

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



_____)
In the Matter of)
)
The Penn State Hershey Medical Center,)
a corporation,)
)
and)
)
PinnacleHealth System,)
a corporation,)
)
Respondents.)
_____)

DOCKET NO. 9368

**ORDER GRANTING JOINT MOTION TO AMEND THE
SCHEDULING ORDER AND REVISED SCHEDULING ORDER**

On April 22, 2016, Federal Trade Commission (“Commission”) Complaint Counsel and Respondents Penn State Hershey Medical Center and PinnacleHealth System (collectively, “the Parties”) filed a Joint Motion to Amend the Scheduling Order (“Joint Motion”). Trial in this matter is scheduled to begin on May 17, 2016.

In their Joint Motion, the Parties state as follows:

On December 9, 2015, the Commission filed a complaint in the United States District Court for the Middle District of Pennsylvania seeking a temporary restraining order and a preliminary injunction to prevent Respondents from consummating the transaction that is the subject of this case. *FTC et al. v. Penn State Hershey Med. Ctr. et al.*, No. 1:15-cv-2362-JEJ (M.D. Pa.) (Dec. 9, 2015). The preliminary injunction hearing commenced on Monday, April 11, before Judge John E. Jones III, and was completed on Friday, April 15. Judge Jones has committed, to the best of his ability, to issue an opinion on the preliminary injunction motion before the administrative hearing begins: “It is my intention to and I’ll make every effort to render a determination by the start of the – the scheduled start of the administrative proceeding. I understand that that’s important to everybody, and so I’m going to make every attempt to do that.” *Id.*, Hearing Transcript at 995:6-10, Apr. 15, 2016.

In light of Judge Jones' statement, the Parties ask for amendments to the remaining deadlines in the Scheduling Order. The Parties have not previously sought any extensions to other deadlines in the Scheduling Order, issued on January 13, 2016. Revising the remaining deadlines in the Scheduling Order will avoid costly and resource-intensive work that may ultimately be unnecessary.¹ Based on the foregoing, there is good cause for the requested extensions. 16 C.F.R. § 3.21(c)(2).

Accordingly, the Joint Motion is GRANTED. The Scheduling Order is hereby revised as follows:

- May 9, 2016 - Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondents' expert reports. If material outside the scope of fair rebuttal is presented, Respondents will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondents).
- May 9, 2016 - Deadline for filing motions *in limine* to preclude admission of evidence.
- May 9, 2016 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- May 9, 2016 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- May 10, 2016 - Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists.
- May 10, 2016 - Complaint Counsel files pretrial brief supported by legal authority.
- May 11, 2016 - Deadline for filing responses to motions *in limine* to preclude admissions of evidence.

¹ In a motion to stay the proceedings, filed with the Commission on February 2, 2016, Respondents stated that the decision by the District Judge in *FTC et al. v. Penn State Hershey Med. Ctr. et al.*, No. 1:15-cv-2362-JEJ (M.D. Pa.) "will almost certainly have the effect of mooting the hearing: If the district court denies relief, history indicates that the Commission is likely to abandon the administrative complaint, as it has done following every denial of injunctive relief in the past two decades. If the court instead enjoins the transaction, Respondents have no intention of pursuing the combination, barring extraordinary circumstances. Thus, regardless of what the district court decides, its holding is likely to be case-dispositive, and the Part III hearing will accomplish little more than unnecessarily consuming the Commission's – and Respondents' – limited resources."

- May 11, 2016 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- May 11, 2016 - Exchange proposed stipulations of law, facts, and authenticity.
- May 13, 2016 - Respondents' Counsel file pretrial brief supported by legal authority.
- May 13, 2016 - By 1:00 p.m., file final stipulations of law, facts, and authenticity. Any subsequent stipulations may be offered as agreed by the parties.
- May 16, 2016 - 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.

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. (Do not include a signature line for the ALJ.)

- May 17, 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.

All of the Additional Provisions in the January 13, 2016 Scheduling Order shall remain in effect.

ORDERED:



 D. Michael Chappell
 Chief Administrative Law Judge

Date: April 25, 2016