

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of

Cabell Huntington Hospital, Inc.
a corporation;

and

Pallottine Health Services, Inc.
a corporation;

and

St. Mary's Medical Center, Inc.
a corporation.

Docket No. 9366

JOINT MOTION TO AMEND SCHEDULING ORDER

Complaint Counsel and Respondents Cabell Huntington Hospital Inc. ("Cabell"), Pallottine Health Services, Inc., and St. Mary's Medical Center, Inc. ("St. Mary's") jointly move the Court for an order amending the December 4, 2015 Scheduling Order. In light of recent West Virginia legislation that may create a path to state action immunity for Respondents' transaction, the Parties have agreed to file a joint motion seeking Commission approval to withdraw this matter from adjudication. In case the Commission does not agree to withdraw the matter from adjudication, the Parties will seek alternative relief to reschedule the start of the Part 3 trial for at least three weeks (i.e., no earlier than April 26, 2016).

In light of the forthcoming motion to withdraw the matter from adjudication, the Parties ask the Court for the following amendments to the imminent, remaining deadlines in the Scheduling Order to avoid costly and resource-intensive work that may ultimately be

unnecessary if the matter is withdrawn from adjudication.¹ This is the first motion any party has filed for an amendment to the Court's December 4, 2015 Scheduling Order.

The parties hereby request the following amendments detailed below:

Submission/Filing	December 4, 2015 Scheduling Order Deadline	Proposed Amended Deadline
Deadline for filing motions in limine to preclude admission of evidence.	March 15, 2016	March 26, 2016
Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists.	March 16, 2016	March 30, 2016
Deadline for filing motions for in camera treatment of proposed trial exhibits.	March 17, 2016	March 26, 2016
Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.	March 18, 2016	April 4, 2016
Deadline for filing responses to motions in limine to preclude admissions of evidence.	March 21, 2016	March 30, 2016, 5:00 pm
Complaint Counsel files pretrial brief supported by legal authority.	March 22, 2016	April 1, 2016
Deadline for filing responses to motions for in camera treatment of proposed trial exhibits.	March 22, 2016	March 30, 2016, 5:00 pm
Exchange proposed stipulations of law, facts, and authenticity.	March 23, 2016	March 28, 2016
Respondents' Counsel files pretrial brief supported by legal authority.	March 29, 2016	April 1, 2016

¹ Complaint Counsel and Respondents, however, plan to file responses to the two witness-related motions previously filed and currently pending with the Court, specifically Complaint Counsel's March 11 Motion to Retain a Witness on Complaint Counsel's Final Witness List, and Respondents' March 11 Motion to Strike Witnesses from Complaint Counsel's Final Proposed Witness List.

Submission/Filing	December 4, 2015 Scheduling Order Deadline	Proposed Amended Deadline
File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be offered as agreed by the parties.	March 30, 2016, 1:00 pm	March 30, 2016, 5:00 pm
<p>Final prehearing conference to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits.</p> <p>To the extent the parties stipulate to certain issues, the parties shall prepare a Joint Exhibit which lists the agreed stipulations. Counsel may present any objections to the final proposed witness lists and exhibits. Trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a Joint Exhibit which lists the exhibits to which neither side objects. Any Joint Exhibit will be signed by each party.</p>	March 31, 2016	April 1, 2016
Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.	April 5, 2016	April 5, 2016

A Proposed Order is attached.

Dated: March 15, 2016

Respectfully submitted,

/s/ Alexis Gilman

Alexis Gilman
Tara Reinhart
Mark D. Seidman
Michelle Yost
Elizabeth C. Arens
Jeanine Balbach
Stephanie R. Cummings
Melissa Davenport
Svetlana S. Gans
Thomas H. Brock
Elisa Kantor
Michael Perry
Samuel I. Sheinberg
David J. Laing
Nathaniel Hopkin
Steve Vieux
Matthew McDonald
Jeanne Liu Nichols
Amy Posner
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580-0001
Phone: 202-326-2638
Email: agilman@ftc.gov
Email: treinhart@ftc.gov
Email: mseidman@ftc.gov
Email: myost@ftc.gov
Email: earens@ftc.gov
Email: jbalbach@ftc.gov
Email: srcummings@ftc.gov
Email: mdavenport@ftc.gov
Email: sgans@ftc.gov
Email: tbrock@ftc.gov
Email: ekantor@ftc.gov
Email: mperry@ftc.gov
Email: ssheinberg@ftc.gov
Email: dlaing@ftc.gov
Email: nhopkin@ftc.gov
Email: svieux@ftc.gov
Email: mmcdonald@ftc.gov
Email: jnichols@ftc.gov

/s/ Geoffrey S. Irwin

Geoffrey S. Irwin
Kerri L. Ruttenberg
Kenneth W. Field
Michael S. Fried
Louis K. Fisher
Tara Lynn R. Zurawski
Debra R. Belott
Douglas E. Litvack
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
Email: gsirwin@jonesday.com
Email: kruttenberg@jonesday.com
Email: kfield@jonesday.com
Email: msfried@jonesday.com
Email: lkfisher@jonesday.com
Email: tzurawski@jonesday.com
Email: dbelott@jonesday.com
Email: dlitvack@jonesday.com
Telephone: (202) 879-3939
Facsimile: (202) 626-1700

Aaron M. Healey
Sergio A. Tostado
Benjamin B. Menker
JONES DAY
325 John H. McConnell Blvd., Suite 600
Columbus, OH 43215-2673
Email: ahealey@jonesday.com
Email: stostado@jonesday.com
Email: bmenker@jonesday.com
Telephone: (614) 469-3939
Facsimile: (614) 461-4198

Lindsey Lonergan
Jessica C. Casey
Mary Ellen Robinson
JONES DAY
1420 Peachtree Street, N.E., Suite 800
Atlanta, GA 30309-3053
Email: llonergan@jonesday.com

Email: aposner@ftc.gov

Complaint Counsel

Email: jcasey@jonesday.com
Email: merobinson@jonesday.com
Telephone: (404) 521-3939
Facsimile: (404) 581-8330

Devin A. Winklosky
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219-2514
Email: dwinklosky@jonesday.com
Telephone: (412) 391-3939
Facsimile: (412) 394-7959

Thomas L. Craig
James R. Bailes
BAILES, CRAIG & YON, PLLC
Post Office Box 1926
Huntington, WV 25720-1926
Email: tlc@bcyon.com
Email: jrb@bcyon.com
Telephone: (304) 697-4700
Facsimile: (304) 697-4714

Counsel for Respondent
Cabell Huntington Hospital, Inc.

/s/ David W. Simon

David W. Simon
Brett H. Ludwig
H. Holden Brooks
FOLEY & LARDNER LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202-5306
Phone: 414-271-2400
Facsimile: 414-297-4900
Email: dsimon@foley.com
Email: bludwig@foley.com
Email: hbrooks@foley.com

Benjamin R. Dryden
FOLEY & LARDNER LLP
3000 K Street, N.W.
Washington, DC 20007-5109
Phone: 202-945-6128
Facsimile: 202-672-5399
Email: bdryden@foley.com

*Counsel for Respondents
Pallottine Health Services, Inc.
and St. Mary's Medical Center, Inc.*

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

Cabell Huntington Hospital, Inc.
a corporation;

and

Pallottine Health Services, Inc.
a corporation;

and

St. Mary's Medical Center, Inc.
a corporation

Docket No. 9366

[PROPOSED] ORDER ON JOINT MOTION TO AMEND SCHEDULING ORDER

Upon joint motion of Complaint Counsel and Respondents, it is hereby

ORDERED, that the Court's December 4, 2015 Scheduling Order is amended as follows:

Submission/Filing	Amended Deadline
Deadline for filing motions in limine to preclude admission of evidence.	March 26, 2016
Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists.	March 30, 2016
Deadline for filing motions for in camera treatment of proposed trial exhibits.	March 26, 2016
Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.	April 4, 2016
Deadline for filing responses to motions in limine to preclude admissions of evidence.	March 30, 2016, 5:00 pm

Submission/Filing	Amended Deadline
Complaint Counsel files pretrial brief supported by legal authority.	April 1, 2016
Deadline for filing responses to motions for in camera treatment of proposed trial exhibits.	March 30, 2016, 5:00 pm
Exchange proposed stipulations of law, facts, and authenticity.	March 28, 2016
Respondents' Counsel files pretrial brief supported by legal authority.	April 1, 2016
File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be offered as agreed by the parties.	March 30, 2016, 5:00 pm
<p>Final prehearing conference to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits.</p> <p>To the extent the parties stipulate to certain issues, the parties shall prepare a Joint Exhibit which lists the agreed stipulations. Counsel may present any objections to the final proposed witness lists and exhibits. Trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a Joint Exhibit which lists the exhibits to which neither side objects. Any Joint Exhibit will be signed by each party.</p>	April 1, 2016
Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.	April 5, 2016

All other provisions of the December 4, 2015 Scheduling Order remain in effect.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2016, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

/s/ Geoffrey S. Irwin

*Counsel for Respondent
Cabell Huntington Hospital, Inc.*

Notice of Electronic Service

I hereby certify that on March 15, 2016, I filed an electronic copy of the foregoing Joint Motion to Amend Scheduling Order, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on March 15, 2016, I served via E-Service an electronic copy of the foregoing Joint Motion to Amend Scheduling Order, upon:

Thomas H. Brock
Attorney
Federal Trade Commission
TBrock@ftc.gov
Complaint

Alexis Gilman
Attorney
Federal Trade Commission
agilman@ftc.gov
Complaint

Tara Reinhart
Attorney
Federal Trade Commission
treinhart@ftc.gov
Complaint

Mark D. Seidman
Attorney
Federal Trade Commission
mseidman@ftc.gov
Complaint

Michelle Yost
Attorney
Federal Trade Commission
myost@ftc.gov
Complaint

Kenneth Field
Jones Day
kfield@jonesday.com
Respondent

Geoffrey Irwin
Jones Day
gsirwin@jonesday.com
Respondent

Kerri Ruttenberg
Jones Day
kruttenberg@jonesday.com
Respondent

Michael Fried
Jones Day
msfried@jonesday.com
Respondent

Louis Fisher
Jones Day
lkfisher@jonesday.com
Respondent

Tara Zurawski
Jones Day
tzurawski@jonesday.com
Respondent

Douglas Litvack
Jones Day
dlitvack@jonesday.com
Respondent

Aaron Healey
Jones Day
ahealey@jonesday.com
Respondent

Thomas Craig
Bailes, Craig & Yon, PLLC
tlc@bcyon.com
Respondent

James Bailes
Bailes, Craig & Yon, PLLC
jrb@bcyon.com
Respondent

David Simon
Foley & Lardner LLP
dsimon@foley.com
Respondent

H. Holden Brooks
Foley & Lardner LLP
hbrooks@foley.com
Respondent

Benjamin Dryden
Foley & Lardner LLP
bdryden@foley.com
Respondent

Elizabeth C. Arens
Attorney
Federal Trade Commission
earens@ftc.gov

Complaint

Jeanine Balbach
Attorney
Federal Trade Commission
jbalbach@ftc.gov
Complaint

Stephanie R. Cummings
Attorney
Federal Trade Commission
srcummings@ftc.gov
Complaint

Melissa Davenport
Attorney
Federal Trade Commission
mdavenport@ftc.gov
Complaint

Svetlana S. Gans
Attorney
Federal Trade Commission
sgans@ftc.gov
Complaint

Elisa Kantor
Attorney
Federal Trade Commission
ekantor@ftc.gov
Complaint

Michael Perry
Attorney
Federal Trade Commission
mperry@ftc.gov
Complaint

Marc Schneider
Attorney
Federal Trade Commission
mschneider@ftc.gov
Complaint

Samuel I. Sheinberg
Attorney
Federal Trade Commission
ssheinberg@ftc.gov
Complaint

David J. Laing
Attorney
Federal Trade Commission
dlaing@ftc.gov
Complaint

Nathaniel Hopkin
Attorney
Federal Trade Commission

nhopkin@ftc.gov
Complaint

Steve Vieux
Attorney
Federal Trade Commission
svieux@ftc.gov
Complaint

Lindsey Lonergan
Jones Day
llonergan@jonesday.com
Respondent

Jessica Casey
Jones Day
jcasey@jonesday.com
Respondent

Brett Ludwig
Foley & Lardner LLP
bludwig@foley.com
Respondent

Max Meckstroth
Foley & Lardner LLP
mmeckstroth@foley.com
Respondent

Timothy Patterson
Foley & Lardner LLP
tpatterson@foley.com
Respondent

Philip Babler
Foley & Lardner LLP
pcbabler@foley.com
Respondent

Miriam Carroll
Foley & Lardner LLP
mcarroll@foley.com
Respondent

Emily Brailey
Foley & Lardner LLP
ebrailey@foley.com
Respondent

Matthew McDonald
Attorney
Federal Trade Commission
mmcdonald@ftc.gov
Complaint

Jeanne Liu Nichols
Attorney
Federal Trade Commission
jnichols@ftc.gov

Complaint

Sergio Tostado
Jones Day
stostado@jonesday.com
Respondent

Benjamin Menker
Jones Day
bmenker@jonesday.com
Respondent

Devin Winklosky
Jones Day
dwinklosky@jonesday.com
Respondent

Debra Belott
Jones Day
dbelott@jonesday.com
Respondent

Benjamin Menker
Attorney