



**SO ORDERED.**

**SIGNED this 14th day of June, 2013.**

*Dale L. Somers*

Dale L. Somers  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS  
KANSAS CITY DIVISION**

<b><i>In re:</i></b>  <b>BROOKE CORPORATION, et al.,</b>  <b>Debtors.</b>	<b>Case No. 08-22786-DLS (Jointly Administered) Chapter 7</b>
<b>CHRISTOPHER J. REDMOND, Chapter 7 Trustee of Brooke Corporation, Brooke Capital Corporation and Brooke Investments, Inc.,</b>  <b>Plaintiff,</b>  <b>vs.</b>  <b>KUTAK ROCK, LLP, et al.,</b>  <b>Defendants.</b>	<b>Adv. No. 10-06246-DLS</b>

**SCHEDULING ORDER**

On May 17, 2013, pursuant to Fed. R. Civ. P. 16(b), the Court conducted a scheduling conference in this case with the parties.<sup>1</sup> Plaintiff Trustee (“Trustee”) appeared through its counsel Michael E. Norton and John Cruciani of Husch Blackwell, LLP. Defendant Kutak Rock, LLP (“Kutak”) appeared through counsel, John Aisenbrey and Brian Sobczyk of Stinson Morrison Hecker, LLP, and Defendants Sandler O’Neill & Partners, L.P. Macquarie Holdings (USA) Inc., and Oppenheimer & Co, Inc. (collectively the “Underwriters”) appeared through their counsel James Moeller, Brian Fenimore and James Moloney of Lathrop & Gage LLP. Robert Orr is a defendant in the adversary proceeding and did not participate in the May 17, 2013 scheduling conference.

After consultation with the parties, the Court enters this scheduling order, summarized in the table that follows:

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<sup>1</sup> As used in this scheduling order, the term “plaintiff” includes plaintiffs as well as counterclaimants, cross-claimants, third-party plaintiffs, intervenors, and any other parties who assert affirmative claims for relief. The term “defendant” includes defendants as well as counterclaim defendants, cross-claim defendants, third-party defendants, and any other parties who are defending against affirmative claims for relief.

SUMMARY OF DEADLINES AND SETTINGS	
Event	Deadline/Setting
Plaintiff's settlement proposal	August 15, 2013
Defendant's settlement counter-proposal	September 6, 2013
Confidential settlement reports to magistrate judge, with identification of agreed-upon mediator or other ADR neutral	September 16, 2013
Initial disclosures exchanged	July 31, 2013
All fact discovery completed	May 1, 2014
Experts disclosed on affirmative claims	May 15, 2014
Responsive experts disclosed	July 7, 2014
Rebuttal experts disclosed	August 1, 2014
All expert discovery completed	August 15, 2014
Preliminary witness and exhibit disclosures	March 24, 2014
Plaintiff's motion to join additional parties or otherwise amend the pleadings	August 15, 2013
Defendants' motions to join additional parties or otherwise amend the pleadings	September 5, 2013
Motions to dismiss for lack of personal jurisdiction, venue, propriety of the parties, or failure to state a claim	August 30, 2013
All other potentially dispositive motions (e.g., summary judgment)	September 15, 2014
Motions challenging admissibility of expert testimony	September 1, 2014
Comparative fault identification	September 6, 2013
Status conference	March 2014
Final pretrial conference	November 2014
Trial	January 15, 2015

1. **Alternative Dispute Resolution (ADR).**

- a. By August 15, 2013, plaintiff shall submit to defendant a good faith proposal to settle the case. By September 6, 2013, defendants shall make a good faith response to plaintiff's proposal, either accepting the proposal or submitting defendants' own good faith proposal to settle the case. By September 16, 2013, each of the parties shall submit independently, by way of e-mail or letter (preferably the former), addressed to the magistrate judge (but not the district judge), a confidential settlement report. These reports shall briefly set forth the parties' settlement efforts to date, current evaluations of the case, views concerning future settlement negotiations and the overall prospects for settlement, and a specific recommendation regarding mediation and/or any other ADR method, together with an indication concerning who has been selected by the parties (preferably jointly) to serve as a mediator or other neutral in an ADR process. These reports need not be served upon opposing parties and **shall not** be filed with the Clerk's Office. The Court may thereafter order participation in an ADR process.

2. **Discovery.**

- a. The parties shall exchange by July 31, 2013 the information required by Fed. R. Civ. P. 26(a)(1). The parties are reminded that, although Rule 26(a)(1) is keyed to disclosure of information that the disclosing party "may use to support its claims or defenses, unless solely for impeachment,"

the advisory committee notes to the 2000 amendments to that rule make it clear that this also requires a party to disclose information it may use to support its denial or rebuttal of the allegations, claim, or defense of another party. In addition to other sanctions that may be applicable, a party who without substantial justification fails to disclose information required by Fed. R. Civ. P. 26(a) or Fed. R. Civ. P. 26(e)(1) is not, unless such failure is harmless, permitted to use as evidence at trial, at a hearing, or on a motion any witness or information not so disclosed. *See* Fed. R. Civ. P. 37(c)(1).

- b. All fact discovery shall be commenced or served in time to be completed by May 1, 2014.
- c. The parties intend to serve disclosures and discovery electronically, as permitted by D. Kan. Rules 5.4.2 and 26.3.
- d. Consistent with the parties' agreements as set forth in their Rule 26(f) report, claims of privilege or of protection as trial-preparation material asserted after production will be handled as follows: See Order Doc #375.
- e. No party, including the Underwriters collectively, shall serve more than 25 interrogatories, including all discrete subparts, to any other party.
- f. There shall be no more than 40 depositions by plaintiff and 40 by defendants collectively, excluding records custodians where necessary.
- g. Each deposition shall be limited to 8 hours, except that the parties anticipate that some depositions may exceed 8 hours. The parties agree to work in good faith to identify such depositions in advance.

- h. Disclosures required by Fed. R. Civ. P. 26(a)(2), including reports from retained experts, shall be served by all parties on any affirmative claims by May 15, 2014, and responsive disclosures by July 7, 2014. Disclosures and reports by any rebuttal experts shall be served by August 1, 2014. The parties shall serve any objections to such disclosures (other than objections pursuant to Fed. R. Evid. 702-705, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), or similar case law), within 11 days after service of the disclosures upon them. These objections should be confined to technical objections related to the sufficiency of the written expert disclosures (e.g., whether all of the information required by Rule 26(a)(2)(B) has been provided, such as lists of prior testimony and publications). These objections need not extend to the admissibility of the expert's proposed testimony. If such technical objections are served, counsel shall confer or make a reasonable effort to confer consistent with requirements of D. Kan. Rule 37.2 before filing any motion based on those objections.
- i. Supplementations of disclosures under Fed. R. Civ. P. 26(e) shall be served at such times and under such circumstances as required by that rule.
- j. The parties shall serve preliminary witness and exhibit disclosures pursuant to Fed. R. Civ. P. 26(a)(3)(A)(i) & (iii) by March 24, 2014. These disclosures shall provide a realistic listing of the witnesses and exhibits that

actually are anticipated to be used during trial of the case instead of merely repeating the initial disclosures under Fed. R. Civ. P. 26(a)(1)(A)(i) & (ii).

- k. At the final pretrial conference after the close of discovery, the Court will set a deadline, usually 21 days prior to the trial date, for the parties to file their final disclosures pursuant to Fed. R. Civ. P. 26(a)(3)(A)(i), (ii) & (iii). As indicated above, if a witness or exhibit appears on a final Rule 26(a)(3) disclosure that has not previously been included in a Rule 26(a)(1) disclosure (or a timely supplement thereto), that witness or exhibit probably will be excluded at trial. *See* Fed. R. Civ. P. 37(c)(1).
- l. To avoid the filing of unnecessary motions, the Court encourages the parties to utilize stipulations regarding discovery procedures. However, this does not apply to extensions of time that interfere with the deadlines to complete all discovery, for the briefing or hearing of a motion, or for trial. *See* Fed. R. Civ. P. 29; D. Kan. Rule 6.1(a). Nor does this apply to modifying the requirements of Fed. R. Civ. P. 26(a)(2) concerning experts' reports. *See* D. Kan. Rule 26.4(b).

3. **Motions.**

- a. Plaintiff's motion for leave to join additional parties or to otherwise amend the pleadings, if any, shall be filed by August 15, 2013. Defendants' motion for leave to join additional parties or to otherwise amend the pleadings, if any, shall be filed by September 5, 2013.

- b. Provided that such defenses have been timely preserved, any motions to dismiss for lack of personal jurisdiction, venue, propriety of the parties, or failure to state a claim upon which relief can be granted shall be filed by August 30, 2013.
- c. All other potentially dispositive motions (e.g., motions for summary judgment) shall be filed by September 15, 2014.
- d. All motions to exclude testimony of expert witnesses pursuant to Fed. R. Evid. 702-705, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), or similar case law, shall be filed no later than September 1, 2014.

4. **Other Matters.**

- a. By September 6, 2013, any party asserting comparative fault shall identify all persons or entities whose fault is to be compared.
- b. Pursuant to Fed. R. Civ. P. 16(a), a status conference will be scheduled for March 2014 in the magistrate judge's courtroom.
- c. Pursuant to Fed. R. Civ. P. 16(e), a final pretrial conference will be scheduled for November 2014.
- d. The parties expect the trial of this case to take approximately 14 trial days or three weeks. The case will be ready for trial by January 15, 2015.
- e. The parties are not prepared to consent to trial by a U.S. Magistrate Judge at this time.



This scheduling order shall not be modified except by leave of Court upon a showing of good cause.

IT IS SO ORDERED.

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