

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, Delaware 19801-3733
(302) 255-0664

April 6, 2009

By Facsimile and U.S. Mail

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Re: Brewington-Carr v. University and Whist Club
C.A. No. 06C-06-299 RRC

Dear Counsel:

I have reviewed Plaintiff's unopposed March 23, 2009 "Motion for Continuance of Trial." The basis for the motion is that Plaintiff's counsel has been unable to schedule a mutually agreeable time for the deposition of Plaintiff's prime medical expert, Keith L. Wapner, M.D.

Even though the motion is unopposed, I note that the original trial date of April 27, 2009 was set on March 20, 2008 (and subsequently rescheduled to May 18, 2009 on or about January 13, 2009). The discovery cut-off date of December 31, 2008 was never changed.

The standard for a motion to amend a scheduling order is set forth in Superior Court Civil Rule 16: "A schedule shall not be modified except by leave of the Court upon a showing of good cause." To show "good cause," a party must establish that he has made diligent efforts to meet the trial scheduling deadlines." *Candlewood Timber Group LLC v. Pan American Energy LLC*, 2006 WL 25803, *4 (Del. Super.). "Such orders and their

enforcement are regarded as the essential mechanism for cases becoming trial-ready in an efficient, just and certain manner. The control of these schedules is deliberately reposed in the court, and not in counsel, so that this end may be achieved.” *Id.* (citing James Wm. Moore et al., *Moore’s Federal Practice* § 16.14(1)(a) (1997)). This Court has also noted that,

It is well-settled in this state that “[p]arties must be mindful that scheduling orders are not mere guidelines but have full force and effect as any other order of the [Superior] Court.” Adherence to case scheduling orders is essential to the orderly administration of the Court’s docket. If this Court were to allow parties to disregard these orders on the basis of the thin excuse offered by the instant parties, the Court would be hard pressed to deny almost any request to modify other scheduling orders. Scheduling orders would then become meaningless guidelines and the Court’s docket would soon become chaotic.

Todd v. Delmarva Power & Light et al., 2009 WL 143169 (Del. Super.) (quoting *Sammons v. Doctors for Emergency Serv.*, 2005 WL 1370188 (Del. Super.)). Although Plaintiff’s counsel represents that he “has used his best efforts to secure the testimony by deposition of Keith L. Wapner, M.D., no showing has been made that timely communication with Dr. Wapner’s office occurred. The record, therefore, does not support a finding of “good cause” for Plaintiff’s requested modification of the scheduling order to establish a new trial date. Therefore, Plaintiff’s “Motion for Continuance of Trial” is denied.

Having denied Plaintiff’s motion, but having been informed in Plaintiff’s motion (at paragraph 5) that “no lawyer in defense counsel’s office is available to attend and participate in the deposition of Dr. Wapner [on April 27, 2009 at 6:00 p.m., the only date and time at which he is apparently available, at least as of the date of the March 23 motion], I will state that the Court expects Defendant’s counsel to make every effort to have a lawyer attend the deposition, if it occurs. To this end, I request a status report from Mr. Silverman on this issue on or before April 8.

IT IS SO ORDERED.

Very truly yours,

cc: Prothonotary