

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

VALENCIA M. MCCLATCHEY,

Plaintiff,

v.

THE ASSOCIATED PRESS,

Defendant.

Civil Action No. 05-145J

**UNOPPOSED MOTION OF DEFENDANT THE ASSOCIATED PRESS
FOR CONTINUANCE OF THE TRIAL**

Defendant The Associated Press (“AP”), through its undersigned counsel, respectfully moves this Court for an order continuing the trial in this case, and avers as follows in support thereof:

1. The trial in this matter is presently scheduled to begin on June 25, 2007. Under the Trial Scheduling Order entered April 23, 2007, the parties are scheduled to exchange proposed jury instructions on June 4 and to submit witness lists, exhibits, jury instructions, proposed voir dire questions, proposed verdict forms, discovery designations, and joint stipulations to the Court by June 18.

2. AP has been represented in this matter principally by two attorneys: Robert Penchina and Michael Berry of Levine Sullivan Koch & Schulz, L.L.P.¹ Mr. Berry has played a significant role with respect to and has been intimately involved in all aspects of the litigation, from fact discovery to summary judgment to pretrial preparation. Given Mr. Berry’s familiarity

¹ Although Gayle Sproul is also listed on AP’s filings, she has served primarily as local counsel and has not participated meaningfully in the case.

with the facts of the case and the relevant legal issues, AP expected that Mr. Berry would continue to be integrally involved in preparing for and conducting the trial.

3. Mr. Berry's wife is twenty-five weeks pregnant. She has been hospitalized due to complications with her pregnancy and likely will remain in the hospital throughout the duration of her pregnancy. Given his wife's present condition, his need to spend significant amounts of time at the hospital and tending to various matters relating to her condition, including tending to their young child, Mr. Berry will no longer be able to participate to any meaningful extent in preparing the case for trial and almost certainly will be unable to assist in trying the case under the deadlines set forth in the Trial Scheduling Order.

4. If the trial proceeds on the current schedule, Mr. Berry's absence would prejudice AP because Mr. Berry has worked on the case so closely for so long and AP would no longer have the benefit of his knowledge of the facts or the law.

5. In light of Mr. Berry's present circumstances, AP respectfully requests that the case be continued until at least September 17, 2007, which likely would permit Mr. Berry to assist in preparing and trying the case.² In addition, AP respectfully requests that the Court reset the remaining dates in the Trial Scheduling Order to correspond to the new trial date.

6. On May 29, 2007, Mr. Berry consulted with Plaintiff's counsel, Douglas M. Hall, concerning AP's request for a continuance. Mr. Hall indicated that Plaintiff is prepared to go to trial on June 25, 2007, but in light of the circumstances does not oppose AP's motion. Mr. Hall further indicated that Plaintiff does oppose any extension of the trial date beyond September, 2007.

² If the requested continuance is granted and Mr. Berry still is unable to participate in the pretrial preparation or trial, the additional time would permit another attorney to fill his role without prejudicing AP.

CONCLUSION

For the foregoing reasons, AP respectfully requests that the Court continue the trial in this matter until at least September 17, 2007 and reset the remaining dates in the Trial Scheduling Order to correspond to the new trial date.

Dated: May 30, 2007

Respectfully submitted,
LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.

By: /s/ Michael Berry

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CERTIFICATE OF SERVICE

I, Michael Berry, hereby certify that on this 30th day of May, 2007, I caused to be served a true and correct copy of the foregoing Unopposed Motion of Defendant The Associated Press for a Continuance of the Trial via the Court's ECF system, upon the following counsel of record:

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/s/ Michael Berry
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