

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

[Plaintiff(s) Name],

Plaintiff(s),

v.

Case No. [2-digit Case Year]-CV-[5-Digit
Case No.]-DT

[Defendant(s) Name],

Defendant(s).

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DEADLINE SUMMARY

Procedural Challenge Statement	07/25/2002
Standard of Review Statement	08/08/2002
Plaintiff's motion for judgment	08/22/2002
Defendant's motion for judgment and response to plaintiff's motion	09/12/2002
Plaintiff's reply to defendant's response	09/26/2002
Defendant's sur-reply	10/10/2002

SAMPLE

**RULE 16 CASE MANAGEMENT CONFERENCE AND SCHEDULING ORDER
FOR REVIEW OF E.R.I.S.A. ADMINISTRATIVE DENIAL OF BENEFITS**

Carefully read the information contained in this Order. It will govern the progress of this case and the presentation of motions.

IT IS HEREBY ORDERED:

1. ERISA ADMINISTRATIVE DENIAL OF BENEFITS REVIEW REQUIREMENTS:

Proceedings in this case must be conducted in accordance with the guidelines set forth by the Sixth Circuit in *Wilkins v. Baptist Healthcare Sys., Inc.*, 150 F.3d 609, 619 (6th Cir. 1998):

1. As to the merits of the action, the district court should conduct a de novo [or arbitrary and capricious, as appropriate] review based solely upon the administrative record, and render findings of fact and conclusions of law accordingly. The district court may consider the parties' arguments concerning the proper analysis of the

evidentiary materials contained in the administrative record, but may not admit or consider any evidence not presented to the administrator.

2. The district court may consider evidence outside of the administrative record only if that evidence is offered in support of a procedural challenge to the administrator's decision, such as an alleged lack of due process afforded by the administrator or alleged bias on its part. This also means that any prehearing discovery at the district court level should be limited to such procedural challenges.

3. For the reasons set forth above, the summary judgment procedures set forth in Rule 56 are inapposite to ERISA actions and thus should not be utilized in their disposition.

2. AGREEMENT TO RESOLVE CASE PROCESSING ISSUES:

Plaintiff's counsel must convene a meeting of all attorneys, as soon as can practically be done, to discuss and attempt to resolve the various case processing issues noted herein. Such meeting may, in the discretion of counsel, be by telephone if all purposes of this order can be effectively dealt with thereby.

3. STATEMENT REGARDING PROCEDURAL CHALLENGE IN ERISA CASE:

On or before **07/25/02**, each party shall file a pleading entitled either "Statement of Procedural Challenge in ERISA Case" or "Statement of No Procedural Challenge in ERISA Case" as appropriate. A "Statement of Procedural Challenge in ERISA Case" must indicate whether the party views the complaint as asserting a procedural challenge to the administrator's decision, such as an alleged lack of due process afforded by the administrator or alleged bias, and must indicate the precise nature of the procedural challenge. *In the event there is such a procedural challenge, the dates for filing Motions for Judgment set forth below shall be deemed adjourned*, and the court will provide a scheduling conference to consider the need for limited discovery, to set a discovery schedule, a motion cutoff date, and other dates. Discovery is ordinarily limited to the procedural challenge indicated by the parties. In the event that the parties dispute whether there is such a procedural challenge, the court shall set the matter for a hearing on the issue.

4. STATEMENT REGARDING STANDARD OF REVIEW:

On or before **08/08/02**, Plaintiff shall file a pleading entitled “Joint Statement Regarding Standard of Review.” In the event that the parties disagree as to the standard of review, on or before the same date noted above, each party shall simultaneously file a brief providing an argument and an analysis of whether the review of the administrative record should be made under a *de novo* or an arbitrary and capricious standard.

5. ERISA REVIEW MOTION PRACTICE:

In the event that neither party asserts a procedural challenge, motion practice will consist of the following five steps:

1) Plaintiff shall file for the parties an agree-upon joint appendix consisting of all pertinent plan documents and the administrative record; and

2) Plaintiff, on or before **August 22, 2002**, will file a “Plaintiff’s Motion for Judgment” including a brief, arguing to either to reverse or affirm the administrator’s decision as the case may be. The brief must analyze the evidentiary materials contained in the plan documents and the administrative record. Plaintiff must also attach to the brief a document *to be produced both in on paper and on computer diskette*¹¹ containing proposed findings of fact and proposed conclusions of law in separately numbered paragraphs.

3) Defendant, on or before **September 12, 2002**, will file “Defendant’s Motion for Judgment and Response to Plaintiff’s Motion” including a brief that firstly argues to either to reverse or affirm the administrator’s decision as the case may be, and secondly responds to the Plaintiff’s motion for judgment argument(s). The brief must analyze the evidentiary materials contained in the plan documents and the administrative record. Defendant must also attach to the brief a document *to be produced both in on paper and on computer*

¹¹ Please write with WordPerfect™ 8.0 or compatible software.

diskette containing proposed findings of fact and proposed conclusions of law in separately numbered paragraphs.

4) Plaintiff, on or before **September 26, 2002**, shall file a "Reply to Defendant's Response" (including a brief that firstly responds to Defendant's motion for judgment argument(s) and secondly replies to Defendant's response.)

5) Defendant, on or before **October 10, 2002**, shall file a "Sur-Reply" in response to Plaintiff's reply.

6. MOTION FORMATTING AND OTHER GUIDELINES:

a) Form. Please print the face sheet *on the judge's copy only* as follows: BLUE for the Plaintiff's first brief; RED for the Defendant's response; GREY for Plaintiff's reply; YELLOW for Defendant's sur-reply.

Please bind the judge's copies of brief and appendices with a staple in the upper left corner unless more than 20 pages are presented, in which case please bind in "book form" along the left margin. The "text" of a brief as discussed in Local Rule 7.1(c)(3) includes things such as the case summary and argument, but does not apply to the statement of facts, table of contents, index of authorities, etc.

b) Briefing and Hearings. Unless there is a procedural challenge, the court will not hold a hearing. Even if a hearing date is set, it is an internal court scheduling device, and not a guarantee that argument will be conducted. A motion may be decided on the briefs only, sometimes just days before a scheduled argument.

Counsel should avoid lengthy boilerplate recitations of those standards or lengthy "string cites" in support of well-established principles. On the merits, please focus your analysis on a few well-chosen cases, preferably recent and from controlling courts. You are encouraged to supply the court with copies of your main cases, with the relevant passage(s) highlighted and tabbed. If you cite an opinion published only in a specialty reporter, submit

a copy of the case itself. Copies of cases are to be submitted in a separate "case appendix" beginning with an index.

IT IS SO ORDERED.

ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

August _____, 2002