

**IN THE CIRCUIT COURT OF GREENBRIER COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION**

**BERNARD HOLLIDAY, an Individual  
and Greenbrier County Resident,**

**Plaintiff,**

**ENGINEERING & TESTING 2000, INC.,  
a West Virginia Corporation with  
its Principal Office in Greenbrier  
County, West Virginia,**

**Plaintiff,**

**vs.**

**Civil Action No. 13-C-78(R)**

**WILLIAM TONEY, an Individual  
and Fayette County Resident,**

**Defendant,**

**ENGINEERING & TESTING 2000, INC.,  
a West Virginia Corporation with  
its Principal Office in Greenbrier  
County, West Virginia,**

**Defendant.**

**SCHEDULING ORDER**

On the 22nd day of July, 2013, came the plaintiff, Bernard Holliday, an Individual and Greenbrier County Resident, by counsel, R. Brandon Johnson of the Stroebel & Johnson, P.L.L.C. law firm, and came the defendant, William Toney, an Individual and Fayette County Resident, by counsel, William Crichton V, respectively, for a scheduling conference with regard to further proceedings herein. Having met with the Court and

pursuant to Rule 16b of the West Virginia Rules of Civil Procedure, the following schedule and procedures were adopted and **ORDERED** by the Court:

1. The plaintiff shall disclose to the defendant the names and addresses of all fact witnesses the plaintiff may call to testify in Plaintiff's case in chief on or before the 15th day of August, 2013.

2. The defendant shall disclose to the plaintiff the names and addresses of all fact witnesses the defendant may call to testify in the defendant's case in chief on or before the 15th day of August, 2013.

3. The plaintiff shall serve all demands for production of documents and requests for admissions on or before the 1st day of September, 2013.

4. The defendant shall serve all demands for production of documents and requests for admissions on or before the 15th day of September, 2013.

5. The plaintiff shall disclose the names of all the plaintiff's expert trial witnesses on or before the 1st day of November, 2013. The defendant shall disclose the names of all the defendant's expert trial witnesses on or before the 1st day of November, 2013. At the time of identifying such expert witness, the party shall disclose the specialty of such expert and furnish the opposing party with copies of all reports with regard to this case which have been submitted by such expert witness, or, if no such reports have been submitted, a summary of the substance of the contemplated testimony of such expert witness.

6. An objection to any interrogatory, notice of deposition, request for admission, or production of documents and/or reports shall be filed within thirty (30) days after service of the same. Any such objection not filed within thirty (30) days shall be waived. Any such objection shall not extend the time in which the objecting party must otherwise appear or

respond to any discovery matters to which no objection was filed. The party objecting to the requested information shall schedule a hearing with the Court on the appropriateness of the objection at the time of the filing of the objection. An objection for which a hearing is not scheduled with the Court shall be deemed waived.

If a party fails to answer an interrogatory or a request for an admission, or fails to produce a document or disclose anything required herein and does not file an objection thereto, then the person seeking such information shall timely file a motion to compel and shall schedule a hearing thereon with the Court. If the party seeking such information fails to file and schedule a hearing on a motion to compel, the request for such information from the other party shall be deemed waived.

7. In any event, all discovery shall be completed on or before the 15th day of January, 2013.

8. Any dispositive motions pursuant to WVRCP 12(b) and 56 motions shall be filed at least 60 days prior to the pre-trial conference.

9. All pre-trial motions including, but not limited to, motions to dismiss, motions for summary judgment or motions in limine shall be filed on or before the 1st day of February, 2014. Hearing on all such motions shall be set with the Court with notice of hearing thereon served on opposing counsel at the time of filing of the motion. WVRE 103(c) contemplates that all motions in limine should be determined prior to trial. Accordingly, unless a matter could not have been reasonably anticipated by a party, the Court will not as a general rule consider motions in limine at or during the time of trial. All dispositive motions shall be scheduled so that they can be heard and resolved well in advance of the

pre-trial conference.

10. It appearing that this case would benefit from mediation, it is hereby referred to the Honorable Thomas C. Evans, III, a judge of the Business Court Division to conduct mediation in a timely manner.

11. The parties shall exchange a list of all proposed exhibits (including demonstrative) and shall make the exhibits available for viewing by counsel at least five 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 Circuit Clerk. The parties shall mark all exhibits by use of standard exhibit stickers and provide a list to the Court and counsel.

12. If a video deposition is to be used at trial, all parties must be prepared to argue objections at the pre-trial conference.

13. The parties shall exchange proposed jury instructions prior to the pre-trial conference and be prepared to discuss the same at the pre-trial conference.

14. Motions in limine must be filed at least ten days prior to the pre-trial conference.

15. A pre-trial conference shall be held with the Court on the 24th day of February, 2014, at 3:45 p.m. at which time lead trial counsel shall appear fully prepared to discuss all aspects of the case. At least two (2) days prior to the pre-trial hearing the parties shall prepare and provide the Court and opposing counsel with a pre-trial memoranda to include at least the following:

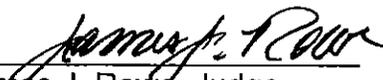
- (1) Statement of the case including a brief summary of  
the material facts and theory of liability or

- defense;
- (2) Itemized statement of damages;
  - (3) Stipulation of uncontested facts;
  - (4) General statement of contested issues of law and in particular, those contested issues of law requiring court ruling before commencement of Trial;
  - (5) All proposed instructions of law;
  - (6) List of the names and addresses of all witnesses, and, if any expert witness, the purpose of the testimony and whether the qualifications of the expert are to be stipulated;
  - (7) Legal authorities to be relied upon;
  - (8) For each party, a list of depositions and exhibits to be offered as evidence at Trial, indicating as to each whether there are objections to either authenticity or relevancy (if there are objections, the lines and pages of depositions being objected to must be identified), and a statement that copies of exhibits have been exchanged by counsel or that opposing counsel have examined the exhibits;
  - (9) Settlement possibilities.

16. A non-jury of the within matter shall be held on the 19th day of March, 2014, at 9:15 a.m. Pursuant to representation of the parties, two (2) days are allotted for trial of this case.

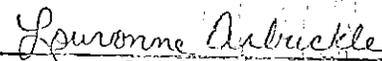
The Clerk is directed to forward a copy of this order to counsel of record, to the Honorable Thomas C. Evans, III at P. O. Box 800, Ripley, WV 25271, as Resolution Judge, and to the Business Court Division Central Office at the Berkeley County Judicial Center, 380 W. South Street, Suite 2100, Martinsburg, WV 25401.

Entered this 22nd day of July, 2013.

  
\_\_\_\_\_  
James J. Rowe, Judge

CIRCUIT COURT GREENBRIER CO. WVA  
JUL 23 2013  
LOUVONNE ARBUCKLE, CLERK

A True Copy:  
ATTEST:

  
\_\_\_\_\_  
Clerk, Circuit Court  
Greenbrier County, WV

By \_\_\_\_\_  
Deputy