



IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

IN RE: GAVIN LANDFILL LITIGATION

CIVIL ACTION NO. 16-C-8000

THIS DOCUMENT APPLIES TO ALL CASES

FIFTH AMENDED CASE MANAGEMENT ORDER

The Court has appointed the following attorneys to serve as Liaison and

Lead Counsel in the Gavin Landfill Litigation:

LIAISON COUNSEL

Plaintiffs: J. Zachary Zatezalo
Defendants: Ancil G. Ramey

LEAD COUNSEL

Plaintiffs: Christopher J. Regan
Defendants: Lori Elliott Jarvis

The Court reminds the parties that Liaison and Lead Counsel are expected to attend all hearings and be present for the entire hearing, absent good cause shown.

This amended case management order shall govern all pre-trial and trial activities for the remaining claimants of the Gavin Landfill Litigation, which shall include all discovery related to the issues of liability, including liability for medical monitoring, causation and whether any damages, including punitive damages, are appropriate. Any private mediation undertaken by the parties will not delay any deadline scheduled in this Order.

TRIAL STRUCTURE:

The trial scheduled in this Order will be on the issues of:

1. liability;
2. whether Plaintiffs are entitled to punitive damages; and
3. if Plaintiffs are entitled to punitive damages, the applicable punitive damages multiplier.

Subsequent causation and damages trials will be scheduled thereafter, if required.

FACT DISCOVERY COMPLETION DEADLINE: January 2, 2018

All responses and objections to discovery shall be completed and all motions to compel discovery shall be filed by the fact discovery completion deadline. The fact discovery completion deadline established in this scheduling order does not excuse failure to comply with the provisions of Rule 26(e) requiring supplementation of responses to discovery.

EXPERT DISCOVERY ON ALL ISSUES:

PLAINTIFFS' AMENDED EXPERT WITNESS DISCLOSURE DEADLINE: on or before **January 12, 2018**. Plaintiffs shall amend their Expert Witness Disclosures, filed on September 29, 2017, as required in the Court's *Order Regarding Expert Witness Disclosures* (Transaction ID 61445755).

DEFENDANTS' EXPERT WITNESS DISCLOSURE DEADLINE: Within **45 days after Plaintiffs' Expert Witness Disclosures are filed and served**. See *Order Regarding Expert Witness Disclosures* (Transaction ID 61445755) at Paragraph 5.

EXPERT DISCOVERY COMPLETION DEADLINE: May 1, 2018

Any party desiring to use an expert witness shall 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, in accordance with WVRCP 26(b)(4). If the name, reports or 26(b)(4) material are not timely provided, a motion to continue, motion to exclude, or other sanction motion on this basis will not be considered unless opposing counsel has filed such motion prior to the pretrial conference.

DEADLINE FOR DAUBERT MOTIONS: May 25, 2018

DEADLINE FOR RESPONSES TO DAUBERT MOTIONS: June 8, 2018

DEADLINE FOR REPLIES TO DAUBERT MOTIONS: June 15, 2018

HEARING ON DAUBERT MOTIONS: at 10:00 am on June 29, 2018, in Courtroom Four, also known as the Ceremonial Courtroom, on the Second Floor of the Kanawha County Courthouse, at 407 Virginia Street, East, Charleston, West Virginia.

ALL DISCOVERY IS CLOSED: May 1, 2018

MEDIATION: The Resolution Judges will conduct mediation on **January 18-19, 2018.**

See Order Governing Mediation and Mediation Statements (Transaction ID 61387063).

DEADLINE FOR FILING MOTIONS IN LIMINE: June 25, 2018

DEADLINE FOR RESPONSES TO MOTIONS IN LIMINE: July 9, 2018

DEADLINE FOR REPLIES TO MOTIONS IN LIMINE: July 16, 2018

WVRE 103(c) requires that all motions in limine should be determined prior to trial, where practicable. This Court will not consider motions in limine on the day of trial without good cause shown.

DEADLINE FOR DISPOSITIVE MOTIONS: June 25, 2018

DEADLINE FOR RESPONSES TO DISPOSITIVE MOTIONS: July 9, 2018

DEADLINE FOR REPLIES TO DISPOSITIVE MOTIONS: July 16, 2018

If a discovery deposition is scheduled within 30 days of the close of discovery, counsel shall request an expedited copy of the transcript of such deposition. The Court will not permit supplementation of dispositive motions or responses to dispositive motions with deposition testimony received after the briefing deadlines set forth above.

HEARING ON DISPOSITIVE MOTIONS AND MOTIONS IN LIMINE: at 10:00 a.m. on August 2, 2018, in Courtroom Four, also known as the Ceremonial Courtroom,

on the Second Floor of the Kanawha County Courthouse, at 407 Virginia Street, East, Charleston, West Virginia.

EXHIBITS, WITNESS LISTS AND DEPOSITION DESIGNATIONS EXCHANGED:

August 1, 2018. Parties shall exchange full and complete copies of all exhibits intended to be introduced into evidence at trial, all witness lists, and all deposition designations. All exhibits shall be pre-marked.

OBJECTIONS TO EXHIBITS, WITNESSES AND DEPOSITION DESIGNATIONS:

August 15, 2018. All parties shall meet and confer **no later than August 22, 2018**, to resolve objections to witnesses, exhibits and deposition designations.

PROPOSED JURY QUESTIONNAIRE, PROPOSED VOIR DIRE, AND PROPOSED

JURY INSTRUCTIONS: August 1, 2018

Parties shall electronically file and serve their proposed jury questionnaire, proposed voir dire, and proposed jury instructions on one another, the Presiding Judges and the Mass Litigation Manager. Parties shall also provide the Mass Litigation Manager with their proposed voir dire and proposed jury instructions in Microsoft WORD format via electronic mail on **August 1, 2018**. The Mass Litigation Manager's electronic mail address is kim.fields@courtswv.gov.

PRETRIAL CONFERENCE MEMORANDA: August 24, 2018

All parties shall exchange their pretrial conference memoranda, and deliver their pretrial conference memoranda to the Presiding Judges and the Mass Litigation Manager.

The pretrial conference memoranda shall contain the following:

- a. Statement of the Case
- b. Issues of Fact

- c. Issues of Law
- d. Proposed Stipulations
- e. Specific Schedule of Exhibits
- f. Specific List of Witnesses (NO reservations authorized)
- g. Pending Motions
- h. Proposed Verdict Form (NO reservations authorized)
- i. Unresolved Deposition Designation Objections

The witness list shall be a bona fide list of intended trial witnesses and any recently discovered fact or condition witness. Names of witnesses shall be specified and shall include contact information for each witness and a statement of intended testimony. Unnamed/unlisted witness reservations are not authorized.

PRETRIAL CONFERENCE: at **10:00 a.m. on September 7, 2018**, in Courtroom Four, also known as the Ceremonial Courtroom, on the Second Floor of the Kanawha County Courthouse, at 407 Virginia Street, East, Charleston, West Virginia.

LEAD COUNSEL TRYING THE CASE SHALL APPEAR AT THE PRE-TRIAL CONFERENCE.

TRIAL: at **9:00 a.m. on September 17, 2018**, in Courtroom Four, also known as the Ceremonial Courtroom, on the Second Floor of the Kanawha County Courthouse, at 407 Virginia Street, East, Charleston, West Virginia. The Court has allotted three weeks to try liability, whether Plaintiffs are entitled to punitive damages and, if Plaintiffs are entitled to punitive damages, the amount of the punitive damages multiplier.

MODIFICATION: In accordance with WVRCP 16(b) and 29(b), this Case Management Order shall not be modified, except by leave of the Court.

SANCTIONS: In accordance with WVRCP 16(f), the Court will 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.

Unless authorized by the Court, the above dates and requirements of this Case Management Order are **FINAL. NO** additional evidence developed as a result of deviations from this Case Management Order will be admissible at trial.

It is so **ORDERED.**

ENTER: December 15, 2017.

/s/ Derek C. Swope
Lead Presiding Judge
Gavin Landfill Litigation