

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EDWARD BENEVILLE, JR. and :
WINCHESTER INSURANCE COMPANY, :
 :
Plaintiffs, :
 :
v. : Civil Action No. 03-474 JJF
 :
FRANCIS G.X. PILEGGI, :
ESQUIRE, FOX ROTHSCHILD, LLP, :
and ROBERT M. UNTERBERGER, :
 :
Defendants. :

Kevin W. Gibson, Esquire of GIBSON & PERKINS, P.C., Wilmington,
Delaware.
Attorney for Plaintiffs.

Jeffrey M. Weiner, Esquire of LAW OFFICES OF JEFFREY M. WEINER,
Wilmington, Delaware.
Attorney for Defendants Francis G.X. Pileggi, Esquire, and Fox
Rothschild, LLP.

Daniel A. Griffith, Esquire of MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN, Wilmington, Delaware.
Attorney for Defendant Robert M. Unterberger, Esquire.

OPINION

July 19, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is the Motion To Compel The Continued Deposition Of Defendant Francis GX Pileggi, Esquire ("Defendant Pileggi"). (D.I. 67.) For the reasons discussed, the Court will deny the Motion.

BACKGROUND

Plaintiffs deposed Defendant Pileggi on March 14, 2004, from approximately 10 a.m. to 4:30 p.m. Plaintiffs' counsel recommended, and Defendants did not object, to ending the deposition at 4:30 p.m. Subsequently, Plaintiffs' sought a continued deposition of Defendant Pileggi; however, Defendants refused such request pursuant to Rule 30(d)(2). By their Motion, Plaintiffs request the Court to order the continued deposition of Defendant Pileggi.

DISCUSSION

I. Parties' Contentions

Plaintiffs contend that the Court should order the continued deposition of Defendant Pileggi because he was unaware that when he ended the deposition that Defense counsel would be unwilling to produce Defendant Pileggi for future depositions. Plaintiffs also contend that the deposition of Defendant Pileggi was protracted because Defendant Pileggi was evasive in his answers. Plaintiffs' counsel contends that he was unaware of Rule 30(d)(2)'s seven hour deposition limitation and that Defense

counsel's refusal to reschedule the continued deposition is violative of the Federal Rules and uncivil. Plaintiffs also request the Court to order Defendants to pay attorney's fees incurred in preparing the instant motion.

Defendants respond that Plaintiffs' counsel's obliviousness to Rule 30(d)(2)'s deposition limitations is not grounds for granting a continued deposition of Defendant Pileggi. Further, Defendants contend that it was Plaintiffs' counsel's lack of preparedness that caused the prolonged deposition of Defendant Pileggi.

II. Decision

Rule 30(d)(2) of the Federal Rules of Civil Procedure provides a "one day of seven hours" limit on the duration of deposing witnesses. Fed. R. Civ. P. 30(d)(2). However, Rule 30(d)(2) permits the Court to grant additional time if "needed for a fair examination of the deponent or if the deponent or another person, or other circumstance, impedes or delays the examination." Id. Examples of grounds for granting an extension include whether a witness requires an interpreter, the examination covers events occurring over a long period of time or extensive documents, if multiple parties are deposed, or if someone impedes or delays the examination. See Advisory Committee Notes to the 2000 Amendments of Rule 30(d)(2).

In this case, apart from the ad hominem attacks by

Plaintiffs' counsel,¹ Plaintiffs have provided the Court with no evidence by which it might determine whether additional deposition time is necessary. Plaintiffs have not provided the Court with the deposition transcript or any other support for their arguments, and therefore, as Plaintiffs, the moving party, have the burden to demonstrate that additional time is necessary, see Rule 30(d)(2), the Court concludes that Plaintiffs have not met their burden.

CONCLUSION

For the reasons discussed, the Court will deny the Motion to Compel. (D.I. 67.)

An appropriate Order will be entered.

¹ Plaintiffs' counsel contends that the deposition was prolonged because of Defendant Pileggi's "arrogant demeanor" and that Defense counsel's refusal to stipulate to a continued deposition "smack[s] of a lack of civility." (D.I. 67.)

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ORDER

At Wilmington, this 19th day of July, 2004, for the reasons discussed in the Opinion issued this date;

IT IS HEREBY ORDERED that the Motion To Compel The Continued Deposition Of Defendant Francis GX Pileggi, Esquire (D.I. 67) is **DENIED.**

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE