

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2007-004901

05/05/2008

HON. EDWARD O. BURKE

CLERK OF THE COURT
L. Nixon
Deputy

ARIZONA STATE, et al.

JOHN M SCHLOSSER

v.

DAKAR ENTERPRISES INC, et al.

WILLIAM M LAWSON JR.

JOHN W PAULSEN

JURY TRIAL SETTING

9:03 a.m. This is the time set for Rule 16 Pre-Trial Conference. Plaintiff, the State of Arizona is represented by counsel, John M. Schlosser. Defendant, Dakar Enterprises Inc. is represented by counsel, William M. Lawson.

Court reporter, Scott Coniam is present and a record of the proceedings is made by audio and/or videotape.

Discussion is held regarding case status and future scheduling.

Counsel has stipulated and submitted an Order Directing the Clerk of the Court to Disburse All Funds on Deposit to Plaintiff for Redeposit with the State Treasurer which is signed in open Court on May 5, 2008, and filed with the Clerk on May 5, 2008.

IT IS ORDERED entering the following schedule for disclosure as set forth unless the parties obtain written modifications by the Court:

- 1) Parties shall disclose the name of any expert witnesses, opinions, and reports no later than **August 1, 2008**. Rebuttal expert witnesses shall be disclosed no later than **December 15, 2008**;

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- 2) Defendant, Mr. Nagy shall submit his appraisal report no later than **May 31, 2008**.
- 3) Parties shall disclose all non-expert witnesses no later than **October 15, 2008**;
- 4) Discovery shall be completed no later than **March 15, 2009**;
- 5) Dispositive motions shall be filed no later than **April 21, 2009**;
- 6) Motions in Limine shall be filed no later than **June 19, 2009**;
- 7) All depositions shall be completed no later than **March 15, 2009**;
- 8) The parties shall schedule and conduct a mediation through a private mediator no later than **March 31, 2009**. All counsel and their clients, or non-lawyer representatives who have full and complete authority to settle this case, shall personally appear and participate in good faith in this mediation.

IT IS ORDERED setting a Status Conference in this matter on **April 17, 2009, at 9:00 a.m. (15 min.)** in this division. The parties may appear telephonically. Counsel will need to confer as the Court cannot accept multiple calls. If all parties wish to appear telephonically, Plaintiff's counsel shall initiate the conference call. The Court's phone number is (602) 506-6538. Transmissions over cellular telephones and speaker phones are not clearly received by the Court's phone system and, therefore, are not allowed.

IT IS FURTHER ORDERED setting a Final Pre-Trial Conference in this matter on **July 10, 2009 at 9:00 a.m.** in this division. The parties may appear telephonically.

IT IS FURTHER ORDERED setting this matter for a 4-day Jury Trial for **July 20, 2009¹**, at **9:30 a.m.** in this division.

**THIS IS A FIRM TRIAL SETTING
NO CONTINUANCE SHALL BE GRANTED**

Trial days are normally 9:30 a.m. to 4:30 p.m., Monday through Thursday.

¹ One day's jury fees will be assessed unless the court is notified of settlement by 2:00 p.m. on the judicial day before trial.

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IT IS FURTHER ORDERED all dispositive motions shall be filed at least 90 days before trial. Motions in *limine* shall be filed in accordance with Rule 7.2 of Civil Procedure and as follows:

- A. Motions in Limine shall be consecutively numbered in the caption identifying the party filing it and the subject of the motion; e.g. "Plaintiff's Motion in Limine No. 1 Re: Defendant's expert;" or "Defendant's Motion in Limine No. 1 Re: No mention of insurance."
- B. Each motion in limine shall deal with one discrete subject.
- C. DO NOT combine a motion in limine with ANY other motion.
- D. DO NOT file a "cross-motion in limine."
- E. Label responses to motions in limine by identifying the number and subject of the motion being responded to; e.g. "Defendant's Response to Plaintiff's Motion in Limine No. 1 Re: Defendant's expert."
- F. DO NOT respond to more than one motion in limine in each response.

A joint pretrial statement (JPTS) prepared in accordance with Rule 16(d) is **due three days prior to the Final Pre-Trial Conference**. The following shall be filed with the JPTS:

- A. A list of the names of all witnesses who may testify to be read to the jury.
- B. A set of agreed-upon jury instructions with an additional copy on a disk, in Word format.
- C. Separate sets of requested instructions that have not been agreed upon with an additional copy on a disk, in Word format.
- D. Proposed findings of fact and conclusions of law (if a request for same has been or will be filed).
- E. A stipulated brief summary of the case, which the court can read at the outset of *voir dire*.

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All exhibits shall be exchanged 30 days before trial. Counsel shall confer regarding exhibits so duplicates are avoided and list any stipulations to those exhibits which can be received in evidence. At least **ten days** before trial, counsel or their knowledgeable assistants, shall call the division clerk at (602) 506-3553 to obtain written procedures for marking exhibits. At least **one week** before trial, counsel shall submit all exhibits to the clerk of the division for marking. Original depositions are provided to the clerk for the record and not marked as exhibits.

If discovery issues arise, the parties may file, brief, and set for argument motions to compel discovery, or at their OPTION may send a one-page two paragraph letter to the Court describing the dispute in the first paragraph and proposing a solution in the second paragraph. The opposing side may respond by letter in 48 hours and the Court will contact counsel by telephone to resolve the issue. This expedited procedure is strictly OPTIONAL, not MANDATORY.

9:13 a.m. Matter concludes.

Counsel and any self-represented parties are advised that the Clerk of the Maricopa County Superior Court has converted its case files to an electronic format and case files are no longer made available to the divisions. Therefore it is imperative that counsel follow Maricopa County Local Rule 3.2 which requires counsel to deliver copies of motions and responses to the division.

TRIAL MANAGEMENT ORDER

PURPOSE: These trial procedures are designed to enhance jury comprehension of the facts and issues; to assist counsel in making the maximum, effective use of their trial time; and to assure the “just, speedy and inexpensive determination” of the parties’ dispute.

IT IS ORDERED:

1. **Voir dire.** Counsel may conduct a limited and reasonable examination of the panel following the Court’s questioning. In the normal case, 15 to 20 minutes is reasonable. Jury “conditioning” will not be allowed. Use of “mini-openings” before voir dire in lieu of a brief statement of the case will be discussed with counsel at the pretrial management conference.

2. **Time allocations.** The Court may make tentative, reasonable, presumptive time allocations for each side. If so, your time will be charged when you have the floor, e.g., voir dire, opening statement, direct examination, cross-examination, closing argument and lost time

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caused by failure to have witnesses available. You will be regularly informed of time used and time remaining. *As this case proceeds, the court will consider the necessity of imposing presumptive time limits on the parties.*

3. Notification of order of proof. Each side will notify the other on a “rolling” forty-eight hours’ basis of the order in which witnesses will be called. From time to time, counsel may be asked to inform the jury of their order of proof. (Witnesses may be scheduled out of order on agreement of counsel or, if necessary, by order of Court.)

4. Absent witnesses. The Court encourages the use of brief, agreed-upon deposition summaries. If the deposition was videotaped, the Court encourages use of a brief, edited extract of pertinent portions of the deposition. Videoconferencing may be arranged at the offering party’s expense.

5. Bench conferences are discouraged. They interrupt the trial, show a certain rudeness in excluding the jury and do not fool the jurors, who understand that someone is trying to keep information from them. If counsel wishes to be heard on an objection outside the presence of the jury, he or she need merely indicate such, and the Court will direct inquiring counsel to move to another subject. The matter will be considered at the next available recess. One exception is jury questions. Counsel may be called to the bench when they are submitted.

6. Jury questions will be reviewed with counsel and, if appropriate, answered at the first available opportunity.

7. Introduction of witnesses. If counsel wish, they may introduce each witness to the jury after the witness is sworn and before the witness begins his or her testimony. An introduction might include the witness’ name and occupation and a brief summary of the witness’s proposed testimony. Alternatively, the Court will not sustain an objection to an opening question such as, “Please tell the jury who you are and why you are here.”

8. Expert opinions. Counsel are strongly encouraged to elicit the expert’s opinion at the earliest, available opportunity. The hypothetical question has been abolished, and the witness’ qualifications should have been established before trial. In the first two to five minutes, the jury should know who the witness is and why the witness is present.

9. Expert witnesses’ resumes (brief and descriptive) will be admitted over a hearsay objection. Questions of length and content will be resolved before trial.

10. Objections will be stated succinctly and clearly without extended dissertation or argument. The Court will supply the jury with a glossary of terms, which includes a definition of

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some common objections, at the time the Court reads the preliminary instructions. A copy of the glossary is attached.

11. Permission to approach and/or publish. Counsel need not ask the Court's permission to approach the clerk or a witness, nor need counsel ask the Court's permission to publish or pass an exhibit to the jury.

12. Interim commentaries. On request, counsel may be permitted to give interim commentaries as the case progresses. Commentaries will consist of statements of fact as to evidence presented or to be presented and will not contain argument.

13. Microphones. Because of the acoustics of our courtroom, it is often difficult to hear a speaker. For the benefit of the jurors and court staff, it is appreciated if all speakers use the assistance of a microphone, whether at the podium or the attorney tables. A microphone is also provided for witnesses.

14. Technology. Counsel are encouraged to make maximum, effective use of the many forms of trial and courtroom technology which are available. Counsel should ensure that the technology is appropriately set up and working properly before its use is attempted in court.

15. Daily schedule. A trial day is from 9:30 a.m. to 4:30 p.m., with lunch usually from noon until 1:30 p.m., one fifteen-minute break in the morning and one in the afternoon.

16. Trial interruptions. Trial will not be interrupted for discussion of legal matters. The Court is available daily before or after trial or during regular recesses to consider such matters.

Glossary: *(to be supplied to the jurors)*

Some Words and Phrases You May Hear

During the trial, you may hear these words or phrases:

“Deposition.” A deposition is the testimony of a witness taken before trial. The witness is placed under oath, and the lawyers may ask questions. The questions and answers are recorded.

“Disclosure.” Our rules require the parties to exchange certain information before trial. An objection of “non-disclosure” is a claim that the other party has not disclosed the information before trial.

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“Discovery.” Discovery is another way the parties may obtain information from other parties or third persons before trial. Depositions and interrogatories are examples of discovery.

“Foundation.” An objection to lack of foundation is a claim that more preliminary information is needed before a question can be answered or a document admitted into evidence.

“Hearsay.” Hearsay is an out-of-court statement offered to prove the truth of the contents of the statement. Hearsay is generally not admissible. There are many exceptions to the hearsay rule, and some out-of-court statements are not hearsay.

“Interrogatory.” An interrogatory is a written question submitted before trial to a party or witness to be answered under oath.

“Leading.” A leading question is one which suggests the answer. The law prefers the answer to come from the witness’s own knowledge and words. Leading questions are sometimes allowed; examples are cross-examination of an opposing party or hostile witness, preliminary questions and questions about technical subjects.

“Rule ____.” Proceedings in court are governed by rules of evidence and rules of procedure. A lawyer may cite a specific rule in arguing for or against an objection.

“Voir dire.” This French phrase means “to tell the truth.” It describes a preliminary examination of a witness or juror sworn to tell the truth. Jury selection is often referred to as “voir dire.” An opposing lawyer may ask to “voir dire” a witness to ask questions about a document or testimony the witness is about to offer.