

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

CHARLESTON AREA MEDICAL
CENTER, INC.,

Plaintiff,

vs.

Civil Action No. 19-C-1259

Presiding Judge: Paul T. Farrell

Resolution Judge: James H. Young, Jr.

BSA LIFESTRUCTURES, INC.,
MI-DE-CON, INC.,
ELCO MECHANICAL CONTRACTORS, LLC,
CARRIER CORPORATION,
MASON & BERRY, INC., and
ENGINEERING ECONOMICS, INC.,

Defendants.

SCHEDULING ORDER

This matter came on the 23rd day of March, 2021 for a telephonic scheduling conference. The following schedule is ORDERED by the Court in the above-styled civil action; and shall not be modified except by leave of Court.

1. **TRIAL DATE: February 28, 2022 at 9:00 a.m. in the Kanawha County Courthouse, Ceremonial Courtroom**
 X Jury Trial Requested Bench Trial Requested

Continuance motions must be heard prior to the pre-trial conference or they will not be considered. Trial is anticipated to last ten (10) trial days.

2. **PRE-TRIAL CONFERENCE DATE: February 14, 2022 at 10:00 a.m. in the Kanawha County Courthouse, Ceremonial Courtroom**

The Court may reschedule the Pretrial Conference/Settlement Conference to allow for additional discussions between or among parties as the Court deems necessary. The following persons shall attend in person: lead trial counsel for each represented party, as well as every party in the case, including the designated corporate representative who will be attending the trial, any unrepresented parties, and any other individuals, such as insurance adjusters, who have full authority to settle the case for each party. These individuals must have full authority to settle the case for the amount of the last demand or offer made by the other side.

3. **PRE-TRIAL CONFERENCE MEMORANDA**

FILED
2021 APR -5 PM 2:05
CATHY S. GILSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

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All parties are **ORDERED** to exchange and deliver their respective **PRE-TRIAL CONFERENCE MEMORANDA** to the Judge's Chambers **NO LATER THAN TEN (10) BUSINESS DAYS BEFORE** the conference. **FAILURE TO COMPLY MAY RESULT IN CONTINUANCE OF TRIAL OR MONETARY SANCTIONS BEING IMPOSED.** Said memoranda are to contain at a minimum, the following:

- | | |
|--------------------------|---|
| 1. Statement of the Case | 7. Pending Motions |
| 2. Issues of Fact | 8. Motions <i>in Limine</i> |
| 3. Issues of Law | 9. All Proposed Instructions of Law |
| 4. Proposed Stipulations | (Disk as well as hard copy shall be provided to the Court.) |
| 5. Schedule of Exhibits | 10. Proposed Voir Dire |
| 6. List of Witnesses | |

Parties are to confer and provide a joint instruction charge to the Court. Each party shall submit to the Court and Circuit Clerk and exchange among counsel, a list containing proposed witnesses and exhibits, proposed jury instructions or substantive theories of recovery or defense on damages and on evidentiary matters pertinent to the case, together with applicable statutory and case authority, special interrogatories, verdict forms, and all proposed voir dire questions requested by counsel for submission to the jury, no later than ten (10) business days prior to the Pretrial Conference. Witnesses shall be identified as to whether they will be called in the parties' case-in-chief or as rebuttal witnesses. All exhibits shall be appropriately pre-marked in sequence. Exhibit markers may be secured from the court reporter. All exhibits should be indexed for easy reference and each exhibit should be individually tabbed. Counsel should have his or her own copy of each exhibit and should furnish opposing counsel with a copy of each exhibit by the aforesaid date. Hard copy duplicate originals shall be delivered to the office of the Presiding Judge as well as an electronic copy compatible with Microsoft Word via email at Jessica.Turley@courtswv.gov, with a courtesy copy to Eleni.Miller@courtswv.gov, Tessa.Bowers@courtswv.gov, and Business.Court@courtswv.gov.

Any objections to the proposed jury instructions, special interrogatories, verdict forms, or voir dire of the other parties shall be filed in writing with the Clerk of this Court within seven (7) days thereafter. Counsel shall submit a copy of any objections with the office of the Presiding Judge via the methods described above.

The Court reserves the right to refuse any proposed instructions or objections to the instructions that are not submitted in compliance with the previous paragraphs.

Parties shall also file with the office of the Presiding Judge any interrogatories, answers thereto, depositions, etc., specifying the appropriate portions thereof that parties intend to offer in this case no later than ten (10) business days prior to the Pretrial Conference. Any objections to the introduction of any of the foregoing shall be filed, in writing with the office of the Presiding Judge, no later than five (5) business days prior to the Pretrial Conference. Any objections not filed by that date shall be deemed waived. This paragraph is not to apply to discovery materials that will be used at trial solely in cross-examination or for impeachment purposes.

In the event of a settlement of this civil action, if counsel desires the return of his or her proposed jury instructions, special interrogatories, answers thereto, depositions, verdict forms, or voir dire, arrangements must be made with the office of the Presiding Judge within fifteen (15) days of the entry of the Final Order, otherwise the Court will dispose of the materials by whatever means deemed most efficient and expedient.

Counsel is encouraged to meet with one another and enter into stipulations of fact in this case. Any such stipulation shall be reduced to writing, signed by all counsel of record, and filed with the Court and with opposing counsel no later than ten (10) business days prior to the Pretrial Conference.

4. SCHEDULE OF EXHIBITS

The parties shall exchange a list of all proposed exhibits (including demonstrative) and shall make the exhibits available for viewing by counsel in conformance with the instructions above. By the time of the Pretrial Conference, counsel shall have stipulated as to which exhibits shall be admitted without objection and provide a list to the Court and Clerk. The parties shall mark all exhibits by use of standard exhibit stickers and provide a list to the Court and counsel.

On the first day of trial, counsel shall tender to the office of the Presiding Judge two (2) binders of the exhibits. One binder shall be for the Court's use and the other shall be for use by the witnesses during trial. If counsel desires each juror to have a binder of exhibits to view as counsel examines witnesses, these should be prepared for presentation to each juror at the appropriate time with the Court's permission. Any objection to any proposed exhibit shall be filed, in writing, with the appropriate citations thereto and referenced proposed exhibit attached, one (1) week prior to the Pretrial Conference. A hard copy of said objection shall be filed with the office of the Presiding Judge with a courtesy electronic copy to Jessica.Turley@courtswv.gov, Eleni.Miller@courtswv.gov, Tessa.Bowers@courtswv.gov, and Business.Court@courtswv.gov. Failure to comply with this paragraph may constitute a waiver of objections or may result in the Court denying the admission of the affected exhibits.

In the event of a settlement of this civil action, if counsel for the respective parties desires the return of his or her proposed exhibit binders, arrangements must be made with the Presiding Judge within fifteen (15) days of the entry of the Final Order, otherwise the Court will dispose of the binders of proposed exhibits by whatever means deemed most efficient and expedient.

5. VIDEO DEPOSITION TO BE USED AT TRIAL

If a video deposition is to be used, all parties must be prepared to argue objections at the pre-trial conference. Thereafter, the proponent of the video deposition shall have the video edited to reflect the court's rulings. In addition, the proponent of the video deposition must have a videographer at trial.

6. EXPERTS DISCLOSED

Plaintiff: n/a

Defendant: n/a

The parties indicated at the scheduling conference held on March 23, 2021 that all experts have been disclosed and this deadline was not necessary.

The admissibility of expert testimony is subject to Rule 104(a) of the Rules of Evidence. Objection to the admissibility of expert testimony will be deemed waived if not objected to by a motion *in limine* filed at least 10 days prior to the pre-trial and a hearing thereon set with the Court prior to first day of trial.

7. EXPERT EVIDENTIARY INSPECTIONS: September 1, 2021

All examinations by expert witnesses must be completed by this date.

8. PROPERTY INSPECTIONS:

All inspection of property, if applicable, shall be completed on or before: **September 1, 2021**

9. DISPOSITIVE MOTIONS

WVRCP 12(b) and 56 motions shall be filed by January 10, 2022. Responses and counter affidavits are due by January 24, 2022. Replies shall be due by January 31, 2022. All dispositive motions, responsive pleadings, supporting memoranda, and affidavits shall be filed with the Circuit Clerk and a hard copy shall be provided to the office of the Presiding Judge with a courtesy electronic copy to Jessica.Turley@courtswv.gov, Eleni.Miller@courtswv.gov, Tessa.Bowers@courtswv.gov, and Business.Court@courtswv.gov. If a hearing on a dispositive motion is necessary prior to the date of the Final Pretrial Conference, counsel shall contact the office of the Presiding Judge to get a hearing date. However, trying to obtain a hearing date within one or two months of the Final Pretrial Conference may only allow you to schedule it for the Final Pretrial Conference. Counsel shall then provide notice of the hearing to opposing counsel and to the Court. If a hearing on a dispositive motion is not necessary prior to the date of the Final Pretrial Conference, the dispositive motion will be heard at the Final Pretrial Conference and counsel shall provide notice of the hearing on the motion for the date and time of the Final Pretrial Conference to opposing counsel and to the Court.

**10. AMENDMENTS, THIRD PARTY PLEADINGS,
AND OTHER MATTERS NO LATER THAN: n/a**

The parties indicated at the scheduling conference held on March 23, 2021 that this deadline had passed under the prior Scheduling Order and this deadline was not necessary.

11. FINAL WITNESS LIST EXCHANGED: February 7, 2022

This is to be a *bona fide* list of intended trial witnesses.

12. DISCOVERY COMPLETION DATE: December 1, 2021

All requests must be filed at least 35 days in advance of this date so that all responses may be completed by this date. For the purposes of this Order, "completed" means that any discovery requiring a response or action shall be filed to allow sufficient time to permit such response or action by the above date. "Completed" does not mean that counsel can file a motion to compel on the above date. A motion to compel should be filed in sufficient time to allow a response before the above date.

The parties stipulated that the discovery completion date shall be October 1, 2021 for fact discovery, and December 1, 2021 for expert discovery.

13. ELECTRONICALLY STORED INFORMATION DISCOVERY:

All parties and counsel shall cooperate and work diligently to agree upon the methods and conduct for discovery of electronically stored information.

All counsel are required to be informed of and understand to a reasonable degree of their client's information management systems and electronically stored information processes including how information is stored and retrieved. An attorney's lack of knowledge will not be considered as an excuse by this Court in ruling upon a motion to compel or a motion for discovery sanctions.

A party has an obligation to take reasonable and proportional steps to preserve discoverable information in the party's possession, custody, or control. The Court may issue sanctions for spoliation, the intentional or negligent destruction, or failure to preserve relevant electronically stored information. A party may move for an order to preserve electronically stored information upon a showing that the continuing existence and integrity of the information is threatened.

All requests made pursuant to Rule 34 of West Virginia Rules of Civil Procedure shall be construed to include information contained or stored in an electronic medium, regardless of format, unless otherwise stated.

Unless otherwise agreed upon, all production of electronically stored information shall be either in hard copy form or in the form of a compact disk (CD) utilizing a format best suited for viewing the information by the requesting party and reasonably accessible to the producing party. If the parties are unable to agree upon a format, the Court will rule upon the type of format to be used for a particular category or all discovery of electronically stored information.

If any party intends to utilize an electronic search of another party's electronically stored information or if any other issue regarding electronically stored information arises between the parties, then all counsel and pro se parties shall hold a conference. The requesting party shall give reasonable notice to all parties, and all counsel and pro se parties shall be present. The conference must be held at least 40 days prior to the completion of discovery, as set by the scheduling order in this matter.

At the conference, all counsel and pro se parties shall use their best efforts to reach an

agreement as to the method of search, the scope of the search, the amount of searching, and the words, terms, or phrases to be used. All counsel and pro se parties shall utilize this conference to resolve all remaining electronic discovery issues such as the allocation of discovery costs for material not readily accessible, form of production, etc.

If, during a search or otherwise, electronically stored information that contains privileged information or attorney work product is inadvertently released in whole or part, then

- a. If the information, document, or material, on its face, appears to be privileged or attorney work product, it shall be immediately returned,
- b. If notice of the inadvertent disclosure is given, it shall be returned as soon as practicable, and in no case later than 10 days.

Upon returning the privileged or attorney work product material, any person to whom it has been disclosed, must destroy any copies, notes, or information derived from the material. The filing of a motion for protective order or to compel or other similarly related motion shall not affect this order.

14. MOTIONS *IN LIMINE*

Must be filed at least 10 days before pre-trial and will be ruled upon at the Pre-trial Conference. All motions, responsive pleadings, supporting memoranda, and affidavits shall be filed with the Circuit Clerk, and a hard copy shall be provided to the office of the Presiding Judge with a courtesy electronic copy to Jessica.Turley@courts.wv.gov, Eleni.Miller@courts.wv.gov, Tessa.Bowers@courts.wv.gov, and Business.Court@courts.wv.gov.

15. MEDIATION/ALTERNATIVE DISPUTE RESOLUTION

The Court finds that this is an appropriate case for mediation or alternative dispute resolution. Therefore, pursuant to Rule 25 of the West Virginia Trial Court Rules, this case is referred to mediation or other form of dispute resolution agreed to by the parties. By order of this Court, mediation or other form of dispute resolution shall be conducted by the Honorable James H. Young, Jr. as Resolution Judge and shall be scheduled and concluded on or before December 15, 2021, unless such deadline is otherwise extended by the Presiding Judge for good cause shown. The Resolution Judge shall contact the parties for the purpose of scheduling mediation/alternative dispute resolution. All counsel or pro se parties shall provide their email address to the Business Court Division Director at Carol.Miller@courts.wv.gov and the Resolution Judge via Diana.Fields@courts.wv.gov.

16. SANCTIONS:

In accordance with WVRCP 16(f), the Court may 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 including exclusion of evidence and granting of default for failure to comply.

17. **UNLESS AUTHORIZED BY COURT ORDER, THE ABOVE DATES ARE FINAL.** No additional evidence developed as a result of deviations from the above schedule will be admissible at trial unless justice requires.

18. **OBJECTIONS** to the above schedule must be made to the undersigned Judge within **15** days of the date of this Order or will be deemed waived.

19. It will be the responsibility of plaintiff or their counsel to notify opposing counsel and *pro se* parties of the existence of this scheduling order, if and when such counsel or *pro se* party appears of record.

20. The dates set out above do not relieve counsel or parties from timely compliance with discovery requests propounded pursuant to the West Virginia Rules of Civil Procedure.

21. **ADDITIONAL JUDICIAL COMMENTS**

Please do not fax to the Judge's Office. If you call and get permission to fax, please do not mail an additional copy to the Judge's Office. If you must or insist on faxing to the Clerk's Office, be mindful that the Trial Court Rules require you to have the original physically signed document or the certified copy of the original in your possession. See Rule 12.03(f)(2). Therefore, do not mail the original to the Clerk's Office. Also, the Clerk's Office may bill you for the copies faxed to its office.

If you file a motion that needs a ruling from the Court, please remember that the Trial Court Rules require you to provide a courtesy copy to the Presiding Judge. If you file a motion that needs a ruling from the Court, you must call and get a hearing date from the undersigned's judicial assistant. Your secretary or paralegal may not have your schedule, nor do they know how long the hearing will take, therefore, you must personally call and get a hearing date from the Judge's Office. After you call and confirm a hearing date, you must provide notice to opposing counsel and to the Court.


The Court hereby **ADJUDGES** and **ORDERS** that the previous Scheduling Order entered in this civil action on July 6, 2020 by Judge Bloom is **VACATED**.

The Clerk is **HEREBY DIRECTED TO** transmit certified copies to counsel of record; the Presiding Judge Paul T. Farrell, at the Cabell County Courthouse, 750 Fifth Avenue Huntington, WV 25701; the Resolution Judge James H. Young, Jr., at the Wayne County Courthouse, PO Box 68, 700 Hendricks St., Wayne, WV 25570; the Business Court Division Central Office, Berkeley County Judicial Center, 380 W. South Street, Martinsburg, West Virginia 25401, and any *pro se* parties.

April 1, 2021
date of entry

Date: 4/6/2021
Certified copies sent to:
☒ counsel of record
☒ parties
☒ other (please indicate)
By: ☒ certified/1st class mail
☒ fax
☒ hand delivery
☒ interdepartmental
Other directives accomplished:
S. Allen
Deputy Court Clerk

Judge Farrell
Judge Young
Bus Ct
K. Nelson
M. Breneman
C. Bayler
Mr. Groves
D. Higgenbotham
M. Markers
A. Turner


JUDGE PAUL T. FARRELL
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION