

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

**GARLAND D. MURPHY, III, MD and
PHYLLIS MURPHY, Individually and on
Behalf of All Others Similarly Situated**

PLAINTIFFS

V.

CASE NO. 5:17-CV-5035

**GOSPEL FOR ASIA, INC.; GOSPEL FOR ASIA-
INTERNATIONAL; K.P. YOHANNAN; GISELA
PUNNOSE; DANIEL PUNNOSE; DAVID CARROLL;
and PAT EMERICK**

DEFENDANTS

CASE MANAGEMENT ORDER

A Case Management Hearing was conducted on May 16, 2017. After a review of the parties' Rule 26(f) Joint Report, and based on discussions with counsel during the hearing, and pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, IT IS HEREBY ORDERED:

1. TRIAL SET FOR APRIL 15, 2019

The trial of this matter is scheduled for a **three to four week JURY TRIAL** in **FAYETTEVILLE, ARKANSAS**, beginning on **APRIL 15, 2019, at 9:00 a.m.**

The case will be tried to an **nine (9)** person jury—unanimous verdict required. Counsel are directed to report to **the Fifth-floor Courtroom by no later than 8:30 a.m.** on the first day of trial unless otherwise notified.

2. FINAL PRE-TRIAL CONFERENCE

A Final Pre-Trial Conference shall be conducted pursuant to the provisions of Rule 16(e) on **APRIL 2, 2019, beginning at 9:00 a.m.**

3. AMENDMENT OF PLEADINGS

Leave to amend pleadings and/or to add or substitute parties shall be sought no later than **OCTOBER 19, 2017**.

4. EXPERT DISCLOSURES

(a) Class Expert Witnesses

Plaintiffs' deadline to provide disclosures and written reports for class experts pursuant to Rule 26(a)(2) is **OCTOBER 15, 2017**. Defendants' deadline to provide class expert witness disclosures and written reports pursuant to Rule 26(a)(2) is **NOVEMBER 30, 2017**. The deadline to provide disclosures and reports of rebuttal experts (*i.e.* whose testimony will be offered solely to contradict or rebut the expert opinions offered by an opposing class expert) is **DECEMBER 15, 2017**.

(b) Merit Expert Witnesses

Plaintiffs' deadline to provide disclosures and written reports for merit experts pursuant to Rule 26(a)(2) is **AUGUST 31, 2018**. Defendants' deadline to provide expert merit witness disclosures and written reports pursuant to Rule 26(a)(2) is **OCTOBER 5, 2018**. The deadline to provide disclosures and reports of rebuttal experts (*i.e.* whose testimony will be offered solely to contradict or rebut the expert opinions offered by an opposing merit expert) is **OCTOBER 19, 2018**.

5. DISCOVERY

The scope of discovery may include both class and merits discovery. That said, discovery which clearly has no purpose other than for merits issues should be deferred until after the Court rules on class certification.

The discovery deadline is **NOVEMBER 16, 2018**. The parties may conduct discovery beyond this date if all parties are in agreement to do so. To avoid later misunderstandings, such agreements should be reduced to a writing which describes the type, scope, and length of the extended period of discovery. That said, the Court will not resolve any disputes which may arise in the course of extended discovery.

All discovery requests must be propounded sufficiently in advance of the discovery deadline to allow for a timely response. Witnesses and exhibits not identified and produced in response to Rule 26(a)(1) Initial Disclosures, and/or in response to subsequent discovery requests, may not be used at trial except in extraordinary circumstances. The Court will not grant a continuance because a party does not have time in which to depose a lay or expert witness.

6. MOTIONS DEADLINES

(a) **Class Certification Motions:** The deadline to file class certification motions is **JANUARY 19, 2018**.

- ▶ Responses to class certification motions are due not later than six (6) weeks after the motion is filed.
- ▶ Replies are due not later than three (3) weeks after the response is filed.

- ▶ A hearing on class certification motions is tentatively set for **APRIL 13, 2018, at 10:30 am¹ in the fifth floor courtroom in Fayetteville.** If the parties envision an evidentiary hearing (in addition to oral argument), counsel should notify the Court well in advance of the hearing date. If the parties do not desire a hearing on pending motions, they should inform the Court as soon as possible.
- ▶ If the parties request an evidentiary hearing—and the Court agrees—then exhibit and witness lists to be presented at the hearing (if any) are to be submitted to the Court at least one week prior to the scheduled hearing.

(b) **Discovery Motions:** In the event of a discovery dispute, the parties must do the following prior to filing any discovery motion:

(i) Confer in good faith to resolve or narrow the dispute as much as possible.

(ii) The senior most lead counsel for each party must directly confer with each other (in person or by phone) and work to bridge and resolve any remaining disputes.

(iii) If the parties remain at an impasse, they should notify the Court and request a telephone conference.

(iv) In advance of the scheduled phone conference, the parties must email a joint letter to Chambers which (1) provides a one paragraph overview of the dispute—concisely written—in a non-argumentative fashion; and (2) is followed by

¹If class motion practice begins substantially earlier than January 19, 2019, the Court will advance the hearing date on its docket.

a concise statement of each side's position—which shall be no more than two (2) pages per side.

(c) **Dispositive Motions:** The deadline to file dispositive motions is **DECEMBER 7, 2018**.

(d) **Daubert Motions:** If applicable, *Daubert* and related expert disqualification motions for merits experts should be filed no later than **DECEMBER 7, 2018**.

(e) **Motions in Limine:** Motions in limine must be filed on or before **MARCH 19, 2019**. Responses must be filed within seven (7) days thereafter. Motions submitted after the deadline may be denied solely on that ground. Briefs in Support of such motions and responses shall not exceed three (3) pages per ruling sought, except on leave of Court for good cause shown.

7. MEMORANDUM BRIEFS

Memorandum briefs filed in support or in response to a motion (other than liminal motions) must not exceed twenty (20) pages in length, without leave of court and for good cause shown. Reply briefs, when permitted, must not exceed seven (7) pages in length.

8. SETTLEMENT CONFERENCE

The parties are ordered to attend a Settlement Conference with Magistrate Judge Erin L. Wiedemann by no later than **FEBRUARY 15, 2019**. The exact date will be set by separate order.²

²By motion, for good cause shown, the parties may request to be excused from this requirement. "Good cause" will be established by a statement that (1) the posture of the case is such that the parties believe settlement efforts would be futile and, (2) the parties intend to proceed to trial as scheduled.

9. PRETRIAL DISCLOSURE SHEET

Pursuant to the provisions of Rule 26(a)(3), the parties shall simultaneously file Pretrial Disclosures on **MARCH 5, 2019**, in a form consistent with the outline contained in Local Rule 26.2.

10. DEPOSITIONS TO BE USED AT TRIAL PURSUANT TO RULE 32³

The party seeking to present deposition testimony at trial must designate the pertinent portions of a deposition to be used as evidence by **MARCH 5, 2019**. The other party must then provide notice of evidentiary objections and/or supplemental counter-designations by **MARCH 12, 2019**. These designations and objections should not be filed with the Court, but rather exchanged by the parties. The parties shall then confer in good faith to resolve any objections to designations.

Any unresolved objections shall be made by a joint written motion (“Joint Motion to Resolve Objections to the Deposition Testimony of *name of witness*”) filed no later than **MARCH 19, 2019**. Instructions for preparing the joint motion and the form to be used are posted on the Court’s website at <http://www.arwd.uscourts.gov/judge-brooks-forms>. Objections will be resolved during the Final Pre-Trial Conference.

11. JURY INSTRUCTIONS

The parties must confer in advance regarding proposed jury instructions in an attempt to narrow areas of disagreement. The parties shall jointly submit a single agreed set of proposed instructions (clearly marked “AGREED”) to Chambers on or before

³Depositions to be used solely for impeachment are not contemplated by the requirements of this paragraph.

MARCH 26, 2019. Proposed verdict forms should be submitted as well. Counsel should use model instructions whenever possible from the Eighth Circuit, AMI, or Federal Jury Practice and Instructions (5th Edition), as applicable, and should note the source and/or basis of the instruction at the end of each instruction.

If the parties cannot agree to a particular instruction(s), the party requesting a disputed instruction must submit it to the Court and to opposing counsel by the same date Agreed Instructions are due. Such instructions should be clearly marked as “[Plaintiff’s/Defendant’s] DISPUTED Instruction No. ____.” The legal basis for the instruction and brief description of the parties’ disagreement shall be provided with the instruction (either in the space below the form of the instruction or attached on a separate page).

The parties should follow the same process to submit “agreed” and “disputed” proposed verdict forms. Agreed and disputed instructions/verdict forms should be submitted electronically in WordPerfect or Word format to *tlbinfo@arwd.uscourts.gov*.

12. STATEMENT OF THE CASE

Each party must submit via email by **MARCH 26, 2019** a concise non-argumentative statement/overview of the case, *no more than one double spaced page in length*, that it proposes the Court to read to the venire panel.

13. STIPULATIONS

By no later than **MARCH 19, 2019**, the parties shall confer, identify, and agree to a set of written stipulations of (1) important dates in the chronology of the dispute, and (2) any substantive facts necessary or useful in establishing a parties’ claims, damages, or

defenses. The parties shall email the stipulations to the Court by no later than **MARCH 29, 2019**. Stipulations will be marked and received as a Court's exhibit for the record, and may be read/shown to the jury at an appropriate time(s) during the trial. The parties are encouraged to make use of stipulations as a means of narrowing and simplifying fact issues submitted to the jury.

14. WITNESS AND EXHIBIT LISTS

Each party shall submit "final" witness and exhibit lists to the Court by no later than **MARCH 29, 2019**. The lists should be in the format as posted on the Court's website at <http://www.arwd.uscourts.gov/judge-brooks-forms>. Witnesses shall be grouped together under headings indicating whether they "will be called" or merely "may be called" to testify.

Trial Exhibits must be identified, numbered, provided, and made available to opposing counsel in advance of the deadline. Counsel must then review and confer for the purpose of identifying any exhibits to which agreement or objections are contemplated. The final numbered exhibit list provided to the Court should therefore indicate—for each applicable exhibit—whether opposing counsel intends to "agree" (subject to proponent laying proper foundation) or "object" to its introduction. Prior to trial, the parties shall further confer and identify which, if any, of the agreed exhibits may be stipulated into evidence *in mass* at the beginning of the trial. Please promptly notify the Court via email as to which exhibits will be received in this manner.

Unless otherwise directed by the Court, each party shall provide a notebook of its final proposed exhibits(numbered, indexed, and tabbed) to Chambers by no later than **APRIL 10, 2019**.

15. DEADLINES

The deadlines set forth above are firm. Extensions and/or continuances will not be considered absent very extraordinary and compelling circumstances.

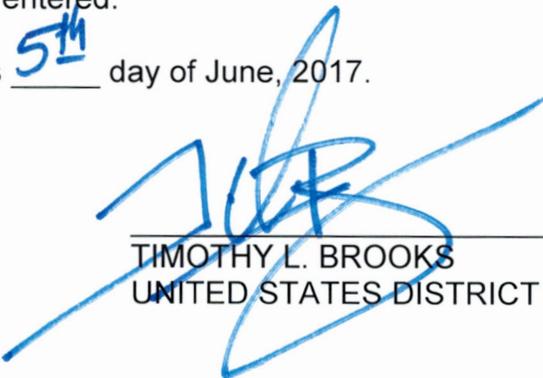
16. SUMMARY TABLE AND FORMS

A table summarizing the deadlines is attached. In the event of a discrepancy between this Order and the summary table, the deadline set forth in the Order is controlling. The forms are available for download on the Court's public website - <http://www.arwd.uscourts.gov/judge-brooks-forms>.

17. COMMUNICATION WITH COURT REGARDING TRIAL OR SETTLEMENT

Settlements should be immediately reported to the Court.⁴ Please communicate any late developing settlement or problems/issues (*i.e.* over the weekend prior to trial) to the Courtroom Deputy, Sheri Craig, at (479) 695-4460 or tlbinfo@arwd.uscourts.gov. If notice of settlement is received after **1:00 p.m. on APRIL 12, 2019**, the parties will be assessed any costs associated with the Court's inability to timely recall the jury panel from reporting. The parties are further advised that the case will not be removed from the trial docket until an order of dismissal has been entered.

IT IS SO ORDERED this 5th day of June, 2017.



TIMOTHY L. BROOKS
UNITED STATES DISTRICT JUDGE

⁴Prompt notification is of great help to the Court in the management of remaining cases set for a given trial term.

DATES AND DEADLINES

HEARINGS AND TRIAL DATE	
FINAL PRE-TRIAL CONFERENCE	4/2/19
TRIAL DATE (Four Week Trial Term beginning on)	4/15/19
DISCOVERY	
AMEND PLEADINGS/ADD OR SUBSTITUTE PARTIES	10/19/17
PLAINTIFF FACT EXPERT WITNESS DISCLOSURES/REPORTS	10/15/17
DEFENDANT FACT EXPERT WITNESS DISCLOSURES/REPORTS	11/30/17
REBUTTAL FACT EXPERT WITNESS DISCLOSURES/REPORTS	12/15/17
PLAINTIFF MERIT EXPERT WITNESS DISCLOSURES/REPORTS	8/31/18
DEFENDANT MERIT EXPERT WITNESS DISCLOSURES/REPORTS	10/5/18
REBUTTAL MERIT EXPERT WITNESS DISCLOSURES/REPORTS	10/19/18
DISCOVERY DEADLINE	11/16/18
MOTIONS	
CLASS CERTIFICATION MOTIONS	1/19/18
DISPOSITIVE MOTIONS	12/7/18
DAUBERT AND RELATED MOTIONS REGARDING EXPERT OPINION TESTIMONY (if applicable)	12/7/18
SETTLEMENT CONFERENCE	
SETTLEMENT CONFERENCE (to be separately scheduled no later than)	2/15/19
FINAL TRIAL PREPARATIONS	
PRETRIAL DISCLOSURES (per format of Local Rule 26.2)	3/5/19
MOTIONS IN LIMINE	3/19/19
DEPOSITION DESIGNATIONS (exchanged)	3/5/19
DEPOSITION COUNTER-DESIGNATIONS (exchanged)	3/12/19
JOINT MOTION TO EXCLUDE DEPOSITION TESTIMONY	3/19/19
JURY INSTRUCTIONS (submitted to the Court via email)	3/26/19
STATEMENT OF THE CASE (submitted to the Court via email)	3/26/19
STIPULATIONS (submitted to the Court via email)	3/29/19
WITNESS AND EXHIBIT LISTS (submitted to the Court via email)	3/29/19
EXHIBITS NOTEBOOK (INDEXED AND TABBED) TO CHAMBERS	4/10/19