

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

FILED

2013 MAR 25 PM 2:07

CLERK
KAWHA COUNTY COURT

DB LAND, LLC,

Plaintiff,

v.

CASE NO.: 12-C-1678

BCD NO.: 12-C-1678KAN

JUDGE: Christopher C. Wilkes

EMPIRE CONSULTING SERVICES, LLC
SNAP CREEK PROCESSING, INC.,

Defendants.

AND

PARDEE MINERALS LLC,
A Delaware Limited Liability Company,

Counter-Defendant,

AND

SNAP CREEK PROCESSING, INC.,
A West Virginia Corporation,

Third-Party Plaintiff,

v.

BOWLES RICE, LLC,
A West Virginia Limited Liability
Partnership

Third-Party Defendant.

SCHEDULING ORDER

The following schedule is ORDERED by the Court in the above-styled civil action; and shall not be modified except by leave of Court.

1. TRIAL DATE: January 27, 2014 at 9:00 A.M.

_____ Jury Trial Requested X Bench Trial Requested

Continuance motions must be filed at least 10 business days prior to the trial or they will not be considered. Trial is anticipated to last 5 days.

2. PRE-TRIAL CONFERENCE DATE: January 27, 2014 at 9:00 A.M.

At which time lead counsel must appear. All parties are **ORDERED** to exchange and deliver their respective **PRE-TRIAL CONFERENCE MEMORANDA** to the Judge's Chambers **NO LATER THAN TEN (10) BUSINESS DAYS BEFORE** the trial. **FAILURE TO COMPLY MAY RESULT IN CONTINUANCE OF TRIAL OR MONETARY SANCTIONS BEING IMPOSED.** Said memoranda are to contain at a minimum, the following:

- | | |
|--------------------------|-----------------------------|
| 1. Statement of the Case | 5. Schedule of Exhibits |
| 2. Issues of Fact | 6. List of Witnesses |
| 3. Issues of Law | 7. Pending Motions |
| 4. Proposed Stipulations | 8. Motions <i>in Limine</i> |

SCHEDULE OF EXHIBITS

The parties shall exchange a list of all proposed exhibits (including demonstrative) and shall make the exhibits available for viewing by counsel at least **5** work days prior to the pre-trial conference. By the time of the pre-trial conference counsel shall have stipulated as to which exhibits shall be admitted without objection and provide a list to the Court and Clerk. The parties shall mark all exhibits by use of standard exhibit stickers and provide a list to the Court and counsel.

VIDEO DEPOSITION TO BE USED AT TRIAL

If a video deposition is to be used, all parties must be prepared to argue objections at the pre-trial conference. Thereafter, the proponent of the video deposition shall have the video edited to reflect the court's rulings. In addition, the proponent of the video deposition must have a videographer at trial.

3. EXPERTS DISCLOSED: Plaintiff: July 1, 2013
Defendant: August 1, 2013

A. Any party desiring to use an expert witness must furnish opposing counsel with the specialty of such expert and copies of all reports submitted by such witness, or, if no reports have been submitted, a summary of the substance of such expert's contemplated testimony, on the date of Expert Disclosure per WVRCP 26(b)(4).

B. The admissibility of expert testimony is subject to Rule 104(a) of the Rules of Evidence. Objection to the admissibility of expert testimony will be deemed waived if not objected to by a

motion *in limine* filed at least 10 days prior to the pre-trial and a hearing thereon set with the Court prior to first day of trial.

C. Co-designation or co-reliance upon experts must also specifically be made in writing on date of Expert Disclosure.

4. INDEPENDENT EXPERT EXAMINATIONS OF THE SUBJECT PROPERTIES:

Motions for examinations are presumptively granted and counsel are to confer and agree upon the date and the extent of the exam, if counsel cannot agree, the objecting party shall file a Motion for Protective Order limiting the time or extent of the examination.

5. DISPOSITIVE MOTIONS: WVRCP 12(b) and 56 motions shall be filed at least 60 days prior to the pre-trial conference.

**6. AMENDMENTS, THIRD PARTY PLEADINGS,
AND OTHER MATTERS NO LATER THAN: June 1, 2013**

7. FINAL WITNESS LIST EXCHANGED: December 27, 2013

This is to be a *bona fide* list of intended trial witnesses.

8. DISCOVERY COMPLETION DATE: December 12, 2013

All requests must be filed at least 35 days in advance of this date so that all responses may be completed by this date. All trial depositions must be completed at least 5 days before the pre-trial.

9. MOTIONS *IN LIMINE* MUST BE FILED AT LEAST 10 DAYS BEFORE PRE-TRIAL AND WILL BE RULED UPON AT THE PRE-TRIAL CONFERENCE.

10. MEDIATION COMPLETION DATE: December 12, 2013

11. SANCTIONS: In accordance with WVRCP 16(f), the Court may impose the full spectrum of sanctions authorized by the WVRCP if a party or party's counsel fails to obey this order or other orders of this Court including exclusion of evidence and granting of default for failure to comply.

12. UNLESS AUTHORIZED BY COURT ORDER, THE ABOVE DATES ARE FINAL. No additional evidence developed as a result of deviations from the above schedule will be admissible at trial unless justice requires.

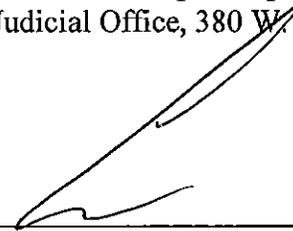
13. OBJECTIONS to the above schedule must be made to the undersigned Judge within **15 days** of the date of this Order or will be deemed waived.

14. It will be the responsibility of plaintiff or their counsel to notify opposing counsel and *pro se* parties of the existence of this scheduling order, if and when such counsel or *pro se* party appears of record.

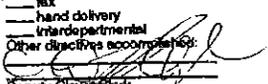
15. The dates set out above do not relieve counsel or parties from timely compliance with discovery requests propounded pursuant to the West Virginia Rules of Civil Procedure.

The Clerk shall transmit certified copies to counsel of record and *pro se* parties and to the Business Court Division Central Office, Berkeley County Judicial Office, 380 W. South Street, Martinsburg, West Virginia 25401.

ENTER: March 20, 2013


CHRISTOPHER C. WILKES, JUDGE
BUSINESS COURT DIVISION

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID COUNTY DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE AND CORRECT COPY OF THE ORIGINAL AS
GIVEN TO ME BY THE COURT AND THAT I HAVE
NOT MADE ANY CHANGES THEREIN.
DATE OF March 20, 2013
Cathy S. Gatson, CLERK
CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA
By: C. Bonnell

Date: 3-29-13
Certified copies sent to:
 counsel of record
 parties
 other Business Court
(please indicate)
By:
 certified/1st class mail
 fax
 hand delivery
 interdepartmental
Other dispatches accompanied:

Deputy Circuit Clerk