



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: YEAGER AIRPORT LITIGATION

CIVIL ACTION NO. 16-C-7000

THIS DOCUMENT APPLIES TO:

CENTRAL WEST VIRGINIA REGIONAL  
AIRPORT AUTHORITY, INC.,

Plaintiff

v.

Civil Action No. 15-C-1022 KAN

TRIAD ENGINEERING, INC., et al.,

Defendants.

ORDER REGARDING RECOMMENDATION  
OF DISCOVERY COMMISSIONER

On October 11, 2018, Discovery Commissioner David M. Kersey heard the following motions:

1. *Defendant, Johnston-Morehouse-Dickey Company d/b/a JMD's Motion to Exclude Previously Undisclosed Opinions of Plaintiff's Expert Witnesses* (Transaction ID 62397387);
2. *Defendant, Nicolon Corporation's Motion to Exclude Previously Undisclosed Opinions of Plaintiff's Expert Witnesses* (Transaction ID 62412721); and
3. *Defendant, Novel Geo-Environmental, LLC's Motion to Exclude Previously Undisclosed Opinions of Plaintiff's Expert Witnesses* (Transaction ID 62414232).

The Discovery Commissioner submitted a Report containing his recommendation, which Report was filed and served on all counsel of record on November 1, 2018 (Transaction ID 62617361). The Court has reviewed the Discovery Commissioner's Report and **FINDS** the Report is comprehensive, thorough, carefully considered, and well-reasoned.

Having conferred with one another to insure uniformity of their decision, as contemplated by Rule 26.07(a) of the West Virginia Trial Court Rules, the Presiding Judges unanimously

**AFFIRM** the Recommendation of the Discovery Commissioner as set forth in his Report filed on November 1, 2018. Accordingly, the above-listed motions to exclude are **DENIED**. Within seven (7) days from the date of this Order, Defendants JMD, Nicolon and Novel are **ORDERED** to file a motion identifying what, if any, additional discovery is deemed necessary as a result of Dr. Collin's report, and the amount of time needed to complete the additional discovery and supplement their expert's disclosures. If no additional discovery is necessary, Defendants JMD, Nicolon and Novel shall have fourteen (14) days from the date of this Order to amend their expert's disclosures.

The Court further **ORDERS** Plaintiff and Defendants JMD, Nicolon, and Novel to each pay one-half of the \$5,627.46 fee incurred by the Discovery Commissioner for work performed in this matter, as described in the *Report* filed on November 1, 2018 and the attached invoice. Each party's payment in the amount of \$2,813.73 shall be delivered to the Discovery Commissioner for receipt **no later than November 27, 2018**.

It is so **ORDERED**.

**ENTER:** November 13, 2018.

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

**Brewster, Morhous, Cameron, Caruth,  
Moore, Kersev & Stafford. PLLC**  
P.O. Box 529  
Bluefield, WV 24701  
304-325-9177  
FEIN 55-0458286

Judge John A. Hutchison  
222 Main Street  
Beckley, WV 25801

PAGE 1  
BILLING DATE: 11/06/18  
ACCT NO.: DMK-18700003

Attn: Judge John A. Hutchison

RE: Yeager Airport Litigation CV#16-C-7000  
CWVRAA v. Triad CV#15-C-1022 KAN

DATE	PROFESSIONAL SERVICES RENDERED	INDIV	TIME	AMOUNT
10/01/18	Telephone conference with Kim Fields regarding possible hearing on issues; reviewed file and serve for pleadings associated with issues to be heard by Mr. Kersey; telephone conference with Mr. Markins regarding objections to 30(b)(6) depositions; telephone conference with Mr. Trautwein regarding expert witnesses; called Thomas Bender regarding hearing on expert witness motions; telephone conference with Mr. Taylor regarding motion to exclude expert witnesses.	BSP	1.00	75.00
10/03/18	Telephone conference with John Palmer regarding Triad's motion to compel; telephone conferences with and e-mail to Ms. Field regarding hearing on expert witness disclosure; telephone conference with Chad Taylor regarding same.	BSP	1.00	75.00
10/04/18	Telephone conferences with all counsel regarding hearing; telephone conference with Deb Brogan regarding court reporter; e-mail to Kim Fields regarding notice; office conference with Mr. Kersey regarding hearing.	BSP	1.00	75.00
10/08/18	Telephone conference with Garrett Reporting regarding court reporter for hearing; telephone conference with Trautwein's office regarding motion; organized Nicolon's pleadings for hearing; organized Novel's motion.	BSP	1.00	75.00
10/09/18	Began review of exclusionary motions, attachments thereto and plaintiffs expert report.	DMK	3.10	620.00

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PAGE 2  
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ACCT NO.: DMK-18700003

10/09/18	Office conference with Mr. Kersey regarding plaintiff's expert report; telephone conference with Tim Bailey's office regarding expert report; reviewed File & Serve for expert report.	BSP	0.40	30.00
10/10/18	Completed review of Collins' Group expert report.	DMK	1.10	220.00
10/11/18	Travelled to Charleston, West Virginia, for hearing	DMK	5.00	1,000.00
10/22/18	Reviewed applicable legal authorities on issue of excluding plaintiff's supplemental expert opinion/report.	DMK	1.00	200.00
10/24/18	Reviewed file and serve for amended scheduling order.	BSP	0.40	30.00
10/26/18	Began work on recommendation.	DMK	4.50	900.00
10/26/18	Reviewed File & Serve for Novel Geo's expert report; telephone conference with Tim Bailey's office regarding Bruce Lacina's deposition transcript; reviewed File & Serve for depositions of witnesses; reviewed File & Serve for expert disclosures of plaintiff.	BSP	3.00	225.00
10/29/18	Continued work on recommendation.	DMK	2.10	420.00
10/30/18	Completed initial draft of recommendation.	DMK	2.10	420.00
10/31/18	Completed recommendation and submitted to Ms. Fields for filing.	DMK	3.50	700.00
<b>Total of New Services:</b>			<b>30.20</b>	<b>5,065.00</b>

DATE	EXPENSE	AMOUNT
10/01/18	Long distance calls	0.44
10/03/18	Long distance calls	0.24
10/04/18	Long distance calls	0.68
10/08/18	Photocopies	12.60
10/11/18	Mileage to/from Charleston, WV, for hearing	118.80
10/11/18	Turnpike tolls to/from Charleston, WV, for hearing	12.00

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PAGE 3  
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10/19/18      Garrett Reporting Service - hearing transcript      417.70

**Total of New Expenses:**      **562.46**

**TIMEKEEPER RECAP**

<u>Timekeeper</u>	<u>Indiv.</u>	<u>Time</u>	<u>Amount</u>	<u>Effective Rate</u>
B. Susanne Pulse	BSP	7.80	585.00	75.00
David M. Kersey	DMK	22.40	4,480.00	200.00

**ACCOUNT SUMMARY**

PREVIOUS BALANCE:	\$0.00
NEW SERVICES:	\$5,065.00
NEW EXPENSES:	\$562.46
NEW PAYMENTS:	\$0.00
TOT. CURRENT PERIOD:	\$5,627.46
CURRENT BALANCE:	\$5,627.46

**GARRETT REPORTING SERVICE**  
P. O. BOX 20200  
CHARLESTON, WEST VIRGINIA 25362  
PHONE 304-346-0460  
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David M. Kersey, Discovery Commissioner  
Job WT1149 (Yeager Airport Litigation)  
Central WV Regional Airport Authority,  
Inc. vs. Triad Engineering, Inc., et al

**INVOICE NO. :** 20723  
**INVOICE DATE:** 10/19/2018  
**REPORTER:**  
Wendy M. Thomas

**ID#** 38-376-8891

<b>Date</b>	<b>Description</b>	<b>Amount</b>
10/11/2018	Hearing -Motion to Exclude Opinions of Plaintiff's Expert Witnesses	
10/11/2018	Transcript 42 pgs @ \$8.00 expedited	336.00
10/11/2018	Reporting Fee (Charleston)	75.00
10/11/2018	Etran - NC	
10/11/2018	PDF - NC	
10/11/2018	Postage	6.70
	<b>Sub Total</b>	417.70
	<b>Paid</b>	0.00
	<b>Balance Due</b>	417.70

Invoices not paid within 60 days are  
subject to 1.5% interest charges per month.