

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:08-CV-25-F

ABB, INC.,)	
)	
)	
)	
Plaintiff,)	
)	
)	ORDER
v.)	
)	
CSX TRANSPORTATION, INC.,)	
)	
)	
Defendants.)	

This matter is before the court *sua sponte*. On October 30, 2013, this court issued an order [DE-127] allowing the parties' Joint Motion to Stay [DE-125] this action, because Defendant CSX Transportation, Inc., had filed a Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit, petitioning the United States Supreme court to review the judgment of the Fourth Circuit with respect to the enforceability of the liability limitation clause at issue in this case. In the order, this court specifically stated: "Once a decision on the Petition is rendered, the parties shall file a notice with the court informing it of the same." Oct. 30, 2013 Order [DE-127] at 1.

A better part of the year has passed since the issuance of that order, and neither party has filed an update with the court. The court, on its own, has learned that Supreme Court has denied CSX's petition. *See CSX Transportation, Inc. v. ABB, Inc.*, 134 S. Ct. 1001 (U.S. Jan. 21, 2014) (No. 13-452). Accordingly, the court **ORDERS** that the stay in this case is lifted.

Because the issues of causation and damages remain for trial, the Clerk of Court is

DIRECTED to set this matter for trial on the term of court commencing on **December 1, 2014**.¹ Additionally, the Clerk of Court is DIRECTED to schedule and notice a pretrial hearing before the undersigned on **November 21, 2014, at 1:30 p.m.** or as soon thereafter as the court may reach it. At the pretrial hearing, the court will rule on the parties' pretrial order, any objection to exhibits, any motions in limine, and any *Daubert* motions. At the hearing, each party should be prepared to present each exhibit to which an objection has been made, and be prepared to argue such objections. The court also will discuss its preliminary draft of jury instructions for the trial. In anticipation of this hearing, the parties are ORDERED to do the following **on or before November 14, 2014**:

1. If necessary, the parties shall submit an updated pre-trial order in accordance with Local Civil Rule 16.1. In addition the requirements of Local Civil Rule 16.1, the pretrial order shall identify the witnesses to be called at trial and provide a succinct summary of their expected testimony not to exceed a few sentences. The pretrial order shall also clearly set out the factual and legal contentions of the parties. If, however, the parties intend to rely on the pretrial order [DE-112] previously entered in this case, they shall file a notice so stating.

2. Each party shall file its proposed jury instructions, any motions in limine and any *Daubert* motions.

3. Each party shall submit to chambers, the deposition transcript, reports and curriculum

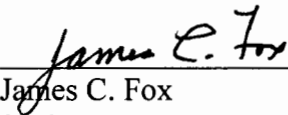
¹ A regular term of court is scheduled to commence on December 1, 2014. The court has no way to predict, this far in advance, the nature or length of the criminal docket for that term. The court advises the parties that criminal cases require adherence to statutory as well as Constitutional speedy trial requirements, and for that reason, criminal trials always preempt civil trials. The parties also should be aware that the volatile nature of criminal cases sometimes necessitates last-minute continuances of criminal trials, and often results in unexpected eleventh-hour guilty pleas. For these reasons, it is unlikely that the trial in this matter will actually commence on December 1, 2014.

vitae of each opinion² witness that party intends to call at trial, whether as a live witness, or by written or video deposition. No witness whose materials are not presented to the court as herein directed will be permitted to testify at trial in person or through deposition.

4. The parties shall jointly submit to chambers the depositions of any witness whose testimony at trial will be presented via deposition, with the objections of ABB underlined in red, and the objections of CSX highlighted in yellow.

SO ORDERED.

This the 9th day of September, 2014.



James C. Fox
Senior United States District Judge

² The parties are advised that this court refers to “expert” witnesses as “opinion” witnesses.