

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION**

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WAGGIN' TRAIN LLC,	)	
	)	
PLAINTIFF,	)	
	)	
V.	)	NO: <u>1:09-cv-1093-JDB-egb</u>
	)	
	)	
NORMERICA INC. AND NORTHDOWN	)	
INDUSTRIES, INC.,	)	
	)	
	)	
DEFENDANTS.	)	

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**ORDER DENYING WAGGIN' TRAIN LLC'S MOTION FOR EXPEDITED DISCOVERY  
AND DENYING MOTION TO EXPEDITE HEARING ON MOTION FOR EXPEDITED  
DISCOVERY**

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This matter is before the Court on the Motion for Expedited Discovery (D.E. 62) filed by Plaintiff Waggin' Train, LLC, on July 30, 2009. This Motion is Plaintiff's second Motion requesting expedited discovery; Plaintiff's first Motion requesting expedited discovery was granted in part and denied in part by this Court on May 5, 2009. Plaintiff has also filed a Motion to Expedite Hearing on Motion for Expedited Discovery on July 30, 2009 (Doc. 63). Defendant opposes the Motions.

As an initial matter, the Court does not find that a hearing on this Motion would aid the Court in making its determination. Accordingly, Plaintiff's Motion to Expedite Hearing on Motion for Expedited Discovery (Doc. 63) is DENIED.

This Court noted in its May 5, 2009 Order Granting in Part and Denying in Part Plaintiff's Motion to Expedite that courts in several circuits, including the Sixth Circuit, have found that expedited discovery should only be allowed where the moving party has demonstrated good cause. *See In re Paradise Valley Holdings, Inc.*, No. 03-34704, 2005 Bankr. LEXIS 2951 (Bankr. E.D. Tenn.

Dec. 29, 2005); *Giltmane v. TVA*, 2009 U.S. Dist. LEXIS 6734 (E.D. Tenn. Jan. 30, 2009). *See also Semitool, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273 (N.D. Cal. 2002). The court in *In re Paradise Valley Holdings, Inc.* observed:

[W]here a plaintiff seeks expedited discovery to prepare for a preliminary injunction hearing, it makes sense to examine the discovery request, as we have done, on the entirety of the record to date and the reasonableness of the request in light of all of the surrounding circumstances[.]” *Merrill Lynch, Pierce, Fenner & Smith v. O’Connor*, 194 F.R.D. 618, 624 (N.D. Ill. 2000). “Because [e]xpedited discovery is not the norm Plaintiff must make some prima facie showing of the need for the expedited discovery.” *O’Connor*, 194 F.R.D. at 623. Additionally, when applying the good cause standard, “the court should consider the scope of the requested discovery.” *Qwest Commc’ns Int’l Inc. v. Worldquest Networks, Inc.*, 213 F.R.D. 418, 420 (D. Colo. 2003) . . . Courts should not grant leave without some showing of the necessity for expedited discovery. The court must protect defendants from unfairly expedited discovery.” *Notaro v. Koch*, 95 F.R.D. 403, 405 (S.D.N.Y. 1982) (internal citation omitted).

*In re Paradise Valley Holdings, Inc.*, 2005 Bankr. LEXIS 2951 at \* 4-6.

Here, Plaintiff has failed to raise any new issues from its previous Motion to Expedite demonstrating good cause for expediting the discovery it seeks. On August 6, 2009 a scheduling conference was held in this matter and, as Defendants note, this Court established a nine-month period for discovery. The Court sees no reason why Plaintiff cannot seek discovery in accordance with normal deadlines, and finds that it would be unfair to expedite Defendants’ time to respond given that Plaintiff has failed to demonstrate its need for additional expedited discovery.

Accordingly, the Court DENIES Plaintiff’s Motion for Expedited Discovery (D.E. 62), as Plaintiff has failed to demonstrate good cause for expediting such discovery.

IT IS SO ORDERED.

**s/ Edward G. Bryant**  
EDWARD G. BRYANT  
United States Magistrate Judge

**August 18, 2009**  
Date