

ORDER SETTING JURY TRIAL, FINAL PRETRIAL CONFERENCE, AND REQUIREMENTS FOR THE PROPOSED FINAL PRETRIAL ORDER

IT IS ORDERED:¹

I. TRIAL DATE: This case has been placed on the calendar of United States District Court Judge Donald E. O'Brien for a jury trial scheduled to commence in the third floor district courtroom of the Federal Courthouse in Sioux City, Iowa, on the **^C day of ^C, 200^C.**, at 9:00 a.m., with the parties to be present in Judge O'Brien's chambers at 8:30 a.m. Judge O'Brien will conduct a pretrial status conference on the **^C day [the Friday before the trial date]** of ^C, 200^C, at 3:30 p.m.

II. CONTINUANCE OF TRIAL OR FINAL PRETRIAL CONFERENCE DATES: Unless requested within **14 days** after the date of this order, no continuance of the trial date will be granted except upon written application and for good cause.

III. FINAL PRETRIAL CONFERENCE: A final pretrial conference ("FPTC") is scheduled before United States Chief Magistrate Judge Paul A. Zoss on the **^C day of ^C, 200^C.** **[approximately two weeks before trial]** The FPTC will be held in person at the U.S. Courthouse in Sioux City, Iowa, unless the parties agree in advance to a telephonic FPTC and so notify Judge Zoss at least **two court days** before the FPTC. If the FPTC is being held by telephone, the court will initiate the conference call, but the parties must advise the court of the contact numbers for each party and counsel who will participate in a telephonic FPTC at least **one court day** before the FPTC.

IV. FINAL PRETRIAL ORDER: The parties are jointly responsible for the preparation of the proposed Final Pretrial Order. Before the FPTC, *pro se* parties and counsel for represented parties must prepare, agree upon, and sign a proposed Final Pretrial Order prepared for Judge Zoss's signature in the format attached to this order. The proposed order must not be filed, but must be e-mailed, in WordPerfect or MS Word

¹**NOTE: This order was revised as of July 8, 2008. The parties are directed to review the requirements of this order carefully, and to comply fully with those requirements.**

format, to Judge Zoss (paul_zoss@iand.uscourts.gov) at least **two court days** before the FPTC. The parties' exhibit lists, prepared as set forth below in this order, must be attached to the proposed final pretrial order, with the entire order, including the exhibit lists, constituting a single document.

V. WITNESS AND EXHIBIT LISTS: Exhibit lists must be attached to, and witness lists must be included as part of, the proposed Final Pretrial Order, in accordance with the instructions in the attached form order. The parties are not required to list rebuttal witnesses or impeachment exhibits. Proposed witness and exhibit lists must be exchanged by the parties (but not filed) at least **21 days** before the FPTC. At the time the parties exchange their exhibit lists, they also must give written notice to all adverse parties of any intent to use a declaration under Federal Rules of Evidence 803(6), 902(11), or 902(12) to establish foundation for records of regularly-conducted activities, and immediately thereafter they must make the records and the declaration available for inspection.

VI. EXHIBITS: Exhibits must be prepared for trial in accordance with the following instructions:

A. Marking of Exhibits. All exhibits must be marked by the parties before trial. The plaintiff(s) should use numbers and the defendant(s) should use letters, unless prior approval is obtained from Judge Zoss for a different exhibit identification scheme. (For example, the parties may want to obtain approval to utilize a sequential numbering system related to the numbering of exhibits as they were numbered in discovery.) Exhibits also must be marked with the case number. ***All exhibits longer than one page must contain page numbers at the bottom of each page.***

B. Elimination of Duplicates. The parties must compare their exhibits and eliminate duplicates. If more than one party wants to offer the same exhibit, then it should be marked with a number and listed as a joint exhibit on the exhibit list of the plaintiff(s).

C. Listing of Exhibits and Objections. Exhibits must be listed separately, unless leave of court is granted for a group exhibit. If a party objects to parts of an

exhibit but not to other parts, the offering party must prepare separate versions of the exhibit, one that includes the parts to which objections are being asserted and the other that redacts those parts.

D. Exhibits referenced in deposition testimony. All references to exhibits in deposition testimony that is read or presented to the jury must correspond to the exhibit designation for trial. The parties are directed to number their exhibits accordingly.

E. Copies for the Court. The parties must bring to the Final Pretrial Conference trial notebooks containing copies of all exhibits to be used at trial. The court's copies of exhibits should be placed in a ringed binder with a copy of the exhibit list at the front and with each exhibit tabbed and labeled. The parties must supply the Clerk of Court with a second set of exhibits, also tabbed and labeled in a ringed binder, to be used as the original trial exhibits in the official records of the court.

VII. PRETRIAL SUBMISSIONS:

A. Trial Briefs. If the trial of the case will involve significant issues not adequately addressed by the parties in connection with dispositive motions or other pretrial motions, the parties must prepare trial briefs addressing such issues. Trial briefs must be filed at or before the FPTC, and a copy must be served on any non-ECF counsel and *pro se* parties in the case.

B. Other Pretrial Submissions. At or before the FPTC, the parties must electronically file the following: (1) joint proposed jury statement, (2) joint proposed jury instructions, (3) proposed verdict forms, (4) any requested voir dire questions, and (5) any requested special interrogatories.

The joint proposed jury statement, joint requested jury instructions, and any requested voir dire questions must be prepared and submitted in accordance with the following instructions:

1. Jury Statement: The jury statement should contain a short, plain statement of the parties' claims and defenses. The parties should make every effort to agree upon the language used in the statement. To the extent the parties cannot agree, they should use the following format: "Plaintiff contends. . . .; Defendant contends. . . ."

The jury statement will be read to the jury panel before voir dire so the members of the panel will be able to give meaningful responses to voir

dire questions. It has no other purpose. Thus, there is no reason for heated disputes between the parties concerning the contents of the jury statement.

2. *Jury Instructions:* Jury instructions must be prepared and submitted in accordance with the following instructions:

a. At least **14 days** before the FPTC, the parties must serve on each other (but not file) proposed jury instructions. In addition, because counsel for the plaintiff(s) ultimately will be responsible for compiling a unified set of instructions for Judge O'Brient, counsel for the defendant(s) must provide counsel for the plaintiff(s) with the proposed instructions of the defendant(s), in word processing format, via e-mail or on a CD.

b. At least **one week** before the FPTC, counsel for the parties must consult, either personally or by telephone, and attempt to work out any differences in their proposed jury instructions.

c. Counsel for the plaintiff(s) then must organize the proposed jury instructions into one document, prefaced by a table of contents. Instructions proposed by opposing parties on the same subject matter must be grouped together. For example, if Instruction No. 10 is a proposed instruction on the elements of negligence, and each party proposes a different instruction, then Instruction No. 10A should be the instruction proffered by the plaintiff(s) and Instruction No. 10B should be the instruction proffered by the defendant(s).

d. Each instruction must treat a single subject, and must be numbered individually, on a separate sheet of paper, and double-spaced.

e. At the bottom of each proposed jury instruction, the party proposing the instruction must cite the decisions, statutes, regulations, or other authorities supporting the proposed instruction. Except as to jury instructions as to which the parties agree, the following information also must be stated at the bottom of each proposed jury instruction: (i) the party offering the instruction; and (ii) each objection to the instruction by an opposing party, and whether the objection is to (A) the language of the instruction, (B) the giving of the instruction, or (C) both. If a party is objecting to the language of a proposed instruction, the objectionable language must be identified. Objections must be supported by citations to applicable authorities.

f. **Pattern instructions should not be reproduced**, but may be requested by reference to the publication, page number, and instruction number. Any modification to a pattern instruction should be disclosed as follows: additions should be underscored and deletions should be set forth by striking out the language sought to be deleted or setting out the deletions in parentheses. The parties should include proposed preliminary instructions **only to the extent** Judge O'Brien's standard preliminary instructions would be inadequate or inappropriate in this case. A copy of Judge O'Brien's standard preliminary instructions may be requested from the judge's office or found on the court's web site at: www.iand.uscourts.gov.

g. Instructions not requested as set forth above will be deemed waived unless the subject of the instruction is one arising in the course of trial that reasonably could not have been anticipated before trial from the pleadings, discovery, or nature of the case.

h. Prior to trial, the parties will receive proposed jury instructions from the court, accompanied by a cover letter from Judge O'Brien in which deadlines for filing objections to the proposed instructions will be established. The failure to serve and file timely objections to proposed jury instructions will constitute a waiver of the right to make objections to those instructions.

3. Requested Voir Dire Questions: The parties may request that Judge O'Brien ask voir dire questions specific to this case. The parties also will be permitted to conduct their own voir dire in the manner set out in the attached voir dire instructions.

VIII. DEMONSTRATIVE AIDS: A party using a demonstrative aid during a jury trial must, before the demonstrative aid is displayed to the jury, show the demonstrative aid to representatives of all other parties participating in the trial. The term "demonstrative aid" includes charts, diagrams, models, samples, and animations, but does not include exhibits admitted into evidence or outlines of opening statements or closing arguments.

IX. PROTOCOL FOR WITNESSES: An attorney who may call a witness to testify at trial must, before the witness testifies, advise the witness of the accepted protocol

for witnesses testifying in this court. This advice should include the following information: (A) the location of the witness box; (B) the proper route from the courtroom door to the witness box;² (C) the fact that the witness will be placed under oath; (D) where the witness should stand while the oath is being administered; (E) that the witness should adjust the witness chair and the microphone so the microphone is close to and directly in front of the witness's mouth; (F) that the witness should speak only in response to a question; (G) that the witness should wait for a ruling on any objections before proceeding to answer a question; (H) that the witness should answer all questions verbally; and (I) that substances such as food, beverages, and chewing gum should not be brought into the courtroom.

The attorney also must advise the witness of proper dress for the courtroom. Proper dress does not include blue jeans, shorts, overalls, T-shirts, shirts with printed words or phrases on the front or back, tank tops, or the like. The testimony of any party or witness who appears in court in the presence of the jury in attire prohibited by this section may be barred.

X. RESTRICTIONS ON WITNESSES:

A. Exclusion of Witnesses. A witness who may testify at the trial or at an evidentiary hearing must not be permitted to hear the testimony of any other witnesses before testifying, and is excluded from the courtroom during the trial or hearing until after the witness has completed his or her testimony, unless exclusion of the witness is not authorized by Federal Rule of Evidence 615 or unless the court orders otherwise. A witness who is excluded from the courtroom pursuant to this paragraph also is prohibited from reviewing a verbatim record of the testimony of other witnesses at the trial or hearing until after the witness has completed his or her testimony at the trial or evidentiary hearing, unless the court orders otherwise.

B. Restrictions on Communications with Witnesses. Unless the court orders otherwise, after the commencement of the trial or an evidentiary hearing and until the conclusion of the trial or hearing, a witness who may testify at the trial or

²A map displaying this route is attached to this order. A copy of this map should be provided to each witness who is unfamiliar with the layout of the courtroom by the attorney calling the witness to testify.

hearing is prohibited from communicating with anyone about what has occurred in the courtroom during the trial or hearing. If the witness does testify at the trial or hearing, after the witness is tendered for cross-examination and until the conclusion of the witness's testimony, the witness is prohibited from communicating with anyone about the subject matter of the witness's testimony. A witness may, however, communicate with his or her attorney about matters of privilege, and may communicate with anyone if the right to do so is guaranteed by the United States Constitution.

C. Parties. The restrictions on witnesses in paragraphs (A) and (B) of this section do not apply to the parties.

D. Uniformed Witnesses. No party or person testifying at trial may appear in court in the presence of the jury wearing a law enforcement uniform. Any such person must, at all times while in the presence of the jury, wear appropriate civilian clothing that does not identify the person as a representative of a law enforcement agency. The testimony of any party or witness who appears in court in the presence of the jury in attire prohibited by this section may be barred.

E. Duties of Counsel. An attorney who may call a witness to testify at the trial or evidentiary hearing must, before the trial or hearing, advise the witness of the restrictions in this section.

XI. TESTIMONY BY DEPOSITION: With respect to any witness who will testify by deposition, at least **21 days** before trial, the party intending to offer the witness must serve on the opposing parties a written designation, by page and line number, of those portions of the deposition the offering party intends to have read into evidence. At least **14 days** before trial, any opposing party who objects to the intended testimony must serve on the offering party any objections to the designated testimony and a counter-designation, by page and line number, of any additional portions of the deposition which the opposing party intends to have read into evidence. At least **one week** before trial, the party offering the witness must serve upon the opposing parties any objections to the designated testimony and a written designation, by page and line number, of any additional portions of the deposition the offering party intends to have read into evidence. At least

four court days before trial, the parties must consult, either personally or by telephone, and attempt to work out any objections to the proposed deposition testimony.

At least **two court days** before the deposition is to be read to the jury, the party intending to offer the deposition testimony must provide Judge O'Brien with a copy of the deposition, with the parts of the deposition to be read to the jury clearly indicated on the deposition, together with a statement listing all unresolved objections. Judge O'Brien will review any objections, listen to any arguments, and make any necessary rulings outside the presence of the jury to permit a "clean read" of the deposition to the jury. The court also will expect the parties to edit any video deposition accordingly.

All references in depositions to exhibit numbers or letters must correspond to the exhibit designation for trial. The parties are directed to number their exhibits accordingly.

XII. MOTIONS IN LIMINE: The parties are required to notify the court by motion in limine or by motion under Federal Rule of Evidence 104(a) of any novel, unusual, or complex legal, factual, or procedural issues reasonably anticipated to arise at trial. All such motions must be served and filed at least **14 days** before the FPTC. Resistances to such motions must be served and filed within **five court days** after service of the motion.

XIII. SETTLEMENT CONFERENCE: Any party desiring a settlement conference should contact Judge Zoss in Sioux City, Iowa, 712-233-3921, at the earliest opportunity. Such contact may be *ex parte* for the sole purpose of requesting a settlement conference. A settlement conference will be scheduled with a judge who will not be involved in trying the case.

XIV. SETTLEMENT DEADLINE: The court hereby imposes a settlement deadline of **5:00 p.m., three court days** before the first scheduled day of trial. If the case is settled after that date, the court may enter an order to show cause why costs and sanctions should not be imposed on the party or parties causing the delay in settlement.

XV. ATTORNEY CHECKLIST FOR TRIAL: At least **five court days** before trial, an attorney for each party participating in the trial must complete, sign, and deliver to Judge O'Brien's chambers (but not file) the form "Attorney Checklist for Trial" attached to this order.

IT IS SO ORDERED.

DATED ___ day of _____, 20___.

**PAUL A. ZOSS
CHIEF MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT**

JUDGE O'BRIEN'S VOIR DIRE INSTRUCTIONS

The following are Judge O'Brien's jury selection procedures.

1. Approximately 25 randomly-selected potential jurors will be notified to appear at the courthouse at 8:30 a.m. on the first day of trial. About a week before trial, the attorneys will receive from the Clerk of Court a list of the potential jurors, together with copies of their juror questionnaires. The attorneys also will receive a list of the first 14 potential jurors in the order in which they were randomly drawn. The court will be provided with a separate list of all of the potential jurors in the order in which they were randomly drawn.

2. The first 14 preselected potential jurors will be seated in order in the jury box, and will be the potential jurors first considered for impanelment on the jury.

3. At 9:00 a.m., the Clerk of Court will open court.

4. Judge O'Brien will greet the jury, counsel, and the parties; announce the name of the case to be tried; and ask counsel if they are ready to proceed.

5. The Clerk of Court will swear in the entire jury panel.

6. Judge O'Brien will ask the entire jury panel and ask potential jurors to raise their hands if their answer is in the affirmative. The attorneys are expected to note who raises their hands and follow up, if they choose, when it is their turn to examine the panel.

7. Judge O'Brien will ask jurors if they are aware of any circumstance that might prevent their service on the jury, and may excuse anyone for whom he believes jury service would be an undue burden. The members of the jury panel not already called will be directed to pay attention to the proceedings in the event they are called to replace a potential juror excused for cause. The lawyers should **REFRAIN** from that sort of inquiry unless the subject is brought up by a juror.

8. Judge O'Brien will make some brief opening remarks, and will read a statement of the case.

9. Judge O'Brien will introduce the courtroom staff. He then will ask the attorneys for each party to identify themselves, the members of their firm and their clients. The judge will then ask whether any of the potential jurors has had any contact with or has knowledge of any of those persons.

10. Judge O'Brien will call on counsel for each party to read a list of anticipated witnesses and give a short description of each one. For example, "*John Smith is an accountant, he is about 34 years of age, and he lives in Sioux City.*" Judge O'Brien then

will ask whether any of the potential jurors has had any contact with or has knowledge of any of the witnesses.

11. Judge O'Brien will ask the individual potential jurors to introduce themselves, state where they are from, state where they work, and describe their families. Among other things, Judge O'Brien will inquire into the following:

- a. Knowledge of this case or any similar case;
- b. Past jury experience;
- c. Participation in any lawsuits, whether as a plaintiff or a defendant;
- d. Experience in matters specifically related to the issues in the case. For example, in a fire accident case: "*Are you a member of a volunteer fire department?*";
- e. Possible bias and prejudice; and
- f. Any other matters Judge O'Brien deems pertinent at the moment.

12. After Judge O'Brien has completed his questions, each side will be permitted to conduct up to 45 minutes of jury voir dire, although much less time usually is sufficient. A request for additional time for attorney voir dire because of the complexity or unusual nature of a case, or in multi-party cases, should be made at the final pretrial conference. **THE ATTORNEYS SHOULD REFRAIN FROM ENGAGING IN CONVERSATIONAL QUESTIONING OF INDIVIDUAL POTENTIAL JURORS CONCERNING INFORMATION THAT IS ALREADY KNOWN.** Attorneys are allowed to question the panel to follow up on the judge's questions and to raise a few additional questions intended to help with the jury selection process, but will not be permitted to pin down potential jurors regarding how they would vote under a certain set of circumstances.

13. The parties will be permitted to challenge any potential juror for cause. These challenges may be made at the side-bar. If a potential juror is excused for cause, he or she will be replaced by the next potential juror on the jury list, who then will undergo the same questioning as the other potential jurors. There will be 14 potential jurors remaining in the jury box at the conclusion of voir dire.

14. The Clerk of Court will give counsel for the plaintiff(s) a list of the names of the potential jurors. Counsel for the plaintiff(s) is to draw a line through one of the names, note in the margin, "*Plaintiff's first peremptory challenge,*" and then state aloud, "*Exercised.*" The Clerk of Court then will take the list and hand it to counsel for the defendant(s), who is to draw a line through one of the names, note in the margin,

“Defendant’s first peremptory challenge,” and then announce aloud, *“Exercised.”* This procedure will be repeated until each side has exercised 3 peremptory challenges and eight jurors remain in the jury box. While technically these are “challenges,” the court will describe them as “strikes” to protect the feelings of the challenged jurors.

15. The names of the eight remaining jurors will be announced by the Clerk of Court. Those persons will be placed in the jury box and will constitute the jury in the case. The rest of the panel will be excused.

16. The Clerk of Court will swear in the jury.

16. **THERE ARE NO ALTERNATE JURORS. ANY VERDICT MUST BE UNANIMOUS.** During trial, if any of the eight jurors has to be excused from jury service for any reason, the case can be decided by as few as 6 jurors.

17. Upon stipulation of the parties, if the court approves, the verdict can be less than unanimous or decided by fewer than six jurors, or both.

18. Upon the request of any party, Judge O’Brien will consider modifying jury selection procedures in a particular case. Such modifications may include, but are not limited to, a twelve-person jury or an increase in the number of peremptory challenges.

UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF IOWA
_____ DIVISION

[INSERT PARTIES AND CASE NUMBER]

**FINAL PRETRIAL ORDER
[PROPOSED]**

[NOTE: Instructions for preparing this form appear in brackets and should not be reproduced in the proposed Final Pretrial Order. All material not appearing in brackets should be reproduced in the proposed Final Pretrial Order, as applicable.]

This final pretrial order was entered after a final pretrial conference held on [date]. The court expects the parties to comply fully with this order. *[Full compliance with the order will assist the parties in preparation for trial, shorten the length of trial, and improve the quality of the trial. Full compliance with this order also will help “secure the just, speedy, and inexpensive determination” of the case. Fed. R. Civ. P. 1.]*

The following counsel, who will try the case, appeared at the conference *[Except in the case of attorneys at the same firm, list each attorney’s information separately. Include an e-mail address for each attorney who will try the case.]*:

1. For plaintiff(s):
Name(s)
Street Number, Street Name and/or Box Number
City, State and Zip Code
Phone Number *[include area code]*
Facsimile Number *[include area code]*
E-mail address

2. For defendant(s):
Name(s)
Street Number, Street Name and/or Box Number
City, State and Zip Code
Phone Number *[include area code]*
Facsimile Number *[include area code]*
E-mail address

I. STIPULATIONS OF FACT: The parties agree that the following facts are true and undisputed: *[The parties are to recite all material facts as to which there is no dispute. Special consideration should be given to such things, for example, as life and work expectancy, medical and hospital bills, funeral expenses, cause of death, lost wages, back pay, the economic value of fringe benefits, and property damage. The parties should stipulate to an undisputed fact even if the legal relevance of the stipulated fact is questioned by one or more party, but in such instances the stipulated fact should be followed by an identification of the objecting party and the objection (e.g. "Plaintiff objects to relevance.")]*

- A.
- B.

II. EXHIBIT LIST: The parties' exhibit lists are attached to this Order. *[The parties are to **attach to this order** (not include in the body of the order) exhibit lists that include all exhibits (except for impeachment exhibits) each party intends to offer into evidence at trial. Exhibit lists are to be prepared in the attached format, indicating objections using the categories described in the form.*

*All exhibits are to be made available to opposing counsel for inspection at least **twenty-one days** before the date of the FPTC. Failure to provide an exhibit for inspection constitutes a valid ground for objection to the exhibit, and should be noted on the exhibit list. Any exhibit not listed on the attached exhibit list is subject to exclusion at trial. The court may deem any objection not stated on the attached exhibit list as waived.*

*The parties must bring to the **Final Pretrial Conference** trial notebooks containing copies of all exhibits to be used at trial. The court's copies of exhibits should be placed in a ringed binder with a copy of the exhibit list at the front and with each exhibit tabbed. The parties must supply the Clerk of Court with a second set of exhibits, also tabbed and in a ringed binder, to be used as the original trial exhibits in the official records of the court.]*

III. WITNESS LIST: The parties intend to call the following witnesses at trial: *[Each party must prepare a witness list, in the following format, that includes all witnesses (except for rebuttal witnesses) the party intends to call to testify at trial. The parties are to exchange their separate witness lists at least **twenty-one days** before the date of the*

FPTC. A witness testifying by deposition must be listed in the witness list with a designation that the testimony will be by deposition.]

- A. Plaintiff('s)(s') witnesses *[list name, substance of testimony, whether any party objects to the witness, and the nature of and grounds for any objection]:*
 - 1.
 - 2.

- B. Defendant('s(s')) witnesses *[list name, substance of testimony, whether any party objects to the witness, and the nature of and grounds for any objection]:*
 - 1.
 - 2.

All parties are free to call any witness listed by an opposing party. A party listing a witness guarantees his or her presence at trial unless it is indicated otherwise on the witness list. *Any objection to the offer of testimony from a witness on the witness list is waived if it is not stated on this list.*

IV. RESTRICTIONS ON WITNESSES: A witness who may testify at the trial or at an evidentiary hearing must not be permitted to hear the testimony of any other witnesses before testifying, and is excluded from the courtroom during the trial or hearing until after the witness has completed his or her testimony, unless exclusion of the witness is not authorized by Federal Rule of Evidence 615 or unless the court orders otherwise. A witness who is excluded from the courtroom pursuant to this paragraph also is prohibited from reviewing a verbatim record of the testimony of other witnesses at the trial or hearing until after the witness has completed his or her testimony at the trial or evidentiary hearing, unless the court orders otherwise.

Unless the court orders otherwise, after the commencement of the trial or an evidentiary hearing and until the conclusion of the trial or hearing, a witness who may testify at the trial or hearing is prohibited from communicating with anyone about what has occurred in the courtroom during the trial or hearing. If the witness does testify at the trial or hearing, after the witness is tendered for cross-examination and until the conclusion of the witness's testimony, the witness is prohibited from communicating with anyone about the subject matter of the witness's testimony. A witness may, however, communicate with his or her attorney about matters of privilege, and may communicate with anyone if the right to do so is guaranteed by the United States Constitution.

These prohibitions do not apply to the parties. An attorney who may call a witness to testify at trial must, before the trial, advise the witness of these restrictions.

V. EVIDENTIARY AND OTHER LEGAL ISSUES:

A. Plaintiff('s)(s') Issues:

- 1.
- 2.

B. Defendant('s)(s') Issues:

- 1.
- 2.

[The parties must list all unusual evidentiary and legal issues that are likely to arise at trial, including such things as disputes concerning the admissibility of evidence or testimony under the Federal Rules of Evidence; the elements of a cause of action; whether recovery is barred as a matter of law by a particular defense; disputes concerning the measure, elements, or recovery of damages; and whether the Statute of Frauds or the Parol Evidence Rule will be raised. The purpose of this listing of issues is to advise the court in advance of issues and problems that might arise at trial.]

VI. COURTROOM TECHNOLOGY: Prior to trial, attorneys and witnesses who intend to utilize the technology available in the courtroom must familiarize themselves with the proper manner of operation of the equipment. Instruction and training on the proper use of the equipment may be obtained at a training session set up by prior appointment with Jose Leon, who may be contacted at 712-233-3845. (If the parties are unable to reach Jose Leon, they may call Sue Young, at 712-233-3844.)

VII. OPENING STATEMENTS; CLOSING ARGUMENTS: Opening statements are limited to **30 minutes** and closing arguments are limited to **one hour**. **A request for additional time for opening statements or closing arguments must be made no later than the commencement of trial.**

VIII. PROTOCOL FOR WITNESSES: An attorney who may call a witness to testify at trial must, before the witness testifies, advise the witness of the accepted protocol for witnesses testifying in this court. This advice should include the following information: (A) the location of the witness box; (B) the proper route from the courtroom door to the

witness box; (C) the fact that the witness will be placed under oath; (D) where the witness should stand while the oath is being administered; (E) that the witness should adjust the witness chair and the microphone so the microphone is close to and directly in front of the witness's mouth; (F) that the witness should speak only in response to a question; (G) that the witness should wait for a ruling on any objections before proceeding to answer a question; (H) that the witness should answer all questions verbally; and (I) that substances such as food, beverages, and chewing gum should not be brought into the courtroom.

The attorney also must advise the witness of proper dress for the courtroom. Proper dress does not include blue jeans, shorts, overalls, T-shirts, shirts with printed words or phrases on the front or back, tank tops, or the like. In addition, law enforcement officers must wear civilian clothing that does not identify them as representatives of a law enforcement agency. The testimony of any party or witness who appears in court in the presence of the jury in attire prohibited by this order may be barred.

IX. DEMONSTRATIVE AIDS: A party using a demonstrative aid during a jury trial must, before the demonstrative aid is displayed to the jury, show the demonstrative aid to representatives of all other parties participating in the trial. The term “demonstrative aid” includes charts, diagrams, models, samples, and animations, but does not include exhibits admitted into evidence or outlines of opening statements or closing arguments.

IT IS SO ORDERED.

DATED this ____ day of _____, 20____.

**PAUL A. ZOSS
CHIEF MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT**

(PLAINTIFF’S) (PLAINTIFFS’) (DEFENDANT’S) (DEFENDANTS’) EXHIBIT LIST
[Form]

The following categories have been used for objections to exhibits:

- A. **Category A.** These exhibits already will be in evidence at the commencement of the trial, and will be available for use by any party at any stage of the proceedings without further offer, proof, or objection.
- B. **Category B.** These exhibits are objected to on grounds **other than** foundation, identification, or authenticity. This category has been used for objections such as hearsay or relevance.
- C. **Category C.** These exhibits are objected to on grounds of foundation, identification, or authenticity. This category **has not** been used for other grounds, such as hearsay or relevance.

(Plaintiff’s)(Plaintiffs’) (Defendant’s)(Defendants’) Exhibits	Objections [Cite Fed. R. Evid.]	Category A, B, C	Offered	Admit/Not Admitted (A) - (NA)
1. <i>[describe exhibit]</i>				*
2. <i>[describe exhibit]</i>				
3. <i>[describe exhibit]</i>				
4. <i>[describe exhibit]</i>				
5. <i>[describe exhibit]</i>				

*[*This column is for use by the trial judge at trial. Nothing should be entered in this column by the parties.]*

This form is to be signed by an attorney for each party appearing at trial and, at least five court days before the trial date, delivered to and received at the chambers of The Honorable Donald E. O'Brien, P.O. Box 267, Sioux City, Iowa 51102. (This form is not to be filed with the Clerk of Court.)

ATTORNEY CHECKLIST FOR TRIAL***

RE: [case name and docket number]

Trial Date: _____

- ____ 1. I have read the Final Pretrial Order and carried out its directives.
- ____ 2. I have provided opposing counsel with my final lists of witnesses and exhibits, and copies of all my exhibits.
- ____ 3. I have compared my exhibits with the exhibits to be offered by opposing counsel to ensure there are no duplicates.
- ____ 4. I have marked and labeled all my exhibits with stickers. [Plaintiffs are to use numbers. Defendants are to use letters.]
- ____ 5. I have put page numbers on my exhibits.
- ____ 6. **I have put all my exhibits in 3-ring binders for the judge, and have tabbed the exhibits.** For my exhibits which exceed five pages, I have made copies of only those pertinent pages I intend to use at trial.
- ____ 7. I will bring to the trial a second complete set of all my exhibits, marked by exhibit stickers and paginated, to be used at trial and kept by the clerk as part of the official records of the court. **I have also put this set of exhibits in a tabbed, 3-ring binder.**
- ____ 8. I have complied in all respects with the requirements of the final pretrial order with regard to depositions to be read into evidence, and if this is a jury trial, I will notify the court at least 48 hours before any deposition is to be read to the jury.
- ____ 9. I have gone through all depositions that will be read and have substituted trial exhibit numbers and/or letters for the designations used in the depositions.
- ____ 10. I have filed any motions in limine on which I want the Court to rule prior to trial.
- ____ 11. I have consulted with opposing counsel and we have drafted and provided to the court a jury statement to be read to the jury prior to voir dire.
- ____ 12. I have read this checklist thoroughly and completed all the above trial preparations.

By: _____
Printed or typed name of Attorney signing:

Phone Number: _____

³The Court is well aware that this checklist procedure may offend some conscientious lawyers; however, this procedure has become necessary because a number of counsel have not been ready for trial.