

**IN THE CIRCUIT COURT OF MCDOWELL COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

STOLLINGS TRUCKING COMPANY,
Plaintiff,

vs.

**CONTINUUM COAL LLC, GS ENERGY LLC,
IAN GANZER, and GARY GANZER,**
Defendants.

Civil Action No. 17-c-55
Presiding Judge: Farrell
Resolution Judge: Matish

SCHEDULING ORDER

A telephonic scheduling conference was held in the above-captioned case on June 9, 2018. Counsel for each party was present at the hearing. Parties represented that the case was transferred to the Business Court Division an outstanding motion for summary judgment. Accordingly, the following schedule is hereby ORDERED for the efficient management of this case and shall not be modified except by leave of Court.

First, movants of all outstanding motions will provide a proposed order and serve a copy upon all non-moving parties by **July 18, 2018**. Non-movant(s) shall provide proposed orders by **July 25, 2018**. Thereafter the Court hear oral argument on **August 24, 2018, at 10:00 am** in the Courtroom of the undersigned.

Any original proposed orders and copies of motions and/or memoranda shall always be sent directly to the Judge via Jessica.Turley@courtswv.gov with a courtesy copy to both Business.Court@courtswv.gov and Eleni.Miller@courtswv.gov. Copies of the proposed orders and the original motions and memoranda shall be filed with the Clerk of the Circuit Court.

1. TRIAL DATE:2/18/2019

☒ 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 8 days.

2. PRE-TRIAL CONFERENCE DATE:1/9/2019, at 1:30AM in the Courtroom of the undersigned

The Court may reschedule the Pretrial Conference/Settlement Conference to allow for additional discussions between or among parties as the Court deems necessary. The following persons shall attend in person: lead trial counsel for each represented party, as well as every party in the case, including the designated corporate representative who will be attending the trial, any unrepresented parties, and any other individuals such as insurance adjusters who have full authority to settle the case for each party shall also be present in person. These individuals must have full authority to settle the

case for the amount of the last demand or offer made by the other side.

3. PRE-TRIAL CONFERENCE MEMORANDA

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 | 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. Each party shall submit to the Court and Circuit Clerk and exchange between/among counsel, a list containing proposed witnesses and exhibits; proposed jury instructions or substantive theories of recovery or defense on damages and on evidentiary matters pertinent to the case, together with applicable statutory and case authority; special interrogatories; verdict forms; and all proposed voir dire questions requested by counsel for submission to the jury, no later than ten (10) business days prior to the Pretrial Conference. Witnesses shall be identified as to whether they will be called in the parties' case-in-chief or as rebuttal witnesses. All exhibits shall be appropriately pre-marked in sequence. Exhibit markers may be secured from the court reporter. All exhibits should be indexed for easy reference and each exhibit should be individually tabbed. Counsel should have his or her own copy of each exhibit and should furnish opposing counsel with a copy of each exhibit by the aforesaid date. Hard copy duplicate originals shall be delivered to the office of the presiding judge as well as an electronic copy compatible with Microsoft Word via email at Jessica.Turley@CourtsWV.gov, with a courtesy copy to Eleni.Miller@courtsWV.gov and Business.Court@courtsWV.gov.

Any objections to the proposed instructions, special interrogatories, verdict forms, or voir dire of the other parties shall be filed in writing with the Clerk of this Court within seven (7) days thereafter. Counsel shall submit a copy of any objections with the office of the presiding judge via the methods described above.

The Court reserves the right to refuse any proposed instructions or objections to the instructions that are not submitted in compliance with the previous paragraphs.

Parties shall also file with the office of the presiding judge any interrogatories, answers thereto, depositions, etc., specifying the appropriate portions thereof that the parties intend to offer in this case no later than ten (10) business days prior to the Pretrial Conference. Any objections to the introduction of any of the foregoing shall be filed, in writing with the office of the presiding judge, no later than five (5) business days prior to the Pretrial Conference. Any objections not filed by that date shall be deemed waived. This paragraph is not to apply to discovery materials that will be used at

trial solely in cross-examination or for impeachment purposes.

In the event of a settlement of this civil action, if counsel desires the return of his or her proposed jury instructions, special interrogatories, answers thereto, depositions, verdict forms, or voir dire, arrangements must be made with the office of the presiding judge within fifteen (15) days of the entry of the final order, otherwise the Court will dispose of the materials by whatever means deemed most efficient and expedient.

Counsel is encouraged to meet with one another and enter into stipulations of fact in this case. Any such stipulation shall be reduced to writing, signed by all counsel of record, and filed with the Court and with opposing counsel no later than ten (10) business days prior to the Pretrial Conference.

4. 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 in conformance with the instructions above. 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.

On the first day of the trial, counsel shall tender to the office of the presiding judge two (2) binders of the exhibits. One binder shall be for the Court's use and the other shall be for use by the witnesses during trial. ~~If counsel desires each juror to have a binder of exhibits to view as counsel examines~~ witnesses, these should be prepared for presentation to each juror at the appropriate time with the Court's permission. Any objection to any proposed exhibit shall be filed, in writing, with the appropriate citations thereto and the referenced proposed exhibit attached, one (1) week prior to the Pretrial Conference. A hard copy of said objection shall be filed with the office of the presiding judge with a courtesy electronic copy to at Jessica.Turley@CourtsWV.gov, Eleni.Miller@courtsWV.gov and Business.Court@courtsWV.gov. Failure to comply with this paragraph may constitute a waiver of objections or may result in the Court denying the admission of the affected exhibits.

In the event of a settlement of this civil action, if counsel for the respective parties desires the return of his or her proposed exhibit binders, arrangements must be made with the presiding judge within fifteen (15) days of the entry of the final order, otherwise the Court will dispose of the binders of proposed exhibits by whatever means deemed most efficient and expedient.

5. VIDEO DEPOSITION TO BE USED AT TRIAL

If a video deposition is to be used, parties must be prepared to argue any 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.

6. EXPERTS DISCLOSED:

Plaintiff's Rule 26 expert witnesses and Rule 26(b)(4) information shall be identified on or before:

09/11/18

Defendant's Rule 26 expert witnesses and Rule 26(b)(4) information shall be identified on or before:
11/09/18

Plaintiff's rebuttal Rule 26 expert witnesses and Rule 26(b)(4) information shall be identified on or before: **12/10/18**

A. The disclosures described in Rules 26(b)(4) of the West Virginia Rules of Civil Procedure are not required of physicians and other medical providers who examined or treated a party or party's decedent, unless the examination was for the purpose of providing expert testimony in the case. The testimony of treating physicians shall be limited to the medical records unless he or she is designated as an expert witness for the purpose of giving opinion testimony (e.g., testimony regarding permanent disability, future medical treatment, etc.).

B. 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 the substance of such experts contemplated testimony, on the date of Expert Disclosure per WVRCP 26(b)(4).

C. 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.

D. Co-designation or co-reliance upon experts must also specifically be made in writing on date of Expert Disclosure.

**7. MEDICAL EXAMINATIONS AND
EXPERT EVIDENTIARY INSPECTIONS: 10/11/18**

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.

8. PROPERTY INSPECTIONS:

All inspection of property, if applicable, shall be completed on or before: **10/11/18**

9. DISPOSITIVE MOTIONS:

WVRCP 12(b) and 56 motions shall be filed at least sixty (60) days prior to the pre-trial conference. Responses and counter affidavits are due thirty (30) days thereafter and, if desired, rebuttal may be submitted fifteen (15) days thereafter. All dispositive motions, responsive pleadings, supporting memorandums, and affidavits shall be filed with the Circuit Clerk and a hard copy shall be provided

to the office of the presiding judge with a courtesy electronic copy to at Jessica.Turley@Courtswv.gov, Eleni.Miller@courtswv.gov and Business.Court@courtswv.gov.

If a hearing on a dispositive motion is necessary prior to the date of the Final Pretrial Conference, counsel shall contact the office of the presiding judge to get a hearing date. However, trying to obtain a hearing date within one or two months of the Final Pretrial Conference may only allow you to schedule it for the Final Pretrial Conference. Counsel shall then provide notice of the hearing to opposing counsel and to the Court. If a hearing on a dispositive motion is not necessary prior to the date of the Final Pretrial Conference, the dispositive motion will be heard at the Final Pretrial Conference and counsel shall provide notice of the hearing on the motion for the date and time of the Final Pretrial Conference to opposing counsel and to the Court.

10. CLASS ACTION CERTIFICATION HEARING: Not applicable

11. JOINDERS, AMENDMENTS, THIRD PARTY PLEADINGS, AND OTHER MATTERS:

Motions to join additional parties, motions to amend pleadings, and any cross-claim or counterclaim and the reply thereto, as well as any similar motions, shall be filed and noticed for hearing by 7/18/18.

12. WITNESS LIST EXCHANGED: 10/11/18

This is to be a *bona fide* list of intended trial witnesses.

13. DISCOVERY COMPLETION DATE: 11/10/18

All requests must be filed at least 35 days in advance of this date so that all responses may be completed by this date. For the purpose of this Order, "completed" means that any discovery requiring a response or action shall be filed to allow sufficient time to permit such response or action by the above date. "Completed" does not mean that counsel can file a motion to compel on the above date. A motion to compel should be filed in sufficient time to allow a response before the above date.

14. 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 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.

15. MOTIONS *IN LIMINE*

Must be filed at least 10 days before pre-trial and will be ruled upon at the pre-trial conference. All dispositive motions, responsive pleadings, supporting memorandums, and affidavits shall be filed with the Circuit Clerk and a hard copy shall be provided to the office of the presiding judge with a courtesy electronic copy to Jennifer.Watson@courtswv.gov and Claire.Watson@courtswv.gov

16. MEDIATION/ALTERNATIVE DISPUTE RESOLUTION

The Court finds that this is an appropriate case for mediation or alternative dispute resolution. Therefore, pursuant to Rule 25 of the West Virginia Trial Court Rules, this case is referred to mediation or other form of dispute resolution agreed to by the parties. By order of this Court, mediation or other form of dispute resolution shall be conducted by the Honorable Judge, **James A. Matish** as Resolution Judge and shall be scheduled and concluded on or before 12/31/2018, unless such deadline is otherwise extended by the Presiding Judge for good cause shown. The Resolution Judge shall contact the parties for the purpose of scheduling mediation/alternative dispute resolution. All counsel or *pro se* parties shall provide their email address to the Business Court Division at Business.Court@courtswv.gov and the Resolution Judge via Jennifer.Watson@courtswv.gov.

17. 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.

18. 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.

19. ~~Objections to the above schedule must be made to the undersigned Judge within fifteen (15) days of the date of this Order or will be deemed waived.~~

20. 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.

21. 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.

22. ADDITIONAL JUDICIAL COMMENTS

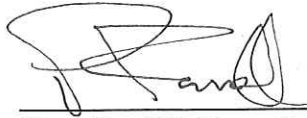
Please do not fax to the Judge's Office. If you call and get permission to fax, please do not mail an additional copy to the Judge's Office. If you must or insist on faxing to the Clerk's Office, be mindful that the Trial Court Rules require you to have the original physically signed document or the certified copy of the original in your possession. See Rule 12.03(f)(2). Therefore, do not mail the original to the Clerk's Office. Also, the Clerk's Office may bill you for the copies faxed to its office.

If you file a motion that needs a ruling from the Court, please remember that the Trial Court Rules require you to provide a courtesy copy to the presiding judge. If you file a motion that needs a ruling from the Court, you must call and get a hearing date from the undersigned's judicial assistant. Your secretary or paralegal may not have your schedule, nor do they know how long the hearing will take, therefore, you must personally call and get a hearing date from the Judge's Office. After you call and confirm a hearing date, you must provide notice of the hearing to opposing counsel and to the Court.

The Clerk is HEREBY DIRECTED TO transmit certified copies to counsel of record; the Presiding Judge Paul T. Farrell, at the Cabell County Courthouse, 750 Fifth Avenue Huntington, WV 25701; the Resolution Judge, James A. Matish, at the Harrison County Courthouse, 301 West Main Street Clarksburg, WV 26301-2967; the Business Court Division Central Office at the Berkeley County Judicial Center, 380 W. South Street, Martinsburg, West Virginia 25401; and any *pro se* parties.

ENTER:

7/12/18



Hon. Paul T. Farrell

A TRUE COPY TESTE
FRANCINE SPENCER CLERK
BY Francine Spencer