

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN J. KORESKO, V, <u>et al.</u>	:	CIVIL ACTION
	:	
v.	:	NO. 04-CV-769
	:	
JEFF BLEIWEIS, <u>et al.</u>	:	
	:	
	:	
	:	

MEMORANDUM AND ORDER

Kauffman, J.

February 10, 2005

Plaintiffs John Koresko, V (“Koresko”) and Pennmont Benefit Services, Inc. (“PennMont”) (collectively “Plaintiffs”) bring this action for Interference with Present and Prospective Business and Contractual Relationships (Count One), Misappropriation of Trade Secrets (Count Two), Commercial Disparagement (Count Four), and Civil Conspiracy (Count Five) against Defendants Jeff Bleiweis (“Bleiweis”), Raymond Ankner (“Ankner”), CJA and Associates (“CJA”), and the Travelers Life and Annuity Company (“Travelers”).¹ Now before the Court is Plaintiffs’ Motion for Extension of Time for Discovery. For the reasons that follow, the Motion will be granted in part.

I. BACKGROUND

This case has been referred to the Honorable Jacob P. Hart for pre-trial management purposes. On August 6, 2004, Judge Hart entered an Amended Scheduling Order. Among other things, the Order required the parties to conclude all fact discovery by October 18, 2004. More than a week after that deadline expired, Plaintiffs filed the instant motion requesting an additional 90 day extension. See Koresko v. Bleiweis, No. 04 Civ. 769 (E.D. Pa. filed Feb. 23,

¹ Plaintiffs’ First Amended Complaint omits a Count Three.

2004).

II. LEGAL STANDARD

Since Plaintiffs filed their motion after the deadline expired, they are entitled to an extension only if they can show that their failure to complete discovery was the result of “excusable neglect.” Fed. R. Civ. P. 6(b)(2). In assessing whether a party’s failure to adhere to a deadline meets the excusable neglect standard, courts consider a number of factors including the degree to which the tardiness is the moving party’s fault and the prejudice granting an extension will cause to the non-moving parties. See In re Orthopedic Bone Screw Prod. Liability Litig., 246 F.3d 315, 322 - 24 (3d. Cir. 2001). Particularly in the discovery context, however, courts may consider other factors as they deem appropriate, since the management of discovery is generally left to the sound discretion of the trial judge. See Miller v. Ashcroft, 2003 WL 22234872 at *4 (3d. Cir. Sept. 20, 2003).

III. ANALYSIS

Plaintiffs intend to use the 90 day extension of the discovery period to take a number of key depositions and to submit follow-up interrogatories. They advance a number of arguments as to why their failure to take these steps within the allotted time was “excusable.” First, they argue that Defendant Travelers Life and Annuity Company (“Travelers”) was deliberately obstructionist in its responses to Plaintiffs’ interrogatories, and that this had the effect of limiting their time to follow-up on Travelers’ answers. See Plaintiffs’ Memorandum of Law in Support of Motion for Extension of Time to Joint Discovery Plan (“Plaintiffs’ Memorandum”) at 8.

In fact, Plaintiffs had already made this argument in their Motion to Compel filed on October 18, 2004. Judge Hart firmly rejected it, finding that Plaintiffs’ interrogatories were

incomprehensible, and that Travelers was not remiss in its attempts to formulate responses. See Koresko v. Bleiweis, No. 04 Civ. 769 (E.D. Pa. Nov. 23, 2004). The Court adopts his analysis here, and accordingly finds that Plaintiffs' inability to follow-up on their interrogatories is their own fault, not Travelers'.

Plaintiffs also attempt to blame Defendant CJA and Associates, Inc. ("CJA") for their need to continue with discovery. CJA, Plaintiffs argue, filed its responses to Plaintiffs' interrogatories one business day before the discovery deadline, leaving Plaintiffs without any time to ask further questions. See Plaintiffs' Memorandum at 6. After reviewing the record, however, the Court concludes that Plaintiffs rather than CJA are responsible for the delay. On September 3, 2004, Plaintiffs' counsel agreed that CJA should not respond to Plaintiffs' discovery requests until Plaintiffs determined whether Defendant Raymond Ankner was still a party in the case. Plaintiffs' counsel promised to contact CJA as soon as she could provide clarification on the matter. See E-mail from Virginia Miller to Craig Trachtenberg, attached as Exhibit 16 to Travelers' Opposition Memo. Despite repeated inquiries from CJA, Plaintiffs' counsel neglected to clarify Ankner's status in the case until October 18, 2004, the deadline for concluding all discovery. Accordingly, the Court finds that Plaintiffs are to blame for the delays.

Next, Plaintiffs argue that they were unable to conduct depositions within the allotted time, because Defendants failed to produce certain documents. However, that argument does not withstand scrutiny. The parties arranged for Plaintiffs' counsel to depose a number of Travelers employees, the first of which was to take place on October 6, 2004 in Hartford, Connecticut. See E-mail correspondence, attached as Exhibit 1 to Travelers' Opposition Memo. However, Plaintiffs cancelled that deposition, along with the other depositions that had been scheduled,

citing Travelers' failure to produce all the requisite documents. See E-mail correspondence, attached as Exhibit 3 to Travelers' Opposition Memo. Plaintiffs' assertions notwithstanding, Travelers had produced 97% of all responsive documents five days prior to the scheduled deposition. See Travelers' Opposition Memo at 13. In the two briefs they have submitted in support of this Motion, Plaintiffs have failed to explain why they needed the final 3% of the production to conduct a meaningful deposition.² Accordingly, the Court concludes that Plaintiffs have only themselves to blame for their failure to depose Travelers employees within the allotted time.

The same is true for the CJA Defendants, who were cooperative in their attempts to facilitate depositions of CJA employees. See email correspondence between Virginia Miller and Renee Bergman, attached as Exhibit 4 to Travelers' Opposition Memo. Plaintiffs' counsel's efforts to arrange the depositions, in contrast, were far less than diligent. See Travelers' Opposition Memo at 18. Thus, it is Plaintiffs who are responsible for the lack of progress in deposing CJA and its employees.

Finally, Plaintiffs argue that they need an extension of discovery deadlines because Defendants have not filed an Answer to Plaintiffs' Amended Complaint.³ Their argument, essentially, is that Plaintiffs may need additional discovery based on the affirmative defenses

² Indeed, Judge Hart concluded that Plaintiffs should have proceeded with depositions earlier: "I believe that Plaintiffs should have resorted to the time-honored technique of obtaining this information in depositions rather than killing a forest-worth of trees drafting undecipherable interrogatories[.]" See Koresko v. Bleiweis, No. 04 Civ. 769 (E.D. Pa. Nov. 23, 2004).

³ Travelers has subsequently filed its answer. " See Koresko v. Bleiweis, No. 04 Civ. 769 (E.D. Pa. Jan. 13, 2005).

Defendants may raise in their Answers. However, there are no substantive differences between Plaintiffs' Amended Complaint and the original, to which Defendants have already filed an Answer. Accordingly, the Court finds that the lack of Answers to Plaintiffs' Amended Complaint is not sufficient reason for extending the discovery deadline.

In short, the Court finds that Plaintiffs are primarily responsible for the lack of progress in discovery. However, the Court is also mindful of the effect that denying further discovery would have on Plaintiffs' case. See Plaintiffs' Reply Memorandum at 7 ("Plaintiffs' claim is dependant upon the discovery of additional information..."). Thus, in the interest of justice, the Court will grant Plaintiffs an additional 30 days in which to conduct oral depositions. To be clear, the extension does not apply to any other form of discovery. An appropriate order follows.

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ORDER

AND NOW, this 10th day of February, 2005, upon consideration of Plaintiffs' Motion for Extension of Time for Discovery (docket no. 64), Defendants' responses thereto (docket nos. 67 and 71), Plaintiffs' Reply Memorandum (docket no. 77), and Defendants' Surreply (docket no. 83), and for the reasons stated in the accompanying Memorandum, it is **ORDERED** that Plaintiffs may conduct oral deposition discovery during an additional 30 day period from the date of this Order.

BY THE COURT:

S/Bruce W. Kauffman

BRUCE W. KAUFFMAN, J.