

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

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UNITED STATES OF AMERICA  
ex rel. JODI MILLER,

Plaintiff,

v.

SSM HEALTH BUSINESSES  
and HOME HEALTH UNITED, INC.,

Defendants.  
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ORDER

12-cv-885-bbc

Plaintiff Jodi Miller has filed a “motion to amend the scheduling order and adjourn the trial date.” Dkt. #64. In the event that the court declines to move the trial, plaintiff asks to move some of the other deadlines in the case. I am denying plaintiff’s request to move the trial, but I will grant a minor modification of the remaining deadlines

In support of her motion, plaintiff says that she decided to postpone doing much discovery until after the court resolved defendants’ most recent motion to dismiss on June 19, 2014. She says that she made that decision out of a desire to avoid expending resources before knowing whether the case would proceed to the next stage. (She says that discovery in this case will be “far more expensive than a typical case,” Plt.’s Br., dkt. #65, at 2, but she does not cite any evidence to support that statement.) In light of her decision to delay discovery, she has missed the deadline for disclosing liability experts and believes that she

does not have enough time to prepare for a potential summary judgment motion before the September 15, 2014 deadline.

Although I am sympathetic to a party's wish not to expend resources unnecessarily, it is not this court's general practice to stay discovery every time a potentially dispositive motion is filed. If that were the general rule, many cases would be mired in delays and the time it takes to resolve cases would expand dramatically.

Plaintiff acknowledges that Magistrate Judge Stephen Crocker warned the parties at the preliminary pretrial conference that the court would not change deadlines if the parties chose not to engage in discovery while motions were pending. Plaintiff says that she could not have anticipated that there would be multiple rounds of dismissal motions, but it is difficult to take that argument seriously. In cases such as this one involving fraud allegations, it is common for district courts to find that the complaint does not comply with the more stringent requirements of Fed. R. Civ. P. 9. E.g., Rigsby v. American Family Mutual Insurance Co., 14-cv-23-bbc, 2014 WL 1515493 (W.D. Wis. Apr. 17, 2014); Friemuth v. Fiskars Brands, Inc., 681 F. Supp. 2d 985, 993 (W.D. Wis. 2010); Semiconductor Energy Lab. Co., Ltd. v. Samsung Electronics Co., Ltd., 749 F. Supp. 2d 892, 909 (W.D. Wis. 2010); Slane v. Emoto, 06-C-632-C, 2007 WL 5346457 (W.D. Wis. Oct. 5, 2007); Friedman v. Rayovac Corp., 295 F. Supp. 2d 957, 996 (W.D. Wis. 2003). It is also common for courts to give plaintiffs an opportunity to file an amended complaint that complies with Rule 9. In fact, the general rule is that district courts *must* allow plaintiffs to try again. Alioto v. Town of Lisbon, 651 F.3d 715, 721 (7th Cir. 2011) ("[A] plaintiff

ordinarily retains the ability to amend his complaint once as a matter of right, even after a court grants a motion to dismiss."). Particularly because plaintiff *asked* the court for leave to amend in the event that the court found pleading deficiencies, Plt.'s Br., dkt. #48, at 13, it is disingenuous for plaintiff to argue that she believed that defendants' first motion to dismiss would be the end of the matter.

Although plaintiff has not shown good cause for moving the trial date, I will extend some of the remaining deadlines because there is room in the schedule for a limited extension. Accordingly, the parties should adhere to the following amended deadlines:

- Disclosure of experts: Proponents: August 11, 2014  
Respondents: September 8, 2014
- Dispositive motions: October 8, 2014

All other deadlines in the preliminary pretrial conference order, dkt. #47, remain the same.

### ORDER

IT IS ORDERED that plaintiff Jodi Miller's motion to amend the scheduling order, dkt. #64, is GRANTED IN PART. The deadlines in the December 27, 2013 preliminary

pretrial scheduling order are AMENDED as reflected in this order. All other deadlines remain the same.

Entered this 8th day of July, 2014.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge