

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:12-CV-610-F

CITY GRILL HOSPITALITY GROUP, )  
INC., )  
Plaintiff, )  
v. )  
NATIONWIDE MUTUAL )  
INSURANCE COMPANY, )  
Defendant. )  
\_\_\_\_\_ )

ORDER

This matter is before the court on the consent motion for extension of time to file pretrial order [DE-54]. For the following reasons, the court has decided to continue the trial in this case and cancel the pretrial conference set for November 21, 2013. The parties do not need to submit the pretrial order on November 14, 2013.

The parties' cross motions for summary judgment were submitted to the undersigned once they became ripe on October 29, 2013. The trial in this matter is currently set for the undersigned's December 2, 2013 term of court. The court has received what appears to be thousands of pages of documents associated with the parties' motions for summary judgment and the court needs more time to fully consider the motions than is currently allowed by the upcoming trial date. In addition, while the case is scheduled for the December 2, 2013 term of court, the court will have at least a week of criminal hearings before this trial can begin. Criminal trials for a particular term of court also always preempt civil trials due to constitutional

and statutory speedy trial requirements.<sup>1</sup> As a result, this trial may not begin until December 9, 2013 or December 16, 2013. The parties' motion for extension of time to file pretrial order suggests that this trial could be quite lengthy. The court is reluctant to disturb jurors, court staff, and the parties' holiday plans to complete the trial unless it is absolutely necessary.

In addition, the court has decided to ALLOW City Grill's motion to allow supplemental rebuttal testimony [DE-23]. The court will issue an order explaining its reasoning for this decision in the coming days. Because Nationwide has indicated that it will need additional time to depose the rebuttal expert and possibly notice a new expert witness to respond, the court deems it prudent to alert the parties of its decision in this order. Assuming Nationwide still wishes to depose this witness, the court hereby ORDERS that discovery is re-opened for the limited purpose of deposing City Grill's rebuttal expert and identifying/deposing a new expert to respond City Grill's rebuttal expert.

Before setting a new trial date and drafting the order on the motions for summary judgment, the court needs to hear from the parties. With respect to the motions for summary judgment, the court does not know whether the parties wish to supplement their summary judgment briefs with the evidence developed from the rebuttal expert[s], or whether the parties are comfortable relying on the summary judgment briefs as they are currently drafted. In addition, before setting the trial date, it will be helpful to the court to know the estimated length of the trial. The court recognizes that only a rough estimate can be provided at this stage, and the court will not hold the parties to the estimate in any way. Finally, to the extent practicable, the

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<sup>1</sup> The court has approximately fourteen arraignments set for the December 2, 2013 term and any of those defendants could decide to proceed to trial. If that occurs, the trial date in this case could be delayed until December 16, 2013.

court wants to set the trial in this matter at a time convenient for the parties and/or counsel. The court provides the following list of its 2014 terms of court to aid the parties in selecting a new trial date: (1) January 2; (2) January 27; (3) March 10; (4) March 31; (5) April 28; (6) May 12; (7) June 2; (8) June 30.

The parties are reminded that each term of court begins with approximately one week of criminal hearings. The court will not know whether any criminal trials are scheduled for a particular term until approximately two weeks prior to the scheduled term.

Accordingly, the court ORDERS that parties submit a joint response **on or before November 21, 2013** addressing the following issues:

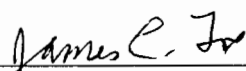
1. Whether the parties wish to supplement the summary judgment briefs with additional argument based on the rebuttal expert[s] report/deposition testimony.
2. The estimated trial length for this case.
3. The parties' preferred term of court for setting the trial.

### **CONCLUSION**

The Clerk of Court is DIRECTED to remove this case from the undersigned's December 2, 2013 trial calendar. The pretrial conference scheduled for November 21, 2013 is hereby cancelled and the parties do not need to submit the pretrial order on November 14, 2013. The parties are DIRECTED to file a joint response as outlined above **on or before November 21, 2013**.

SO ORDERED.

This the 14<sup>th</sup> day of November, 2013.

  
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JAMES C. FOX  
Senior United States District Judge