

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:11 CV 201

BARBARA P. MOORE AND MELVIN J.)
MOORE, JR.,)

Plaintiffs)

v)

STATE FARM INSURANCE COMPANY)
T/D/B/A STATE FARM FIRE AND)
CASUALTY COMPANY,)

Defendant.)

ORDER

THIS MATTER is before the undersigned pursuant to a motion filed by counsel for defendant entitled, “ Motion to Extend Deadlines in Pretrial Order and Case Management Plan” (#10). In the motion, defendant requests that the Pretrial Order and Case Management Plan be modified such that the schedule for completion of discovery, mediation, dispositive motions and trial would all be extended. In the alternative, defendant requests an extension of the time for completion of discovery, mediation, and filing of dispositive motions.

In the motion, defendant reports the parties have been unable to complete discovery in this case due to the death of plaintiff, Barbara P. Moore. Ms. Moore’s death is reported to have occurred in late 2011. Defendant does not provide any explanation as to why the plaintiff has not filed a suggestion of death of Ms. Moore and why plaintiff has not filed a motion requesting that the court order substitution of the personal representative of Ms. Moore’s estate in this matter, if such is appropriate.

Rule 25 of the Federal Rules of Civil Procedure provides:

(a) **Death.**

- (1) **Substitution if the Claim Is Not Extinguished.** If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.
- (2) **Continuation Among the Remaining Parties.** After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.
- (3) **Service.** A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.

The undersigned will schedule a hearing in regard to the motion(#10). Counsel for all parties are required to be present. At that time counsel for plaintiff will be given an opportunity to explain why plaintiff's counsel has not filed a notice of the death of Ms. Moore and to further explain why a motion has not been filed requesting permission to substitute the personal representative of Ms. Moore's estate as a plaintiff in this matter. Counsel for plaintiff and counsel for defendant will further be required to describe in detail all discovery that has been attempted in this case and provide good and sufficient reasons why the court should allow defendant's motion.

ORDER

IT IS, THEREFORE, ORDERED that a hearing be scheduled in regard to defendant's motion entitled "Motion to Extend Deadlines in Pretrial Order and Case Management Plan" (#10). Counsel for plaintiffs and defendant shall present themselves to the court on **June 6, 2012 at 2:00 o'clock p.m.** At that time, counsel for plaintiffs and defendant will be given an opportunity to present information to the court as set forth in the body of this Order and provide such other information as they deem appropriate in this matter.

Signed: May 25, 2012

 _____

Dennis L. Howell
United States Magistrate Judge

