

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

**SHELL EQUIPMENT CO., INC.,
PLAINTIFF,**

VS.

**CASE NO.: 08-C-18
Presiding Judge: Judge Wilkes
Resolution Judge: Judge Rowe**

**ROSSCO LIMITED LIABILITY COMPANY,
a West Virginia limited liability company,
CARSON ONE MINING, LLC, a West Virginia
Limited liability company, "JOHN DOE DEFENDANTS,"
DEFENDANTS.**

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 29, 2014 at 9:00 A.M.**

 X 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 3 days.

2. **PRE-TRIAL CONFERENCE DATE: April 28, 2014 at 1:00 P.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 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 (Disk as well as hard copy shall be provided to the Court.) |
| 4. Proposed Stipulations | |
| 5. Schedule of Exhibits | 10. Proposed Voir Dire |
| 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: January 2, 2014
Defendant: January 20, 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 experts 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. **EXPERT EVIDENTIARY INSPECTIONS:** December 15, 2013

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:** December 1, 2013

7. **FINAL WITNESS LIST EXCHANGED:** April 9, 2014

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

8. **DISCOVERY COMPLETION DATE:** March 20, 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. **ALTERNATE DISPUTE RESOLUTION**

The assigned Resolution Judge will contact the parties to schedule and arrange Alternate Dispute Resolution. Counsel have agreed and indicated that they would like mediation scheduled as soon as possible.

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 Judge James J. Rowe, P.O. Drawer 751, Lewisburg, West Virginia 24901.

ENTER October 17, 2013

Judge

UPSHUR COUNTY, W.V.
FILED
2013 OCT 17 10 23 AM
CIRCUIT CLERK
BRYAN GAUGHER

cc 10/17/13
G. Schillace
K. Webb, Jr.
J. Rowe