PRETRIAL AGREEMENTS AND AN EXPLANATION

Item No.	Description	Explanation
1.	As to any discovery dispute, the lead lawyers will try to resolve by phone and no one will write letters to the other, including letters attached as pdf's to emails: just e-mails and phone calls.	• Senior lawyers should talk to each other and not leave it to younger ones who don't appreciate what's worth fighting about • I also insist that any email that is sent to me is copied to rest of my team and client and I will reciprocate. I insist that my own lawyers copy me on everything: that way I can spot a fight brewing
2.	Depositions will be taken by agreement, with both sides alternating and trying in advance to agree upon the dates for depositions, even before the deponents are identified. In jurisdictions where there is no limit to the length or number of depositions, each side gets 10 lasting for 6 hours each.	• I would reduce the length of a deposition to 3 hours. Lawyers feel compelled to use the time they are given. • If Courts will limit the length of trials and tell the lawyers early on how little time they have, the court can discourage a lot of depositions
3.	The parties will use the same court reporter/videographer, who agrees to provide specified services at discounted prices for the right to transcribe all depositions.	
4.	All papers will be served on the opposing party by e-mail.	
5.	Documents will be produced on a rolling basis as soon as they have been located and numbered; if copies are produced, the originals will be made available for inspection upon request.	
6.	Each side must initially produce electronically stored information from the files of 5 custodians selected by the other side during an agreed period of time. Only documents which have a lawyer's name on them can be withheld from production and only if they are in fact privileged. Production does not waive any privilege and documents can be snapped back whenever the producing party recognizes they are privileged. After analyzing the initial production, each side can request electronic files from 5 other custodians. Beyond that, good cause must be demonstrated. We will produce ESI in the native format kept by the producing party, or in a common interchange format, such as Outlook/PST, Concordance or Summation, so it can be searched by the other side. If any special software is required to conduct a search in native format and is	The biggest expense of producing ESI in not located and producing, but rather reviewing for responsiveness and privilege before production. With the right PO in place, I can sometimes persuade opp. counsel to produce without regard to responsiveness, but I can't get them to agree to produce without a priv. review because of their fear that an agreement with their opponent in this case will not preclude opponents in other cases from arguing waiver. We really need a rule change or at least a court order here.

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	regularly used by the producing party, it must be made available to the other side. We will produce a Bates numbered file listing of the file names and directory structure of what is on any CDs or DVDs exchanged. Either side may use an e-mail or an attachment to an e-mail that came from one of these previously produced disks by printing out the entire e-mail (and the attachment if they are using a file that came with an e-mail) and marking it at the deposition or trial, and either side may use application data (which was not an attachment to e-mail–so it's stand-alone on a CD or DVD) as long as the footer on the pages or a cover sheet indicates (1) the CD or DVD from whence it came, (2) the directory or subdirectory where the file was located on the CD or DVD, and (3) the name of the file itself including the file extension.	
7.	If agreement cannot be reached on the form of a protective order within 48 hours of the time they are exchanged, both sides will write a letter to the Court including each other's preferred version and, without argument, ask Court to select one or the other ASAP.	The Court should have a standard protective order and make it clear that there is a very high burden on anyone who wants something different
8.	All deposition exhibits will be numbered sequentially X-1, X-2, etc., regardless of the identity of the deponent or the side introducing the exhibit and the same numbers will be used in pretrial motions and at trial.	This agreement, easy to get from opposing counsel, is sometimes frustrated by court personnel who insist on a different format for trial exhibits. I would urge judges to encourage their clerks to be flexible
9.	The parties will share the expense of imaging all deposition exhibits.	
10.	Neither side will be entitled to discovery of communications between counsel and expert witnesses or to drafts of experts' reports.	
11.	The production of a privileged document does not waive the privilege as to other privileged documents. Documents that the other side claims are privileged can be snapped back as soon as it is discovered they were produced without any need to show the production was inadvertent.	Again the fear here is that this agreement will not protect my opponents in other cases
12.	Each side has the right to select 20 documents off the other's privilege list for submission to the court for in camera inspection.	This is very effective.
13.	Demonstrative exhibits need only be shown to the other side before shown to the jury and need not be listed in any pretrial order.	
14.	We will agree upon jury questionnaire.	

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15.	We will ask the Court to allow the jurors to take notes and ask questions (by delivering the same to the Court anonymously)	
16.	We will agree upon a juror notebook possibly containing a cast of characters, list of witnesses (and their photos), time-line, glossary, dispositive documents, etc.	