

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2001-011001

02/03/2003

HONORABLE PETER C. REINSTEIN

CLERK OF THE COURT
A. Reinhart
Deputy

FILED: 02/07/2003

STATE OF ARIZONA, et al.

BRYAN B PERRY

v.

PACIFIC OUTDOOR SYSTEMS COMPANY
LIMITED, et al.

MARTIN A ARONSON

ROBERT V KERRICK

MINUTE ENTRY

IN CHAMBERS:

9:00 a.m. This is the time set for a pretrial conference. Plaintiff is represented by co-counsel, Christopher Kramer and Bryan B. Perry. Defendant U.S. Restaurant Properties is represented by counsel Robert Kerrick. Defendants Pacific Outdoor, L.P., Infinity Outdoor, Inc. & Levine & Riggle Rental Co. are represented by counsel William Cleaveland who is present on behalf of counsel Martin A. Aronson.

A court reporter is not present.

Discussion is held regarding status of case.

IT IS ORDERED setting a telephonic status conference for **May 19, 2003, at 8:30 a.m.** Counsel for Plaintiff shall initiate the telephone conference by calling this division at (602) 506-6368.

The parties have no discovery disputes at this time. If any disputes should arise the Court will attempt to resolve them through a telephonic conference.

Pretrial matters are discussed.

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IT IS ORDERED AS FOLLOWS:

I. Setting a Firm Jury Trial in this matter for **Tuesday, September 16, 2003, at 9:30 a.m.**, in this division. Estimated length of trial: **4 days.**

II. **CLOSURE OF DISCOVERY RULE 26.1**

- A. The parties shall simultaneously exchange final appraisal reports by 5:00 p.m., on **June 1, 2003**. No information disclosed after that date may be used at trial, absent Court Order on Motion and Affidavit.
- B. The parties shall simultaneously exchange their engineer expert by 5:00 p.m. on **June 1, 2003**.
- B. Rebuttal witnesses shall be disclosed by 5:00 p.m. on **August 1, 2003**.
- D. All discovery shall be completed no later than 30 days before trial.

III. **PRETRIAL MOTIONS**

All pretrial motions, other than motions *in limine* shall be filed no later than 60 days before trial.

IV. **MOTIONS IN LIMINE**

Any 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): "The primary purpose of a motion *in limine* is to avoid disclosing to the jury prejudicial matters which may compel a mistrial." See also, Ariz. Rules of Evidence, Rule 103(c). 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. No motions will be considered outside of those filing limits. No replies shall be filed. Each motion shall be limited to one issue and no more than 5 such motions per side will be considered by the Court.

V. **PRETRIAL MANAGEMENT CONFERENCE**

The Pretrial Management Conference (PTMC) is set for **Tuesday, September 9, 2003, at 8:30 a.m.**, in this division. (Allotted time: 30 minutes).

At the PTMC, counsel shall be prepared to discuss:

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A. Time limits in *voir dire*, opening statements, examination of witnesses and closing arguments.

Pursuant to Rule 611(a), Arizona Rules of Evidence, the following presumptive maximum time limits will be enforced during the trial:

- Mini-opening statements: 3 minutes each party
- Lawyer voir dire: 15 minutes each party
- Opening statements: 30 minutes each party
- Witnesses:
 - Direct examination: 60 minutes
 - Cross examination 40 minutes
 - Redirect examination: 15 minutes
- Closing arguments: 45 minutes each party
- Good cause must be shown for extensions

B. Stipulations for the foundation and authenticity of exhibits.

C. Jury instructions (preliminary and final), juror notebooks (Counsel shall bring any proposed jury notebooks to the Conference), mini-opening statements, *voir dire* and forms of verdict.

D. Agreed-upon deposition summaries and excerpts from deposition transcripts and the editing of videotaped depositions.

E. Use of "short trial" or summary jury trial.

F. Any special scheduling or equipment issues.

G. Status of settlement of the case.

COUNSEL WHO WILL BE THE TRIAL LAWYERS ON THE CASE ARE REQUIRED TO ATTEND THE PRETRIAL MANAGEMENT CONFERENCE.

FAILURE OF TRIAL COUNSEL TO ATTEND THE PRETRIAL MANAGEMENT CONFERENCE MAY RESULT IN PERSONAL SANCTIONS.

VI. **JOINT PRETRIAL STATEMENT**

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The Joint Pretrial Statement (JPTS) in accordance with Rule 16(d), A.R.C.P., is due in this Division by 5:00 p.m., five (5) judicial days before the PTMC.

In addition to the information required by A.R.C.P. Rule 16(d), Counsel shall identify in/with the JPTS all deposition or other transcribed testimony that may be offered at trial. The proposed testimony is to be identified by reference to page and line numbers. Objections to such testimony, if any, and the reasons for such objections, shall also be indicated.

Along with the JPTS, Counsel shall deliver copies of the following to this Division:

- A. Proposed *voir dire* questions.
- B. A joint set of agreed-upon Preliminary and Final Jury Instructions.

Before the due date for the proposed jury instructions, counsel shall **personally** consult for the purpose of preparing and submitting a joint set of agreed-upon preliminary and final jury instructions and clean copies of them. Counsel are requested to submit a copy of the jury instruction requests on an IBM-compatible, double sided, high-density 3.5 diskette in Microsoft Word 97 **and a clean copy of each requested instruction**. If counsel request any of the Recommended Arizona Jury Instructions, counsel should submit the instruction by designating the RAJI requested along with a clean copy of the instructions.

Non- RAJI instructions should be typed, each on a separate page with a heading (i.e.: Plaintiff's Instruction No. 2 etc.), and provide authority for the instruction. Please number each instruction consecutively, rather than leaving a blank space for someone else (such as the Court) to number. Counsel should also submit a clean copy of each non-RAJI instruction.

The Court will not start the trial if counsel have not submitted a comprehensive set of jury instructions as indicated above.

- C. Separate sets of requested instructions that have not been agreed upon in the form indicated in paragraph B, above. Please read *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993), and the RAJI Civil 3d Statement of Purpose and Approach before preparing the request for non-RAJI instructions.

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- D. Proposed Findings of Fact and Conclusions of Law, if a request has been or will be filed. If no proposed Findings of Fact and Conclusions of Law are received, the request shall be deemed waived. No more than 5 pages will be considered and each issue shall be in a separate numbered paragraph.
- E. A jointly-completed time and witness estimate form. The Court will use the form to predict the length of the trial for the jurors and to direct Counsel to follow the trial time limits established pursuant to paragraph III, B, above.
- F. In jury trial cases the parties shall jointly prepare a brief summary of the case which the Court will read to the jury at the commencement of *voir dire*.

VII. MARKING EXHIBITS

At least five (5) judicial days before the trial, the trial lawyers, or their knowledgeable assistants, shall appear in this Division to present all exhibits. The exhibits will be marked serially as they are listed in the LIST OF EXHIBITS - Plaintiff's first, Defendant's second, which will be prepared by counsel and saved onto an IBM compatible 3.5 diskette in Microsoft Word 97 and given to the Clerk with the exhibits. The parties shall advise the Clerk, referring specifically to the pretrial statement, which exhibits may be marked directly in evidence. All exhibits will be clearly labeled by Counsel to correspond with the list provided. Counsel are directed to meet in person to exchange the exhibits before coming to court. **Counsel will make sure that they do not bring to the clerk a set of exhibits that include duplicate exhibits.** Counsel should not reserve exhibit numbers for "all Defendant's exhibits," "all Plaintiff's exhibits," "miscellaneous demonstrative exhibits," and the like. Counsel shall also present original depositions for filing at that time.

VIII. SETTLEMENT

If the case is set for a jury trial, one day's jury fees will be assessed unless the Court is notified of settlement before 2:00 p.m. on the judicial day before trial.

If the parties wish a Settlement Conference under Rule 16.1, A.R.C.P., they are to file a request with the Court whereupon a Judge Pro Tem will be appointed by the Alternate Dispute Resolution Office ("ADRO"). Alternatively, the parties are encouraged to hire their own mediator to conduct a conference.

9:15 a.m. Matter concludes.