

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-016572

07/13/2012

HON. SALLY SCHNEIDER DUNCAN

CLERK OF THE COURT
K. Gilmet
Deputy

DIANA S LYNCH

IVAN K MATHEW

v.

MICHAEL J HELENIC III, et al.

KENNETH B VAUGHN

ORAL ARGUMENT/
UNDER ADVISEMENT RULING

Courtroom 702 – Central Court Building

10:47 a.m. This is the time set for Oral Argument regarding Defendants' Motion to Dismiss. Counsel, Ivan K. Mathew is present on behalf of Plaintiff, Diana S. Lynch. Counsel, Kenneth B. Vaughn, is present telephonically on behalf of Defendants, Michael J. Helenic and Shakiera Helenic.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

The parties agree that Defendant, Trauma Flight 2, Inc. has been dismissed without prejudice.

Argument is presented to the Court.

IT IS ORDERED taking this matter under advisement.

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11:14 a.m. Matter concludes.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

LATER:

With respect to Defendants' Motion to Dismiss and based on the statute of limitations,

THE COURT FINDS that their discovery is necessary and that this issue is more susceptible to being determined based on a motion for summary judgment.

Accordingly,

IT IS ORDERED denying Defendants' Motion to Dismiss on this basis.

With respect to Defendants' Motion to Dismiss based upon breach of covenant of good faith and fair dealing (Count 3),

THE COURT FINDS that Plaintiff failed to respond to the fact that there is no contract between Plaintiff and Shakiera Helenic (Trauma Flight 2, Inc. has been previously dismissed as a Defendant).

Accordingly,

IT IS ORDERED granting Defendants' Motion to Dismiss the breach of covenant of good faith and fair dealing claim (Count 3) as to Shakiera Helenic.

THE COURT FURTHER FINDS that there is no privity of contract between Plaintiff and Michael Helenic.

Accordingly,

IT IS ORDERED granting Defendants' Motion to Dismiss the breach of covenant of good faith and fair dealing claim against Michael Helenic.

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With respect to the remaining claims,

IT IS ORDERED denying Defendants' Motion to Dismiss without prejudice.

IT IS FURTHER ORDERED that Defendant shall file an answer no later than **August 13, 2012**.

IT IS FURTHER ORDERED as follows:

Counsel and/or the parties are to meet personally to discuss all of the matters set forth in Rule 16(b), Ariz. R. Civ. P. Counsel and/or the parties shall prepare and file with the Court, no later than **5:00 p.m.** on **August 13, 2012**, a Joint proposed Scheduling Order, for discovery, motion and disclosure deadlines.

If the parties agree to the dates, they should prepare an Order **in the form attached hereto**, containing the provisions which are applicable to their case. For example, paragraph one of the Order set forth below need not be included in the parties' proposed Order if the parties intend to disclose their experts' identity and opinions at the same time they disclose their experts' areas of testimony. Similarly, if the parties agree to simultaneously disclose the identity and opinions of their expert witnesses, they need not include in their proposed Order the language set forth in paragraph 2a. and b., below.

The proposed Order shall include specific dates (June 1, 2012, rather than 45 days from close of discovery). Do not incorporate a firm trial date in the proposed Order.

If counsel are unable to agree on any of the items that are to be included in the Order, the reasons for their inability to agree shall be set forth in their proposed Order.

The Court will review the proposed Scheduling Order. If all is in order, the Court will set a status conference close to the discovery cutoff date. At the status conference, if the parties have completed discovery and are ready for trial, the Court will set firm dates for the final pretrial management conference and the trial. If the parties are not ready for trial, the matter will be placed on the Inactive Calendar for dismissal within 60 days.

If counsel feel a pretrial conference is still necessary at this stage of the litigation, they should address the reasons why in the first paragraph of the proposed Scheduling Order.

If a Joint proposed Scheduling Order is not timely submitted, the Court will place the matter back on the Inactive Calendar for dismissal.

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NOTE: COUNSEL SHALL UPLOAD AND E-FILE ALL PROPOSED ORDERS IN WORD FORMAT ONLY TO ALLOW FOR POSSIBLE MODIFICATIONS BY THE COURT.

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JOINT SCHEDULING ORDER

The Court has reviewed the parties' Joint Proposed Scheduling Order and adopts and/or modifies the days as follows:

IT IS ORDERED as follows:

1. The parties shall mutually and simultaneously disclose areas of expert testimony by **5:00 p.m. on _____, 2012. [or]**
 - a. Plaintiffs shall disclose areas of expert testimony by **5:00 p.m. on _____, 2012.**
 - b. Defendants shall disclose areas of expert testimony by **5:00 p.m. on _____, 2012.**
2. The parties shall mutually and simultaneously disclose the identity and opinions of their expert witnesses by **5:00 p.m. on _____, 2012. [or]**
 - a. Plaintiffs shall disclose the identity and opinions of their expert witnesses by **5:00 p.m. on _____, 2012.**
 - b. Defendants shall disclose the identity and opinions of their expert witnesses by **5:00 p.m. on _____, 2012.**
3. Any and all discovery requests shall be served by **5:00 p.m. on _____, 2012.**
4. The parties shall disclose all non-expert witnesses by **5:00 p.m. on _____, 2012. [or]**
 - a. Plaintiffs shall disclose areas of non-expert testimony by **5:00 p.m. on _____, 2012.**
 - b. Defendants shall disclose areas of non-expert testimony by **5:00 p.m. on _____, 2012.**
5. The parties shall mutually and simultaneously disclose their rebuttal expert witnesses and opinions by **5:00 p.m. on _____, 2012.**

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6. All discovery shall be concluded by **5:00 p.m. on _____, 2012.**
7. The parties shall have exchanged up-to-date final Rule 26.1 Supplemental Disclosure Statements by **5:00 p.m. on _____, 2012.** This Order does not replace the parties' obligation to seasonably disclose on an on-going basis under Rule 26.1 as information becomes available.
8. The parties shall file dispositive motions no later than _____, 2012;
9. Settlement conference (choose one):

The parties shall participate in private mediation by **5:00 p.m. on _____, 2012;**

OR

The parties shall participate in a mandatory Settlement Conference. This case is referred to the Court's Alternative Dispute Resolution for the appointment of a judge *pro tempore* to conduct a settlement conference. Counsel and/or the parties will receive a minute entry from ADR appointing the judge *pro tempore*. Counsel and any "pro per" parties will contact the appointed judge *pro tempore* to arrange the date, time, and location for the settlement conference. The judge *pro tempore* is requested to conduct a settlement conference not later than (at least 90 days out), 2012. The Office of Alternative Dispute Resolution will not do the scheduling of the settlement conference so please do not contact that office. If counsel prefer to use a private mediator to conduct the Settlement Conference, a Stipulation and Order re: Alternative to ADR must be presented to the Court by **5:00 p.m. on _____, 2012.**

All counsel and their clients, or non-lawyer representatives who have full and complete authority to settle the case, shall personally appear and participate in good faith in the Settlement Conference. Sanctions may be imposed for failure to participate.

10. No expert witnesses, expert opinions, lay witnesses, or exhibits shall be used at trial other than those disclosed in a timely manner, except for good cause shown or written agreement of the parties.
11. All pretrial motions, other than motions *in limine*, must be filed by **5:00 p.m. on _____, 2012.**

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12. For trial or any evidentiary hearing, exhibits shall be submitted to the clerk a minimum of five days prior to the scheduled trial or evidentiary hearing.
13. A **Telephonic Pretrial Status/Scheduling Conference** is set for _____, 2012 at _____ a.m./p.m. for the purpose of assigning a trial date if the case has not settled. Counsel shall have their trial calendars available. Counsel for Plaintiff shall initiate the telephonic conference by first arranging the presence of all other counsel on the conference call and by calling this division at: **(602) 506-9042** promptly at the scheduled time.
14. Should any discovery disputes arise, counsel, prior to filing discovery motions, shall meet and confer pursuant to Rule 37, Ariz.R.Civ.P.
15. The dates set forth in this Order are FIRM dates and will not be extended or modified by this Court absent good cause. Lack of preparation will not ordinarily be considered good cause.
16. This case is removed from the Inactive Calendar and all requirements of Rule 38.1, Ariz.R.Civ.P., are waived unless and until otherwise ordered by the Court.

NOTE: This Court utilizes FTR for an electronic record of the proceedings. However, any party may request the presence of a court reporter by contacting the division three (3) court business days before the scheduled hearing.

Dated: _____

HONORABLE SALLY SCHNEIDER DUNCAN
JUDICIAL OFFICER OF THE SUPERIOR COURT