

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 06-21748-CIV-MARTINEZ-BANDSTRA

MARK J. GAINOR and ELYSE GAINOR,

Plaintiff,

vs.

SIDLEY, AUSTIN LLP, a Delaware limited liability Partnership, f/k/a SIDLEY AUSTIN BROWN & WOOD, f/k/a BROWN & WOOD, R.J. RUBLE, an individual, ARTHUR ANDERSEN, LLP, an Illinois limited liability partnership, MICHAEL S. MARX, an individual, P. ANTHONY NISSLEY, an individual, MERRILL LYNCH & CO., INC., a Delaware corporation, and MARK C. KLOPFENSTEIN, an individual,

Defendant.

JOINT MOTION OF PLAINTIFF MARK J. GAINOR AND DEFENDANT SIDLEY AUSTIN L.L.P. TO VACATE CURRENT PRETRIAL SCHEDULE IN LIGHT OF THE FILING OF PLAINTIFFS' AMENDED COMPLAINT AND AGREED MOTION FOR ENLARGEMENT OF TIME FOR SIDLEY AUSTIN LLP TO RESPOND TO AMENDED COMPLAINT

On December 12, 2006, this Court entered an Order Setting Civil Trial Date and Pretrial Schedule (the "Order") in this matter. At the time the Court entered the Order, the only parties to this litigation were Plaintiff Mark J. Gainor ("Plaintiff") and Sidley Austin LLP ("Sidley"). The Order set the beginning of the trial period on October 29, 2007, required exchange of expert reports on April 2, 2007, and closed discovery on June 21, 2007.

Plaintiff and Sidley have diligently pursued discovery. Both parties have propounded and responded to written discovery. Plaintiff has taken the deposition of Sidley's corporate representative, while Sidley has taken Plaintiff's deposition. In addition, Sidley has served subpoenas on, and obtained documents from, several third-parties.

On March 2, 2007, Plaintiff filed a motion for leave to amend his complaint. On March 7, the Court granted Plaintiff's motion. Plaintiff's amended complaint added six new defendants – Arthur Andersen, LLP, Mark C. Klopfenstein, Michael S. Marx, Merrill Lynch & Co., Inc., P. Anthony Nissley, and R. J. Ruble – as well as one new plaintiff – Elyse Gainor. Most of the parties have not yet been served.

It is axiomatic that a district court has “inherent power to control the disposition of cases on its docket and ensure a ‘fair and efficient’ adjudication of matters.” *Republic of Venezuela v. Philip Morris Companies*, No. 99-0586-Civ., 1999 WL 33911677, at *1 (S.D. Fla. April 28, 1999). In this case, the nature of the litigation has changed with the addition of six new defendants, each of whom must obtain counsel, take and provide discovery, and prepare expert reports. The current trial schedule, which provides for the close of discovery about three months from the filing of the amended complaint, and the exchange of expert reports less than one month from the filing of the amended complaint, was based on a different procedural posture – two litigants, not seven – and has become impracticable because the new defendants have not even made an appearance, much less participated in discovery, and because the new allegations and new parties may require both Plaintiff and Sidley to conduct additional discovery. Therefore, Plaintiff and Sidley respectfully request that the Court vacate the current trial and pre-trial schedule and order the parties to meet and confer in order to propose a new civil trial schedule that will expeditiously allow fair and efficient preparation of this matter for trial.

Finally, Sidley requests that its time to respond to the amended complaint shall be extended to April 16, 2007, as per Sidley's agreement with Plaintiff.

CASE NO. 06-21748-CIV-MARTINEZ

DATED: March 15, 2007

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