



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

**ORDER REGARDING FIFTH RECOMMENDED
DECISION OF DISCOVERY COMMISSIONER**

The Presiding Judges have reviewed and considered the *Fifth Recommended Decision* of the Discovery Commissioner filed on March 13, 2018 (Transaction ID 61796076) regarding *Plaintiffs' Motion for Sanctions and Request for Evidentiary Hearing* (Transaction ID 61597054) and *Defendants' Motion for Sanctions, to Extend Defendants' Expert Witness Disclosure Deadline, and to Require Plaintiffs to Produce Dr. James Dahlgren for At Least 16 Days of Deposition and Request for Expedited Briefing Schedule* (Transaction ID 61598091). The Presiding Judges have also reviewed and considered Plaintiffs' *Notice of Exception and Objection to the Fifth Recommended Decision of the Discovery Commissioner* (Transaction ID 61823514) filed March 20, 2018, and *Defendants' Opposition to Plaintiffs' Notice of Exception and Objection to the Fifth Recommended Decision of the Discovery Commissioner* (Transaction ID 61844436) filed March 27, 2018.

Following extensive briefing and a lengthy hearing, the Discovery Commissioner issued a 16-page recommended decision in which he set forth in great detail the issues before him and all of the reasons for his recommendations. Within the prescribed time period Plaintiffs filed a one-page *Notice of Exception and Objection*, that generally states, "as reflected in their motion already on file and the attached transcript, the record clearly establishes the Defendants' misconduct, Plaintiffs' right to the sanctions sought, and Plaintiffs submit the Discovery Commissioner's recommendation that sanctions be denied is in error." As argued by Defendants on page 2 of their *Opposition to Plaintiffs' Notice of Exception and Objection*:

Plaintiffs do not claim any specific error on the part of the Discovery Commissioner. They do not claim that the Discovery Commissioner overlooked any particular point. They do not claim that the Discovery Commissioner misunderstood any argument or issue. Instead, Plaintiffs simply suggest that the Discovery Commissioner was generally wrong and attempt to shift the onus back onto the Panel to review their Motion *de novo*, without any showing that such a review would be warranted.

The Court finds that the Discovery Commissioner's *Fifth Recommended Decision* is comprehensive, thorough, carefully considered, and well-reasoned. The Court further finds that Plaintiffs' *Notice of Exception and Objection* to the Discovery Commissioner's recommendations is procedurally deficient because it has not specifically identified any assignment of error by the Discovery Commissioner. The Court adopts and incorporates the Discovery Commissioner's *Fifth Recommended Decision* and **ORDERS**:

1. *Plaintiffs' Motion for Sanctions and Request for Evidentiary Hearing* (Transaction ID 61597054) is **DENIED**.
2. *Defendants' Motion for Sanctions, to Extend Defendants' Expert Witness Disclosure Deadline, and to Require Plaintiffs to Produce Dr. James Dahlgren for At Least 16 Days of Deposition and Request for Expedited Briefing Schedule* (Transaction ID 61598091) is **DENIED**. Plaintiffs shall voluntarily produce the questionnaires they completed for Dr. Dahlgren. The parties shall agree to dates for Dr. Dahlgren's deposition. If there are any further disputes regarding dates for Dr. Dahlgren's deposition, the parties shall report back to the Discovery Commissioner.
3. The Discovery Commissioner has found that Plaintiffs and the Defendants each had some merit in their positions on the referenced motions. Therefore, as recommended by the Discovery Commissioner, Plaintiffs are **ORDERED** to pay one-half and Defendants are

ordered to pay one-half of the total amount of \$6,150.00 for the Discovery Commissioner's costs in this matter.

4. Plaintiffs shall deliver payment in the amount of \$3,075.00 and Defendants shall deliver payment in the amount of \$3,075.00 to the Discovery Commissioner for receipt **no later than April 12, 2018.**

It is so **ORDERED.**

ENTER: March 29, 2018.

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