

9-1-2009

# Sirius LC v. Erickson Augmentation Record Dckt. 36466

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# In the Supreme Court of the State of Idaho

SIRIUS LC, a Wyoming limited liability  
company,

Plaintiff-Respondent,

ORDER GRANTING MOTION TO  
AUGMENT THE RECORD

v.

Supreme Court Docket No. 36466-2009  
Caribou County Docket No. 2004-284

BRYCE H. ERICKSON, and any person  
claiming under by or through BRYCE H,  
ERICKSON in and to the real property  
described as follows: Caribou County, Idaho:  
Township 5 South, Range 45 E.B.M., Section  
27; Lots 1 and 2, N ½ NW ¼, except therefrom  
the S½ NE ¼ NW¼ NW ¼,

Defendant-Appellant,

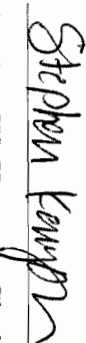
A MOTION TO AUGMENT THE APPELLATE RECORD and STATEMENT OF  
COUNSEL TO AUGMENT THE APPELLATE RECORD was filed by counsel for Appellant on  
August 21, 2009. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT THE APPELLATE  
RECORD be, and hereby is, GRANTED and the augmentation record shall include the documents  
listed below, file stamped copies of which accompanied this Motion:

1. Order for Trial, Pre-trial Schedule, and Pre-trial Conference, file-stamped August 9,  
2007; and
2. Minute Entry and Order, file-stamped June 25, 2008.

DATED this 1<sup>st</sup> day of September 2009.

For the Supreme Court

  
Stephen W. Kenyon, Clerk

cc: Counsel of Record

**AUGMENTATION RECORD**

**Exhibit “A”**

FILED  
CARIBOU COUNTY CLERK  
*[Signature]*  
DEPUTY

2007 AUG -9 PM 3:53

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CARIBOU

SIRIUS LC, a Wyoming Limited Liability Company, )

Plaintiff , )

VS )

BRYCE H. ERICKSON, AND ANY PERSON CLAIMING UNDER BY OR THROUGH BRYCE H. ERICKSON IN AND TO THE REAL PROPERTY DESCRIBED AS FOLLOWS: )

CARIBOU COUNTY, IDAHO )

TOWNSHIP 5 SOUTH, RANGE 46 E.B.M., SECTION 27: LOTS 1 AND 2 N 1/2 NW 1/4, EXCEPT THEREFROM THE S 1/2 NE 1/4 NW 1/4 NW 1/4 )

Defendants, )

Case No. CV 04-284

ORDER FOR TRIAL, PRE-TRIAL SCHEDULE, AND PRE-TRIAL CONFERENCE

**IT IS HEREBY ORDERED:**

**\*\* TRIAL SCHEDULE \*\***

This cause shall be tried by **COURT:**

This cause is set for trial schedule as follows:

**TRIAL: COURT**

DATE: June 30-1, 2008 AT: 9:00 O'clock a.m.

PLACE: Caribou County Courthouse  
SETTING POSITION: No. 1  
ESTIMATED NUMBER OF DAYS: TWO (2)**FORMAL PRE-TRIAL CONFERENCE:**DATE: May 2, 2008 TIME: 9:00 a.m.  
PLACE: Caribou County Courthouse

Pre-trial preparation by the parties shall be in the manner and at times set forth in the attached schedule.

Service of copies of documents and reports upon the court at resident chambers shall be as prescribed in I. R. C. P. rule 5(d)(3).

DATED this 9<sup>th</sup> day of August 2007.DON L HARDING  
DISTRICT JUDGE

**\*\* APPENDIX A TO TRIAL ORDER \*\***

**1. MULTIPLE SETTINGS:**

In the event of multiple settings for the same date and time, it is the responsibility of counsel to inform themselves of their position upon the trial calendar. In the event a case cannot be tried on the date indicated, every effort will be made to reset at the earliest date available to court and the parties.

**2. SCHEDULING CONFLICTS:**

Requested continuance of trial setting because of pre-existing scheduling conflict shall be by written motion, state specifically the details of the conflict, and be filed within 14 days hereof.

Requests and/or stipulations for continuances for other than pre-existing conflicts must be in writing, state the specific reason therefor, be approved by the client, propose mutually agreeable times for rescheduling, and are subject to approval by the court.

**3. SETTLEMENT:**

In the event of settlement of this cause prior to trial, **NOTICE SHALL BE GIVEN TO THE JUDGE AND TO THE CLERK OF THE COURT FORTHWITH**. Expenses of the jury incurred because lack of reasonable notice will be assessed to the responsible party or parties.

**\*\* PRE-TRIAL SCHEDULE \*\***

The pre-trial schedule for this cause shall be as follows:

**1. 60 DAYS BEFORE TRIAL - DISCLOSURE OF WITNESSES:**

Each party shall disclose in writing to all other parties a complete list of all witnesses, expert and lay, which that party intends to call at trial, together with a summary of the testimony of each.

**2. 60 DAYS BEFORE TRIAL - DISCLOSURE OF EXHIBITS:**

Each party shall disclose, in writing, to all other parties, and the court, a complete list of all exhibits, with a summary of the points to be proven, with a copy attached, which that party intends to use at trial.

**3. 60 DAYS BEFORE TRIAL - DISCOVERY COMPLETION:**

All discovery shall be completed. Discovery requests shall have been served sufficiently in advance of this date to require responses to such requests to be filed by this date. Motions for compulsion, sanctions and/or extensions will be filed in advance of this date.

4. **30 DAYS BEFORE TRIAL - MOTIONS FOR SUMMARY JUDGMENT:**  
I. R. C. P. rule 56(b) shall control the filing of Motions for Summary Judgment and briefing schedule.
5. **4 WEEKS BEFORE TRIAL - MOTION DEADLINE:**  
Except for motions for summary judgment, as set out above, and motions directly related to trial procedure, no motions shall be filed after this date. In addition to other requirements of the Rules, or of Orders of this Court, if any, all motions filed with this Court must be supported by a memorandum of position and authorities. Adverse parties shall oppose in the same manner.
6. **6 WEEKS BEFORE TRIAL - PRE-TRIAL CONFERENCE OF PARTIES:**  
Counsel, and any unrepresented party, shall hold a pre-trial conference in an effort to resolve the action or to prepare a definitive pre-trial order and plan for trial. Each party shall be prepared to fully discuss each issue and defense presented by the case. The parties shall fully consider the requirements of I.R.C.P. rule 16. This conference will be held at the office of the plaintiff's counsel unless otherwise agreed. Plaintiff's counsel shall take the lead in organizing and presenting discussion. Exhibits shall be pre-marked (numerically for plaintiff and alphabetically for defendant. An index of all exhibits shall be prepared showing number/letter, offering party, brief description, and whether offered without objection, or if not, the legal grounds for objection.
7. **4 WEEKS BEFORE TRIAL - PRE-TRIAL REPORT AND PROPOSED ORDER:**  
The parties shall file a report of their pre-trial conference, including any stipulations of the parties, and a proposed order, substantially covering those matters contemplated by I.R.C.P. rule 16(e)(6)(A) through (K). The report shall include the index of pre-marked exhibits. Plaintiff's counsel shall take the lead in drafting the report and proposed order. Any party disagreeing with the content shall submit a separate report identifying the area(s) of disagreement with explanation of differences.
8. **2 WEEKS BEFORE TRIAL - BRIEFS - EXHIBIT COPIES:**  
Pre-trial **POINTS AND AUTHORITIES** on all substantive, procedural or evidentiary issues anticipated shall be filed.  
Each party shall furnish the court with a copy of each exhibit capable of being copied, in a binder, and tabbed for reference. A tabbed insert sheet, summarizing any exhibit not capable of being copied, shall be included.
9. **MEDIATION-** Plaintiffs shall set up a mediator within days and have mediation held within months.

Pursuant to Rule 16, I.R.C.P, a formal Pre-trial Conference shall be held on **May 2, 2008**, at 9:00 a.m., in Room 301 at the Caribou County Courthouse.

**\*\* JURY TRIAL \*\*****10. 14 DAYS BEFORE JURY TRIAL - INSTRUCTIONS AND VERDICT FORMS**

Each party shall file requested JURY INSTRUCTIONS and PROPOSED VERDICT FORMS. LATE FILING SEVERELY INTERFERES WITH THE ABILITY OF THE COURT TO PREPARE FOR TRIAL.

IRCP Rules 51(a)(1) and 51(a)(2) will be followed. IDJI instructions shall be used when appropriate and any modification will be specifically identified.

The set with cited authority and the "clean" set will be served upon the clerk of the court. The "clean" set will be used for submission to the jury. (\*\* Rule 5 (d)(3) will be followed for filing copies directly with the court.)

**\*\* BENCH TRIAL \*\*****11. 10 DAYS BEFORE BENCH TRIAL - PROPOSED FINDINGS AND CONCLUSIONS**

Unless Findings and Conclusions are waived by mutual stipulation of the parties, proposed **FINDINGS OF FACT AND CONCLUSIONS OF LAW** will be filed by each party. The court will not proceed to trial without them. Sanctions will be imposed for delay.

Proposed findings shall be concise and shall recite ultimate rather than mere evidentiary facts. They will serve not only as suggested findings of fact but also a convenient recitation of contentions of the respective parties to be before the court as it hears and considers the evidence.

Proposed conclusions of law should be similarly concise and reflect those that can be drawn reasonably from the proposed findings of fact, and that would support the judgment or decisions sought. Citation of authority should not be included but shall be submitted separately as Points and Authorities.

**EARLIER CUT-OFF DATES MAY BE STIPULATED BY THE PARTIES. PROPOSED EXTENSIONS OF DATES SHALL BE SUBJECT TO APPROVAL BY THE COURT.**

**DELAY OF TRIAL CAUSED BY THE FAILURE OF A PARTY TO COMPLY WITH THIS PRE-TRIAL SCHEDULE WILL RESULT IN SANCTIONS, INCLUDING, AMONG OTHER THINGS, CONTINUANCE, DISMISSAL, STRIKING, EXCLUSION OF WITNESS AND EVIDENCE, AND FINANCIAL PENALTIES.**



**CERTIFICATE OF MAILING/SERVICE**

I hereby certify that on the 9<sup>th</sup> day of August 2007, I mailed/served a true copy of the foregoing document on the attorney(s)/person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

Attorney(s)/Person(s):

Method of Service:

A. Bruce Larson  
Attorney at Law  
P O Box 6369  
Pocatello ID 83205-6369

Faxed  
478-7602

Bryan Smith  
MCGRATH MEACHAM & SMITH  
P O Box 50731  
Idaho Falls ID 83405

Faxed  
529-4166

EDIE BUSH, Clerk

By: *Stacy Ferguson*  
Deputy Clerk

**Exhibit “B”**

FILED  
CARIBOU COUNTY CLERK  
DEPUTY

2008 JUN 25 AM 10: 38

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CARIBOU

SIRIUS LC, A WYOMING LIMITED  
LIABILITY COMPANY

Case No: CV-2004-0000284

PLAINTIFF(S)

VS

MINUTE ENTRY AND ORDER

BRYCE ERICKSON, AND ANY PERSON  
CLAIMING UNDER BY OR THROUGH  
BRYCE H ERICKSON IN AND TO THE  
REAL PROPERTY DESCRIBED AS  
FOLLOWS:

CARIBOU COUNTY, IDAHO:

TOWNSHIP 5 SOUTH, RANGE 46 E.B.M,  
SECTION 27: LOTS 1 AND 2 , N1/2 NW1/4,  
EXCEPT THEREFROM THE S1/2 NE1/4  
NW1/4 NW1/4,

DEFENDANT(S)

**COURT REPORTER:** Dorothy Snarr

**DATE:** Monday, June 23, 2008 09:00 AM

**APPEARANCES:** Sirius LC, Plaintiff  
A. Bruce Larson, Attorney for Plaintiff  
Bryce Erickson, Defendant  
Bryan Smith, Attorney for Defendant

**MATTER BEFORE THE COURT:** Hearing on Defendant's Objection to Allowing William Bagley to Testify as Expert and Motion to Continue Trial Setting and Plaintiff's Motion in Limine and Motion to Strike Expert Report

**PROCEEDINGS:** The above-entitled matter regularly came on for hearing before the court this date pursuant to setting. A. Bruce Larson, Attorney for Plaintiff appeared telephonically with Sirius LC, Plaintiff. Bryan Smith, Attorney for Defendant appeared

telephonically with Bryce Erickson, Defendant. Plaintiff made comments to the court for consideration. Mr. Smith made further comments for the courts consideration.

**DISPOSITION:** The court has no time on its calendar to give or allow a short continuance, This is a very old case filed on September 3, 2004. Motion for a continuance is denied. The court is not going to limit the testimony of Ms. Shively since her report was detailed and provided in a timely manner. Mr. Bagley was disclosed very early in this case and the issue of his representation has been known from the beginning. He will be allowed to testify as an attorney in this action and as such on expert witness. The trial will continue as previously scheduled on June 30, 2008. The court has reviewed the motions on summary judgment and there are too many material questions of fact to grant summary judgment to either party. The court will issue a written order on the summary judgment issue.

**IT IS SO ORDERED.**

**DATED:** this 23rd day of June, 2008.

  
\_\_\_\_\_  
DON L. HARDING  
District Judge

**CERTIFICATE OF MAILING/SERVICE**

I hereby certify that on Wednesday, June 25, 2008, I mailed/served a true copy of the Minute Entry and Order on the attorney(s)/person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

**PLAINTIFF ATTORNEY:**

A. Bruce Larson  
PO Box 6369  
Pocatello ID 83205-6369

Mailed  
 Hand Delivered  
 Faxed (208) 478-7602

**DEFENDANT ATTORNEY:**

Bryan D. Smith  
P O Box 50731  
Idaho Falls ID 83405

Mailed  
 Hand Delivered  
 Faxed (208) 529-4166

VEDA MASCARENAS, Clerk

by: Sharon Welch  
Deputy Clerk