a verbatim record of the trial will be made (i.e., cd/videotape or court reporter).

4. **IT IS FURTHER ORDERED** each party intending to submit a jury notebook to the jurors shall submit a copy of the notebook to opposing counsel five days before the final pretrial conference, or if no conference is scheduled, five days before the trial.

5. **IT IS FURTHER ORDERED** each party who will be submitting a trial memorandum shall file such memorandum five days before the final pretrial conference, or if no conference is scheduled, five days before the trial.

### **MOTIONS IN LIMINE**

Pursuant to Rule 7.2(a) ARCP, counsel shall meet and confer to discuss and identify any disputed evidentiary issues that are anticipated to be the subject of motions in limine. The parties are directed to provide the court with a written report of agreements reached at the conference so that the court can enforce such agreements. At the time of filing any motions in limine, counsel shall also provide the court notice that counsel have met in person prior to the filing of said motions in limine or the motion(s) may be stricken.

Motions in limine shall be filed only in accordance with Rule 7.2, ARCP. Motions in limine shall be filed thirty (30) days before the PTMC and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397, 499 P.2d 152 (1972). No “prophylactic” motions in

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limine may be filed. A written response to a motion in limine may be filed no later than ten (10) days thereafter. The Court will rule on the motions in limine without oral argument. If the Court wishes to hear argument, the argument will be heard at the PTMC. No replies shall be filed.

**DISPOSITIVE MOTIONS**

All motions, other than motions in limine, shall be filed **not later than one hundred twenty (120) days prior to the date set for trial** unless otherwise ordered by the court.

**Notices of Settlement**

**In accordance with the provisions of ARCP 41(a), to be effective, any Notice of Settlement or Dismissal providing for resolution of one or more pending claims that is filed after service by the opposing party's answer or dispositive motion, must be signed by each affected party (or appropriate counsel) prosecuting or defending against the claim(s) covered by the Notice. Each filed Notice shall state whether it resolves all pending issues in the case and constitutes a representation to the Court that the claims subject to the Notice have been fully resolved with respect to Notice signatories, and that the only further relief to be sought with respect to such claims is entry of an order that each signatory confirms is consistent with the agreement that gave rise to filing of the Notice.**

**IT IS FURTHER ORDERED** that the Time Estimates for Trial attached hereto shall be submitted on the same date as the parties' Joint Pretrial Statement as ordered herein.

ATTACHED: SAMPLE FORMAT FOR TIME ESTIMATE FORM AND EXHIBIT PROCEDURES

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CAUSE NUMBER

CASE CAPTION

PLAINTIFF'S COUNSEL

DEFENDANT'S COUNSEL

(NOTE: Add additional lines as needed for additional parties and or witnesses.)

TIME ESTIMATES FOR TRIAL

Opening Statement and Closing Argument

PLAINTIFF'S OPENING STATEMENT	
DEFENDANT'S OPENING	
PLAINTIFF'S CLOSING	
DEFENDANT'S CLOSING	
PLAINTIFF'S REBUTTAL	

Estimate of Time for Witness Examination

PLAINTIFF'S WITNESSES	DIRECT EXAMINATION	CROSS EXAMINATION	REDIRECT EXAMINATION



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**GUIDELINES FOR COUNSEL WHEN PREPARING EXHIBITS FOR USE IN COURT**

**COUNSEL PLEASE READ**

**Exhibits are due to the Court not later than 5:00 p.m. July 31, 2013.**

If Defendant's exhibits are received prior to Plaintiff's exhibits, the Clerk may mark them first with Plaintiff's exhibits following.

Exhibits will be marked consecutively. If your list refers to an exhibit and it is not provided at the time of marking, the numbers of all following exhibits will be moved up. In addition, if duplicate exhibits are submitted, the clerk will remove the duplicate and the numbering will be adjusted accordingly. To avoid confusion during trial, it is essential that counsel avoid submitting duplicate exhibits. *The clerk cannot reserve numbers for exhibits that will be provided at a later date.* Exhibits will be marked as they are received. Do not list "Any and all exhibits listed by ...." Depositions will not be marked as an exhibit. Original depositions to be used for impeachment purposes shall be provided to the clerk on the first day of trial to be hand-filed by the clerk.

**\*\*\*\*Each multiple page exhibit must be securely fastened together by staple or other means. NO PAPER CLIPS, BINDER CLIPS, OR RUBBER BANDS may be used. If Acco fasteners are used they must be long enough to fasten securely.\*\*\*\***

Counsel are to provide a workable list of exhibits. The list should include a description of each exhibit. (See blank sample of an exhibit table below as a reference.) Do not put numbers on the exhibits; however a slip sheet with the exhibit number on it should be placed in front of each exhibit.

Exhibit Description Information:

The descriptions should be verifiable when viewing the first page of the exhibit.

No bates stamp references or number of pages in documents should be used.

If counsel are submitting large charts, blow-ups or maps, please include a small version which can be marked as the exhibit and can go into the jury if in evidence. The blow-ups, charts and/or maps can be used as demonstrative but will not be marked as exhibits and will be returned to counsel.

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For additional assistance in preparation of exhibits contact the courtroom clerk at 602-372-7736.

Sample of List of Exhibits to be provided to the courtroom clerk:

EXHIBIT LIST			
Exhibit No.	Identified By	Description	Stipulated in Evidence/ Objection