

the scheduling order, and established July 3, 2003, as the new deadline for completion of discovery and August 1, 2003, as the deadline for filing pretrial motions, including summary judgment motions. On August 1, 2003, Fleet moved for summary judgment.

Casey's alleges that prior to the deadline for completion of discovery, its attorney contacted Fleet's attorney to request available dates for the deposition of Fleet. Fleet's counsel failed to respond to Casey's request for deposition dates and, instead, filed its motion for summary judgment. Casey's asserts that crucial information to its defense concerning the alleged assignment of the service contracts is in Fleet's possession and that it cannot defend the motion for summary judgment without further discovery. Casey's also asserts that Fleet's delay of several months in providing written discovery left inadequate time for depositions.

Fleet opposes Casey's motion on the basis that Casey was dilatory in pursuing discovery. Fleet's counsel acknowledges the receipt of Casey's letter dated June 13, 2003, which requested potential dates available for depositions. Fleet alleges, however, that Casey's did not follow up the letter with any other correspondence before the discovery deadline of July 1, 2003.

Several rules are pertinent to this dispute. Rule 16(b) of the Federal Rules of Civil Procedure provides that "[a] schedule shall not be modified except upon a showing of good cause and by leave of the district judge or, when authorized by local rule, by a magistrate judge." FED. R. CIV. P. 16(b). Federal Rule of Civil Procedure 56(f) provides as follows:

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

FED. R. CIV. P. 56(f). In addition to Rules 16(b) and 56(f), Rule 1 provides that the rules governing federal civil procedure "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." FED. R. CIV. P. 1. Finally, Rule 6(b) provides that the court may extend time "upon motion made after the expiration of the specified period . . . where the failure to act was the result of excusable neglect." FED. R. CIV. P. 6(b).

The defendants have shown good cause for the court to revise the previous scheduling order because of scheduling conflicts between the parties and Fleet's failure to provide dates upon which depositions could be taken. In addition, the court notes that on September 10, 2002, the court ordered the parties to engage in mediation after reasonable discovery. This has not been done, perhaps because of neglect of counsel, and this case appears to be one suitable for mediation. Therefore, in the interest of securing a "just, speedy, and inexpensive determination" of this action, the

court will defer consideration of Fleet's motion for summary judgment to allow depositions of Fleet and to allow the parties time to engage in mediation.

Accordingly, the defendant's motion to revise the scheduling order and to defer consideration of Fleet's motion for summary judgment is granted. The deadline for discovery is extended to Thursday, September 25, 2003, for the sole purpose of allowing Casey's an opportunity to depose Fleet's representatives. Casey's response to the motion for summary judgment will be due on or before Thursday, October 2, 2003. The court's consideration of Fleet's motion for summary judgment will be deferred until after that date. In addition, the parties are directed to engage in private mediation on or before Thursday, September 25, 2003.

IT IS SO ORDERED this 28th day of August, 2003.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE