



**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**IN RE: YEAGER AIRPORT LITIGATION**

**CIVIL ACTION NO. 16-C-7000**

**THIS DOCUMENT APPLIES TO:**

THEODORE CARTER and  
REBECCA CARTER, husband  
and wife,

Plaintiffs,

v.

Civil Action No. 15-C-1074 KAN

CENTRAL REGIONAL WEST  
VIRGINIA AIRPORT AUTHORITY, et al.,

Defendants.

**SCHEDULING ORDER FOR BIFURCATED  
TRIAL ON DECLARATORY JUDGMENT**

The Presiding Judges hereby schedule trial in the above-captioned case at **9:00 a.m. on October 16, 2017**, in the Ceremonial Courtroom, on the Second Floor of the Kanawha County Courthouse, at 407 Virginia Street, East, Charleston, West Virginia, on the following issues:

**1. EARTH MOVEMENT EXCLUSION:**

- (a) Was the failure of the EMAS system and any subsequent landslide the “pre-eminent or efficient proximate cause” of the destruction of the home on the premises owned by Theodore and Rebecca Carter?
- (b) Was the failure of the EMAS system and any subsequent landslide the “pre-eminent or efficient proximate cause” of the destruction of other structures on the premises owned by Theodore Carter and Rebecca Carter?

## **2. GOVERNMENT ACTS EXCLUSION:**

- (a) Did someone issue an order to destroy the home on the premises owned by Theodore and Rebecca Carter? If so, who?
- (b) Was the person who issued the order to destroy the home on the premises owned by Theodore and Rebecca Carter acting on behalf of a government or public entity? If so, what government or public entity?
- (c) By what authority did the government or public entity order the destruction of the home on the premises owned by Theodore and Rebecca Carter?
- (d) What was the scope of the order of destruction?
- (e) Was an act of a government or public entity the “pre-eminent or efficient proximate cause” of the destruction of the home on the premises owned by Theodore and Rebecca Carter?
- (f) Did someone issue an order to destroy other structures on the premises owned by Theodore and Rebecca Carter? If so, who?
- (g) Was the person who issued the order to destroy other structures on the premises owned by Theodore and Rebecca Carter acting on behalf of a government or public entity? If so, what government or public entity?
- (h) By what authority did the government or public entity order the destruction of other structures on the premises owned by Theodore and Rebecca Carter?
- (i) What was the scope of the order of destruction?
- (j) Was an act of a government or public entity the “pre-eminent or efficient proximate cause” of the destruction of other structures on the premises owned by Theodore Carter and Rebecca Carter?

Because the insurance company has the burden of proof in a case where the insurance company is seeking to enforce an exclusion, Nationwide Mutual Fire Insurance Company shall have the burden of proof regarding the issues stated above.

The following deadlines shall govern trial of this issue:

**MOTIONS IN LIMINE: September 1, 2017.**

**RESPONSES TO MOTIONS IN LIMINE: September 15, 2017.**

No replies to Motions in Limine are permitted.

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

**WITNESS LISTS, EXHIBITS, AND DEPOSITION DESIGNATIONS EXCHANGED:**

**August 1, 2017.**

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

**OBJECTIONS TO WITNESSES, EXHIBITS, AND DEPOSITION DESIGNATIONS:**

**August 15, 2017.**

Parties shall **MEET AND CONFER** no later than **August 25, 2017**, to resolve objections to witnesses, exhibits and deposition designations.

**PROPOSED JURY QUESTIONNAIRE: August 1, 2017.**

Parties shall electronically file and serve their proposed jury questionnaire on one another, the Presiding Judges and the Mass Litigation Manager.

**PRETRIAL CONFERENCE MEMORANDA:** All parties shall electronically file and serve their pretrial conference memoranda on one another and on the Presiding Judges and the Mass Litigation Manager **no later than September 22, 2017.**

The pretrial conference memoranda shall contain:

- |    |   |    |                                      |
|----|---|----|--------------------------------------|
| a. | Statement of the Case   | g. | Pending Motions                      |
| b. | Issues of Fact  | h. | Motions in Limine                    |
| c. | Issues of Law   | i. | Proposed Jury Voir Dire              |
| d. | Proposed Stipulations   | j. | Proposed Jury Instructions           |
| e. | Specific Schedule of Exhibits<br>(NO reservations authorized) | k. | Proposed Verdict Form                |
| f. | Specific List of Witnesses<br>(NO reservations authorized)    | l. | Deposition Designation<br>Objections |

**No later than September 22, 2017,** the parties shall email their proposed jury *voir dire* and instructions in Microsoft WORD format to the Mass Litigation Manager at [kim.fields@courtswv.gov](mailto:kim.fields@courtswv.gov). The witness list shall be a bona fide list of intended trial witnesses and any recently discovered fact or condition witness. Names of witnesses must be specified and must include contact information for each witness and a statement of intended testimony. Unnamed/unlisted witness reservations are not authorized.

**PRETRIAL CONFERENCE:** **9:00 a.m. on October 6, 2017,** in 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 MUST APPEAR.**

**TRIAL:** Beginning at **9:00 a.m. on October 16, 2017,** in the Ceremonial Courtroom, on the Second Floor of the Kanawha County Courthouse, at 407 Virginia Street, East, Charleston, West Virginia. The Court has scheduled four days for this trial.

Unless authorized by the Court, the above dates and requirements of this Order are **FINAL**. Pursuant to Rules 16(b) and 29(b) of the West Virginia Rules of Civil Procedure, this 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.

It is so **ORDERED**.

**ENTER:** July 11, 2017.

/s/ John A. Hutchison  
Lead Presiding Judge  
Yeager Airport Litigation