

EXHIBIT D

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

HERCULES INCORPORATED,)	
a corporation of the)	
State of Delaware,)	
)	
Plaintiff,)	
)	
v.)	C.A. Nos. 92C-10-105 and
)	90C-FE-195-1-CV(FSS)
THE AETNA CASUALTY AND)	
SURETY COMPANY, et al.,)	(Consolidated)
)	
Defendants.)	

CASE MANAGEMENT ORDER
(CASE ORDER NO. 11)

To supplement prior case orders and to promote efficient resolution of this action, the Court, pursuant to Case Order No. 9, Section I.C.1., hereby enters this Case Order No. 11. This case order shall apply only to plaintiff and the Hercules defendants, as identified in Case Order No. 8, Section II.A.

I. PHASE II PRE-TRIAL SCHEDULE

Pursuant to Superior Court Civil Rule 16, the final phase of discovery, wherein the parties must complete all remaining Phase II discovery as set forth in Case Order No. 9, Section I.C.1., commenced on September 4, 1996, shall last for a period of approximately six months, and shall proceed as follows:

A. Contention Interrogatories

The contention interrogatories served before October 1, 1996 shall be the only contention interrogatories that may be served regarding any other party's contentions before the trial

of the Jacksonville, Arkansas site coverage issues. Responses to the parties' contention interrogatories shall be served no later than November 27, 1996.

B. Expert Discovery

1. On or before October 29, 1996, the parties shall identify expert witnesses and submit Superior Court Civil Rule 26(b) statements as to those experts relating to the policies that may provide coverage for Hercules and the Jacksonville, Arkansas site (selected as the first trial site pursuant to Case Order No. 9, Section I.A.). Any party shall have until January 10, 1997 to designate additional expert witness(es), whose function will be solely to rebut an opinion taken by a designated expert witness. Upon designation of the rebuttal expert witness(es), the party designating the rebuttal expert witness(es) shall produce corresponding Rule 26(b) statements.

2. Discovery of expert witnesses, including depositions, shall take place during the four-month period October 29, 1996 through February 28, 1997. On or before November 18, 1996, any party seeking to depose another party's expert witnesses shall specify its preference as to the sequence in which such depositions shall be taken, including in particular which depositions are sought to be completed before the deadline of January 10, 1997 for the designation of rebuttal expert witnesses. In the event that, despite reasonable efforts, the depositions cannot be completed within the specified periods, any party, in the absence of an agreed extension, may apply to the

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Court for an adjustment: (1) in the schedule set forth in Section I.B.1. above to allow for the completion of the deposition(s) of one or more particular expert witness(es) before the designation of one or more particular rebuttal expert witness(es); and/or (2) in the answering brief schedule set forth in Section I.D. below to allow for the completion of the deposition(s) of any expert witness(es) relied on in an opening brief before the filing of an answering brief responsive thereto.

C. Stipulations To Authenticity of Policies

Pursuant to Case Order No. 4, Paragraph V.C., the parties during the October-December 1996 time period shall identify and attempt to resolve any discrepancies and disputes relating to the policies that have been produced or exchanged in this action, and the parties also shall meet and confer in good faith in an effort to enter into stipulations concerning the authenticity of all the insurance policies at issue herein.

D. Motions

1. Summary judgment and partial summary adjudication motions, pursuant to Superior Court Civil Rule 56, concerning (a) the policies that may provide coverage for Hercules and (b) any issue regarding the Jacksonville, Arkansas site ("Rule 56 motions") shall proceed in the following manner:

2. During the period January 21, 1997 to April 30, 1997, plaintiff and any Hercules defendant may serve and file a Rule 56 motion(s) and opening brief(s) not to exceed sixty (60) pages, exclusive of appendices.

a. Within forty-five (45) days after the filing of Rule 56 motion(s) and supporting brief(s), any party opposing the motion(s) shall serve and file an answering brief(s) not to exceed sixty (60) pages for each answering brief, exclusive of appendices.

b. Within the time period prescribed in Case Order No. 4, Section IV. B. 2., any Hercules defendant may file and serve a brief asserting a position different from that which is set forth in an individual Hercules defendant's opening or answering brief(s); provided that any such brief shall not exceed fifteen (15) pages and that plaintiff shall be allotted an additional page in answer or reply for each additional page in a separate opening or answering brief, other than a pro forma joinder submitted without argument, filed by a Hercules defendant.

c. Within twenty-one (21) days after the date upon which a party serves an answering brief, the moving party shall file and serve a reply brief, not to exceed thirty (30) pages in support of each Rule 56 motion filed by the Hercules defendants, or the page limitation provided for in Section I.C.2.b. above in the event that individual Hercules defendants serve and file separate answering briefs.

d. Oral argument, if any, shall be held at the Court's earliest convenience.

e. The Court shall endeavor to resolve all summary judgment and partial summary adjudication motions no

later than December 12, 1997.

E. Pre-Trial

1. On July 30, 1997, plaintiff and the Hercules defendants collectively shall exchange drafts of a Pre-Trial Order that shall address the items set forth in Superior Court Civil Rule 16(c) to the extent not previously resolved.

2. Immediately following the exchange of proposed Pre-Trial Orders, the parties shall meet and confer in an attempt to reach an agreement on a final Pre-Trial Order for the first trial. On or before August 29, 1997, the parties shall submit a proposed pretrial order. In the event the parties cannot reach agreement on the terms of the Pre-Trial Order, a single proposed order shall be filed and any areas of disagreement shall be appropriately noted in the one proposed order submitted. The first pretrial conference shall be held on or about September 15, 1997. The Court shall schedule additional pretrial conferences as needed.

F. Meet and Confer Obligations and Pretrial Scheduling Order

1. No later than February 10, 1997, plaintiff and the Hercules defendants shall meet and confer in good faith in an effort to agree upon a more definitive pretrial schedule including, without limitation, a schedule for the following suggested matters or some of them: (a) the exchange of witness lists; (b) the exchange of exhibit lists and objections to exhibits; (c) entering into one or more stipulations regarding the authenticity and admissibility of exhibits; (d) the taking of

depositions limited to the authentication and admissibility of exhibits; (e) motions in limine; (f) the exchange of lists designating depositions and other testimony not taken in this action that the parties propose to use at trial, and the designations and counter designations of specific testimony and objections thereto; (g) the exchange of lists designating depositions taken in this action that the parties propose to use at trial, specific designations and counter designations of such testimony and objections thereto; (h) the editing of videotape depositions for use at trial; (i) the exchange of demonstrative aids and exhibits; (j) stipulating to the form of the pretrial order; (k) a cut-off date for supplementing answers to interrogatories; (l) a cut-off date, e.g. September 30, 1997, for the presentation at trial of underlying costs relating to the Jacksonville, Arkansas site; (m) proposed conferences with the Court to obtain advance rulings on the admissibility of evidence and the use vel non of learned treatises at trial; (n) the exchange of revised lists of witnesses, exhibits, depositions, other testimony, videotapes and designations and counter designations and objections thereto as a result of rulings on summary judgment and pre-trial motions and motions in limine; (o) submission of a questionnaire to potential jurors; (p) submission of voir dire questions to the jury panel; (q) jury selection; (r) the submission of proposed notebooks and/or folders for the Court and the jurors to maintain notes and exhibits during trial; (s) submission of jury instructions; (t) submission of verdict form;

and (u) any other matters the parties deem appropriate to the extent not previously addressed. In addition, no later than February 10, 1997, plaintiff and the Hercules defendants shall meet and confer in an attempt to agree upon: (a) whether designations of proposed exhibits are required for cross examination and rebuttal purposes, whether they may be withdrawn without prejudice, and whether they are to be with or without prejudice as to authenticity, relevance or other issues of admissibility; (b) the notice time required, e.g. 72 hours, for calling witnesses at trial; and (c) any other matters the parties deem appropriate to the extent not previously addressed.

2. If by March 10, 1997, or after such longer time as otherwise mutually agreed by the parties, plaintiff and the Hercules defendants have not reached an agreement regarding the matters identified in Section I.E.1. above, they shall file their respective proposals with the Court. On March 24, 1997, plaintiff and the Hercules defendants shall submit memoranda in support of their respective proposals, which shall not exceed twenty-five (25) pages in length for plaintiff and twenty-five (25) pages in length for the Hercules defendants collectively. The Court shall hold a hearing on April 24, 1997 at 3:00 p.m. to address the parties' proposals and enter a pretrial scheduling order.

G. Trial

The trial of the Jacksonville, Arkansas site shall begin on January 19, 1998.

II. FILINGS WITH THE COURT

In connection with any matter submitted to the Court for resolution by motion or otherwise, the parties shall include, at the time of the last filing regarding that matter, a list of all CLAD docket numbers relevant to the matter.

III. AMENDMENTS

This Order may be amended by the Court or supplemented by additional case orders as deemed appropriate by the Court.

SO ORDERED this ____ day of _____, 1996.

Silverman, J.

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v.)	C.A. Nos. 92C-10-105 and
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THE AETNA CASUALTY AND)	
SURETY COMPANY, et al.,)	(Consolidated)
)	
Defendants.)	

CASE MANAGEMENT ORDER
(CASE ORDER NO. 12)

To supplement prior case orders and to promote efficient resolution of this action, the Court hereby enters this Case Order No. 12. This case order shall apply only to plaintiff and the Hercules defendants, as identified in Case Order No. 8, Section II.A., and is intended to provide guidelines for the taking of testifying expert depositions that are permitted by Case Order No. 11, Section I.B.

I. Scheduling of Testifying Expert Depositions And Related Matters

A. As soon as practical, the party taking a deposition will advise the other side of its good faith estimate of how many days it is anticipated that the testifying expert's deposition will take.

B. Each party will pay its testifying experts' fees and expenses incurred in connection with the deposition of such experts. All costs incurred in the production of documents

discussed herein shall also be borne by the party producing the documents.

C. The parties will make a good faith effort to schedule testifying expert depositions at locations convenient for counsel and the experts. In the absence of any agreement, each deposition will take place in Wilmington, Delaware. If the deposition is taken in Wilmington, Delaware, the deposition will be held at a location to be selected by counsel for the party taking the deposition.

D. Testifying expert witnesses will appear for depositions without the necessity of subpoenas.

II. Document Identification And Production of Documents Relied Upon By Testifying Experts In This Action

A. On or before fourteen (14) calendar days before the deposition begins, each side will provide the other side with a list of the documents reviewed by each testifying expert in his capacity as a testifying expert in this case. The list will include the Bates numbers (if any) or a deposition exhibit number (if any), the date, and a brief description of each document, such as the names of the author and addressee and the title or line reference.

B. On or before fourteen (14) calendar days before each deposition begins, the party proffering a testifying expert will produce to the party taking the testifying expert's deposition the following documents relied upon by a testifying expert in his capacity as a testifying expert in this case:

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1. Documents relied upon by a testifying expert in his capacity as a testifying expert in this case that were obtained by one side from third parties and not produced to the other side in this action;

2. Documents relied upon by a testifying expert in his capacity as a testifying expert in this case that were produced in this action for which there is no common Bates numbering or a deposition exhibit number;

3. Documents prepared by a non-testifying expert that were relied upon by a testifying expert in his capacity as a testifying expert in this case;

4. All publications of any type relied upon by a testifying expert in his capacity as a testifying expert in this case, including by way of example only, documents considered to be "learned treatises" under D.U.R.E. 803(13). This subparagraph is not intended to include publications that merely form part of the basis of a testifying expert's education, training and experience in a particular field, but rather, only those on which a testifying expert is relying or about which he will testify at trial. Further, if a publication otherwise required to be produced pursuant to this subparagraph is shown by the party proffering a testifying expert to be readily accessible in its entirety from other sources, then only the relevant portions thereof must be produced.

5. Copies of reports, memoranda and correspondence in this case between a testifying expert and

others concerning that expert's opinions in this case; and

6. Notes made by a testifying expert in this case reflecting his opinions, or the grounds on which they are based.

C. No later than December 20, 1996, each party proffering a testifying expert will make its best effort to produce to the party taking the expert's deposition a list that will include, at a minimum, the cases, administrative matters or other proceedings in which the expert has given trial or other testimony in public. The list also will include, to the extent readily accessible to the expert, the name of the matter, the name of the court or other public body, the names of the parties and their attorneys, whether the expert has a copy of the testimony, and a brief description of the nature of the proceeding.

III. Consultation With Experts During Their Depositions

Notwithstanding the provisions in Superior Court Civil Rule 30(d), a party and its counsel can consult with the party's testifying experts during the course of their depositions during

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customary breaks. This provision does not allow counsel to consult with a deponent between the time a question is posed and an answer given or to allow counsel to unduly delay a deposition by virtue of such consultation.

SO ORDERED This 18th day of December, 1996.

/s/ Fred S. Silverman

Judge

cc: Prothonotary
pc: All Attorneys via CLAD