

SCANNED

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

AEROTEK ENERGY,

Plaintiff,

vs.

Civil Action No. 16-C-77-2
Thomas A. Bedell, Chief Judge

ELECTRICAL SYSTEMS, INC.,

Defendant.

PRE-TRIAL AND SCHEDULING ORDER

This action came before Thomas A. Bedell, Judge of the Circuit Court of Harrison County, West Virginia, on the 2nd day of June, 2016, for a Pretrial/Scheduling Conference pursuant to Rule 16 of the West Virginia Rules of Civil Procedure, the West Virginia Trial Court Rules, and the Court's pretrial procedure; and came, Aerotek Energy, plaintiff, by Clinton W. Smith, its attorney. Also came Electrical Systems, Inc., defendant, by Richard R. Marsh, its attorney.

JOINDER and AMENDMENTS

Motions to join additional parties, motions to amend pleadings, and any cross-claim or counterclaim and the reply thereto, as well as any similar motions, shall be fully affected by September 1, 2016.

DISCOVERY SCHEDULE

Plaintiff's Rule 26 expert witnesses and Rule 26(b)(4) information shall be identified on or before September 1, 2016; Defendant's Rule 26 expert witnesses and Rule 26(b)(4) information on or before October 1, 2016. The plaintiff's rebuttal Rule 26 expert witnesses and Rule 26(b)(4) information shall be identified on or before October 15, 2016.

The disclosures described in West Virginia Rules of Civil Procedure 26(b)(4) shall not be required of physicians and other medical providers who examined or treated a party or party's decedent unless the examination was for the sole purpose of providing expert testimony in the case. However, their testimony shall be limited to the medical records unless designated as expert witness for the purpose of giving opinion testimony (i.e., permanent disability, future medical treatment, etc.).

All inspection of property, if applicable, shall be completed on or before April 1, 2017.

Discovery shall be completed by April 1, 2017.

For the purpose of this Order, "completed" means that any discovery requiring a response or action shall be filed in sufficient time to permit such response or action by the above date.

FINAL LISTS OF WITNESSES AND EXHIBITS

On or before the 15th day of May, 2017, the parties shall file with the Clerk of this Court a list containing their proposed witnesses and exhibits and shall serve a copy of

the same upon all counsel of record. 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 marked in sequence. Exhibit markers *may* be secured from the Court Reporter.

On the first day of the trial, counsel shall tender to the **office of the presiding Judge** two (2) binders of the exhibits. These exhibits should be indexed for easy reference and each exhibit should be individually tabbed. One (1) of these binders will be for the Court's use and the other is for use by the witness. Counsel should have his or her own copy of each exhibit and should furnish opposing counsel(s) with a copy of each exhibit as well. 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 as well as the attached exhibit, on or before the 29th day of May, 2017. **A copy of said objection shall be filed with the office of the presiding Judge.** Failure to comply with this paragraph may constitute a waiver of objections or may result in the Court's denying the admission of the affected exhibits.

In the event of a settlement of this civil action, if counsel for the respective parties herein shall desire the return of their 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 proceed in disposing of the binders of proposed exhibits by whatever means deemed most efficient and expedient.

MOTIONS IN LIMINE

All motions *in limine*, accompanied by memoranda of law, and all other related pretrial motions, shall be filed with the Clerk of this Court **and a copy with the office of the presiding Judge** on or before the 15th day of May, 2017.

Responses to such motions shall be filed by counsel with the Clerk of this Court **and a copy with the office of the presiding Judge** on or before the 29th day of May, 2017.

DISPOSITIVE MOTIONS SCHEDULE

All dispositive motions, supporting memorandums, and affidavits shall be filed with the Clerk of this Court **and a copy with the office of the presiding Judge** on or before the 1st day of May, 2017.

All responsive pleadings, supporting memorandums, and counter-affidavits shall be filed with the Clerk of this Court **and a copy with the office of the presiding Judge** on or before the 15th day of May, 2017.

All rebuttal pleadings, supporting memorandums, and counter-affidavits shall be filed with the Clerk of this Court **and a copy with the office of the presiding Judge** on or before the 22nd day of May, 2017.

A hearing on all dispositive motions shall be scheduled by the Court, if the Court deems a hearing on the same necessary prior to the Final Pretrial Conference; otherwise, the same shall be set for hearing by counsel giving notice to the other side and the Court for the date and time of the Final Pretrial Conference.

All other motions may be filed and set for hearing based on case development.

**PROPOSED JURY INSTRUCTIONS, SPECIAL
INTERROGATORIES, VERDICT FORMS, and VOIR DIRE**

Proposed Jury Instructions or substantive theories of recovery or defense, on damages and on evidentiary matters peculiar to the case, together with pertinent statutory and case authority, special interrogatories, and verdict forms, as appropriate to the case, and all proposed voir dire questions requested by counsel for submission to the jury shall be exchanged by counsel and **the original, as well as the same saved on a compact disk (CD) compatible with Microsoft Word be delivered to the office of the presiding Judge** on or before the 15th day of May, 2017.

Within two (2) weeks thereafter, the parties shall submit to the **office of the presiding Judge**, any objections, in writing only, which they may have to the proposed instructions, special interrogatories, verdict form, or voir dire of the other party(ies).

The Court reserves the right to refuse any proposed instructions or to refuse to consider any objections to the instructions not submitted in compliance herewith.

In the event of a settlement of this civil action, if counsel for the respective parties herein shall desire the return of their proposed jury instructions, special interrogatories, verdict forms, and voir dire, arrangements must be made with the presiding Judge within fifteen (15) days of the entry of the final Order, otherwise the Court will proceed in disposing of the proposed jury instructions, special interrogatories, verdict forms, and voir dire by whatever means deemed most efficient and expedient.

FILING OF DISCOVERY FOR USE AT TRIAL

On or before the 15th day of May, 2017, the parties shall file **with the office of the presiding Judge** any interrogatories, answers thereto, depositions, etc., specifying the appropriate portions thereto that the parties intend to offer in this case. Any objection(s) to the introduction of any of the foregoing shall be filed, in writing **with the office of the presiding Judge**, by each of the parties on or before the 30th day of May, 2017, or such objection(s) shall be deemed to have been waived. **This paragraph is not to apply to discovery materials that will be used at trial solely in cross-examination or for impeachment.**

In the event of a settlement of this civil action, if counsel for the respective parties herein shall desire the return of their discovery, arrangements must be made with the presiding Judge within fifteen (15) days of the entry of the final Order, otherwise the Court will proceed in disposing of the discovery by whatever means deemed most efficient and expedient.

STIPULATIONS

Counsel are encouraged to meet with one another and enter into stipulations of fact in this case and any such stipulation shall be reduced to writing, signed by all counsel of record, and filed with the Court and with opposing counsel on or before the 22nd day of May, 2017.

FINAL PRETRIAL CONFERENCE/SETTLEMENT CONFERENCE

The Final Pretrial Conference/Settlement Conference in this matter shall be held on the **13th** day of **June, 2017**, at **8:15 o'clock a.m.** Said conference shall be attended by **LEAD TRIAL COUNSEL** for each represented party and all unrepresented party(ies). Counsel and parties should be prepared to participate fully and to discuss all aspects of the case. Individuals with full authority to settle the case for each party shall be present in person or immediately available by telephone. The Court may reset the Settlement Conference for additional discussions as necessary.

TRIAL DATE

This matter is hereby set for a **JURY TRIAL** during the week of **June 19, 2017**.

MEDIATION

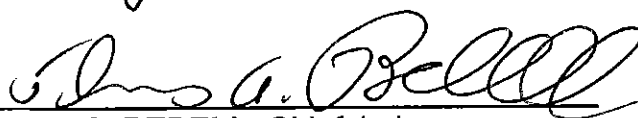
The Court finds that this is an appropriate case for reference to mediation. Therefore, pursuant to Rule 25 of the West Virginia Trial Court Rules, this case is referred to mediation. Selection of a mediator shall be pursuant to TCR 25.05, and the parties shall have **15** days from the entry of the within Order to select a mediator and notify the Court; if the parties are unable to agree to such selection, counsel for the Plaintiff(s) shall immediately notify the Court, in writing, and the Court will subsequently make such selection by Order. Mediation shall be scheduled and concluded on or before the 31st day of December, 2016, unless such deadline is otherwise extended by the Court for good cause shown. At the conclusion of said mediation, the **mediator**

shall immediately notify the Court, in writing, of the results of said mediation. The costs associated with said mediation attempt shall be borne equally by all the parties. Said mediation shall be a condition precedent to the jury trial hereinabove set.

It is now **ORDERED** that this Pretrial and Scheduling Order shall control the course of this action unless modified by the Court for good cause.

The Clerk is hereby directed to send a certified copy of this Order to Clinton W. Smith, counsel for the Plaintiff, at his address of Mezzanine Suite 4, 405 Capitol Street, Charleston, West Virginia 25301 and Sam H. Harrold, III, counsel for the Defendant, at his address of McNeer, Highland, McMunn & Varner, L. C., Post Office Drawer 2040, Clarksburg, West Virginia 26302-2040.

ENTER: June 3, 2016


THOMAS A. BEDELL, Chief Judge