



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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September 12, 2013

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Hon. Robert G. Marshall
7930 Willow Pond Court
Manassas, Virginia 20111

**Re: Northern Virginia Transportation Authority v. Statutory
Defendants VA Code § 15.2-2650, Case No. CL-2013-0011988**

Dear Counsel of Record:

This letter is to confirm that this matter will be heard on September 30th, 2013. The attached order sets the schedule for briefing and discovery. Delegate Marshall will file his opening brief, to include all constitutional issues, by close of business on September 17, 2013. Northern Virginia Transportation Authority will file its responsive brief by September 24, 2013.

Discovery in this case will be accelerated as agreed in the order. Each party has one week to respond to discovery requests from the other party. Objections to exhibits or witnesses must be filed, and state the reasons therefor, no later than September 27. No discovery is to be propounded after September 16, and all discovery is to be completed on or before September 23.

Sincerely,

Dennis J. Smith
Chief Judge

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

NORTHERN VIRGINIA TRANSPORTATION)
AUTHORITY,)

Plaintiff,)

v.)

Case No. 2013-11988

STATUTORY DEFENDANTS PURSUANT TO)
VIRGINIA CODE §§ 15.2-2650, ET SEQ., ET AL.,)

Defendants.)

~~PROPOSED~~ SCHEDULING ORDER

THE PREHEARING CONFERENCE was held on September 10, 2013 at 10:00 a.m.

Counsel and/or duly authorized representatives for all parties attended. After discussing the various issues presented, it is **ORDERED**:

I. Trial

A hearing (the "Hearing") will be held on September 30, 2013 at 10:00 a.m. in the Circuit Court of the County of Fairfax to consider the Motion for Judgment filed by the Northern Virginia Transportation Authority ("NVTA") and all related matters. The Hearing is expected to last one day.

At the Hearing, in accordance with Virginia Code §§ 15.2-2650, et seq., the Court will determine whether NVTA is entitled to determinations that:

- (a) The NVTA Transportation Facilities Revenue Bonds (the "Bonds") planned for issuance by NVTA are valid;
- (b) All NVTA proceedings taken in conjunction with or related to the authorization and issuance of the Bonds and, upon consideration of the issues raised by the Answer and Counterclaim, and associated pleadings, and the taking of evidence and argument thereon, the processes and proceedings by which NVTA selected projects to be funded by funds received in Fiscal Year 2014 (including Bond proceeds) are legal;
- (c) The revenues dedicated to the NVTA Fund by the Virginia General Assembly and all other means provided for payment of the Bonds are valid;

- (d) All pledges of revenues and other security for the Bonds are valid and that the Bonds, when issued, shall be payable only from the revenues of NVTA pledged for such purpose and shall not be a debt, liability or general obligation of the Commonwealth of Virginia or any political subdivision thereof other than NVTA; and
- (e) The covenants and provisions which constitute a part of the contract between NVTA and the Bond owners are valid.

II. Discovery

All written fact discovery requests shall be served on or before **September 16, 2013**. All depositions and discovery responses and/or objections shall be completed on or before **September 23, 2013**. All expert designations and reports are due on **September 23, 2013**. All expert witness disclosures shall comply with the requirements of Virginia Supreme Court Rule 4:1. Depositions of experts may take place until **September 25, 2013**. 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.

III. Dispositive Motions

All dispositive motions shall be presented to the Court on or before **September 17, 2013**. Oppositions to dispositive motions shall be filed on or before **September 24, 2013**. Oral argument, if necessary, on dispositive motions shall be conducted before or at the Hearing.

IV. Exhibit and Witness Lists

Counsel of record shall exchange no later than **September 23, 2013**, a list specifically identifying each exhibit to be introduced at the Hearing, copies of any exhibits not previously supplied in discovery, and a list of witnesses proposed to be introduced at the Hearing. 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 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 therefor, and shall be filed with the Clerk of the Court and a copy delivered to opposing counsel no later than **September 27, 2013**, or the objections will be deemed waived absent leave of court for good cause shown.

V. Pre-Hearing Conference

Pursuant to the Publication Order entered by the Court on July 25, 2013 the Pre-Hearing Conference in this matter was held on September 10, 2013.

VI. Motions in Limine

Oral argument, if necessary, on any motion *in limine* shall be conducted at the Hearing.

VII. Witness Subpoenas

Witness subpoenas should be served no less than ten (10) days before the Hearing.

VIII. Continuances

Continuances will only be granted by the Court on timely and proper notice to all parties, for good cause shown, and only to the extent that there is no prejudice to the other parties.

IX. Deposition Transcripts to be Used at Trial

All parties shall confer and attempt to identify and resolve all issues regarding the use of depositions at the Hearing. It is the obligation of the proponent of any deposition of any non-party witness who will not appear at the Hearing to advise opposing counsel of record of counsel's intent to use all or a portion of the deposition at trial no later than **September 27, 2013**.

X. 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.

XI. Pre-Trial and Post-Trial Briefs

At the Court's discretion pre-trial ^{DOJ} and ~~post-trial~~ ^{DOJ} briefs shall be submitted ~~on or before~~ ^{DOJ} ~~the~~ ~~schedule~~ ~~set~~ ~~forth~~ ~~in~~ ~~the~~ ~~letter~~ ~~dated~~ ~~Sept.~~ ~~12,~~ ~~2013~~ ~~DOJ~~ ~~forwarded~~ ~~to~~ ~~the~~ ~~schedule~~ ~~set~~ ~~forth~~ ~~in~~ ~~the~~ ~~letter~~ ~~dated~~ ~~Sept.~~ ~~12,~~ ~~2013~~

Entered this 12th day of September 2013


The Honorable Dennis J. Smith