

CIVIL ACTION NO.: 02-C-9500
Honorable Jay M. Hoke

THIS DOCUMENT APPLIES TO:

PAMELA MURPHY, *individually and*
As Executrix of the Estate of SHANNON B. PETTIT,
Deceased,
Plaintiff,

v.

(Civil Action No.: 17-C-445 KAN)

CSX TRANSPORTATION, INC., etc.,
Defendant.

PRE-TRIAL CONFERENCE ORDER

On the day 18th day of October, 2018, came the parties, for a scheduling conference in this matter, John D. Hurst, counsel for the plaintiff, and Luke A. Lafferre, counsel for the defendant, and the following schedule was adopted and **ORDERED** by the Court in the above-styled civil action pursuant to Rule 16(b), W.Va.R.Civ.P.. The Court notes that this Order adopts some deadlines specified in the "Scheduling Conference Order" previously in effect in this case and that some of those deadlines have already passed.

1. **MEDIATION:** The Court has determined that, given the issues and evidence involved in this matter known to the Court at this point in time, it is just and reasonable to direct and refer this case to mediation, pursuant to said rules, with such serving the interests of justice, as well as judicial economy. In accordance with Trial Court Rule 25, the parties shall agree upon a mediator, who may

be any certified mediator, with this mediation to take place at the convenience of the parties, but no later than thirty days before the pre-trial conference, with a brief written report by the mediator chosen to be made to the Court as to the success or lack thereof of the mediation five (5) days prior to the Final Pre-trial Conference.

2. **TRIAL DATE: July 15, 2019, at 9:30 a.m.**

A. Any continuance motions must be heard prior to the Pre-trial Conference or they will not be considered.

3. **EXPERTS DISCLOSED: January 11, 2019**

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 expert's contemplated testimony, on the date of Expert Disclosure per W.Va.R.Civ.P. 26(b) (4).

B. If the name, reports or 26(b)(4) material is not timely provided, a motion to continue, motion to exclude, or other sanction motions on this basis will not be considered unless opposing counsel has filed such motions prior to the pre-trial conference.

C. Anticipated destructive tests of tangible evidence or of a simulated conditions nature must also be disclosed on the above date.

D. Co-designation or co-reliance upon experts must also specifically be made in writing on the above date.

4. **MEDICAL EXAMINATIONS AND EXPERT EVIDENTIARY INSPECTIONS: January 25, 2019**

All medical examinations by expert physicians must be completed by this date. Medical examinations in accordance with W.Va.R.Civ.P. 35 are granted, but subject to court control.

Any modification to the standard medical examination of the plaintiff must be made by plaintiff's counsel in writing and noticed for hearing prior to the examination. Any continuing medical treatment to be admissible at trial must be disclosed prior to the discovery completion date.

5. **INTERMEDIATE STATUS CONFERENCE: December 14, 2018 @ 11:30 a.m. by telephone**

6. **DISPOSITIVE MOTIONS:** W.Va.R.Civ.P. 12(b) and 56 motions are to be filed before and should be scheduled for hearing prior to the pre-trial conference.

7. **AMENDMENTS, THIRD PARTY PLEADINGS, AND OTHER MATTERS:**

No later than: **June 30, 2018**

8. **FINAL WITNESS LIST EXCHANGED: May 13, 2019**

This is to be a *bona fide* list of intended trial witnesses as well as any recently discovered fact or condition witness.

9. **MEDIATION: To Be Completed Thirty Days Before Pre-Trial Conference**

10. **DISCOVERY COMPLETION DATE: May 6, 2019**

11. **PRE-TRIAL CONFERENCE DATE: June 14, 2019 @ 10:00 a.m.**

All parties are directed to exchange and deliver their respective pre-trial conference memoranda to the Court law clerk by electronic mail no later than the day preceding the conference. Said memoranda are to contain as a minimum, the following:

- | | |
|--------------------------|--|
| 1. Statement of the Case | 6. List of Witnesses |
| 2. Issues of Fact | 7. Pending Motions |
| 3. Issues of Law | 8. Motions in Limine |
| 4. Proposed Stipulations | 9. All Proposed Instructions of Law |
| 5. Schedule of Exhibits | 10. All Proposed Jury <i>Voir Dire</i> |

The Court desires that all counsel read all parties' proposed jury instructions prior to the conference and that they be prepared to discuss and/or review them at that time. The Court will not be inclined to receive instructions after the pre-trial conference and just prior to the trial, and will not accept them during the trial, especially in handwritten form.

10. **MOTIONS IN LIMINE ON OR BEFORE:**

WVRE 103 indicates that all Motions in Limine should be determined prior to trial. Accordingly, this Court will not consider motions in limine on the day of trial.

11. **MODIFICATION:** In accordance with Rule 16(b), W.Va.R.Civ.P., this scheduling conference order shall not be modified except by leave of the Court.

12. **SANCTIONS:** In accordance with RULE 16, W.Va.R.Civ.P.(f), the Court will impose the full spectrum of sanctions authorized by the W.Va.R.Civ.P. if a party or party's counsel fails to obey this Order or other Orders of this Court.

13. Accordingly, unless the Court is needed to rule on any matters of difference between the parties, this action is continued to the intermediate status conference and pre-trial dates above.

14. Unless authorized by the Court the above dates are **FINAL**. Therefore, **NO** additional evidence developed as a result of deviations from the above will be admissible at trial.

ENTERED on the date shown on the sidebar by the Honorable Jay M. Hoke, Judge.

Approved by Counsel of Record:

/s/ John D. Hurst

John D. Hurst, Esquire

jhurst@motleyrice.com

W.Va. State Bar No. 10861

MOTLEY RICE LLC

50 Clay Street, Suite 1

Morgantown, WV 26501

Telephone: (304) 413-0457

Fax: (304) 413-0458

Counsel for Plaintiff

PAMELA MURPHY

/s/ John E. (Rett) Guerry, III

John E. (Rett) Guerry, III, Esquire

rguerry@motleyrice.com

Pro hac vice

MOTLEY RICE LLC

28 Bridgeside Blvd.

P.O. Box 1792

Mt. Pleasant, SC 29465

Telephone: (843) 216-9488

Fax: (843) 216-9450

Counsel for Plaintiff

PAMELA MURPHY

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/s/ Luke A. Lafferre

Luke A. Lafferre, Esquire

Luke.Lafferre@Dinsmore.com

W.Va. State Bar No. 2122

DINSMORE & SHOHL LLP

611 Third Avenue

Huntington, WV 25701

Telephone: (304) 529-6181

Fax: (304) 522-4312

Counsel for Defendant,

CSX TRANSPORTATION, INC.