

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:10 cv 105**

MELISSA YOUNGBLOOD,)	
)	
Plaintiff)	
)	
v)	
)	
METROPOLITAN LIFE INSURANCE)	
COMPANY and THE EATON)	
CORPORATION/27701 EMPLOYEE)	
WELFARE BENEFIT PLAN,)	
)	
Defendants.)	

ORDER

THE PARTIES came before the court to be heard on August 27, 2010 regarding the Certification and Report of Rule 26(f) Conference and Discovery Plan (#10). It was the intent of the undersigned to hear the parties in regard to the content of a Pretrial Order and Case Management Plan to be entered in this case. The undersigned entered an Order (#12) scheduling the hearing on August 20, 2010. Prior to the commencement of the hearing, the undersigned raised the issue about whether or not there had been service upon defendant The Eaton Corporation/27701 Employee Welfare Benefit Plan. The notation on the electronic file showed that service had been made on June 10, 2010 (#3) but an examination of the actual return of service showed only service upon defendant Metropolitan Life Insurance Company. At that time, the undersigned addressed the parties regarding LCvR 16.1(A) and (B). An examination of the Local Rules shows that at this point in time there has not been a joinder of the issues because all the parties in this action have not been served with a copy of the

Summons and Complaint. The Complaint in this action was filed on May 25, 2010.

Rule 4(m) of the Federal Rules of Civil Procedure provides as follows:

- (m) **Time Limit for Service.** If a defendant is not served within 120 days after the complaint is filed, the court –on motion or on its own after notice to the plaintiff–must dismiss the action without prejudice against that defendant or order that service be made within a specified time.

It would appear the time for plaintiff to make service upon The Eaton Corporation/27701 Employee Welfare Benefit Plan will expire on September 22, 2010.

It would appear to be appropriate to strike the Certification and Report of Rule 26(f) Conference and Discovery Plan (#10) and for the court to then wait and determine whether or not the plaintiff obtains service on the other defendant within the time set forth by law.

ORDER

IT IS, THEREFORE, ORDERED the Certification and Report of Rule 26(f) Conference and Discovery Plan (#10) is hereby ordered to be **STRICKEN** from the record.

Signed: September 13, 2010

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Dennis L. Howell
United States Magistrate Judge

