

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**Heartland Surgical Speciality
Hospital, LLC, et.al.,**

Plaintiff,

v.

Case No. 05-2164-MLB-DWB

**Midwest Division, Inc., d/b/a HCA
Midwest Division, et.al.,**

Defendants.

STATUS CONFERENCE ORDER NO. 1

On September 13, 2006, pursuant to Fed. R. Civ. P. 16(b), the undersigned magistrate judge conducted a scheduling conference in this case with the parties. The parties appeared through counsel as follows:

Plaintiff Heartland Surgical Speciality Hospital:

Patrick J. Stueve, Norman E. Siegel, Todd M. McGuire and Rachael E.
Schwartz*¹;

Defendant Midwest Division, Inc.:

David E. Everson, Jr., Eric J. McCarthy and Margaret Zwisler;

Defendant Blue Cross and Blue Shield of Kansas City:

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It appears that the attorneys who are noted with an asterisk by their names have not entered an appearance in the case and will therefore not receive any CM/ECF notices.

William Perry Brandt, Lynn S. McCreary and Craig S. O'Dear;*

Defendant Coventry Health Care of Kansas, Inc.:

Jeffrey J. Simon, Leonard L. Wagner and Michael S. Hargens;

Defendant Humana Health Plan, Inc.:

Philip W. Goodin, Gerald Sterns* and Barry L. Pickens;*

Defendant Cigna Healthcare of Ohio, Inc.:

Richard N. Bien and Simeon M. Schopf;

Defendant Board of Trustees of the North Kansas City Hospital:

Randall E. Hendricks;

Defendants United Healthcare of the Midwest, Inc. & United Healthcare Insurance Co.:

H. Reed Walker and Mitchell D. Raup;

Defendant Saint Luke's Health System, Inc.:

Floyd R. Finch, Jr.

Defendant Carondelet Health, St. Joseph Medical Center and St. Mary's Medical Center:

Richard B. Walsh, Jr.;

Defendant Shawnee Mission Medical Center, Inc.:

John M. McFarland and Scott E. Harvison

Defendants Aetna Health Inc. and Aetna Life Insurance Company:

Robert J. Fogarty and Edward R. Spalty.

After consultation with the parties, the Court now enters this Status Conference Order No. 1 concerning topics discussed at the September 13, 2006, status conference:

1. Presently before the Court are three Motions to Seal (Doc.'s 282, 292 and 295) concerning Plaintiff's Motion to Compel, Defendants' Opposition and Plaintiff's Reply, along with a Motion for Hearing on these motions (Doc. 287). In its September 5, 2006, Order Concerning Status Conference, the Court indicated that it would hear oral argument on these motions. (Doc. 309 at ¶ 3.) At the status conference, the parties announced that they had resolved a procedural dispute raised in those motions concerning the application of paragraphs 3 and 5 of the Protective Order (Doc. 170). The parties have stipulated that the provisions of paragraph 3 shall be modified to allow a Producing Party ten (10) days to file any response to a motion to seal. The Court finds that this modification is reasonable and hereby modifies paragraph 3 of the Protective Order (Doc. 170) accordingly. With this modification, the parties announced that the pending Motions to Seal had been fully briefed and were ripe for decision.

2. The parties have met and conferred concerning another proposed revision to paragraph 7 of the Protective Order (Doc. 170) concerning the use of confidential documents during depositions, but have not been able to agree on any proposed modification. *See e.g.* Plaintiff's Motion for Modification of Protective Order to Facilitate Appropriate Use of Documents During Deposition Discovery (Doc. 314); Defendants' Letter Proposal (Doc. 315). The Court has allowed Plaintiff and Defendants to submit simultaneous briefs concerning this possible modification of the Protective Order with the initial briefs to be filed on **September 20, 2006**, and response briefs to be filed on **September 25, 2006**. Briefs shall not exceed fifteen (15) pages in length.

3. The parties believe that it would be advisable to continue the existing stay, *see* Doc. 245, of the 30-day time limit within which to file motions to compel. The Court agrees, and hereby Orders that the provisions of Paragraph III(e) of the Scheduling Order (Doc. 242) and D. Kan. Rule 37.1(b) are stayed until **January 15, 2007**. Therefore, any motion to compel concerning a discovery default or allegedly insufficient discovery response, answer or objection, which occurs on or prior to December 15, 2006, shall be filed not later than January 15, 2007. The time for filing any motions to compel concerning any discovery default or allegedly insufficient discovery response, answer or objection, which occurs after December 15, 2006, will

be subject to the 30-day provision of Paragraph III(e) of the Scheduling Order (Doc. 242) and D. Kan. Rule 37.1(b).

4. The Court hereby sets additional status conferences in this case for **November 16, 2006, and January 24, 2007.** These conferences will be held at **1:30 p.m. in Courtroom 440, Robert J. Dole U.S. Courthouse, 500 State Avenue, Kansas City, Kansas.** Counsel will not be allowed to participate by telephone in these conferences. Prior to each status conference, counsel for the respective parties are directed to consult with each other for the purpose of establishing a list of items which counsel believe need to be discussed with the Court at the conference. Any written agenda for the respective conferences should be e-mailed to the undersigned magistrate judge at ksd_bostwick_chambers@ksd.uscourts, not later than **3:00 p.m. on Tuesday, November 14, 2006 and Monday, January 22, 2007.** The parties should also be prepared to respond to any questions the Court may have concerning any pending motions that have been fully briefed as of the date of the status conference. Also, at the November 14, 2006, conference, the parties should be prepared to discuss limits on the number of depositions and limits on the number of expert witnesses.

5. Plaintiff is to complete its electronic document production not later than **October 23, 2006**, and all Defendants are to complete any of their remaining electronic document production not later than **October 23, 2006**.

6. As to any Rule 30(b)(6) depositions noticed by Plaintiffs which are to occur on or before November 2, 2006, Plaintiff shall provide to counsel for the entity to be deposed, at least seven (7) business days prior to the deposition, a copy of any of Plaintiff's electronic discovery documents which Plaintiff has not yet produced to that party and which Plaintiff intends to use during the party's Rule 30(b)(6) deposition.

Nothing in this Status Conference Order No. 1 alters the other deadlines and hearings previously set in the First Revised Scheduling Order (Doc. 242).

IT IS SO ORDERED.

Dated at Wichita, Kansas on this 15th day of September, 2006.

s/ Donald W. Bostwick
DONALD W. BOSTWICK
U.S. MAGISTRATE JUDGE