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

WEST BEND MUTUAL INSURANCE COMPANY,

                      Plaintiff,

    and

STEPHEN AND MELANIE FUEHRINGER,

                    Involuntary Plaintiffs,

    v.

KOMO MACHINE, INC.,

                    Defendant.

ORDER

11-cv-204-wmc

Before the court is plaintiff's late-filed motion to compel discovery, dkt. 32. For the reasons stated below, this motion is denied and the May 9, 2012 telephonic hearing is canceled as unnecessary.

Last month, on April 5, 2012, the court denied as untimely defendant's March 27, 2012 motion to take a Rule 25 medical examination of involuntary plaintiff Stephen Fuehrenger. The court pointed out that discovery had ended on April 1, 2012, that plaintiffs had convincingly argued that they would be unfairly prejudiced by such a late examination, and that defendant had not shown good cause for waiting so long to seek the examination. *See* dkt. 30.

Now the shoe is on the other foot: although discovery began on May 12, 2011 (the date of the preliminary pretrial conference, *see* dkt. 13), the involuntary plaintiffs waited to serve their extensive second set of written discovery requests until February 21, 2012, with responses due Wednesday, March 28, 2012, three weekdays before discovery ended on Sunday, April 1, 2012 (a date jointly suggested by the parties, *see* Rule 26(f) report, dkt. 10, at 3). According to the involuntary plaintiffs, defendant did not respond until after discovery ended (April 16, 2012) and its answers were inadequate. For several days thereafter, the attorneys for both sides exchanged communications debating and disputing what defendant had agreed to produce and whether any discovery still was owing. Finally, on April 25, 2012, plaintiffs filed the instant motion to compel discovery, dkt. 32.

The court's computer automatically set a response deadline for a week later and set the matter on for a telephonic hearing. Defendant filed an objection on May 2, 2012, complaining about the broad scope and late service of the discovery, fretting that this "would likely lead to new opinions by liability experts . . . as well as additions to exhibit lists, motions in limine and possibly require the disclosure and deposition of other witnesses." *See* dkt. 39 at 5.

No, it won't. Discovery ended on April 1, 2012, the date suggested by the parties and ordered by the court. Although the court would have been obliged to accept a motion to compel discovery filed *by* that date (although it would have chastised the parties for waiting until the last minute), it will not accept a motion to compel filed over three weeks after discovery ended.

This court admonished the parties in the May 12, 2011 preliminary pretrial conference order that they:

> . . . must attend diligently to their obligations in this lawsuit and must reasonably accommodate each other in all matters so as to secure the just, speedy and inexpensive resolution of each proceeding in this matter as required by Fed. R. Civ. Pro. 1. Failure to do so shall have consequences.

Dkt. 13 at 1.

The court further ordered:

> **4. Discovery Cutoff: April 1, 2012**
>
> All discovery in this case must be completed not later than the date set forth above, absent written agreement of all parties to some other date.
>
>   ***
>
> This court also expects the parties to file discovery motions promptly if self-help fails. Parties who fail to do so may not seek to change the schedule on the ground that discovery proceeded too slowly to meet the deadlines set in this order.

Id. at 3, 4.

The involuntary plaintiffs are not claiming that there is a written agreement between the parties to extend discovery beyond April 1, 2012. They have not shown good cause for waiting until

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late February to serve what they characterizes as demands for disclosure of important evidence. If this evidence actually was so important, then they should have sought it much, much sooner. They were playing with fire by waiting so long to serve their requests. The court understands that the parties took depositions and it is aware that there might have been a mediation attempt over the past year. None of this excuses the failure to complete discovery by the clearly announced deadline, or the failure to file a motion to compel before this April 1, 2012 discovery cutoff. Counsel should have kept their eye on the calendar because when April 1 passed without an agreement or a motion, discovery ended.

Further, as defendant notes, plaintiff's motion to compel discovery is even later and more prejudicial than *its* recent motion for discovery, which the court denied. The trial judge has ordered that all Rule 26(a)(3) disclosures and motions in limine be filed by this Friday, May 11, 2012, with other submissions due sequentially thereafter, and jury selection and trial set to begin on June 11, 2012. *See* dkt. 38. It is much too late in the process to be talking about adding new, potentially material evidence into the mix.

The court's bright-line policy regarding the discovery cutoff isn't merely a punctilious insistence on enforcing an arbitrary deadline. To achieve the goals of Rule 1, it is important to set and to hold firmly to a discovery cutoff at least 30 days before trial. This provides the parties and their attorneys a "safe harbor" for trial preparation during which they can digest and organize the evidence without fear that additional evidence will be added to the mix that might materially change their 26(a)(3) disclosures, their motions in limine, and their overall approach to and preparation for the imminent trial. On April 5, 2012, this court invoked its bright-line policy to deny defendant's attempt to obtain late discovery; today the court invokes it to deny the involuntary plaintiffs' attempt to obtain even broader discovery even later in the proceedings. Discovery is over. The parties should focus on trial preparation.

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ORDER

It is ORDERED that plaintiff's motion to compel discovery, dkt. 32, is DENIED as untimely and the May 9, 2012 telephonic hearing is canceled as unnecessary.

Entered this 8th day of May, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge