

**IN THE UNITED STATES DISTRICT COURTS
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

CORY NIXON, *et al.*

PLAINTIFFS

v.

Case No. 4:11-cv-00578-KGB

COSTNER EXCAVATING, INC., *et al.*

DEFENDANTS

ORDER

On April 4, 2013, the Court conducted a status conference to discuss the request for additional discovery and all pending motions. Specifically, the Court heard argument regarding defendants' second motion to defer plaintiffs' motion for partial summary judgment until after completion of discovery (Dkt. No. 92) and defendants' motion for continuance which requests additional time to complete discovery (Docket No. 136). Defendants also made an oral motion to depose all of the plaintiffs who could be called to testify at trial. Plaintiffs objected to this oral motion. The Court also raised with counsel how long the parties anticipate the trial to last.

The Court ruled that plaintiffs and defendants may engage in limited discovery on the retaliation claim recently added by plaintiffs and on all claims against separate defendant LaDonna Costner.¹ To the extent the parties dispute whether requested discovery falls within the scope of this Court's Order, they are directed to contact the Court and request a telephone conference with the Court to address the matter. The Court extended the discovery deadline for this additional discovery by 90 days. The Court will set new discovery deadlines, motions deadlines, supplemental briefing deadlines, as well as a new trial date, by a Second Amended Final Scheduling Order.

¹ On March 25, 2013, the Court entered an Order granting separate defendant LaDonna Costner's motion for continuance (Dkt. No. 150). Ms. Costner was added as a defendant on February 21, 2013; this was after the close of an extended discovery period and after the filing deadline for dispositive motions.

At the hearing, the Court took under advisement defendants' oral motion to depose all of the plaintiffs who could be called to testify at trial. The Court now denies that motion without prejudice. The Court on April 6, 2012, certified a collective action with respect to persons "who were employed as dump truck drivers for Defendants since July 21, 2008" (Dkt. No. 45). The parties engaged in 10 months of discovery. Defendants requested and were granted an extension of time to complete discovery (Dkt. No. 122). At no time during that discovery period, and not even when requesting additional time to complete discovery, did defendants make this request of the Court – a request to depose all plaintiffs who could be called to testify at trial. Defendants first made this request of the Court after discovery closed. Defendants chose to follow a discovery strategy that did not include these depositions. At the hearing, defendants offered no specific reason unique to this case or the claims in this case to justify such a request. They offered no reason to explain the timing of their belated request. For these reasons, defendants' motion to depose all of the plaintiffs who could be called to testify at trial is denied without prejudice. Defendants may renew this request if warranted based on information developed during the course of additional discovery permitted by this Court's Order or as the case progresses.

IT IS SO ORDERED this the 16th day of April, 2013.



KRISTINE G. BAKER
UNITED STATES DISTRICT JUDGE