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

THE WEST VIRGINIA INVESTMENT  
MANAGEMENT BOARD, a public body  
corporate, and THE WEST VIRGINIA  
CONSOLIDATED PUBLIC RETIREMENT  
BOARD, a public agency,

Plaintiffs,

v.

THE VARIABLE ANNUITY LIFE  
INSURANCE COMPANY, a Texas  
corporation,

Defendant.

Civil Action No. 09-C-2104  
Presiding Judge: Christopher C. Wilkes  
Resolution Judge: James J. Rowe

**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: March 22, 2016, at 9:00 a.m.

X  Jury Trial Requested                      \_\_\_\_\_ Bench Trial Requested

Defendant objects to Plaintiffs' request for a jury trial and reserves the right to file a motion challenging Plaintiffs' right to a jury trial.

Continuance motions must be filed at least 20 business days prior to the trial or they will not be considered. Trial is anticipated to last 10 days.

2. PRE-TRIAL CONFERENCE DATE: March 21, 2016, at 9:00 a.m.

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 CONTINUANCE OF TRIAL OR MONETARY SANCTIONS BEING IMPOSED.** Said memoranda are to contain at a minimum, the following:

- |                          |                             |
|--------------------------|-----------------------------|
| 1. Statement of the Case | 5. Schedule of Exhibits     |
| 2. Issues of Fact        | 6. List of Witnesses        |
| 3. Issues of Law         | 7. Pending Motions          |
| 4. Proposed Stipulations | 8. Motions <i>in Limine</i> |



5. **DISPOSITIVE MOTIONS:** WVRCP 12(b) and 56 motions shall be filed at least 60 days prior to the pre-trial conference.
6. **AMENDMENTS, THIRD PARTY PLEADINGS,  
AND OTHER MATTERS NO LATER THAN:** August 28, 2015
7. **PRELIMINARY WITNESS LIST EXCHANGED:** October 1, 2015  
The parties shall in good faith exchange a list of their intended trial witnesses as of this date. Each party shall use its best efforts to provide a list that is neither under-inclusive nor over-inclusive.
8. **FINAL WITNESS LIST EXCHANGED:** February 26, 2016  
This is to be a *bona fide* list of intended trial witnesses.
9. **DISCOVERY COMPLETION DATE:** December 15, 2015  
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 20 days before the pre-trial. The parties agree that any witness who appears on a party's Final Trial Witness List, if not already deposed, may be deposed in advance of the pre-trial conference as outlined above.

#### **ELECTRONICALLY STORED INFORMATION DISCOVERY:**

All parties and counsel shall cooperate and work diligently to agree upon the methods and conduct for discovery of electronically stored information.

All counsel are required to be informed of and understand to a reasonable degree of their client's information management systems and electronically stored information processes including how information is stored and retrieved. An attorney's lack of knowledge will not be considered as an excuse by this Court in ruling upon a motion to compel or a motion for discovery sanctions.

A party has an obligation to take reasonable and proportional steps to preserve discoverable information in the party's possession, custody, or control. The Court may issue sanctions for spoliation, the intentional or negligent destruction, or failure to preserve relevant electronically stored information. A party may move for an order to preserve electronically stored information upon a showing that the continuing existence and integrity of the information is threatened.

All requests made pursuant to Rule 34 of the West Virginia Rules of Civil Procedure shall be construed to include information contained or stored in an electronic medium, regardless of format, unless otherwise stated.

Unless otherwise agreed upon, all production of electronically stored information shall be either in hard copy form or in the form of a compact disk (CD) utilizing a format best suited for viewing the information by the requesting party and reasonably accessible to the producing party. If the parties are unable to agree upon a format, the Court will rule upon the type of format to be used for a particular category or all discovery of electronically stored information.

If any party intends to utilize an electronic search of another party's electronically stored information or if any other issue regarding electronically stored information arises between the parties, then all counsel and *pro se* parties shall hold a conference. The requesting party shall give reasonable notice to all parties, and all counsel and *pro se* parties shall be present. The conference must be held at least 40 days prior to the completion of discovery, as set by the scheduling order in this matter.

At the conference, all counsel and *pro se* parties shall use their best efforts to reach an agreement as to the method of search, the scope of the search, the amount of searching, and the words, terms, or phrases to be used. All counsel and *pro se* parties shall utilize this conference to resolve all remaining electronic discovery issues such as the allocation of discovery costs for material not readily accessible, form of production, etc.

If, during a search or otherwise, electronically stored information that contains privileged information or attorney work product is inadvertently released in whole or part, then

- a. If the information, document, or material, on its face, appears to be privileged or attorney work product, it shall be immediately returned,
- b. If notice of the inadvertent disclosure is given, it shall be returned as soon as practicable, and in no case later than 10 days.

Upon returning the privileged or attorney work product material, any person to whom it has been disclosed, must destroy any copies, notes, or information derived from the material. The filing of a motion for protective order or to compel or other similarly related motion shall not affect this order.

10. **MOTIONS *IN LIMINE* MUST BE FILED AT LEAST 10 DAYS BEFORE PRE-TRIAL AND WILL BE RULED UPON AT THE PRE-TRIAL CONFERENCE.**

11. **MEDIATION COMPLETION DATE: February 29, 2016**

12. **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.

13. **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.

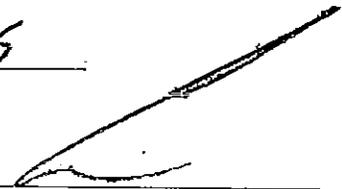
14. **OBJECTIONS** to the above schedule must be made to the undersigned Judge within 15 days of the date of this Order or will be deemed waived.

15. It will be the responsibility of plaintiffs 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.

16. 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 and *pro se* parties and to the Business Court Division Central Office, Berkeley County Judicial Office, 380 W. South Street, Martinsburg, West Virginia 25401.

ENTER: July 22, 2015

  
CHRISTOPHER C. WILKES, JUDGE  
BUSINESS COURT DIVISION

Date: 7/27/15  
Certified copies sent to:  
 counsel of record  
 parties  
 other (please indicate)  
By:  
 certified/1st class mail  
 fax  
 hand delivery  
 interdepartmental  
Other directives accomplished:  
S. Patton  
Deputy Circuit Clerk

TH  
ES  
MF  
WD  
AM

STATE OF WEST VIRGINIA  
COUNTY OF BERKELEY, SS  
I, CATHY S. BATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 27  
DAY OF July 2015  
Cathy S. Batson CLERK  
CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA