

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY**

**SABIN EWING, DDS, Individually and)
on behalf of CUMBERLAND)
PEDIATRIC DENTISTRY AND)
ORTHODONTICS, PLLC, et al.,)**

Plaintiffs,)

VS.)

BRENT MILLER, DDS; et al.,)

Defendants.)

NE
NO. 15-1064-BC

2016 JAN 28 AM 10:21
FILED
CLARENCE HASTLER
DAVIDSON CO. CHANCERY CT.
D.C. & M.

CASE LITIGATION PLAN ORDER

On January 25, 2016, a Tennessee Rule 16.02 Conference was conducted to prepare a plan for the efficient and timely disposition of this case. All agreed that the litigation had three phases: pretrial preparation, jury trial on disputed facts of Plaintiff's removal, and a post-trial phase for the Court to determine the proper remedy (e.g. restitution, buy-out) should Plaintiff prevail on its wrongful removal claim. Counsel also agreed that no other parties needed to be added. The Court and Counsel conferred on prioritizing rulings on pure legal issues to narrow and clarify the case as well as the timing and sequencing of preliminary discovery, mediation and waiting on expert discovery to delay that expense until necessary.

The litigation plan that was created took into account that, prior to mediation, some initial discovery is needed to develop facts about the reasons for the Plaintiff's removal as a member of the PLLCs and facts of other businesses the Defendants maintain. As well, it

emerged that a ruling should be prioritized, if possible, on whether and/or how the buyout formula accounts for Plaintiff's share of the PLLCs' debt for the parties to better evaluate the value of their claims and their exposure, and to make a cost/benefit analysis of the litigation, and to assist mediation. On the buyout formula, Counsel have different strategies. Plaintiff may pursue a ruling as a matter of law on the text of the formula in the Operating Agreements. Defendants may assert as an affirmative defense or counterclaim reformation of the text of the formula, or may assert as a legal or equitable defense that debt must be taken into account in applying the formula. Each party's approach was taken into account to frontload, if possible, a decision on the method to calculate a buyout and quantification of a buyout to assist mediation and valuation of the case before the full expense of discovery.

From the foregoing analysis of the case at the Conference, the following plan and deadlines for the litigation of this case are ORDERED:

1. Amendments to Pleadings—February 19, 2016, is the deadline for amendments to the pleadings, counterclaims, responses thereto, and motions concerning amendments. Should they determine to do so, the Defendants are granted leave to file an amended answer.

2. Preliminary Discovery—March 24, 2016 is the deadline for serving contention and preliminary interrogatories, requests for production and requests to admit, and motions related thereto.

3. Preliminary Dispositive Motions—April 1, 2016 is the deadline for conducting a hearing on pure questions of law based upon the pleadings, such as construction of the buy-


out formula in the Operating Agreements. Accordingly, such motions need to be filed sufficiently in advance to be heard April 1, 2016, or prior to that date.

4. Mediation—On April 7, 2016, at 11:30 a.m., the Court shall conduct a telephone conference to determine the timing of mediation. Attorney Davidson shall initiate the call.

5. Fact Discovery—August 19, 2016 is the deadline for completion of all fact discovery.

6. Interim Status Conference—On August 26, 2016, at noon, the Court shall conduct a status conference to discuss whether expert witnesses will be used and, if so, scheduling of their depositions; and setting oral argument on dispositive motions, if any, and selecting a trial date.

7. Notice from Attorney Morgan—If Mr. Morgan is notified that his federal court trial will not proceed in April, he shall promptly file a notice with the Court so it can readjust the deadlines of the litigation plan.



ELLEN HOBBS LYLE
CHANCELLOR
TENNESSEE BUSINESS COURT
PILOT PROJECT

cc: Paul Davidson
Russell Morgan
Alex McFall

