

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

WEST VIRGINIA RADIO CORPORATION,
PLAINTIFF,

VS.

CASE NO.: 13-C-468
HON. THOMAS C. EVANS, III

WEST VIRGINIA UNIVERSITY BOARD OF
GOVERNORS, WEST VIRGINIA UNIVERSITY
FOUNDATION, INC., WEST VIRGINIA MEDIA
HOLDINGS, LLC, ANDREW A. PAYNE, III, DAVID B.
ALVAREZ, ALBERT BREY CARY, JR., RALPH
BALLARD, RICHARD BALLARD, OLIVER LUCK,
JAMES P. CLEMENTS, and IMG COLLEGE, LLC,
DEFENDANTS.

SCHEDULING ORDER

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: October 14, 2014

 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 10 days.

PRE-TRIAL CONFERENCE DATE: September 22, 2014 at 1:00 p.m. in the
Circuit Courtroom of Judge Russell M. Clawges, Jr. in
Monongalia County Courthouse, Morgantown, West Virginia.

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 (in Jackson County) **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 |
| 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 Charge to the Court.

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

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.

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. **EXPERTS DISCLOSED:** Plaintiff: July 1, 2014
Defendant: August 1, 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, a summary of opinions, and the basis and grounds for each opinion, on the date of Expert Disclosure, in accordance with 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 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:** N/A

All medical examinations by expert physicians must be completed by this date. Medical examinations in accordance with WVRCP 35 are granted, but subject to court control. Any modification to the standard medical examination of the plaintiff must be made by plaintiff's counsel in writing and noticed for hearing prior to the examination. Any continuing medical treatment to be admissible at trial must be disclosed prior to the discovery completion date.

5. **DISPOSITIVE MOTIONS:** WVRCP 12(b) and 56 motions shall be filed on or before **September 1, 2014** with Responses filed on or before **September 15, 2014** and Replies filed on or before **September 19, 2014**.
6. **AMENDMENTS, THIRD PARTY PLEADINGS, AND OTHER MATTERS NO LATER THAN:** **January 15, 2014**
7. **FINAL WITNESS LIST EXCHANGED:** to be in Pretrial Memorandums
This is to be a *bona fide* list of intended trial witnesses.
8. **DISCOVERY COMPLETION DATE:**
FACT DISCOVERY: **June 16, 2014**
EXPERT DISCOVERY: **September 1, 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 DATE:** **January 31, 2014**
11. **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.
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 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 provide attested copies of this order to all counsel of record, *pro se* parties, and the Business Court Division Central Office, Berkeley County Judicial Center, 380 W. South Street, Suite 2100, Martinsburg, West Virginia 25401.

Entered: 11/14/2013



The Honorable Thomas C. Evans, III
Presiding Judge
Business Court Division

ENTERED Nov 14, 2013

FILED 271