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

WILLIAM C. FRAZIER, *et al.*,

Plaintiffs,

v.

LAYNE CHRISTENSEN COMPANY, *et al.*,

Defendants.

ORDER

04-C-315-C

Before the court is plaintiffs' January 24, 2006 request for an adjournment. "Unhappy" barely begins to describe the court's mood in response to where the parties find themselves yet again. Cutting to the chase, the trial date is not moving, plaintiffs may have a brief extension of their response deadline on summary judgment, and defendants owe the court a persuasive explanation for why they should not be sanctioned for their last-minute document dump.

The parties are in the midst of briefing their second round of summary judgment motions; indeed, each side's response to its opponent's motion was due two days ago, on January 24, 2006. Plaintiffs, however, have asked for additional time to respond and have requested an adjournment of the March 6 trial date, based on their allegations of renewed discovery malfeasance by the defendants. Plaintiffs claim that defendants, after filing their new summary judgment motion, deluged plaintiffs with over 8,600 pages of documents purportedly responsive to this court's September 29, 2005 order on discovery.

Defendants demure, offering a generalized response to each of plaintiffs' points. Among other things, defendants contend that

> of the 8,600 pages cited by the plaintiffs, nearly all are merely cumulative to what had previously been produced and others have only a marginal association with the BoreBlast or BoreBlast II processes. A large number of them are boilerplate materials, such as drilling contracts with respect to which the BoreBlast or BoreBlast II projects may have been done incidentally after the drilling was completed. In an effort to go the extra mile and produce anything that the plaintiffs could remotely contend relates to the BoreBlast technology, Lane has produced documents of this nature in order to avoid just the type of allegation that is now being made. Additional documents relate to recent projects that were completed in late 2005 or early 2006 and could not have been produced before the project took place. Because so many of the documents require no real analysis, the plaintiffs' argument of insufficient time to analyze them rings hollow.

January 23, 2006 Letter of Attorney Richard R. Johnson at ¶2.

In a January 25 follow-up letter, defendants go so far as to suggest that this whole mess is plaintiffs' fault, because they sat around from January 2 until January 18 without asking the court for relief. That's a valid point, especially when the parties suggested and accepted an end-game schedule as squeaky-tight as that in place here.

But even if all of this is true, defendants' decision to engage in a last-minute document dump after filing a new summary judgment motion is contrary to the letter and spirit of this court's orders governing the defendants' chronically haphazard fulfillment of their clear discovery obligations in this case. As habitual offenders, defendants are on the cusp of having liability judgment granted against them as punishment for their almost

compulsive passive/aggressive toying with opposing counsel. Defendants have one last chance to get it right, and they had better make it count:

Not later than February 1, 2006, defendants shall identify to the court and opposing counsel every document in that 8,600+ barrage that had not previously been disclosed to plaintiffs. Defendants also must persuade the court that they had valid reasons to disclose all of these documents in one large group in conjunction with last-minute summary judgment motions, with no clear identification of which documents were new and which were repeats, rather than disclose these documents in several smaller, more easily digestible packets with clearer indices during the three months following entry of the September 29, 2005 discovery order.

Not later than February 8, 2006, plaintiffs may reply to defendants' submission. In order to obtain sanctions, plaintiffs bear the burden of establishing to the court's satisfaction that they have suffered (or will suffer) actual prejudice as a result of how and when defendants disclosed these documents. On that same day, plaintiffs must file and serve their response to defendants' summary judgment motion.

Not later than February 17, 2006, defendants must file their reply in support of their summary judgment motion, and any reply to plaintiffs' claim of prejudice from defendants' handling of discovery.

Same-day, normal business hour (before 5:00 p.m.) service of all submissions is required.

Let me reiterate that no matter what else happens, the trial date is not moving again. This court already has accommodated the parties in a manner foreign to its usual practices; nothing beneficial resulted. With dispositive motions under advisal seventeen days before trial, the parties should not expect to receive rulings until the eve of trial, at the earliest; it is possible that the court will not have time to rule at all. This is a consequence of the tight schedule proposed by the parties and accepted by the court. The parties should plan accordingly.

Entered this 26th day of January, 2006.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge