

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

LINDA BOTTOMS, Individually, and as the
TEMPORARY ADMINISTRATOR OF THE
ESTATE OF MARY JONES, DECEASED,

Plaintiffs,

v.

GREEN STREET NH, LLC d/b/a
PROVIDENCE HEALTHCARE OF
THOMASTON a/k/a PROVIDENCE HEALTH
AND REHAB; PROVIDENCE SNF
OPERATOR, LLC d/b/a PROVIDENCE
HEALTHCARE a/k/a PROVIDENCE
HEALTH AND REHAB; PWW
HEALTHCARE, LLC; GORDON JENSEN
HEALTHCARE ASSOCIATION, INC.;
BEACON HEALTH MANAGEMENT, LLC;
ABC CORPORATION; and JOHN/JANE
DOES I and II,

Defendants.

CIVIL ACTION NO. 18EV-004774

SCHEDULING ORDER

Pursuant to the Court's Preliminary Case Management Order, the parties conducted an early planning conference on May 13, 2019, with the following counsel (and/or *pro se* parties) in attendance:

Name: Michael A. Prieto

William F. Holbert

Capacity: Counsel for Plaintiff

Firm Name: **PRIETO, MARIGLIANO, HOLBERT & PRIETO, LLC**

Address: Two Ravinia Drive, Ste, 1330, Atlanta, Georgia 30346

Telephone Number: 404-856-0040

Email Address: mprieto@pmhplaw.com; bholbert@pmhplaw.com

Name: David C. Marshall
Christian J. Lang
Capacity: Counsel for Defendants
Firm Name: **HAWKINS, PARNELL & YOUNG, LLP**
Address: 303 Peachtree Street, NE, Ste. 4000, Atlanta, Georgia 30346
Telephone Number: 404-614-7400
Email Address: dmarshall@hpylaw.com; CLang@hpylaw.com

Parties not in attendance: _____

The parties having conferred in an effort to settle the case, discuss discovery, limit issues, and discuss other matters and deadlines addressed in this Scheduling Order, **IT IS HEREBY ORDERED** as follows:

1. DISCOVERY

- (a) The time period for all discovery (including, but not limited to, written discovery, depositions, and any *expert discovery*) commenced on May 10, 2019, pursuant to Uniform State Court Rule 5.1 and shall close on May 10, 2020. [Guidelines: Personal Injury – 6 months; Complex Personal Injury (including Wrongful Death) – 12 months; Medical Malpractice – 12 months; Complex Medical Malpractice (including Wrongful Death) – 18 months; Contract – 6 months; Complex Contract – 12 months; Other – 6 months (12 months if Complex)]
- (b) State the basis for any departure from the guideline or for “complex” designation:¹ N/A.
- (c) The parties shall supplement their responses to any applicable discovery request, if required by O.C.G.A. § 9-11-26(e), as soon as possible, but no later than 15 days after the close of discovery.
- (d) Extensions of time for discovery will be granted only upon consent motion or in exceptional cases in which the parties promptly commence and diligently pursue discovery, yet are unable to complete discovery in the timeframe set forth above due to circumstances not reasonably anticipated at the time that the parties prepare and submit the Scheduling Order. Any motion for an extension of time for discovery must be filed with the Court prior to the expiration of the existing discovery period.

¹ Complex cases involve large number of parties, large number of claims and defenses, highly technical and exceptionally complex issues and proof, multiple experts, greater than normal amount of documents and evidence (including electronically stored information), problems locating and preserving documents and evidence (including electronically stored information), or extensive discovery outside the State of Georgia.

- (e) Any amendment of pleadings (i) to add, create, or expand counts, claims, or means of liability, (ii) to expand the means of recovery or damages, (iii) to join additional parties, or (iv) to substitute parties for fictitiously named parties (e.g., John Doe or XYZ Corporation) must be made no later than 60 days prior to the close of discovery. [*Note*: this Order constitutes a pre-trial order under O.C.G.A. § 9-11-16(b) and for purposes of pleading amendments as a matter of right under O.C.G.A. §9-11-15(a).]
2. EXPERT DISCOVERY (if applicable) *must be completed by the discovery deadline set forth in section 1(a) above*:
- (a) The plaintiff(s) shall identify experts who are expected to testify at trial no later than January 10, 2020. Such identification shall include the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion, in accordance with O.C.G.A. § 9-11-26(b)(4)(A)(i). Discovery depositions of all experts identified by the plaintiff(s) shall be completed no later than February 10, 2020.
 - (b) The defendant(s) shall identify experts who are expected to testify at trial no later than March 10, 2020. Such identification shall include the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion, in accordance with O.C.G.A. § 9-11-26(b)(4)(A)(i). Discovery depositions of all experts identified by the defendant(s) shall be completed no later than April 10, 2020.
 - (c) The parties shall disclose any rebuttal experts within 45 days of the conclusion of the deposition of the expert to be rebutted, but no later than April 10, 2020, and shall make any rebuttal experts available for discovery deposition no later than May 10, 2020. Such disclosure shall include the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion, in accordance with O.C.G.A. § 9-11-26(b)(4)(A)(i).

3. MOTIONS

- (a) BRIEFS: absent prior permission of the Court, briefs filed in support of, or in response to, a motion are limited in length to twenty-five (25) pages. Any reply brief filed by the movant is limited to fifteen (15) pages. All motions and briefs shall be double-spaced and in a font size at least as large as Times New Roman 12 point.
- (b) DISPOSITIVE MOTIONS and MOTIONS brought pursuant to O.C.G.A. § 24-7-702 or otherwise to exclude or limit expert testimony shall be filed no later than 30 days after the close of discovery. Prior to filing any such motion regarding expert testimony, the parties shall meet and confer in a good faith effort to resolve

the evidentiary issue(s). Hearings on motions for summary judgment shall be scheduled according to the Court's availability.

4. MEDIATION through the Office of Alternative Dispute Resolution (ADR) of the Fulton County Courts (404-612-4549), or through a private mediator mutually agreed upon by the parties, shall be completed no later than 45 days after the close of discovery.² If a dispositive and/or *Daubert* motion is filed, the mediation shall be stayed until the motion(s) have been ruled on.
5. TRIAL BY JURY
 - (a) Upon the Court's order on any motions for summary judgment and/or *Daubert* motions, or in the event that no such motions are filed, the Court will schedule a pre-trial conference.
 - (b) The parties shall submit a consolidated civil pre-trial order in substantially the same form as contained in Uniform State Court Rule 7.2 no later than 5 days before the date of the pre-trial conference. The plaintiff(s) shall be responsible for consolidating the pre-trial order. All other parties shall provide their portions of the pre-trial order to the plaintiff(s) no later than 2 business days prior to the due date. No party shall submit its own individual portions of the pre-trial order to the Court without a written certification detailing the party's good-faith efforts to present the Court with a fully consolidated order.
 - (c) At the pre-trial conference, the Court will advise the parties of the date(s) when this case will be called for trial beginning at the next available civil jury calendar. To request a special setting for trial by jury, the parties shall include such request, along with the basis for the request, in the consolidated civil pre-trial order.
 - (d) All motions *in limine*, trial briefs, and other non-dispositive motions shall be filed on or before the date for filing the consolidated civil pre-trial order.
 - (e) All requests to charge, a proposed verdict form, and all exhibit lists must be submitted to the Court electronically, in Microsoft Word format, prior to the start of trial. Special requests to charge (non-pattern) are limited to 15 per party. When requesting pattern jury charges, the requesting party should list the title and number of the charge; the text of the requested pattern charge need not be included. ***Prior to the start of trial***, the parties must mark and exchange all exhibits, including demonstrative exhibits; and the parties must confer in an effort to resolve any objections or issues pertaining to the admissibility of any exhibits. ***Prior to the start of trial***, the parties must confer in an effort to resolve any objections to deposition testimony that may be tendered at trial.

² Alternatively, the parties may request referral to a Judicially Hosted Settlement Conference. Such request shall be directed to the Court's Staff Attorney no later than the close of discovery and shall set forth the reasons for the request.

- (f) If trial is expected to last more than one week, the parties must contact the Court's Staff Attorney after mediation and before the pre-trial conference.

IT IS FURTHER ORDERED that the following PRACTICES and PROCEDURES govern this litigation:

- A. **DISCOVERY DISPUTES** – In addition to the obligations set forth in Uniform State Court Rule 6.4(B), the parties shall meet and confer *in person or by telephone* in a good faith effort to resolve any discovery dispute. If the parties are unable to resolve the dispute, the parties must contact the Court's Staff Attorney to request a telephonic hearing with the Court, *prior to filing any motion*. The Court will schedule a telephonic hearing, if appropriate, or instruct the parties to brief the matter. "Discovery disputes" shall include disputes concerning requests for qualified protective orders in accordance with *Baker v. Wellstar Health Sys., Inc.*, 288 Ga. 336 (2010).
- B. **COMMUNICATION WITH THE COURT**
- The parties may contact the Court's Staff Attorney to inquire regarding any procedural issue (scheduling, case status, court requirements, etc.) and/or to arrange a status conference or hearing. Email communications are preferred, with all parties copied thereon where possible; the email address for the Court's Staff Attorney may be found at the Court's website at <http://fultonstate.org/judge_tailor.php>. When contacting the Court's Staff Attorney, please provide your name, the case name, and civil action number.
 - Unless instructed by the Court, the parties shall not submit letter briefs (including substantive emails addressing the merits) or "carbon copy" the Court on correspondence between the parties that addresses the merits of the case.
 - Before initiating any communications with the Court or the Court's Staff Attorney, review Uniform State Court Rule 4.1.
- C. **PROPOSED ORDERS and COURTESY COPIES**
- The Court discourages the parties from submitting courtesy paper copies of any e-filings, unless specifically requested. The parties shall e-file any proposed orders.
 - The parties may contact the Court's Staff Attorney regarding any consent/joint filings or other filings necessitating prompt action by the Court.
- D. **ORIGINAL DEPOSITION TRANSCRIPTS AND OTHER DISCOVERY MATERIAL**
- The parties shall e-file copies in lieu of original deposition transcripts or other discovery material and shall retain original deposition transcripts and discovery material until specifically requested by the Court or necessary for trial.

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