

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

Joseph T. DOBKIN and
Laurie Dobkin McDermott,
Plaintiffs,

v.

Civil Action No. 14-G-91

David B. SHRIVER,
Defendant.

AMENDED SCHEDULING ORDER

On the 15th day of June, 2015, this matter came before the Court for a telephonic hearing upon the Defendant's Motion for Status Conference and to Consider Modification of Scheduling Order, filed June 9, 2015; and the Plaintiff's Response and Supplemental Response thereto, filed June 12. Joseph T. Dobkin and Laurie Dobkin McDermott ("Plaintiffs") appeared by counsel, Robert P. Fitzsimmons and Gregory A. Gellner; David B. Shriver ("Defendant") appeared by counsel, Avrum Levicoff and Jordan C. Hettrich.

Whereupon, the Court proceeded to hear argument and now ORDERS as follows:

Defendant shall disclose the names of all expert trial witnesses on or before July 1, 2015. At the time of identifying such expert witnesses, the party shall disclose the specialty of such expert and furnish the opposing party with copies of all reports with regard to this case which have been submitted by such expert witness, or, if no such reports have been submitted, a summary of the substance of the contemplated testimony of such expert witness. 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. **Expert witness depositions shall be concluded no later than August 31, 2015.**

Any objection to an interrogatory, notice of deposition, request for production of documents or expert witness report shall be filed within thirty (30) days after service of the same. Any objection not filed within thirty (30) days shall be deemed waived. Any such objection shall not extend the time in which the objecting party must otherwise appear or respond to any discovery matters to which no objection was filed. The party objecting to the requested information shall schedule a hearing with the Court on the appropriateness of the objection at the time of the filing of the objection. An objection for which a hearing is not scheduled with the Court shall be deemed waived.

If a party fails to answer an interrogatory or a request for an admission, or fails to produce a document or disclose anything required herein and does not file an objection thereto, then the person seeking such information shall timely file a motion to compel and shall schedule a hearing thereon with the Court. If the party seeking such information fails to file and schedule a hearing on a motion to compel, the request for such information from the other party shall be deemed waived.

All fact discovery, to include responses to written interrogatories and requests for production of documents and fact witness depositions, shall be completed on or before August 31, 2015. Written interrogatories and requests for production of documents shall be timely propounded, no later than August 17, 2015.

All pre-trial motions, including motions in limine, shall be filed on or before July 31, 2015. Argument on such motions shall be heard at the pre-trial conference. **It is understood that discovery may not be complete at the time of the pre-trial conference; however, the parties must endeavor to move in limine based upon the information available at that time.**

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.

No later than August 6, 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.

No later than August 13, 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.

The parties shall provide opposing counsel and the Court with proposed jury instructions no later than August 13, 2015, and shall be prepared to discuss the same at the pre-trial conference.

A pre-trial conference shall be held with the Court on **August 18, 2015, at 1:30 PM**, at the Marshall County Courthouse in Moundsville, West Virginia, at which time lead trial counsel

shall appear fully prepared to discuss all aspects of the case. **Three full hours have been allotted for the pre-trial conference and hearing on any pending motions.**

Responses to motions in limine shall be filed in accordance with Rule 6(d)(2)(B) of the Rules of Civil Procedure (at least two days prior to the hearing if served by fax). No replies to responses shall be permitted on motions scheduled for oral argument.

Hearing on dispositive motions may be scheduled in advance of the pre-trial conference, by contacting the office of the undersigned judge and providing a notice of hearing to opposing counsel simultaneously with service of the motion. In the event a hearing is scheduled, responses to dispositive motions shall be filed in accordance with Rule 6(d)(2)(B) of the Rules of Civil Procedure (at least two days prior to the hearing if served by fax). No replies to responses shall be permitted on motions scheduled for oral argument. Should the movant desire to stand on the briefs, the dispositive motion should be served without a notice of hearing and a briefing schedule will be issued giving the non-movant an opportunity to request a hearing, and giving the movant an opportunity to reply to the non-movant's response.

Trial by jury of the within matter shall be held on September 22, 2015, at 9:00 AM, at the Marshall County Courthouse in Moundsville, West Virginia. Four (4) days are allotted for trial of this case.

On this date, Defendant was granted seven (7) days in which to file his prospective Motion for Leave to File Third Amended Answer. Plaintiff was granted five (5) days in which to respond.

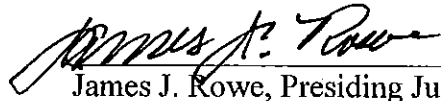
It is noted that the Defendant's Motion for Leave to File Second Amended Answer was granted without Plaintiff's objection by Order entered on or about June 4, 2015. It is

noted that neither did Plaintiff object to Defendant's Motion for Leave to Serve Additional Interrogatories, and the same is therefore granted.

This matter shall come before the Court for a telephonic hearing on the Defendant's Motion for Leave to File Third Amended Answer on Wednesday, July 1, 2015, at 2:00 PM. The telephonic hearing shall be held using the conference call number previously provided.

The Clerk shall forward a copy of this Order to **counsel of record**; 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 22nd day of June, 2015.


James J. Rowe, Presiding Judge
Business Court Division