

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

CHRISTOPHER FAIN, *et al.*, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

WILLIAM CROUCH, *et al.*,

Defendants.

CIVIL ACTION NO. 3:20-cv-00740

HON. ROBERT C. CHAMBERS, JUDGE

JOINT MOTION FOR EXTENSION OF FACT DISCOVERY DEADLINE

Pursuant to Federal Rules of Civil Procedure 16(b)(4) and 29(b), and Local Rule 16.1(f)(3), Defendants Crouch, Beane, and the West Virginia Department for Health and Human Resources, Bureau of Medical Services (collectively, “Defendants”)¹ and Plaintiffs Christopher Fain, Zachary Martell, and Brian McNemar (collectively, “Plaintiffs”) (collectively, the “Parties”) jointly move this Court for an extension of the deadline for fact discovery by 90 days, from the current deadline of December 1, 2021 to March 1, 2022. (ECF No. 75.) Defendant Ted Cheatham does not oppose the relief requested. Although the Parties have been diligently pursuing discovery, the Parties have conferred and agree that more time is required to complete fact discovery and to comply with the other deadlines in the current Scheduling Order. The requested extension will not affect any other deadline in the Scheduling Order or delay the ultimate completion of discovery in the case, but instead will simply allow the fact discovery period to run concurrently with a portion of the expert discovery period.

¹ In light of the stay of case schedule deadlines against Defendant The Health Plan of West Virginia, Inc. (“The Health Plan”) entered on October 18, 2021, this motion does not involve The Health Plan. (ECF No. 121.)

Over the course of the fact discovery period, Plaintiffs have served several sets of discovery requests on defendants (ECF Nos. 69-71, 110-112, 128-129) and served notice of third-party subpoenas to the three Managed Care Organizations for West Virginia's Medicaid program (ECF No. 123). The parties have held conferences to meet and confer about written discovery responses and document production issues, and participated in a discovery-related conference with the Honorable Judge Eifert regarding those issues (ECF No. 118). Nonetheless, Covid-related illness and delays have impeded the discovery process, seriously hampering the parties' ability to complete document discovery and take efficient and meaningful depositions before the December 1, 2021 fact discovery cut-off.

For example, the individual in the Bureau for Medical Services that has been facilitating discovery, including coordinating with the West Virginia Office of Technology to assist the Medicaid Defendants with their document review and production was out of the office for multiple weeks while he cared for a child with Covid, and then took time to recover from Covid after contracting it himself. As a result, the Medicaid Defendants have been unable to complete document production and require additional time to conduct the relevant searches of custodian records, review potentially responsive documents, conduct a privilege review, and prepare responsive non-privileged documents for production. With the work remaining on document discovery, the parties are concerned that production may not be complete before the December 1, 2021 deadline to complete depositions. This will lead to significant inefficiencies since the parties likely will need to reopen depositions if relevant documents are produced after the depositions are conducted. The requested extension will allow the parties to bring document discovery to an orderly conclusion so that depositions can be conducted effectively and without wasteful duplication.

The Parties rely on the concurrently-filed memorandum of law in support of this joint motion and request that the Court extend the fact discovery cut-off from December 1, 2021 to March 1, 2022.

Dated: October 20, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

Now come Plaintiffs Christopher Fain, Zachary Martell and Brian McNemar by and through counsel, and do hereby certify that the foregoing JOINT MOTION FOR EXTENSION OF FACT DISCOVERY DEADLINE was served on Defendants' counsel listed below via email on October 20, 2021:

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