

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

PETER KIEWIT SONS', INC.,

Plaintiff,

vs.

WALL STREET EQUITY GROUP,
INC., ET AL.,

Defendants.

8:10-CV-365

ORDER

This matter is before the Court on the oral motion to continue made by defendant Steven S. West (filing 408) during the Court's pretrial teleconference on October 9, 2013. The motion is denied.

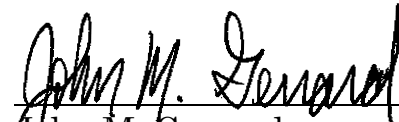
The Court has reviewed the evidence submitted by West in his previous motions to the United States Magistrate Judge (filings 398, 400, and 404). Based on West's conduct during the discovery phase of these proceedings, *see, e.g.,* filing 263, the Court is concerned that West may be attempting to use a continuance to delay final disposition of the plaintiff's claims. *See Watson v. Miears*, 772 F.2d 433, 437 (8th Cir. 1985). But more importantly, West is effectively asking the Court, based on the evidence presented, to indefinitely continue this case. That, the Court is unwilling to do. *See Radecki v. Joura*, 177 F.3d 694, 696 (8th Cir. 1999); *see also Johnson v. Potter*, 364 Fed. Appx. 159, 163 (5th Cir. 2010).

Courts have consistently held that a continuance sought for medical reasons may be appropriately denied where the evidence submitted in support of the motion contains no suggestion of when or if the party or witness might be available for trial. *See, Rance v. Rocksolid Granit USA, Inc.*, 489 Fed. Appx. 314, 316 (11th Cir. 2012); *Johnson*, 364 Fed. Appx. at 163; *Command-Aire Corp. v. Ontario Mech. Sales and Serv. Inc.*, 963 F.2d 90, 96 (5th Cir. 1992); *Scholl v. Felmont Oil Corp.*, 327 F.2d 697, 700 (6th Cir. 1964). Nor is the Court obliged to accept a conclusory statement, even from a medical professional, that is unsupported by medical records or other documentation. *See United States v. \$94,000.00*, 2 F.3d 778, 787-88 (7th Cir. 1993). West's evidence, to the limited extent it is credible, provides no basis for the Court to determine when, if ever, West might be more fit for trial. The inadequate evidence West has presented provides no reasonable basis for the Court to indefinitely delay the plaintiff's right to prosecute its claims.

IT IS THEREFORE ORDERED that West's oral motion to continue trial (filing 408) is overruled.

Dated this 9th day of October, 2013.

BY THE COURT:



John M. Gerrard
United States District Judge