Georgia State University
ScholarWorks @ Georgia State University

Georgia Business Court Opinions | College of Law

12-11-2006

# Order (JOHN W. OXENDINE)

Alice D. Bonner
*Superior Court of Fulton County*

Follow this and additional works at: http://scholarworks.gsu.edu/col_businesscourt

Recommended Citation
Bonner, Alice D., "Order (JOHN W. OXENDINE)" (2006). *Georgia Business Court Opinions.* Paper 2.
http://scholarworks.gsu.edu/col_businesscourt/2

This Court Order is brought to you for free and open access by the College of Law at ScholarWorks @ Georgia State University. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of ScholarWorks @ Georgia State University. For more information, please contact scholarworks@gsu.edu.

COPY

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

FILED IN OFFICE

DEC 1 1 2006

Deputy Clerk Superior Court
Fulton County, Georgia

| | | |
|---|---|---|
| JOHN W. OXENDINE, | * | |
| | * | |
| Plaintiff, | * | |
| v. | * | Civil Action No. 2003-CV-98868 |
| | * | (Division One—ADB) |
| TOTAL LIFE CARE, P.C., et al., | * | |
| | * | |
| Defendants, | * | |
| | * | |
| v. | * | |
| | * | |
| CAPITAL CITY BANK & TRUST COMPANY, | * | |
| | * | |
| Third-Party Plaintiff, | * | |
| | * | |
| v. | * | |
| | * | |
| WILLIAM H. CLEVELAND, M.D., et al., | * | |
| | * | |
| Third-Party Defendants, | * | |
| | * | |
| v. | * | |
| | * | |
| TOTAL LIFE CARE, P.C., et al., | * | |
| | * | |
| Third-Party Plaintiffs, | * | |
| | * | |
| v. | * | |
| | * | |
| JOHN G. WHITMORE, et al., | * | |
| | * | |
| Third-Party Defendants. | * | |

## ORDER

This case is before the Court on the Motions for Summary Judgment of Third-Party Defendants John G. Whitmore and EWM Group, P.C. (hereinafter "Third-Party Defendants") against the Third-Party Plaintiffs Total Life Care, P.C., TLC Administrators,

Inc., TLC Management, Inc., and Benjamin E. Woods, M.D. (hereinafter "TLC Plaintiffs") and the Third-Party Plaintiff Iris Johnson (hereinafter "Johnson").

The Third-Party Defendants were hired by the Commissioner of Insurance to examine the Providers Direct Health Plan of Georgia, Inc., ("PDHP") in connection with its initial application to operate as a physician sponsored healthcare corporation, as well as its ongoing compliance with the statutory requirements of such a corporation. TLC Plaintiffs' and Johnson's claims arise from these actions.

In support of its unopposed motion for summary judgment against TLC Plaintiffs, the Third-Party Defendants argue the following: (i) Third-Party Defendants owed no duty of care to the TLC Plaintiffs; (ii) TLC Plaintiffs intentionally misrepresented PDHP's finances to the Third-Party Defendants; (iii) TLC Plaintiffs failed to file an expert affidavit in support of their claim of professional malpractice; (iv) TLC Plaintiffs' claims were filed outside of the four year statute of limitations provided in O.C.G.A. § 9-3-25; and (v) governmental immunity provided under Ga. Const. of 1983, Art. I, Sec. II, Par. IX(d), protected the actions undertaken by Third-Party Defendants. Having carefully considered the evidence and the motion, the Court concludes that Third-Party Defendants' motion for summary judgment as to TLC Plaintiffs' claims should be and is hereby **GRANTED**.

In support of their motion for summary judgment against Johnson, Third-Party Defendants assert the above stated claims and that they never received service of process of Johnson's Third-Party Complaint. As such, and for the reasons stated above, the Court concludes that the Third-Party Defendants' motion for summary judgment as to Johnson should be and is hereby **GRANTED**.

SO ORDERED this 8 day of December, 2006.

Alice D. Bonner

ALICE D. BONNER, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

Ms. Linda Dreyer
Court Administrator's Office

Mr. Bandele Browne
Fulton County Clerk's Office

William W. Calhoun, Esq.
Langley & Lee, LLC
P.O. Box 607
323 Pine Avenue, Suite 300
Albany, Georgia 31702-0607

Tony L. Axam, Esq.
Sandra M. Davis, Esq.
Axam & Adams, P.A.
1280 West Peachtree Street
Suite 310
Atlanta, Georgia 30309

John T. McGoldrick, Jr., Esq.
Michael N. White, Esq.
Martin Show LLP
240 Third Street
P.O. Box 606
Macon, Georgia 31202-1606

Eric P. Schroeder, Esq.
S. Derek Bauer, Esq.
Powell Goldstein LLP
One Atlantic Center
Fourteenth Floor
1201 West Peachtree Street, NE
Atlanta, Georgia 30309

Kevin H. Hudson, Esq.
Halsey G. Knapp, Jr., Esq.
Foltz Martin LLC
Five Piedmont Center, Suite 750
Atlanta, Georgia 30305-1549

S. Ralph Martin, Jr., Esq.
P.O. Box 310568
Atlanta, Georgia 30305-1549

Edward H. Wasmuth, Jr., Esq.
Smith, Gambrell & Russell, LLP
Suite 3100 Promenade II
1230 Peachtree Street, NE
Atlanta, Georgia 30309-3592

Thomas B. Branch, Esq.
Tiffani Moody, Esq.
Holland & Knight LLP
One Atlantic Center, Suite 2000
1201 West Peachtree Street, NE
Atlanta, Georgia 30309

Steven D. Brower, Esq.
Drew, Eckl & Farnham, LLP
880 West Peachtree Street
P.O. Box 7600
Atlanta, Georgia 30357