

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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**CONSTANCE J. SCHALLIPP**  
*individually and as Executrix of the*  
*Estate of Richard F. Lang also known as*  
*Constance Lang,*

Plaintiff,

-against-

**MEMORANDUM  
AND ORDER**

**12-CV-3039 (CBA)**

**GRANITE CONSTRUCTION INC., et al.,**

Defendants.

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**ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:**

On May 1, 2013, this Court issued a Memorandum and Order in which it denied in part and granted in limited part the parties' joint application to extend the discovery deadline; specifically, the Court granted a one-month extension of discovery (rather than the requested three-month extension) and denied the parties' application for permission to add new parties long after the Court-imposed deadline of November 30, 2012. See Memorandum and Order (May 1, 2013) ("M&O"), Electronic Case Filing Docket Entry ("DE") #18; see also Joint Motion for Extension of Time (Apr. 30, 2013), DE #17.

In ruling as it did, the Court noted, among other things, the length of time the case had been pending (eleven months), as well as this Court's warning to the parties, at the initial conference held on October 25, 2012, that the joinder of new parties would have to be effectuated "sooner rather than later." M&O at 1. The Court concluded, in its Memorandum and Order, that the parties' explanation for their delay -- to wit, the pendency of a parallel

New Jersey State court action that was dismissed last month -- did not establish good cause for a *nunc pro tunc* extension of the time to implead new parties. See id. at 2 (citing Fed. R. Civ. P. 16(b)(4)); see also M&O at 1.

Currently pending before the Court are a motion for reconsideration filed by defendant Risa Management Corp. ("Risa") and a belatedly filed response by plaintiff Schallipp ("plaintiff"), who joins Risa's motion. See Letter Motion for Reconsideration (May 2, 2013) ("Risa Motion"), DE #19; Response to Motion (May 8, 2013) ("Pl. Response"), DE #21.<sup>1</sup> Risa's application provides additional information about the discontinued New Jersey action, noting the overlapping claims and parties in the two cases. See Risa Motion at 1. While Risa implies that before impleading plaintiff's decedent's employer, Risa was waiting to see which of the two actions plaintiff would chose to pursue, see id. at 2, Risa does not explain why it failed to make a timely request to extend the November 30th deadline for impleading parties. Furthermore, according to plaintiff, the decision to discontinue the New Jersey action was communicated by e-mail to all counsel in the instant case almost four months ago, on January 14, 2013. See Pl. Response at 2.

Accordingly, even taking into consideration the additional facts proffered in the parties'

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<sup>1</sup> Plaintiff's counsel apologizes for filing his response two days after the deadline set by the Court, explaining that he was involved in a two-week trial that ended on Friday, May 3, 2013, and was out of the office on the due date, Monday, May 6, 2013. See Pl. Response at 1. However, the author of that letter (Alex Lyubarsky) is not a solo practitioner but is a member of a large firm, and, in fact, is not even counsel of record for plaintiff -- his partner, Darren Gelber, is. Therefore, the excuse proffered for the delay in responding is unpersuasive.

latest submissions, no showing of good cause for reopening the period for joinder has been made. Moreover, as even plaintiff concedes, see id., if the Court were to permit the addition of a new party or parties at this late date, the discovery schedule would have to be further extended, and the Court is not disposed to allow such further delays. This case has been languishing long enough. The Court declines to modify its Memorandum and Order of May 1, 2013.

**SO ORDERED.**

**Dated: Brooklyn, New York**  
**May 10, 2013**

/s/ Roanne L. Mann  
**ROANNE L. MANN**  
**UNITED STATES MAGISTRATE JUDGE**