

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA,
Plaintiff,
v.
NRA FOUNDATION INC, et al.,
Defendants.

2020 CA 003454 B

Judge Yvonne Williams

PRETRIAL ORDER

Based on the Pretrial Conference held on November 16, 2023, the Court orders as follows:

1. **Incorporation.** This Pretrial Order incorporates the Joint Pretrial Statement, filed November 9, 2023, and Defendant National Rifle Association of America’s Praecipe Attaching Updated Preliminary Exhibit List, filed November 15, 2023, except as modified below.

2. **Trial date.** The Court will begin a **Non-Jury Trial on Monday, April 29, 2024 at 9:30 a.m. in Courtroom 212.** Unless otherwise advised by the Court, all parties and counsel shall be present at that time in the courtroom, ready to begin trial. If the Court knows earlier that it will be unable to begin the trial on that date and time, it will notify the parties. If the Court is unable to begin trial at that time, all parties and counsel shall – unless the Court otherwise instructs the parties – remain ready, on a one-hour telephone alert, to begin trial on any of the two court days immediately following the scheduled trial date.

3. **Length of trial.** The parties expect the trial to last no more than eight days.

4. **Claims and defenses.** No party may assert any claim or defense at trial other than those described in the Joint Pretrial Statement, unless the parties make a showing of good cause or excusable neglect.

5. **Settlement.** The Court encourages the parties to continue settlement discussions up to the day of trial. However, absent exceptional circumstances, the Court will not delay the start of the trial to accommodate additional settlement discussions.

6. **Discovery.** Discovery is closed.

7. **Stipulations.** All stipulations are set forth in the Joint Pretrial Statement.

8. **Witnesses.** All of the parties' potential witnesses are listed in the Joint Pretrial Statement. Except for impeachment or rebuttal, no party may offer at trial the testimony of any witness not listed in the Joint Pretrial Statement or in this Pretrial Order. So that a witness testifies only once, the Court will allow a party to cross-examine a witness outside the scope of direct examination if the party would otherwise have called the witness in its case-in-chief.

9. **Exhibits.** All of the parties' potential exhibits are listed in the Joint Pretrial Statement and Defendant National Rifle Association of America's Praeipie Attaching Updated Preliminary Exhibit List. Except for impeachment or rebuttal, no party may offer at trial any other exhibit, except for good cause shown and with prior leave of the Court. No party may object to any exhibit at trial on a basis not set forth in the Joint Pretrial Statement, and Defendant National Rifle Association of America's Praeipie Attaching Updated Preliminary Exhibit List, or identified at the Pretrial Conference, unless the party could not timely file the objection for reasons beyond that party's control.

10. **Motions.** At the Pretrial Conference, the Court entered the following orders:

a. Defendant National Rifle Association of America's Opposed Motion to Continue Trial Date: **GRANTED.**

i. Defendants the National Rifle Association of America (the "NRA") and the NRA Foundation, Inc. (the "Foundation") would be prejudiced if this trial

were to occur simultaneously with the 6-week jury trial in the New York Attorney General's case against the NRA because of the potential unavailability of the NRA's trial counsel and due to the number of overlapping witnesses within the NRA's control. Further, the District will not be significantly prejudiced by a three-month delay. Therefore, the January 16, 2024 Non-Jury Trial is continued until April 29, 2024.

b. Plaintiff District of Columbia's Motion *in Limine* to Exclude All Testimony from Foundation Expert William Klimon and Undisclosed Expert John Keegan, and to Exclude Certain Testimony from Foundation Expert Michael Fahlman and Former Foundation Trustee Susan Hayes: **DENIED IN PART.**

- i. The District's Motion *in Limine* with respect to William Klimon's testimony as to the business judgment rule is held in abeyance until trial.
- ii. The Motion is denied as to Mr. Klimon's testimony about the NRA's alleged misuse of Foundation funds and the authority of the Attorney General for the District of Columbia. Mr. Klimon will be permitted to present his opinions regarding misuse of funds related to the management fee. Any testimony that relies on after-the-fact considerations (evidence not known at the time the management fee was approved) goes to the weight of the evidence and can be challenged on cross-examination. For the same reason, the Motion is denied as to Michael Fahlman's testimony regarding the Foundation's loans to the NRA. To the extent that Mr. Klimon presents legal opinions during his trial testimony, the legal opinions will be struck from the record and will not be considered by the Court.

- iii. The Motion is denied with respect to John Keegan's testimony. The Foundation is not offering Mr. Keegan as an expert witness; thus, Mr. Keegan will be permitted to testify as a lay fact witness. If Mr. Keegan attempts to present expert opinions, that testimony will be struck from the record and will not be considered by the Court. The District may contact Mr. Keegan regarding his proposed testimony and to inspect the Foundation's office space.
- iv. The Motion is denied as to Susan Hayes' testimony that Wells Fargo Bank backed away from the NRA for political reasons rather than creditworthiness, and Mr. Klimon and Mr. Fahlman's reliance on this statement to support their respective expert opinions. The underlying basis of Ms. Hayes' beliefs can be challenged on cross-examination. Mr. Klimon and Mr. Fahlman's reliance on Ms. Hayes' statement will only be considered if their expert opinions changed as a result.
- c. Motion *in Limine* to Preclude the Testimony of Bruce L. Blacker and Ryan Sullivan: **GRANTED IN PART.**
 - i. The only claims against the NRA in this matter concern the District's requested remedy to impose a constructive trust over any funds the NRA improperly holds that, in equity, belong to the Foundation. Upon review of Ryan Sullivan and Bruce L. Blacker's qualifications as identified in their June 21, 2023 expert report, neither expert is qualified to testify about non-profit governance. Mr. Blacker, a Certified Public Accountant with a certification in financial forensics, may testify with respect to the NRA's

use of Foundation funds. Dr. Sullivan, however, shall be precluded from testifying at trial.

d. Defendant NRA Foundation, Inc.’s Consolidated Motions *in Limine*: **DENIED IN PART AND GRANTED IN PART.**

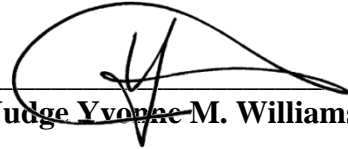
- i. The Motion to Exclude Evidence and Argument that Transactions are Void Under Section 29-406.70 is **DENIED**. The Second Amended Complaint raises claims under Section 29-412.20 of the District of Columbia Nonprofit Corporation Act (“NCA”). Section 29-412.20(a)(1) permits the Court to dissolve a nonprofit corporation, appoint a receiver, impose a constructive trust, or impose other injunctive or equitable relief if the Attorney General establishes that “[t]he corporation has exceeded or abused and is continuing to exceed or abuse the authority conferred upon it by law[.]” D.C. Code § 29-412.20(a)(1)(B). Under Section 29-406.70, the Foundation is authorized to engage in conflicting interest transactions when certain conditions are met, however, a violation of the conditions articulated in Section 29-406.70 creates a void or voidable transaction. If the Foundation executed a void or voidable conflicting interest transaction, it would abuse the Foundation’s statutory authority. Thus, a violation of Section 29-406.70 would also be a violation of Section 29-412.20(a)(1), and the District was not required to plead a separate cause of action under Section 29-406.70.
- ii. The Motion to Exclude Evidence and Argument in Support of Common Law Claims Not Based on Diversion or Corporate Waste is **DENIED**. The District has not brought a cause of action regarding the Foundation

Trustees' alleged breach of fiduciary duties. Any argument related to the Trustees' alleged breach of fiduciary duties will be raised in support of the District's claims under the NCA.

- iii. The Motion to Exclude Evidence or Argument Disputing the Size of the Foundation's Rented Office Space is **DENIED**. The Foundation has had sufficient notice of the District's dispute concerning the size of its office space at the NRA headquarters. If the District proceeds with this issue at trial, the Foundation's fact witness, John Keegan, can provide rebuttal testimony.
- iv. The Motion to Exclude Undisclosed Expert Opinions and Disavowals of Prior Expert Testimony is **DENIED**. The District's expert, Elizabeth Kingsley, is not required to supplement her expert report under Rule 26(e). Although Ms. Kingsley reviewed the Foundation's supplemental production concerning its grantmaking to the NRA after she submitted her report, her expert opinions did not change. Furthermore, the District may question its experts about the alleged misuse of funds at trial.
- v. The Motion to Exclude Investigative Interview Transcript is **GRANTED**. The District is precluded from introducing pre-litigation interview transcripts at trial in lieu of testimony because, while the interviews were under oath, they were not subject to cross-examination. There is no hearsay exception that would otherwise allow entire pre-litigation interview transcripts to be introduced in lieu of testimony.

- vi. The Motion to Exclude Evidence or Argument Related to Certain Alleged NRA Expenditures Not Involving Foundation Funds is **DENIED**. The District is permitted to present evidence of the NRA's expenditures if there is a connection between those expenditures and the District's claims. Any disputes regarding the relevancy of the expenditures can be raised and resolved at trial.
- e. Defendant National Rifle Association of America's Motion *in Limine* is **DENIED**.
 - i. The District is not seeking liability against the NRA. Any evidence involving the NRA's actions that are relevant to the District's claims against the Foundation or the remedies sought are admissible. Disputes about the evidence regarding the NRA's actions must be resolved at trial.

IT IS SO ORDERED.


Judge Yvonne M. Williams

Date: November 20, 2023

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