

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

**CHARLESTON DIVISION**

WILLIE CRISS, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:09-cv-00543

ACTAVIS TOTOWA, LLC., et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER**

Pending before the court is Defendants' Rule 41 motion to dismiss for failure to comply with the timing and procedures of pretrial order no. 29 [Docket 20]. For reasons discussed below I **DENY** the motion.

On July 2, 2009, I issued PTO #29 which ordered plaintiffs in multi-plaintiff actions, with the exception of the first-named plaintiff, to file severed and amended complaints and pay the appropriate filing fee no later than August 3, 2009. The instant action was one of three multi-plaintiff actions subject to PTO #29. Plaintiffs Frank Heppel and Linda Weadock failed to comply with PTO #29 by the deadline. The defendants contacted plaintiffs' counsel in writing concerning the failure to comply and voluntarily extended the deadline to cure. Due to a series of events noted in plaintiffs' response, the letter was not received until after the deadline extension expired and the subsequent filing of defendants' motion to dismiss. Plaintiffs' filed a timely response to defendants' motion to dismiss.

Finding that (1) the defendants' were obviously willing to allow plaintiffs to correct their

failure to comply beyond the court ordered deadline; (2) the plaintiffs have admitted their failure to docket the appropriate deadline and have taken remedial steps to ensure that all court deadlines are properly docketed in the future; (3) the failure was not an attempt to purposefully delay these proceedings; and (4) the plaintiffs have fully cured the outstanding procedural deficiencies outlined in defendants' motion in accordance with PTO #29, I accordingly **DENY** the motion to dismiss.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: August 21, 2009

  
Joseph R. Goodwin, Chief Judge