

STATE OF NEW HAMPSHIRE
Superior Court
Rockingham, ss.
Case No. 215-2022-CV-00167

Steven Rand et al.,

Plaintiffs,

v.

The State of New Hampshire,

Defendant.

**PLAINTIFFS' OBJECTION TO DEFENDANT'S EXPEDITED MOTION TO
CONTINUE TRIAL**

Plaintiffs, by and through the undersigned counsel, object to the Defendant's Expedited Motion to Continue Trial ("Mot."). In support of this objection, the Plaintiffs state as follows:

1. Trial is scheduled to begin on Monday, September 30. The Court has set aside its schedule. The parties have agreed on a general order of witnesses accommodating schedules on both sides. Out of state attorneys from both parties have set their travel plans.
2. The State claims that its latest attempt to delay trial is meritorious because it is unprepared to try the case for three reasons: the July 30 subpoena, the September 3 witness list, and the September 17 document production. None of these are a basis to continue trial.
3. First, the parties have reached an agreement in principle regarding stipulation and production of documents pursuant to the Subpoena. The parties have met and conferred and are working in good faith to resolve objections and logistics regarding the Subpoena. The parties have

also agreed to limit the number of witnesses necessary, if any, to testify regarding these documents.¹

4. Second, the State’s motion to exclude witnesses on the September 3 list was denied. *See* Order Denying Motion to Exclude ConVal Witnesses (Sept. 12, 2024). As the court determined, the testimony of those witnesses will not prejudice the State, “in light of the fact that all parties have transcripts of the [witness] testimony” from trial. *Id.* at 13. It can therefore “hardly be said that such testimony (which is largely admitted to lay foundation for the DOE forms) is surprising to any party.” *Id.* Mot. ¶ 6. For over a year, the State has failed to attempt any discovery of those witnesses. *Id.* The State has also not sought depositions of these witnesses since that ruling.

5. Finally, as explored fully in the Plaintiffs’ Objection to the State’s Motion to Exclude, the documents produced were not prejudicial. To the extent the Court is inclined to agree that the September 17, 2024 disclosures were not prompt or were prejudicial, the granting of the State’s motion to exclude the documents disclosed therein would eliminate them as a basis for granting the instant motion.

6. The State asserts in its motion that a continuation would be in Plaintiffs’ best interest to permit them to rely on potentially excludable discovery. Had the State engaged in a meet and confer with the Plaintiffs as was required, the State would know this is not the case.

7. Tellingly, the State has refused to engage with Plaintiffs’ regarding a resolution to objectionable exhibits that would permit the parties to proceed to trial (including potentially

¹ This includes an agreement not to call the “Apex” witnesses. The parties will address this in a separate filing.

withdrawing exhibits). That is because any resolution on the objections would moot the State's basis for a motion to continue – which is what it truly seeks.

8. The State's claim that it needs “a reasonable period . . . to conduct appropriate discovery” is contrived. Mot. ¶ 15. The State had two years to conduct discovery and strategically decided not to conduct any. What the State truly seeks is a re-do of that strategic decision now that it is clear trial is imminent.

9. The State's motion does not identify a date or even a rough period to which it believes trial should be moved. The State has directed its efforts toward preventing this case from being tried rather than preparation for trial. It should not be rewarded for its indolence with another delay.

10. For the foregoing reasons, the Court should deny the State's motion to continue the trial. To the extent there are any issues regarding exclusion of exhibits, those may be handled at trial with all rights reserved.

Dated: September 25, 2024
Concord, New Hampshire

Respectfully submitted,

Counsel for Plaintiffs

/s/ John E. Tobin Jr.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this document has been served on counsel for Defendant, State of New Hampshire, on this 25th day of September, 2024, by way of the Court's electronic filing and service system.

/s/ John E. Tobin, Jr.
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