

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

JAY J. SCHINDLER, M.D.,

Plaintiff,

v.

MARSHFIELD CLINIC,

Defendant.

ORDER

05-C-705-C

Several discovery motions in this case need resolution: plaintiff's motion to compel discovery (dkt. 226, sealed), under advisal on January 8, 2007; defendant's motion to compel expert depositions (dkt. 229), under advisal on December 28, 2006; and plaintiff's motion to extend the discovery deadline (dkt. 244), under advisal on January 9, 2007. Because recent occurrences in this case materially have re-contoured the landscape, I will address the motions in reverse order.

Motion to extend discovery: plaintiff wants an extra three weeks of discovery, until January 26, 2007. Plaintiff notes that the court recently moved the trial date from February 5, 2007 to March 19, 2007, which gives the parties some breathing room; he further notes that the court's recent order granting summary judgment to defendants on all but the breach of contract claim against the clinic has considerably narrowed this case, necessitating a review of trial strategy. More substantively, plaintiff contends that there is a lingering dispute over whether an out-of-state witness, T.S., may be deposed after the January 5, 2007 close of discovery.

Ordinarily, when this court moves back a trial date, it extends other dates commensurately, usually because everybody wants and can use the extra time. This case

continues to be an outlier, with defendant opposing any additional discovery.¹ Offering a different take on how the parties got to this juncture, defendant contends that plaintiff simply is indulging his habit and routine of not attending to discovery in a timely manner. Defendant does not want this court to cut plaintiff any slack because this would reward dilatory behavior.

Defendant has a point, and its ire is understandable in light of having received a notification at 4:30 p.m. January 4, 2007, the day before discovery closed, that plaintiff was noticing up T.S. for a trial deposition. But for the extra time provided by the moved trial date, this notice automatically would be a nullity. It ends up being a nullity in any event because of the equities presented in this case. This court is hoarse from voicing its concerns over plaintiff's inability to conform to the rules and procedures that govern his lawsuit. It's not as if the court imposed arcane, inscrutable requirements on the parties: everything was spelled out in great detail in the preliminary pretrial conference order, to which this court has adhered throughout this lawsuit. So, except as previously agreed between the parties, discovery closed on January 5, 2007, as previously ordered by the court (with two possible exceptions addressed below). Each side will bear its own costs on this motion.

The exceptions relate to the remaining discovery motions. On December 15, 2006, defendant filed a motion to compel the timely depositions of plaintiff's three testifying experts, Michael J. Ebersold, Regis W. Haid, Jr. and Stephen P. Manlove. According to defendant, it has been attempting since late October to get these depositions lined up, to no avail. On December

¹ Plaintiff attempts to have the last word with an unbidden reply (dkt. 252) that was sent in letter form explicitly to evade the rule against replies, *see id.* As is its practice, the court will take no notice of the unrequested reply.

20, 2006, plaintiff responded in opposition (dkt. 234), arguing that defendant had not adequately attempted to resolve this issue and claiming that all of his witnesses either were scheduled for timely depositions, or had been available for timely depositions. Had plaintiff not characterized this response as a “cross-motion,” the file would be complete, but plaintiff’s tactic allowed a response/reply by defendant (dkt. 237). Defendant defends its efforts at self-help and recites a chronology suggesting that plaintiff did not timely respond to defendant’s numerous requests to schedule firm deposition dates.

Now that January 5, 2007 has come and gone, and given that the court has moved the trial date from February to March, I need an update as to whether the three specified witnesses have been deposed (or firmly scheduled for deposition). If so, then there is nothing for the court to order. If this issue still is in play, then the court will set the deadlines for completing these depositions. Each side must file an update (or a joint update if the parties wish) not longer than 300 substantive words (*i.e.*, excluding case caption and closing niceties) not later than noon on Friday, January 19, 2007.

I also am requiring an update on plaintiff’s longer, more substantive motion to compel significant amounts of discovery. The motion, response and (requested) reply all were written on or before the court’s January 4, 2007 order granting summary judgment on all but one of plaintiff’s claims. Much of plaintiff’s motion seeks information regarding the remaining breach of contract claim, so I assume the parties still need a decision. It would be helpful if both sides submitted a short report in which they pinpoint which portions of the motion still need court action and why. Given the depth and breadth of the disputes raised in the parties’ previous

submissions, “short report” becomes a relative term. I will not impose an artificial page limit on the parties, but I do not want them spending a lot of time and effort on this. I have read their voluminous submissions and I do not need either side to repeat itself. I simply want an update that focuses the court on the issues that still need its attention. This submission also is due by noon on Friday, January 19, 2007. The parties may combine their two updates into one document if they wish.

ORDER

For the reasons stated above, it is ORDERED that:

- (1) Plaintiff’s motion to extend the discovery deadline is DENIED;
- (2) Each side will bear its own costs on this motion; and
- (3) Decisions on Plaintiff’s motion to compel discovery and Defendant’s motions to compel expert depositions are STAYED pending the parties’ January 19, 2007 reports.

Dated: January 15, 2007.

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