



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
IN RE: FELA ASBESTOS LITIGATION **CIVIL ACTION NO. 02-C-9500**

THIS DOCUMENT APPLIES TO:

JESSICA HIGGINBOTHAM,
Administratrix for the Estate
Of DUSTIN C. HIGGINBOTHAM,

Plaintiff,

v.

Civil Action No. 20-C-285 KAN FELA

NORFOLK SOUTHERN RAILWAY CO., etc.

Defendant.

CASE MANAGEMENT ORDER

On March 15th, 2023, came Joseph J. Cappelli, Esq., and Shawn Ricci, Esq., of Bern & Cappelli LLC and Levi B. Pellegrin, Esq. of The Giatras Law Firm, PLLC on behalf of the Plaintiff, and Luke A. Lafferre, Esq., of Dinsmore & Shohl LLP and Daniel Donahoe, Esq., of Burns & White LLC on behalf of Defendant Norfolk Southern Railway Company, by telephone pursuant to a *Notice of Telephonic Scheduling Conference* (Transaction ID 66907648), and the following schedule was adopted and **ORDERED** by the Court in the above-styled civil action pursuant to WVRCP 16(b).

FACT DISCOVERY:

FACT WITNESS DISCLOSURE DEADLINE: Per previous order

FACT DISCOVERY COMPLETION DEADLINE: Per previous order

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:

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.

PLAINTIFFS' EXPERT WITNESS REPORTS ARE DUE: Per previous order

DEFENDANTS' EXPERT WITNESS REPORTS ARE DUE: Per previous order

EXPERT DISCOVERY COMPLETION DEADLINE: May 26th, 2023

ALL DISCOVERY IS CLOSED: June 30th, 2023

MEDIATION:

Mediation will be conducted by the parties and be completed by **September 29th, 2023**.

DISPOSITIVE MOTIONS:

DEADLINE FOR DISPOSITIVE MOTIONS: July 31st, 2023

DEADLINE FOR RESPONSES TO DISPOSITIVE MOTIONS: August 30th, 2023

DEADLINE FOR REPLIES TO DISPOSITIVE MOTIONS: September 13th, 2023

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.

MOTIONS *IN LIMINE*:

Pursuant to West Virginia Rule of Evidence 103(c), all motions *in limine* should be determined prior to trial, where practicable. The Court will not consider motions *in limine* on the day of trial without good cause shown.

DEADLINE FOR FILING MOTIONS *IN LIMINE*: October 25th, 2023

DEADLINE FOR RESPONSES TO MOTIONS *IN LIMINE*: November 1st, 2023

DEADLINE FOR REPLIES TO MOTIONS *IN LIMINE*: November 8th, 2023

HEARING OF DISPOSITIVE MOTIONS AND MOTIONS *IN LIMINE*:

The Court will hear dispositive motions and motions *in limine* during the pretrial conference at **10:00 a.m. on November 17th, 2023**, in the Courtroom of the Lincoln County Courthouse, 8000 Court Ave., Hamlin, West Virginia 25523.

JOINT PROPOSED JUROR QUESTIONNAIRE:

The parties shall file and serve their *joint proposed* juror questionnaire in Rich Text Format on the Presiding Judge and the Mass Litigation Manager no later than **12:00 p.m. on October 25th, 2023**.

JOINT PROPOSED VOIR DIRE, JURY INSTRUCTIONS, AND VERDICT FORM:

The Parties shall electronically file and serve their *joint proposed* voir dire, jury instructions, and verdict form in Rich Text Format on the Presiding Judge and the Mass Litigation Manager on **November 8th, 2023**.

EXHIBITS, WITNESS LISTS, AND DEPOSITION DESIGNATIONS EXCHANGED: **November 17th, 2023**

Parties shall exchange full and complete copies of all exhibits intended to be introduced into evidence at trial and all deposition designations. All exhibits shall be pre-marked. Witness lists shall be bona fide lists of intended trial witnesses and any recently discovered fact or condition witnesses. 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.

OBJECTIONS TO EXHIBITS, WITNESSES AND DEPOSITION DESIGNATIONS EXCHANGED: November 27th, 2023

PRETRIAL CONFERENCE MEMORANDA:

All parties shall exchange their pretrial conference memoranda and deliver their pretrial conference memoranda to the Presiding Judge and the Mass Litigation Manager on **January 19th, 2024**. The pretrial conference memoranda shall contain the following:

- a. Statement of the Case (NO reservations authorized)
- b. Issues of Fact
- c. Issues of Law
- d. Proposed Stipulations
- e. Specific Schedule of Exhibits (NO reservations authorized)
- f. Specific List of Witnesses
- g. Pending Motions
- h. Motions *in Limine*
- i. Unresolved Objections to Exhibits, Witnesses and Deposition Designations

PRETRIAL CONFERENCE:

10:00 a.m. on January 26th, 2024, in the Courtroom of the Lincoln County Courthouse, 8000 Court Ave., Hamlin, West Virginia 25523. **LEAD COUNSEL TRYING THE CASE SHALL APPEAR.**

TRIAL:

9:30 a.m. on February 12th, 2024, in the Ceremonial Courtroom of the Kanawha County Courthouse, 407 Virginia Street, East Charleston WV 25336. **LEAD COUNSEL TRYING THE CASE SHALL APPEAR.** The Court has allotted two (2) weeks for the trial of this case.

MODIFICATION:

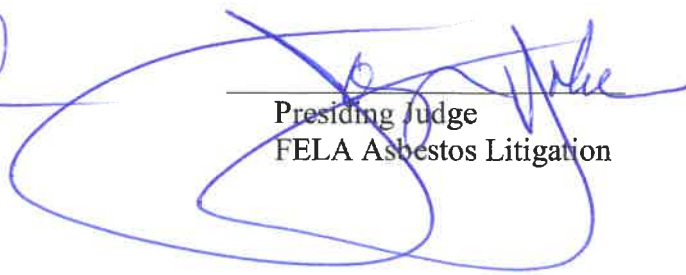
The dates and requirements of this Case Management Order are **FINAL**. No additional evidence developed because of deviations from this Case Management Order will be admissible at trial. This Case Management Order shall not be modified, except by leave of the Court.

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.

A copy of this Order has this day been electronically served on all counsel of record via File & ServeXpress.

It is so **ORDERED**.

ENTERED: March 20th, 2023.



Presiding Judge
FELA Asbestos Litigation