

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

THE THRASHER GROUP, INC.

Plaintiff,

v.

BEAR CONTRACTING, LLC
and GREAT AMERICAN INSURANCE COMPANY

Defendants.

Civil Action No. 20-C-350
Presiding: Judge Dent
Resolution: Judge Farrell

SCHEDULING ORDER

This matter came on the 4th day of April 2022 for a remote scheduling conference. Adam S. Ennis, Esq. and John D. Pizzo, Esq appeared for Plaintiff, The Thrasher Group, Inc. Evan S. Aldridge, Esq. and Christopher A. Brumley, Esq. appeared for Defendants Bear Contracting, LLC and Great American Insurance Company.

This Court **VACATES** the previous *Scheduling Order*, entered March 1, 2021; a certain *Order Granting Joint Motion to Extend Scheduling Order*, entered September 10, 2021; and an *Agreed Order Amending the Scheduling Order*, entered January 20, 2022.

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: March 20, 2023, through March 29, 2023.**
Each trial day shall begin at 9:00 a.m.
Location to be determined.

The parties requested a bench trial. Continuance motions must be heard prior to the pre-trial conference, or they will not be considered. Trial is anticipated to last six (6) to eight (8) trial days. The Court will attempt to secure a location in Kanawha County, West Virginia with the possibility of using a courtroom in Greenbrier County, West Virginia if a Kanawha County location is not available.

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2. PRE-TRIAL CONFERENCE DATE: March 1, 2023, at 1:00 p.m.
Location to be determined.

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:

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. All Proposed Instructions of Law
(Disk as well as hard copy shall be
provided to the Court) |
| 3. Issues of Law | 9. Proposed <i>Voir Dire</i> |
| 4. Proposed Stipulations | |
| 5. Schedule of Exhibits | |
| 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 duplicates shall be delivered to the office of the Presiding Judge as well as an electronic copy compatible with Microsoft Word via email at Allison.Burke@courtswv.gov with a courtesy copy to Samantha.Clarkson@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 and 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 Alison.Burke@courts.wv.gov with a courtesy copy to Samantha.Clarkson@courts.wv.gov, Tessa.Bowers@courts.wv.gov, and Business.Court@courts.wv.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. EVIDENTIARY MOTIONS HEARING: February 15, 2023, at 10:00 a.m. in the Greenbrier County Courthouse.

Evidentiary motions, including motions *in limine*, motions to strike, motions to exclude, and like "evidentiary" motions shall be filed prior to this hearing in accordance with the *West Virginia Rules of Civil Procedure*, and *West Virginia's Trial Court Rules* to permit appropriate time for a response.

7. EXPERTS DISCLOSED

Initial:	July 15, 2022
Rebuttal:	August 19, 2022

The party that bears the burden of proof on an issue serves the initial report.

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 witnesses. Such report shall be signed by the testifying expert. The reports will contain the opinions the experts will render, the bases for such opinions, and identify with reasonably particularity the facts and documents upon which their opinions are based. Experts shall also provide a copy of their CV or resume, and a fee schedule.

The admissibility of expert testimony is subject to Rule 104(a) of the Rules of Evidence.

Co-designation or co-reliance upon experts must also specifically be made in writing on the date of Expert Disclosure.

8. DISPOSITIVE MOTIONS

WVRCP 12(b) and 56 motions shall be filed by October 28, 2022.

Responses and counter affidavits to such motions shall be filed by November 18, 2022.

Replies shall be filed by December 2, 2022.

Dispositive Motion Hearing January 11, 2023, at 10:00 a.m. in the Greenbrier County Courthouse (or as otherwise scheduled by this Court).

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 Alison.Burke@courtswv.gov with a courtesy copy to Samantha.Clarkson@courtswv.gov, Tessa.Bowers@courtswv.gov, and Business.Court@courtswv.gov. If a hearing on a dispositive motion is necessary prior to the established hearing date, the undersigned will contact counsel to schedule the same.

9. FINAL WITNESS LIST EXCHANGED: January 15, 2023.

This is to be a *bona fide* list of intended trial witnesses. The Court finds all witness disclosure by the parties must be completed by this date.

10. DISCOVERY COMPLETION DATE:

Fact Discovery Closes: June 15, 2022

Expert Discovery Closes: September 23, 2022

All requests must be filed in advance of these dates, as appropriate, so that all responses may be completed by these dates. 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.

11. 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 Paul T. Farrell as Resolution Judge and shall be scheduled and occur by **October 1, 2022**, unless such deadline is otherwise extended by the Presiding Judge for good cause shown. Tessa Bowers, Division law clerk will assist the parties in contacting the Office of the Resolution Judge for the purpose of scheduling mediation or alternative dispute resolution. All counsel or pre se parties shall provide their email address to the Business Court Division Director at Carol.Miller@courtswv.gov and the Resolution Judge via Jessica.Turley@courtswv.gov.

12. SANCTIONS

In accordance with WVRCP 16(f), the Court may impose the full spectrum of sanctions authorized by the WVRCCP if a party or party's counsel fails to obey this order or other orders of this Court including the exclusion of evidence and granting of default for failure to comply.

13. 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 so requires.

14. 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.

15. 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.

16. 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.

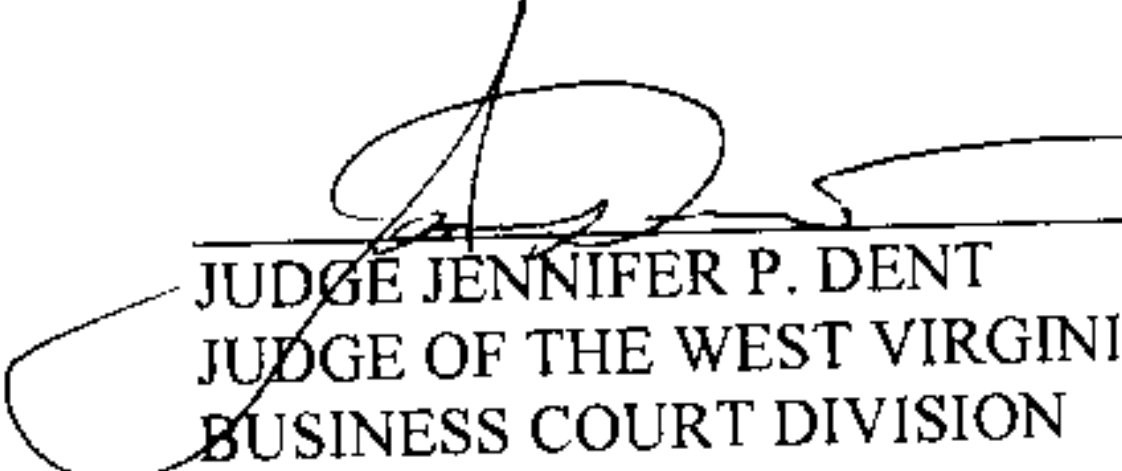
17. ADDITIONAL JUDICIAL COMMENTS


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. The parties are directed to provide a courtesy copy of all motions, responsive pleadings, supporting memoranda, and proposed orders to the Presiding Judge via email at Alison.Burke@courts.wv.gov, with a courtesy copy to Samantha.Clarkson@courts.wv.gov, Tessa.Bowers@courts.wv.gov, and Business.Court@courts.wv.gov.

The Clerk is **HEREBY DIRECTED TO** transmit certified copies to counsel of record; the Resolution Judge Paul T. Farrell, at the Cabell County Courthouse, 750 Fifth Avenue, Huntington, West Virginia, 25701; the Business Court Division Central Office, Berkeley County Judicial Center, 380 W. South Street, Martinsburg, West Virginia 25401, and any *pro se* parties.

April 26, 2022
Date of entry


JUDGE JENNIFER P. DENT
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION

Date: 05-03-22 - Business court
Certified copies sent to:
☒ counsel of record
☐ parties
☐ other (please indicate) - Judge P.T. Farrell
By: ☒ certified/1st class mail - L.A. Brumley
☐ fax - A.S. Ennis
☐ hand delivery - S.D. Pizzo
Other (if applicable) - E.S. Aldridge
Signature: 
Deputy Court Clerk


Jointly Drafted by:

John Pizzo *w/permission ESA*

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April 19, 2022

The Honorable Jennifer P. Dent
Greenbrier County Courthouse
P.O. Box 751
912 Court Street North
Lewisburg, WV 24901

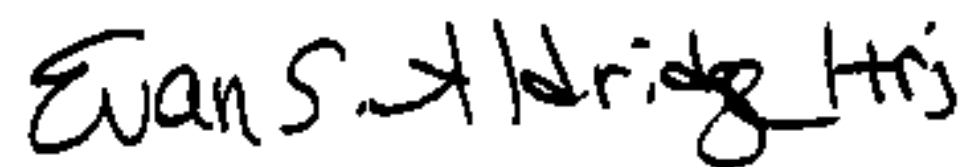
Re: The Thrasher Group, Inc. v. Bear Contracting, LLC, et al.
Civil Action No.: 20-C-772

Dear Judge Dent:

Enclosed please find an executed Scheduling Order in the above-referenced matter. If the Order meets with your approval, please sign and forward to the Clerk for entry with the Court with instructions to forward true copies to all counsel. Should you have any questions, please do not hesitate to contact me.

Thank you for your assistance in this matter.

Sincerely,


Evan S. Aldridge

ESA/trj

cc: Adam S. Ennis, Esq.
John D. Pizzo, Esq.

Enclosures
10598-55867