

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

BARRY AVIATION, INC.,

Plaintiff,

ORDER

v.

02-C-635-C

LAND O'LAKES MUNICIPAL
AIRPORT COMMISSION, *et al.*,

Defendants.

On September 5, 2003, plaintiff filed a motion to conduct depositions by telephone. *See* Dkt. 45. On September 8, 2003, defendants responded with a letter trying to crystalize the dispute. Defendants do not object to plaintiff's attorney appearing telephonically for depositions *if* depositions are allowed at this stage; what defendants object to is the taking of any discovery whatsoever. Defendants based their objection in part on uncertainty whether the court intends to hold an evidentiary hearing on defendants' motion for sanctions. For the reasons stated below, I am allowing prompt, brief depositions.

I do not know whether Judge Crabb intends to take evidence on the sanctions motion, and the judge is out of the country until September 22, 2003. This presents something of a dilemma because September 23, 2003 is plaintiff's deadline for responding to defendants' motion for sanctions. Since both parties are partially responsible for creation of the current scheduling predicament, I am resolving it in favor of maintaining the current briefing schedule so that this case stops languishing.

In a July 15, 2003 order (dkt. 39) I outlined plaintiff's pattern and routine of repeatedly asking for continuances at the last minute. I scolded plaintiff's attorney for sandbagging but still gave him some additional time to complete the requested depositions. The very next day, July 16, 2003, defendants temporarily withdrew their motion for sanctions based on plaintiff's procedural defense under F. R. Civ. P. 11(c)(1)(A), but noted their intent to refile the motion after 21 days had elapsed. *See* Dkt. 40. True to their word, defendants refiled their motion for sanctions on August 14, 2003. *See* Dkt. 41. On August 18, 2003, plaintiff moved for another extension of its response deadline, claiming that its president and principal was hospitalized in Florida following a severe plane crash. I granted the request, noting that there would be no further extensions. *See* Dkt. 44.

Given this history of delays, the court's current goal is to get a fully-briefed motion for sanctions under advisal. To accomplish this, I will allow plaintiff to take depositions of Tomas J. Thomas and Daniel J. Finkelmeyer, each lasting not more than 60 minutes. This probably is more time than plaintiff needs, but even if it's not, it's all plaintiff is going to get. Counsel for all concerned (including for Thomas and Finkelmeyer) shall promptly set a date and time for these depositions. The current briefing deadlines shall not be moved.

Entered this 9th day of September, 2003.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge