

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DARLINGTON )

IN THE COURT OF COMMON PLEAS  
FOURTH JUDICIAL CIRCUIT

ANTOINE BOSTIC, Individually and as )  
Personal Representative of the Estate of )  
BERTILA DELORA BOYD-BOSTIC, )  
 )  
Plaintiff, )

CASE NO. 2017-CP-16-0400

vs. )

**SCHEDULING ORDER SETTING**  
**TRIAL DATE OF NOVEMBER 5, 2018**  
**AND DENIAL OF DEFENDANT'S**  
**MOTION TO CONTINUE AND**  
**OBJECTION TO DATE CERTAIN**

Johnson & Johnson Consumer Inc., et al., )  
 )  
Defendants. )  
 )  
 )  
 )

**RECEIVED**

**OCT 23 2018**

**SC Court of Appeals**

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This case was commenced on May 22, 2017. Trial of this case began on May 14, 2018 and ended on May 25, 2018 with the jury involuntarily dismissing the in-state defendant, Rite Aid of South Carolina, Inc., via unanimous verdict and failing to reach a unanimous verdict with respect to Defendants Johnson & Johnson and Johnson & Johnson Consumer, Inc. As such, a mistrial was declared as to Defendants Johnson & Johnson and Johnson & Johnson Consumer, Inc.

Another case against Defendants Johnson & Johnson and Johnson & Johnson Consumer, Inc., Walter K. Wills, Individually and as Personal Representative of the Estate of Joyce F. Wills v. Johnson & Johnson, et al., No. 18-CP-10-01660, involving the same South Carolina lead attorneys and the same expert witnesses was scheduled to commence trial by agreement of the parties on November 5, 2018 in Charleston County, South Carolina. However, based on lack of courtroom availability and limited judicial resources, the Wills case cannot go forward in the November 2018 trial term.

Chief Justice Beatty has appointed the undersigned to retry this case in Darlington County Circuit Court on November 5<sup>th</sup> and November 12<sup>th</sup> 2018. That order is attached as Exhibit A hereto. Darlington County has courtroom availability and there are no outstanding issues in the Boyd-Bostic case and its ready for retrial. The Court hereby sets this case for trial in Darlington County, to begin November 5, 2018. The Court finds that setting the Boyd-Bostic case for trial will further judicial efficiency and serve the ends of justice, and that no party will be prejudiced by the November 5, 2018 trial setting.

On October 8<sup>th</sup> 2018, the undersigned conducted a telephone conference granting Plaintiff's motion for dates certain setting retrial of this case for November 5<sup>th</sup> and November 12<sup>th</sup> 2018. On October 12<sup>th</sup> 2018, Defendant filed a motion and memorandum opposing setting a date certain for trial. I did not issue an order on this matter pending the Chief Justice's issuance of an order setting a term of court for November 5<sup>th</sup> and 12<sup>th</sup> and appointing the undersigned to conduct the Boyd-Bostic case. The main thrust of this motion was unavailability for trial of attorney Michael Brown of Nelson Mullins Law Firm whose practice is located in their Baltimore, Maryland office. Mr. Brown's participation in this case was characterized in the motion as lead counsel and it was contended he would not be available for trial on these dates. South Carolina lead counsel for Defendant in this case has always been South Carolina attorney Louis Hems of Milligan Hems Law Firm. Mr. Hems and Mr. Brown were two of at least eight lawyers who at one time or another appeared for Defendant during the course of trial of this case in May of 2018. Mr. Brown's inability to participate in this trial would not prejudice the Defendant. On Plaintiff's side, one of Plaintiff's lawyers who actively participated in the original trial was attorney Marlon Kimpson who is also a State Senator from Charleston County. Were this case to be continued to next spring, his ability to participate in the trial would be hindered due to legislative protection.

Additionally, another South Carolina attorney for Plaintiff, Gerald Malloy, is also a State Senator from Darlington County whose participation in retrial would be hindered if this case were continued to the spring of 2019. Balancing all of these issues, I find Defendant would not be prejudiced by trying this case November 5<sup>th</sup> and November 12<sup>th</sup> 2018. However, Plaintiff would stand to be more disadvantaged in a trial in which two of its attorneys would not be able to participate.

The following pre-trial deadlines shall apply:

**October 22-** Parties exchange final witness lists

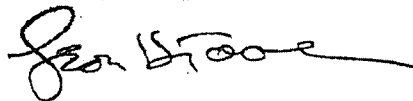
**October 29-** Parties exchange final exhibit lists and page/lines designations

**November 2-** Counter-page/lines designations due

**November 4-** Final page/lines designations due

IT IS THEREFORE ORDERED that this case shall commence trial in Darlington County, South Carolina on November 5, 2018.

IT IS SO ORDERED.



The Honorable Jean H. Toal, Acting Circuit Court Judge,  
Retired Chief Justice of the S.C. Supreme Court

October 19, 2018  
Columbia, South Carolina