

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

RICKY W. MARKHAM,)	
)	
Plaintiff,)	
)	
v.)	Case No. 08-4032-SAC
)	
BTM CORPORATION,)	
)	
Defendant.)	

ORDER

This case comes before the court on plaintiff's motion to deem the report of his expert, Glen Amundson, M.D., timely disclosed and for an extension of time to May 5, 2010, for Dr. Amundson to be deposed (**doc. 57**). The court ordered any response to this motion to be filed by January 25, 2010 (doc. 60). Defendant has not filed a response. Thus, pursuant to D. Kan. Rule 7.4, the court considers the instant motion uncontested. Uncontested motions are ordinarily "granted without further notice."¹

As discussed in detail in the court's December 2, 2009 order (doc. 52), this case has been plagued by repeated delays.² The court therefore recognized the "need to set new, *firm*, deadlines in this case to put it back on a track toward trial."³ The court set a deadline of January 8, 2010, for the disclosure of plaintiff's expert reports and a deadline of January 29,

¹ D. Kan. Rule 7.4

²The December 2, 2009 order detailed "the very casual manner in which *both* parties have managed this case." Doc. 52 at 4.

³*Id.* at 7.

2010, for the depositions of plaintiff's experts. A final pretrial conference was set for April 1, 2010, and a deadline of May 15, 2010, was set for the filing of dispositive motions.⁴

In the instant motion, plaintiff asks the court to deem the expert report of his treating physician, disclosed on January 13, 2010, timely. Plaintiff explains that, despite the efforts of his counsel, Dr. Amundson did not provide his report to plaintiff until that date, and the report was faxed to defense counsel upon receipt. Plaintiff further requests that the court extend the deadline for deposing Dr. Amundson to May 5, 2010. Plaintiff states that Dr. Amundson's schedule does not currently permit an earlier deposition, but that "an arrangement has been made to check daily for cancellations."⁵ Plaintiff submits that this situation is largely beyond his control. Plaintiff promises to cooperate fully in all other remaining discovery, such that "[t]he only events that cannot occur prior to the April 1 Pretrial are Dr. Amundson's deposition and any amendment to defendant's expert report that might be a result of that deposition."

With reluctance, the court grants plaintiff's motion. Unlike the multiple previous delays in this action, the instant delay is not the result of dilatory conduct on the part of the parties or their counsel. Defendant does not oppose the requested extensions (despite the fact that the final pretrial conference will be held before it will have an opportunity to depose Dr. Amundson and seek a response from its own expert).

⁴A trial date has not yet been set.

⁵Doc. 58 at 2.

IT IS THEREFORE ORDERED that the expert report of Dr. Amundson is deemed timely and that the deadline for deposing Dr. Amundson is extended to May 5, 2010. All other deadlines in this case remain unchanged.

Dated January 26, 2010, at Kansas City, Kansas.

s/James P. O'Hara

James P. O'Hara

U. S. Magistrate Judge