

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

**CHRISTOPHER FAIN; SHAWN
ANDERSON a/k/a SHAUNTAE ANDERSON;
and LEANNE JAMES, individually and on
behalf of all others similarly situated,**

Plaintiffs,

v.

**Case No.: 3:20-cv-00740
Judge Robert C. Chambers**

**WILLIAM CROUCH, in his official capacity as
Cabinet Secretary of the West Virginia
Department of Health and Human Resources;
CYNTHIA BEANE, in her official capacity as
Commissioner for the West Virginia Bureau for
Medical Services; WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN
RESOURCES, BUREAU FOR MEDICAL
SERVICES; and JASON HAUGHT, in his official
capacity as Director of the West Virginia Public
Employees Insurance Agency,**

Defendants.

JOINT MOTION TO EXTEND DEFENDANTS' EXPERT WITNESS DEADLINE

Defendant Jason Haught, in his official capacity as Director of the West Virginia Public Employees Insurance Agency (“Defendant Haught”), by and through counsel, Perry W. Oxley, David E. Rich, Eric D. Salyers, Christopher K. Weed, and the law firm of Oxley Rich Sammons, PLLC, along with Defendants Crouch, Beane, and the West Virginia Department of Health and Human Resources, Bureau for Medical Services, (collectively, “Defendants”), by and through counsel, pursuant to Rule 16.1(f)(1) of the Local Rules for the United States District Court for the Southern District of West Virginia, hereby move this Court to extend the expert witness deadline in the Scheduling Order for the Defendants. For the reasons set forth herein, this Motion should be granted.

I. Background

1. A Scheduling Order was entered on August 6, 2021, setting, *inter alia*, the expert witness deadline for the party not bearing the burden of proof for February 15, 2022. *See* ECF 75. This deadline has not been altered or extended in this case.

2. On September 23, 2021, the Plaintiffs moved for leave to file their First Amended Complaint which sought to add two new Plaintiffs, Shauntae Anderson and Leanne James. *See* ECF 106, 109.

3. On October 21, 2021, the fact discovery deadline was extended to March 1, 2022. *See* ECF 133.

4. The Plaintiffs' Motion for Leave to file their First Amended Complaint was granted on October 28, 2021, and the First Amended Complaint was filed that same day. *See* ECF 139, 140.

5. On January 14, 2022, the Plaintiffs filed their expert disclosures of Dr. Dan Karasic and Dr. Loren Schechter. *See* ECF 182-183. Combined, the disclosures of Dr. Karasic and Dr. Schechter total 138 pages.

6. On January 21, 2022, the Plaintiffs moved for leave to file their Second Amended Complaint. *See* ECF 187-188.

7. The proposed Second Amended Complaint adds claims by Plaintiff James against the West Virginia Public Employees Insurance Agency ("PEIA"), as well as her employer, the Kanawha County Board of Education.

8. On February 10, 2022, the fact witness discovery deadline was extended to April 29, 2022. *See* ECF 196.

9. On February 11, 2022, Plaintiff James' claims against Defendant Haught were stayed due to the pending Motion for Leave to file the Second Amended Complaint. *See* ECF 198.

10. On the morning of February 15, 2022, defense counsel contacted Plaintiffs' counsel and requested a short extension, which could have consisted of a three-day, two-day, or even one-day extension of the Defendants' expert witness disclosure deadline to permit the Defendants' jointly retained expert, Stephen B. Levine, M.D., additional time to complete his report, which will respond to both of Plaintiffs' retained experts' reports and which is expected to be approximately 75 pages in length.

11. At 2:45 p.m., Plaintiffs' counsel informed defense counsel that Plaintiffs were "unable to agree to extend today's expert report deadline given the length of time the parties have had notice of this deadline in the case schedule." Email, Borelli to Salyers, Feb. 15, 2022, attached hereto as **Exhibit A**. Acknowledging that meeting the deadline would be difficult due to Dr. Levine's clinical schedule, Plaintiffs' counsel noted that the report would be expected by midnight on February 15, 2022.

12. As a result of the above, the parties bring the instant motion.

II. Argument

Rule 16.1(f) of the Local Rules of the United States District Court for the Southern District of West Virginia governs extensions of Scheduling Orders entered by the Court. Specifically, Rule 16.1(f) states as follows:

Modification of Scheduling Order.

(1) Time limits in the scheduling order for the joinder of parties, amendment of pleadings, filing of motions, and completions of discovery, and dates for conferences before trial, a final pretrial conference, and trial may be modified for good cause by order.

(2) Subject to subparagraph (3), stipulations to modify disclosure or discovery procedures or limitations will be valid and enforced if they are in writing, signed by the parties making them or their counsel, filed promptly with the clerk, and do not affect the trial date or other dates and deadlines specified in subparagraph (1).

(3) A private agreement to extend discovery beyond the discovery completion date in the scheduling order will be respected by the court if the extension does not affect the trial date or other dates and deadlines specified in subparagraph (1). A discovery dispute arising from a private agreement to extend discovery beyond the discovery completion date need not, however, be resolved by the court.

L. R. Civ. P. 16.1(f).

This case is complex procedurally and factually. It involves the safety and efficacy of hormonal and surgical interventions for gender dysphoria, insurance coverage issues regarding those interventions, and more than 10,000 pages of discovery documents. The Plaintiffs disclosed two separate expert reports from physicians, which total approximately 138 pages. The Defendants were provided approximately one month to respond to the Plaintiffs' experts. Nonetheless, the Defendants jointly secured an expert, Dr. Stephen Levine, Clinical Professor of Psychiatry at Case Western Reserve University School of Medicine. However, Dr. Levine has an active clinical practice, which creates difficulty in completing his report timely. The Defendants disclosed the identity of their expert to Plaintiffs' counsel today, and requested a short extension, until Friday, February 18, 2022, due to the short time frame to respond and Dr. Levine's clinical schedule. However, the Plaintiffs denied this reasonable request. *See Exhibit A*. Thus, the Defendants are forced to file the instant motion.

A brief extension to file the Defendants' expert witness disclosure will not affect the time limits in the scheduling order for any other deadline. There has yet to be a single deposition taken in this case. Additionally, the claims against Defendant Haught are currently stayed. Moreover, the parties have until April 29, 2022 to complete expert discovery. With the Defendants sharing a

single expert, this will ease the burden of scheduling future depositions if the Plaintiffs choose to depose the Defendants' expert. Submitting the report of Dr. Levine days after the original deadline will not affect the other deadlines in this matter in any way and will not prejudice the Plaintiffs in any way. Thus, the Defendants request a short extension, to February 21, 2022, to submit their expert witness disclosures. A deadline of February 21, 2022 allows Dr. Levine to utilize the weekend to finalize his report. Alternatively, if the Court determines that an extension to February 21, 2022 is not warranted, the Defendants request an extension to February 18, 2022 be provided.

III. Conclusion

WHEREFORE, the parties move the Court for entry of an Order granting their Motion and for any and all other such relief as the Court deems appropriate.

Dated: February 15, 2022

Respectfully submitted,

s/Caleb B. David

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SERVICES; and JASON HAUGHT, in his official
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing “**Joint Motion to Extend Defendants Expert Witness Deadline**” on this **15th** day of **February, 2022**, with the Clerk of the Court using the CM/ECF system, which will send notification of filing, and a copy of the same, to the following CM/ECF participants:

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Eric D. Salyers

From: Tara Borelli <Tborelli@lambdalegal.org>
Sent: Tuesday, February 15, 2022 2:45 PM
To: Eric D. Salyers
Subject: Expert report deadline

Eric,

Thanks for your call earlier. While we try to be reasonable about extension requests in general, we are unable to agree to extend today's expert report deadline given the length of time the parties have had notice of this deadline in the case schedule. We fully understand that, in light of Dr. Levine's clinical schedule, the report may need to be served close to the midnight deadline.

Best,
Tara

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