

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRENDA MOMBOURQUETTE, By Her Guardian,
TAMMY MOMBOURQUETTE, *et al.*

Plaintiffs,

v.

WISCONSIN COUNTIES MUTUAL INSURANCE
CORPORATION, *et al.*

Defendants.

ORDER

05-C-748-C

On October 20, 2006, defendant David Schaldach filed a motion for a two-week extension of his deadline for naming a damages expert on the issue of life expectancy. *See* dkt. 86. The other defendants soon joined this motion, *see* dkt. 92. Plaintiff opposes the motion, *see* dkt. 108. Having concluded that Schaldach's attorneys glossed over relevant facts, I am denying the motion.

When plaintiffs filed this lawsuit on December 29, 2005, defendant Schaldach was represented by the same attorneys who represent most of the other defendants in this case. At the April 4, 2006 preliminary pretrial conference this court set August 25, 2006 as plaintiffs' expert disclosure deadline and September 22, 2006 as defendants' expert disclosure deadline. On or about July 11, 2006, Shaldach switched from the group attorneys to his own attorneys.

Apparently plaintiffs met their August 22, 2006 expert disclosure deadline; near defendants' September 22, 2006 expert disclosure deadline, they asked plaintiffs to stipulate to a four-week extension. Plaintiffs agreed, so defendants' new deadline became October 20, 2006.

On October 20, Schaldach's attorneys filed their motion to request an extension of this deadline, to November 3, 2006, to allow more time for their expert on life expectancies to file her report. In support of this motion, counsel averred to the court that they had learned during a September 13, 2006 conversation with the other defendants' attorney, that this lawyer "had been in the process of lining up a life expectancy expert, named Ronald Cranford, but that Mr. Cranford had passed away unexpectedly." Dkt. 88 at 1-2. After plaintiffs disclosed their experts and defendants had named their liability experts, Schaldach's attorneys decided that they would take the lead in finding a life expectancy expert. They began looking for such an expert about two weeks before the October 20 disclosure deadline; on October 18, 2006, counsel located the expert they wish to use, Vera Dolan. Not surprisingly, Ms. Dolan could not complete her report in two days; hence the pending motion for an additional two weeks.

So far, so good: a two week extension on a damages expert at this juncture in the case wouldn't necessarily pose a problem. Sometimes defense damages experts aren't named until eight weeks before trial, which in this case would be December 8, 2006. Indeed, the court's initial reaction to plaintiffs' declaration of opposition was bemusement: when a retained expert dies unexpectedly on the cusp of his disclosure deadline, whose fault is that?

It turns out, however, that Dr. Cranford's death was neither recent nor unexpected: he had been suffering from kidney cancer and he died on May 31, 2006 in a hospice near Minneapolis.¹ This was less than two months after the preliminary pretrial conference, 1½

¹According to one obituary, Dr. Cranford, a nationally renowned expert on end-of-life care, was proud to have been labeled "The Energizer Bunny of Death." See www.medscape.com/viewarticle/533952.

months before Schaldach's current attorneys even appeared in this case, about three months before plaintiffs named their experts and not quite five months before defendants' extended expert disclosure deadline in October. There is no logical or acceptable reason for any of the defendants to have waited until early October to seek a replacement for Dr. Cranford.

Even so, counsel's inexplicable languidness, while anathema to this court, would not have prejudiced plaintiffs, so there was at least a slight possibility this court would have allowed a brief extension. But counsel's characterization of the sequence of events was materially misleading. Assuming this was unintentional, it is still unacceptable. The court sees no equitable reason to depart from its policy of strictly enforcing discovery deadlines.

It is ORDERED that defendants' motion for extension of time to disclose an expert is DENIED.

Entered this 27th day of October, 2006.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge