

“Case Resources to Support Discovery Stay or Deposition Deferral During the COVID-19 Pandemic,” (April 2020).

Articles

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If you are dealing with opposing counsel who expect you and your legal teams to virtually prepare witnesses and defend depositions during the current pandemic, below are recent case citing resources (based on case law out of Florida, Minnesota, and Missouri) to support a stay of discovery or deferral of depositions.

These are select examples only. They do not guarantee that other courts will follow suit or that these determinations are binding in other jurisdictions.

“It is painfully obvious that counsel for both sides failed to keep their comparatively unimportant dispute in perspective. Would the world end if the corporate deposition did not occur next week? Obviously not. Is it reasonable to require defense counsel to prepare the 30(b)(6) witness for a

deposition while complying with the social distancing standard of ten feet? Absolutely not. [. . .] So the deposition will not be taken next week. Life will go on. But the Undersigned will be requiring counsel for both sides to appear for a hearing at some point, even if they work out the rescheduled date for the corporate deposition. That hearing will require the attorneys to explain their behavior in context of the far-more-important issues this Court (and the entire world) is facing.”

C.W. v NCL (Bahamas) Ltd, **No. 19-cv-24441 (S.D. Fla. March 21, 2020)**.

“The discovery deadlines in this case will be extended, and the depositions must be rescheduled. It is essential that all Minnesotans work together to slow the spread of this terrible pandemic. In addition, counsel and litigants need to be patient and understanding with one another, and they should work cooperatively to adjust schedules as needed.”

Elsherif v. Clinic, **No. 18-CV-2998-DWF-KMM, 2020 WL 1441959, at *1 (D. Minn. Mar. 24, 2020)**.

“Given the global COVID-19 pandemic, it is hardly surprising that Plaintiff filed [ECF No. 47] a motion to extend the mediation and discovery deadlines and all related deadlines and to reschedule the special set trial date. Plaintiff’s motion represents that Defendant objected to the request. That’s right. Defendant objected to what appears to be a realistic and common sense motion to reschedule the trial and other deadlines. I had to read the certification twice in order to make sure that I was reading it correctly. If the motion is correct, then Defendant wants to push forward with the existing trial date and all trial-related deadlines even though no one has any idea when the Court will be able to safely resume jury trials (or when it will be safe to travel by air, to return to work or to get closer than ten feet to anyone). Rather than guess at defense counsel’s motivation, the

Undersigned requires defense counsel to by March 26, 2020 file a double-spaced memorandum explaining (1) whether he did, in fact, oppose the motion to reschedule the trial and enlarge trial-related deadlines and the mediation deadline, and (2) all the reasons justifying his opposition (assuming that he did actually advise Plaintiff's counsel that he opposes the motion). If defense counsel opposed the motion, then he is best advised to provide a comprehensive and rational explanation. Before filing this response, though, defense counsel may want to brush up on the concepts of karma, goodwill, grace, compassion, equity, charity, flexibility, respect, spirituality, selflessness, kindness, public spirit, social conscience, and empathy."

Martinez v. Cherry Bekaert, LLP, No. 18-cv-25429 (S.D. Fla. March 25, 2020).

"[G]ood cause exists based on the disruption to business caused by the spread of COVID-19," and "[t]he situation caused by the virus makes it reasonable to stay discovery for a period of time."

Garbutt v. Ocwen Loan Servicing, LLC, No. 8:20-CV-136-T-36JSS, 2020 WL 1476159, at *1 (M.D. Fla. Mar. 26, 2020).

"The Court finds that these factors weigh in favor of a stay of discovery in this case. Defendants' arguments for dismissal are colorable. The breadth of discovery in this case is substantial, and the Covid-19 pandemic will only compound the difficulty the parties have experienced obtaining discovery. A stay will cause Bryant no unfair prejudice."

Bryant v. Boyd, 1:18-CV-117-SEP, 2020 WL 1493548, at *2 (E.D. Mo. Mar. 27, 2020).

An additional helpful cite in the N.D. Illinois case, *DeVine v. XPO Logistics Freight*, sets forth a protocol for handling requests for discovery from medical providers that might be advocated for and other courts may adopt:

"The current COVID-19 public health emergency takes courts, litigants, and medical treater witnesses into uncharted territory in terms of managing discovery in a time of a public health emergency. The Governor of Illinois has closed public schools through at least March 30, 2020. Various elected officials and public health officials have cautioned against gathering in groups of 250 or more, then 50 or more, then 10 or more - over the next few weeks or months. This Court issued its March 16, 2020 Amended General Order effectively pausing civil litigation in this judicial district for 21 days. In the meantime, the Court takes judicial notice of the multiple reports, warnings, and other public statements about the impact that community spread of COVID-19 could have on medical care providers, doctors, hospitals, and so on. The concern is that health care providers could become overwhelmed. There is also substantial anecdotal evidence that physicians and their staff are currently engaged in planning for the spread of the virus, even if they may not yet be engaged in actually providing care to persons infected by COVID-19.

In other words, the medical community is very, very busy right now, and likely will be busy for weeks or months to come. And these doctors and nurses are busy preparing to take care of sick people. Soon they may be taking care of more sick people than they can handle. We all hope that conditions will not overwhelm our health care system, but at this writing, we do not know how significant the impact will be. Even if the system is not overwhelmed, it may be strained to at or near its limits. Physicians who do not normally practice emergency care may find themselves deployed to emergency rooms. Physicians who might never practice emergency medicine may find themselves immersed in logistical planning or other essential services. It is reasonable for all of us to expect that at this moment and at least for the next few weeks and possibly longer, the situation at hospitals and medical offices will be all hands on deck. **All hands**

cannot be on deck if some of them are at a law office sitting for a deposition in a tort lawsuit.”

DeVine v. XPO Logistics Freight, 18 C 1264, 2020 WL 1275087, at *2-3 (N.D. Ill. Mar. 17, 2020) (emphasis added).

For more information, contact WTO partner [Ellen Herzog](#).