

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Robert E. Blackburn**

Civil Action No. 14-cv-00778-REB-MEH

UNITES STATES WELDING, INC., a Colorado corporation,

Plaintiff,

v.

TECSYS, INC., a Canadian corporation,

Defendant.

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**ORDER ADOPTING RECOMMENDATION OF UNITED STATES  
MAGISTRATE JUDGE & CONTINUING TRIAL**

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**Blackburn, J.**

This matter is before me on the **Recommendation of United States Magistrate Judge** [#208]<sup>1</sup> filed December 14, 2015. As noted in the recommendation, the parties agree with the recommendation of the magistrate judge. That agreement demonstrates that the parties do not object to the recommendation. Therefore, I review the recommendation only for plain error. ***See Morales-Fernandez v. Immigration & Naturalization Service***, 418 F.3d 1116, 1122 (10<sup>th</sup> Cir. 2005). Finding no error, much less plain error, in the recommendation, I find and conclude that recommendation should be approved and adopted.

For many months the magistrate judge has worked with the parties to address and resolve myriad discovery and other issues. In his recommendation, the magistrate

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<sup>1</sup> “[#208]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court’s case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

judge notes:

This case presents complicated issues of causation and damages. From January 2015 to the present, this Court has worked to assist the parties in attempting to resolve numerous discovery issues concerning damages, some of which remain outstanding. These proceedings have prolonged this case much longer than expected. The Court's and parties' efforts may require additional time and will intrude upon the currently scheduled trial preparation conference and trial. Indeed, I do not believe the current schedule will permit the parties to adequately prepare for trial.

*Recommendation* [#208], p. 1. Trial in this case currently is set to begin on February 8, 2016. The magistrate judge recommends that the trial be continued to a date later in 2016 to permit the parties and the court to complete discovery and to resolve issues which remain outstanding. The defendant seeks a trial in April, May, September, or October 2016. The plaintiff seeks a trial as soon as practicable after discovery is complete and pre-trial issues are resolved.

The United States Court of Appeals for the Tenth Circuit has identified four primary factors that should be considered to determine if a continuance is necessary.

***See, e.g., Morrison Knudsen Corp. v. Fireman's Fund Ins. Co.***, 175 F.3d 1221, 1230 (10th Cir. 1999) (citing ***U.S. v. West***, 828 F.2d 1468, 1469 (10th Cir. 1987) (listing factors)). The key relevant factors are

(1) the diligence of the party requesting the continuance; (2) the likelihood that the continuance, if granted, would accomplish the purpose underlying the party's expressed need for the continuance; (3) the inconvenience to the opposing party, its witnesses, and the court resulting from the continuance; [and] (4) the need asserted for the continuance and the harm that [movant] might suffer as result of the district court's denial of the continuance.

***United States v. Rivera***, 900 F.2d 1462, 1475 (10<sup>th</sup> Cir. 1990) (quoting ***United States v. West***, 828 F.2d 1468, 1470 (10<sup>th</sup> Cir. 1987)). Applied to the present case, these

factors augur toward a continuance of the trial and the combined Final Pretrial Conference and Trial Preparation Conference.

**THEREFORE, IT IS ORDERED** as follows:

1. That **Recommendation of United States Magistrate Judge** [#208] filed December 14, 2015, is approved and adopted as an order of this court;
2. That the combined Final Pretrial Conference and Trial Preparation Conference set for January 22, 2016, and the trial set to begin February 8, 2016, are vacated and continued without date, pending further order;
3. That on **January 5, 2016, at 11:30 a.m.** (MST) counsel for the parties shall contact the court's administrative assistant **at (303) 335-2350** to reschedule the combined Final Pretrial Conference and Trial Preparation Conference and the concomitant trial;
4. That the trial shall be scheduled for eight (8) trial days;
5. That counsel for the plaintiff shall arrange and coordinate the conference call necessary to facilitate the telephonic setting conference;
6. That the **Trial Preparation Conference Order** [#75] entered January 27, 2015, is amended and supplemented accordingly.

Dated December 17, 2015, at Denver, Colorado.

**BY THE COURT:**



Robert E. Blackburn  
United States District Judge