

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA

,  Plaintiff
, et al.  Defendants

Case No.

NOTICE OF PRETRIAL  
CONFERENCE DATE AND  
PRETRIAL CONFERENCE  
ORDER<sup>1</sup>

The Pretrial Conference in the above captioned matter is set on \_\_\_\_\_ in Dept. \_\_\_ of the above entitled court at 9:00 a.m. All parties shall comply with Local Rule of Court 3.35, with the following modifications and clarification and subject to any further order of the trial judge:

A. JOINT SUBMISSIONS

The parties are ordered to meet and confer in sufficient time prior to the Pretrial Conference, and as many times as necessary, to meaningful assemble the following items to be submitted jointly by all parties to the Court at the Pretrial Conference. **Unless otherwise requested by the court, courtesy copies of these documents should not be submitted to the court in advance of the pretrial conference.**

1. Jury Instructions – with ALL BLANKS FILLED IN - which will be given to the jurors at the conclusion of the trial. This does not mean a set of

<sup>1</sup> Revised December 4, 2015. Changes since last version in **bold**.

instructions from each party or side. The court expects the parties to resolve any differences amongst themselves and present a unified set of instruction. It is easier to delete instructions that do not apply after the presentation of evidence than to craft instructions on the eve of argument. Any proposed jury instruction, including any proposed Special Jury Instruction, not agreed upon shall be separately submitted by each party.

2. Verdict Form - A single verdict form which will be used by the jury. Again this does not mean different verdict forms from each party or side. The observation noted above as to the jury instructions applies equally to the verdict form. With both Jury Instructions and Verdict Forms all causes of action and defenses must be included even if counsel expects some may be eliminated on motion or otherwise stricken or modified.

3. Exhibit List - An exhibit list with no duplicate documents. Counsel shall meet and confer to determine an assignment of blocks of exhibit numbers per party. Pre-marked exhibits shall be lodged with the Court on the first day of trial along with an Index identifying each of the numbered exhibits (e.g. 10 page letter from X to Y dated \_\_\_\_). The description on the index will be used by the court to identify in the record the documents that are marked for identification or admitted into evidence during the trial.

4. Witness List - A common witness list limited to those witnesses which the parties actually expect to call to testify (this list will be used in the Juror Questionnaire).

5. Jury Questionnaire - A common juror questionnaire, with questions in disagreement to be highlighted. A form "Instructions to Jurors" should be attached as the first page to any submitted questionnaire.

6. Time Estimate - A reasonable cumulative time estimate from each side for the number of hours needed to present their case. This reasonable estimate shall include: opening statement, final argument, direct examination of their party's witnesses and cross examination of opposing witnesses. In other words how much time does each party need for the presentation of

their case?

7. Statement of the Case - A Statement of the Case to be read to the jury. (Counsel shall advise the court if they are agreeable to making mini-opening statements of no more than 3 minutes each).

8. Evid, Code 401/402 Hearings - A list of those witnesses where a party requests an Evidence Code section 401 or section 402 hearing. Note that after the jury selection process begins, a request for such a hearing will only be entertained if the requesting party could not have reasonably anticipated the need for such a hearing at the time of the Issues/Pretrial Conference.

Any party who does not diligently participate in these discussions runs the risk that he/she or it has waived objection and/or does not contest the above items presented to the court at the pretrial conference.

#### B. IN LIMINE MOTIONS

1. Unless otherwise ordered (see paragraph 5, below) each side is limited to a total of **5** motions in limine; however, each defendant may additionally file up to **2** defendant-specific motions in limine.
2. Each motion in limine shall be filed separately from any other motion in limine and shall not be combined, aggregated or consolidated with any other motion. Motions shall not be filed in “subparts.” Counsel shall not file “trial briefs” seeking an evidentiary ruling that should have been filed as a motion in limine; so-called “trial briefs” will not be considered by the court or ruled upon.
3. Motions shall be numbered consecutively beginning with the party’s name, for example: Plaintiff MIL #1; Defendant Smith MIL #1, #2, #3, etc.; Defendant Jones MIL #1, #2, #3, etc. Motions shall set forth in the title which of the following categories it is in:
  - a. Expert Testimony
  - b. Evidence
  - c. Damages

- d. Legal Duty
- e. OTHER

4. Each motion in limine shall be accompanied by a separate memorandum of points and authorities as defined in CRC 3.113(b). A notice of hearing is not necessary. All motions seeking to exclude evidence shall set forth factual support as to the exact nature and type of evidence which the party is seeking to exclude, including attaching relevant portions of depositions, interrogatories or other factual support. The court will specifically enforce the standards of Kelly v. New West Federal Savings (1996) 49 CA4th 659, 670. Motions which make unsupported assertions about what witnesses allegedly said in deposition or speculate about what witnesses may say at trial without attaching to the motion a declaration setting forth a factual basis are subject to sanctions.

5. All in limine motions are to be served on opposing counsel at least 14 days prior to the conference. All oppositions to in limine motions are to be served on opposing counsel at least 7 days prior to the conference. **These deadlines are mandatory unless, prior to the pretrial conference the court has approved a modification of these deadlines for good cause.** Counsel shall meet and confer **prior to the pretrial conference** to determine which motions will require a court ruling.

A party may seek leave of court to serve additional motions in limine above the maximum number set forth above for good cause showing. The request shall be in writing, served on all parties, and shall include a copy of the proposed motion along with the attorney's declaration of good cause. The request shall be filed and served at least 14 days prior to the conference and any opposition shall be filed at least 7 days prior to the conference.

6. Parties are to comply with revised Local Rule 3.35(e)(2) which states: "Unless otherwise ordered by the trial judge, all motions in limine subject to this rule must be in writing, numbered consecutively and filed in the clerk's office at least three court days before the pretrial conference or, if there is no pretrial conference, three court days before trial. Motions in limine

addressing separate evidence or issues shall not be aggregated into one motion. Reservation numbers are not required for motions in limine subject to this rule.”

7. At the Pretrial Conference parties shall provide the trial judge with ONE list of all in limine motions filed – plaintiffs’ listed first and then defendants’ motions in numerical order - with the subject of each motion described in less than 10 words and an indication if the motion is stipulated, withdrawn, deferred or contested. This list should be provided to the trial judge, along with courtesy copies of the motion(s) and opposition brief(s) of the *contested* motion(s) at the Pretrial Conference. The trial judge will make further order at the time of the Pretrial Conference.

8. TENTATIVE RULINGS ON COMMON MOTIONS IN LIMINE:  
The following motions in limine are conditionally granted and, unless contested in writing, should NOT be filed:

PROCEDURE:

1. To amend the Case Caption to Reflect Remaining Defendants only. Defendants will be referred to, introduced and participate at trial in alphabetical order;
2. To preclude reference to any possible future wrongful death action;
3. To preclude reference to plaintiff’s counsels’ other clients or website;
4. To preclude attribution of fault to any party granted summary judgment.
5. Motion to Exclude Witness from the Courtroom Until Witness’ Testimony is Completed.

EVIDENCE:

1. Motion To Preclude Mention of Bankruptcy or other Financial Status of Absent Defendants;
2. Motion to Preclude Reference to Absence of Corporate Representative is granted. However, that does not preclude Plaintiff from commenting on any defendant’s failure to produce or refute relevant evidence.
3. Motion to Exclude Evidence or Mention of Insurance, including Plaintiff’s Medical Insurance;

4. Motion to Exclude Experts Not Designated Pursuant to CCP 2034;
5. Motion to Preclude Reference to Serpentine as the State Rock;
6. Motion to Preclude Reference to Defendants as “the Asbestos Industry” is granted, provisionally: The dictionary defines “industry” as a group of businesses that provide a particular product or service, often named after their common principal product: e.g. the automobile industry, the textile industry, the cosmetics industry. To the degree plaintiff has evidence that the principal product of any of the defendants is asbestos, such as the mining company or fabricator of raw asbestos, the plaintiff may refer to that defendant as a member of the “asbestos industry.” To the degree plaintiff has not made that showing, he shall not merely assert or argue that a defendant or all defendants are within the asbestos industry.
7. Motion To Exclude Reference to the 1989 Proposed EPA Ban which never went into effect;
8. Motion to Exclude “But For” Causation Opinions by Experts.

#### DAMAGES:

1. Motion To Exclude Any Reference to or Evidence of Prior Settlements is granted.
2. Motion to Bifurcate Punitive Damage claims;
3. Motion to Exclude Collateral Source Evidence;
4. Motion to Preclude Reference to Surviving Spouse Pension Benefits as Collateral Source;
5. Motion to Preclude Use of Personal Consumption as a Damages Offset;
6. Motion To Limit Evidence of Plaintiff(s)’ Claims for Past and Future Medical Expenses to Those Actually Paid by or on Behalf of Plaintiff is granted.

Evidence of Past Medical Expenses is limited to amounts actually paid by or on behalf of Plaintiff and which were accepted by medical care providers as payment in full. Evidence of currently Outstanding Medical Expenses which have not yet been paid is limited to amounts which were actually incurred and for which plaintiff is personally liable or his insurer is contractually liable. Future Medical Expense evidence is limited to amounts which it is reasonably foreseeable Plaintiff will incur and be liable for either personally or through his insurance coverage. Evidence of the amount billed

for medical care but for which Plaintiff is not liable either personally or through his insurer is excluded. Evidence that medical payments were made on behalf of Plaintiff by a collateral source such as Medicare is excluded. (see *Howell and Corenbaum*)

#### C. 48 HOUR NOTICE

(1) **OPENING STATEMENTS** : **In opening statements to the jury by counsel, no display to the jury or reference should be made to any document, chart, graph, map, picture, model, video or any other graphic device or presentation except 1)when marked as an exhibit and received in evidence; 2)by stipulation of counsel; or 3)with leave of court. With prior approval of the court, counsel may use paper for illustrative purposes during opening statements.** At least 48 hours in advance of the Opening Statement, parties shall exchange any power point screens or other visual or demonstrative aids (e.g. photographs, maps, charts, excerpts of deposition testimony or documents) they intend to display to the jury in their Opening Statement. Objections to any said materials shall be brought the attention of the trial judge immediately so that the court has reasonable time to rule upon any objections prior to Opening Statements being presented.

(2) **TRIAL**: Parties shall identify to opposing parties the names of the witnesses they will be calling to the stand and exhibits they intend to introduce (in their direct case) at least 48 hours in advance (**and no later than Friday 5 p.m. for Monday witnesses**). Failure to strictly comply with this order shall result in preclusion of the witness or exhibit until the full 48 hours' notice is complied with.

#### D. PAGE AND LINE DESIGNATIONS

At least 14 days prior to the Pretrial Conference, counsel shall exchange proposed page and line designations of testimony of witnesses who will not be appearing live at trial. At least 7 days prior to the conference counsel shall exchange objections and counter-designations and shall meet and confer. Deposition designations and counter designations shall not be filed with the court **nor shall advance courtesy copies be sent to the court. The parties shall meet and confer prior to the Pretrial Conference in**

**order to narrow the number of depositions, designations and objections.**

Where objections cannot be resolved and require court ruling, counsel shall prepare an index for each transcript at issue with columns identifying (1) the page and line designations and counter-designations. (2) the objections, if any, to said page and line designations; (3) the response(s) to said objections; and (4) boxes for the court to check whether the objection(s) to the designated page and lines are "sustained" or "overruled." Counsel shall provide the trial judge with each transcript at issue with the contested page and line designations highlighted with a different color for each party. Trial transcripts shall not be filed with the court.

**E. Bankruptcy Claims: No later than 14 days prior to the Pretrial Conference, plaintiff shall provide defendants copies of all claims made to bankruptcy trusts on behalf of plaintiff.**

**F. REMAINING PARTIES and DISMISSALS:**

Plaintiff (s) shall provide the court with an alphabetical list of all defendants remaining in the case including names of defense counsel, firm names and defense counsel's email address by no later than five court days prior to the first day of trial. Plaintiff(s) shall also provide the trial court with an alphabetical list of all defendants who were granted summary judgment in their favor including a description as to what product or site was the basis for the summary judgment no later than five court days prior to the first day of trial.

**G. STATUS OF PLEADINGS:**

At least five court days prior to the first day of trial, counsel for Plaintiff(s) shall provide the trial court with a courtesy copy of the Complaint or any Amended Complaint on file in this case, including any description/location/site of plaintiff's alleged asbestos exposure and the theory of liability, including correlated causes of action, as to each remaining defendant.

**NOTICE:** Plaintiff's counsel shall serve a copy of this Order upon all defendants and to file a proof of service with the court. The clerk is directed

to serve a file endorsed copy of this Order upon counsel for Plaintiff.

DATED:

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Brad Seligman, Judge