**IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION**

**UNITED STATES OF AMERICA,**

**and**

**STATE OF OHIO,**

**Plaintiffs,**

**v.**

**Civil Action:** 2:26-cv-207
**Judge:** Algenon L. Marbley
**Magistrate Judge:** S. Courter Shimeall

**OHIOHEALTH CORPORATION,**

**Defendant.**

# RULE 26(f) REPORT

Pursuant to Federal Rule of Civil Procedure 26(f), a meeting was held on March 10, 2026, and was attended by:

Paul Torzilli, Karl D. Knutsen, Jessica Hollis , counsel for plaintiff United States of America.

Thomas Collin, Beth Finnerty, Mark Kittel , counsel for plaintiff State of Ohio.

Kris Armstrong, John Steren, Tom Jaworski , counsel for defendant OhioHealth Corporation.

Counsel represent that, during the meeting, they engaged in a meaningful attempt to meet and confer on the matters outlined below.

Plaintiffs have prepared a chart appearing at the end of this Report as Exhibit A. It reflects the milestone events and the Parties' proposed deadlines for each event. The Plaintiffs prepared Exhibit A to facilitate the Court's review of the proposed event and dates.

1. CONSENT TO MAGISTRATE JUDGE

Do the parties consent to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c)?

_____Yes X___No

2. INITIAL DISCLOSURES

Have the parties agreed to make initial disclosures?

_X__ Yes _____No _____The proceeding is exempt under Rule 26(a)(1)(B)

If yes, such initial disclosures shall be made by the later of: (a) 21 days after Defendant serves its motion under Federal Rule of Civil Procedure 12, or (b) 5 days after entry of the Protective Order, whichever is later.

3. VENUE AND JURISDICTION

Are there any contested issues related to venue or jurisdiction?

_____Yes X___No

If yes, describe the issue: not applicable

If yes, the parties agree that any motion related to venue or jurisdiction shall be filed by not applicable.

4. PARTIES AND PLEADINGS

a. The parties agree that any motion or stipulation to amend the pleadings or to join additional parties shall be filed by motion filed not later than 90 days after the commencement of fact discovery.

b. If the case is a class action, the parties agree that the motion for class certification shall be filed by not applicable.

5. MOTIONS

a. Are there any pending motion(s)?

_____Yes X___No

If yes, indicate which party filed the motion(s), and identify the motion(s) by name and docket number: not applicable

b. Are the parties requesting expedited briefing on the pending motion(s)? Not applicable

_____Yes _____No

If yes, identify the proposed expedited schedule:

Opposition to be filed by_____; Reply brief to be filed by_____.

6. ISSUES

Jointly provide a brief description of case, including causes of action set forth in the complaint, and indicate whether there is a jury demand:

Plaintiffs United States of America and the State of Ohio bring this antitrust action to challenge certain restrictions found in OhioHealth Corporation's contracts with commercial health insurers. Plaintiffs allege that these restrictions impede competition among hospital providers and prevent insurers from offering money-saving health insurance plan options to employers and patients in the Columbus area. Plaintiffs United States and the State of Ohio bring a claim under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Plaintiff State of Ohio brings a claim under Ohio's Valentine Act, Ohio Revised Code §§ 13301.01 *et seq.* Plaintiffs seek injunctive relief to prohibit Defendant OhioHealth Corporation from enforcing these allegedly unlawful contract restrictions and to enjoin Defendant from engaging in similar contracting practices in the future. Defendant intends to move for dismissal of the complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted, and denies that any provision in its contracts with commercial health insurers have an adverse effect on competition. Plaintiffs intend to oppose the motion because the Complaint states claims for relief under the Sherman and Valentine Acts.

7. DISCOVERY PROCEDURES

a. The parties agree that Fact Discovery shall be completed by 10 months after Fact Discovery commences. The parties agree to schedule their discovery in such a way as to require all responses to Fact Discovery to be served prior to the cut-off date, and to file any motions relating to Fact Discovery within the discovery period unless it is impossible or impractical to do so. If the parties are unable to reach an agreement on any matter related to Fact Discovery, they are directed to arrange a conference with the Court. To initiate a telephone conference, counsel are directed to join together on one line and then call the Magistrate Judge's chambers or provide the Court with a call -in number.

b. Do the parties anticipate the production of ESI? X Yes_____ No

If yes, describe the protocol for such production: The Parties are in the process of discussing an ESI protocol. Plaintiffs have delivered to Defendant the U.S. Department of Justice, Antitrust Division, Standard Specifications for Production of ESI and/or Hard Copy as Images and Text, June 2019. Plaintiffs' position is that all producing parties should abide by the Division's Standard Specification for their productions. Defendant is evaluating whether that protocol is a good technical fit for its ESI systems and whether Defendant will propose any revisions.

c. Do the parties intend to seek a protective order or clawback agreement? Yes

If yes, such order or agreement shall be produced to the Court by [14 (Plaintiffs); 28 (Defendant)] days after filing 26(f) report.

8. DISPOSITIVE MOTIONS

a. Any motions for summary judgment shall be filed by [14 (Plaintiffs); 28 (Defendant)] days after expert discovery closes.

b. Are the parties requesting expedited briefing on dispositive motions?

_____Yes X No

If yes, identify the proposed expedited schedule: not applicable

Opposition to be filed by 28 days after motion; Reply brief to be filed by 14 days after opposition.

9. EXPERT DISCOVERY AND TESTIMONY

a. Plaintiffs' initial expert reports must be produced by [Plaintiffs' position: 14 days after the close of Supplemental Fact Discovery; Defendant's position: 14 days after the close of Fact Discovery]. All backup must be produced one day after producing the report.

b. Defendant's expert reports must be produced by 28 days after Plaintiffs' initial expert reports are due. All backup must be produced one day after producing the report.

c. Plaintiffs' rebuttal expert reports must be produced by 28 days after Defendant's expert reports are due. All backup must be produced one day after producing the report.

d. Expert discovery to close by 14 days after Plaintiffs' rebuttal expert reports are due.

e. Motions to exclude expert testimony (that is, *Daubert* motions) must be filed no later than [Plaintiff's position: 14 days after the close of expert discovery; Defendant's position: 28 days after the close of expert discovery]. Deadlines for opposition and reply memoranda to follow Local Rule 7.2(a)(2).

10. SETTLEMENT

Plaintiff(s) made a settlement demand on March 6, 2026. Defendant responded on March 20, 2026. Plaintiffs and Defendant conducted a call on the afternoon of March 24 to discuss the Defendant's proposed revisions. The parties agree to make a good faith effort to settle this case. The parties understand that this case will be referred to an attorney mediator, or to the Magistrate Judge, for a settlement conference. The Court refers cases to settlement throughout the year. The parties request the following month and year:

[Plaintiffs' position: November 8, 2027 (14 days after summary judgment reply)]
[Defendant's position: January 2028 (after the close of expert discovery)]

In order for the conference to be meaningful, the parties agree to complete all discovery that may affect their ability to evaluate this case prior to the settlement conference. The parties understand that they will be expected to comply fully with the settlement conference orders which require, *inter alia*, that settlement demands and offers be exchanged prior to the conference and that principals of the parties attend the conference.

11. RULE 16 PRETRIAL CONFERENCE

Do the parties request a scheduling conference?

X Yes, the parties would like a conference with the Court prior to it issuing a scheduling order. The parties request that the conference take place by telephone:

Judge Deavers scheduled a Telephonic Preliminary Pretrial Conference or March 31, 2026 at 10:00 a.m. *See* ECF 5.

_____ No, a conference is not necessary, the Court may issue a scheduling order after considering this Report.

12. OTHER MATTERS

Indicate any other matters for the Court's consideration:

(1) Defendant provided waiver of the service of the summons on March 11, 2026.

(2) Plaintiffs' position on settlement. Plaintiffs provided a draft consent decree on March 6, 2026. On March 20, 2026, Defendant provided edits to Plaintiffs' proposed consent decree. Plaintiffs are evaluating Defendant's proposed edits. Plaintiffs have requested a call with the Defendant to occur on the afternoon of Tuesday March 24 to discuss Defendant's proposed edits. Plaintiffs are committed to promptly moving settlement discussion forward to determine if the Parties can agree to a settled resolution. Plaintiffs see no present basis upon which to delay either the deadline for Defendant to file its planned motion to dismiss or to commence fact discovery.

Defendant's position on settlement. The parties are engaged in active settlement negotiations and [have/will] exchanged drafts of a proposed consent decree. Defendant's deadline to respond to the Complaint is currently April 21, 2025. [Defendant would like to discuss 21-day extension document with DOJ. *DOJ/Ohio*: If you would like to discuss, we would want to understand the basis of the motion to dismiss that you contemplate filing to assess whether we would be willing to stipulate to the time extension.]

(3) Plaintiffs' position on fact discovery commencement. The Plaintiffs request that Fact Discovery commence upon entry of the scheduling order because the Defendant will suffer minimal prejudice. Either this action will settle in the near term on terms acceptable to both sides, obviating the need for further discovery, or the matter will not settle requiring discovery to proceed. Plaintiffs will suffer prejudice by unwarranted delay of fact discovery commencement. In Section 4 of the Sherman Act, 15 U.S.C. § 4, Congress expressly provided that proceedings brought under the Sherman Act proceed with alacrity toward resolution. Specifically, Congress stated: "When the parties complained of shall have been duly notified of such petition the court shall proceed, *as soon as may be*, to the hearing and determination of the case." (emphasis added). An unwarranted delay of fact discovery is contrary to Congress's express prescription. Defendant's identification of the number of fact witness depositions is a non-issue. Most depositions will not occur until many months after fact discovery commences, since the parties will need to obtain and review document productions from relevant custodians before most depositions proceed. If the Court was in any way inclined to delay discovery, Plaintiffs request that the Court wait to make that determination until the Defendant moves for a discovery stay after filing its dismissal motion. This will afford the Court an opportunity to review the full briefings on the stay motion. Plaintiffs expect that the Defendant's dismissal motion is unlikely to be meritorious, such that proceeding with discovery will not be prejudicial and a stay unwarranted.

Defendant's position on fact discovery commencement. In light of the significant efforts being made toward settlement (including exchange of proposed stipulated resolutions) and the scope of the discovery contemplated by Plaintiffs (60+ depositions and extensive ESI discovery, *see* items No. X and X [currently 5 and 7] below), Defendant requests that Fact Discovery be stayed pending this Court's decision on Defendant's forthcoming motion to dismiss. Alternatively, Defendant asks that discovery be stayed through its deadline to respond to the Complaint (i.e., stayed pending negotiations toward a stipulated resolution).

(4) Plaintiffs' position on number of depositions. Because this action is complex, involving antitrust claims, discovery will be more voluminous than other types of civil actions. The Plaintiffs request that each Side be permitted to take up to thirty (30) depositions in Fact Discovery. Depositions taken solely to authenticate documents do not count towards the 30-deposition limit. Practically speaking, most third-party depositions will be cross noticed, meaning each side will want to ensure splitting the time allotment, so that there will effectively be fewer than sixty (60) total depositions taken in fact discovery. Fact discovery will certainly require more than the ten (10) deposition limit set in the Federal Rules. There are likely to be ten (perhaps more) depositions of the Defendant's current and former employees, to ensure Plaintiffs have reasonable deposition discovery in preparation to carry their burden at trial and fairly rebut any defense and arguments Defendant may raise. In addition, there will likely be at least ten third parties requiring at least one (likely 2) deposition per third party. Given the almost certainty that the Plaintiffs will need far more than 10 depositions to fairly conduct discovery in this antitrust action, it would not be a good use of judicial resources to require the Parties to return to the Court to seek additional deposition discovery, if a 30-deposition limit is set at the outset. Setting the deposition limit at the outset of fact discovery has the added advantage of permitting the Parties to make orderly discovery plans. In a similar litigation, a Department of Justice, Antitrust Division

civil enforcement action against Atrium (formally known as the Charlotte-Mecklenburg Hospital Authority), the district court's Pretrial Order and Case Management Plan permitted 40 depositions per side in fact discovery. A copy of that Order and Plan is attached to this Report as Attachment 1 (hereinafter Attachment 1).

Defendant's position on number of depositions. Defendant requests that the court reserve a decision on this issue until a party has reached its deposition limit under Fed. R. Civ. P. 30(a)(2)(A)(i), at which point that party may apply to the court for relief under that rule.

(5) The Parties agree to the following with respect to third-party depositions: When any Side notifies the other Side about its intention to attempt to secure the deposition of a third party, the other Side may "cross notice" the deposition, provided they do so not later than 7 days after the notice of intent to secure the deposition was received. For a deposition that is "cross noticed," each Side may use up to 3.5 hours on the record. If a third-party deposition is not "cross noticed," the "noticing" side may use up to 5 hours on the record. The other Side may use up to two hours on the record. A "cross notice" counts against the cross-noticing Side's deposition limit.

(6) Plaintiffs propose the following to help ensure fair and efficient deposition discovery in this action. The Parties must meet-and-confer to develop a protocol for conducting fact and expert depositions. Not later than thirty (30) days after Fact Discovery commences, if the Parties continue to have disputes concerning the Protocols, the Parties must submit a joint filing presenting the disputes for the Court's resolution.

(7) Plaintiffs' position on coordinated insurer claims data requests. The Plaintiffs expect that Fact Discovery will require significant data from insurers regarding the claims they process. In order to facilitate the orderly and efficient production and use of claims data, Plaintiffs request that each Party be required to make any requests for production of such claims data from insurers within 45 days of the commencement of Fact Discovery. This will enable the insurers, who are third parties to this litigation, to develop a coordinated and synthesized approach for extracting data that are responsive to both Sides' requests. Coordination on payer claims data requests was included in the Atrium Plan and Order and worked well in that action to facilitate claims data discovery. *See* Attachment 1 at 4.

Defendant's position on coordinated insurer claims data requests. Defendant requests that the case follow standard discovery practice and that each party may determine the timing and sequence of its own discovery under Fed. R. Civ. P. 26(d)(3).

(8) Plaintiffs' position on nationwide service of process. To assist the Parties in planning discovery, the Plaintiffs request that the Court order pursuant to 15 U.S.C. § 23 the issuance of discovery and trial subpoenas from this Court, requiring witnesses to attend who reside in other federal districts. The Plaintiffs request that the Court's order state that the availability of nationwide service of process does not make a witness who is otherwise "unavailable" for purposes of Federal Rule of Civil Procedure 32 and Federal Rule of Evidence 804 available under those rules or otherwise affect the admissibility at trial of a deposition of a witness. *See* Attachment 1 (ordering nationwide service of trial subpoenas).

Defendant's position on nationwide service of process. Defendant requests that the court defer this issue until a party makes proper application for relief and shows cause for same on an individual-witness basis under 15 U.S.C. § 23.

(9) Plaintiffs' position on fact witness lists. Plaintiffs request that each Party's Preliminary Fact Witness List will be due 30 days before the close of Fact Discovery. In preparing Preliminary Fact Witness Lists, the Parties must make a good-faith attempt to identify the fact witnesses whom they expect they will present as live witnesses at trial (other than solely for impeachment). The witness lists must include contact information, including email and telephone, for each person or their counsel (if the person is represented in this matter). The Parties' Final Witness Lists shall be exchanged 8 weeks before trial, which shall be limited to those witnesses appearing on that Party's Preliminary Fact Witness List and any person whose documents were produced and deposition taken in this action, excluding experts. Plaintiffs share the Defendant's interest in using Judge Marbley's standard pretrial order for issues closely related to trial, such as a final witness list. This interest, in the Plaintiffs' view, does not preclude the use of a preliminary fact witness list to help ensure that as many fact witnesses as practicable can be deposed after a custodial document in the fact discovery period. *See* Attachment 1 at 4 (requiring preliminary fact witness lists).

Defendant's position on fact witness lists. Defendant requests to follow Judge Marbley's standard Civil Trial Scheduling Order and Procedures for Trial Preparation and standard Pretrial Order.

(10) Plaintiffs request a supplemental Fact Discovery period. The purpose is to ensure that both sides have a fair opportunity to conduct document and deposition discovery of any person who appears on the other side's Preliminary Fact Witness List for whom fact discovery is incomplete. The Supplemental Fact Discovery period would consist of 60 days to commence after the close of Fact Discovery. Supplemental Fact Discovery is limited solely to discovery on persons appearing on any Party's Preliminary Fact Witness List whose (a) documents have not been produced in this matter or (b) deposition has not been taken. The Parties may use the Supplemental Fact Discovery period to obtain any such person's documents and take the person's deposition. Depositions taken in Supplemental Fact Discovery do not count towards the deposition limit applicable to Fact Discovery. Experts can incorporate information obtained through Supplemental Fact Discovery in their expert reports.

Defendant requests one, singular period of fact discovery, in accordance with standard practice.

(11) In accordance with newly enacted Fed.R.Civ.P. 26(f)(3)(D), the Plaintiffs propose the Case Management Order for this action include the following provisions to help streamline the process of communicating the assertion of claims of privilege or protection of trial-preparation materials that would otherwise be required under Fed.R.Civ.P. 26(b)(5):

"The following privileged or otherwise protected communications may be excluded from privilege logs: (1) documents or communications sent solely between outside counsel for the

Defendant (or persons employed or acting on behalf of such counsel); (2) documents or communications sent solely between counsel for Plaintiffs (or persons employed or acting on behalf of the United States Department of Justice or State of Ohio AG); and (3) documents or communications sent solely among inside counsel (acting in a purely legal capacity), or inside counsel (acting in a purely legal capacity) and outside counsel (or persons employed by or acting on behalf of counsel) for the Defendant. For each entry of the privilege log, all attorneys acting in a legal capacity with response to that document or communication will be marked with the designation ESQ after their names (including a space before and after the "ESQ").

Signatures:

Attorney for Plaintiff(s):

/s/Paul Torzilli
Counsel for Plaintiff United States
Bar # 411832

/s/ Tom Collin
Counsel for Plaintiff State of Ohio
Bar # 0023770

Attorney for Defendant(s):

/s/ David DeVillers
Counsel for Defendant OhioHealth
Bar # 0059456

Date: 3/24/2026

# Exhibit A

| Event | Plaintiffs' Date | Defendant's Date | 26(f) Report references |
|---|---|---|---|
| Defendant provided waiver of summons | 3/11/2026 | 3/11/2026 | ¶ 12.1 |
| Fact Discovery Begins | 4/7/2026 (upon entry of the scheduling order) | To be determined | ¶ 12.2 |
| Proposed Protective Order submitted | 4/7/2026 | 4/21/2026 | ¶ 7.c (# of days after 26(f) Report submitted) |
| Deadline for Defendant to file its Rule 12 motion | 4/21/2026 | 4/21/2026 | |
| Deposition Protocol | 5/7/2026 (30 days into Fact Discovery) | Defendant does not agree to a deposition protocol | ¶ 12.4–6 |
| Exchange Initial Disclosures (unless exchanged five days after Protective Order entry or Answer filed sooner) | 5/12/2026 | 5/12/2026 | ¶ 2 |
| Parties submit claims data requests to insurers | 5/22/2026 (45 days into Fact Discovery) | No deadline | ¶ 12.5 |
| Parties exchange Preliminary Fact Witness Lists | 1/8/2027 (30 days before Fact Discovery closes) | Defendant does not agree to a Preliminary Fact Witness List | ¶ 12.7 |
| Fact Discovery Closes | 2/8/2027 (10 months after Fact Discovery begins) | | ¶ 7.a |
| Supplemental Fact Discovery closes | 4/9/2027 (60 days after Fact Discovery closes) | Defendant does not agree to supplemental fact discovery | ¶ 12.8 |
| Initial Expert Reports (backup one day afterwards) | 4/23/2027 (14 days after Supplemental Fact Discovery closes) | 14 days after Fact Discovery closes | ¶ 9.a |
| Defendant's expert reports (backup one day afterwards) | 5/21/2027 (28 days after Plaintiffs' Initial Expert Reports are due) | 28 days after Plaintiffs' Initial Expert Reports are due | ¶ 9.b |
| Plaintiffs' Rebuttal | 6/18/2027 (28 days | 28 days after | ¶ 9.c |

| Event | Plaintiffs' Date | Defendant's Date | 26(f) Report references |
|---|---|---|---|
| Reports (backup one day afterwards) | after Defendant's expert reports are due) | Defendant's expert reports are due | |
| Expert discovery closes | 7/2/2027 (14 days after Plaintiffs' Rebuttal Expert Reports are due) | 14 days after Plaintiffs' Rebuttal Expert Reports are due | ¶ 9.d |
| *Daubert* motions | 7/16/2027 (14 days after Expert Discovery closes) | 28 days after Expert Discovery closes | ¶ 9.e |
| Summary Judgment Motions | 7/16/2027 (14 days after Expert Discovery closes) | 28 days after Expert Discovery closes | ¶ 8.a |
| Summary Judgment Oppositions | 8/13/2027 (28 days after SJ motion filing) | 28 days after SJ motion filing | ¶ 8.b |
| Summary Judgment Replies | 8/27/2027 (14 days after SJ opposition) | 14 days after SJ opposition | ¶ 8.c |
| Settlement conference | 9/10/2027 (14 days after summary judgment reply) | January 2028 | ¶ 10 |

**UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF NORTH CAROLINA**
**CHARLOTTE DIVISION**
**Case No. 3:16-cv-00311**

| | |
|---|---|
| **UNITED STATES OF AMERICA and the STATE OF NORTH CAROLINA,**<br><br>**Plaintiffs,**<br><br>**v.**<br><br>**THE CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY d/b/a CAROLINAS HEALTHCARE SYSTEM,**<br><br>**Defendant.** | **PRETRIAL ORDER AND CASE MANAGEMENT PLAN** |

IN ACCORDANCE WITH the Local Rules of the Western District of North Carolina and pursuant to Rule 16 of the Federal Rules of Civil Procedure, the parties enter the following Pretrial Order and Case Management Plan in this matter.

**DEADLINES AT A GLANCE**

| | |
|---|---|
| **Fact Discovery Completion:** | February 2, 2018 |
| **Expert Discovery Completion:** | July 27, 2018 |
| **Expert Reports:** | March 9, 2018 (Plaintiffs) |
| | May 4, 2018 (Defendant) |
| | June 8, 2018 (Plaintiffs' Rebuttal) |
| **Mediation:** | July 20, 2018 |
| **Dispositive Motions:** | August 3, 2018 (Initial Motion) |
| | August 31, 2018 (Opposition) |
| | September 14, 2018 (Reply) |
| **Trial:** | November 5, 2018 |

## I. DISCOVERY

**A.** **DISCOVERY GUIDELINES**: Discovery in this case is limited as follows: Each party may propound no more than **20** interrogatories, including subparts; no more than **30** requests for admission (excluding requests for admission to authenticate documents for trial), and take no more than **40** depositions of fact witnesses.

**B.** **RULE 26 DISCLOSURES**: The parties have agreed to exchange the information set forth in Rule 26(a) by **May 5, 2017**.

**C.** **RESPONSES TO INTERROGATORIES AND REQUESTS FOR ADMISSION**: Every response to an interrogatory or request for admission, and every objection thereto, shall be preceded by the original number and complete text of the corresponding interrogatory or request for admission.

**D.** **THE MAINTENANCE OF DISCOVERY MATERIALS**: Discovery materials are NOT to be filed. All counsel are advised to consult the local rule which provides that while depositions, interrogatories, and requests for admission, and responses thereto, must still be served on all parties, they are no longer to be filed unless upon order of the Court. The parties are responsible for the preservation of any and all discovery materials they may generate.

**E.** **VIDEO DEPOSITIONS**: If video depositions are taken and counsel intend to use them at trial for any purpose other than impeachment, counsel are directed to resolve any objections and edit the video accordingly so that the video may be shown without interruption. Failure to do this prior to trial will result in objections being deemed waived. No video deposition may be admitted as evidence at trial unless all parties have had the opportunity to attend and cross-examine the witness at the deposition. To the extent that a

party or parties reasonably believes or believe that a video deposition will be used at trial as substantive testimony in lieu of calling the witness live, no such deposition may be conducted unless the opposing party or parties have had an opportunity to conduct a discovery deposition at least ten days prior to the scheduled date of the video deposition. Such discovery deposition will not count against the deposition limit set forth in this Pretrial Order and Case Management Plan unless the discovery deposition was conducted before notice of the video deposition for use at trial. Nothing in this provision shall bar the parties from otherwise using a video deposition for all uses provided under the Federal Rules of Civil Procedure and Rules of Evidence and nothing in this provision precludes any party from having a discovery deposition recorded by video.

**F.** **PROTECTIVE ORDER**: The parties have entered into a Protective Order Regarding Confidentiality which has been adopted and entered by the Court, (Doc. Nos. 43, 45). The terms and conditions of this Protective Order are adopted by reference and incorporated into this Pretrial Order and Case Management Plan. To the extent that there is ambiguity in these orders, the terms and conditions of the Protective Order shall be followed pending any clarification or interpretation. Any objections made to discovery requests shall be accompanied by a draft proposed protective order if such order is, or will be, requested. When counsel submit proposed protective orders, they shall include a provision leaving the ultimate disposition of protected materials subject to a final order of the Court on the completion of litigation.

**G. DISCOVERY COMPLETION**: By **May 19, 2017**, each party shall have made any demands for "claims data"[1] that it intends to make from the following six insurers – Aetna, Blue Cross Blue Shield of North Carolina, Blue Cross Blue Shield of South Carolina, Cigna, MedCost, and UnitedHealthcare. Any subsequent demands for claims data from those six insurers may only be made with leave of the court on good cause shown. Plaintiffs and defendants shall meet and confer by **May 26, 2017,** to determine if they can demand a common set of claims data from the six insurers. The parties shall exchange preliminary fact witness lists by **September 22, 2017.** Those lists shall contain no more than 20 potential fact witnesses per side (including fact witnesses who may also offer expert testimony). If a party is unable to identify by name a witness, but is able to identify for whom the witness is (or was) employed and the category or categories of testimony about which the witness is expected to testify, a party may identify such a witness generically using this information for up to five witnesses. This generic identification does not apply to witnesses employed or formerly employed by a party and is intended to apply to potential witnesses employed or formerly employed by third parties. The parties shall exchange final fact and expert witness lists by **January 5, 2018**, not to exceed 25 fact witnesses per side and with no more than five fact witnesses not previously listed on the preliminary fact witness list. Parties may not generically identify witnesses on this final fact witness list. Any individual identified on a party's final fact witness list who was not identified on the party's preliminary witness list, including any witness who was previously identified

[1] Such data is understood by the parties to be "machine readable" data which sets forth claims for any requested period. It is the intent of this provision to alleviate the burden on the named third parties in producing such data, but documentary material—such as emails, spreadsheets, or other similar items—that are not machine readable and which may contain or refer to claims data is not intended to be encompassed in this paragraph.

generically may be deposed. Such new witness' depositions shall not count against the deposition limit. Thereafter, a party may add to a witness list only upon leave of court and for good cause shown. For each expert listed, the parties shall provide the name, address and affiliation of the expert as well as a copy of the expert's resume. Within ten (10) days, each side may supplement its list to add additional experts, but only if directly responsive to an expert listed by the other side**.** All factual discovery, other than discovery to authenticate documents shall be completed by **February 2, 2018**. All discovery (fact and expert) shall be complete no later than **July 27, 2018**. Supplementations per Rule 26(e) shall be due within **thirty (30) days** after obtaining applicable information. Counsel are directed to initiate discovery requests and notice or subpoena depositions sufficiently in advance of the discovery deadline so as to comply with this Order. Discovery requests that seek responses or schedule depositions after the discovery completion deadline are not enforceable except by order of the Court for good cause shown. The parties may consent to extensions of the discovery completion deadline so long as any such extension expires not later than ten (10) days prior to scheduled trial time. If a party requests an extension of time to respond to discovery requests or to extend the discovery deadline, the result of consultation with opposing counsel must be stated in the motion.

**H.** **EXPERT WITNESSES**: Pursuant to Rule 26(a)(2) and by **March 9, 2018**, the Plaintiffs shall provide expert reports from any witness they expect to testify as an expert that is either (a) retained or specifically employed to provide expert testimony in the case or (b) otherwise employed by one of them. By **May 4, 2018**, Defendant shall provide reports pursuant to Rule 26(a)(2) of any witness it expects to testify as an expert that is either (a) retained or specifically employed to provide expert testimony in the case or (b) otherwise

employed by it. The Plaintiffs shall provide rebuttal reports from any witness they expect to testify as an expert that is either (a) retained or specially employed to provide expert testimony in the case, or (b) otherwise employed by one of them by **June 8, 2018**. For any witness from which a party intends to elicit expert testimony, but who is not either (a) retained or specially employed to provide expert testimony in the case, or (b) otherwise employed by a party, the party shall provide the disclosures described in F.R.C.P. 26(a)(2)(C)(i) and (ii) on March 9, 2018 (for Plaintiffs) and on May 4, 2018 (for Defendant). If any witness was deposed before he or she was identified as offering expert testimony, that previous deposition will not foreclose another deposition as set forth in paragraph I below to explore the expert's testimony and bases thereof. Any expert witness not identified in accordance with this paragraph shall not be permitted to testify at trial.

**I.** **DEPOSITIONS OF EXPERT WITNESSES**: The parties shall make expert witnesses available for deposition at mutually convenient times and places. The deposition of an expert witness shall not be used by the party identifying the expert in lieu of the expert's appearance at trial unless all parties consent. Nothing in this Pretrial and Case Management Order shall bar the parties from otherwise using the deposition of an expert witness for all uses provided for under the Federal Rules of Civil Procedure and Rules of Evidence. Each party shall be responsible for the applicable fees and expenses of the expert witness identified by the party. The party taking the deposition of the expert witness is not required to subpoena the witness for attendance at the deposition. In addition, each expert shall be required to appear at a deposition with all materials the expert relied on that were not previously produced to the other side. This requirement does not alter the parties' November 15, 2016 agreement regarding what the experts are not required to preserve or

disclose and what they are required to disclose. Any party may choose to attend or conduct the deposition of an expert witness by telephone or by video-conference provided that counsel for any party to this action may appear in person at the deposition. In the event counsel for a party chooses to conduct or attend the deposition of an expert witness by video-conference, the expert witness shall be required to appear at a video-conferencing facility within 40 miles of his or her place of business. The party represented by counsel attending by video-conference shall bear the costs of travel by the expert witness to the video-conferencing facility. All parties who have counsel attend a deposition by video-conference shall split the costs of the video-conference on a pro rata basis.

**J.** **TIME LIMITATION ON DEPOSITIONS**: If the deposition of a third-party is noticed by one side, and not cross-noticed within three (3) business days of the service of the notice, then the side which issued the notice shall allot two (2) hours for examination to the side that did not issue the notice. If a deposition is cross-noticed, then the parties shall evenly split the deposition time by side. If a party cross-notices a third-party deposition, but uses two hours or less of its allocated 3.5 hours, 1.5 hours reverts to the opposing party. Otherwise, there is no reallocation of deposition time for cross-noticed or non-cross-noticed depositions. Depositions of witnesses may not extend for more than 7 hours of examination time, unless the witness agrees or the Court orders additional examination time. However, no side shall be permitted to examine an individual witness in deposition for more than 7 hours.

## II. MOTIONS

**A.** **DISPOSITIVE MOTIONS DEADLINE**: All motions other than motions in limine, motions challenging expert testimony under *Daubert,* and motions to continue shall be filed

no later than **August 3, 2018**. Parties may not extend this deadline by agreement and stipulated extensions of the completion of discovery do not extend the Motions Deadline. Responses to dispositive motions shall be filed no later than **August 31, 2018**. Replies shall be filed no later than **September 14, 2018**. The dispositive motion and the response shall each be no more than 40 pages in length. Any reply shall be no more than 20 pages in length.

**B.** **MOTIONS HEARINGS**: Hearings on motions will be conducted when the Rules require a hearing, when the papers filed in support of and in opposition to the motion do not provide an adequate basis for decision, or when the Court determines it would aid the decisional process. The Court invites oral argument on dispositive motions whenever any of the attorneys believe that it would assist in the resolution of such motions. All motions requiring a hearing will be heard as soon as it is practical. The Clerk will notify all parties as far in advance as possible of the date and time set for the hearing.

**C.** **MEMORANDA IN SUPPORT OF MOTIONS**: Every motion shall include, or be accompanied by, a brief written statement of the facts, a statement of the law, including citations of authority and the grounds on which the motion is based. Motions not in compliance with this Order are subject to summary denial.

**D.** **RESPONSES AND REPLIES**: Other than as set forth in Paragraph II.A. above, responses to motions, if any, must be filed within fourteen (14) days of the date on which the motion is filed. Replies to responses, if any, must be filed within seven (7) days of the date on which the response is filed. All motions, and oppositions and replies related thereto, will be by the Court's electronic filing system and will not extend the time for a response or reply provided that such motion or opposition is served no later than 8:00pm, Eastern Time. Motions or oppositions served after 8:00pm, Eastern Time, shall be considered as filed for the purposes

of any response on the next business day. Any service other than by the electronic filing system or by e-mail shall be subject to Rule 6(d) and the respondent shall have an additional three (3) days to file a response or reply.

**E.** **ENLARGEMENT OF TIME**: If counsel need more than fourteen (14) days to file a response or seven (7) days to file a reply, a motion for extension of time shall be filed, accompanied by a proposed order. The moving party must show consultation with opposing counsel regarding the requested extension and must notify the Court of the views of opposing counsel on the request. If a party fails to make the requisite showing, the Court may summarily deny the request for extension.

**F.** **MOTIONS TO COMPEL**: A motion to compel must include a statement by the movant that the parties have conferred in good faith in an attempt to resolve the dispute and are unable to do so. Consistent with the spirit, purpose, and explicit directives of the Federal Rules of Civil Procedure and the Local Rules of the Western District of North Carolina, the Court expects all parties (and counsel) to attempt in good faith to resolve discovery disputes without the necessity of court intervention. Failure to do so may result in appropriate sanctions.

## III. TRIAL

**A.** **TRIAL DATE**. A bench trial is scheduled for **November 5, 2018**. The parties estimate that the total time needed for trial will be approximately **15 days**.

**B.** **TRIAL SUBPOENAS**: Counsel must subpoena all witnesses at least ten (10) days before the trial date. The Court may elect not to enforce subpoenas that have not been issued in compliance with this deadline, or, if requested, may quash subpoenas that have not been issued in compliance with this deadline. To assist the parties in planning discovery, and in view of the possibility that potential witnesses may be located outside this District, the

parties shall be permitted, pursuant to 15 U.S.C. § 23, to issue trial subpoenas that may run into any other federal district requiring witnesses to attend this Court.

**C. COUNSEL'S DUTIES PRIOR TO TRIAL**:

a) After **September 14, 2018**, and no later than **September 28, 2018**, counsel for all parties shall:

i. Discuss the possibility of settlement;

ii. Exchange copies of exhibit lists, and proposed exhibits or permit inspection if copying is impractical;

iii. Number and become acquainted with all exhibits;

iv. Exchange by page and line number(s) the identification of the portions of depositions which each side intends to offer into evidence; and

v. File any *Daubert* motions related to experts or motions in limine.

b) Counsel shall by **October 10, 2018,** exchange objections to the admissibility exhibits and the identification of depositions intended to be offered into evidence and counter-designate those portions of depositions which each intends to introduce into evidence in response to those designations.

c) Counsel shall also file any responses to *Daubert* motions related to experts or motions in limine by **October 10, 2018**. Without leave of the Court, no replies to any such motions shall be filed.

d) Counsel shall by **October 15, 2018,** meet and confer to resolve the admissibility of exhibits and deposition designations.

**D. COUNSEL'S FILINGS TWO WEEKS BEFORE TRIAL**: By **October 19, 2018,** counsel for each party shall file with the Clerk of Court each of the following:

a) A trial brief addressing all issues of fact;

b) The deposition testimony a party will offers as evidence at trial; and

c) Based upon the designations and counter-designations noted above, the parties shall agree on and provide a trial copy with highlighting to distinguish between such designations, subject to objection. The parties shall list in the margin or by other appropriate means, objections to such testimony and responses to those objections.

d) Agree upon stipulations of fact and file them with the Court. The parties are encouraged to stipulate to as many facts as possible to facilitate the trial of the case.

**E.** On **October 29, 2018**, counsel for the parties will be available for a final pre-trial conference.

**F.** **COUNSEL'S FILINGS ON THE FIRST DAY OF TRIAL**: No later than the morning of the first day of trial, counsel for each party shall file with the Clerk of Court an original and four (4) copies of the following:

a) A witness list containing the name of every proposed witness;

b) A statement of the education, experience, and qualifications of each expert witness, unless the parties have stipulated to the qualifications of each expert witness;

c) Stipulations concerning the authenticity of as many proposed exhibits as possible; and

d) An exhibit list.

**G.** **COUNSEL'S FILINGS POST-TRIAL**: **Thirty (30) days** after the delivery of the final volume of transcript for the trial, counsel shall file with the Court their Proposed Conclusions of Law and their Proposed Findings of Fact.

**H.** **EXHIBITS**: Parties are expected to use presentation technology available in the courtroom. Training on the equipment should be arranged well in advance of trial with the courtroom deputy. See "Courtroom Technology" link on the district website at www.ncwd.uscourts.gov.

Counsel shall provide in electronic format any exhibits of documents, photographs, videos, and any other evidence that may be reduced to an electronic file, for the use of Court personnel and the Court's Jury Evidence Recording System (JERS) during trial. Documents and photographs shall be in **.pdf, .jpg, .bmp, .tif,** or **.gif** format; video and audio recordings shall be in **.avi, .wmv, .mpg, .mp3, .wma,** or **.wav** format. Each electronic exhibit shall be saved as a separate, independent file, and provided to the Court on a storage device, such as cd, dvd, or flash drive. Exhibit files shall be named consistent with their order and name on the exhibit list. For example:

Exhibit 1 - photograph of . . .

Exhibit 2(a) - contract

Exhibit 2(b) - video deposition of . . .

**I.** **FORMAT FOR EXHIBIT LIST**: In preparing the exhibit list, counsel separately shall identify and number each exhibit, shall arrange the list numerically by exhibit number, and shall place the following headings on the exhibit list:

| Exhibit# | Description | Objections | Identified By | Admitted |
|---|---|---|---|---|

It is not necessary for counsel to make entries in either the "Identified By" column or the "Admitted" column. Counsel shall also provide an electronic copy of the exhibit list with the electronic exhibit files.

## IV. ADR

**A.** **METHOD**: The method of ADR to be utilized in this case is **Mediated Settlement Conference**.

**B.** **DEADLINE**: The timing for completing ADR and filing a report on the results is in the parties' discretion but shall be completed no later than **July 20, 2018.**

## V. SANCTIONS FOR FAILURE TO COMPLY WITH THE PRETRIAL ORDER

Failure to comply with any of the provisions of this Order which causes added delay or expense to the Court may result in the imposition of sanctions as provided by the Federal Rules of Civil Procedure.

Signed: May 18, 2017

Robert J. Conrad, Jr.
United States District Judge