

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

United States District Court
Southern District of Texas
FILED

ELIZABETH HAVAS,
Plaintiff,

MAY 17 1999

Michael N. Milby, Clerk

V.

CIVIL ACTION NO. 2:98-CV-0562

BAY AREA HEALTHCARE GROUP,
LTD. d/b/a COLUMBIA DOCTORS
REGIONAL MEDICAL CENTER, AND
COLUMBIA/HCA HEALTHCARE
CORPORATION,
Defendants.

**JOINT REPORT OF THE MEETING OF PARTIES
AND JOINT DISCOVERY/CASE MANAGEMENT PLAN**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

NOW COME Elizabeth Havas, Plaintiff, and Bay Area Healthcare Group, Ltd. d/b/a Columbia Doctors Regional Medical Center, and Columbia/HCA Healthcare Corporation, Defendants, and file this joint report of the parties' planning meeting and case management plan, in accordance with Rule 26(f) of the Federal Rules of Civil Procedure, as follows:

1. State where and when the meeting of the parties required by Rule 26(f) was held, and identify the counsel who attended for each party:

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Thomas J. Laneaux for Plaintiff and Kerry L. McGill for Defendant conferred by telephone on May 13, 1999.

2. List the cases related to this one that are pending in any state or federal court, with the case number and court.

None.

3. Briefly describe what this case is about.

Plaintiff, a registered nurse, claims a left upper back and shoulder injury as a result of an on-the-job incident on 10/31/96 in which she attempted to lift a patient slipping out of an ortho-chair. Defendant hospital is a non-subscriber under the Texas Workers' Compensation Act. Defendant Columbia/HCA Healthcare Corporation is the Plan Administrator of the hospital's employee benefit plan. Plaintiff alleges Defendant hospital was negligent in training and understaffing. Plaintiff is also seeking plan benefits and punitive damages. Defendants filed a general denial in state court prior to removal and plead the affirmative defenses of frivolous lawsuit, failure to mitigate, that Plaintiff's own negligence was the sole proximate cause of any injuries or damages to Plaintiff, foreseeability, unavoidable accident, proportionate responsibility, and offset or credit for Plan expenses paid to or on behalf of Plaintiff for medical expenses and wage supplementation. Further, Defendant Columbia/HCA Healthcare Corporation contends that the termination of ERISA benefits was in accordance with the terms of the Plan and was not arbitrary or capricious.

4. Specify the allegation of federal jurisdiction.

**Federal question, 28 U.S.C. §1331 (under ERISA 29 U.S.C. §1001, *et seq.*)
and pendent removal jurisdiction, 28 U.S.C. §1441(c).**

5. Name the parties who disagree and the reasons.

None.

6. List anticipated additional parties that should be included, when they can be added, and by whom they are wanted.

**Plaintiff has failed to correctly name the proper party to the ERISA suit.
Columbia/HCA Healthcare Corporation should be named in its capacity as
"Plan Sponsor" only.**

7. List anticipated interventions.

None.

8. Describe class-action issues.

None.

9. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures.

The parties have already answered respective discovery requests that encompass the requirements of Rule 26(a)(1), including the production of documents, and have agreed to cooperate in further disclosures, if needed or requested by either party. The parties will adhere to Rule 26 in all other respects.

10. Describe the proposed agreed discovery plan, including:

(a) Responses to all the matters raised in Rule 26(f).

An agreement on issues raised in Rule 26(f) cannot be reached until Defendant is aware of the identity of Plaintiff's counsel or Plaintiff's *pro se* status.

(b) When and to whom the plaintiff anticipates it may send interrogatories.

Plaintiff has sent interrogatories to Defendant and has received responses.

(c) When and to whom the defendant anticipates it may send interrogatories.

Defendant has sent interrogatories to Plaintiff and received responses.

(d) Of whom and by when the plaintiff anticipates taking oral depositions.

Unknown until the identity of Plaintiff's counsel is determined.

(e) Of whom and by when the defendant anticipates taking oral depositions.

Plaintiff, her designated testifying expert(s), and her treating physician, Dr. Charles W. Kennedy, Jr.

(f) When the plaintiff (or the party with the burden of proof on an issue)

will be able to designate experts and provide the reports required by Rule 26(a)(2)(B), and when the opposing party will be able to designate responsive experts and provide their reports.

Unknown until the identity of Plaintiff's counsel is determined.

- (g) List expert depositions the plaintiff (or the party with the burden of proof on an issue) anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report).

Unknown until the identity of Plaintiff's counsel is determined.

- (h) List expert depositions the opposing party anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report).

Named experts and treating physicians of Plaintiff, sixty (60) days after Plaintiff's designation of experts and tender of expert reports.

11. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party.

Not applicable.

12. Specify the discovery beyond initial disclosures that has been undertaken to date.

See response above to No. 9.

13. State the date the planned discovery can reasonably be completed.

Defendants project discovery completion by October 1, 1999, unless the trial

and scheduling order is modified.

14. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting.

Settlement was not discussed because Plaintiff's counsel has filed a Motion to Withdraw. Further, Defendants question the underlying merits of Plaintiff's case.

15. Describe what each party has done or agreed to do to bring about a prompt resolution.

N/A.

16. From the attorneys' discussion with the client, state the alternative dispute resolution techniques that are reasonably suitable, and state when such a technique may be effectively used in this case.

Mediation is normally unopposed by Defendants; however, where the status of Plaintiff's representation is questionable and Defendants feel that Plaintiff cannot make a *prima facie* case for liability, Defendants would submit that mediation would not be fruitful.

17. Magistrate judges may hear jury and non-jury trials. Indicate the parties' joint position on a trial before a magistrate judge.

There is not an agreement to have this matter heard by a magistrate.

18. State whether a jury demand has been made and if it was made on time.

No jury demand was made. Defendant maintains that a jury trial is not available under ERISA.

19. Specify the number of hours it will take to present the evidence in this case.

An approximation cannot be made until counsel for Plaintiff is identified.

20. List pending motions that could be ruled on at the initial pretrial and scheduling conference.

Plaintiff: Motion to Withdraw filed by Plaintiff's counsel.

21. List other pending motions.

None.

22. Indicate other matters peculiar to this case, including discovery, that deserve the special attention of the Court at the conference.

A ruling on Plaintiff's counsel's Motion to Withdraw and the parameters for Plaintiff to identify additional counsel or proceed *pro se*.

23. Certify that all parties have filed Disclosures of Interested Parties as directed in the Order of Conference and Disclosure of Interested Parties, listing the date of filing for original and any amendments.

Defendants have filed the required Certificate of Disclosure of Interested Parties. Plaintiff has not.

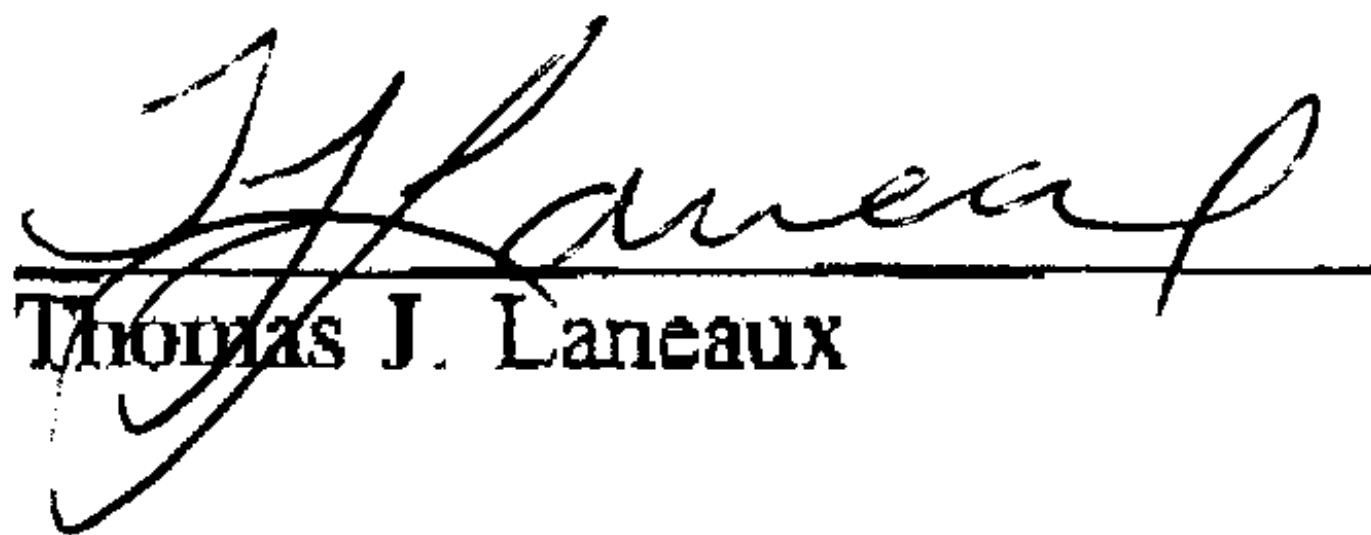

24. List the names, bar numbers, addresses, and telephone numbers of all counsel:

Counsel for Plaintiff:

Thomas J. Laneaux
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Counsel for Defendants:

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(512) 469-7924 - Facsimile

By:  By: 
Thomas J. Laneaux Kerry L. McGill

DATE: 5-13-99

DATE: 5-14-99