

RULE 16C. EXPEDITED TRACK

The procedure described in this rule may be invoked for cases filed in the Superior Court and cases removed to the Superior Court from the District Court, when the original filing date for the complaint is on or after January 1, 2015.

(a) **Placement Upon Expedited Track.** Placement upon the expedited track is limited to cases where the parties affirmatively elect to go forward under this rule and where each party seeking damages agrees that the damages recoverable, including pre-judgment interest, but not including costs, post judgment interest, and any available attorney fees, will be no more than \$50,000, or another amount agreed in writing by all parties and filed with the court. After the filing of an answer to a complaint in the Superior Court, the court shall issue a scheduling order in accordance with Rule 16(a) which shall govern the case through trial unless the parties elect to place the case on the expedited track in accordance with this rule, at which point an expedited discovery order shall be substituted by the court and shall govern all subsequent procedures relating to the case through trial.

(b) **Election To Proceed On Expedited Track.**

(1) *Request by Plaintiff.* A Plaintiff who elects to place a case on the expedited track shall incorporate within the caption of the complaint a notice of its election to place the case on the expedited track. With regard to cases that were initially filed in the District Court and have been removed by a defendant to the Superior Court, a plaintiff, within ten days after removal by the defendant, shall file with the court a pleading indicating its election to place the case on the expedited track.

(2) *Request by Defendant.* Within ten days after the defendant answers, the defendant may file a pleading indicating its agreement to proceed with the case on the expedited track. Otherwise, the case shall proceed in accordance with Rule 16, and the standard scheduling order shall be issued.

(3) *Third Party Complaints and Additional Parties.* Third party complaints are not permitted under this rule.

(c) Expedited Discovery Order. Upon agreement by all parties to place the matter upon the expedited track, the court shall issue an expedited discovery order which shall set forth the deadlines articulated below and may also include other provisions contained within the standard Rule 16(a) scheduling order which are not inconsistent with the special rules relating to expedited discovery described herein.

(d) Discovery

(1) *Plaintiff's Initial Disclosures.* Within twenty-one days after the parties' agreement to proceed by this rule, the plaintiff shall serve upon the defendant its initial disclosures.

(A) The initial disclosures of the plaintiff shall contain the following information:

(i) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

(ii) A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment;

(iii) A computation of any category of damages claimed by the disclosing party, making available the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including the following information if any claim for loss of income or loss of earning capacity is asserted:

(a) copies of federal income tax returns, with all attachments, for the period beginning three years prior to the occurrence giving rise to the complaint up until the date of the initial disclosures;

(b) A list of employers, with their names and contact information, of the party asserting economic loss for the same period of time described above, together with an appropriate authorization to obtain employment and payroll records;

(c) In lieu of the information required to be provided within sections (a) and (b) above, a party may provide signed authorizations permitting the opposing party or attorney to obtain the information directly from the taxing authorities and/or employers.

(iv) The name and address of any expert witness designated for use at trial together with a report from that expert containing the information required by Rule 16C(d)(1)(C). If the expert witness is a treating medical provider, that physician's medical records may serve as the report required by this subsection. Unless the court orders otherwise for good cause shown, each party may designate no more than one expert per issue.

(B) In a case where damages are claimed for bodily injury and/or emotional distress, a party claiming such damages must provide the following as part of its initial disclosures:

(i) All medical records pertaining to treatment and/or examinations of the party with regard to the injuries claimed from the date of occurrence to the date of the disclosures.

(ii) All medical records reflecting examinations and/or treatment of the party seeking damages for the ten years prior to the occurrence to the date of the disclosures.

(iii) A list of all health care professionals and hospitals where the party seeking damages has been examined or treated for the ten years prior to the occurrence to the date of the disclosures, including the name and address of the medical provider, the period of treatment, and the general nature of the treatment. Upon request, the party seeking damages shall provide authorizations permitting the opposing party or its attorney to obtain the aforesaid information directly from the medical providers.

(iv) A list of all other lawsuits, injury claims, disability claims, or workers compensation claims, for the ten years prior to the occurrence to the date of the disclosures, including the caption of each other matter, the name and address of each forum, the date of each injury or condition, and a brief summary of each injury or condition giving rise to each claim.

(v) In lieu of the information required to be provided within sections (i) and (ii) above, a party may provide the names and addresses for the medical

providers and signed authorizations permitting the opposing party or attorney to obtain the information directly from the medical providers.

(C) *Reports of Experts.* A party shall provide, with respect to any expert witness designated for use at trial, a report, prepared and signed by the expert witness, setting forth a complete statement of all opinions to be expressed and the basis and reasons therefor, the data or information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the opinions, the qualifications of the witness, and the compensation to be paid to the witness. If the expert witness is a treating medical provider, that physician's medical records may serve as the report required by this subsection.

(2) *Defendant's Initial Disclosures.* A defendant shall be required to provide its initial disclosures, containing the information required by 16(C)(d)(1)(A)(i)-(iii), within thirty days after the date that the defendant serves notice of its election to proceed by the expedited process. A defendant shall be required to provide, for any designated trial expert, the information described within Rule 16C(d)(1)(A)(iv) and Rule 16C(d)(1)(C) within sixty days after the date that the defendant serves notice of its election to proceed by the expedited track. A defendant pursuing a counterclaim shall provide the same disclosures as a plaintiff, as described in Rule 16C(d)(1).

(3) *Duty to Supplement.* The parties are obligated to supplement information contained within their initial disclosures, including information relating to expert witnesses, on a timely basis as that information becomes available to them, without any obligation on the part of the other party to request such supplementation, up until the time of trial.

(4) *Written Discovery.* Unless otherwise ordered by the court, upon a request by a party and for good cause shown, the parties shall not be allowed to serve more than ten interrogatories, more than ten requests for production of documents and more than ten requests for admissions. The parties may furnish signed authorizations in lieu of producing documents requested by the other party within the time for responding to the requests.

(5) *Depositions.* Depositions are limited to three per party.

(6) *Time for Completing Discovery.* Discovery shall be completed within six months after an expedited scheduling order has been entered. Discovery shall

be initiated so as to enable the opposing party to serve a response within the period allowed by the rules but in advance of the deadline.

(7) *Discovery Disputes.* Any disputes concerning the substance or timing of the initial disclosures and discovery shall be addressed in accordance with Rule 26(g). The court shall give priority to resolving said disputes promptly, given the shorter deadlines involved.

(e) Trial Procedure

(1) *Reports of Experts.* Any party may introduce the direct testimony of an expert witness, including treating physicians, through that expert's written report, which must include the information required by Rule 16C(d)(1)(C). If the party plans to introduce an expert report at trial in lieu of live testimony, the party must provide notice to all other parties of its intent to do so at least thirty days before the close of discovery. Any objections or motions must be filed with the court by the discovery deadline so the court can make appropriate rulings and allow the proffering party an opportunity to amend the report to meet any sustained objections by the opposing party and to allow time to conduct a deposition of the expert. If the parties depose an expert, each may designate all or portions of that deposition testimony, to be admitted into evidence at trial, regardless of the expert's availability for trial.

(2) *Medical Records.* The parties may utilize copies of medical records which would qualify for admission by statute or as business records in accordance with Maine Rules of Evidence 803(6) and 902(11) and (12) if accompanied by the appropriate certification.

(f) Judgment. No judgment shall issue in excess of \$50,000 or other amount agreed to by the parties pursuant to section (a) of this Rule 16C. If a jury returns a verdict that exceeds \$50,000, or other amount agreed to by the parties pursuant to section (a) of this Rule 16C, the court shall reduce the verdict to \$50,000 or to the said agreed amount, including prejudgment interest, but exclusive of costs, post-judgment interest, and any applicable attorney fees, and judgment shall be entered accordingly.

(g) Alternative Dispute Resolution. The requirements of Rule 16B do not apply to cases placed upon the expedited track. However, the parties, by agreement, may elect to conduct ADR prior to trial.

(h) Other Provisions of Maine Rules of Civil Procedure Unaffected. Unless inconsistent with a provision of this rule, the Maine Rules of Civil Procedure apply to cases placed on the expedited trial list.

Advisory Note – June 2014

This new Rule 16C provides an expedited track for specified cases.