

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

F.K. EVEREST, INC. and
J. Mike Martin,
Plaintiffs,

v.

Ryan L. EDDY, David Bryte,
Jarod Graffius, Jason Tomaro,
Infinity Electric, Inc., and
Orange Construction Corporation.
Defendants.

Civil Action No.: 15-C-134
Presiding Judge: James J. Rowe
Resolution Judge: Paul T. Farrell

CASE MANAGEMENT AND SCHEDULING ORDER

On the 4th day of May, 2015, came F.K. Everest, Inc. and J. Mike Martin (hereinafter collectively referred to as "Plaintiffs"), by counsel Wendy G. Adkins, of Jackson Kelly PLLC; and came Ryan L. Eddy, David Bryte, Jarod Graffius, Jason Tomaro, Infinity Electric, Inc., and Orange Construction Corporation (hereinafter collectively referred to as "Defendants"), by counsel Andrew G. Fusco and Dylan C. Lewis, of Bowles Rice LLP, for a case management and scheduling conference with regard to further proceedings herein. Pursuant to Rule 16(b) of the West Virginia Rules of Civil Procedure and Rule 29.08 of the West Virginia Trial Court Rules, the following schedule and procedures are hereby adopted and ORDERED by the Court:

1. Plaintiffs shall disclose to Defendants the names and addresses of all fact witnesses who may be called to testify in the Plaintiffs' case in chief on or before May 22, 2015.
2. Defendants shall disclose to Plaintiffs the names and addresses of all fact witnesses who may be called to testify in the Defendants' case in chief on or before June 1, 2015.
3. Plaintiffs shall serve Defendants with all demands for production of documents and requests for admissions on or before June 26, 2015.

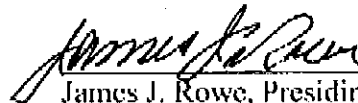
4. Defendants shall serve Plaintiffs with all demands for production of documents and requests for admissions on or before July 17, 2015.
5. Plaintiffs shall disclose the names of all expert trial witnesses on or before June 26, 2015. Defendants shall disclose the names of all expert trial witnesses on or before July 17, 2015. Expert witness disclosures shall include the specialty of each expert and copies of any reports submitted by the expert with regard to this case. If no reports have been submitted, the parties shall provide a summary of the substance of the contemplated testimony of the expert. Any objection to the admissibility of expert testimony must be raised in a timely filed motion *in limine* for hearing at the pre-trial conference. The parties shall timely disclose co-designation of any expert.
6. Any objection to an interrogatory or request for admission, notice of deposition, or demand for production of documents shall be filed within thirty (30) days after service of the same. Any such objection not filed within thirty (30) days shall be deemed waived. The party objecting to the request shall schedule a hearing with the Court and notice the same simultaneously with service of the objection. An objection for which a hearing is not scheduled with the Court shall be deemed waived. Pending discovery disputes shall not extend the time in which the objecting party must otherwise appear or respond to any request as to which no objection has been filed.
7. If a party fails to answer an interrogatory or request for an admission, or fails to produce a document or make required disclosures, and does not file an objection thereto, the requesting party shall timely file a motion to compel. The movant shall schedule a hearing with the Court and notice the same simultaneously with service of the motion to compel. If the requesting party fails to file a motion to compel or schedule a hearing

- thereon, the request shall be deemed waived.
8. In any event, all discovery shall be completed on or before September 4, 2015.
 9. Hearing on any dispositive motions shall be scheduled well in advance of the pre-trial conference and noticed simultaneously with service of the motion.
 10. Mediation or other form of alternative dispute resolution shall be conducted by the Honorable Paul T. Farrell, Resolution Judge, and shall be concluded on or before September 25, 2015. The Resolution Judge will contact the parties for the purpose of scheduling mediation or alternative dispute resolution.
 11. All pre-trial motions, including motions *in limine*, shall be filed on or before October 15, 2015, for hearing at the pre-trial conference. Unless a matter could not have been reasonably anticipated by a party, the Court will not consider motions *in limine* at the time of trial.
 12. No later than October 15, 2015, the parties shall exchange a list of all proposed exhibits (including demonstrative) and shall make the exhibits available for viewing by counsel. At the pre-trial conference, counsel shall have stipulated as to which exhibits shall be admitted without objection. Prior to trial, the parties shall preliminarily mark all exhibits by use of standard exhibit stickers, and provide a list to the Court, the Court Reporter, and the Circuit Clerk.
 13. No later than October 15, 2015, the parties shall each prepare and provide the Court and opposing counsel with a pre-trial memorandum, to include at least the following:
 - a. Statement of the case including a brief summary of the material facts and theory of liability or defense;
 - b. Itemized statement of damages;
 - c. Stipulation of uncontested facts;
 - d. General statement of contested issues of law and, in particular, those contested issues of law requiring court ruling before commencement of trial;

- e. The names and addresses of all witnesses, and, if any expert witness, the purpose of the testimony and whether the qualifications of the expert are to be stipulated;
 - f. Legal authorities to be relied upon;
 - g. For each party, a list of depositions and exhibits to be offered as evidence at trial, indicating as to each whether there are objections to either authenticity or relevancy (if there are objections, the lines and pages of depositions being objected to must be identified), and a statement that copies of exhibits have been exchanged by counsel or that opposing counsel have examined the exhibits; and
 - h. Settlement possibilities.
14. The parties shall provide proposed jury instructions to the Court and opposing counsel no later than October 15, 2015, and shall be prepared to discuss the same at the pre-trial conference.
15. A pre-trial conference shall be held with the Court on Thursday, October 22, 2015, at 2:00 PM, the Monongalia County Judicial Center, Division II (Clawges) Courtroom, at which time lead trial counsel shall appear fully prepared to discuss all aspects of the case.
16. A jury trial of the within matter shall commence on Tuesday, December 8, 2015, at 9:00 AM, at the Monongalia County Judicial Center. Three (3) days are allotted for trial of this case.

The Circuit Clerk shall forward a copy of this Order to all counsel of record; to the Honorable Paul T. Farrell, Resolution Judge, Cabell County Courthouse, 750 Fifth Avenue, Huntington, WV 25701; and to the Business Court Division Central Office, Berkeley County Judicial Center, 380 W. South Street, Ste. 2100, Martinsburg, West Virginia 25401.

IT IS SO ORDERED this 4th day of May, 2015.


James J. Rowe, Presiding Judge
Business Court Division

ENTERED May 4, 2015
DOCKET LINE #: 47

JEAN FRIEND, CIRCUIT CLERK