

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

HIGHMARK WEST VIRGINIA, INC.,

Plaintiff,

VS.

Civil Action No.: 18-C-271

Presiding Judge: Shawn D. Nines

Resolution Judge: Christopher C. Wilkes

MEDTEST LABORATORIES, LLC, et al.,

Defendants.

MEDTEST LABORATORIES LLC,

Counterclaim and Third-Party
Plaintiff,

vs.

HIGHMARK WEST VIRGINIA INC., et al.,

Counterclaim and Third-Party
Defendants.

SECOND 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: May 31, 2022 at 9:00 a.m. in the Wood County Courthouse,
Judge Waters's Courtroom**

 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 nine (9) days.

2. **PRE-TRIAL CONFERENCE DATE: April 29, 2022 at 10:00 a.m. in the Barbour**

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ENTERED

____ D.B. No. ____

Page ____

4/13/21 CCX4 to Judges Niles, Judge Wilkes
Business Ct. Division & Muhammad
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CELESTE RIDGWAY
CLERK CIRCUIT COURT

County Courthouse

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 | 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 provided to the Court.) |
| 5. Schedule of Exhibits | |
| 6. List of Witnesses | 10. Proposed Voir Dire |

Parties are to confer and provide a joint instruction charge to the Court.

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 at least 5 work days prior to the pre-trial conference. 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.

VIDEO DEPOSITION TO BE USED AT TRIAL

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

JURY INSTRUCTIONS

The Court desires that all counsel read all parties' proposed jury instructions prior to the conference and be prepared to discuss them at the conference. The Court will not be inclined to receive instructions after the pre-trial conference.

- | | | | |
|----|---------------------------|-------------------|----------------------|
| 3. | EXPERTS DISCLOSED: | Plaintiff: | June 11, 2021 |
| | | Defendant: | July 9, 2021 |

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 expert's contemplated testimony, on the date of Expert Disclosure per WVRCP 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 and a hearing thereon set with the Court prior to first day of trial.

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

4. EXPERT EVIDENTIARY INSPECTIONS: August 27, 2021

All examinations by expert witnesses must be completed by this date.

5. DISPOSITIVE MOTIONS: WVRCP 12(b) and 56 motions shall be filed by January 24, 2022. Responses and counter affidavits are due by February 8, 2022. Replies shall be due by February 23, 2022.

All dispositive motions, responsive pleadings, supporting memoranda, 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 Andrea.Chambers@courtswv.gov, Michael.Yost@courtswv.gov, Tessa.Bowers@courtswv.gov, and Business.Court@courtswv.gov.

**6. AMENDMENTS, THIRD PARTY PLEADINGS,
AND OTHER MATTERS NO LATER THAN: n/a**

The parties have indicated that this deadline has already passed.

7. FINAL WITNESS LIST EXCHANGED: January 10, 2022

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

8. DISCOVERY COMPLETION DATE: November 18, 2021

Plaintiff shall serve Defendant with final requests for admissions and/or production of documents by **September 30, 2021**. Likewise, Defendant shall serve Plaintiff with final requests for admissions and/or production of documents by **September 30, 2021**. All trial depositions must be completed at least 5 days before the pre-trial.

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.

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

10. **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 Christopher C. Wilkes as Resolution Judge and shall be scheduled and concluded on or before December 31, 2021, unless such deadline is otherwise extended by the Presiding Judge for good cause shown. Tessa Bowers, Division law clerk, will assist the parties in contacting the Office of 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@courtswv.gov.

11. **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.

12. **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.

13. **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.

14. 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.

15. 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 Court hereby **ADJUDGES** and **ORDERS** that any and all previous Scheduling Order entered in this civil action by the undersigned are hereby **VACATED**.

The Clerk shall transmit certified copies to counsel of record; the Presiding Judge Shawn

D. Nines; the Resolution Judge Christopher C. Wilkes, Berkeley County Judicial Center, 380 W. South Street, Suite 4100, Martinsburg, West Virginia 25401; the Business Court Division Central Office, Berkeley County Judicial Center, 380 W. South Street, Suite 2100, Martinsburg, West Virginia 25401, and *pro se* parties.

04-06-2021
date of entry

A handwritten signature in black ink, appearing to read "Shawn D. Nines", written over a horizontal line.

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