

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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| THE MEDICAL CENTER AT ELIZABETH PLACE, LLC, | : | Case No. 3:12-cv-26 |
| | : | |
| Plaintiff, | : | Judge Timothy S. Black |
| | : | |
| vs. | : | |
| | : | |
| PREMIER HEALTH PARTNERS, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

**ORDER DENYING DEFENDANTS' MOTION TO STAY EXPERT REPORTS
AND EXPERT DISCOVERY (Doc. 110)**

This civil action is before the Court on Defendants' motion to stay expert reports and expert discovery pending the outcome of a dispositive motion (Doc. 110), and the parties' responsive memoranda (Docs. 113, 116).

I. PROCEDURAL POSTURE

Fact discovery closed on February 28, 2014. (Doc. 41). Defendants maintain that Plaintiff's claim cannot survive a dispositive motion now that fact discovery has concluded.¹ Defendants argue that in light of their impending dispositive motion,² it would waste time and resources to proceed with expert discovery on topics that will be unnecessary if the motion is granted.

¹ However, discovery has not concluded. The parties still need to schedule multiple depositions. (Doc. 110, fn. 1).

² Dispositive motions are not due until July 24, 2014, but Defendants maintain that they intend to file before that date. (Doc. 41). Specifically, three weeks after the last depositions are taken. (Doc. 110 at 1). It is unclear whether those depositions have even been scheduled.

Defendants first proposed a stay of expert discovery in late February, after Plaintiff's expert work had already commenced.³ Plaintiff responded by proposing a modification that would stage expert discovery after dispositive motions are due and also keep the current trial date, but Defendants rejected the proposal.

II. STANDARD OF REVIEW

District courts are authorized to stay discovery "for good cause." Fed. R. Civ. P. 26(c)(1). "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with the economy of time and effort for itself, for counsel, and for litigants." *Shirk v. Fifth Third Bankcorp*, No. 05-cv-49, 2005 U.S. Dist. LEXIS 12871, at *4 (S.D. Ohio June 29, 2005) (citations omitted).

III. ANALYSIS

Defendants maintain that there is good cause to stay expert discovery pending resolution of their dispositive motion because: (1) the motion is legally well-founded and, if successful, would dispose of this entire case; (2) neither party requires expert discovery for the adjudication of the motion; and (3) proceeding to expert discovery in the face of an unresolved motion would be very costly for both parties, whereas staying it would cause Plaintiff no prejudice.

A. Dispositive Motion

Defendants argue that their motion will dispose of the entire case, and boldly

³ Plaintiff's expert disclosures are due on March 24, 2014. (Doc. 41).

claim that it is “unlikely” that the motion will be denied. (Doc. 116 at 1). Not surprisingly, Plaintiff has a different perspective. No motion is currently pending before this Court, and there is absolutely no evidence that Defendants’ motion for summary judgment is all but guaranteed to resolve this case.⁴

B. Expert Discovery

Next, Defendants argue that when a party cannot convince the court that it needs further discovery in order to “present facts essential to justify its opposition” to the dispositive motion, then it is appropriate to stay further discovery to resolve the pending motion on the existing record. Fed. R. Civ. P. 56(d). However, without the benefit of Defendants’ anticipated motion, it is impossible for the Court to determine whether expert discovery will in fact be required for its adjudication.

C. Cost and Prejudice

Finally, Defendants argue that proceeding to expert discovery would be very costly, whereas staying expert discovery will not prejudice the Plaintiff. Ultimately, the Court must consider whether the risk of forcing the parties to engage in potentially irrelevant but costly discovery is outweighed by the “likely harm to be produced by the delay,” if the dispositive motion is subsequently denied. *Weisman v. Mediq, Inc.*, No. 9501831, 1995 U.S. Dist. LEXIS 5900, at *5 (E.D. Pa. May 3, 1995).

⁴ The Court also notes that when the parties conferred about the structure of the Calendar, Defendants complained that Plaintiff “propose[d] a summary judgment date before expert reports are even exchanged.” (Doc. 113, Ex. A). Defendants cannot now, merely one month before Plaintiff’s expert disclosures are due, ask to stay a calendar the Defendants requested.

Defendants argue that Plaintiff cannot “identify any particular prejudice or burden that a stay of discovery would” cause, because the parties should be in a position to complete any expert discovery quickly once the Court resolves the motion. *Stienmier v. Donley*, No. 09-01260, 2010 U.S. Dist. LEXIS 48009, at *3 (D. Colo. Apr. 20, 2010). The parties allotted 4.5 months for expert discovery. (Doc. 41). Given the complex nature of this case, and the numerous discovery disputes between the parties, the Court is not convinced that expert discovery can be completed on an expedited basis. Moreover, other than the representation that Defendants intend to file a dispositive motion before the dispositive motion deadline, it is unclear when that motion will actually be filed.⁵

Additionally, since Plaintiff’s expert disclosures are due on March 24, 2014, Plaintiff has already incurred expenses preparing for that deadline. Stopping and restarting would add to Plaintiff’s expense.

Therefore, the Court finds that staying expert discovery will likely prejudice the Plaintiff. In considering all of the facts and circumstances *in toto*, the Court finds that this prejudice outweighs the potential for avoiding costly expert discovery.

IV. CONCLUSION

Accordingly, for the foregoing reasons, Defendants’ motion to stay expert discovery pending the outcome of the dispositive motion (Doc. 115) is **DENIED**.

⁵ From the date the motion is filed, it takes approximately 3-4 months for the motion to ripen and for the Court to resolve the motion (absent any extensions).

IT IS SO ORDERED.

Date: 3/12/14

s/ Timothy S. Black
Timothy S. Black
United States District Judge