

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

**GENERAL ORDER**

**RE: PRETRIAL PROCEDURES IN ADVERSARY PROCEEDINGS SET FOR TRIAL  
BEFORE JUDGE KEVIN J. CAREY**

1. The Court enters this order in an effort to expedite the trial of this matter.
2. The parties shall file, no later than three (3) business days prior to the date set for the trial, their Joint Pretrial Memorandum, approved by all counsel and by all unrepresented parties, and shall contemporaneously deliver two (2) copies thereof to Judge Carey's chambers.
3. Counsel for plaintiff shall be responsible for initiation of the preparation of the Joint Pretrial Memorandum and for the assembly and timely filing and submission of the same to the court. At the very least, counsel for plaintiff shall submit a proposed draft to counsel for all other parties and to all unrepresented parties no less than seven (7) days prior to the deadline for its filing and submission.
4. All counsel and all unrepresented parties are expected to make a diligent effort to ensure that the Joint Pretrial Memorandum is complete in all respects, and that all unresolved issues are fully, completely and adequately disclosed therein.
5. The Joint Pretrial Memorandum shall govern the conduct of the trial and shall supersede all prior pleadings in the case. Amendments subsequent to its filing and submission shall be permitted only in exceptional circumstances and to prevent manifest injustice.
6. The Joint Pretrial Memorandum shall contain the following as to each party:
  - (A) Basis of jurisdiction. (including a statement whether this matter is core or noncore). If the matter is noncore, the parties shall state whether they consent to the court's entry of a final order pursuant to 28 U.S.C. § 157(c)(2). If the parties disagree, they shall each cite to relevant authority to support their positions.
  - (B) Statement of uncontested facts.
  - (C) Statement of facts which are in dispute. [No facts should be disputed unless opposing counsel expects to present contrary evidence on the point of trial, or genuinely challenges the fact on credibility grounds.]
  - (D) Damages or other relief. A statement of damages claimed or relief sought. A party seeking damages shall list each item claimed under a separate descriptive heading, shall provide a detailed description of each item and state the amount of damages claimed. A party seeking relief other than damages shall list the exact form of relief sought with precise designations of persons, parties, places and things expected to be included in any order providing relief.
  - (E) Legal issues presented and the constitutional, statutory, regulatory and decisional authorities relied upon. (Counsel should include a brief statement

regarding which party has the burden of proof on each legal issue).

- (F) Witnesses listed in the order they will be called along with a brief statement of the evidence the witness will give. Witnesses shall be classified between those who any party expects to present and those whom any party may call if the need arises. If not already provided to all parties, the address and telephone number of each witness shall be disclosed.
- (G) A list of all exhibits to be offered into evidence which shall be serially numbered and physically marked before trial in accordance with the schedule. Documents which a party may offer if the need arises shall be separately identified.
- (H) A list of each discovery item and trial deposition to be offered into evidence. (Counsel shall designate by page and line(s) each portion of deposition testimony and by number the interrogatories which shall be offered in evidence at trial).
- (I) An estimate of the length of trial.

7. Each party shall bring to trial sufficient copies of all pre-marked exhibits assembled in binders and appropriately tabbed or otherwise identified, so that the Court, the clerk, the witness and all counsel will have a copy.

8. Any party may, but is not required to, file a trial brief, no less than three (3) business days prior to trial. If filed, two (2) courtesy copies of each such brief shall be delivered to Judge Carey's chambers contemporaneously with its filing. No trial brief shall be more than 25 double-spaced pages in length.

9. Failure to strictly comply with all of the provisions of this order may result in the imposition of sanctions, the entry of a dismissal or a default as the circumstances warrant, in accordance with Fed. R. Civ. P. 16, made applicable to this proceeding by Fed. R. Bankr. P. 7016.

10. The trial shall take place in the United States Bankruptcy Court, District of Delaware, at 824 Market Street, Fifth Floor, Courtroom 5, Wilmington, Delaware.

At Wilmington, Delaware this 21<sup>st</sup> day of February, 2007.

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**KEVIN J. CAREY**  
**UNITED STATES BANKRUPTCY JUDGE**