


APPENDIX B

NOTICE TO APPEAR FOR FINAL PRE-TRIAL CONFERENCE	DOCKET NUMBER <input type="text"/>	Trial Court of Massachusetts Superior Court Department 
CASE NAME: <input type="text"/>	<input type="text"/>	<input type="text"/>
TO: <input type="text"/>	<input type="text"/>	COURT NAME & ADDRESS <input type="text"/>

A final pre-trial conference in the above referenced case will be held on:

Date:
Time:
Event:
Session / Courtroom Location:

All **trial counsel are required to attend** and submit their joint pre-trial memorandum to the Court.

To facilitate orderly and efficient progress towards trial, counsel for all parties **shall confer** for the purpose of preparing a joint pre-trial memorandum. The joint pre-trial memorandum shall be submitted jointly and shall be filed with the court no less than three business days prior to the pre-trial conference. Unless all counsel agree otherwise, counsel for the plaintiff shall be responsible for preparing and circulating the first draft. Each party's lead counsel at trial is expected to attend the final pre-trial conference.

A. FOR JURY TRIAL

The joint pre-trial memorandum shall include the following component parts:

- (1) Agreed facts in a form suitable for submission as an exhibit at trial;
- (2) A brief statement by each party of what that party expects the evidence to show;
- (3) Agreed suggested description of the case to be read to the jury during impanelment;
- (4) Statement of all significant legal issues (including, particularly, any significant evidentiary issues), the position of the parties on these issues, and a statement of authorities. Provide a copy of all cases and other authorities relied upon other than reported Supreme Judicial Court and Appeals Court cases.
- (5) The name and address of each witness to be called by each party. Failure to list a witness in the pre-trial memorandum may lead to an order precluding the testimony of that witness unless the need for the witness cannot reasonably be anticipated prior to trial or other good cause is shown. No party may reserve the right to add a witness after the pre-trial conference without leave of the Court. In addition, the parties shall identify any witness or party who needs an interpreter, as well as the language the interpreter needs to speak.
- (6) (a) The names, addresses and qualifications of each expert witness the parties intend to call, together with subject matter on which the expert is expected to testify, the substance of all facts and opinions to which the expert is expected to testify and a detailed summary of the grounds of each expert's opinion. If an expert witness's identity and expected testimony has previously been disclosed in response to expert interrogatories, this item may be covered by appending to the pre-trial memorandum a copy of the expert interrogatory responses. Failure to comply with this paragraph forfeits the party's ability to present an expert as of right. See Superior Court Rule 30B(a).

(b) Unless earlier resolved, whether any party moves to conduct any expert deposition under Mass. R. Civ. P. 26(b)(4). If so, unless the parties all agree to the expert deposition, a written motion to conduct the expert deposition and opposition shall be appended to the pre-trial memorandum so that the motion may be decided by the judge at the pre-trial conference.

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(c) Whether any party intends to serve any *Daubert-Lanigan* motion challenging the admissibility of expert testimony and, if so, when the party intends to serve and file such a motion and the anticipated basis for such a motion. Failure to inform the court in the pre-trial memorandum of a party's intent to file a *Daubert-Lanigan* motion may, in the discretion of the court, constitute a waiver of the motion. If the date proposed for the filing of a *Daubert-Lanigan* motion is deemed by the court to be too close to trial, the court may set an earlier deadline for the filing of the *Daubert-Lanigan* motion. At the pre-trial conference, the court will set a date for hearing on any *Daubert-Lanigan* motion.

NOTE: Inclusion of an expert witness' identity and expected testimony in the joint pre-trial memorandum does not waive any party's right to object to that expert's testimony on the ground that responses to expert discovery were untimely or inadequate.

- (7) Estimated length of trial (please specify whether your estimate is based on half days or full days).
- (8) An itemization of the special or liquidated damages alleged.
- (9) A certification that counsel for all parties have conferred and discussed the possibility of settlement, and the amenability of the case to mediation or other forms of alternate dispute resolution. If alternative dispute resolution has commenced or will commence, the parties shall inform the Court of its status. The parties shall not disclose the contents of settlement demands or offers in the pre-trial memorandum.
- (10) A statement whether the parties have consulted about provisions for case-specific management available under Superior Court Rule 20(h)-(i), and if so, which provisions are agreed or are still under consideration.

B. FOR BENCH TRIAL UPON WAIVER OF DETAILED WRITTEN FINDINGS:

If all parties have agreed to a bench trial with waiver of detailed findings (Superior Court Rule 20(h)), the joint pre-trial memorandum need not include items (1)-(3), and the parties will not be required to file proposed findings of fact. In the absence of such waiver, the joint pre-trial memorandum for a bench trial shall include all items listed in (A), above except item (3).

C. FUTURE FILINGS (All cases):

No later than five business days prior to the scheduled trial, counsel shall meet and review the exhibits proposed to be introduced by each party and all materials to be shown to the fact-finder. Based on that meeting and review of exhibits, counsel shall prepare a joint exhibit list identifying 1) stipulated exhibits (which shall be pre-marked and introduced at the commencement of trial) and 2) proposed exhibits of each party as to which there is no agreement on admissibility. The exhibit list is to be presented to the trial judge at the commencement of trial with a copy for the clerk or court reporter.

In the event deposition transcripts are to be offered at trial, and there are objections to any of the answers set forth in the transcript, the parties, not less than three days prior to the commencement of trial, are to supply to the court a transcript of the testimony with objections highlighted and, in the margin, a brief statement of the grounds of the objection and the response by the proponent of the testimony. Videotaped depositions are governed by Mass. R. Civ. P. 30A.

DATE ISSUED

ASSOCIATE JUSTICE

ASSISTANT CLERK

SESSION PHONE#