

frittered away by Complainants their instant motion would be unnecessary. In that context, then, it can hardly be concluded that good cause exists for extending the hearing schedule.

As they did in their initial motion seeking a continuance, Complainants' opposition brief pleads that this is a "big case" and thus requires time to prepare. That point has long since been acknowledged and was the main reason that the hearing officer gave the parties a year to prepare. It is further noted that this was the length of time initially requested by Complainants.

But Complainants nowhere state, nor could they, that they diligently pursued discovery during that entire period of time and it has proven to be insufficient. Far from it. Complainants literally wasted the first three months of the schedule by engaging in no discovery. Thus, it is not that the original time scheduled was insufficient, it's that Complainants wasted it. That simply doesn't constitute good cause to further extend the hearing date.

As Respondents demonstrated in their memorandum in support of the instant motion to reconsider, fact discovery can be completed by June 15. Complainants have noticed 23 individuals as well as corporate representatives for deposition on 23 topics. Of the 23 individuals noticed, dates have been set for 15; Complainants have withdrawn their notices for three. That leaves five individuals to be scheduled.¹ Of the 23 deposition topics noticed, Respondents agreed to produce individuals on fifteen topics and objected to the rest. *Depositions on all but one of these topics have already been scheduled. All of the depositions that Complainants have noticed will be completed by June 15.*²

¹ The remaining individual has recently been hospitalized for an emergency surgical procedure and may not be available for any testimony.

² Indeed, after Complainants filed the instant motion, Complainants noticed six additional depositions. Each of these has been noticed to take place in the first week of June.

In contrast to these undisputed facts which make the case for no delay in the hearing date, the Complainants cobble together two contentions to gain more delay, both of which they utterly fail to support. First, Complainants say that they will need to take 50 depositions. It's unclear who these 50 deponents are. If this refers to the depositions currently noticed, as shown above, almost all of them have already been scheduled and will be completed by June 15. If the Complainants believe that they need to take the depositions of others, one would think that, after almost four years, Complainants would know who they are and would have noticed them. Certainly, Complainants have provided no explanation (much less a justification) for why they have waited to proffer notice of that discovery.

Second, the Complainants say that there are likely to be discovery disputes that need to be resolved. Although this is no doubt true (indeed, Respondents have a motion to compel pending), it is no reason to delay the hearing. Unlike Complainants, Respondents have moved forward expeditiously to bring their discovery issues forward to opposing counsel and then, when necessary, to the Attorney Examiner. If Complainants have problems with Respondents' discovery responses, they have failed to let Respondents know. Again, Complainants have given no information regarding what their specific issues are, or more to the point, any reason why they have waited to raise these issues with Complainants' counsel or the Attorney Examiner.³

Lastly, and importantly, Complainants provide no reason why, if fact discovery will end on June 15 (as will be the case), the parties will not have a fair and adequate opportunity to prepare for the hearing under the schedule proposed by Respondents in their moving papers. Nor

³ As noted previously, the fact that Complainants propounded a revised set of discovery in the face of Respondents' objections to Complainants' initial requests is tantamount to an admission of the validity of Respondents' objections.

have Complainants raised any issue to dispute the real prejudice that will befall Respondents by a continuance in an already extended procedural schedule.

CONCLUSION

The issue of setting the proper schedule in a case is ultimately one of fairness. The Commission seeks a proper balance to allow the parties the opportunity to present their cases. Although providing time to prepare is part of that calculus, guarding against providing too much time is also part of the equation. Delay works a prejudice too; especially where, as here, the matter has been extended to over four years after the events in question. Fairness dictates that the Commission reconsider its schedule in this case and reinstate the original hearing date and set the rest of the procedural schedule in this case in light of the current likelihood that fact discovery will be completed by June 15.

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Respectfully submitted,



David A. Kutik (Trial Counsel)

Lisa B. Gates

Meggan A. Rawlin

JONES DAY

North Point

901 Lakeside Avenue

Cleveland, Ohio 44114

Telephone: 216-586-3939

Facsimile: 216-579-0212

E-mail: dakutik@jonesday.com

lgates@jonesday.com

mrawlin@jonesday.com

Mark A. Whitt
JONES DAY
Mailing Address:
P.O. Box 165017
Columbus, Ohio 3216-5017
Street Address:
325 John H. McConnell Blvd., Suite 600
Columbus, Ohio 43215-2673
Telephone: 614-469-3939
Facsimile: 614-461-4198
E-mail: mawhitt@jonesday.com

Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply in Support of Motion for Reconsideration of April 30, 2007 Entry Extending Procedural Schedule was sent by facsimile and U.S. Mail this 8th day of May, 2007.

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| Daniel G. Galivan, Esq. Grotefeld & Denenberg, LLC 105 West Adams Street, Suite 2300 Chicago, IL 60603 | Alyssa J. Endelmen, Esq. Christina L. Pawlowski, Esq. Grotefeld & Denenberg, LLC 21 E. Long Lake Road, Suite 200 Bloomfield Hills, MI 48308 |
| Edward Siegel Attorney at Law 5910 Landerbrook Drive, #200 Cleveland, OH 44124 | Craig Bashein BASHEIN & BASHEIN CO. L.P.A. 50 Public Sq #3500 Cleveland, OH 44113 |
| Francis Sweeney, Jr. Attorney at Law 323 Lakeside Avenue, Suite 450 Cleveland, OH 44113 | Joel Levin LEVIN & ASSOCIATES, CO., L.P.A. The Tower at Erieview, Suite 1100 1301 East Ninth Street Cleveland, OH 44114 |
| Paul Flowers PAUL W. FLOWERS CO., L.P.A. 50 Public Square #3500 Cleveland, OH 44113 | Leslie E. Wargo, Esq. McCarthy, Lebit, Crystal & Liffman Co., L.P.A. 101 West Prospect Avenue 1800 Midland Building Cleveland, OH 44115 |



Mark A. Whitt