

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-02438-CMA-MEH
(Consolidated with Case No. 07-cv-02552-CMA-MEH)

CONAGRA TRADE GROUP, INC.,

Plaintiff,

v.

FUEL EXPLORATION, LLC,

Defendant.

**ORDER ON MOTION TO REOPEN DISCOVERY
AS TO DAMAGES ISSUES**

Michael E. Hegarty, United States Magistrate Judge.

Before the Court is Fuel Exploration, LLC's Motion to Reopen Discovery as to Damage Issues [filed March 9, 2009; docket #66]. For the following reasons, the Court **grants** the Motion as outlined herein.

This is a consolidation of a case originally filed by ConAgra, joined with a case that Fuel Exploration filed in Denver District Court which was removed to this Court. The dispute concerns certain Purchase and Sale Agreements executed by the parties.

Over a substantial period of time in this case, the Court engaged in efforts to mediate the dispute. The Court believed on several occasions that a settlement was likely. During the process of trying to resolve the case, the Court assured the parties, as it does in every such situation, that the Court would ensure that the parties' efforts toward settlement, in lieu of engaging in the adversarial process, would not prejudice the parties in the event a settlement was not reached. In other words, the Court has a great interest in expending time and resources toward settling a lawsuit rather than

attorney's fees spent in litigation; thus, in the event that settlement is not achieved, deadlines will be adjusted to ensure that the parties' rights are preserved. Despite the Court's best efforts at helping parties in this case resolve their differences, those efforts ultimately were not fruitful.

The Court believes it is responsible for much of the time that was spent in exploring settlement, time that was not spent in discovery. The Court also believes that the efforts toward settlement likely dissuaded Fuel Exploration from pursuing some of the discovery it needed. Most of the settlement effort was directed toward Fuel Exploration's financial condition, specifically its ability to satisfy any payment to ConAgra that Fuel Exploration might make in potential compromise of the claims in this case. It is also significant that Fuel Exploration's original counsel withdrew immediately after the Court determined that settlement was at a dead end.

Therefore, some further adjustment of the discovery deadlines in this case is necessary.

Fuel Exploration will be permitted one set of interrogatories, requests for production, and requests for admission, up to five of each type, submitted to ConAgra electronically no later than **March 30, 2009**, with responses due **April 29, 2009**. Fuel Exploration may also take one Rule 30(b)(6) deposition of someone with knowledge of ConAgra's summary of damages, no later than **May 15, 2009**. The Court will conduct a Final Pretrial Conference on **June 4, 2009 at 9:30 o'clock a.m.**

Accordingly, Fuel Exploration, LLC's Motion to Reopen Discovery as to Damage Issues (filed March 9, 2009; docket #66) is **granted** as specified herein.

Dated at Denver, Colorado, this 25th day of March, 2009.

BY THE COURT:

s/ Michael E. Hegarty
Michael E. Hegarty
United States Magistrate Judge