

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

**MEMORANDUM OF LAW IN SUPPORT OF 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 of Health and Human Resources, Bureau for Medical Services (collectively, “Defendants”) and Plaintiffs Christopher Fain and Shauntae Anderson (collectively, “Plaintiffs”) (collectively, the “Parties”)¹ jointly move this Court for an extension of the deadline for fact discovery by 59 days, from the current deadline of March 1, 2022, to April 29, 2022. (ECF No. 133.) 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 (ECF No. 75). 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 the expert discovery period, which also ends on April 29, 2022.

¹ Defendant Jason Haught does not object to the relief requested in this Joint Motion.

BACKGROUND

Over the course of the fact discovery period, Plaintiffs have served several sets of discovery requests on Defendants (ECF Nos. 71, 111, 128, 129), and served third-party subpoenas to the three Managed Care Organizations for West Virginia's Medicaid program (ECF Nos. 123, 134, 136, 148). The parties have held conferences to meet and confer about written discovery responses and document production issues. Nonetheless, there have been unavoidable delays in the discovery process, including the production of Defendants' documents, which have in turn delayed the taking of depositions.

The Parties are now in the process of scheduling depositions. However, the Parties have conferred and agreed that more time is needed for this process. The Plaintiffs have requested to take a deposition of the West Virginia Department of Health and Human Resources, Bureau for Medical Services pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure. Due to the breadth of topics to be covered by the deposition, seven individuals have been designated to provide testimony on one or more topics. Additionally, the schedules of some individuals to be deposed in this matter are affected by the West Virginia Legislature being in session. Currently, it is anticipated that two witnesses may require second deposition dates to allow for the seven hours of questioning permitted under the Federal Rules of Civil Procedure. The Parties jointly seek extension of the time for conducting fact discovery to allow the depositions to proceed in an orderly and efficient manner.

ARGUMENT

As this Court has explained, “[s]cheduling orders may be modified only for good cause and with the court’s consent. Fed. R. Civ. P. 16(b).” *Esquire Grp., Inc. v. Columbia Gas*

Transmission, LLC, No. CV 3:14-24972, 2016 WL 8715666, at *2 (S.D.W. Va. Feb. 26, 2016); *see also, Jackson v. United States*, No. CV 3:14-15086, 2016 WL 502056, at *1 (S.D.W. Va. Feb. 8, 2016). “Rule 16(b)’s good cause standard focuses on the diligence of the moving party.” *Id.* (citing *Montgomery v. Anne Arundel Cty., Maryland*, 182 Fed. Appx. 156, 162 (4th Cir. 2006) (citations omitted). In order to establish good cause, “the movant must show the deadlines cannot reasonably be met despite the movant’s diligence; good cause is lacking if the movant has not acted diligently to comply with the schedule.” *Esquire Grp., Inc.*, 2016 WL 8715666, at *2. Additionally, “[d]istrict courts have discretion to consider other factors before amending a scheduling order, which include: the danger of prejudice to the non-moving party, the length of delay and its potential impact on the proceeding, the movant’s reason for the delay, and whether the movant acted in good faith.” *Id.*

Here, the Parties are acting in good faith and have been diligently pursuing discovery, there is no risk of prejudice, and the length of the extension requested will not impact the rest of the scheduling order. As explained in the Background section, *supra*, the Parties have acted diligently to pursue written and document discovery. This includes serving extensive requests, and meeting and conferring to resolve issues. But delays in completion of the document discovery process have hampered the Parties’ ability to make progress with efficiently conducting depositions. Granting the extension of the fact discovery deadline will not prejudice the Parties as the Parties have conferred and agree that more time is required to complete fact discovery. More importantly, the requested extension will not affect any other deadline in the Scheduling Order or delay the ultimate completion of discovery in the case. Ultimately, the Parties can establish the good cause required by Rule 16(b)(4).

Rule 29(b) states that “[u]nless the court orders otherwise, the parties may stipulate that: (b) other procedures governing or limiting discovery be modified—but a stipulation extending the time for any form of discovery must have court approval if it would interfere with the time set for completing discovery, for hearing a motion, or for trial.” *George Golf Design, Inc. v. Greenbrier Hotel, Inc.*, No. CV 5:10-01240, 2011 WL 13228487, at *4 (S.D.W. Va. Dec. 6, 2011). Here, the Parties have met, conferred, and agreed to extension of the fact discovery deadline and have done so in a manner that does not interfere with scheduled Court proceedings. *See generally, Walker v. W. Pub. Corp.*, No. CIV.A. 5:09-0723, 2011 WL 3667632, at *2 (S.D.W. Va. Aug. 18, 2011), objections sustained in part and overruled in part, No. 5:09-CV-00723, 2011 WL 3667613 (S.D.W.Va. Aug. 22, 2011) (“Federal Rule of Civil Procedure 29(b) anticipates that parties may agree in these regards as long as their stipulations do not interfere with scheduled Court proceedings.”). That is the case here since the requested extension will simply permit fact discovery to run concurrently with the expert discovery period, which does not close until April 29, 2022. (ECF No. 75.)

CONCLUSION

For the forgoing reasons, the Parties respectfully request that the Court grant the Joint Motion for Extension of Fact Discovery Deadline and enter the accompanying proposed order.

Respectfully Submitted,

Dated: February 9, 2022

/s/Kimberly M. Bandy

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CERTIFICATE OF SERVICE

Now come Defendants Crouch, Beane, and the West Virginia Department of Health and Human Resources, Bureau for Medical Services, by and through counsel, and do hereby certify that the foregoing MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR EXTENSION OF FACT DISCOVERY DEADLINE was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a Notice of Electronic Filing to, and constitutes service upon on counsel listed below on February 9, 2022:

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