



IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

IN RE: GAVIN LANDFILL LITIGATION

CIVIL ACTION NO. 16-C-8000

THIS DOCUMENT APPLIES TO ALL CASES

THIRD AMENDED CASE MANAGEMENT ORDER

The Court has appointed the following attorneys to serve as Liaison and Lead Counsel in the Gavin Landfill Litigation:

LIAISON COUNSEL

Plaintiffs: J. Zachary Zatezalo
Defendants: Ancil G. Ramey

LEAD COUNSEL

Plaintiffs: Christopher J. Regan
Defendants: Lori Elliot Jarvis

The Court reminds the parties that Liaison and Lead Counsel are expected to attend all hearings, and be present for the entire hearing, absent good cause shown.

During the December 20, 2016 hearing before the Presiding Judges, the parties made an oral motion requesting a 90 day extension of time to complete pretrial discovery. The motion was granted, with the admonishment that this will be the last amendment to the Court's Case Management Order requested by the parties.

This amended case management order shall govern all pre-trial and trial activities for Phase I of the Gavin Landfill Litigation, which shall include the issues of liability, including liability for medical monitoring, and whether punitive damages are appropriate. All amended pretrial deadlines are highlighted for the convenience of the Court and the parties.

INITIAL DISCOVERY CONFERENCE: June 26, 2016

Plaintiffs and Defendants have met, conferred, and attempted to resolve all discovery disputes. The parties conducted an additional conference to discuss outstanding issues, scheduling issues and the Plaintiff Fact Sheet, by telephone, on **July 6, 2016**.

PARTIES TO EXCHANGE PROPOSED JURY INSTRUCTIONS: July 15, 2016

CONFERENCE REGARDING JURY INSTRUCTIONS: July 22, 2016 at 9:00 am.

CONFERENCE REGARDING PROPOSED PLAINTIFF FACT SHEET (if necessary): July 22, 2016 at 9:00 am.

Plaintiffs and Defendants shall meet and confer regarding the proposed Jury Instructions and Plaintiff Fact Sheet, and shall e-file and serve the proposed Jury Instructions and Plaintiff Fact Sheet in rich text format **no later than August 5, 2016.**

Plaintiffs and Defendants shall e-file and serve any briefs in support of their proposed Jury Instructions and Plaintiff Fact Sheet **no later than August 15, 2016.**

Plaintiffs and Defendants shall e-file and serve any responsive briefs related to the proposed Jury Instructions and Plaintiff Fact Sheet **no later than August 22, 2016.**

All Plaintiff Fact Sheets shall be completed, e-filed and served no later than 30 days after the Court has approved the parties' proposed Plaintiff Fact Sheet.

HEARING ON PROPOSED JURY INSTRUCTIONS AND PLAINTIFF FACT SHEET:

The Court will hear oral argument regarding the parties' proposed jury instructions and Plaintiff Fact Sheet at **10:00 a.m. on August 29, 2016**, in Courtroom Four, also known as the Ceremonial Courtroom, on the Second Floor of the Kanawha County Courthouse, at 407 Virginia Street, East, Charleston, West Virginia.

DEADLINE FOR FILING ANY DECLARATORY JUDGMENT ACTION REGARDING INSURANCE COVERAGE: January 13, 2017

DEADLINE FOR AMENDING COMPLAINT TO ADD COUNTS OR PARTIES, INCLUDING THIRD-PARTIES: August 1, 2016

DEADLINE TO PROVIDE A COMPLETE LIST OF ALL PLAINTIFFS, ALONG WITH

CIVIL ACTION NUMBERS: Plaintiffs filed a *List of All Plaintiffs with Civil Action Numbers* on **June 30, 2016** (Transaction ID 59218010).

FACT DISCOVERY

FACT WITNESS DISCLOSURE DEADLINE: **August 1, 2016**

FACT DISCOVERY COMPLETION DEADLINE: **June 2, 2017**

All responses and objections to discovery shall be completed and all motions to compel discovery shall be filed by the fact discovery completion deadline. The fact discovery completion deadline established in this scheduling order does not excuse failure to comply with the provisions of Rule 26(e) requiring supplementation of responses to discovery.

EXPERT DISCOVERY

PLAINTIFFS' EXPERT WITNESS DISCLOSURE DEADLINE : **March 31, 2017**

DEFENDANTS' EXPERT WITNESS DISCLOSURE DEADLINE : **May 15, 2017**

EXPERT DISCOVERY COMPLETION DEADLINE: **August 1, 2017**

Any party desiring to use an expert witness shall 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, in accordance with WVRCP 26(b)(4). If the name, reports or 26(b)(4) material are not timely provided, a motion to continue, motion to exclude, or other sanction motion on this basis will not be considered unless opposing counsel has filed such motion prior to the pretrial conference.

ALL DISCOVERY IS CLOSED: **August 1, 2017**

MEDIATION: The Resolution Judges will conduct mediation on **April 27-28, 2017**. An order scheduling mediation, governing mediation procedure and mediation statements will be entered by

Lead Resolution Judge Booker T. Stephens.

DEADLINE FOR FILING MOTIONS IN LIMINE: September 5, 2017

DEADLINE FOR RESPONSES TO MOTIONS IN LIMINE: September 19, 2017

DEADLINE FOR REPLIES TO MOTIONS IN LIMINE: September 26, 2017

WVRE 103(c) requires that all motions in limine should be determined prior to trial, where practicable. This Court will not consider motions in limine on the day of trial without good cause shown.

DEADLINE FOR DISPOSITIVE MOTIONS: September 5, 2017

DEADLINE FOR RESPONSES TO DISPOSITIVE MOTIONS: September 29, 2017

DEADLINE FOR REPLIES TO DISPOSITIVE MOTIONS: October 6, 2017

If a discovery deposition is scheduled within 30 days of the close of discovery, counsel shall request an expedited copy of the transcript of such deposition. The Court will not permit supplementation of dispositive motions or responses to dispositive motions with deposition testimony received after the briefing deadlines set forth above.

HEARING ON DISPOSITIVE MOTIONS AND MOTIONS IN LIMINE: at 10:00 a.m.

on October 23, 2017, in Courtroom Four, also known as the Ceremonial Courtroom, on the Second Floor of the Kanawha County Courthouse, at 407 Virginia Street, East, Charleston, West Virginia.

EXHIBITS, WITNESS LISTS AND DEPOSITION DESIGNATIONS EXCHANGED:

November 1, 2017. Parties shall exchange full and complete copies of all exhibits intended to be introduced into evidence at trial, all witness lists, and all deposition designations. All exhibits shall be pre-marked.

OBJECTIONS TO EXHIBITS, WITNESSES AND DEPOSITION DESIGNATIONS:

November 15, 2017. All parties shall meet and confer **no later than November 22, 2017,** to resolve objections to witnesses, exhibits and deposition designations.

WITNESS AND EXHIBIT LISTS, PROPOSED JURY QUESTIONNAIRE, PROPOSED VOIR DIRE, AND PROPOSED JURY INSTRUCTIONS: December 4, 2017

Parties shall electronically file and serve their witness and exhibit lists, proposed jury questionnaire, proposed voir dire, and proposed jury instructions on one another, the Presiding Judges and the Mass Litigation Manager. Parties shall also provide the Mass Litigation Manager with their proposed voir dire and proposed jury instructions in Microsoft WORD format via electronic mail on **December 4, 2017**. The Mass Litigation Manager's electronic mail address is kim.fields@courtswv.gov.

The witness list shall be a bona fide list of intended trial witnesses and any recently discovered fact or condition witness. Names of witnesses shall be specified and shall include contact information for each witness and a statement of intended testimony. Unnamed/unlisted witness reservations are not authorized.

PRETRIAL CONFERENCE MEMORANDA: December 18, 2017

All parties shall exchange their pretrial conference memoranda, and deliver their pretrial conference memoranda to the Presiding Judges and the Mass Litigation Manager.

The pretrial conference memoranda shall contain the following:

- a. Statement of the Case
- b. Issues of Fact
- c. Issues of Law
- d. Proposed Stipulations

- e. Specific Schedule of Exhibits
- f. Specific List of Witnesses (NO reservations authorized)
- g. Pending Motions
- h. Proposed Verdict Form (NO reservations authorized)
- i. Unresolved Deposition Designation Objections

PRETRIAL CONFERENCE: at 10:00 a.m. on January 16, 2018, in Courtroom Four, also known as the Ceremonial Courtroom, on the Second Floor of the Kanawha County Courthouse, at 407 Virginia Street, East, Charleston, West Virginia.

LEAD COUNSEL TRYING THE CASE SHALL APPEAR AT THE PRE-TRIAL CONFERENCE.

TRIAL: at 9:00 a.m. on February 5, 2018, in Courtroom Four, also known as the Ceremonial Courtroom, on the Second Floor of the Kanawha County Courthouse, at 407 Virginia Street, East, Charleston, West Virginia.

The Court has allotted three weeks for the Phase I Trial of liability, including liability for medical monitoring, and whether punitive damages are appropriate. If Plaintiffs prevail in Phase I, the Court will schedule pre-trial and trial deadlines and conduct a Phase 2 Trial of proximate cause and damages on dates and times to be determined.

MODIFICATION: In accordance with WVRCP 16(b) and 29(b), this Case Management Order shall not be modified, except by leave of the Court.

SANCTIONS: In accordance with WVRCP 16(f), the Court will 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. Unless authorized by the Court, the above dates and requirements of this Case Management Order are **FINAL. NO** additional evidence developed as a result of deviations

from this Case Management Order will be admissible at trial.

It is so **ORDERED**.

ENTER: January 4, 2017.

/s/ Derek C. Swope
Lead Presiding Judge
Gavin Landfill Litigation