

ELECTRONIC ORDER IN WARD V. CONNECTICUT DEPARTMENT OF PUBLIC SAFETY, 06 CV 1936 (PCD)

1/19/2010 – In granting in part defendant’s Motion to Continue Jury Selection, Senior U.S. District Judge Peter C. Dorsey held with respect to the military deployment of Sgt. James McLain and Trooper Matthew McCullough, that “[t]he Court does not want to interfere with the witnesses[’] responsibilities to the Army while in combat, but if in the near future these witnesses should be relieved from [the] combat zone, for example[, for] rest [and] recreation[], then maybe at that time [the parties can] take [their] depositions . . .” (Dkt. #73).

In both conferences held before this Magistrate Judge on the topic of discovery and/or settlement (see, e.g., Dkts. ##76-77, 79, 81-82), the topic of the McLain deposition has been addressed. This deposition was scheduled, for the third time, for tomorrow, 1/20/10.

This morning, an impromptu telephone discovery conference was held, to address an issue raised by defense counsel, namely that she was notified this morning that Sgt. McLain is not scheduled to be re-deployed until 2012, and that his retained counsel in another lawsuit was objecting to the resumption of Sgt. McLain’s deposition at this time, in that the trial before Judge Dorsey was likely to occur during 2010 or 2011, but such private counsel represented that if Sgt. McLain were to be re-deployed prior to 2012, then the witness would be available for his continued deposition “ASAP.” Plaintiff’s counsel objects to the postponement, yet again, of the McLain deposition, particularly because his client presently is in transit from another state to attend such deposition.

In light of the representation of plaintiff’s counsel that this resumed deposition will not rehash topics that already were covered during the first two-hour session of Sgt. McLain’s deposition, plaintiff is entitled to complete this deposition, without regard to whether or not Sgt. McLain is called back to military duty in 2010, 2011, or 2012, an occurrence over which no party or counsel in this case has any control, and is largely subject to the unpredictability of world events.