

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

TERRI EIDE,

Plaintiff,

v.

LIFE INSURANCE COMPANY
OF NORTH AMERICA,

Defendant.

ORDER

09-cv-671-slc

Before the court in this disability insurance coverage lawsuit is the parties' joint motion to extend the dispositive motion deadline to allow mediation and to set dates for expert disclosures. The motion is granted, although not in as generous measure as the parties probably hoped.

Plaintiff filed this lawsuit in state court on October 1, 2009 and defendant removed it to this court on November 3, 2009. In a November 30, 2009 joint Rule 26(f) report to the court, the parties predicted they would be ready for trial in December, 2010. Although this was a relaxed schedule by this court's notoriously speedy standards, at the December 3, 2009 preliminary pretrial conference the court accommodated the parties and set this case for a five- or six-day jury trial beginning December 6, 2010. The court's calendaring template led to a dispositive motion deadline on July 16, 2010, about 4½ months before trial. The court did not set expert disclosure deadlines at that time because there was a dispute whether ERISA applied to this case and limited discovery.

Now the parties report that they would like to undertake mediation without having to incur the cost of summary judgment motions which may be mooted by settlement. They report

that the key depositions have been scheduled for this month and should be completed by the end of the third week of June, which could be either June 18 or June 23 depending on when one starts counting. They “intend to schedule mediation with a private mediator in early to mid-July.” Dkt. 22 at 2. The parties report that they “fully understand this court’s practices and preferences” regarding adherence to deadlines in a civil lawsuit, but request relief so that they can engage in mediation at the earliest and most opportune time. *Id.*

There’s no way that counsel could know this, but their motion is part of a recent surge of such motions before all judges in this court. What we’re seeing is that counsel, usually about a month before their summary judgment motion deadline, announce that, having finished their major discovery, they now believe that their time (and their clients’ money) would be better spent attempting to mediate a settlement rather than prepare and file a summary judgment motion. Worth noting is that the court is receiving these requests even though it has been calendaring its trials two or three months more loosely than it did before 2008. In other words, despite having 60 to 90 more days for discovery, attorneys are not using this extra time to schedule a mediation attempt before the summary judgment motion deadline. Instead, they are asking the court for even more time, which would require either moving the trial date or jamming up the court’s ability to rule on a summary judgment motion in a timely fashion. As just noted, the court already has relaxed its trial calendaring practices and it has no plans to start re-setting trial dates in the middle of a lawsuit to accommodate mediation attempts. So, the court is not inclined to grant such motions in any case absent exceptional circumstances.

Exceptional circumstances do not exist in the present case, but I will still give the parties two extra weeks. The new summary judgment motion deadline is July 30, 2010. Rather than

try to guess what would be the fairest and most efficient way to calendar the expert disclosures, I will leave it to the parties to set these deadlines. As is always the case in this court, the parties are free to stipulate out of compliance with Rule 26(a)(2)'s expensive and time-consuming disclosure procedures.

Accordingly, it is ORDERED that the joint motion is GRANTED in the manner and for the reasons stated above.

Entered this 9th day of June, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge