IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

RANDALL B. WALKER,	)	
	)	
Plaintiff,	)	
v.	)	
	)	**CASE NO. 3:23-cv-00004**
HANDY DAGG REMODELING & CARPENTRY, LLC and JERRY FRANCIS	)	
	)	
Defendants.	)	

ORDER

This matter is before the Court on the parties' joint motion to extend deadlines. [ECF 90].

I. BACKGROUND

Plaintiff filed suit against defendants on January 25, 2023, [ECF 1], and on April 5, 2023, filed his first amended complaint [ECF 27]. The Court held an initial scheduling conference on April 25, 2023, and issued a Trial Management Order establishing a schedule for this litigation. [ECF 35]. That Order provided for a fact discovery deadline of October 30, 2023, with all discovery to be completed by January 15, 2024, and set this matter for trial on July 15, 2024. *Id.* at 1–2.

At an October 3, 2023 status conference, the parties urged that additional time was needed to complete discovery, and the Court issued a revised discovery schedule. [ECF 53]. The Court extended the fact discovery deadline to November 30, 2023, with all discovery to be completed by March 1, 2024, and extended the dispositive motion deadline to April 1, 2024, but did not extend the trial date. *Id.* In December 2023, the parties again sought to extend the discovery schedule. [ECF 57]. The Court set a fact discovery deadline of March 1, 2024, with all discovery to be

completed by June 1, 2024, and reset the trial for October 21, 2024. [ECF 58].

In February 2024, the parties advised that all written discovery had been completed, but that they needed additional time to schedule depositions and complete mediation. [ECF 62]. The Court granted an extension as to those deadlines only, extending the date for fact discovery to March 15, 2024. [ECF 63]. Then, on April 1, 2024, plaintiff moved to extend the time for mediation and for certain expert discovery deadlines. [ECF 72]. Following an April 11, 2024 status conference, the Court extended the schedule again, this time with a deadline for the completion of all discovery by August 1, 2024, with trial scheduled for December 9, 2024. [ECF 77].

At a July 11, 2024 status conference, defendants objected to the timing of plaintiff's request to name an accident reconstruction expert. *See* [ECF 82]. The Court noted that the parties needed additional time to complete expert depositions, and ordered all discovery to be completed by September 1, 2024, with expert-related motions to be filed no later than September 15, 2024. *Id.* The Court advised the parties to request a status conference if needed. Thereafter, on July 31, 2024, plaintiff filed his rebuttal expert disclosure report [ECF 83], which defendants moved to strike as untimely. [ECF 84].

The parties filed the instant motion on September 12, 2024. [ECF 90].

II. LEGAL STANDARDS

Federal Rule of Civil Procedure 16(b) requires a court to enter a scheduling order early in a lawsuit's history, which must at a minimum include dates for adding parties, amending pleadings, the completion of discovery, and the filing of motions. Fed. R. Civ. P 16(b)(3)(A).[1] Rule 16(b)(4) provides "[a] schedule may be modified only for good cause and with the judge's

[1] Rule 16(b)(3)(B) sets out additional matters that may be included in a scheduling order.

consent." Fed. R. Civ. P. 16(b)(4).

> The rationale for the "good cause" requirement for modification of a court's scheduling order is that "scheduling orders are at the heart of case management. If they can be disregarded without a specific showing of good cause, their utility will be severely impaired." *Koplove v. Ford Motor Co.*, 795 F.2d 15, 18 (3d Cir. 1986) . . . .
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> . . .
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> To establish "good cause" under Rule 16(b)(4), "the moving party must demonstrate that a more diligent pursuit of discovery was impossible. In addition, courts consider whether granting the extension would prejudice the non-moving party." *Crossley v. Elliot*, 2008 WL 2944667 at *1 (D.V.I.2008) (internal quotation omitted). "Within a specific case, what constitutes good cause [under Rule 16(b)(4)] changes as the litigation progresses." *In re Tutu Water Wells Contamination Litigation*, 1995 WL 841940 at *1 (D.V.I. Nov. 22, 1995) (unpublished).

Unlimited Holdings, Inc. v. Bertram Yacht, Inc., 2008 WL 4642191, at *6 (D.V.I. Oct. 15, 2008). Relevant factors include: "(1) whether the moving party's lack of diligence or the opposing party's conduct contributed to the delay; (2) potential prejudice caused by the discovery extension; and (3) any other factors the trial court, in its discretion, determines to be relevant." *Trask v. Olin Corp.*, 298 F.R.D. 244, 267 (W.D. Pa. Mar. 4, 2014) (citing 6A *Federal Practice and Procedure*, § 15222.2, 313–16). The authority to modify a scheduling order extends to a decision to reopen discovery, and this decision rests in the court's broad discretion. *Id.* (citing *LeBoon v. Lancaster Jewish Cmty. Ass'n*, 503 F.3d 217, 235 (3d Cir. 2007) and *Sempier v. Johnson & Higgins*, 45 F.3d 724, 734 (3d Cir. 1995)).

Additionally, Federal Rule of Civil Procedure 6(b) provides that "[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time . . . if a request is made[] before the original time or its extension expires." Fed. R. Civ. P. 6(b)(1)(A). If, however, a party moves to extend after a deadline has passed, the party must show excusable neglect. Fed. R. Civ. P. 6(b)(1)(B).

The "excusable neglect" inquiry is one grounded in equity, considering all relevant circumstances. *Baptiste v. Rohn*, 2015 WL 9460128, at *2 (D.V.I. Dec 23, 2015). Factors include "the danger of prejudice to the [other party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993). Courts may also consider "the procedural circumstances surrounding the extension request and the repercussions of not granting relief." *Baptiste*, 2015 WL 9460128, at *2 (citation omitted).

III. DISCUSSION

Here, the parties seek an extension to take the depositions of experts and to file expert-related motions. They further request that the deadlines to file motions in limine and other trial-related matters also be extended, and that trial of this matter be scheduled for April 4, 2025.

As an initial matter, the Court observes that while the parties purport to request a 30-day extension of the Court's deadlines, the parties' new proposed dates extend 2.5 months or more beyond the current deadlines.[2]

The parties were to complete all discovery by September 1, 2024, but they did not bring the instant motion until September 12, 2024. They make no attempt to demonstrate the requisite excusable neglect for this late filing.

As to good cause for the requested extension, the parties claim they "are in the process of scheduling expert depositions; however, experts' availability are beyond the current deadline." [ECF 90] at 1. The parties provide no further details as to why they were unable to take the expert

[2] For example, the current motion in limine deadline is November 9, 2024, and the parties request an extension to March 1, 2025. *See* [ECF 77] at 1; [ECF 90] at 2. Expert-related motions are due September 15, 2024, and the parties request an extension to December 1, 2024. *See* [ECF 82] at 1; [ECF 90] at 2.

depositions within the schedule—even as extended on multiple occasions—other than to claim that "counsel has had a hectic trial calendar" this year. *Id.* According to the motion, expert depositions are scheduled for September 13 and 26, 2024, and others still need to be scheduled. The motion does not indicate when these yet-to-be-scheduled depositions might take place.

Although the Court concludes that the parties have failed to demonstrate excusable neglect, the Court sees no bad faith on the part of any movant, nor any true prejudice that will result from the requested extension. And, while it was certainly within the parties' control as to when to file their joint motion to extend, that the parties did so 11 days after the discovery deadline had passed does not evidence inordinate delay. Finally, while the Court is not persuaded "that a more diligent pursuit of discovery was impossible," the Court finds that allowing this final extension will not unduly frustrate "efforts to adjudicate this matter in an orderly and prompt manner." *Unlimited Holdings*, 2008 WL 4642191, at *6–7. The Court cautions the parties, however, that its deadlines are not "mere suggestions." For all of these reasons, and in light of the joint nature of the request, the Court will grant the motion.

IV. CONCLUSION

Accordingly, the premises considered, it is ORDERED that the joint motion to extend deadlines [ECF 90] is granted as follows:

1. All expert depositions shall be completed by October 31, 2024.

2. The parties shall file expert-related motions no later than December 2, 2024. The time for filing responses and replies **may not be extended without leave of Court**.

3. All motions in limine or to exclude evidence shall be filed no later than March 3, 2025. Any response shall be filed no later than seven days after the motion is served. Any reply shall be filed no later than five days after a response is served.

4. The parties shall file their proposed joint final pretrial order no later than March 14, 2025.

5. The parties shall file their proposed voir dire, proposed joint neutral statement, and proposed jury instructions no later than March 24, 2025.

6. The parties shall file a trial brief or memorandum pursuant to Local Rule 16.1(c) no later than March 24, 2025.

7. The final pretrial conference in this matter will be scheduled by the presiding judge.

8. The trial of this matter is scheduled to begin promptly at **9:00 a.m. on April 7, 2025**. The trial period extends from April 7, 2025 to April 21, 2025. To the extent that there are conflicts, the trial date may change to any date within this period. All parties, witnesses, and counsel should arrange their schedules accordingly.

9. A status conference is scheduled for **December 17, 2024 at 10:00 a.m., via Microsoft Teams**.

ENTER:

Dated: September 19, 2024

/s/ G. Alan Teague
G. ALAN TEAGUE
U.S. MAGISTRATE JUDGE