IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	
	)	Supreme Court Rule No. R-13-0017
PETITION TO AMEND	)	
ARIZONA RULES OF	)	
CIVIL PROCEDURE	)	
16, 16.1, 26, 37, 38, 38.1,	)	
72, 73, 74 AND 77	)	
_____	)	

Introduction

The Pima County Superior Court hereby submits the following comments to the proposed rule change contained in R-13-0017, regarding trial settings. The Court opposes the proposed rule change regarding trial settings. The Court recognizes the benefits derived from an early pretrial conference that sets out a schedule for disclosure and discovery in more complex cases. However, the Court opposes the wholesale requirement of having such scheduling orders and conferences in all civil cases. The proposed changes would serve no purpose in non-complex cases, would cost the parties millions of dollars in added litigation expense, and would strain scarce court resources. This is particularly true where the current rules allow either the parties or the Court to have such orders made when either believes there is a need in a particular case.

Identification of the Issue or Problem is Lacking

In examining any proposed rule change it is important to identify what issue or problem the rule change seeks to remedy. If the proposed rule change does not address the issue or problem then it is doomed to fail. It is also critical that the issue or problem be examined on both a qualitative and a quantitative basis to determine if it truly needs a remedy. It is equally important to understand issues or problems the proposed rule change would not address.

The thrust of the proposed rule change is to require, in all civil cases, an early scheduling order from the Court. This is done either by agreement of the parties that the Court would then review and approve or at a pretrial conference if the parties cannot agree or the Court has concerns about the agreed upon schedule submitted by the parties. The obvious problem that would be alleviated by the proposed rule change would be the disclosure of experts, witnesses, or other evidence late in the litigation process, but prior to 60 days before trial. Any disclosure that

occurs within 60 days of trial is, already, presumptively excluded, unless the Court grants an extension of time for disclosure [Rule 26(e) and 26.1(b)(2)]. Disclosures that occur just prior to the 60 day deadline have the potential for a trial delay. By establishing an earlier deadline for expert disclosure and witness disclosure, the potential for a trial delay is removed. This issue is typically present in more complicated cases, where expert testimony is involved. In simple cases that require a short trial (three days or less), the potential is small.

If this is the issue that is being addressed by the proposed rule change, it would be important to know the number of cases where trials are being continued due to disclosure of witnesses and evidence just prior to 60 days before trial. There is no information in the Petition that attempts to quantify this perceived problem in any county or statewide. It has been the experience of the Pima County Civil Bench that such disclosures and requests for trial continuances are not occurring.

The Petition in support of the proposed rule change discusses the current practice in Maricopa County, where the parties will not be able to complete discovery within 60 days of the filing of the Motion to Set, pursuant to Rule 38.1(a)(3)(i). Apparently, what is happening in Maricopa County is that the attorneys are not preparing their cases in light of Maricopa County's 150 day notice requirement. When the attorneys receive the 150 day notice, they are asking the Court for more time to complete discovery. The Court is then getting involved and setting a pretrial conference where a scheduling order is made. The problem is that the case has been pending for a significant period of time. This practice reflects Maricopa County's Court's philosophy of not setting trial dates until the end of the litigation process. Other counties, including Pima, believe in setting trial dates at the beginning of the case so that the parties have a target date to work toward.

Under the proposed rule change, the parties are to submit to the Court an agreed upon scheduling order, the earlier of either, 14 days after the initial disclosure statements are due or 180 days after the filing of the Complaint. The proposed rule change does not provide for any monitoring of the process or an enforcement mechanism. Unlike disclosure statements, there is no built in enforcement mechanism. With disclosure statements if either side fails to make disclosure, the other side can seek to compel the disclosure or move to exclude the evidence for late disclosure. The issue of non-disclosure is brought before the Court by one of the parties.

Under the proposed rule change, if both parties do not comply with the rule, the Court will not be made aware of the situation until the 270 day mark, when case management places the case on the dismissal calendar. At that point the parties will likely submit a scheduling order and all that will be accomplished is that the problem perceived by Maricopa County has been pushed back from 150 days to 270 days.

With both parties culpable in the late filing of the scheduling order it is unlikely that either party will ask for sanctions. Likewise, it is unlikely that the Court will, on its own, impose sanctions for the late filing of the scheduling order. Under Maricopa County's current practice, when attorneys are submitting Motions to Set near the 150 day notice and where discovery will not be completed in 60 days, is the bench imposing sanctions because the case will not be ready for trial within 60 days, as is required? If no sanctions are being imposed at the present, then what is the likelihood of sanctions being imposed, sua sponte, by the Court for a late scheduling order?

In order for the proposed rule change to have a chance of working there must be a monitoring of the case to ensure the deadlines are complied with. This will create a huge burden on the Court to monitor every case to see that the rule is complied with. Realistically, the only date the Court can monitor is the 180 day time limit. Parties are continually granting each other's extensions of time to make disclosure without the Court's involvement. The only "hard date" is the 180 day deadline. The Court with this monitoring process would then issue a notice that the scheduling order requirement has not been complied with. The Court would order a scheduling conference. Practically speaking it appears the proposed rule change accomplishes nothing more than moving the 150 day notice to 180 days.

It is equally important to recognize what the proposed rule would not address or fix. Several members of the Pima County Bench were present at two separate presentations by members of the Civil Practice and Procedure Committee to the Committee on Superior Courts. When asked what problems the proposed rule change would address, some of the presenters discussed the problem of attorneys being scheduled for trial in two cases at the same time or the trial court having scheduled multiple trials for the same date with no other judge available on the trial date to resolve the trial conflict. Neither of these problems would be "fixed" by the proposed rule change.

The issue the proposed rule change is designed to address, the nearly late disclosure of witnesses and evidence, does not exist in any appreciable or significant number. The issue presented in the Petition of attorneys not preparing their cases to meet the requirements of the Maricopa County Practice of the 150 day notice and contained in Rule 38.1(a)(3)(i) are not remedied by the proposed rule change, as there is no incentive to comply with or penalty for non-compliance with the proposed rule change by dilatory attorneys. To make the proposed rule change effective would require the Court to affirmatively monitor every civil case to ensure attorneys do what they are supposed to do. This is not the role of the Court and would be too burdensome on the Court if monitoring was required.

Costs to Litigants will increase

The adoption of the proposed rule change carries with it a significant cost to the litigants. Using 2012 statistics for the State, the cost of merely having the parties submit a mutually agreed upon scheduling order would be approximately 18 million dollars per year. In 2012, there were 71,722 civil cases filed in the State of Arizona, according to A.O.C. Statistics. The filing of 71,722 civil cases in 2012 is a significant drop in the number of filings from the prior three years. In 2011, the civil case filings for the State were 97,056, in 2010, the filings were 101,591, and in 2009, the filings were 92,800.

In examining the type of cases that comprise those filings, Pima County filings were reviewed. There is no reason to believe the distribution of cases in Pima County would differ significantly from a statewide distribution. From 2007 to 2011 contract cases and tort cases comprised 55% to 60% of all civil filings. These numbers exclude medical malpractice case filings, which are accounted for separately and comprise less than 1% of all civil case filings. For purposes of the following analysis the 40 to 45% of civil cases that are not contract or tort cases are assumed to not fall within the class of cases where a pretrial scheduling order would be necessary. In addition, for the last several years 14% of the cases are resolved through arbitration. Cases resolved through arbitration would not be subject to the pretrial scheduling order. Pima County's arbitration limit is $50,000.00. This leaves between 41% and 44% (55% - 14% to 60% - 14%) of the civil cases subject to the pretrial scheduling order. If one were to assume only one-half of those cases would require a pretrial scheduling order without an actual conference before the Court, the cost to the litigants would be in the millions of dollars.

Using 2012 numbers, there were 71,722 civil cases filed in the Superior Court. Multiplying the total filings by 41%, which is the percentage of cases that are contract or tort cases, produces 29,406 cases that could potentially have a scheduling order. Assuming only one-half of those cases actually went through the scheduling order process, this would yield 14,703 cases in which the parties' counsel would confer and submit a scheduling order to the Court. If one were to conservatively estimate a total of five hours spent by all counsel in producing the scheduling order to submit to the Court and assuming a hourly billing rate of $250.00 per hour, the cost to the litigants would be $18,378,750.00 (14,703 cases times five hours per case times $250.00 per hour). This figure assumes there would be no actual appearance before a judge. If one were to assume only 20% of those cases would result in appearance before a judge and assuming an additional two hours of attorney time for the preparation, travel, and appearance in Court, this would add an additional $1,475,300.00. (2,940 cases times two hours per case times $250.00 per hour). This would bring the total added litigation cost to the public of just under $20 million dollars per year.

Beyond just the costs of going through the pretrial scheduling process, the proposed rule change would require the parties to go through a mandatory settlement conference or private mediation before the parties could obtain a trial date. At the time of the pretrial scheduling order the parties are not likely to be in a position to evaluate the case for settlement. This means a trial date would not be set as part of the scheduling order. It follows then there would have to be a later trial setting conference before the Court. This would only add to the litigants' cost.

The proposed rule change calls for mandatory settlement conference or private mediation before the Court can set a trial date. The presiding ADR judge in Pima County will be filing a separate comment on the impact of this request and the drain on resources it will entail.

The above discussion highlights the significant cost to litigants by the adoption of this proposed rule change with no corresponding quantifiable benefit to the litigants and the negative public perception that would follow.

Burdens on the Court's Technical Resources

The proposed rule change would also consume the Court's limited resources. At the present time of tight budgets and scarce resources, the Courts are trying to make significant improvements in technology. The Arizona Supreme Court is well aware of the issues facing the IT departments of the various courts in developing the statewide e-filing through AzTurbo Court.

In addition, the IT departments at the various counties are in different stages of implementing new case management systems from Maricopa County's Isis system, to Pima County's Agave system, and even a statewide case management system for the other counties. In addition, the various Superior Courts are working with the Clerk's office to move from paper files to electronic files. All of these important projects are straining the Superior Courts' IT departments.

The proposed rule change would require the IT departments to reallocate their strained resources to focus on redeveloping the case management system for each county to account for this new process. It would only further delay the implementation of AzTurbo Court, electronic files and a statewide case management system.

It is not just the IT department that would be effected. In Pima County the Director of Case Management Services has indicated that she would have to have her staff monitor the daily civil filings to see what scheduling orders were filed and then enter a code into the case management system that would remove that case from being placed on the dismissal calendar after 270 days. Individual monitoring would be necessary due to the variations in the naming of the scheduling order as opposed to the singular designation of a Motion to Set. The scheduling order could be referred to as a scheduling order, a stipulation regarding scheduling, a joint scheduling order, a pretrial conference order, a joint pretrial conference memorandum or any number of other names. If the Court were also required to monitor the case filings for compliance with the 180 day deadline, this would add further work to the case management services department. This is yet an additional burden on the Court's limited and stressed resources, with little, if any, real benefit.

<u>Strain on Judicial Resources</u>

As the Supreme Court is aware there are substantial constraints on the budget and the Courts are not likely to see significant increases from the State legislature or county boards of supervisors. Case filings in certain areas have significantly increased in the areas of juvenile dependency cases and family law post-decree cases. With the aging population, it is likely the Courts will see future increases in probate filings. Without additional judicial officers in the foreseeable future the Superior Courts will need to reallocate the assignment of judicial officers. In Pima County the number of civil caseloads has been reduced from eight to seven which means larger caseloads and workloads per judge.

Recent rule changes by the Supreme Court have already increased the workload of civil trial judges. These include recent amendments to Rule 55, civil default judgments, ending paper copies to judges of lengthy documents, and recent amendments to Rule 56, motions for summary judgment.

The instant proposed rule change imposes additional, unnecessary and bureaucratic burdens on trial judges. The proponents of the rule change suggest that few actual pretrial conferences will occur before the judge because the parties will likely agree to the scheduling and the judge need only "rubber stamp" it. First, in order for the judge to "rubber stamp it" the judge must review the proposed scheduling to see if it makes sense. It has been the experience of the Pima County Civil Bench that the scheduling orders the parties submit for a case often do not make sense or the parties do not agree.

Reviewing scheduling orders, determining whether the scheduling makes sense, and then having a hearing on those cases where the parties cannot agree or a schedule on the proposed schedule does not make sense is time consuming. Going through this process on simple civil cases that do not need a scheduling order to begin with is a waste of limited judicial resources.

Existing Practice Across the State

A review of the manner in which Rule 38.1 is implemented throughout the State reveals no county is alike in the way it sets trials. Only Maricopa, Santa Cruz and Yuma counties have expressly adopted Rule 38.1 (a)(3)(i). Pima and Apache counties have expressly adopted Rule 38.1(a)(3)(iii). The other counties do not specify in their local rules what they do as far as civil trial settings. It is fair to say each county has developed, over decades of practice, when and how civil trials are set. Each county's "culture" has evolved to meet the needs of that county.

The proposed rule change is clearly developed in reference to the culture that has developed in Maricopa County. The Petition consistently references the Maricopa practice in discussing the proposed rule change. Maricopa County believes parties should not be requesting a trial date until discovery is or is nearly complete. Maricopa County perceives there is a problem when practitioners are requesting trial dates near the end of the 150 day notice period and discovery has not been completed. This results in a pretrial conference and scheduling order well into the case that causes delays in getting the case resolved.

Other counties believe in setting a trial date and, where appropriate, a scheduling order at the beginning of the case. Typically, in Pima County a party files a Motion to Set and Certificate

of Readiness just after the Answer has been filed. In the Motion to Set, the parties set out their request for a jury, the number of days the trial will take, how soon discovery will be completed and a proposed trial date. Depending upon the number of trial days requested the Court will issue a trial notice with the trial date and numerous other deadlines. (See Attachment A.) If the parties request a lengthy trial (more than 4 or 5 days), the Court will often set, Sua Sponte, a Rule 16 pretrial conference. (See Attachment B.) At the pretrial conference a more detailed scheduling order will result. (See Attachment C.) This approach has worked well for Pima County, where it is rare that a request for a trial continuance has resulted from a lack of disclosure that a scheduling order would have avoided. In addition, in fiscal year 2011/12 Pima County had resolved 94% of its cases within 545 days, which is close to the proposed state time standard of 96% of cases resolved within 540 days.

It is likely the other counties have in place a method that works for that county. No county's method is better or worse than the other. What works for one may not work for the other and it is up to each county to determine what works best for it. It is unwise to impose and mandate a massive culture change in counties that do not experience a problem simply because another county perceives a problem that they could fix by local rule and a change in their local culture. The proposed rule change would require each county to amend its local rule for trial settings and, more significantly, force a culture change where it is not necessary.

The Existing Rules are Appropriate and Function Well

The major thrust of the proposed rule change is to put in place, early in the case, a schedule for disclosure and discovery. This is presently required in medical malpractice cases and in cases designated as complex. The existing rule [Rule 16(b)] also permits any party to request (and the Court must set) a comprehensive pretrial conference. This enables attorneys to avail themselves of the benefits an early scheduling order when they believe it is warranted. Finally, the Court on its own may order a pretrial conference, if it believes it is appropriate for that particular case.

It has been the experience of the Pima County Bench that both attorneys and the Court have opted to have early pretrial conferences in more complicated cases, where there is a need or benefit for such a conference. Conversely, in simple cases with a relatively short trial (three days or less) there is no need for a scheduling order and any necessary deadline can and are included in the trial notice (See attachment A and B.)

Conclusion

The current rules allow for all of the benefits the proposed rule change presents at the option of the parties or the Court, when either believes it would be beneficial for that particular case. The proposed rule change would impose the extra expense of a scheduling order and/or pretrial conference when neither the parties nor the Court believes it would be beneficial. The proposed rule change adds approximately 20 million dollars in litigation costs and consumes limited judicial resources in cases where it is not necessary. The proposed rule change would not be effective in resolving the unquantified problem posed by its proponents and would only push back the perceived problem to the 180 day or 270 day mark. The Pima County Superior Court firmly believes the proposed rule change is unnecessary and in fact wasteful. The proposed rule change should not be adopted.

Honorable Sarah Simmons
Presiding Judge
Pima County Superior Court

Charles Harrington
Civil Presiding Judge
Pima County Superior Court

Attachment A

FILED
PATRICIA NOLAND
CLERK, SUPERIOR COURT
6/4/2012 4:03:10 PM

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. KENNETH LEE
JUDGE

CASE NO. C20114056

DATE: June 04, 2012

MARK JACKSON
Plaintiff

VS.

GRACE BOLAND
Defendant

NOTICE

DIVISION 3--JURY TRIAL

IT IS ORDERED affirming the **Jury Trial** on **Wednesday, February 20, 2013**, at **9:00 AM**, for **3 Days**.

IT IS FURTHER ORDERED affirming the **Status Conference** on **Monday, December 03, 2012**, at **9:00 AM**.

IT IS FURTHER ORDERED:

(1) All discovery is to be completed not later than 60 days prior to trial.

(2) Final disclosures are to be made not later than 60 days prior to trial.

(3) All dispositive motions shall be filed not later than 90 days prior to trial.

(4) Any Motion challenging the admissibility of an expert's opinion, pursuant to A.R.S. §12-2203, shall be filed not later than 90 days before trial.

(5) All Motions in Limine shall be filed not later than 30 days prior to trial; responses to Motions in Limine shall be filed not later than 20 days prior to trial; no replies are to be filed.

(6) If there is a settlement or the case is otherwise resolved, counsel will immediately advise the Court. One day's jury fees will be assessed unless the Court is notified of the settlement before 12:00 noon on the judicial day before trial.

(7) Pursuant to Pima County Local Rules of Practice, Rule 3.5, the Court will not give out hearing dates over the telephone for motions, other than on an emergency basis. Hearing dates must be obtained by bringing the motion and separate notice of hearing, together with appropriate copies, to this Division for scheduling. Pursuant to Rule 3.5(b) of Pima County Rules, any motions for which hearing dates are not requested will be decided without oral argument, unless the other party(ies) request(s) a hearing.

(8) A joint pretrial statement, compliant with Arizona Rules of Civil Procedure Rule 16(d), shall be filed, with a copy to this Division, not less than twenty (20) days prior to trial; failure to do so

Mary Ann Ritz
Judicial Administrative Assistant

will cause assignment of this case to the Inactive Calendar and its dismissal in 60 days without further notice. Failure in good faith to prepare or assist in the preparation of the joint pretrial statement shall subject offending counsel to the sanctions set forth in Arizona Rules of Civil Procedure Rule 16(f).

(9) As a general rule, if an objection of non-disclosure is made at trial, the burden shall be on the party offering the particular line of testimony, exhibit or the like, to show that **written notice was timely given** (at least 60 days prior to trial) of the testimony/document in dispute. Counsel are advised to have all disclosure statements, correspondence or other written documents establishing notice, available in the courtroom, at trial. A party's failure to produce such written evidence, immediately after an objection of non-disclosure is made, will generally result in the exclusion of that evidence.

(10) In addition to the requirement of the rule [Arizona Rules of Civil Procedure Rule 16(d)], the parties shall submit to the trial judge twenty (20) days prior to the trial, one copy of each deposition transcript. On that copy, each party's offered testimony shall be highlighted in separate colors (e.g., yellow/Plaintiffs, blue/Defendants). It is the obligation of the counsel to arrange a hearing to obtain rulings on objections prior to trial. This should be, at the time of hearing on Motions in Limine and not later than one week prior to trial. Failure to do so will result in either waiver of objections or rejection of offered testimony. The Court cautions counsel regarding over designation of transcript testimony. Further, summaries are an effective means of giving information to the jury. This Court may require, at the request of any party, a deposition summary and will consider sanctions for unreasonable objections.

(11) The Friday before the first day of jury trial, counsel shall submit to the trial judge an original and one copy of all instructions, forms of verdict; a joint draft of preliminary instructions; and interrogatories which counsel intend to request the Court submit to the jury, if any, and counsel's suggestions for questions on Voir Dire.

(12) During the week before trial, the trial lawyers shall make an appointment for themselves or their knowledgeable assistants to meet with the clerk of this Division or the Second Floor Clerk's Office with all exhibits. Please advise the clerk which exhibits may be marked directly into evidence. Trial counsel shall also provide to the Judge a set of the paper exhibits.

(13) The purpose of the Mandatory Status Conference is to have counsel confer with the Court approximately 60 days prior to trial to resolve any discovery matters or other matters relevant to the trial of the case and to explore settlement options.

(14) Requests for Continuance of the trial date will be considered in light of the Court's policy on trial continuance. Copy available upon request.

cc: Hon. Kenneth Lee
Lance J Wood, Esq.
Richard Auerbach, Esq.

Mary Ann Ritz
Judicial Administrative Assistant

Attachment B

ARIZONA SUPERIOR COURT, PIMA COUNTY

JEAN CHANG, a single woman, Plaintiff, v. LAURENCE LYNN GILLARD, etc.; et al., Defendants.	MOTION TO SET AND CERTIFICATE OF READINESS (Assigned to: Judge Lee)	Case No. C2012-3544

[x] Tort Motor Vehicle		[ ] Real Property
[ ] Tort Non-Motor Vehicle		[ ] An Appeal
[ ] Contract	INDICATE NATURE OF CASE	[ ] Non-Classified Civil
[ ] Domestic Relations		[ ] Medical Malpractice
[ ] Probate		[ ] _____

I request that the above-numbered case be set for trial and certify that:

1. The Complaint was filed on June 1, 2012, and thereafter, an answer was filed and the issues joined.

2. The parties have completed, or will have had a reasonable opportunity to complete ten days prior to trial, all procedures intended to be undertaken under Rules 26 to 37 of the Rules of Civil Procedure.

3. The estimated length of trial is 4 [ ] hour(s) [xx] day(s).

4. Jury trial demanded [xx] Yes [ ] No.

5. The largest award sought by any party, including punitive damages, but excluding interest, attorneys' fees, and costs, **exceeds $50,000.00.**

This case is subject to arbitration [ ] Yes [xx] No.

6. The case is entitled to trial preference [ ] Yes [xx] No.
(If "Yes", cite the court order, statute or rule:_____

7. A copy of this Motion and Certificate has been [ ] delivered [xx] mailed to:

Name	Address	Phone	Attorney for
Marshall Humphrey, III Humphrey & Petersen, PC	3861 E. 3rd St. Tucson, AZ 85716-4646	520-795-1900	Defendants

This case will be ready for trial: [Check One]
Within the next 6 months: _____ 6-12 months: _____ 12-15 months: xx
After 15 months: ___ (If more than 15 months, please explain in space provided below why this length of time is required.)
If this is a one-day court trial or less and not subject to Arbitration, are you willing to be placed on an On-Call Status if this would mean a quicker trial date:
NOTE: We will set a FIRM trial date, but if there is an earlier vacancy, we will call you. YES [ ] NO [xx]

DATE: 1.2.2013

Louis Hollingsworth (PCC #26935; SB #11534)
Michael Kelly (PCC #65747; SB #022911)
John F. Kelly (PCC #30884; SB #004109)
Hollingsworth Kelly, 3501 N. Campbell Ave., #104
Tucson, AZ 85719; Phone: 520-882-8080
Counsel for Plaintiff

FILED
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13 JAN -3 PM 12:01
BY: E. BRADFORD
DEPUTY

1-3-13

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CLERK, SUPERIOR COURT
1/28/2013 2:44:16 PM

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. KENNETH LEE

CASE NO. C20123544
DATE: January 28, 2013

JEAN CHANG
Plaintiff

VS.

LAURENCE LYNN GILLARD, DTLI LLC,
and RYDER TRUCK RENTAL LT
Defendants

NOTICE

DIVISION 3--JURY TRIAL

IT IS ORDERED setting a **Jury Trial** on **Tuesday, February 04, 2014**, at **9:00 AM**, for **4 Days**.

IT IS FURTHER ORDERED setting a **Status Conference** on **Monday, December 02, 2013**, on **9:00 AM**.

IT IS FURTHER ORDERED:

(1) All discovery is to be completed not later than 60 days prior to trial.

(2) Final disclosures are to be made not later than 60 days prior to trial.

(3) All dispositive motions shall be filed not later that 90 days prior to trial.

(4) Any Motion challenging the admissibility of an expert's opinion, pursuant to A.R.S. §12-2203, shall be filed not later than 90 days before trial.

(5) All Motions in Limine shall be filed not later than 30 days prior to trial; responses to Motions in Limine shall be filed not later than 20 days prior to trial; no replies are to be filed.

(6) If there is a settlement or the case is otherwise resolved, counsel will immediately advise the Court. One day's jury fees will be assessed unless the Court is notified of the settlement before 12:00 noon on the judicial day before trial.

(7) Pursuant to Pima County Local Rules of Practice, Rule 3.5, the Court will not give out hearing dates over the telephone for motions, other than on an emergency basis. Hearing dates must be obtained by bringing the motion and separate notice of hearing, together with appropriate copies, to this Division for scheduling. Pursuant to Rule 3.5(b) of Pima County Rules, any motions for which hearing dates are not requested will be decided without oral argument, unless the other party(ies) request(s) a hearing.

Mary Ann Ritz
Judicial Administrative Assistant

(8) A joint pretrial statement, compliant with Arizona Rules of Civil Procedure Rule 16(d), shall be filed, with a copy to this Division, not less than twenty (20) days prior to trial; failure to do so will cause assignment of this case to the Inactive Calendar and its dismissal in 60 days without further notice. Failure in good faith to prepare or assist in the preparation of the joint pretrial statement shall subject offending counsel to the sanctions set forth in Arizona Rules of Civil Procedure Rule 16(f).

(9) As a general rule, if an objection of non-disclosure is made at trial, the burden shall be on the party offering the particular line of testimony, exhibit or the like, to show that **written notice was timely given** (at least 60 days prior to trial) of the testimony/document in dispute. Counsel are advised to have all disclosure statements, correspondence or other written documents establishing notice, available in the courtroom, at trial. A party's failure to produce such written evidence, immediately after an objection of non-disclosure is made, will generally result in the exclusion of that evidence.

(10) In addition to the requirement of the rule [Arizona Rules of Civil Procedure Rule 16(d)], the parties shall submit to the trial judge twenty (20) days prior to the trial, one copy of each deposition transcript. On that copy, each party's offered testimony shall be highlighted in separate colors (e.g., yellow/Plaintiffs, blue/Defendants). It is the obligation of the counsel to arrange a hearing to obtain rulings on objections prior to trial. This should be, at the time of hearing on Motions in Limine and not later than one week prior to trial. Failure to do so will result in either waiver of objections or rejection of offered testimony. The Court cautions counsel regarding over designation of transcript testimony. Further, summaries are an effective means of giving information to the jury. This Court may require, at the request of any party, a deposition summary and will consider sanctions for unreasonable objections.

(11) The Friday before the first day of jury trial, counsel shall submit to the trial judge an original and one copy of all instructions, forms of verdict; a joint draft of preliminary instructions; and interrogatories which counsel intend to request the Court submit to the jury, if any, and counsel's suggestions for questions on Voir Dire.

(12) During the week before trial, the trial lawyers shall make an appointment for themselves or their knowledgeable assistants to meet with the clerk of this Division or the Second Floor Clerk's Office with all exhibits. Please advise the clerk, which exhibits may be marked directly into evidence. Trial counsel shall also provide to the Judge a set of the paper exhibits.

(13) The Court Sua Sponte is setting a Comprehensive Pretrial Conference pursuant to the Arizona Rules of Civil Procedure, Rule 16 for **Tuesday, February 19, 2013,** at **9:30 AM**. Prior to the comprehensive pretrial conference, the counsel for the parties shall meet and address the following items. Before the conference, counsel shall submit 5 days before the conference a written memorandum outlining their agreements or disagreements on these areas.

(A) Schedule for disclosure of expert witnesses.

(B) Schedule for disclosure of lay witnesses.

Mary Ann Ritz
Judicial Administrative Assistant

(C) Determine whether additional discovery requests are necessary beyond that which is provided in the Rules.

(D) Resolve any discovery disputes that exist at this time.

(E) Determine if the case should be submitted to some form of alternative dispute resolution forum or settlement conference and, if so, when that should occur.

(F) Determine any other areas that need to be addressed.

(14) The purpose of the Mandatory Status Conference is to have counsel confer with the Court approximately 60 days prior to trial to resolve any discovery matters or other matters relevant to the trial of the case and to explore settlement options.

(15) Requests for Continuance of the trial date will be considered in light of the Court's policy on trial continuance. Copy available upon request.

cc: Hon. Kenneth Lee
John F. Kelly, Esq.
Louis Hollingsworth, Esq.
Marshall Humphrey, Esq.
Michael F. Kelly, Esq.

Mary Ann Ritz
Judicial Administrative Assistant

Attachment C

FILED
PATRICIA NOLAND
CLERK, SUPERIOR COURT
2/21/2013 2:28:12 PM
By: C. Holden

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. KENNETH LEE

CASE NO. C20123544

COURT REPORTER: Digitally Recorded
Courtroom - 483

DATE: February 19, 2013

JEAN CHANG
Plaintiff

Michael F. Kelly, Esq. counsel for Plaintiff

VS.

LAURENCE LYNN GILLARD,
DTLI, LLC, and
RYDER TRUCK RENTAL, LT
Defendants

Ryan Scott Andrus, Esq. for Marshall Humphrey, Esq. counsel for Defendants

MINUTE ENTRY

COMPREHENSIVE PRETRIAL CONFERENCE

No parties are present.

THE COURT NOTES that it has received and reviewed the Joint Pre-Trial Conference Memorandum and adopts the dates set forth therein.

Counsel make statements to the Court.

IT IS ORDERED setting the following hearing dates and deadlines:

TYPE OF HEARING/EVENT	HEARING DATE/EVENT DEADLINE
Jury Trial	February 04, 2014, at 9:00 AM. Estimated time for trial is four (4) days is AFFIRMED
Status Conference	December 02, 2013, at 9:00 AM is AFFIRMED
Disclosure of Plaintiff's Expert Witnesses and their opinions	June 21, 2013
Disclosure of Defendant's Expert Witnesses and their opinions	September 1, 2013
Disclosure of Rebuttal Experts and their opinions	October 1, 2013
Disclosure of Non-Expert Witnesses	120 days prior to trial
Dispositive Motions	90 days prior to trial
Motions pursuant to A.R.S. 12-2203 or Evidence Rule 702	90 days prior to trial

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Disclosure	60 days prior to trial
Discovery	60 days prior to trial
Motions *in Limine*	30 days prior to trial
Responses to Motions *in Limine*	20 days prior to trial
Joint Pretrial Statement	20 days prior to trial
Proposed *Voir Dire* & Jury Instructions	Friday prior to trial

Counsel advise the Court that there are no disclosure issues to be addressed at this time.

cc: Hon. Kenneth Lee
Marshall Humphrey, Esq.
Michael F. Kelly, Esq.

C. Holden
Deputy Clerk