

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

INSIGHT KENTUCKY PARTNERS II, L.P.

PLAINTIFF

vs.

CIVIL ACTION NO. 3:16CV-625-CRS

LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT, ET AL

DEFENDANTS

**SCHEDULING ON AGREED
LITIGATION PLAN AND DISCOVERY SCHEDULE
AND REFERRAL ORDER**

The parties having submitted to the Court a Report of Parties' Planning Meeting with a proposed Discovery Plan (DN 35),

IT IS HEREBY ORDERED that the Court will adopt the parties' Report of Planning Meeting and Discovery Plan and the following schedule is established for the preparation of this case for trial:

1. **Pre-Discovery Disclosures:**

To be exchanged by **July 10, 2017**.

The parties are under a continuing duty to supplement their disclosures and responses as required by Rule 26(e) whenever necessary during the entire course of this litigation, but **no later than two months before end of fact discovery**.

2. **Preliminary Discovery:**

Not applicable.

3. **Special Instructions re: Interrogatories, Requests for Admissions and Depositions:**

The parties agree that the scope of discovery shall be governed by the Federal Rules of Civil Procedure subject to the parties' right to seek (or agree upon) additional or modified discovery provisions under appropriate circumstances.

- A. The parties agree that interrogatories shall be governed by the limits set forth in Fed. R. Civ. P. 33. The parties also agree that document productions shall be made, so far as practicable and economically reasonable, in electronic, searchable or native format as requested, subject to the right of any party to inspect the original hard copies as necessary. The parties shall confer on protocols for production of electronically stored information.
- B. The parties agree that depositions of fact witnesses shall be governed by the limits set forth in Fed. R. Civ. P. 30. The parties agree to establish in advance a system of numbering deposition exhibits to ensure that unique exhibit numbers, suitable for use at trial and in all motion papers and other submissions to the Court, is employed.

4. Identify Experts and Compliance with Fed. R. Civ. P. 26(a)(2):

Due no later than **December 4, 2017**. Rebuttal reports shall be due by **January 8, 2018**, and all expert discovery shall be completed by **February 5, 2018**, unless such limits are subsequently modified by agreement of the parties or by further order of the Court.

In the absence of good cause shown, no witness shall be permitted to testify except upon compliance with the provisions of this Order.

A. Physician Experts

With respect to each treating physician who is expected to testify at trial in person or by deposition, the party who will call the witness shall disclose in writing the substance of the facts and opinion to which the physician is expected to testify and a summary of the grounds for each opinion. This requirement may be satisfied by furnishing a report signed by the treating physician or by a narrative disclosure. No deposition of any treating physician shall be conducted until after the required disclosure is made.

B. Employee Experts

If a party intends to use employee experts on any issue at trial, disclosures required under Rule 26(a)(2), including any written reports or summaries of facts and opinion, must be timely made. Whether or not the employee has been deposed as a fact witness, any such employee expert may be deposed regarding his or her expert opinions before the deadline for concluding expert depositions.

C. Expert Depositions

Any expert who has been identified to give trial testimony may be deposed, subject to the limitation that any expert may be deposed for up to seven (7) hours.

5. **Joinder of Additional Parties and Amendment of Pleadings:**

Due no later than **July 31, 2017**.

6. **Other Miscellaneous Matters:**

The parties agree to the following:

A. **Electronically Stored Information**

The parties agree that they will work in good faith to reach a general stipulation for the preservation and production of documents, including Electronically Stored Information (“ESI”). Should the parties fail to agree, they shall bring the matter before the Court by motion. In no event shall any party refrain from preserving or collecting documents for production based on the fact that the parties have not yet entered into a stipulation.

B. **Service of Pleadings, Motions, Other Papers, and Discovery Requests and Responses**

All pleadings, motions, and other papers that are filed are to be served on the other party electronically as provided by the Federal Rules and Local Rules. In addition, the parties agree to serve by e-mail courtesy copies of all discovery requests and written responses and other papers that are not filed. The serving party shall attach the pleading or paper in “Portable Document Format” (.pdf) or other form of electronic file; if transmission of voluminous materials (such as a compendium of attachments or transcripts) as an e-mail attachment is impractical, then those materials shall be served by overnight delivery via service with the ability to “track” deliveries and verify receipt. Service of discovery requests, objections and responses by e-mail prior to 9:00 p.m. Eastern Time shall be the equivalent of service by hand that day for purposes of Rules 5 and 6. If service by overnight courier has been used for these papers, it will be the equivalent of service by hand on the date of receipt. The parties agree to exchange “listserv” addresses or other group e-mail addresses to facilitate service on all parties and all outside counsel for each party. The parties shall serve their discovery requests, responses, and objections on all other parties and outside counsel.

C. **Drafts and Counsel Communications with Experts**

The parties agree that no notes, drafts, or other type of preliminary written work by or for experts concerning the subject matter of this civil action shall be the subject of discovery or inquiry at trial. No communication, whether written or oral, between or among any expert(s) and counsel for the party retaining said expert(s) concerning the subject matter of this action shall be the subject of discovery or inquiry at trial. The foregoing shall not apply to any

communications or documents upon which the expert relied in forming his or her opinion as expressed in an affidavit, report or testimony, or on which an expert intends to rely as a basis for an opinion expressed in an affidavit, report or testimony in connection with this action; such communications shall be subject to discovery and inquiry at trial. Materials, communications, and other information exempt from discovery under this paragraph shall be treated as attorney work product.

D. Modification

A party's agreement to the deadlines and limitations stated in this Discovery Plan is without prejudice to its right to seek modifications of the Plan and pretrial schedule pursuant to Rules 16 and 26.

E. Privilege Log

The parties agree to make a good-faith effort to provide a privilege log within fourteen (14) calendar days of service of the final document set responsive to document requests. The parties further agree that communications between any party and its litigation counsel in anticipation of this action, and documents and things created after the date of the filing of this lawsuit need not be identified on any such privilege log.

F. 30(b)(6) Witness Designations

The parties agree to identify the corporate representative being offered to testify as a witness pursuant to Rule 30(b)(6) and the topics on which the witness is being offered to testify at least five (5) days in advance of the deposition date.

G. Third Party Materials

The parties shall provide or make available all materials obtained from third parties pursuant to Rule 45.

7. All Discovery:

To be completed by **February 5, 2018**.

Motions pertaining to unresolved discovery disputes may not be filed without first having a joint telephonic conference. Counsel shall jointly contact case manager Theresa Burch at theresa_burch@kywd.uscourts.gov or (502) 625-3546 to schedule the conference.

8. Supplemental Disclosures and Responses:

Parties to timely supplement disclosures and responses as necessary.

9. **Dispositive Motions:**

To be filed by **February 15, 2018**. Deadlines for responses and replies will adhere to the Court's rules for motions practice.

10. **Administrative Record:**

Not applicable.

IT IS FURTHER ORDERED that pursuant to 28 U.S.C. § 636(b)(1)(A), this matter is hereby **REFERRED** to Honorable Colin H. Lindsay, United States Magistrate Judge, for resolution of all litigation planning issues, entry of scheduling orders, consideration of amendments thereto, and disposition of all non-dispositive matters, including discovery issues. The Magistrate Judge is authorized and empowered to conduct all necessary scheduling conferences, hearings or other proceedings which in his discretion he deems necessary in order to properly address the issues which arise in the course of this litigation. **The Court will conduct a telephonic status conference thirty (30) days prior to the close of fact discovery. Counsel shall jointly contact case manager Theresa Burch no later than forty-five (45) days prior to the close of fact discovery to schedule the conference.**

The Magistrate Judge is further authorized to conduct a settlement conference in this matter at any time should counsel indicate that a conference would be helpful in resolving the issues. **Counsel shall jointly contact case manager Theresa Burch to schedule the conference when so needed.**

IT IS SO ORDERED.

Dated: June 29, 2017

A handwritten signature in black ink, appearing to read 'Charles R. Simpson III', is written over a faint circular seal of the United States District Court.

**Charles R. Simpson III, Senior Judge
United States District Court**

cc: Counsel of Record