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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

8 CNA INSURANCE COMPANY LIMITED,

CASE NO. C18-932RSM

9 Plaintiff,

ORDER

10 v.

11 EXPEDITORS INTERNATIONAL OF  
12 WASHINGTON, INC. d/b/a EXPEDITORS  
INTERNATIONAL OCEAN, *et al.*,

13 Defendants.

14  
15 **A. Introduction and Case History**

16 This matter is before the Court *sua sponte*. Plaintiff CNA Insurance Company Limited  
17 and Defendant Expeditors International of Washington, Inc. d/b/a Expeditors International Ocean  
18 are the parties remaining in this action. Dkt. #30. Trial is set for December 2, 2019. Dkt. #20.  
19 The trial date has not changed since it was originally set approximately one year ago.

20 In the intervening year, the matter has not been before the Court often. The only  
21 substantive dispute brought before the Court was Defendant's motion to compel responses to its  
22 discovery requests. Dkt. #21. Plaintiff responded to but did not substantively oppose the motion  
23 to compel. The Court granted the motion and later ordered Plaintiff to pay Defendant attorneys'  
24 fees of \$1,805.50 by July 5, 2019. Dkts. #25 and #29.

ORDER – 1

1           **B. Defendant Files a Motion to Dismiss and a Motion *In Limine***

2           Thirty-two days before the trial date, Defendant filed a motion to dismiss the action on  
3 the assertion that “Plaintiff has not prosecuted the case and has stymied [Defendant’s] ability to  
4 conduct discovery and submit pre-trial filings in accordance with past and pending deadlines.”  
5 Dkt. #33 at 1 (punctuation altered). The motion is noted for consideration on November 22,  
6 2019—ten days before the trial date. Shortly thereafter, Defendant also filed a motion *in limine*  
7 seeking to exclude the testimony of a possible witness (“Mr. Giardino”). Dkt. #34. Both motions  
8 were premised, at least in part, on a dispute over who had the responsibility to schedule the  
9 continuation of a Rule 30(b)(6) deposition with Mr. Giardino as a substituted Rule 30(b)(6)  
10 witness.<sup>1</sup> Dkts. #33 and #34. Also relevant here, Defendant represents to the Court that “to date,  
11 and despite repeated requests, [Defendant] has yet to receive the court-ordered attorneys’ fees,  
12 which were due by the Court’s Order on or before July 4, 2019.” Dkt. #33 at 2.

13           Plaintiff responded to Defendant’s motions on November 18, 2019. Dkts. #36 and #37.  
14 Plaintiff argues its position that Defendant was responsible for assuring that the deposition went  
15 forward and failed to do so. Dkt. #33 at 3–4. Additionally, Plaintiff argues that Defendant has  
16 not made its own employee available for a Rule 30(b)(6) deposition noted by Plaintiff. *Id.* On  
17 these facts, Plaintiff argues “that dismissal of the captioned matter is not warranted and requests  
18 that the parties be given 30 days to complete the deposition of Mr. Giardino by subpoena, and  
19 the date to file the pretrial order be extended for 30 days and that the matter thereafter proceed  
20 to trial.” Dkt. #36 at 9. Plaintiff argues that the motion *in limine* should be denied for similar  
21 reasons. Dkt. #37. In neither response does Plaintiff address whether it violated this Court’s

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24 <sup>1</sup> The parties originally agreed to hold the continuation deposition on August 26, 2019, but the deposition did not go forward after the witness indicated he was no longer available.

1 previous order by failing to timely pay attorneys' fees.<sup>2</sup> Defendant's reply has not been filed and  
2 the motions remain pending.

### 3 **C. Plaintiff Fails to File a Pretrial Order**

4 At the time the Court set the trial date, the Court set November 20, 2019, as the deadline  
5 for submission of an agreed pretrial order. Dkt. #20. Local Civil Rule 16 sets forth various  
6 requirements related to submission of a proposed pretrial order. LCR 16(h)–(m). These  
7 requirements include plaintiff providing defendant with a proposed pretrial order 30-days prior  
8 to the court's deadline, reviewing proposed exhibits, arranging and participating in a conference  
9 of attorneys, and cooperating with opposing counsel "in developing a proposed pretrial order  
10 which can be signed by counsel for all parties. LCR 16(h)–(k). "In order to accomplish effective  
11 pretrial procedures and to avoid wasting the time of the parties, counsel, and the court, the  
12 provisions of this rule will be strictly enforced. Sanctions and penalties for failure to comply are  
13 set forth in LCR 11 and in the Federal Rules of Civil Procedure." LCR 16(m)(1).

14 Local Civil Rule 11 sets forth possible sanctions, cautioning that

15 [f]ailure of an attorney for any party to appear at a pretrial conference or to  
16 complete the necessary preparations therefor, or to appear or be prepared for trial  
17 on the date assigned, may be considered an abandonment or failure to prosecute  
or defend diligently, and judgment may be entered against that party either with  
respect to a specific issue or the entire case.

18 An attorney or party who without just cause fails to comply with any of the  
19 Federal Rules of Civil or Criminal Procedure, these rules, or an order of the court,  
or who presents to the court unnecessary motions or unwarranted opposition to  
20 motions, or who fails to prepare for presentation to the court, or who otherwise so  
multiplies or obstructs the proceedings in a case may, in addition to or in lieu of  
21 the sanctions and penalties provided elsewhere in these rules, be required by the  
court to satisfy personally such excess costs and may be subject to such other  
22 sanctions as the court may deem appropriate.

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23 <sup>2</sup> Plaintiff did indicate, in the Declaration of James A. Saville, Jr. In Support of Plaintiff's  
24 Response to Defendant Expeditors's [sic] Motion to Dismiss, that "[t]he payment of fees with  
respect to the Court's prior order was made and Expeditor's counsel was made aware that the  
check was mailed prior to the filing of the instant motion." Dkt. #36-1 at ¶ 12.

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2 LCR 11(c).

3         Despite the clear direction of the Court’s prior order and the local rules and despite being  
4 warned of the potential consequences, Plaintiff did not file a pretrial order. Instead, Defendant  
5 filed a proposed pretrial order on its own behalf, indicating that “[P]laintiff has failed to submit  
6 pre-trial statements as required by LCR 16(h); to join [D]efendant for a conference of attorneys  
7 as required by LCR 16(k); or otherwise cooperate with [D]efendant in the pretrial process.” Dkt.  
8 #38 at 1.

9         **D. Plaintiff Seeks A Trial Continuance**

10         On November 21, 2019, and with five court days remaining prior to trial, Plaintiff filed a  
11 motion to continue the trial date. Dkt. #39. The motion was noted for the Court’s consideration  
12 on Friday, November 29, the Friday before the Monday trial date. Therein, Plaintiff sought, for  
13 the first time, a continuance of the “case to a date no earlier than February 24, 2020.” *Id.* at 1.  
14 Plaintiff indicates that, after the continued Rule 30(b)(6) deposition did not go forward—despite  
15 it already being scheduled after the Court’s discovery cutoff—, the parties agreed<sup>3</sup> to seek a trial  
16 continuance. Dkt. #39-1 at ¶ 5; Dkt. #33-1 at ¶¶ 9–10. Plaintiff’s counsel agreed that he would  
17 prepare the stipulated motion. *Id.* However, Plaintiff’s counsel failed to do so, as did  
18 Defendant’s counsel, and no such stipulated motion was filed.

19         Somewhat shockingly, Plaintiff excuses its failure to seek a timely continuance because  
20 it necessarily “has focused its time in the last few weeks on opposing” Defendant’s motions  
21 because “[u]ntil the witness dispute is resolved, the parties simply cannot fully meet the Court’s  
22 deadlines regarding the Pretrial Order and other pretrial deadlines, although [P]laintiff is making  
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24 <sup>3</sup> Plaintiff is vague about when the agreement occurred, representing it as “weeks ago,” while Defendant places the agreement in early September 2019. Dkt. #39-1 at ¶ 5; Dkt. #33-1 at ¶ 10.

1 efforts to do so prior to the scheduled Pretrial Conference.”<sup>4</sup> Dkt. #39 at 4. The Court struggles  
2 to see how prudent counsel, aware of impending deadlines that will not be met, fails to take the  
3 several minutes necessary to draft a stipulated motion to continue and instead spends hours or  
4 days opposing motions that may be irrelevant if a continuance is granted.

5 While placing the blame with Defendant, Plaintiff takes conflicting positions on its own  
6 readiness. Plaintiff takes the position that it has evidence sufficient to make out a prima facie  
7 case against defendants.” Dkt. #39-1 at ¶ 4. Simultaneously, Plaintiff takes the position that the  
8 trial cannot go forward on the trial date because the trial will “necessarily involve witnesses from  
9 out of the state and also possibly from out of the country.” Dkt. #39 at 3.

10 Plaintiff’s motion for a continuance and recent filings read like bad excuses. *See* Dkt.  
11 #39-1 at ¶ 5 (“Despite [Plaintiff’s New York counsel’s] offer to prepare the Stipulated Motion,  
12 [Defendant’s counsel] could easily have prepared it, as could [Plaintiff’s local counsel] if  
13 [Plaintiff’s local counsel] had known before recently that it was not being prepared.”). But the  
14 Court is not sure that Defendant is entirely blameless either. Defendant highlights the importance  
15 of Mr. Giardino to its defense to play up the harm purportedly caused by Plaintiff’s failure to  
16 make him available. If Mr. Giardino was vital to Defendant’s case, it could have obtained  
17 necessary relief instead of waiting to the eve of trial to strategically cry foul.

18 Perhaps most frustratingly, Plaintiff’s local counsel believes “this case could still settle,  
19 or if not, could be prepared for trial in a month or two if the Court were to allow that at this  
20 point.” Dkt. #39-1 at ¶ 7. Why were neither of these paths taken months ago? Counsel  
21 knowingly neglected their duties. Now, counsel dumps the matter in the Court’s lap, frivolously  
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24 <sup>4</sup> No pretrial conference is scheduled yet.

1 occupying the Court's time to solve their self-created emergencies. The Court will not continue  
2 to allow this case to monopolize the Court's docket.

3 Accordingly, having reviewed the record in this matter, the Court finds and ORDERS:

- 4 1. The December 2, 2019 trial date and all *unexpired* pretrial deadlines are VACATED.
- 5 2. Plaintiff's Motion to Continue Trial Date (Dkt. #39) is DENIED as moot.
- 6 3. The parties are tasked with informing the Court of whether this matter can continue and  
7 of the proper path forward. Dismissal of the entire case may be too harsh a penalty.  
8 Similarly, holding Plaintiff to its failure to comply with previous deadlines or to file a  
9 pretrial order identifying witnesses or evidence may act as a de facto dismissal. The Court  
10 ORDERS each party to show cause: (a) whether Plaintiff's action should be dismissed,  
11 (b) what sanction short of dismissal may be appropriate, and (c) considering counsel's  
12 actions and appropriate sanctions, what is a reasonable path to resolution. **Responses**  
13 **shall be no more than six (6) pages and shall be filed no later than November 27,**  
14 **2019.**
- 15 4. Defendant's motions (Dkts. #33 and #34) REMAIN PENDING. If necessary, the Court  
16 will address the motions following filing of the parties' responses.
- 17 5. Failure to respond will result in dismissal of this case.

18 Dated this 22<sup>nd</sup> day of November 2019.

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20 RICARDO S. MARTINEZ  
21 CHIEF UNITED STATES DISTRICT JUDGE  
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