



## **AMC 2025**

### **Session 3**

# **Handling Complex Civil & Commercial Cases: Best Practices for Judges & Lawyers – Session One**

**Presented by:**

***Moderator:***

*Hon. Lisa K. Stark, Wisconsin Court of Appeals District III, Wausau*

***Panelists:***

*Hon. Michael J. Aprahamian, Waukesha County Circuit Court, Waukesha*

*Hon. Eugene A. Gasiorkiewicz, Racine County Circuit Court, Racine*

*Terry E. Johnson, von Briesen & Roper, S.C., Milwaukee*

*Matthew W. O'Neill, Fox O'Neill & Shannon, S.C., Milwaukee*

## About the Presenters...

**Hon. Michael J. Aprahamian** is a partner in the Milwaukee office of Foley & Lardner LLP, where he practices commercial litigation and serves as the office's Professional Responsibility Partner addressing ethics and responsibility issues. He received his B.A., with honors, from the University of Wisconsin-Madison in 1989 and his J.D. from Yale Law School in 1992. From 1992-93, he clerked for the Honorable Richard D. Cudahy, United States Court of Appeals for the Seventh Circuit. Mr. Aprahamian is a member of the State Bar of Wisconsin, the American Bar Association, the Milwaukee County Bar Association, and the Waukesha County Bar Association, participating in various sections and committees in those organizations relating to litigation, judicial polling, court of appeals, jury enhancement, and judicial selection.

**Hon. Eugene A. Gasiorkiewicz** has served as Racine County Circuit Court judge since August, 2010, presiding over felony and civil cases. He also serves as a Commercial Court judge. Prior to his election, he was in private practice for over 35 years, focusing on civil litigation. He was a Civil Trial Specialist, certified by the National Board of Trial Advocacy. He was past president and member of the Racine Bar Association. He served on the board of governors and executive committee of the State Bar of Wisconsin. He was a prosecutor and a hearing examiner for the Office of Lawyer Regulation. From 2014 until 2018, he was a Committee Member for the Wisconsin Civil Judicial Benchbook Committee. From 2018 until 2022, he served as the Chair of the Wisconsin Civil Judicial Benchbook Committee. He serves on the Civil Jury Instruction Committee. He is a circuit court representative on the Wisconsin Judicial Council and its Evidence & Civil Procedure Committee. He also serves on the Judicial Education Committee. He is a judicial commentary editor of the State Bar of Wisconsin's Wisconsin Trial Practice publication. He continues to frequently lecture in the areas of trial practice, expert scientific testimony, procedure and evidence. He was continuously listed in Wisconsin Super Lawyers until his election in 2010. He also holds an AV Preeminent rating from Martindale-Hubbell. He received his A.B. from Regis College in 1971 and his J.D. from the University of Mississippi Law School in 1974. He served as law clerk to the Mississippi Supreme Court Justice L.A. Smith Jr 1974-1975. He was named Wisconsin Trial Judge of the Year (2024) by the Wisconsin Chapter of the American Board of Trial Advocates.

**Terry Johnson** is a Shareholder and Chair of the firm's Professional Liability Section. Terry has tried hundreds of cases to a verdict in matters ranging from complex legal malpractice cases to major construction defect disputes to major personal injury actions. He has had an impact in the development of Wisconsin law through appellate work in a wide spectrum of areas. Representative matters and examples of reported appellate decisions are listed below. Terry was asked to serve by the Chief Justice of the Wisconsin Supreme Court on the Office of Lawyer Regulation ("OLR") Procedure Review Committee. The recommendations of that Committee were adopted in July 2020. Terry participated in a subsequent training program on the new procedures for referees. Terry has also repeatedly participated in training sessions for judges on civil procedure issues at the annual Wisconsin Office of Judicial Education's Civil Law Seminar.

**Matthew W. O'Neill** is a shareholder at Fox, O'Neill & Shannon, S.C. His practice includes commercial litigation/arbitration, employment law, election and campaign finance law, and appeals. Matt graduated from Marquette Law School in 1991 and clerked for Wisconsin Supreme Court Chief Justice Nathan S. Heffernan. Matt is a past President of the Eastern District of Wisconsin Bar Association and serves on the Board of Legal Action of Wisconsin. Out in the wild, Matt enjoys his dogs, crackling fires with the family, running in costumes, cooking, and solving puzzles.

**Hon. Lisa Stark** serves as a judge on the District 3 Court of Appeals. She was elected to the Court of Appeals in 2013 and re-elected in 2019 and 2025. Stark is the presiding judge in District 3, and previously served as a Deputy Chief Judge for the Court of Appeals for six years. Stark served as a Circuit Court Judge for Eau Claire County from 2000 to 2013. Prior to taking the bench, she was a partner in the Eau Claire law firm of Misfeldt, Stark, Richie, Wickstrom & Wachs concentrating primarily in the areas of civil and business litigation, insurance defense, and family law. Judge Stark received her bachelor's degree from the University of Wisconsin–Eau Claire in 1979 and her law degree from the University of Wisconsin Law School in 1982. Prior to taking the bench, she served as a supplemental Eau Claire County Court Commissioner for eight years, and also served nine years on the State Bar of Wisconsin Standing Committee on Professional Ethics. Stark was a member of the Civil Jury Instruction Committee from 2001 to 2011, and continues to serve on that committee in an emeritus capacity. She has spoken at many judicial and legal education seminars statewide and nationally. She served as an Associate Dean of the Wisconsin Judicial College from 2005 to 2010, and served as Dean of the college from 2010 until she retired from that position in 2024. Stark served on the Legislative Study Committee on Reducing Recidivism and Removing Impediments to Ex-Offender Employment in 2018 and she was previously appointed in 2009 to serve on the Justice Reinvestment Initiative; both subcommittees were created by the state legislature. Judge Stark serves on a number of other boards and committees including the Effective Justice Strategy Committee. Stark is a long time proponent of integrating evidence-based decision making in the justice system, has spoken statewide on that topic on many occasions, and helped create Wisconsin drug court standards and performance measures. Stark helped create a restorative justice program which has operated in Eau Claire County since 2002, helped initiate and presided over a drug court in Eau Claire County for nine years, and worked with Eau Claire County to obtain and administer a national grant from BJA to implement EBDM practices county-wide. Stark has served on a number of professional, community and non-profit board of directors in Eau Claire, including the London Square Bank Board, board member and Chairman of the Eau Claire Area Chamber of Commerce, the United Way, YMCA and various City of Eau Claire committees. Judge Stark lives in Eau Claire with her husband, Thomas Misfeldt. She has one son, three step-sons and three grandchildren. Contact Information: [lisa.stark@wicourts.gov](mailto:lisa.stark@wicourts.gov)

## **RESOURCES FOR HANDLING COMPLEX CIVIL AND COMMERCIAL LITIGATION**

ABA Business Court Benchbook

ABA The Business Lawyer publication

Economic Analysis for Lawyers, 4<sup>th</sup> Ed. Henry Butler, Joanna Shepherd and James C. Cooper

State Bar of Wisconsin Brown books

Waukesha County Local Rules

Wisconsin Civil Jury Instructions and case notes

Wisconsin Fair Dealership Law

Wisconsin Judicial Benchbook

Plaintiff: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 -VS-  
 Defendant: \_\_\_\_\_  
 Address: \_\_\_\_\_

**Management Report by  
 Parties and Proposed  
 Scheduling for Case**

Case No. \_\_\_\_\_  
 Case Code \_\_\_\_\_

1. **Meeting of parties.**

Pursuant to the Court's Standing Order for cases in the Commercial Docket (and Scheduling Order), a meeting was held on [Date] \_\_\_\_\_, 20\_\_\_\_ at [Time] \_\_\_\_\_ and was attended by:

For plaintiff [Name] \_\_\_\_\_.  
 For defendant [Name] \_\_\_\_\_.

2. **Nature of case; summary of dispute.**

*[No more than 250 words for each litigant, or 500 words if a joint description.]*

3. **Status of pleadings.**

*[Describe status of pleadings, proposed amendments, service of process, addition of new parties, any initial pleading motions.]*

4. **Discovery Plan.**

The parties jointly propose to the Court the following discovery plan:

*[Use separate paragraphs or subparagraphs as necessary if parties disagree.]*

Discovery will be needed on the following subjects:

*[Brief description of subjects on which discovery will be needed.]*

All discovery commenced in time to be completed by [Date] \_\_\_\_\_.

Discovery on issue for early discovery to be completed by [Date] \_\_\_\_\_.

Dates for preliminary disclosure of fact witness:

From plaintiff: \_\_\_\_\_

From defendant: \_\_\_\_\_

Maximum of \_\_\_\_\_ interrogatories by each party to any other party. *[Responses due \_\_\_\_\_ days after service].*

Maximum of \_\_\_\_\_ requests for admission by each party to any other party. *[Responses due \_\_\_\_\_ days after service.]*

Maximum of \_\_\_\_\_ depositions by plaintiff and \_\_\_\_\_ by defendant.

Each deposition *[other than of \_\_\_\_\_]* limited to maximum of \_\_\_\_\_ hours unless extended by agreement of parties.

Disclosure and reports from retained experts due:

From plaintiff: \_\_\_\_\_

From defendant: \_\_\_\_\_

Supplementations under §804.01(5), Wis. Stats.

*[List of dates or intervals]:* \_\_\_\_\_

5. **Preservation of Discoverable Information:**

The parties agree to handle the preservation of discoverable information in the following way:

6. **Electronically Stored Information:**

The parties agree to handle electronically stored information in the following way:

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7. **Other Items:**

*[Use separate paragraphs or subparagraphs as necessary if parties disagree.]*

Plaintiff/Defendant requests a protective order on materials and information provided in discovery.

The parties ☐ request ☐ do not request a conference with the Court before entry of the scheduling order.

The parties request a pretrial conference in [Month and Year] \_\_\_\_\_.

Plaintiff should be allowed until [Date] \_\_\_\_\_ to join additional parties and until [Date] \_\_\_\_\_ to amend the pleadings.

Defendant \_\_\_\_\_ should be allowed until [Date] \_\_\_\_\_ to join additional parties and until [Date] \_\_\_\_\_ to amend the pleadings.

All potentially dispositive motions should be filed by [Date] \_\_\_\_\_.

Settlement is

☐ cannot be evaluated prior to [Date] \_\_\_\_\_.

☐ the parties agree to use \_\_\_\_\_ as a mediator in this matter. If there is no agreed mediator, then the parties agree to this process to select a mediator: \_\_\_\_\_.

Final lists of witnesses and exhibits should be due from plaintiff by [Date] \_\_\_\_\_ from defendant by [Date] \_\_\_\_\_.

Parties should have \_\_\_\_\_ days after service of final lists of witnesses and exhibits to list objections.

The case should be ready for trial by [Date] \_\_\_\_\_ and at this time is expected to take approximately [Length of time] \_\_\_\_\_.

**BY THE PARTIES:**

_____ Plaintiff/Defendant	
_____ Name Printed or Typed	
_____ Address	
_____ Email Address	_____ Telephone Number
_____ Date	_____ State Bar No. (if any)

_____ Plaintiff/Defendant	
_____ Name Printed or Typed	
_____ Address	
_____ Email Address	_____ Telephone Number
_____ Date	_____ State Bar No. (if any)

**DISTRIBUTION:**

1. Court
2. Plaintiff
3. Defendant
4. Other: \_\_\_\_\_

STATE OF WISCONSIN

CIRCUIT COURT

WAUKESHA COUNTY

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\_\_\_\_\_,

Plaintiff,

v.

Case No. \_\_\_\_\_

\_\_\_\_\_,

Defendant,

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**ORDER OF REFERENCE PURSUANT TO WIS. STAT. §§ 804.01(2)(e)1r.f. and 805.06**

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¶1. In the light of the complex and contentious nature of the dispute and the need potentially to protect confidential information of third parties, the Court concludes, in its discretion, that the appointment of a discovery referee will expedite the case, protect confidential information, facilitate the discovery of information, and preserve judicial resources.

¶2. Accordingly, pursuant to WIS. STAT. §§ 804.01(2)(e)1r.f. and 805.06, the Court appoints the [referee] as Referee, effective as of the date of this order, to assist the Court in coordinating discovery, including the scope of discovery and objections to discovery. This includes addressing any motions to compel discovery and for protective order, as well as ruling on any objections to the scope and nature of discovery. The Court reserves the right, at the request of a party, the Referee, or on its own initiative, to modify or supplement the tasks comprising the reference.

¶3. The parties must cooperate with [referee] as Referee in developing future scheduling recommendations and orders for this case.

¶4. The Referee has the full authority of the Court in coordinating and establishing all procedures relating to discovery. All discovery motions filed in this case will initially be heard by the Referee, who will make a recommended ruling to the Court on all motions. The recommendations of the Referee are subject to *de novo* review by this Court as described below.

¶5. Except as ordered by the Referee, the filing, service, and notice of motions are governed by the Wisconsin Rules of Civil Procedure and the Local Rules of this Court.

¶6. The original of every document submitted to the Referee must be filed with the Court. The Referee must file with the Court the original of any recommendation.

¶7. If the Referee determines that a specific issue presented by the parties for the Court's decision is of such fundamental importance to the progress or outcome of the case that effective case management would not be furthered by having the Referee issue a recommendation, the Referee may certify that issue to the Court. As the final arbiter of case management, the Court may accept the certification or refer the matter back to the Referee for a recommendation. If the Court does not accept the certification, the Referee will proceed to make a recommendation in accordance with the terms of this order.

¶8. Within seven (7) calendar days of the issuance of a recommendation, either party may file with the Court an objection to the recommendation. Objections not filed within this time period are forfeited.

¶9. The Court's review of the Referee's recommendations will be based on, and limited by, the materials and information comprising the record before the Referee. No additional submissions will be permitted unless good cause and exceptional circumstances are



demonstrated. The Court will review *de novo* the recommendations of the Referee. Absent objection, any recommendation of the Referee may be approved immediately and without a hearing.

¶10. All recommendations approved by the Court are appealable after the final disposition of this case as if they were made by this Court. A party need not object to a recommendation of the Referee in order to preserve the issue for appeal, either on an interlocutory basis or as an appeal of a final order.

¶11. The Referee must be reasonably available to hear matters promptly and at such times as may be convenient, at the discretion of the Referee.

¶12. The Referee has the discretion to hear argument on a motion or dispute in person, by video conference, or by telephone.

¶13. Hearings will be held at places directed by the Referee. The Referee may arrange for a court reporter to be present at hearings and will provide to the parties or their counsel a copy of the transcript of the hearing if requested. The cost of the court reporter will be borne jointly by the parties, subject to the Referee's discretion to allocate the costs between the parties.

¶14. All decisions of the Referee must be accompanied by supporting reasons and must be served upon the parties at the same time as it is filed with the Court.

¶15. Except for good cause shown or by stipulation of the parties to a dispute, the Referee will issue a decision on all disputed matters within ten (10) calendar days of the hearing of any motion, or within ten (10) calendar days of the conclusion of briefing if no oral argument is scheduled.

¶16. The Referee will be compensated at the rate of \$\_\_\_\_.00 per hour, and will be reimbursed for all reasonable and necessary expenses. The fees and expenses of the Referee will

be allocated equally between the parties, subject to a motion to reallocate the fees and costs, which the Referee will address in the first instance.

¶17. The Referee must submit itemized statements to the parties on a monthly basis.

¶18. All counsel of record promptly must send their telephone, address, and email address to [referee] at [email].

SO ORDERED.

Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_.

BY THE COURT:

/s/ Michael J. Aprahamian  
Circuit Court Judge

**Wis. Stat. 804.05(2)(e).** A party may in the notice name as the deponent a public or private corporation or a limited liability company or a partnership or an association or a governmental agency or a state officer in an action arising out of the officer's performance of employment and designate with reasonable particularity the matters on which examination is requested. The organization or state officer so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized by statute or rule.

**Fed. R. Civ. P. 30(b)(6)** *Notice or Subpoena Directed to an Organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination. A subpoena must advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

## **Waukesha County Civil Local Rule 2: Discovery**

### **2.1 Discovery Conference with Mediator**

Except in actions exempted by the Court, the parties must meet with the mediator selected by the parties or identified in the scheduling order at least 90 days after the scheduling order to discuss the case and the possibilities for prompt resolution. The parties and the mediator must (a) discuss discovery to be completed prior to mediation, (b) identify any contemplated motions, particularly those that may impact the scheduling of mediation, and (c) secure a date for mediation on the mediator's calendar.

### **2.2 Form of Response**

An objection or answer to an interrogatory, request to produce a document, or request for admission must reproduce the request to which it refers. Absent good cause or written agreement by the parties, objections not timely made to any discovery request are waived.

### **2.3 Standard Definitions Applicable to All Discovery**

(1) The full text of the definitions set forth in subparagraph (2) is deemed incorporated by reference in all discovery, and may not be varied by litigants, but does not preclude the definition of other terms specific to the particular litigation, the use of abbreviations, or a more narrow definition of a term defined in paragraph (2).

(2) Definitions. The following definitions apply to all discovery:

(a) Communication. The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

(b) Document. The term “document” is defined to be synonymous in meaning and equal in scope of the usage of this term in Wis. Stat. [§804.09\(1\)](#). A draft or non-identical copy is a separate document within the meaning of this term.

(c) To Identify.

(i) With Respect to Persons. When referring to a person, “to identify” means to give, to the extent known, the person’s full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(ii) With Respect to Documents. When referring to documents, “to identify” means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

(d) Person. The term “person” is defined as any natural person or any business, legal, or governmental entity, or association.

## **2.4 Confidentiality of Discovery Materials**

(1) All motions and stipulations requesting a protective order must contain sufficient facts demonstrating good cause. Upon a showing of good cause, the Court may enter a protective order regarding confidentiality of all documents produced in the course of discovery, all answers to interrogatories, all answers to requests for admission, and all deposition testimony. A protective order template is included in the Appendix to these Local Rules.

(2) A party may challenge the designation of confidentiality by motion. The movant must accompany such a motion with the certification required by Civ. L. R. 2.7(1). Absent good cause, the party prevailing on any such motion may recover as motion costs its actual attorney fees and costs attributable to the motion.

(3) At the conclusion of the litigation, all material not received in evidence and treated as confidential under this Rule must be returned to the originating party or, if the parties stipulate, the material may be destroyed.

## **2.5 Limitation on Discovery Requests**

(1) Interrogatories. Except as provided in sub (3), no party may serve more than a total of 25 interrogatories to another party in any case.

(a) The 25 permissible interrogatories may not be expanded by the creative use of sub-parts. Each sub-part of an interrogatory is counted as one interrogatory.

(b) Interrogatories inquiring about the name and location of parties, expert witnesses, and other persons having knowledge of discoverable information, or about the existence, location, or custodian of documents or physical evidence are excluded and not counted toward the limit.

(2) Parties represented by the same attorney or law firm are regarded as one party for purposes of determining compliance with limitations on discovery.

(3) Parties may agree to permit additional discovery beyond that authorized under this rule or the Wisconsin Rules of Civil Procedure. Such agreement must be in writing or on the record and need not be filed with the Court except in support of a motion seeking compliance with the stipulation. After complying with Civ. L. R. 2.7(1), a party may move the Court for permission to serve or pursue additional discovery beyond the limitations of these rules or the Wisconsin Rules of Civil Procedure.

## **2.6 Depositions**

(1) Objections to a deposition notice, including a notice to an organization under Wis. Stat. §804.05(2)(e), must be raised and resolved either by stipulation or protective order prior to the deponent sitting for the deposition. Absent good cause, objections to the notice not resolved prior to the deponent sitting for the deposition are waived.

(2) Objections to questions asked at a deposition must be stated concisely in a non-argumentative and nonsuggestive manner. An objection “to the form of the question,” preserves all objections to the question unless the questioning party asks the objecting party the basis for the objection. An attorney may instruct a deponent not to answer a question only when necessary to preserve a privilege, to enforce a limitation ordered by a court, or to suspend the deposition to present a motion for a protective order under Wis. Stat. §804.01(3).

## **2.7 Discovery Motions**

(1) All motions to compel discovery or for a protective order precluding or limiting discovery must be accompanied by an affidavit by the movant certifying that, after the movant in good faith has conferred or attempted to confer with the opposing party to resolve the discovery dispute without court action, the parties are unable to reach an accord. The affidavit must recite the date and time of the conference or conferences and the names of all parties participating in the conference or conferences.

(2) Absent good cause, a motion to compel discovery must be filed no later than 90 days after the date upon which the discovery response was due (if no discovery response was served) or the date the discovery response was served.

(3) Failure to comply with this rule may result in immediate denial of the motion.

## **2.8 Completion of Discovery**

Unless the Court orders otherwise, all discovery (excluding depositions to preserve testimony for trial) must be completed 20 days before the final pretrial hearing. Completion of discovery means that discovery must be scheduled to allow depositions to be completed, interrogatories and requests for admissions to be answered, and documents to be produced before the deadline and in accordance with the Wisconsin Rules of Civil Procedure. On motion and for good cause, the Court may extend the time during which discovery may occur or may reopen discovery.

PLAINTIFF,

Plaintiff/Counterclaim Defendant,

vs

**SCHEDULING ORDER**

Case No. \_\_\_\_\_

DEFENDANT.

Defendants/Counterclaim Plaintiffs.

The parties held a scheduling conference pursuant to the Court's meet and confer order. \_\_\_\_ appeared on behalf of the Plaintiff and \_\_\_\_ appeared on behalf of Defendant. The parties stipulate to the following deadlines and conditions for the litigation of the case, with each party reserving the right to move to amend this order for good cause or in the interest of justice.

**IT IS ORDERED:**

1. Plaintiff must pay the jury fee or give written notification of non-payment no later than \_\_\_\_\_. Defendant(s) must pay the jury fee or give written notification of non-payment no later than \_\_\_\_\_. The right to a jury trial is waived or otherwise forfeited if the fees are not timely paid. The trial date will be scheduled at the final pretrial conference.

2. Amended pleadings, including the addition of parties, must be accomplished by Plaintiff no later than \_\_\_\_\_ and by Defendant by \_\_\_\_\_. In the event that a party is added and the appropriate fee paid, a copy of this scheduling order along with any additional pleading must be served on the added party(ies).

3. The party bearing the burden of proof on a claim or counterclaim must provide in writing to the court and the opposing parties: (1) the names and addresses of all lay witnesses along with a brief statement of his/her anticipated testimony; and (2) an itemized statement of damages claimed, including, if applicable, any special damage claims and permanency, no later than \_\_\_\_\_. Responsive disclosures must be made no later than \_\_\_\_\_. The party bearing the burden of proof on a claim or counterclaim must serve the names, addresses, and resumes for each expert named, along with a written report specifying all opinions to be offered, by \_\_\_\_\_. All expert disclosures and reports in response to those named above must be named by \_\_\_\_\_. Any rebuttal expert or rebuttal expert opinion must be disclosed no later than \_\_\_\_\_. Witnesses not timely named and described will be precluded from testifying as witnesses at trial, except for good cause shown.

4. Summary judgment and other dispositive pretrial motions must be filed no later than \_\_\_\_\_. Unless otherwise ordered by the Court, responding party has 30 days from service of the movant's motion and supporting documents to serve and file a response brief and supporting documents, or waiver in writing; movant has 14 days from service of a response brief and supporting documents to serve and file a reply brief limited to matters in reply to the response brief. All submissions must comply with Civ. L. Rule 3.3. Parties are encouraged to file a joint scheduling order for the briefing of summary judgment and other significant motions.

5. Any motion pursuant to Wis. Stats. § 901.04 to allow (out of the ordinary experts) or to challenge the admission of expert testimony must be filed by \_\_\_\_\_, unless a stipulation is filed by the parties which resolves such issues. The motion must be accompanied by an offer of proof and a written basis for the requested relief.

6. Discovery must be completed by all parties twenty (20) days prior to the scheduled final pretrial in accordance with Civ. L. Rule 2.8. In the event the trial date is rescheduled or a second final pretrial conference is scheduled, **discovery is not reopened without permission of the Court**. At this time, the parties agree to the provisions in Civ. L. Rule 2.5, but the parties reserve their right to pursue additional discovery pursuant to Civ. L. Rule 2.5(3). Any motion to compel discovery must comply with Civ. L. Rule 2.7. Pursuant to Wis. Stat. § 804.12(1)(c), the Court will award the successful party its expenses, including attorneys fees, incurred relating to the motion,

unless the losing party convinces the Court that an award of expenses would be unjust or inappropriate under Wis. Stat. § 804.12(1)(c).

7. Mediation is ordered by the Court. The Court appoints \_\_\_\_\_ as mediator, but the parties may agree upon a different mediator. Within 90 days from the date of this scheduling order, the parties must participate in a discovery conference with the mediator pursuant to Civ. L. Rule 2.1. The Court expects the parties and the mediator to address the discovery to be completed prior to mediation, to identify any contemplated motions that may impact the scheduling of mediation, and to secure a date for mediation on the mediator's calendar. Fees and expenses of mediation will be divided equally between the parties unless otherwise ordered by the Court. The parties and their attorneys must be personally present for mediation, unless approved by the Court. Each corporate party must be represented by an individual with decision-making authority to negotiate a resolution in this matter, or such person with decision-making authority must be immediately available to the mediator during the mediation. In the event a party appears without full authority to negotiate a resolution, the party may be ordered to pay all costs of the mediation. The ordered mediation must be completed no later than 20 days prior to the final pretrial conference unless approved by the Court.

8. Copies of all documents and evidence to be used at trial must be identified and made available to the opposing party(ies) no later than 48 hours prior to the final pretrial conference. All exhibits must be premarked. Plaintiff is to use exhibit numbers 1-99 and Defendant is to use exhibit numbers 100 – 199, or an agreed upon and consistent protocol to prevent duplicate numbers. Exhibits are to be filed with the Court pursuant to Civ. L. Rule 4.4.

9. A final pretrial conference is set on \_\_\_\_\_ at \_\_\_\_\_ a.m. in Room \_\_\_\_\_. The attorney(s) who will actually try the case must be present. The party must also personally appear unless the attorney has full authority to act for the party. If the party cannot be personally present, the party must be reasonably available by phone. The parties must be prepared to discuss the scheduling of any evidentiary depositions for use at trial, as well as the order of witnesses and the exchange of any final trial exhibits. If any party fails to appear at the final pretrial conference, the Court may enter an order dismissing the case or defaulting the party without further notice.

10. Pretrial Report: Each party must file with the Court a pretrial report no later than seven days prior to the final pretrial conference. The report must be signed by the attorney who will try the case or a party personally if not represented by an attorney. The pretrial report must include the following:

- A. A detailed summary of the facts of the case, issues, theories of liability or defense, and evidentiary issues. The summary should not exceed two pages.
- B. Identification of each trial witness, lay and expert, and a summary of anticipated testimony not exceeding one page per witness.
- C. Exhibit List identifying each exhibit (except those to be used for impeachment only). In addition, each party must identify any objections (and the grounds therefor) to the admissibility of opposition exhibits.
- D. An estimate of the probable length of the trial in half-day increments.
- E. Designation of all depositions or portions thereof to be read into the record at trial as substantive evidence, unless used only for impeachment purposes.
- F. **If a jury trial**, provide: (a) all proposed jury instructions, numbers only unless requesting modified or special instructions; (b) proposed special verdict form and (c) motion(s) in limine. A date to hear the motion(s) in limine will be set at the time of the final pretrial conference. The Court will order the parties to meet and confer to agree upon a special verdict and jury instructions.
- G. **If a court/bench trial**, provide: proposed findings of fact and conclusions of law.
- H. Certification that alternative dispute resolution occurred, including the mediator and the date(s) it occurred.
- I. In addition to completing a report, parties are expected to confer and make a good faith effort to settle the case. Parties are also expected to arrive at stipulations that will save time during the trial. The pretrial report must itemize any stipulations.

11. The parties may stipulate to an extension of time limits in this order that will not affect dispositive motions or the final pretrial conference date. Other stipulations must be approved by the Court.

12. \_\_\_\_\_  
\_\_\_\_\_

**FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER IS CAUSE FOR IMPOSING SANCTIONS, INCLUDING THE DISMISSAL OF CLAIMS AND DEFENSES, THE EXCLUSION OF WITNESSES, AND MONETARY SANCTIONS.**



**JUDGE: EUGENE GASIORKIEWICZ****CASE NO.**

Attorneys

Plaintiff

vs.

Defendants

**IT IS ORDERED:**

1. The case is set for trial to (the court) a Jury of \_\_\_\_\_ Persons on \_\_\_\_\_, 20\_\_\_\_ at 8:30 am.  
The trial time is expected to be \_\_\_\_\_ days.

**(Check one)** ☐ Jury fee has been paid

☒ Jury Fee has not been paid and must be paid within 7 days or the case shall be tried to the court on the same date pursuant to Wis. Stats. § 814.61(4).

2. All discovery shall be completed by \_\_\_\_\_.
3. All actions, including motions and amendment of pleadings, relating to adding additional parties, third party practice, interpleader, misjoinder shall be served, filed and completed by \_\_\_\_\_.  
Plaintiff shall join as parties all persons with subrogated, derivative or assigned rights by \_\_\_\_\_ pursuant to Wis. Stat. § 803.03(2).
4. Except as provided in paragraph 3, all amendments to pleadings and supplemental pleadings shall be served and filed by \_\_\_\_\_.
5. All dispositive motions under Wis. Stat. § 802.06 and § 802.08, shall be filed, served and heard by \_\_\_\_\_. The motion(s) shall be filed and served at least \_\_\_\_\_(30) days before the hearing date. Respondent shall have \_\_\_\_\_(20) days from the filing of the movant's brief to file a response brief. The movant shall have \_\_\_\_\_(5) days from the filing of respondent's brief to file a reply brief. See Racine County Local Rules.

6. Circuit Court Rule III Civil "C" (6/20) Plaintiff shall provide the defendant(s) with the name(s) of all the expert witness(es) by \_\_\_\_/\_\_\_\_/\_\_\_\_.
- ☐ With a summary of expected testimony and a current curriculum vitae.
  - ☐ Full compliance with the Special Order Regarding Expert Reports - attached.
7. Defendant(s) shall provide the plaintiff with the name(s) of all their expert witness(es) by \_\_\_\_/\_\_\_\_/\_\_\_\_ in compliance with the requirements of plaintiffs in paragraph 6.
8. Plaintiff shall furnish to defendant(s) an itemized list of all special damages, copies of all medical and hospital records in the possession of the plaintiff and a permanency claim report and loss of earnings capacity by \_\_\_\_\_.
9. Any physical and/or mental examination of the plaintiff(s) shall be scheduled and completed by the defendant(s) by \_\_\_\_\_. Defendant(s) shall deliver to the plaintiff(s) a copy of all IME and medical reports prepared pursuant to such examination within 10 days after receipt, but no later than 3 weeks after appointment date.
10. Trial briefs, requested jury instructions and requested jury verdict forms shall be served and filed 1 week before the final pretrial date. Motions in limine, *including Daubert motions*, must be served and filed 1 week before the final pretrial and will be heard at final pretrial. Attorneys must be present in person at final pretrial and have clients immediately available by telephone. Final Pre-trial is \_\_\_\_\_ At \_\_\_\_\_ PM.
11. No adjournment will be granted due to non-availability of expert witnesses. Counsel and parties are bound to the time limits and dates set by the Scheduling Order unless altered by the court.
12. All attempts to resolve through **mandatory** alternative dispute, including mediation or arbitration are to be completed by \_\_\_\_\_. Pursuant to Wis. Stat. 802.12, the parties **shall inform** the court by letter of the outcome of ADR within 1 week of the above date.
13. Compliance with attached *Daubert* challenges is **mandatory**.
14. Other: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY RESULT IN SANCTIONS TO THE NON-COMPLIANT PARTY INCLUDING ENTERING OF JUDGMENT OR DISMISSING CLAIMS OR DEFENSES. SEE WIS. STAT § 804.12, § 805.03.**

\_\_\_\_\_  
Circuit Court Commissioner

**SPECIAL ORDER REGARDING EXPERT REPORTS AND *DAUBERT* CHALLENGES**

**DUE TO THE NATURE OF THIS CASE, THE COURT ORDERS THAT THE PLAINTIFF'S AND THE DEFENDANT'S DESIGNATION OF EXPERTS AND THE PROVIDING OF REPORTS BE COMPLIANT WITH FEDERAL RULE OF CIVIL PROCEDURE 26.**

**IT IS FURTHER ORDERED THAT ANY *DAUBERT* CHALLENGE BE COMPLIANT WITH THE ATTACHED FORMAT AND SPECIFICALLY DESIGNATE THE AREAS CHALLENGED AS IDENTIFIED IN *STATE V. JONES*, 2018 WI 44, ¶ 29; 381 Wis.2d 284, 911 N.W.2d 97.**

- 1. Plaintiff's and Defendant's designation of expert in accordance with the Scheduling Order shall contain the following items identified in Fed. Rule Civil Procedure 26:**
  - a. The expert witness must provide a written report prepared and signed by the expert witness. The report must contain:**
    - i. A complete statement of ALL opinions the witness will express and the basis and reasons for them;**
    - ii. The facts or data considered by the witness in forming them;**
    - iii. Any exhibits that will be used to summarize or support them;**
    - iv. The witness' qualifications, including a list of all publications authored in the previous 10 years;**
    - v. A list of all other cases in which, during the previous 4 years, the witness testified at trial or by deposition; and**
    - vi. A statement of the compensation to be paid for the study and testimony in the case.**
- 2. Order regarding *Daubert* challenges. Generally speaking, unless otherwise ordered by the Court, such challenges will be by paper (affidavit) review.**
- 3. Mandatory compliance with Court's order for specificity on any *Daubert* challenge.**

## STANDING ORDER ON CHALLENGES TO THE ADMISSIBILITY OF EXPERT TESTIMONY UNDER WIS. STAT § 907.02 AND *DAUBERT*

This Standing Order governs challenges to the admissibility of expert testimony pursuant to Wis. Stat § 907.02 et seq. and the U.S. Supreme Court's decisions in *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993); *Kumho Tire Co., v. Carmichael*, 526 U.S. 137, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999); and Wisconsin court decisions in *State v. Giese*, 2014 WI App 92; *Seifert v. Balink*, 2017 WI 2; *State v. Jones*, 2018 WI App 44; *State v. Hogan*, 2021 WI App 24; *Vanderventer v. Hyundai Motor Co.*, 2022 WI App 56.

**General Procedures.** Any party may challenge the admissibility of expert testimony offered by another party. The party seeking to challenge the admissibility of expert testimony shall do so by motion, in accordance with any schedule set by the Court. In the motion, the moving party **shall** identify the specific opinion(s) that the movant seeks to exclude and the legal basis for exclusion, together with sufficient background information to provide context. The movant **shall** electronically file the relevant expert report(s) and, if the expert was deposed, the full transcript of the expert's deposition, and any affidavits and supporting materials for the Court to consider.

**Legal Framework.** The parties should be familiar with the legal standard governing the admissibility of expert testimony in a Wisconsin court. The following discussion is not intended to be an exhaustive discussion of the Seventh Circuit law, but instead seeks to remind the parties of certain guiding principles:

"Federal Rule of Evidence 702 governs the admissibility of expert testimony, as does the Supreme Court's seminal case of *Daubert*..."; [same as Wis. Stat. § 907.02] *United States v. Lupton*, 620 F.3d 790, 798 (7th Cir. 2010); *Lewis v. CITGO Petroleum Corp.*, 561 F.3d 698, 705 (7th Cir. 2009).

"The proponent of the expert bears the burden of demonstrating that the expert's testimony would satisfy the *Daubert* standard." *Lewis*, 561 F.3d at 705 (citing Fed. R. Evid. 702 - Adv. Comm. Notes ("[T]he admissibility of all expert testimony is governed by the principles of Rule 104(a). Under that Rule, the proponent has the burden of establishing that the pertinent admissibility requirements are met by a preponderance of the evidence"))).

"The district court is responsible for acting as a gatekeeper to ensure that all admitted expert testimony satisfied [Rule 702's] reliability and relevance requirements." *Stollings v. Ryobi Techs. Inc.*, 725 F.3d 753, 765 (7th Cir. 2013)(citing *Daubert*, 509 U.S. at 592-93). "[T]he key to the gate is not the ultimate correctness of the expert's conclusions. Instead, it is the soundness and care with which the expert arrived at the opinion: the inquiry must 'focus...solely on principles and methodology, not on the conclusions they generate.'" *Schultz v. Akzo Nobel Paints, LLC*, 721 F.3d 426, 431 (7th Cir. 2013)(citing *Daubert*, 509 U.S. at 595). *See also Wisconsin cases previously cited in accord.*

***Daubert* Hearing.** The Court, upon request of a party, may use its discretion to conduct a *Daubert* hearing or conduct a paper review. See *United States v. Ozuna*, 561 F.3d 728, 737 (7th Cir. 2009) (district court has discretion over whether to conduct a *Daubert* hearing.) A *Daubert* hearing permits the parties to examine the challenged expert in open court or by paper review to develop his or her testimony for purposes of evaluating its admissibility.

**General Principles:** The hearing shall be limited to the specific issues raised in the *Daubert* motion. If an in-person hearing is granted, the expert at issue will testify. The hearing is not a forum to develop the expert's testimony for any purpose other than evaluating its admissibility. The parties shall avoid inquiry into undisputed issues of admissibility. The Court encourages the parties, where possible, to stipulate to any uncontested issues of admissibility, such as the expert's qualifications, prior to the hearing. See requirements *State v. Jones*. The proponent of the expert is responsible for procuring and paying for the expert's attendance at the hearing.

**Before the Hearing:** **One week** prior to the hearing, the parties **shall** file a Joint Report stating whether any party intends to present testimony from any witness other than the expert at issue. The Court does not anticipate that the parties will present any witness other than the expert at issue. The Joint Report shall also include an exhibit list and copies of any exhibits that the parties intend to use at the hearing.

**If Paper Review:**

1. The party opposed to the expert's opinion will file affidavit in opposition with authorities, along with the *Daubert* challenge motion.
2. The proponent of an expert shall file any affidavits or supporting materials in support of the proffered opinion within ten (10) days of the challenge motion filed.
3. The Court will then rule on the admissibility of the expert's findings.
4. The above time constraints must be complied with and served and filed 1 week before the scheduled final pretrial.

Plaintiff,

vs.

Defendant.

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**Court's Order for Specificity on Any *Daubert* Challenge**

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Now comes Circuit Court Br \_\_ of \_\_\_\_\_ County, Wisconsin, and pursuant to its inherent authority to control<sup>1</sup> its calendar and in the interests of judicial economy, hereby orders that any party seeking a pre-trial *Daubert*<sup>2</sup> challenge to any expert testimony provide at the time of scheduling the motion or review specificity<sup>3</sup> to the Court and opposing parties in conformity with the relevant Court inquiries articulated in *State v. Jones*, 2018 WI 44, ¶ 29; 381 Wis.2d 284; 911 N.W.2d 97.

The party seeking a *Daubert* challenge shall provide at the time of filing for said hearing or review the specific areas challenged as outlined below:

- Whether the scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact of issue; (referencing Wis. Stat. § 904.02.)
- Whether the expert is qualified as an expert by knowledge, skill, experience, training, or education;
- Whether the testimony is based upon sufficient facts or data;
- Whether the testimony is the product of reliable principles and methods; and
- Whether the witness has applied the principles and methods reliably to the facts of the case.

By the Court,

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<sup>1</sup> *State vs. Schwind*, 2019 WI 48, ¶¶ 12-16, 386 Wis.2d 526, 926 N.W.2d 742; *State v. Henley*, 2010 WI 97, ¶ 73, 328 Wis.2d 544, 787 N.W.2d 350.

<sup>2</sup> *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

<sup>3</sup> *Irby v. State*, 60 Wis.2d 311, 210 N.W.2d 755 (1973).

# BEST PRACTICES FOR HANDLING COMPLEX CIVIL AND COMMERCIAL LITIGATION FOR JUDGES AND LAWYERS

1

## PANELISTS

- **Michael Aprahamian**

Circuit Court Judge, Waukesha County

- **Eugene Gasiorkiewicz**

Circuit Court Judge, Racine County

- **Michael Waterman**

Circuit Court Judge, St. Croix County

- **Matthew O'Neill**

Attorney, Fox, O'Neill and Shannon, S.C., Milwaukee

- **Terry E. Johnson**

Von Briesen & Roper, S.C., Milwaukee

2

## **MODERATOR**

- **Lisa Stark**

**Presiding Judge, District 3 Court of Appeals  
Wausau**

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## **LEARNING OBJECTIVES: At the conclusion of this panel discussion you should be able to:**

- **FOR JUDGES:**

1. **Identify and appreciate the unique issues and “needs” of the parties in complex civil and commercial cases.**
2. **Develop best practices for presiding over these types of cases fairly, efficiently, effectively and consistently.**

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## **LEARNING OBJECTIVES: At the conclusion of this panel discussion you should be able to:**

### **• FOR ATTORNEYS:**

- 1. Understand and appreciate the systemic constraints/limitations on circuit court judges when handling complex civil and commercial litigation cases.**
- 2. Develop best practices for handling these types of cases efficiently and successfully in the circuit court.**

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## **SCHEDULING BEST PRACTICES**

### **ATTORNEYS:**

- Tell the circuit court what you need and want up front**
- Be realistic when setting timeframes for completion of actions**
- Consult with other counsel prior to scheduling and status conferences**
- Consider the use of mediation/referees/discovery masters**

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## SCHEDULING BEST PRACTICES

- **JUDGES:**
- Take an active role: Schedule yourself unless referee or discovery master schedules
- Review file throughout and be prepared for issues
- Need overarching timeframes, but consider whether scheduling order encompasses entire case or setting incremental deadlines
- Be sensitive to parties' needs and be flexible, but sanction if unreasonable delays

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## DISCOVERY BEST PRACTICES

### ATTORNEYS:

- Consult with other counsel and develop an agreement on how to handle discovery and issues
- Request a discovery master or referee
- Educate the judge on the issues and technology

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## **DISCOVERY BEST PRACTICES**

### **JUDGES:**

- **Set expectations up front as to the timing of your involvement and reviews**
- **Seek an expert – hire your own, if needed**
- **Handle issues as they arise – be available and flexible**
- **Ask the attorneys to educate you**

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## **DISPUTES AND SANCTIONS BEST PRACTICES**

### **ATTORNEYS:**

- **Work to resolve issues between the parties**
- **Hire/work with a discovery master or referee**
- **Seek sanctions sparingly**

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## **DISPUTES AND SANCTIONS BEST PRACTICES**

### **JUDGES:**

- Don't encourage parties to seek sanctions/relief
- If the parties seek sanctions, impose meaningful sanctions – provide effective relief for the nature of the violation
- Don't be reluctant to impose sanctions where needed to gain compliance

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## **BEST PRACTICES WHEN DESIGNATING CORPORATE REPRESENTATIVES**

### **ATTORNEYS:**

- Take this designation seriously
- Prepare the designee in advance and make sure they are organized
- Consider a designee with personal knowledge and then one who has knowledge from other sources

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## **BEST PRACTICES WHEN DESIGNATING CORPORATE REPRESENTATIVES**

### **JUDGES:**

- **Require disclosure as part of pretrial order**
- **Resolve issues regarding the designee prior to discovery**
- **Make yourself available during the deposition of the designee to timely resolve issues**

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## **OTHER EXPECTATIONS**

### **JUDGES:**

- **Issue decisions promptly – orally if possible**
- **Remain neutral and detached – minimal involvement at trial**
- **Rule on objections in real time**
- **Require advance witness identification**

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## OTHER EXPECTATIONS

### ATTORNEYS:

- Be prepared
- Stipulate to all possible and promptly advise court in advance
- Confirm technology available in courthouse in advance and hire experts to run technology