

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

Civil Action No. 09-cv-00649-CMA-BNB

MEGAN MARTINEZ,

Plaintiff,

v.

LIBERTY MUTUAL FIRE INSURANCE COMPANY,

Defendant.

ORDER

This matter arises on the following:

(1) **Defendant Liberty Mutual Fire Insurance Company's Motion to Compel Independent Medical Examination of Plaintiff** [Doc. # 15, filed 10/19/2009] (the "Motion to Compel"); and

(2) **Unopposed Joint Motion to Vacate the October 30, 2009 Hearing and for Extension of the Expert Disclosure Deadline** [Doc. # 18, filed 10/28/2009] (the "Motion for Extension").

I am informed that the matters raised in the Motion to Compel have been resolved by the parties.

The Motion for Extension recites that the plaintiff will submit to an independent medical examination by Dr. Rachel Basse on December 14, 2009. The deadline for the submission of rebuttal expert reports, including that of Dr. Basse, is December 11, 2009. Consequently, the parties request that the rebuttal expert deadline be extended until December 31, 2009, "so that

Dr. Basse may prepare and Defendant can disclose the expert report prepared after the IME takes place.” Motion for Extension at ¶7. That extension is appropriate in view of the date of the IME and is granted.

The Motion for Extension also requests “that the Court allow Plaintiff up to and including January 15, 2010, to rebut any findings set forth in Dr. Basse’s report.” Id. at ¶8. In this case, however, the Scheduling Order established a two part, not a three part, expert disclosure schedule. Specifically, at Part 8(d)(3)-(4), the Scheduling Order [Doc. # 12] required the “parties” to designate all principal experts, where they had the burden of proof, on or before November 6, 2009; and required the “parties” to disclose all rebuttal experts, where they were answering someone else’s expert, by December 11, 2009. The Scheduling Order did not contemplate that the plaintiff would be allowed to further rebut the defendant’s rebuttal medical expert. I am not prepared, on the record now before me, to alter that scheme. To do so would cast doubt on the viability of the remainder of the pretrial schedule, including the discovery cut-off date, the deadline for dispositive motions, and the final pretrial conference date. Nor has any party attempted to establish good cause to justify such a change in the expert disclosure process. Consequently, this part of the Motion for Extension is denied.

IT IS ORDERED that the Motion to Compel is DENIED as moot.

IT IS FURTHER ORDERED that the Motion for Extension is GRANTED IN PART and DENIED IN PART as follows:

GRANTED to vacate the hearing set for October 30, 2009, at 1:30 p.m.;

GRANTED to extend the deadline for the disclosure of Dr. Basse’s rebuttal expert report to and including **December 31, 2009**; and

DENIED in all other respects.

Dated October 29, 2009.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge