

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

DIANN M. CURTIS, individually and on behalf of herself and  
all others similarly situated, )

Plaintiff, )

vs. )

WHEATON FRANCISCAN SERVICES, INC. d/b/a Wheaton  
Franciscan Healthcare, WHEATON FRANCISCAN SYSTEM  
RETIREMENT PLAN COMMITTEE, and JOHN DOEs 1-20, )

Defendants. )

) 16 C 4232  
)  
) Judge Gary Feinerman

BRUCE BOWEN and CHERYL MUELLER, individually and  
on behalf of herself and all others similarly situated, and on  
behalf of the Wheaton Franciscan System Retirement Plan, )

Plaintiffs, )

vs. )

WHEATON FRANCISCAN SYSTEM RETIREMENT PLAN, )  
WHEATON FRANCISCAN SERVICES, INC. d/b/a Wheaton )  
Franciscan Healthcare, OPERATIONS COMMITTEE OF THE )  
BOARD OF DIRECTORS OF WHEATON FRANCISCAN )  
SERVICES, INC., JOHN and JANE DOEs 1-20, members of )  
the Operations Committee, ASCENSION HEALTH, )  
ASCENSION HEALTH ALLIANCE d/b/a Ascension, )  
ASCENSION HEALTH PENSION COMMITTEE, JOHN and )  
JANE DOEs 21-40, members of the Ascension Health Pension )  
Committee, and JOHN and JANE DOEs 41-60, )

Defendants. )

) 16 C 6782  
)  
) Judge Gary Feinerman

**ORDER**

For the reasons stated below, Plaintiff Curtis’s motion for consolidation and appointment of lead counsel [38] in Case No. 16 C 4232 is granted in part and denied in part, and Bowen Plaintiffs’ motion for appointment of lead counsel [44] in Case No. 16 C 6782 is granted. By

agreement, and pursuant to Civil Rule 42(a), these two cases (16 C 4232 and 16 C 6782) are consolidated for all purposes. The caption of these consolidated cases shall be “In re: Wheaton Franciscan ERISA Litigation,” and henceforth the file shall be maintained in 16 C 4232. Pursuant to Civil Rule 23(g)(3), Cohen Milstein Sellers & Toll PLLC and Keller Rohrback, L.L.P. are appointed as interim co-lead class counsel. These cases otherwise are stayed pending the Supreme Court’s resolution of *Advocate Health Care Network v. Stapleton*, Nos. 16-74, 16-86, 16-258 (U.S.). A more formal case management order will be entered when the stay is lifted.

### **STATEMENT**

The background of these suits is set forth in *Curtis v. Wheaton Franciscan Services, Inc.*, 2016 WL 6432579 (N.D. Ill. Oct. 31, 2016) (Doc. 58 in 16 C 4232). All parties agree that consolidation is appropriate under Civil Rule 42(a), and the court concurs.

As to the competing Civil Rule 23(g)(3) motions, both sets of counsel would ably represent Plaintiffs and the putative class. Although it is tempting to split the baby and appoint both sets of counsel as co-lead interim counsel, these cases are insufficiently complex and time-intensive to warrant that step. Having considered counsels’ briefs and their arguments at the motion hearing, and recognizing that reasonable judicial minds could (and indeed have) differ, the court concludes that the Bowen Plaintiffs’ counsel have the edge.

Both sets of counsel have sufficient resources to commit to representing the putative class. *See* Fed. R. Civ. P. 23(g)(1)(A)(iv). However, although the Bowen Plaintiffs’ counsel might have had access to more Plan documents when they drafted their complaint, the two complaints, considered along with the parties’ respective discussions of the pertinent legal and factual issues in their briefs, reflect that the Bowen Plaintiffs’ counsel have done more work identifying and investigating potential claims in this action. *See* Fed. R. Civ. P. 23(g)(1)(A)(i). Moreover, the Bowen Plaintiffs’ counsel have more experience litigating this type of church-plan ERISA case. *See* Fed. R. Civ. P. 23(g)(1)(A)(ii). Finally, given their active and ongoing involvement in the consolidated church-plan ERISA cases now before the Supreme Court, the Bowen Plaintiffs’ counsel have more intimate knowledge of the applicable law. *See* Fed. R. Civ. P. 23(g)(1)(A)(iii). That involvement will put counsel in the best position to guide this litigation after the Supreme Court rules, whatever that ruling might be. The court trusts that if these cases result in a settlement or judgment, Curtis’s counsel will be appropriately compensated for the work they have performed thus far.

Until the Supreme Court rules, all discovery and other matters in these cases are stayed. The Supreme Court’s decision will shed much light on what discovery should be taken, and it would be most efficient to wait until then to begin. *See* Fed. R. Civ. P. 26(b)(1).

January 4, 2017



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United States District Judge