

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA
HARRISON COUNTY DEVELOPMENT AUTHORITY,

Plaintiff,

v.

Civil Action No. 12-C- 504-3
Business Court Division

TETRICK & BARTLETT, PLLC,

Defendant.

AMENDED SCHEDULING ORDER

On a previous day came the parties by and through the undersigned counsel for a scheduling and status conference, pursuant to Rule 16 of the West Virginia Rules of Civil Procedure and the West Virginia Trial Court Rules, following entry of an order referring this civil action to the Business Court Division. On or about February 8, 2013, the Circuit Court of Harrison County, West Virginia entered a Scheduling Order in this civil action. The Scheduling Order previously entered by the Circuit Court of Harrison County, West Virginia is hereby vacated and the following shall be the Scheduling Order for the instant case moving forward:

DISCOVERY SCHEDULE

Plaintiff's Rule 26 expert witnesses and Rule 26(b)(4) information shall be identified on or before September 1, 2013; Defendant's Rule 26 expert information and Rule 26(b)(4) information on or before October 15, 2013.

All inspection of property, if applicable, shall be completed on or before October 15, 2013.

Discovery shall be completed on or before November 20, 2013. For purposes 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 December 20, 2013 (at least two weeks prior to the Final Pretrial Conference), 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 and the office of presiding Judge. 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. Exhibits markers may be secured from the Court Reporter. All exhibits should be indexed for easy reference and each exhibit should be individually tabbed. 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 by the aforesaid date.

On the first day of the trial, counsel shall tender to the office of the presiding Judge two (2) binders of the exhibits. One binder shall be for the Court's use and the other shall be for use by witnesses during trial. 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 December 27, 2013 (one week prior to the Final Pre-Trial Conference). 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 within fifteen (15) days of the entry of the final Order, otherwise the Court will proceed in disposing of the binders of the 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 December 20, 2013 (at least two weeks prior to the final pre-trial conference).

Responses to such motions shall be filed by counsel with the Clerk of the Court and a copy with the office of the presiding Judge on or before December 27, 2013 (at least one week prior to the final pre-trial conference).

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 December 6, 2013

All responsive pleadings, supporting memorandums, and counter-affidavits shall be filed with the Clerk of this Court and a copy with the presiding Judge on or before the December 20, 2013

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 December 27, 2013.

A hearing on all dispositive motions shall be scheduled by the Court, if the Court deems said hearing on the same necessary prior to the Final Pre-Trial 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 for the Final Pre-Trial Conference. All other motions may be filed and set for hearing based on case development.

**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 **with an original being filed in the office of the Clerk of this Court. Duplicate originals, as well as the same saved on a compact disk (CD) compatible with WordPerfect 9.0 for Windows shall be delivered to the office of the presiding Judge** on or before the 20th day of December, 2013, (at least two (2) weeks prior to the Final Pretrial Conference herein).

Within seven (7) days thereafter, the parties shall file with the Clerk of this Court an original, and submit a copy to the 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 proposed jury instructions, special interrogatories, verdict forms, and voir dire by whatever means deemed most efficient and expedient.

FILING OF DISCOVERY FOR USE AT TRIAL

On or before the 20th day of December, 2013, (at least two (2) weeks prior to the Final Pretrial Conference herein), 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 27th day of December, 2013, (at least one (1) week prior to the Final Pretrial Conference herein), 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 discovery, 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 discovery 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 20th day of December, 2013.

FINAL PRETRIAL CONFERENCE/SETTLEMENT CONFERENCE

The Final Pretrial Conference/Settlement Conference in this matter shall be held on the 7th day of January, 2014, at 1:30 o'clock p.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 Settlement Conference for additional discussions as necessary.

TRIAL DATE

This matter is hereby set for a **JURY TRIAL** beginning on January 27, 2013, at 9:00 o'clock a.m.

MEDIATION

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. By order of this Court, mediation shall be conducted by the Honorable Christopher C. Wilkes. Mediation shall be scheduled and concluded on or before December 15, 2013, unless such deadline is otherwise extended by the Court for good cause shown. Said mediation shall be a condition precedent to the jury trial hereinabove set.

It is now **ORDERED** that this Pretrial and Amended Scheduling Order shall control the course of this action **and shall not be amended except by the consent of all parties, unless the Court shall modify the same for good cause, and such modification may be made on application of counsel for the parties or on motion of the Court.**

The Clerk is hereby directed to send a certified copy of this Order to counsel for the plaintiff, James A. Varner, Sr., and Jeffrey D. Van Volkenburg, at the address of McNeer, Highland, McMunn and Varner, L.C., Post Office Drawer 2040, Clarksburg, WV 26302-2040, and counsel for the defendant, John F. McCusky at his address of Shuman, McCuskey & Slicer, PLLC, 1411 Virginia Street, East, Suite 200, Charleston, WV 25339, and Jennifer L. Tampoya, at her address of Shuman, McCuskey & Slicer, PLLC, 11445 Stewartstown Road, Suite 200, Morgantown, West Virginia 26505.

ENTER: Aug 16 2013

James H. Young
JAMES H. YOUNG, JUDGE

Prepared by:

Jeffrey D. Van Volkenburg
Jeffrey D. Van Volkenburg (WV Bar ID 10227)
Counsel for Harrison County Development Authority

Agreed As To Form:

John F. McCuskey
John F. McCuskey (WV Bar ID 2431)
Counsel for Tetrick & Bartlett

A True Copy
Attest: Donald L. Kopp II
Clerk