

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

ALAN ENTERPRISES, LLC,

Plaintiff,

v.

MAC'S CONVENIENCE STORES, LLC,
d/b/a Circle K, Joyce Sammon, and
Louis Diab,

Defendants.

CIVIL ACTION NO. 14-C-503
Presiding Judge: Joanna I. Tashit

FILED IN 15TH
CIRCUIT COURT
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SCHEDULING ORDER

The following shall apply to and govern the above-captioned action and activities conducted in connection with it. In the absence of a specific date or deadline for a given activity, it is anticipated that such activity will be scheduled and conducted within a reasonable time prior to trial and prior to any scheduled activity which should logically precede it. The parties may not amend, modify or adjust any provision of this Scheduling Order, except by leave of Court.

Pursuant to Rule 16(b) of the West Virginia Rules of Civil Procedures 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. Joinder and Amendments: The dates previously set for motions to join other parties or to amend the pleadings have elapsed.
2. Identification of Fact Witnesses: All parties are to identify fact witnesses by July 1, 2016.

3. Discovery: All discovery shall be completed by August 31, 2016. "Completed discovery" means that by the discovery cut-off deadline, all depositions shall have been taken and all responses, including objections, shall have been served in response to interrogatories, requests for production of documents, and requests for admission.

Parties have a continuing obligation to supplement their discovery responses beyond the discovery cut-off date as required by Rule 26(e).

4. Expert Witnesses: The dates previously set for the identity of expert witnesses, subject matters on which the experts are expected to testify, and the substance of the experts testimony, have elapsed. The depositions, if any, of experts must be completed by the discovery completion date. The Parties have a continuing duty to supplement their expert disclosures as required by Rule 26(e).

5. Dispositive Motions: All dispositive motions, together with depositions, admissions, documents, affidavits or other exhibits, and a memorandum in support of such motions, shall be filed by September 30, 2016. Responses to dispositive motions shall be filed by October 21, 2016, and replies shall be filed by November 4, 2016. Any dispositive motion filed outside of this time frame will be deemed waived.

6. Mediation: By Order entered on March 29, 2016, a mediation pursuant to Trial Court Rule 29.08(e) shall be conducted before Resolution Judge H. Charles Carl, III, on Wednesday, July 13, 2016 beginning at 9:00 a.m. in Charleston. The parties are directed to the above-referenced Order regarding the requirements and procedures to be followed for the mediation.

7. Motions In Limine and Other Pre-Trial Motions: Any motions *in limine* and any other pre-trial motions shall be filed by January 20, 2017. Responses to motions *in*

limine and other pre-trial motions shall be filed by January 27, 2017, with replies to be filed by February 1, 2017. "Other pre-trial motions" include "*Daubert*" motions or like motions seeking to exclude or limit the testimony of expert witnesses.

8. Pre-Trial Disclosure of Exhibits and Deposition Testimony: The identification of each document or other proposed trial exhibit and the designation of the transcripts of witnesses whose testimony will be presented by deposition shall be exchanged between and among the parties by January 11, 2017. Any objections to the exhibits or depositions so designated and any additional or counter designation of the transcripts of such witnesses shall be exchanged between and among the parties by January 20, 2017. Any objections to the additional or counter designations shall be exchanged between and among the parties by January 25, 2017.

9. Proposed Integrated Pre-Trial Order: Counsel for the Plaintiff shall prepare its portion of the pre-trial order and submit it to counsel for the Defendants no later than January 27, 2017. Counsel for the Defendants shall prepare and file a proposed integrated pre-trial order by February 6, 2017. The pre-trial order shall follow the format for pre-trial memorandums set forth in paragraph 10 of the Case Management and Scheduling Order entered December 28, 2015, by Judge Rowe.

10. Pretrial Conference: A final pretrial conference shall be held on February 13, 2017 from 9:00 a.m. to 4:00 p.m. in Charleston. Lead counsel shall appear fully prepared to discuss all aspects of the case. Following the pretrial conference, the Court shall enter a final Pre-Trial Order, which shall only be modified to prevent manifest injustice.

11. Proposed Jury Instructions and Voir Dire: Proposed jury instructions, including special interrogatories and a proposed verdict form, and proposed voir dire must

be exchanged by the parties by February 21, 2017. Thereafter, the parties shall meet, confer and submit to the Presiding Judge, to the extent possible, agreed instructions and voir dire no later than 4:00 p.m. on February 24, 2017. Instructions, verdict form(s) and voir dire shall be submitted on a Word disk and in hardcopy. The proposed instructions and voir dire shall not be filed with the Clerk.

12. Trial: Trial of this action shall commence on February 28, 2017, at 9:00 a.m. in Clarksburg. Eight (8) consecutive days are allotted for the trial of this case.

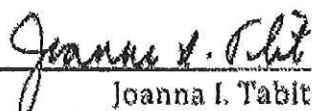
13. Status Conferences: No status conferences with the Court are scheduled at this time. However, if a party desires to have a status conference, a short motion to that effect should be filed. If the parties jointly desire to have a status conference, the parties should contact the Presiding Judge's secretary.

14. Service by E-Mail: By agreement of the parties, the parties shall serve all pleadings, motions and other papers by e-mail, unless a party specifically asks to be served by U.S. First Class Mail. The additional time afforded by Rule 6(a) of the West Virginia Rules of Civil Procedure shall apply to all pleadings, motions, and other papers served by e-mail. Service by e-mail should be made upon all counsel of record for a party. If any pleading, motion or other paper contains voluminous attachments for exhibits, such attachments or exhibits may be served by U.S. First Class Mail instead of email, in the discretion of the Serving Party.

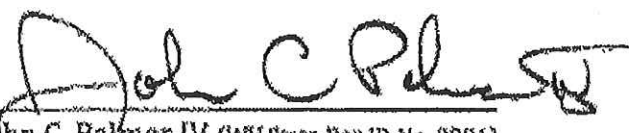
15. Confidentiality: The Agreed Protective Order entered on March 2, 2015 by Judge Bedell and the Agreed Supplemental Protective Order entered on March 19, 2015 by Judge Bedell shall remain in full force and effect.

The Clerk of the Circuit Court of Harrison County shall forward a copy of this Scheduling Order to all counsel of record; to the Honorable H. Charles Carl, III, Harrison County Judicial Center, 50 South High Street, Suite 6, Romney, West Virginia 26757; and to the Business Court Division Central Office, Berkeley County Judicial Center, 380 W. South Street, Ste. 2100, Martinsburg, West Virginia 25401.

ENTER this 20th day of May, 2016.


Joanna L. Tabit
Presiding Judge, Business Court Division


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