

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

GITO, INC. d/b/a NELLO  
CONSTRUCTION COMPANY, for the use  
and benefit of COST COMPANY,  
Plaintiff,

vs.

Civil Action No. 13-C-13  
Hon. Thomas C. Evans, III  
Presiding Judge

BOARD OF EDUCATION OF THE  
COUNTY OF MARSHALL, WEST VIRGINIA,  
Defendant/Third-Party Plaintiff,

vs.

SCALISE INDUSTRIES CORPORATION,  
a wholly owned subsidiary of EMCOR GROUP, INC.,  
Third-Party Defendant.

FILED IN  
Circuit Clerk's Office  
this 19<sup>th</sup> day of  
Aug 20 13 at 11:10  
David R. Ealy, Clerk

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: April 7, 2014 at 9:00 a.m.

Jury Trial Requested  Bench Trial Requested

Continuance motions must be heard prior to the pre-trial conference or they will not be considered. Trial is anticipated to last 10-14 days.

2. PRE-TRIAL CONFERENCE DATE: March 31, 2014

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 conference. 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 | 7. Pending Motions  |
| 2. Issues of Fact        | 8. Motions <i>in Limine</i>   |
| 3. Issues of Law         | 9. All Proposed Instructions of Law<br>(Disk as well as hard copy shall be<br>provided to the Court.) |
| 4. Proposed Stipulations | 10. Proposed Voir Dire  |
| 5. Schedule of Exhibits  |   |
| 6. List of Witnesses     |   |

Parties are to confer and provide a joint Instruction Charge to the Court.

#### **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.

#### **JURY INSTRUCTIONS**

The Court desires that all counsel read all parties' proposed jury instructions prior to the conference and be prepared to discuss them at the conference. The Court will not be inclined to receive instructions after the pre-trial conference.

#### **3. EXPERTS DISCLOSED: Plaintiff and 3<sup>rd</sup> Party Plaintiff: December 1, 2013 Defendants: January 3, 2014**

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. **MEDICAL EXAMINATIONS AND EXPERT EVIDENTIARY INSPECTIONS:** **Requests for Inspection shall be filed/served October 31, 2013**

All medical examinations by expert physicians must be completed by this date. Medical examinations in accordance with WVRCP 35 are granted, but subject to court control. Any modification to the standard medical examination of the plaintiff must be made by plaintiff's counsel in writing and noticed for hearing prior to the examination. Any continuing medical treatment to be admissible at trial must be disclosed prior to the discovery completion date.

5. **DISPOSITIVE MOTIONS:** WVRCP 12(b) and 56 motions shall be filed by: **February 2, 2014 Responses due in 20 days from the filing of the motion, Replies due in 7 days.**

6. **AMENDMENTS, THIRD PARTY PLEADINGS, AND OTHER MATTERS NO LATER THAN:** **30 days from entry of this Order**

7. **FINAL WITNESS LIST EXCHANGED:** **December 31, 2013**  
This is to be a *bona fide* list of intended trial witnesses.

8. **DISCOVERY COMPLETION DATE:** **January 31, 2014**  
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:** **October 31, 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, *pro se* parties, and the Business Court Division Central Office at Berkeley County Judicial Center, 380 W. South Street, Suite 2100, Martinsburg, West Virginia. 25401

Entered: 8/16/2013



The Honorable Thomas C. Evans, III  
Presiding Judge  
Business Court Division

A Copy Teste:

Edward E. P. ly, Clerk

By Diana Crow Deputy

