

CAUSE NO. \_\_\_\_\_

vs.

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IN THE DISTRICT COURT  
OF TARRANT COUNTY, TEXAS  
67TH JUDICIAL DISTRICT COURT

**DISCOVERY AND DOCKET CONTROL PLAN FOR LEVEL 3 CASE**  
(“PLAN”)

In accordance with Rules 166, 190 and 19 of the TEXAS RULES OF CIVIL PROCEDURE, the Court makes the following order and sets the following deadlines:

**TRIAL SETTING**

\_\_\_\_\_ 1. TRIAL SETTING. The trial of this cause is set for this date at 8:30 AM. Reset or continuance of this date will in no way alter any deadlines herein or as established by the TEXAS RULES OF CIVIL PROCEDURE, unless specifically provided for in this Plan after motion showing good cause.

**PRETRIAL MATTERS**

\_\_\_\_\_ 2. PRETRIAL HEARING. A pretrial hearing shall be held on this date at which time any pending motions including motions in limine, special exceptions, depositions objections or other pretrial matters must be presented to the Court in advance of trial for consideration. At this time, each party must designate deposition testimony that each party intends to use at trial and provide each party with specific deposition excerpts. (See #20 below) **Prior to this hearing, all attorneys must attempt to reach agreements on various motions.**

\_\_\_\_\_ 3. JOINDER OF PARTIES / DESIGNATION OF RESPONSIBLE THIRD PARTIES. No additional parties may be joined after this date except on motion for leave showing good cause. This paragraph does not alter the requirements of TEXAS RULES OF CIVIL PROCEDURE 38. NOTE: The party joining an additional party must serve a copy of this Plan on the new party concurrently with the pleading joining the new party. Additionally, the designation of Responsible Third Party provided in CPRC § 33.004, must be made by this date.

\_\_\_\_\_ 4. FOREIGN LAW. Motions to determine law of another state or country must be filed by this date. Failure to do so is a waiver of such contention and Texas law will apply.

\_\_\_\_\_ 5. PLAINTIFF’S EXPERT DESIGNATIONS. Plaintiff must designate its experts (name, address, telephone number and subject of testimony) and provide reports by this date.

- \_\_\_\_\_ 6. DEFENDANT'S EXPERT DESIGNATIONS. Defendant must designate its experts (name, address, telephone number and subject of testimony) and provide reports by this date.
- \_\_\_\_\_ 7. PLAINTIFF'S REBUTTAL EXPERT DESIGNATIONS. Plaintiff must designate rebuttal experts (name, address, telephone number and subject of testimony) and provide reports by this date.
- \_\_\_\_\_ 8. DEFENDANT'S REBUTTAL EXPERT DESIGNATION. Defendant must designate rebuttal experts (name, address, telephone number and subject of testimony) and provide reports by this date.
- \_\_\_\_\_ 9. DISCOVERY COMPLETION DATE. No discovery may be propounded which requires an answer after this date. All supplemental answers to written discovery requests served on the parties by opposing and other parties, including requests for disclosures, written interrogatories, requests for production and any other written discovery requests and motions must be completed by this date.

The parties may serve \_\_\_\_\_ written interrogatories, excluding interrogatories asking a party only to identify or to authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

- \_\_\_\_\_ 10. DEPOSITIONS COMPLETION DATE. The parties are required to complete oral and written depositions, including the depositions of expert witnesses by this date.

No side may examine or cross examine an individual witness or expert for more than \_\_\_\_\_ hours under TEXAS RULES OF CIVIL PROCEDURE 199.5. Additional time may be requested by motion and after hearing.

- \_\_\_\_\_ 11. PLAINTIFF'S AMENDED PLEADINGS. Plaintiff shall file with the Court and serve Defendant's and any other party's of record attorney of record with any amended pleadings by this date. No additional theories or allegations shall be pled after this date without prior leave of court based upon a showing of good cause or reason by the Plaintiff or by written agreement of the parties pursuant to Rule 11 of the TEXAS RULES OF CIVIL PROCEDURE.

- \_\_\_\_\_ 12. DEFENDANT'S AMENDED PLEADINGS. Defendant shall file with the Court and serve Plaintiff's and any other party's of record attorney with any amended pleadings, including any and all affirmative defenses and/or special exceptions in response to Plaintiffs amended pleadings by this date. No

additional affirmative defenses, inferential rebuttal defenses, or any other defensive theories shall be pled after this date without prior leave of court based upon a showing of good cause or reason by the Defendant or by written agreement of the parties pursuant to Rule 11 of the TEXAS RULES OF CIVIL PROCEDURE.

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13. PLAINTIFF'S SUPPLEMENTAL PLEADINGS and SPECIAL EXCEPTIONS. Plaintiff shall file with the Court and serve Defendant's and any other party's of record attorney with amended and/or supplemental pleadings and/or special exceptions in response to Defendant's amended or supplemental pleadings and/or special exceptions on or before this date. Except in response to Defendant's supplemental or amended pleadings, no additional theories or allegations shall be pled at this time by Plaintiff without prior leave of court based upon a showing of good cause or reason by Plaintiff or written agreement of the parties pursuant to Rule 11 of the TEXAS RULES OF CIVIL PROCEDURE.

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14. DEFENDANT'S SUPPLEMENTAL PLEADINGS and SPECIAL EXCEPTIONS. Defendant shall file with the Court and serve Plaintiff's and other party's attorney of record with amended and/or supplemental pleadings and/or special exceptions in response to Plaintiff's amended or supplemental pleadings and/or special exceptions on or before this date. Except in response to Plaintiff's supplemental or amended pleadings, no additional theories or allegations shall be pled at this time by the Defendant without prior leave of court based upon a showing of good cause or reason by Defendant or written agreement of the parties pursuant to Rule 11 of the TEXAS RULES OF CIVIL PROCEDURE.

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15. ALTERNATIVE DISPUTE RESOLUTION/MEDIATION. The parties and their attorneys, along with all parties having full and final settlement authority shall attend a settlement conference or an alternative dispute resolution in the nature of a mediation conference to encourage peaceful resolution of this matter on or before this date. If the parties are unable to agree upon a mediator, the parties will notify the Court and the Court will appoint a mediator to serve in this case. Any objections to the mediator or to mediation must be filed with the Court and with all parties no later than ten (10) days prior to the scheduled mediation conference.

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16. MOTIONS FOR SUMMARY JUDGMENT. Parties may prepare and file any motions for summary judgment, including "no evidence" motions, but without leave of Court for good cause shown, any hearings on any such summary judgment motion will not be scheduled with the Court until after an adequate time for discovery has passed on or after this date.

\_\_\_\_\_ 17. MOTIONS TO EXCLUDE EXPERT TESTIMONY (“*DAUBERT-ROBINSON*” CHALLENGES). Parties shall file any motions to exclude expert testimony based on qualifications, relevancy and reliability under Rule 702 of the TEXAS RULES OF EVIDENCE and the *Daubert-Robinson* standards by this date.

\_\_\_\_\_ 18. HEARING ON *DAUBERT-ROBINSON* CHALLENGES. Hearing on Motions to Exclude Expert Testimony Based on Qualifications, Relevancy and Reliability must be held on or before this date. (No less than 60 days before trial).

**REQUIREMENTS FOR *DAUBERT-ROBINSON* CHALLENGES.**

- (a) Affidavits, depositions excerpts and all evidence for the prima facie challenge to an expert witness must be filed 15 days before the hearing date. The challenge to the expert must specify every aspect of the expert or the opinion or the basis for the opinion that is being challenged; failure to specify a ground for a challenge is a waiver of that challenge.
- (b) Direct testimony and all other evidence in support of the challenged expert must be reduced to affidavits or deposition excerpts of each and all witnesses to be used and such material filed with the Court no later than 4:00 PM four (4) days before the scheduled hearing. Such evidence must be exchanged so as to be received in opposing counsel’s offices by 5:00 PM four (4) days before the scheduled hearing. Facsimile transmission received by that time, if receipt is confirmed by telephone, shall be the same as hand delivery for the purpose of Rule 21a of the TEXAS RULES OF CIVIL PROCEDURE.

\_\_\_\_\_ 19. TRIAL DOCUMENTS. The following must be filed with the Court  
(Court will set) by NOON and copies served on all opposing parties.

**Originals for the Court File (two-hole punched on top):**

Exhibit List

A list separately identifying each exhibit the party expects to offer during the trial.

Fact Witness List (separate document from Exhibit List)

A list including the name, address, phone number and topic of testimony of each fact witness who may be called at trial must be exchanged with counsel by this date. Designations for videotaped depositions must be filed by this date and time. All objections to such deposition designations must be filed prior to or at the pretrial conference.

Motion in Limine (with separate Order for Court’s ruling) and any other pretrial motions not yet filed with the Court.

Proposed Jury Questions/Instructions (or Findings of Fact /Conclusions of Law) (The pleading should be named “[Name of Party]’s Proposed Jury Questions and Instructions” and copied on a Microsoft Word disk. The pleading on this disk should be in 12 pitch “Arial” or comparable font, **free of any typographical emphasis** *i.e.* bolding, all caps, underlining, italics, etc., free of case cites or footnotes, and **labeled on the disk** with the case style and submitting party’s name. This document on disk should be exactly as it would be presented to a jury without signature blocks for the Judge for granting, denying or modifying any requests. This disk may be delivered to the Court on day of trial.)

Vocabulary List (if one is filed) - **Required in medical malpractice cases.**

**Courtesy Copies for Court Reporter** (To be delivered to Coordinator)

Exhibit List  
Witness List  
Vocabulary List

**20. REGARDING EXHIBITS (To be brought to Court on day of trial):**

All exhibits\* shall be **PRE-MARKED**, three-hole punched on the left side\*\* and in a three-ring binder notebook with numbered index tabs and the notebook labeled as to which party’s exhibits. If you are not able to provide a notebook, please have the exhibits three-hole punched and we will provide a notebook when you arrive.

\*See Tarrant County Local Rule #3.0.

\*\*If three-hole punching the original exhibit will destroy a part of the exhibit, such exhibit may be placed in a plastic envelope in the exhibit notebook. The Court can provide such plastic envelope if needed.

**NOTE:** This Discovery and Docket Control Plan for Level 3 Cases (the “Plan”) controls the procedures in this case and, to the extent that the Plan changes deadlines in the TEXAS RULES OF CIVIL PROCEDURE and any Local Rules of the Tarrant County District Courts, the Plan shall prevail. All parties shall comply with the Plan unless it is modified by the trial court by written order or oral statement on the record in this case before or during the trial of this case to prevent manifest injustice or as required by Rule 190.4 of the TEXAS RULES OF CIVIL PROCEDURE. By written agreement of the parties pursuant to Rule 11 of the TEXAS RULES OF CIVIL PROCEDURE, all deadlines may be modified except dates set for Trial Setting, Pretrial Hearing, and *Daubert-Robinson* challenges.

All statutory deadlines established by Chapter 74 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE are not controlled by this Plan.

Additionally, approval of this Plan by all attorneys and this Court does **not** represent an agreement by the parties and approval by this Court of modifying any statutory deadlines except those deadlines found in the TEXAS RULES OF CIVIL PROCEDURE and any Local Rules of the Tarrant County District Courts.

The parties are severally responsible for providing a copy of this Scheduling Order to all parties joined and/or attorneys making an appearance after the date this order is signed.

**SIGNED** this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
DONALD J. COSBY, JUDGE PRESIDING

**APPROVED:**

(Signatures of Attorneys - Fax signatures are acceptable)

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Attorney for Plaintiff

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Attorney for Defendant

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