

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STRIDER CONSTRUCTION CO., INC.,

Plaintiff,

vs.

IDAHO WATER RESOURCE BOARD,

Defendant.

Case No. CV01.22.10932

5TH SCHEDULING ORDER

THIS MATTER came before the Court for scheduling of Trial, Pre-trial Conference, and other matters governing further proceedings, IT IS HEREBY ORDERED, as follows:

1) The above-entitled matter is set for further proceedings, as follows:

<u>Hearing Type</u>	<u>Date(s)</u>	<u>Time</u>
Pre-trial Conference	January 14, 2025	3:30 pm
Jury Trial	February 10, 2025	8:30 am

2) NOTICE OF INTENT TO RELY ON PANEL OF JUDGES AS ALTERNATES: Due to multiple settings, criminal calendar, and/or cases with higher priority, Judge Borton may not be the trial judge in this case. Therefore, notice is hereby given, pursuant to ICRP 40(d)(1)(g) that an alternate judge may be assigned to preside over the trial of this case. The following is a list of potential alternate judges:

Hon. Deborah A. Bail
Hon. Roger Burdick
Hon. Cheri C. Copsy
Hon. Bradley Ford
Hon. Richard Greenwood
Hon. Thomas Neville

Hon. Michael Reardon
Justice Gerald Schroeder
Hon. Darla Williamson
Hon. Ronald Wilper
All Sitting Fourth District Judges

Unless a party has previously exercised their right to disqualification without cause under Rule 40(d)(1), each party shall have the right to file one (1) motion for disqualification without cause as to any alternate judge not later than ten (10) days after service of this written notice listing the alternate judge, unless otherwise prohibited by any applicable Supreme Court Procedural Order.

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3) TRIAL:

- a) This case is scheduled for trial for 12 days, commencing on **February 10, 2025**.
- b) Trials will start at 8:30 a.m. and end at 5:00 pm on the Monday set forth above, and 3:15 p.m. all other days unless otherwise ordered. No proceedings will be held on Thursdays due to the Court's criminal calendar.
- c) If all parties desire a continuance of the trial date, this Court will only consider a motion to continue if all parties and all counsel sign the motion/stipulation.
- d) If a party fails to appear at trial, without good cause, such failure shall be sufficient ground for entry of judgment against such party or dismissal of the action of such party, with prejudice, without further notice.

4) PRE-TRIAL CONFERENCE:

- a) The **Pre-trial Conference** will be held on **January 14, 2025**. Each party shall appear in person and be represented by trial counsel or an attorney full knowledge of the case and with authority to bind the party by stipulation. If a party fails to appear at the Pre-trial Conference without good cause, such failure may be ground for entry of judgment against such party or dismissal of the action of such party, with prejudice, without further notice.
- b) At least 7 calendar days *before* the Pre-trial Conference Counsel for Plaintiff shall convene an **attorneys' conference** (telephonic or in person) to discuss exhibits (and identify where stipulations for admissibility may rest, and to avoid duplication of exhibits where possible), to identify proposed witnesses (lay and expert), identify any foundational objections to exhibits or witnesses, to stipulate to uncontested facts that may be incorporated into a jury instruction, explore settlement possibilities, and address all other matters set forth in IRCP 16(c)(2).
- c) **Trial Briefs**: Each party must file a Trial Brief at least four (4) calendar days before the **Pre-trial Conference**, that includes the following:
 - (1) Elements of Plaintiff's case (Plaintiff¹),
 - (2) Defenses of Defendant's case (Defendant²)
 - (3) Statement of uncontested, agreed or stipulated facts,
 - (4) Statement of contested facts,
 - (5) Contested issues of law with points and authorities,
 - (6) Anticipated evidentiary issues,
 - (7) Itemization of damages (when appropriate).
- d) **Exhibit & Witness Lists**. Each party must file Exhibit lists and Witness lists at least four (4) calendar days before the **Pre-trial Conference**. Witness lists shall briefly describe the subject matter of each witness's anticipated testimony. Exhibits shall be marked numerically for the Plaintiff and alphabetically for the Defendant(s).
- e) **Jury Instructions**. If this case is a jury trial, proposed jury instructions must be submitted at least two (2) days before the **Pre-trial Conference**, with final proposed instructions submitted at least 7 days prior to trial. All proposed jury instructions must be submitted in compliance with IRCP 51, including the format set forth in IRCP 51(d). Requested instructions should also be submitted to the court Clerk in digital Word format.

¹ In this Order, "Plaintiff" includes any Plaintiff, Counterclaimant, and Third Party Plaintiff.

² In this Order, "Defendant" includes any Defendant, Counterdefendant, or Third Party Defendant.

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5) MOTION PRACTICE:

- a) It is intended that these Motion Practice deadlines promote compliance with IRCP 7 as well as the orderly advancement of the case through a cooperative resolution or a trial, whichever is necessary. If the parties jointly file a motion with an accompanying stipulation to alter any of these deadlines the Court is likely to grant that motion.
 - i) When necessary hearings on any pre-trial Motions must be scheduled through Judge Borton's Court Clerk via email, *before* a notice of hearing is filed.
 - ii) Any party who does not intend to oppose the motion should promptly file a pleading showing non-opposition.
 - iii) Counsel are reminded to comply with local rules, including page limitations in *Local Rule 8*.
 - iv) Parties shall also send an electronic copy in Word format of any memorandum to Judge Borton's Staff Attorney at ejoyce@adacounty.id.gov.
- b) *Motions to Compel*. Any Motion to Compel must be accompanied by a Declaration of counsel specifying the efforts made at meeting and conferring by telephone or in person with counsel about the concerns at issue. Emails and letters without more is not considered "conferring" for the purpose of a Motion to Compel.
- c) *Oral Argument*: As most Motions are briefed well by counsel and are supported by the matters of record, the parties are encouraged to use oral argument to provided specific emphasis on the particular record at issue. To that end, unless otherwise ordered by the Court, each side will be afforded up to 15 minutes each for oral argument, including summary judgment. Questions from the bench do not count against that timeframe.
- d) Absent a stipulation from all parties the following deadlines remain in effect until modified by Court Order:
 - i) **210 days** before trial is the last day to file motions to add additional parties to the lawsuit.
 - ii) **180 days** before trial is the last day to file a motion to amend the claims between existing parties to the lawsuit, including adding a claim for punitive damages.
 - iii) **120 days** before trial is the last day for filing motions for a physical or mental examination.
 - iv) All non-dispositive motions (other than for summary judgment) must be filed *and* heard not later than the Pre-Trial Conference.
 - v) All motions for Summary Judgment or other dispositive motions must be filed *and* heard at least **60 days** before trial (preferably sooner, if possible).
 - (1) *Plaintiff's experts*: **150 days** before trial is the last day for plaintiff to disclose each person plaintiff intends to call as an expert witness at trial and shall state the subject matter on which the witness is expected to testify and shall disclose all information required by Rule 26(b)(4) IRCP regarding expert witnesses. 90 days before trial, defendant shall complete any depositions of the plaintiff's expert witnesses.
 - (2) *Defendant's experts*: **120 days** before trial is the last day for any Defendant to disclose each person that Defendant intends to call as an expert witness at trial and shall state the subject matter on which the witness is expected to testify and shall disclose all information required by Rule 26(b)(4) IRCP regarding expert witnesses. 60 days before trial, plaintiff shall complete any depositions of the defendant's expert witnesses.
 - (3) *Plaintiff's rebuttal experts*: **90 days** before trial is the last day for plaintiff to disclose each person plaintiff intends to call as an expert witness at trial to rebut new information or issues disclosed or raised by the defendant and shall disclose all information required by Rule 26(b)(4)

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IRCP regarding the rebuttal expert witnesses. 45 days before trial, defendant shall complete any depositions of the plaintiff's rebuttal expert witnesses.

6) LAY WITNESS DISCLOSURES AND DEADLINES

- a) **100 days** before trial is the last day for plaintiff to disclose each person plaintiff intends to call as a lay witness at trial (excluding impeachment witnesses).
- b) **80 days** before trial is the last day for defendant to disclose each person defendant intends to call as a lay witness at trial (excluding impeachment witnesses).
- c) **60 days** before trial is the last day for plaintiff to disclose each lay witness (excluding impeachment witnesses) plaintiff intends to call at trial to rebut new information or issues disclosed or raised by the defendant.
- d) **40 days** before trial, all parties shall complete any depositions of lay witnesses.

7) WRITTEN DISCOVERY DEADLINES

- a) **75 days** before trial is the last day to serve written discovery requests (interrogatories, requests for production, requests for admissions, and requests to permit entry upon land or other property).
- b) **40 days** before trial, all parties must serve any final and supplemental responses to discovery.

8) EXHIBITS:

- a) The original set of pre-marked trial exhibits, plus one paper copy, must be provided to the Court not later than the beginning of trial.
- b) Exhibits should be pre-marked prior to opening of court. Unless otherwise indicated, Plaintiff's exhibits should be identified numerically, and Defendant's exhibits should be identified alphabetically.
- c) All videotape or audiotape presentations must be cued in advance and all equipment tested for sound, picture, etc., prior to presenting evidence contained therein.
- d) The parties are responsible for reviewing proposed exhibits for redactions to ensure that objectionable material is not seen by the jury.
- e) Electronic pdf or jpg copies of exhibits may be produced to the Court by email attachment, or on CD or flash drive.

9) COMPLIANCE AND SANCTIONS: In the absence of a written stipulation providing otherwise, a party may be excused from strict compliance with any provision of this Order only upon motion showing extraordinary circumstances and good cause, and lack of prejudice to the timely administration of justice. Failure to strictly comply with this Order may subject a party or its attorney to appropriate sanctions under Rule 16, including, but not limited to costs and reasonable attorney fees, exclusion of witnesses, evidence or testimony, or the dismissal of claims or striking of defenses, with prejudice.

10) GENERATIVE AI: Each attorney in this matter remains steadfast in his/her adherence to the Idaho Rules of Professional Conduct (IRPC), including but not limited to Rules 1.1 (competence), 3.1 (meritorious claims), 3.3 (candor to the tribunal), 4.1 (truthfulness in statements to others), and 5.1 (responsibilities of partners, managers, and supervisory lawyers), as well as IRCP 11(b) in civil matters. In furtherance of this compliance with the IRPC, no portion of any filing in this matter may be drafted by generative artificial intelligence-including quotations, citations, paraphrased assertions, and legal analysis – unless it has been checked for accuracy using print reporters or traditional legal databases, by a human being before it is submitted to the Court. Any attorney who signs any filing in this case is making an overt affirmation to the Court that the filing has been reviewed prior to filing and the attorney

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who signs the filing will be held responsible for the contents thereof, regardless of whether generative artificial intelligence drafted any portion of the filing. A cautionary example can be found at *Mata v. Avianca, Inc.*, No. 1:2022cv01461 - Document 54 (S.D.N.Y. 2023).

IT IS SO ORDERED.



JOSEPH W. BORTON
District Judge

6/5/2024 12:20:50 PM
DATE

CERTIFICATE OF MAILING

I hereby certify that on 6/7/2024 1:08:44 PM, I mailed (served) a true and correct copy of the within instrument to:

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TRENT TRIPPLE
Clerk of the District Court

By: 
Deputy Court Clerk

