

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

KEVIN MEDCALF,)	
)	
Plaintiff,)	
)	
v.)	Case No. 20-cv-2659-EFM-TJJ
)	
FEDEX GROUND,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff Kevin Medcalf’s Motion for Jury Trial (ECF No. 15). Defendant FedEx Ground Package System, Inc. opposes the motion. Intervenor Plaintiff Protector Insurance Company has not responded. Upon consideration of the matter, the Court finds the motion should be granted.

Plaintiff filed this case in the District Court of Johnson County on November 23, 2020, alleging he was injured when he slipped on ice on Defendant’s premises. Defendant removed the action to this court on December 30, 2020,¹ and filed its answer the same day.² On February 15, 2021, Plaintiff filed a jury demand,³ followed the next day by Defendant’s objection.⁴ This motion followed.

Plaintiff acknowledges his jury demand was untimely under Rule 38 of the Federal Rules of Civil Procedure, which preserves the Seventh Amendment right to a civil jury and sets forth the procedural requirements for demanding a jury trial. Under Rule 38(b), “a party may demand

¹ See ECF No. 1.
² ECF No. 4.
³ ECF No. 11.
⁴ ECF No. 12.

a trial by jury by (1) serving the other parties with a written demand—which may be included in a pleading—no later than 14 days after the last pleading directed to the issue is served, and (2) filing the demand in accordance with Rule 5(d).” Failure to serve and file the demand within the 14-day limit constitutes a waiver of the right to a trial by jury.⁵

Plaintiff explains this action was filed by counsel who represents him in a workers compensation claim arising out of this same incident, as Plaintiff was acting in the course and scope of his employment when he was injured. When the case was removed, counsel was unfamiliar with federal court practice and overlooked the 14-day period for filing and serving a jury demand. Co-counsel filed an entry of appearance on February 1, 2021⁶ and made a jury demand when he realized no such demand had been made. The demand was out of time by 17 days.

Defendant opposes the motion for two reasons. First, Defendant argues Plaintiff’s untimely demand arises from inadvertence, and denying relief on that basis would not be an abuse of this Court’s discretion.⁷ In support of this argument, Defendant cites *Nissan Motor Corporation in U.S.A. v. Burciaga*, 982 F.2d 408 (10th Cir. 1992), where the defendant requested a jury trial when plaintiff amended its complaint two years after the original complaint. In that case, the defendant explained the belated demand resulted from its mistaken assumption that the plaintiff had requested a jury in the original complaint. The district court declined to exercise its

⁵ Fed. R. Civ. P. 38(d).

⁶ ECF No. 8.

⁷ To its credit, Defendant also acknowledges that absent strong and compelling reasons to the contrary, a court should exercise discretion under Rule 39(b) and grant a jury trial. *AMF Tuboscope, Inc. v. Cunningham*, 352 F.2d 150, 155 (10th Cir. 1965).

discretion to allow the request, and the Tenth Circuit affirmed, agreeing the defendant had shown no reason beyond mere inadvertence.⁸

Second, Defendant argues the delay in conducting trials in this District due to Covid-19 and changes in how trials will be conducted would result in delay, burden, and expense if this case is tried to a jury. Defendant asserts a court trial would promote a just, speedy, and inexpensive determination as required by Federal Rule of Civil Procedure 1.

The Court finds neither reason persuasive. Defendant's argument that Plaintiff demonstrates nothing more than mere inadvertence as the reason for failure to timely demand trial by jury ignores the opponent's burden to demonstrate strong and compelling reasons why a court should exercise its discretion to deny a party a right to jury trial. Plaintiff's demand was late by a mere 17 days, and came before the Rule 16 Scheduling Conference and before any party initiated discovery. Indeed, not all the parties were present in the case, as the motion to intervene by Protective Insurance Company was not yet ripe and had not been ruled.⁹

The Court is quite familiar with the delays caused by Covid-19 over the past year, but as of April 1, 2021, in-person jury trials in this district resumed.¹⁰ Moreover, it is this Court's experience that no District Judge who sets trial dates in the Scheduling Order is setting jury trials later than the norm of approximately 8 months after the dispositive motions deadline. And in this case, the presiding District Judge does not set a trial date until the Final Pretrial Conference is conducted, which further insulates against delay.

⁸ 982 F.2d at 409.

⁹ Arguably, Plaintiff's jury demand was not untimely if the Intervenor Complaint (ECF No. 18) and/or answers thereto (ECF Nos. 21, 24) are "the last pleading directed to the issue." *See* Fed. R. Civ. P. 38(b)(1). Those documents were served on March 3, 15, and 24, 2021, respectively. The Court need not decide the issue.

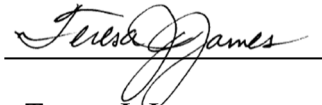
¹⁰ *See* Admin. Order No. 2021-05.

In sum, no strong or compelling reason exists to justify refusing Plaintiff's request for jury trial in this case. Resolution of the facts of this case involving allegations of negligence are particularly well suited to be decided by a jury. The Court grants Plaintiff's motion.

IT IS THEREFORE ORDERED that Plaintiff Kevin Medcalf's Motion for Jury Trial (ECF No. 15) is granted.

IT IS SO ORDERED.

Dated this 7th day of April, 2021, at Kansas City, Kansas.

A handwritten signature in cursive script, reading "Teresa J. James", is written above a horizontal line.

Teresa J. James
U. S. Magistrate Judge