

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

John DeGroot Services, LLC, et al.)
Plaintiffs)

versus)

F. Edwin Harbach, et al.)
Defendant(s))

Case No. CL 2011-10612

CONSENT

JMR

SCHEDULING ORDER

THE SCHEDULING CONFERENCE was held _____ N/A

After discussing the various issues presented, it was ORDERED:

I. Trial

The trial date is April 1, 2013 with a jury. The estimated length of the trial is four weeks.

II. Discovery

The parties shall complete all fact discovery, including depositions, on or before November 30, 2012. All written fact discovery requests shall be served on or before October 31, 2012. Fact depositions may be taken after November 30, 2012, by agreement of counsel of record or for good cause shown, provided however, that the taking of a deposition after the deadline established herein shall not provide a basis for continuance of the trial date or the scheduling of motions inconsistent with the normal procedures of the court. The parties have a duty to seasonably supplement and amend discovery responses pursuant to Rule 4:1 (e) of the Rules of the Supreme Court of Virginia. "Seasonably" means as soon as practical. No provision of this Order supersedes the Rules of the Supreme Court of Virginia governing discovery. Any discovery motion filed shall contain a certification that counsel has made a good faith effort to resolve the matters set forth in the motion with opposing counsel.

III. Expert Discovery

A. For the purposes of this Order, "expert" means only (a) individuals who are retained or specially employed by a party to provide expert testimony at trial in the Case, or (b) individuals whose duties as a party's employee regularly involve giving expert testimony and who may present expert testimony at trial, as well as the staff and others working under the direction and control of (a) or (b).

4/21/2012

- B. All experts shall produce to opposing counsel a written report containing:
- i. a statement of all opinions the witness will express and the basis and reasons for them;
 - ii. the facts or data considered by the witness in forming these opinions;
 - iii. any exhibits that will be used to summarize or support the opinions;
 - iv. the witness's qualifications, including a list of all publications authored in the previous 10 years;
 - v. a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
 - vi. a statement of the compensation to be paid for the study and testimony in the Case.
- C. Expert designations and reports on topics for which the party has the burden of proof are due on December 14, 2012. Responsive expert reports are due on January 15, 2013. Rebuttal expert reports are due on January 31, 2013. The parties shall complete expert depositions on or before February 28, 2013.
- D. Drafts of any expert report or disclosure, regardless of the form in which the draft is recorded, shall not be subject to discovery, need not be preserved, and shall not be the subject of inquiry at deposition, hearing, or trial in the Case.
- E. All communications between or among a party, the party's attorney, and/or any expert retained by the party, regardless of the form of communications, shall not be subject to discovery and shall not be the subject of inquiry at deposition, hearing, or trial in the Case, except to the extent that the communications:
- i. relate to compensation for the expert's study or testimony;
 - ii. identify facts or data that a party's attorney provided and the expert considered in forming the opinions to be expressed; or
 - iii. identify assumptions that a party's attorney provided and the expert relied on in forming the opinions to be expressed.
- F. Other than paragraph III.B of this Order, nothing in this Order is intended to expand the permissible forms, substance, or timing of expert discovery under the Rules of the Supreme Court of Virginia.
- G. Notwithstanding the foregoing, subject to the Rules of the Supreme Court of Virginia and Orders of the Court, all documents provided to experts, other than those described in paragraphs III. D and E and other than those that were prepared in anticipation of litigation or for trial, that were considered by the expert in formulating his

or her opinion (whether or not they support the opinion) are discoverable and may be the subject of inquiry at deposition, hearing, and trial.

H. Expert communications and related documents generated in conjunction with this litigation, which the parties have agreed are not discoverable pursuant to this Order, shall not later be discoverable in any future litigation that may arise between the Parties.

IV. Dispositive Motions

All dispositive motions shall be presented to the court on or before February 8, 2013. All oppositions to dispositive motions shall be presented to the court on or before March 8, 2013. All reply briefs in support of dispositive motions shall be presented to court on or before March 18, 2013. Dispositive motions shall be filed with memoranda not to exceed forty pages. Oppositions to dispositive motions shall not exceed forty pages. Reply briefs in support of dispositive motions, if any, shall not exceed twenty-five pages.

V. Exhibit and Witness List

Counsel of record shall exchange no later than March 13, 2013, a list specifically identifying each exhibit to be introduced at trial, copies of any exhibits not previously supplied in discovery, and a list of witnesses proposed to be introduced at trial. The witness list shall identify each witness as "will call" or "may call" and "live" or "by deposition." The lists of exhibits and witnesses shall be filed with the Clerk of the Court simultaneously therewith but the exhibits shall **not** then be filed. Any exhibit or witness not so identified and filed will not be received in evidence, except in rebuttal or for impeachment or unless the admission of such exhibit or testimony of the witness would cause no surprise or prejudice to the opposing party and the failure to list the exhibit or witness was through inadvertence. Any objections to exhibits or witnesses shall state the legal reasons therefore except on relevancy grounds, and shall be filed with the Clerk of the Court and a copy delivered to opposing counsel no later than March 28, 2013, or the objections will be deemed waived absent leave of court for good cause shown.

VI. Pretrial Conferences

Pursuant to Rule 4:13 of the Rules of the Supreme Court of Virginia, when requested by any party or upon its own motion, the court may order a pretrial conference wherein motions *in limine*, settlement discussions or other pretrial motions which may aid in the disposition of this action can be heard.

VII. Motions in Limine

Absent leave of court, any motion *in limine* which requires argument exceeding five (5) minutes shall be duly noticed and heard before the day of trial.

VIII. Witness Subpoenas

Early filing of a request for witness subpoenas is encouraged so that such subpoenas may

be served at least ten (10) days before trial.

IX. Continuances

Continuances will only be granted by the court for good cause shown.

X. Jury Instructions

Counsel of record, unless compliance is waived by the court, shall no later than March 25, 2013, exchange proposed jury instructions. At the commencement of trial, counsel of record shall tender the court the originals of all agreed upon instructions and copies of all contested instructions with appropriate citations. This requirement shall not preclude the offering of additional instructions at the trial.

XI. Deposition Transcripts to be Used at Trial

Counsel of record shall confer and attempt to identify and resolve all issues regarding the use of depositions at trial. It is the obligation of the proponent of any deposition of any non-party witness who will not appear at trial to advise opposing counsel of record of counsel's intent to use all or a portion of the deposition at trial no later than March 6, 2013. It becomes the obligation of the opponent of any such deposition to bring any objection or other unresolved issues to the court for hearing before the day of trial.

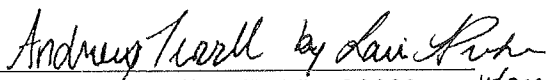
XII. Waiver or Modification of Terms of Order

Upon motion, the time limits and prohibitions contained in this order may be waived or modified by leave of court for good cause shown.

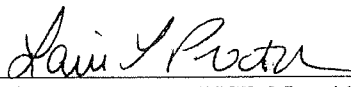
ENTERED this 15 day of February 2012.



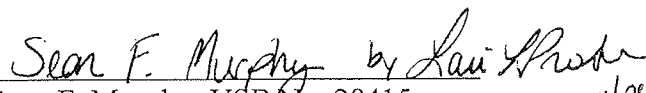
JANE MARUM ROUSH, JUDGE



Andrew J. Terrell, VSB No. 30093
Kathleen A. Waldy, VSB No. 75539
Counsel for Plaintiffs



William B. Porter, VSB No. 41798
Laurie L. Proctor, VSB No. 75320
Counsel for Defendant F. Edwin Harbach



Sean F. Murphy, VSB No. 28415
Counsel for Defendants Lord, McGeary,
Strange, Allred, Bernard, Fleischer, Kanin-
Lovers, and Munson

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TO: All Attorneys of record and Pro-Se parties

NOTICE OF PROCEDURE FOR TRIAL EXHIBITS

A **LIST** of exhibits specifically identifying each exhibit to be introduced at trial must be filed with the Clerk of the Court on or before the date stated in the Scheduling Order. (LIST ONLY!)

A **COPY** of all exhibits not previously supplied in discovery must be delivered to opposing counsel or party on or before the date stated in the Scheduling Order.

The original exhibits must be brought to court the DAY of TRIAL.

1. Exhibits should be on standard size paper and inserted into binders. If necessary, pictures should be taken of the large exhibits and inserted into the binders. Counsel/Pro Se parties must bring to trial a sufficient number of binders with pre-marked exhibits so that one binder each can be given to the judge, opposing counsel, and placed on the witness stand.
2. The Exhibit List Form should be completed and inserted into the front of the binder. Please do not mark anything in the last two columns
3. Mark each exhibit with appropriate labels. Record both the exhibit and case number on the labels. Please leave sufficient space for the Judge's initials and the date. (The case Tracking Program DOES NOT GIVE out exhibit labels)

