

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

COMMUNITY CARE OF WEST VIRGINIA, INC.,

Plaintiff,

v.

CIVIL ACTION NO. 17-C-318

Presiding Judge: Shawn D. Nines

Resolution Judge: David M. Hammer

**FRONTIER COMMUNICATIONS OF
AMERICA, INC., its parents, subsidiaries, and
affiliates; TAMCO CAPITAL CORPORATION,
its parents, subsidiaries, and affiliates;
ANTHONY ROME; and
MICHAEL SHAFFER,**

Defendants.

SECOND AMENDED SCHEDULING ORDER

On a prior day came the parties jointly and by their respective counsel and presented a proposed agreed Second Amended Scheduling Order for the Court's consideration. The Court has reviewed and considered the parties' proposal and ORDERS that the following scheduling deadlines and terms are adopted by the Court pursuant to W. Va. Rule of Civil Procedure 16(b):

TRIAL DATE: 02/12/2024

X 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.

- 1. PRE-TRIAL CONFERENCE DATE: January 29, 2024 at 10:00 a.m. at the
Bachman County Courthouse**

The Court may reschedule the Pre-Trial 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.

2. 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 (Sent in Word version via e-mail to Tessa Bowers at Tessa.Bowers@courts.wv.gov) |
| 4. Proposed Stipulations | 10. Proposed <i>Voir Dire</i> |
| 5. Schedule of Exhibits | |
| 6. List of Witnesses | |

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 Pre-Trial 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 of exhibits shall be delivered to the office of the Presiding Judge (see paragraph 4, Schedule of Exhibits, below).

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 to the Presiding Judge via West Virginia E-Filing and via email as set forth 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 Pre-Trial 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 Pre-Trial 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.

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 Pre-Trial Conference**.

3. 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, **five (5) business days prior to the Pre-Trial Conference**. 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/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 materials by whatever means is deemed most efficient and expedient.

4. 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.

5. EXPERTS DISCLOSED:

Plaintiff's Rule 26 expert witnesses and Rule 26(b)(4) information shall be identified on or before: **May 15, 2023**.

Defendant's Rule 26 expert witnesses and Rule 26(b)(4) information shall be identified on or before: **June 30, 2023**.

Plaintiff's rebuttal Rule 26 expert witnesses and Rule 26(b)(4) information shall be identified on or before: **July 28, 2023**.

A. 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 the Expert Disclosure pursuant to W. Va. R. Civ. Pr. 26(b)(4)

B. 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 Conference** and a hearing thereon set with the Court prior to the first day of trial.

C. Co-designation or co-reliance upon experts must also specifically be made in writing on the date of a party's Expert Disclosure.

6. PROPERTY INSPECTIONS AND EXPERT EVIDENTIARY INSPECTIONS:

All inspection of property, if applicable, shall be completed on or before **May 1, 2023**.

7. DISPOSITIVE MOTIONS

All dispositive motions shall be filed at least **sixty (60) days prior to the Pre-Trial Conference**. Responses and counter affidavits are due **thirty (30) days prior to the Pre-Trial Conference**. Any reply briefs are due **fifteen (15) days prior to the Pre-Trial Conference**. All dispositive motions, responsive, pleadings, supporting memoranda, and affidavits shall be e-filed with the Circuit Clerk with a courtesy copy via e-mail to all persons set forth above.

If a hearing on a dispositive motion is necessary prior to the date of the Final Pre-Trial Conference, counsel shall contact the office of the Presiding Judge to get a hearing date. Counsel shall provide notice of the hearing to all counsel and to the Court. If a hearing on a dispositive motion is not necessary prior to the date of the Final Pre-Trial Conference, the dispositive motion will be heard at the Final Pre-Trial Conference and counsel shall provide notice of the hearing on the motion for the date and time of the Final Pre-Trial Conference to all counsel and to the Court.

8. JOINDERS, AMENDMENTS, THIRD-PARTY PLEADINGS, AND OTHER MATTERS:

Motions to join additional parties, motions to amend pleadings, and any cross-claim or counterclaim and reply thereto, as well as any similar motions, shall be filed and noticed for hearing by **April 5, 2023**.

9. WITNESS LISTS EXCHANGED: 10 business days prior to the Pre-Trial Conference

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

10. DISCOVERY COMPLETION DATE: December 15, 2023

All discovery requests must be served 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.

11. 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 produced electronically through a sharefile or on a flash drive. 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 **forty (40) days prior to the completion of discovery.**

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, etcetera.

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

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

Upon returning and/or deleting 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.

12. MOTIONS *IN LIMINE*

Must be filed at least **ten (10) business days prior to the Final Pre-Trial Conference** and will be ruled upon at the Final Pre-Trial Conference. All responses to motions *in limine* shall be filed at least **five (5) business days prior to the Pre-Trial Conference**. Any reply briefs shall be filed at least **two (2) business days prior to the Pre-Trial Conference**. All dispositive motions, responsive pleadings, supporting memoranda, affidavits, and exhibits shall be e-filed with a courtesy copy to all those listed above.

13. MEDIATION

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 David M. Hammer as Resolution Judge and shall be scheduled and concluded on or before **December 20, 2023**, unless such deadline is otherwise extended by the Presiding Judge for good cause shown. The parties shall contact the Resolution Judge 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 Director at Carol.Miller@courts.wv.gov and the Resolution Judge via christina.bernhard@courts.wv.gov.

14. SANCTIONS

In accordance with West Virginia Rule of Civil Procedure 16(f), the Court may impose the full spectrum of sanctions authorized by the West Virginia Rules of Civil Procedure 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.

15. 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.

16. If any new parties are joined to this case after the entry of this Order, it is the responsibility of the party who joined the new party(ies) to notify the new party(ies) of this Order.

17. 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.

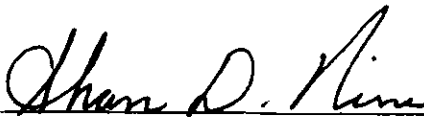
18. ADDITIONAL JUDICIAL COMMENTS

A courtesy copy of all documents that are e-filed in this case shall be e-mailed to Business.Court@courts.wv.gov; Carol.Miller@courts.wv.gov; Tessa.Bowers@courts.wv.gov; Michael.Yost@courts.wv.gov; Andrea.Chambers@courts.wv.gov.

If you file a motion that needs a ruling from the Court, you must call and get a hearing date from the Presiding Judge'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 Presiding Judge's office. After you call and confirm a hearing date, you must provide notice of the hearing to all counsel and the Court.

The Clerk is HEREBY DIRECTED TO transmit certified copies to counsel of record; the Presiding Judge Shawn D. Nines, at the Barbour County Courthouse, 47 Church Street, Third Floor, Philippi, West Virginia 25701; the Resolution Judge David M. Hammer, at the Jefferson County Courthouse, 100 E. Washington Street, Charles Town, West Virginia 25414; the Business Court Division Central Office, Berkeley County Judicial Center, 380 W. South Street, Suite 2100, Martinsburg, West Virginia 25401, and any *pro se* parties.

ENTERED this 17th day of March, 2023



JUDGE SHAWN D. NINES
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION

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