

FILED



1:10 pm, 8/4/23

Margaret Botkins
Clerk of Court

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF WYOMING

ANITA C. DESELMS, et al.,

Plaintiffs,

vs.

OCCIDENTAL PETROLEUM
 CORPORATION, et al.,

Defendants.

Case No. 19-CV-243-NDF

SCHEDULING ORDER

On August 2, 2023, the Honorable Nancy D. Freudenthal held a scheduling conference. Counsel participating were Thomas Long, J. N. Murdock, Robert Schuster, and Aaron Lyttle for Plaintiffs and Timothy Stubson, Barrett Reasoner, Ross MacDonald, and Mark Dore for Defendants.

Accordingly, the schedule is set to the following:

Event	Deadline
Pl. expert disclosure supplement	9/15/2023
Def. expert disclosure supplement	10/20/2023
Telephone Status Conference	11/16/2023 at 1:30 p.m.
Fact discovery cutoff	11/21/2023
Filing dispositive motions and Daubert challenges	12/19/2023
Dispositive motion responses	1/23/2024
Dispositive motion hearing	3/5/2024 at 9:00 a.m.
Exchange of Initial Witness and Exhibit Lists	3/26/2024
Exchange of Final Witness and Exhibit Lists	4/23/2024
Motions in Limine	4/30/2024
Oppositions to Motions in Limine	5/14/2024
Final Pre-Trial Order	5/21/2024
Final Pretrial Conference	6/4/2024 at 1:30 p.m.
Service of Initial Deposition Designations	6/11/2024

Service of Objections and Counter-Designations to Initial Deposition Designations	6/25/2024
Filing Joint Jury Instructions and Special Verdict Form with Court	6/25/2024
Submission to Court of Any Disputes Over Deposition Designations	7/1/2024
Trial (jury, 3 weeks)	8/12/2024 at 8:30 a.m.

If any party seeks to amend their pleading or add parties, the motion will be subject to Rule 16(b)(4)'s good cause standard. If the Court holds a hearing on dispositive motions, reply briefs will not be permitted.

Any extensions of the schedule shall require the Court's approval and good cause. Fed. R. Civ. P. 16(b)(4). Barring unforeseen circumstances, the Court holds the final pretrial conference and trial dates firm.

Counsel are reminded to review and follow the Court's current Local Rules available on the District of Wyoming's website.

Fact Discovery Cutoff Date — November 21, 2023

All written discovery requests must be served upon and received by opposing counsel on or before the discovery cutoff date. All discovery depositions must be completed by the discovery cutoff. Trial depositions – *i.e.*, depositions that are not for discovery but only to preserve testimony for trial; *see Kowalsky v. Dakota, Minn. & E. Rr. Corp.*, No. 07-cv-292-D, 2009 WL 10692837 (D. Wyo. Oct. 15, 2009) (Beaman, M.J.) – may be taken after the discovery cutoff, subject to the deadlines below.

Expert Witness Supplemental Designations —

Plaintiff's Designation Deadline — September 15, 2023

Defendant's Designation Deadline — October 20, 2023

In accordance with Fed. R. Civ. P. 26(a)(2) and U.S.D.C.L.R. 26.1(e), the parties shall designate expert witnesses, including a complete summary of the testimony expected from each expert by the respective deadlines above. These summaries shall include a comprehensive statement of the expert's opinions and the basis for the opinions. *See Smith v. Ford Motor Co.*, 626 F.2d 784 (10th Cir. 1980). **The parties' expert reports shall be from the same experts offered in relation to the class certification phase of the case, and the reports filed shall be supplemental and substantially similar to the reports filed in relation to that phase of the case.** The parties are each limited to one testifying expert witness for each field of expertise, absent a showing that complex issues necessitate expert witnesses with narrow, specialized areas of expertise within a larger general field. **THE PARTIES SHALL FILE THEIR EXPERT DESIGNATIONS WITH THE COURT.**

In cases where treating medical or mental health providers, including vocational rehabilitation specialists, may or will be called to testify in part or in full as an expert witness, **the party calling the medical or mental health providers shall designate them as expert witnesses.**

Parties may depose an opposing party's experts after the discovery cutoff date but must complete the depositions at least **fourteen (14) days prior to the final pretrial conference.**

In any case in which a party (here assumed to be the plaintiff, but it could be any party) satisfies the criteria for a physical or mental examination under Federal Rule of Civil Procedure 35, the Defendant(s) may require Plaintiff to submit to physical and psychological examinations by experts chosen by Defendant(s) any time up to **five full weeks prior to trial.** Defendant(s) shall designate said expert witnesses no later than one week after the examination. Plaintiff may depose the examining expert witnesses any time during the last **four weeks prior to trial.** If Defendant(s) conduct an examination earlier than five weeks prior to trial, Defendant(s) must

designate the opinions of the experts no later than **twenty (20) days** following the examination. Plaintiff may depose said expert any time prior to trial.

Non-Dispositive Motions —

Non-dispositive motions are generally referred to the Magistrate Judge. The parties shall comply with U.S.D.C.L.R. 7.1 and/or 37.1 prior to filing any non-dispositive motions. All proposed orders regarding non-dispositive civil motions shall be emailed to the referred Magistrate Judge's Chambers in Word.

Telephone Status Conference – November 16, 2023 at 1:30 p.m.

At this time, the parties do believe there will be dispositive motions. A telephone status conference is set to discuss the status of the claims, whether the parties anticipate filing dispositive motions, if such motions can be obviated by agreement or stipulation, and the status of settlement efforts. Counsel should appear by telephone by calling into the following conference line: (307) 735-3644; access code 547991460#.

Dispositive Motions and Daubert Challenges — Hearing – March 5, 2024 at 9:00 a.m.

Dispositive Motion Deadline: December 19, 2023; Response: January 23, 2024

A dispositive motion hearing is set before the Honorable Nancy D. Freudenthal. The parties shall appear at the U.S. Courthouse, 2120 Capitol Avenue, Courtroom No. 1, Cheyenne, Wyoming. All requirements of Rule 56 and U.S.D.C.L.R. 7.1 for dispositive motions shall apply. All briefs, affidavits and other materials in support of the party's motion or opposition are due by the above filing deadlines. All filings for dispositive motions, responses (and replies, if allowed) shall be electronically searchable, except audio files, video files, and documents not prepared in Word for which making the file searchable would exceed the file size limit in CM/ECF. Parties relying on deposition testimony for their motions or oppositions shall also email the e-transcript

(or fully searchable pdf) version of the deposition(s) to Chambers (wyojudgndf@wyd.uscourts.gov). If a hearing is set, the Court does not allow reply briefs. If the dispositive motions or briefs thereon are filed earlier than the above scheduled dates, responses and replies shall be filed in the time periods provided in U.S.D.C.L.R. 7.1. If no dispositive motions are timely filed, the hearing will be vacated. **Each party – and parties represented by the same counsel – is limited to filing no more than one motion for summary judgment. Parties wishing to file more than one summary judgment motion must first obtain the Court’s leave.**

Final Pretrial Conference — June 4, 2024 at 1:30 p.m.

A final pretrial conference is set in Chambers, 2120 Capitol Avenue, Room 2242, Cheyenne, Wyoming 82001. Counsel shall appear in person.

Joint Proposed Final Pretrial Order – May 21, 2024. Counsel for represented parties must confer to prepare and sign a joint proposed final pretrial order in the format provided on Judge Freudenthal’s webpage by **May 21, 2024**. All represented parties are jointly responsible for the preparation of the proposed Joint Final Pretrial Order, but **unless counsel otherwise agree, Plaintiff’s counsel shall take the lead in drafting the joint final pretrial order**. The proposed order must be emailed in Word to Chambers.

Exchange of Initial Witness and Exhibit Lists – March 26, 2024. By **March 26, 2024**, the parties shall exchange (but not file) initial witness and exhibit lists.

Exchange of Final Witness and Exhibit Lists – April 23, 2024. By **April 23, 2024**, the parties shall exchange (but not file) final witness and exhibit lists. The parties shall attach their exhibit lists (including objections, if any) to the proposed final pretrial order. The parties shall include their witness lists (including objections, if any) in the proposed order. The parties are not

required to list rebuttal witnesses or impeachment exhibits. The parties shall separately identify will call and may call witnesses and shall state whether each witness will testify in person, by deposition, or if warranted under Federal Rule of Civil Procedure 43(a), by videoconference. If either side wishes to present witnesses by videoconference, counsel shall note any objections in the proposed order.

Exhibit List Format. Any exhibit not listed on a party's exhibit list is subject to exclusion at trial. The Court may deem any objection not stated on the exhibit list as waived. The parties shall use the following format.

Plaintiff(s) Exhibits	Objections (Cite Fed. R. Evid.)	Category A, B, C	Offered	Admit/Not Admitted (A) - (NA)*

* This column is for the judge's use at trial. The parties should not enter anything in this column.

The parties shall use the following categories for objections to exhibits:

A. **Category A.** These exhibits are admissible upon motion of any party and will be available for use by any party at any stage of the proceedings without further proof or objection.

B. **Category B.** Objections on grounds other than foundation, identification, or authenticity. This category is for objections such as hearsay or relevance.

C. **Category C.** Objections on only the grounds of foundation, identification, or authenticity.

Objections to Authenticity/Requests for Authentication. Any counsel requiring authentication of an exhibit must notify the offering counsel in writing **within five (5) business**

days after the exhibit is made available for examination. Failure to do so is an admission of authenticity.

Format for Marking Exhibits. Exhibits must be prepared for the final pretrial conference and for trial as follows:

A. Marking of Exhibits: All exhibits must be listed and marked by the parties before trial, including the case number. The plaintiff(s) shall use numerals; defendant(s) shall use letters. For example, “Civil No. _____, Plaintiff’s Exhibit 1;” “Civil No. _____, Defendant’s Exhibit A.” If there are multiple parties, the surname or abbreviated name of the party shall precede the word exhibit, *e.g.*, “Defendant Jones Exhibit A,” “Defendant Smith Exhibit A.”

B. Elimination of Duplicates. The parties should eliminate duplicates. If more than one party will offer the same exhibit, it should be listed as a joint exhibit on Plaintiff(s)’ list.

C. Copies for the Court. There is no need to provide paper copies of exhibits to the Court. The originals of any exhibits not submitted through JERS (see below) shall be provided to the Deputy Clerk as they are introduced and admitted at trial.

Motions in Limine – April 30, 2024. Motions in limine relating to the exclusion of evidence shall be filed no later than **April 30, 2024**. Responses shall be filed **by May 14, 2024**. No replies are permitted. Counsel shall confer before filing motions in limine and shall certify their good faith efforts to confer in the motion. Each side shall file no more than **one** motion in limine to brief all evidentiary issues they wish to raise before trial. Please do not file a motion in limine regarding generic issues covered by the rules of evidence or by Judge Freudenthal’s *Final Pretrial and Trial Pointers*, available on the judge’s webpage. The Court expects counsel to know and follow the applicable rules without needing a court order to do so. Motions in limine are also not a second chance to raise discovery issues, dispositive arguments, or *Daubert* issues. Allegations

that expert designations are faulty or fail to satisfy *Daubert* and its progeny shall be brought by motion – certifying good faith efforts to confer – in a timely fashion. Do not wait and file such objections in the form of a motion in limine.

Jury Trial — August 12, 2024 at 8:30 a.m.

A jury trial of three weeks is set before Judge Freudenthal at the U.S. Courthouse, 2120 Capitol Avenue, Courtroom 1, Cheyenne, Wyoming 82001. This case is stacked first on the civil docket. For the first day of trial, counsel shall report to Chambers at 8:30 a.m.

Jury Evidence Recording System (JERS). The Court has implemented a system for electronic submission of exhibits to the jury, known as JERS. The system allows jurors to review evidence (documentary, photo, or video/audio exhibits) on a large LED screen during deliberations. JERS is not used for presentation of evidence during trial; counsel remain responsible for determining the format in which they will present evidence during trial. Counsel shall provide their trial exhibits in electronic format on a USB drive, DVD, or CD to the office of the Clerk of Court no later than 8:30 a.m. five (5) days prior to trial. Counsel shall provide all electronic evidence in the following formats:

- Document and Photographs: .pdf, .jpg, .bmp, .tif, .gif
- Video and Audio Recordings: .avi, .wmv, .mpg, .mp3, .mp4, .wma, .wav

Individual files should not exceed 500MB. If possible, exhibits approaching or exceeding the size limit should be separated into multiple files. Parties may obtain additional information regarding the submission of electronic exhibits by contacting the Clerk’s Office at (307) 433-2120.

Proposed Voir Dire, Joint Jury Instructions and Joint Special Verdict Forms – June 25, 2024. The parties shall file (in pdf) and email (in Word) to Chambers their proposed voir dire questions, *joint jury instructions* and *joint special verdict form* by **June 25, 2024**. In order to

produce the joint instructions, the parties shall meet and confer sufficiently in advance of the required submission date. Counsel need to submit only proposed substantive jury instructions; the Court has its own general instructions, which can be found on the website under “Forms.”

Unless counsel otherwise agree, Plaintiff’s counsel shall take the lead in drafting the jury instructions. Jury instructions must include citations of authority and must be formatted as a single document in Word. The instructions shall be in the sequence in which the parties wish to have them read. If the parties cannot reach agreement, then instructions shall be submitted in three (3) sets as follows:

1. The agreed-upon instructions.
2. Those instructions propounded by Plaintiff, opposed by Defendant.
3. Those instructions propounded by Defendant, opposed by Plaintiff.

Disputed instructions shall include the objections and the parties’ differing versions thereof, or a statement as to why the instruction should not be included.

Along with the jury instructions, the parties shall file a joint statement setting forth briefly and simply in a noncontentious manner the background of the case and the claims and defenses asserted. The parties should make every effort to agree upon the statement. If the parties cannot agree, they should use the following format: “Plaintiff contends . . . ; Defendant contends”

Deposition Designations. The parties shall serve their initial deposition designations by **June 11, 2024**. Objections and counter-designations to initial deposition designations shall be filed by **June 25, 2024**. The parties shall submit to the Court any disputes over deposition designations by **July 1, 2024**.

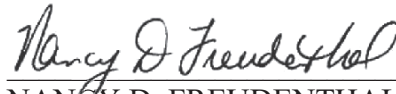
Settlement Conference—

The parties should contact either of the District's full-time Magistrate Judges if they are interested in court-assisted settlement or mediation.

Modifications of Filing Deadlines and the Schedule —

The Court must approve any stipulated extensions of time for filing deadlines. The schedule established in this Order may be modified only for good cause and with the Court's consent. Barring unforeseen circumstances, the Court holds the final pretrial conference and trial dates firm.

Dated this 4th day of August, 2023.



NANCY D. FREUDENTHAL
UNITED STATES SENIOR DISTRICT JUDGE