

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

GITO, INC. d/b/a NELLO
CONSTRUCTION COMPANY, for the
use and benefit of COST COMPANY,

Plaintiff

Vs.

BOARD OF EDUCATION OF THE
COUNTY OF MARSHALL, WEST
VIRGINIA,

Defendant

Vs.

SCALISE INDUSTRIES CORPORATION,
A wholly owned subsidiary of EMCOR
GROUP, INC.,

Third Party Defendant

CIVIL ACTION NO. 13-C-13K

(Thomas C. Evans, III, Circuit Judge
Presiding Judge, Business Court
Division)

FIRST AMENDED SCHEDULING ORDER

The following amended 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: November 10, 2014 at 9 a.m.

X Jury Trial Requested. (The week of November 17th is also blocked off for the trial.)

Continuance motions must be heard prior to the pre-trial conference, or they will not be considered. Trial is anticipated to last 10-14 days.

2. Pre-Trial Conference: October 10, 2014.

The conference will be conducted telephonically. The Court will set the time.

At which time lead counsel must appear. 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 THE CONTINUANCE OF THE TRIAL OR MONETARY OR OTHER SANCTIONS BEING IMPOSED. See Rule 16, WVRCivP.

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 |
| 5. Schedule of Exhibits | provided to the Court.) |
| 6. List of Witnesses | 10. Proposed Voir Dire |

Parties are to confer and provide a Joint Instruction to Charge to the Court.

All submissions to the Judge's Chambers shall be in digital format (Word, Wordperfect, .txt, plain text or .rtf format)

Schedule of Exhibits.

The parties shall exchange all proposed exhibits (including demonstrative exhibits) at least 5 work days prior to the pre-trial conference. By the time of the pre-trial conference, counsel shall have stipulated as to which exhibits shall be admitted without objection and provide a list to the Court and Clerk.

Prior to exchange, the parties shall mark all exhibits by use of standard exhibit stickers and provide a list to the Court and counsel.

Prior to trial, the parties shall submit to the Judge's Chambers all exhibits to be used in the trial (please submit in digital format, i.e. pdf).

Video Deposition to be Used at Trial.

If a video deposition is to be used at trial, 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, unless otherwise Ordered, the proponent of the video deposition must have a videographer at trial.

Jury Instructions.

The Court desires that all counsel read all parties' proposed jury instructions prior to the conference and be prepared to discuss them at the conference. The Court will not be inclined to receive instructions after the pre-trial conference.

3. Expert Witness Disclosure:

Plaintiff, Counterclaim Plaintiff and Third-Party Plaintiff Expert Witness Disclosure: March 1, 2014.

Defendant, Counterclaim Defendant and Third-Party Defendant Expert Witness Disclosure: April 1, 2014.

Rebuttal Expert Witness Disclosure: April 8, 2014

- 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 or if the reports do not contain Rule 26(b)(4) information, a summary of the substance of such expert's contemplated opinions, together with a statement of the grounds and bases for such opinions, as provided in WVRCP 26(b)(4).
 - b. 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 the first day of trial.
 - c. Co-designation or co-reliance upon experts must also specifically be made in writing on date of Expert Disclosure.
4. **Medical Examinations and Expert Evidentiary Inspections:** Completed. (As per Scalise's notice, the Board and Scalise will schedule a mutually convenient date/time.)
 5. **Dispositive Motions:** WVRCP 12(b) and 56 motions shall be filed by September 10, 2014. Responses shall be filed in 20 days from the filing of the motion. Replies shall be filed in 7 days.
 6. **Amendments, Third-Party Pleadings, and Other Matters No Later Than:** Completed.
 7. **Final Witness List exchanged:** June 1, 2014.

This is to be a *bona fide* list of intended trial witnesses.
 8. **Discovery Completion Date:** August 31, 2014.

All requests must be filed at least 35 days in advance of this date so that all responses may be completed by this date. All trial depositions must be completed at least 5 days before the pre-trial.
 9. **MOTIONS IN LIMINE MUST BE FILED AT LEAST 10 DAYS BEFORE PRE-TRIAL AND WILL BE RULED UPON AT THE PRE-TRIAL CONFERENCE.**

10. **MEDIATION COMPLETION: February 28, 2014.**
11. **SANCTIONS:** In accordance with WVRCP16(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.
12. **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 stipulated or as justice requires.
13. **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.
14. 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.
15. 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.

The Clerk shall transmit certified copies to counsel of record, *pro se* parties, and the Business Court Division Central Office at Berkeley County Judicial Center, 380 W. South Street, Suite 2100, Martinsburg, West Virginia 25401.

All of which is **ORDERED**, accordingly.

Entered: 1/2/2014



Thomas C. Evans, III, Circuit Judge
Presiding Judge
Business Court Division