

## IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MSPE

Plaintiff,

vs.

Civil Action No. 20-C-350  
Judge Maryclaire AkersSmith/Packott Med Com LLC, et al.  
Defendant.**CIVIL SCHEDULING ORDER**

Pursuant to Rule 16(b) of the West Virginia Rules of Civil Procedure ("WVRCP") the Court enters the following Scheduling Order upon agreement of the parties. Pursuant to Rule 5.04 of the West Virginia Trial Court Rules ("WVTCR") it is the duty of the parties and/or their lawyers to give written notice to the other parties and, if necessary, the Clerk of the Court and this Court of imminent future conflicts with this Order.

The parties are not immediately required to notify the Clerk and this Court of imminent conflicts other than those related to the Trial and/or Pretrial dates. However, imminent conflicts of any deadline shall be reported if they, in turn, impact the Trial and/or Pretrial dates. The Court does not require an Agreed Order if the parties voluntarily amend any dates within this Scheduling Order. However, any such amendment shall not impact the Trial and/or Pretrial dates. The parties may enter a Stipulation regarding any such amendment.

1. TRIAL DATE: 2/24/25 9:00 A.M.

Pursuant to Rule 16.05(c) of the WVTCR this Court is directed by the Supreme Court of Appeals of West Virginia ("Supreme Court") to enter final judgment in general civil cases within eighteen (18) months of the filing of the Complaint. Pursuant to Rule

16.13(b) of the WVTCR it is furthermore the duty of this Court to control continuances by strict application of applicable rules. No continuance of the Trial shall be granted absent strictly defined good cause.

The parties shall exchange exhibit notebooks, voir dire, jury instructions and verdict forms no later than five (5) business days prior to Trial. The parties shall submit the same to the Court no later than three (3) business days prior to Trial. Jury instructions and verdict forms shall conform with Rule 23.02 of the WVTCR. Voir dire shall occur in accordance with Rule 23.03 of the WVTCR. Pursuant to Rule 23.03 of the WVTCR the Court shall generally allow the parties to conduct voir dire.

The Court recognizes that evidence and argument during Trial may change a party's final exhibits, jury instructions and verdict forms. However, the parties' initial submissions shall reasonably conform to the expected evidence. Any exhibit not previously disclosed during discovery shall not be admitted during Trial.

In addition to the WVTCR, the parties shall comply with relevant statutory requirements contained within West Virginia Code Section 56-6-1 et seq.

**2. JURY SELECTION DATE:** 2/24/25

Jury selection generally occurs the Friday before a Monday Trial. If the parties anticipate more than one day is needed for jury selection, then they shall notify the Court during their Scheduling Conference.

**3. PRETRIAL CONFERENCE DATE:** 2/3/25 10:00 A.M.

All Pretrial Motions including Motions in Limine shall be filed no later than fifteen (15) business days prior to the Pretrial Conference. All Responses shall be filed no later than ten (10) business days prior to the Pretrial Conference. All Replies shall be filed no

later than seven (7) business days prior to the Pretrial Conference. Any Pretrial Motion, Response or Reply not timely filed shall be waived.

The parties shall provide the Court with a Pretrial Memorandum no later than three (3) business days prior to the Pretrial Conference. The Pretrial Memorandum shall set forth a summary of material facts, the alleged legal liability for any party bearing the burden of proof, any stipulations, a list of exhibits, any expected testimony by deposition, a list of expected fact and expert witnesses, a list of outstanding Motions and the proposed length of trial. The parties may include any other information they deem relevant within their Pretrial Memorandums.

4. **DISPOSITIVE MOTIONS:** ~~10/18/24~~ ~~10/29/24~~ 11/7/24

Dispositive Motions shall be filed no later than sixty (60) days prior to the Pretrial Conference. All Responses to Dispositive Motions shall be filed no later than ten (10) days after the Dispositive Motions deadline. All Replies shall be filed no later than three (3) business days after any Response is filed. Any Dispositive Motion, Response or Reply not timely filed shall be waived.

5. **DISPOSITIVE MOTIONS HEARING: TO BE SCHEDULED AFTER FILED**

All Dispositive Motions Hearings shall occur no later than forty-five (45) days prior to the Pretrial Conference.

6. **DISCOVERY DEADLINE:** 10/30/24

Discovery shall end no later than thirty (30) days prior to the Dispositive Motions deadline. A party seeking Court relief over a discovery dispute shall file any accompanying Motion within ten (10) business days of meeting, conferring and certifying an attempt to resolve the dispute. The Court shall not automatically grant hearings related to discovery

disputes. A party's simple failure to respond to discovery, for example, shall result in a ruling on the pleadings.

Evidentiary depositions are not discovery. Evidentiary depositions may take place after the Discovery Deadline if they do not conflict with the Trial and/or Pretrial.

7. **TESTING/IME DEADLINE:** N/A

The parties shall agree on any testing and/or IME protocols no later than fifteen (15) business prior to any such testing and/or examinations taking place. If the parties are unable to agree upon protocols, then delays to this deadline shall not normally constitute good cause to continue the Trial and/or Pretrial dates. To maintain the Trial and/or Pretrial dates, the parties shall timely seek Court relief over testing and/or examination disputes. The parties shall meet, confer and certify that they attempted to resolve any testing/IME disputes prior to seeking Court relief.

8. **MEDIATION:** ~~02/04/25~~ 1/20/25

Mediation shall occur no later than sixty (60) days prior to Trial. Appearances are strictly governed by Rule 25.10 of the WVTCR.

9. **RULE 26(b)(4) BURDEN OF PROOF DISCLOSURES:** N/A

10. **RULE 26(b)(4) RESPONSIVE DISCLOSURES:** N/A

Rule 26(b)(4) expert disclosures shall include the expert's name, specialty, copies of any reports or, if no reports were created, a reasonable summary of the subject matter upon which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. Any such disclosure is not expected to constitute the full testimony of the expert but shall

conform with the spirit of Rule 26(b)(4) of the WVRCP to provide fair notice to the opposing party.

11. PLAINTIFF'S FACT WITNESS DISCLOSURES: N/A

12. DEFENDANT'S FACT WITNESS DISCLOSURES: N/A

13. THIRD PARTY COMPLAINTS: N/A

### **GENERAL REQUIREMENTS OF THE COURT**

The parties shall timely schedule hearing dates for any Motions not otherwise addressed in this Scheduling Order. Failure to do so will result in a waiver.

All Motions shall comply with Rule 6 of the WVTCR. All proposed Orders shall be submitted pursuant to Rule 24 of the WVTCR.

The Court shall generally conduct in-person hearings. However, the Court shall Order videoconferencing of hearings, at its discretion, pursuant to Rule 14 of the WVTCR. The parties may make written requests for videoconferencing. Dispositive motions are not generally subject to videoconferencing requests barring exigent circumstances. Requests for videoconferencing of matters such as status or scheduling hearings may be more liberally granted. Parties in a videoconference shall appear the same as though in person.

Lawyers shall comply with the Rules of Professional Conduct. Special note is made of Rules 3.3, 3.4 and 3.5 during Court appearances. Lawyers shall treat opposing parties and/or counsel in a professional manner. Claims of misconduct directed towards other counsel shall be seriously addressed by this Court. Any lawyer who makes a frivolous claim of professional misconduct by another lawyer may themselves be subject to sanctions and/or disciplinary

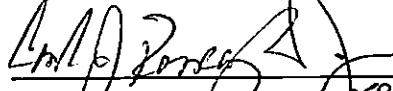
reporting. This Court expects zealous advocacy but shall require respectful conduct of lawyers towards other parties and their counsel.

ENTER THIS 8<sup>th</sup> DAY OF August, 2025.

  
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THE HONORABLE MARYCLAIRE AKERS, JUDGE

**\*\*IN ORDER TO RECEIVE YOUR COPY PROMPTLY, PLEASE PRINT YOUR  
NAME AND ADDRESS LEGIBLY\*\***

**COUNSEL FOR PLAINTIFF:**

  
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J. Vic Flanagan, <sup>Pro Se</sup> for Carter Bank  
Def / MSPE  
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**COUNSEL FOR DEFENDANT:**

Evan Aldridge (ECS)  
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J.P. Jr (Jarrett Construction)  
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Allison Schaefer (Carter Bank)  
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Robert A. Lockhart (Owner Defendants)  
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