

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

WILLIAM FULP WRECKER )  
SERVICE, INC., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MILLER TRANSFER AND )  
RIGGING CO., )  
 )  
Defendant. )

1:23-CV-368

**ORDER**

The defendant seeks a thirty-day extension of the discovery period. The plaintiff objects. Because the defendant has not shown good cause, or indeed any cause, the motion will be denied.

In July 2023, the parties agreed that the discovery necessary for the case could be completed by April 30, 2024. Doc. 9. The Magistrate Judge entered an initial pretrial order requiring discovery to be completed by that date. Doc. 11. The defendant chose not to conduct certain depositions during that time, gambling that its motion for judgment on the pleadings would be granted. Doc. 28 ¶ 6. It was not. The defendant now asks for more time for discovery, saying it needs to take the deposition of a Highway Patrol trooper and, potentially, of a representative of the Highway Patrol. Doc. 28 ¶ 9.

Scheduling orders entered pursuant to Rule 16 of the Rules of Civil Procedure are mandatory, Fed. R. Civ. P. 16(b)(1), and serve a vital purpose in helping a court manage its civil caseload. *See, e.g., Green v. AMF Bowling Ctrs., Inc.*, No. ELH-19-1410, 2020

WL 6204297, at \*3–4 (D. Md. Oct. 21, 2020). In an era of crowded dockets, “effective case management has become an essential tool for handling civil litigation.” *Tower Ventures, Inc. v. City of Westfield*, 296 F.3d 43, 45 (1st Cir. 2002). To that end, a scheduling order is an important vehicle in securing the just, speedy, and inexpensive determination of every action. *See, e.g.*, FED. R. CIV. P. 1; *Green.*, 2020 WL 6204297, at \*3–4; *Miller v. Transcend Servs., Inc.*, 1:10-CV-362, 2013 WL 1632335, at \*4 (M.D.N.C. Apr. 16, 2013). Indeed, it is “the critical path chosen by the trial judge and the parties” to resolve the case fairly and expeditiously. *Marcum v Zimmer*, 163 F.R.D. 250, 253 (S.D.W. Va. 1995); *see also Blue v. Hartford Life & Accident Ins. Co.*, 698 F.3d 587, 594 (7th Cir. 2012) (“[D]istrict courts have an interest in keeping litigation moving forward and . . . maintaining respect for set deadlines is essential to achieving that goal.”).

Pursuant to Federal Rule of Civil Procedure 16(b)(4), a schedule entered by court order “may be modified only for good cause and with the judge’s consent.” Rule 16 thus recognizes “that the parties will occasionally be unable to meet deadlines in a scheduling order because scheduling order deadlines are established relatively early in the litigation.” *O’Connell v. Hyatt Hotels of P.R.*, 357 F.3d 152, 154 (1st Cir. 2004) (cleaned up). But the fact that parties will “occasionally” be unable to meet deadlines does not mean that scheduling orders should be modified without a good reason for the delay or in the absence of diligence. Such an approach would be inconsistent with this district’s history of strict adherence to discovery schedules<sup>1</sup> and with the court order entered early in this

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<sup>1</sup> This history goes back at least to 2005 and continues to this day. *See, e.g., Walter Kidde Portable Equip., Inc. v. Universal Sec. Instruments, Inc.*, No. 1:03-CV-537, 2005 WL 6043267,

case directing the parties to “promptly move the case towards final resolution and to build in time for coping with delays and obstacles.” Doc. 10 ¶ 9.

The touchstone of good cause under Rule 16(b) is diligence. *Marcum*, 163 F.R.D. at 255; *accord, e.g., Tyndall v. Maynor*, 288 F.R.D. 103, 108 (M.D.N.C., 2013). Here, the defendant has not acted with diligence.

During the many months of discovery, the defendant chose not to take the depositions it now says are needed. That is not due diligence. Moreover, the pending motion that the defendant offers as the reason for its delay was completely resolved almost two months before the end of the discovery period, and the defendant has offered no explanation for why it did not take any depositions during this time frame.

Finally, the defendant is wrong when it says that an extension of the discovery deadline would not affect the trial date and extending the discovery deadline has consequences the defendant has failed to address. The defense proposal to extend the discovery deadline and, perforce, the deadline for motions for summary judgment, is likely to interfere with the trial date and will place unreasonable and unexpected demands on the Court. *See Cooper*, 2020 WL 5806484, at \*2 (denying extension of discovery period where “the parties disregard the possibility (or, more likely, the strong probability) that the Court will have to address a significant number of matters in an unrealistically short timeframe”).

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at \*3 (M.D.N.C. July 7, 2005); *Alston v. Becton, Dickinson & Co.*, No. 1:12-CV-452, 2014 WL 338804, at \*3 (M.D.N.C. Jan. 30, 2014); *N.C. State Conf. of the NAACP v. Cooper*, No. 1:18-CV-1034, 2020 WL 5806484, at \*2 (M.D.N.C. May 27, 2020).

In the absence of a showing of diligence and because granting the motion would interfere with the long-established schedule for dispositive motions and with the trial date, the motion will be denied.

It is **ORDERED** that the motion for extension of the discovery deadline, Doc. 28, is **DENIED**.

This the 1st day of May, 2024.

  
UNITED STATES DISTRICT JUDGE