

1413

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

POB, LLC, and  
ASSOCIATED SPECIALISTS, INC.,

Plaintiffs,

VS.

CIVIL ACTION NO. 12-C-475-2  
(Thomas A. Bedell, Judge)

GRANT ARCHITECTS, P.C., INC.,  
and CENTURY ENGINEERING, INC.,

Defendants.

**PRE-TRIAL and SCHEDULING ORDER**

The Court would note that the above styled civil action came on for a Pre-Trial and Scheduling Conference on the 20<sup>th</sup> day of March, 2013, before Thomas A. Bedell, Judge of the Circuit Court of Harrison County, West Virginia, pursuant to Rule 16 of the Rules of Civil Procedure, the West Virginia Trial Court Rules, and the Court's pre-trial procedure; and came the Plaintiffs by Steven B. Nanners, their counsel. Further came the defendant, Grant Architects, P.C., Inc., by Teresa J. Dumire, its counsel. Also came the defendant, Century Engineering, Inc., by Kenneth G. Stallard, its counsel.

**JOINDER and AMENDMENTS**

Motions to join additional parties, motions to amend pleadings, and any cross-claim or counterclaim and the reply thereto, as well as any similar motions, shall be fully effected on or before the 1<sup>st</sup> day of November, 2013.

192

**DISCOVERY SCHEDULE**

Plaintiffs' Rule 26 expert witnesses and Rule 26(b)(4) information shall be identified on or before the 30<sup>th</sup> day of September, 2013; Defendants' Rule 26 expert witnesses and Rule 26(b)(4) information shall be identified on or before the 25<sup>th</sup> day of November, 2013. The Plaintiffs' rebuttal Rule 26 expert witnesses and Rule 26(b)(4) information shall be identified on or before the 30<sup>th</sup> day of December, 2013.

The disclosures described in West Virginia Rules of Civil Procedure 26(b)(4) shall not be required of physicians and other medical providers who examined or treated a party or party's decedent unless the examination was for the sole purpose of providing expert testimony in the case. However, their testimony shall be limited to the medical records unless designated as expert witness for the purpose of giving opinion testimony (i.e., permanent disability, future medical treatment, etc.).

All inspection of property, if applicable, shall be completed on or before the 16<sup>th</sup> day of May, 2014.

Discovery shall be completed on or before the 18<sup>th</sup> day of July, 2014.

For the purpose of this Order, "completed" means that any discovery requiring a response or action shall be filed in sufficient time to permit such response or action by the above date.

**FINAL LISTS OF WITNESSES AND EXHIBITS**

On or before the 19<sup>th</sup> day of August, 2014, the parties shall file with the Clerk of this Court a list containing their proposed witnesses and exhibits and shall serve a copy of the same

upon all counsel of record. Witnesses shall be identified as to whether they will be called in the parties' case-in-chief or as rebuttal witnesses. All exhibits shall be appropriately marked in sequence. Exhibit markers *may* be secured from the Court Reporter.

**On the first day of the trial**, counsel shall tender to the **office of the presiding Judge** two (2) binders of the exhibits. These exhibits should be indexed for easy reference and each exhibit should be individually tabbed. One (1) of these binders will be for the Court's use and the other is for use by the witness. Counsel should have his or her own copy of each exhibit and should furnish opposing counsel(s) with a copy of each exhibit as well. If counsel desires each juror to have a binder of exhibits to view as counsel examines witnesses, these should be prepared for presentation to each juror at the appropriate time with the Court's permission. Any objection to any proposed exhibit shall be filed, in writing, with the appropriate citations thereto as well as the attached exhibit, on or before the 26<sup>th</sup> day of August, 2014. **A copy of said objection shall be filed with the office of the presiding Judge.** Failure to comply with this paragraph may constitute a waiver of objections or may result in the Court's denying the admission of the affected exhibits.

**In the event of a settlement of this civil action, if counsel for the respective parties herein shall desire the return of their proposed exhibit binders, arrangements must be made with the presiding Judge within fifteen (15) days of the entry of the final Order, otherwise the Court will proceed in disposing of the binders of proposed exhibits by whatever means deemed most efficient and expedient.**

**MOTIONS IN LIMINE**

All motions in limine, accompanied by memoranda of law, and all other related pre-trial motions, shall be filed with the Clerk of this Court **and a copy with the office of the presiding Judge** on or before the 8<sup>th</sup> day of August, 2014.

Responses to such motions shall be filed by counsel with the Clerk of this Court **and a copy with the office of the presiding Judge** on or before the 22<sup>nd</sup> day of August, 2014.

**DISPOSITIVE MOTIONS SCHEDULE**

All dispositive motions, supporting memorandums, and affidavits shall be filed with the Clerk of this Court **and a copy with the office of the presiding Judge** on or before the 8<sup>th</sup> day of August, 2014.

All responsive pleadings, supporting memorandums, and counter-affidavits shall be filed with the Clerk of this Court **and a copy with the office of the presiding Judge** on or before the 22<sup>nd</sup> day of August, 2014.

All rebuttal pleadings, supporting memorandums, and counter-affidavits shall be filed with the Clerk of this Court **and a copy with the office of the presiding Judge** on or before the 29<sup>th</sup> day of August, 2014.

A hearing on all dispositive motions shall be scheduled by the Court, if the Court deems a hearing on the same necessary prior to the Final Pretrial Conference; otherwise, the same shall be set for hearing by counsel giving notice to the other side and the Court for the date and time of the Final Pretrial Conference.

All other motions may be filed and set for hearing based on case development.

199

**PROPOSED JURY INSTRUCTIONS, SPECIAL INTERROGATORIES, VERDICT FORMS, and VOIR DIRE**

Proposed Jury Instructions or substantive theories of recovery or defense, on damages and on evidentiary matters peculiar to the case, together with pertinent statutory and case authority, special interrogatories, and verdict forms, as appropriate to the case, and all proposed voir dire questions requested by counsel for submission to the jury shall be exchanged by counsel and the original, as well as the same saved on a compact disc (CD) compatible with Microsoft Word delivered to the office of the presiding Judge on or before the 19<sup>th</sup> day of August, 2014.

*Within seven (7) days thereafter, the parties shall submit to office of the presiding Judge, any objections, in writing only, which they may have to the proposed instructions, special interrogatories, verdict form, or voir dire of the other party(ies).*

The Court reserves the right to refuse any proposed instructions or to refuse to consider any objections to the instructions not submitted in compliance herewith.

In the event of a settlement of this civil action, if counsel for the respective parties herein shall desire the return of their proposed jury instructions, special interrogatories, verdict forms, and voir dire, arrangements must be made with the presiding Judge within *fifteen (15) days* of the entry of the final Order, otherwise the Court will proceed in disposing of the binders of proposed jury instructions, special interrogatories, verdict form, and voir dire by whatever means deemed most efficient and expedient.

**FILING OF DISCOVERY FOR USE AT TRIAL**

On or before the 19<sup>th</sup> day of August, 2014, the parties shall file with the office of the presiding Judge any interrogatories, answers thereto, depositions, etc., specifying the appropriate portions thereto that the parties intend to offer in this case. Any objection(s) to the introduction of any of the foregoing shall be filed, in writing, with the office of the presiding Judge by each of the parties on or before the 26<sup>th</sup> day of August, 2014, or such objection(s) shall be deemed to have been waived. **This paragraph is not to apply to discovery materials that will be used at trial solely in cross-examination or for impeachment.**

In the event of a settlement of this civil action, if counsel for the respective parties herein shall desire the return of their proposed jury instructions, special interrogatories, verdict forms, and voir dire, arrangements must be made with the presiding Judge within *fifteen (15) days* of the entry of the final Order, otherwise the Court will proceed in disposing of the binders of proposed jury instructions, special interrogatories, verdict form, and voir dire by whatever means deemed most efficient and expedient.

**STIPULATIONS**

Counsel are encouraged to meet with one another and enter into stipulations of fact in this case and any such stipulation shall be reduced to writing, signed by all counsel of record, and filed with the Court and with opposing counsel on or before the 26<sup>th</sup> day of August, 2014.

**FINAL PRE-TRIAL CONFERENCE/TRIAL SETTLEMENT CONFERENCE**

The Final Pre-Trial Conference/Final Settlement Conference in this matter shall be held on the **2<sup>nd</sup> day of September, 2014, at 8:15 o'clock a.m.** Said conference shall be attended

by LEAD TRIAL COUNSEL for each represented party and all unrepresented party(ies). Counsel and parties should be prepared to participate fully and to discuss all aspects of the case. Individuals with full authority to settle the case for each party shall be present in person or immediately available by telephone. The Court may reset the Final Settlement Conference for additional discussions as necessary.

**TRIAL DATE**

This matter is hereby set for a **JURY TRIAL** during the week of the **8<sup>th</sup> day of September, 2014.**

**MEDIATION<sup>1</sup>**

The Court finds that this is an appropriate case for reference to mediation. Therefore, pursuant to Rule 25 of the West Virginia Trial Court Rules, this case is referred to mediation. Selection of a mediator shall be pursuant to TCR 25.05, and the parties shall have **15** days from the entry of the within Order to select a mediator and notify the Court; if the parties are unable to agree to such selection, counsel for the Plaintiffs shall **immediately** notify the Court, in writing, and the Court will subsequently make such selection by Order. Mediation shall be scheduled and concluded **on or before the 1<sup>st</sup> day of July, 2014**, unless such deadline is otherwise extended by the Court for good cause shown. At the conclusion of said mediation, the **mediator** shall immediately notify the Court, in writing, of the results of said mediation. The costs

---

<sup>1</sup> This mediation is in addition to and superseded by the mediation to be undertaken by the appropriate parties pursuant to this Court's "Order Granting the Defendant Grant Architects' Motion to Stay" being entered contemporaneously herewith

198

associated with said mediation attempt shall be borne equally by all the parties. Said mediation shall be a condition precedent to the jury trial hereinabove set.

It is now **ORDERED** that this Pre-Trial and Scheduling Order shall control the course of these actions unless modified by the Court for good cause.

The Clerk is hereby directed to send a certified copy of this Order to the following counsel of record:

Steven B. Nanners  
Law Offices of Nanners & Willett, L.C.  
45 West Main Street  
Buckhannon, West Virginia 26201  
*Counsel for Plaintiffs*

Teresa J. Dumire  
Shannon P. Smith  
Kay Casto & Chaney, PLLC  
1085 Van Voorhis Road, Suite 100  
Morgantown, West Virginia 26505  
*Counsel for defendant, Grant  
Architects, P.C., Inc.*

Kenneth G. Stallard  
Thompson O'Connell, LLP  
1212 New York Avenue, N.W.  
Suite 1000  
Washington, D.C. 20005  
*Counsel for defendant,  
Century Engineering, Inc.*

ENTER:           mm 9 20, 2013          

          T. A. Bevell            
THOMAS A. BEDELL, JUDGE

STATE OF WEST VIRGINIA  
COUNTY OF HARRISON, TO-WIT

I, Donald L. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18<sup>th</sup>  
Family Court Circuit of Harrison County, West Virginia, hereby certify the  
foregoing to be a true copy of the ORDER entered in the above styled action  
on the 20 day of March, 2013.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix  
the Seal of the Court this 6 day of June, 2013.

  
\_\_\_\_\_  
Fifteenth Judicial Circuit & 18<sup>th</sup> Family Court  
Circuit Clerk  
Harrison County, West Virginia