

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITY HEALTH PLANS INSURANCE  
CORPORATION,

Plaintiff,

v.

IOWA HEALTH SYSTEM d/b/a  
UNITYPOINT HEALTH,

Defendant.

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PRELIMINARY PRETRIAL  
CONFERENCE ORDER

13-cv-845-wmc

This court held a telephonic scheduling conference on February 11, 2014. Both parties appeared by counsel. The court, with the input of the parties, set the schedule for this case and advised the parties that their conduct throughout this case is governed by this pretrial conference order and the attachments to it. The court also determined that certain amendments to the preliminary injunction were appropriate.

Consistent with that conference, IT IS ORDERED that:

A. The court's original Preliminary Injunction is amended to read as follows:

1. UnityPoint and its affiliates are preliminary enjoined from:

- a. using "Unity" or "unity" as a stand-alone word in any of its advertising, marketing materials, logos or marks within the "Unity Health Territory" as defined in the Order & Opinion of February 5, 2014;
- b. advertising or otherwise marketing any of its health insurance or related services as offered by UnityPoint on a stand-alone basis in the Unity Health Territory, although it may describe Meriter as an affiliate of UnityPoint Health, UnityPoint Clinic, or UnityPoint At Home provided that Meriter is the dominant mark; and

- c. advertising, marketing, referring to, or otherwise indicating to the public, including prospective customers, UnityPoint's affiliation with Physicians Plus Insurance Company in the Unity Health Territory.
2. Notwithstanding the above, UnityPoint may continue its *regular* ongoing advertising and marketing efforts originating outside the Unity Health Territory, provided that (a) the principal target audience is not the Unity Health Territory *and* (b) the advertising and marketing efforts make no reference to Meriter and/or Physicians Plus Insurance Company.
3. Should either side believe that changing circumstances necessitate revisiting and revising this preliminary injunction, either side is welcome to move the court to do so.

B. Consistent with this court's direction, the parties are to confer and advise the court of their position(s) as to the appointment of a neutral branding expert **on or before Tuesday, March 4, 2014**.

C. The parties and their attorneys must at all times treat everyone involved in this lawsuit with courtesy and consideration. The parties must attend diligently to their obligations in this lawsuit and must reasonably accommodate each other in all matters so as to secure the just, speedy and inexpensive resolution of each proceeding in this matter as required by Fed. R. Civ. Pro. 1. In light of the court's entry of a preliminary injunction and truncated trial schedule, this may include reasonable requests for expedited discovery. Failure to act accordingly shall have consequences.

D. The following schedule shall apply to the remainder of this case:

**1. Amendments to the Pleadings: March 11, 2014**

Amendments to the pleadings may be filed and served without leave of court not later than the date set forth above.

**2. Disclosure of Liability Experts: Proponent: May 28, 2014**

**Respondent: June 27, 2014**

**Disclosure of Damages Experts: Proponent: July 30, 2014**

**Respondent: August 29, 2014**

All disclosures mandated by this paragraph must comply with the requirements of Rule 26(a)(2). There shall be no third round of rebuttal expert reports. Supplementation pursuant to Rule 26(e) is limited to matters raised in an expert's first report, must be in writing and must be served not later than five calendar days before the expert's deposition, or before the general discovery cutoff if no one deposes the expert. Any employee of a party who will be offering expert opinions during any phase of this case must comply with all of these disclosure requirements.

Failure to comply with these deadlines and procedures could result in the court striking the testimony of a party's experts pursuant to Rule 37. The parties may agree between themselves to modify these deadlines and procedures .

**3. Deadline for Filing Dispositive Motions: June 27, 2014**

Dispositive motions may be filed and served by any party on any date up to the deadline set forth above. All dispositive motions must be accompanied by supporting briefs.

All responses to any dispositive motion must be filed and served within 21 calendar days of service of the motion, which the court presumes is the date the motion is filed with the court. Any reply by the movant must be filed and served within 10 calendar days of service of the response, which the court presumes to be the date the response is filed with the court. The parties may not modify this schedule without leave of court.

If any party files a motion for summary judgment, all parties must follow this court's procedure governing such motions, a copy of which is attached to this order. The court will not consider any document that does not comply with its summary judgment procedure. A party may not file more than one motion for summary judgment in this case without leave of court.

Parties are to undertake discovery in a manner that allows them to make or respond to dispositive motions within the scheduled deadlines. The fact that the general discovery deadline cutoff, set forth below, occurs after the deadlines for filing and briefing dispositive motions is not a ground for requesting an extension of the motion and briefing deadlines.

#### **4. Settlement Letters: September 15, 2014**

Not later than this date, each party must submit a settlement letter to the clerk of court at [clerkofcourt@wiwd.uscourts.gov](mailto:clerkofcourt@wiwd.uscourts.gov). The letter should contain the terms and conditions upon which the party would this case. Such letters should be marked "Under Seal" and should not be sent to opposing counsel. Such letters will not become part of the record in this

case. Upon receipt of the letters, the clerk of court will initiate settlement discussions with counsel.

**5. Discovery Cutoff: September 8, 2014**

All discovery in this case must be completed not later than the date set forth above, absent written agreement of all parties to some other date. Absent written agreement of the parties or a court order to the contrary, all discovery must conform with the requirements of Rules 26 through 37 and 45. Rule 26(a)(1) governs initial disclosures unless the parties agree in writing to the contrary.

The following discovery materials *shall not* be filed with the court unless they concern a motion or other matter under consideration by the court: interrogatories; responses to interrogatories; requests for documents; responses to requests for documents; requests for admission; and responses to requests for admission.

A party need not file a deposition transcript with the court until that party is using the deposition in support of some other submission, at which time the entire deposition must be filed. The court is retaining its policy that depositions that are not filed with the court by the deadline for filing pretrial submissions shall not be used by any party for any purpose at trial.

All deposition transcripts must be in compressed format. The court will not accept duplicate transcripts. The parties must determine who will file each transcript.

A party may not file a motion regarding discovery until that party has made a good faith attempt to resolve the dispute. All efforts to resolve the dispute must be set forth in any subsequent discovery motion filed with this court. By this order, the court requires all parties

to a discovery dispute to attempt to resolve it quickly and in good faith. Failure to do so could result in cost shifting and sanctions under Rule 37.

This court also expects the parties to file discovery motions promptly if self-help fails. Parties who fail to do so may not seek to change the schedule on the ground that discovery proceeded too slowly to meet the deadlines set in this order.

All discovery-related motions must be accompanied by a supporting brief, affidavit, or other document showing a *prima facie* entitlement to the relief requested. Any response to a discovery motion must be served and filed within seven calendar days of service of the motion, which the court presumes is the date the motion is filed with this court. Replies may not be filed unless requested by the court.

**6. Rule 26(a)(3) Disclosures *and* all motions in limine: September 22, 2014**

**Responses: September 29, 2014**

The first date is the deadline to file and serve all Rule 26(a)(3) disclosures, as well as all motions in limine, proposed voir dire questions, proposed jury instructions, and proposed verdict forms. All responses in opposition are due by the second date. The format for submitting proposed voir dire questions, jury instructions and verdict forms is set forth in the Order Governing Final Pretrial Conference, which is attached.

The parties must submit courtesy copies of all these submissions to chambers.

**7. Telephonic Final Pretrial Conference: October 14, 2014 at 3:00 p.m.**

Counsel for plaintiff is responsible for placing the call to chambers.

Any deposition that has not been filed with the Clerk of Court by the date of the final pretrial conference shall not be used by any party for any purpose at trial.

**8. Trial: October 20, 2014 at 9:00 a.m.**

Subject to further order of the court, trial shall be to a jury of seven, be bifurcated and take one week to try. Absent further order of this court, the issues to be tried shall be limited to those identified by the parties in their pleadings.

This case will be tried in an electronically equipped courtroom and the parties shall present their evidence using this equipment. Counsel shall ensure the compatibility of any of their personal equipment with the court's system prior to the final pretrial conference or shall forfeit their right to use any personal equipment that is not compatible with the court's system.

**9. Reporting Obligation of Corporate Parties.**

All parties that are required to file a disclosure of corporate affiliations and financial interest form have a continuing obligation throughout this case promptly to amend that form to reflect any changes in the answers.

Entered this 11<sup>th</sup> day of February, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY  
District Judge