

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2001-021372

01/15/2003

HON. GARY E. DONAHOE

CLERK OF THE COURT
S. Yoder
Deputy

FILED: 01/22/2003

SIMON MARCIL, et al.

MARSHALL SCOTT MEYERS

v.

GENERAL MOTORS CORPORATION

NEGATU MOLLA

TRIAL SETTING MINUTE ENTRY

8:30 a.m. IN CHAMBERS: This is the time set for a scheduling conference. Appearing telephonically are Jack Gunn, counsel for Plaintiff, and Negatu Molla, counsel for Defendant.

A court reporter is not present.

Counsel advise the Court of the status of the case. The Court is advised that the parties have participated in a settlement conference. Mr. Gunn advises the Court that the car in question was traded in on another vehicle, so Plaintiff's claim is for diminution in value. Mr. Molla advises that he will be disclosing a valuation expert and filing a motion for summary judgment.

IT IS HEREBY ORDERED setting this matter for trial to a jury in this division, East Court Building, Courtroom 412, on **September 8, 2003.** (Time limit: 3 days.) The Court's trial schedule that week is Monday through Thursday, 9:30 a.m. to noon and 1:15 p.m. to 4:30 p.m. **This is a firm trial date and will not be continued.**

The proceeding will take place in the Superior Court's new "e-courtroom." A record of the proceedings may be made by videotape and CD in lieu of a court reporter. Should you want an unofficial copy of the proceedings, the parties or counsel may give the Court a blank, previously unused videotape at least fifteen (15) minutes before the trial and a copy will be made at no cost. A specific type of videotape must be used for this system in order to ensure the most reliable record: Maxell or Fuji Super HG 120 (VHS) (SNG T-120) or equivalent. If the proceedings last for more than one day, a new tape must be provided each day.

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As an alternative to the videotape, the court will “burn” a CD of that day’s trial at no cost to the party requesting it. The CD will contain the audio and video of the trial. The party desiring a “burned” CD must supply the court with a blank CD-R disk. The court’s experience is that the failure rate during the “burning” process is less if a name brand, high quality CD-R disk is used. If the trial lasts for more than one day, a new CD-R disk must be provided each day. The CD-R disk may be viewed using Microsoft’s Media Player or JAVS’ CaseViewer. “CaseViewer” is available for free from Jefferson Audio Visual Systems at:

www.javs.com/court/support/caseviewer.html

For the convenience of the parties, the store in the courthouse cafeteria sells the appropriate videotape and CD-R disks.

Should an official transcript be required, you may request that the court prepare it. The party ordering the transcript must pay for it. With this new technology, a court reporter is likely not required and the parties are encouraged to experience the court's digital video recording system before requesting a court reporter. To request a transcript, call 602-506-7100 and provide the date of the proceeding, the case number, the case caption, if the transcript is for an appeal, and your name, address and telephone number.

If a court reporter is required, the court must receive a written request at least 48 hours before the commencement of the proceeding. Failure to timely request a court reporter will be deemed consent to proceed without a court reporter.

The Court suggests that counsel prepare the case for presentation using the courtroom technology. To facilitate presentation of exhibits, counsel should consider having all documents (medical records, business records, photographs, etc.) that may be used in the case scanned in a non-proprietary format with the cost shared by the parties. It is suggested that the depositions of witnesses who may not be available for trial be videotaped.

IT IS FURTHER ORDERED setting a final pretrial conference on **August 22, 2003 at 10:00 a.m.** All pending motions will be heard at this time. The Court also will review the Joint Pretrial Statement and proposed jury instructions and rule, to the extent possible, on objections to exhibits and any objections to proposed deposition testimony.

IT IS FURTHER ORDERED that all material facts, witnesses, expert opinions and exhibits be disclosed no later than **March 31, 2003.**

Rule 1, Arizona Rules of Civil Procedure, provides in part:

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[These rules] shall be construed to secure the **just, speedy, and inexpensive** determination of every action. (Emphasis added.)

The disclosure rules will be enforced to achieve those goals. Material facts and exhibits not disclosed will not be used at trial. Failure to disclose information required to be disclosed pursuant to Rule 26.1 will result in harsh sanctions being imposed. Counsel should assure that their respective disclosure statements and supplements are complete and comprehensive.

Opinions of experts not disclosed or which are fairly sought and revealed in deposition or other discovery shall not be supplemented at trial. Material facts and exhibits not fairly disclosed in disclosure statements or timely supplements thereto or revealed in deposition or other discovery shall not be supplemented or utilized at trial.

IT IS FURTHER ORDERED that all discovery be completed no later than **June 2, 2003**. "Completed" means "propounded and answered" and does not mean "just initiated." Therefore, "written discovery requests must be propounded sufficiently in advance of the discovery completion date to afford the party to whom they are directed the time for response prescribed by the Rules and to insure that the responses are due prior to the date for the completion of discovery." See State Bar Note, 2000 Amendment. Depositions need to be scheduled sufficiently in advance of the discovery completion date so that they are completed by the discovery completion date. Counsel by letter agreement may extend the discovery cut-off date, but any discovery dispute arising after the date set by the Court will not be grounds for continuance of the trial.

IT IS FURTHER ORDERED:

1. No less **than five (5) judicial days prior to the final pretrial conference**, counsel shall file:

A. Any trial memoranda (optional), which will be in lieu of post-trial briefs unless otherwise requested by the Court at the conclusion of the trial.

B. Motions *in limine*, which must meet the test of **State v. Superior Court**, 108 Ariz. 396, 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." Each motion shall be limited to one issue and no more than five (5) such motions per side will be considered by the court.

C. A Joint Pretrial Statement (**not optional**) containing the information required by Uniform Rule VI(a). **Objections to exhibits and deposition testimony are deemed waived unless set forth in the Joint Pretrial Statement.**

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D. The Court will conduct voir dire based on the issues set forth in the Joint Pretrial Statement. If there are particular areas either party desires the Court to cover, proposed voir dire questions should be submitted to the Court along with the Joint Pretrial Statement.

E. Proposed jury instructions (**not optional**).

Prior to 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 thereof. If counsel request any non-uniform jury instruction, the Court requests that counsel provide a disk containing all non-uniform jury instructions in Word format.

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.

2. Written response to a motion *in limine* may be filed no later than noon of the day before the final pretrial conference.

3. At least three days before the trial date, 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 which will be prepared by counsel and downloaded (saved) onto a disk (IBM-compatible, 3.5 diskette in Microsoft Word 95 or 97) and given to the clerk with the exhibits. Contact this court's clerk at 602-506-3712 to schedule a time for presentation of all exhibits. The parties shall advise the division, referring specifically to the pretrial statement, which exhibits may be marked directly in evidence. All exhibits will be clearly marked 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 includes duplicate exhibits.** Counsel should not reserve exhibit numbers for additional exhibits, miscellaneous demonstrative exhibits, and the like. Counsel shall also present original depositions for filing at that time. Written stipulations to admit specified exhibits in evidence are encouraged. If an objection to an exhibit is not stated in the pretrial statement, all objections are deemed waived and the Court will assume the exhibit may be marked directly in evidence.

THE CLERK OF THE COURT IS IN THE PROCESS OF IMPLEMENTING A NEW SYSTEM FOR MARKING TRIAL EXHIBITS. THIS NEW SYSTEM REQUIRES THAT ALL TRIAL EXHIBITS BE TAKEN FOR MARKING IN ADVANCE OF TRIAL TO THE "EXHIBIT INTAKE DEPARTMENT." ONCE IMPLEMENTED, THE

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DIVISION CLERK WILL NOT MARK EXHIBITS IN ADVANCE OF TRIAL. THIS NEW SYSTEM MAY BE OPERATIONAL BY THE TIME OF THE TRIAL. PLEASE CALL THIS DIVISION (602-506-3712) BEFORE BRINGING THE EXHIBITS TO THE DIVISION TO DETERMINE WHERE TO TAKE THE TRIAL EXHIBITS FOR MARKING.

4. All documents and pleadings described above shall be delivered or telefaxed to opposing counsel on the date they are delivered to the Court.

5. All dispositive motions shall be filed at least **60 days before the final pretrial management conference** to allow sufficient time for briefing and oral argument. The trial will not be continued because a dispositive motion is pending.

6. Expert witnesses should be scheduled to allow sufficient time to complete direct, cross and redirect examinations by 4:30 p.m. If a doctor or other expert witness is scheduled to appear in the afternoon on any trial day, the party calling the witness should consider having the witness plan on returning to court the morning of the next trial day unless all counsel have agreed to a time allocation for completing their questioning by 4:30 p.m. The Court will likely not keep the jury later than 4:30 p.m. and the Court often has other matters scheduled for 4:30 p.m.

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

- Mini-opening statements: 3 minutes each party
- Lawyer voir dire: 10 minutes each party
- Opening statements: 30 minutes each party
- Witnesses other than parties:
 - Direct examination: 75 minutes
 - Cross-examination: 60 minutes
 - Redirect examination: 15 minutes
- Closing arguments: 45 minutes each side

These time limits are based on the assumption that counsel will make maximum use of the electronic evidence presentation system. The Court also encourages counsel to agree on a juror notebook containing, at a minimum, (1) a photo of each witness beside which should be their name and occupation, and if an expert witness, a brief summary of their education and experience, (2) monthly calendars for the time frame in question, (3) a glossary of medical terms, and (4) those documents or photographs that likely will be referred to multiple times during the trial.

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8. In cases involving multiple parties on either side, the Court will apply Rule 43(d), Arizona Rules of Civil Procedure, and allow only one attorney for each side to examine a witness.

9. The Court intends to enforce Rules 1 and 16(g), Arizona Rules of Civil Procedure, and take this Court's trial calendar out of the settlement mix. Delaying meaningful settlement negotiations until the eve of trial will not be permitted. If the case is going to settle, it should settle well before trial and without reference to this Court's calendar. Delay will be sanctioned. Gamesmanship will be sanctioned. If the Court has not been advised **at least sixty days before trial** that the case has settled, the Court will assume that the parties have truly completely exhausted settlement efforts and that the case will go to trial on the date set. In setting its calendar, the Court will be relying on counsels' representation that the parties have completely exhausted settlement efforts. Other cases may not be set during the time period scheduled for this trial based on counsels' representation that the parties have completely exhausted settlement efforts. Accordingly, if the case settles after it is set for trial, the Court will impose a sanction for delay in an amount sufficient to render delay and/or gamesmanship unprofitable to the party causing the delay or engaging in gamesmanship. After a hearing, the penalty will be assessed against the party that delayed settlement by failing to make its best offer or demand at least sixty days before trial.