

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

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KATHLEEN McHUGH and  
DEANNA SCHNEIDER, Individually  
and on behalf of all persons similarly  
situated ,

Plaintiffs,

v.

MADISON-KIPP CORPORATION,  
CONTINENTAL CASUALTY COMPANY,  
COLUMBIA CASUALTY COMPANY,  
UNITED STATES FIRE INSURANCE  
COMPANY and ABC INSURANCE  
COMPANIES 1 - 50,

Defendants,

--and--

MADISON-KIPP CORPORATION,

Case No. 11-cv-724-bbc

Cross-  
Claimant,

v.

CONTINENTAL CASUALTY COMPANY,  
COLUMBIA CASUALTY COMPANY and  
UNITED STATES FIRE INSURANCE  
COMPANY,

Cross-Claim Defendants,

--and--

CONTINENTAL CASUALTY COMPANY and  
COLUMBIA CASUALTY COMPANY,

Cross-Claimants/Third-Party Plaintiffs,

v.

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MADISON-KIPP CORPORATION,

Cross-Claim Defendant,

and

LUMBERMENS MUTUAL CASUALTY  
COMPANY, AMERICAN MOTORISTS  
INSURANCE COMPANY, and JOHN DOE  
INSURANCE COMPANIES 1-20,

Third-Party Defendants.

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**DEFENDANT MADISON-KIPP CORPORATION'S BRIEF  
IN OPPOSITION TO PLAINTIFFS' MOTION TO MODIFY BRIEFING**

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This Court is known for its effort to approach each case in a manner to achieve “the just, speedy, and inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1; *see also* dkt. #14 at 1. In light of this approach and to keep its docket moving efficiently, even before a case is scheduled, the Court informs parties of the likely schedule by which their case will be governed. This includes notification that trials “shall be held nine to twelve months after the preliminary pretrial conference” and that “[t]he court requires dispositive motions to be filed not later than 4 ½ months before trial . . . .” Once a schedule is set, to keep within these deadlines, the Court sets specific briefing schedules. Some, like the ones governing Madison-Kipp’s *Daubert* motions and motion to strike, are issued automatically upon filing while others, like those governing dispositive motions, are set forth in the Court’s Preliminary Pretrial Conference Order. Furthermore, the Court holds fast to its briefing deadlines to insure it has sufficient time to rule on motions within the parameters of the case schedule it sets. It is with this

backdrop that Plaintiffs come to the Court seeking, once again, to modify one of the Court's briefing schedules.

While Plaintiffs suggest that Madison-Kipp has somehow acted improper in its refusal to agree to a 21-day extension and in filing its *Daubert* motions in conjunction with its summary judgment reply brief, nothing is farther from the truth. First, there is nothing improper with the timing of Madison-Kipp's *Daubert* motions. There is no rule on the timing of any such motions and, frequently, *Daubert* motions challenging liability experts are filed throughout the summary judgment stage in this district. Indeed, Plaintiffs' challenge to the timing of the motions is odd given Plaintiffs' efforts to improperly supplement one of their liability expert's report in response to Madison-Kipp's summary judgment motion. Simply put, Plaintiffs' reading of the Court's scheduling order to require that such motions be filed only at the dispositive motion deadline or not until the motions *in limine* stage is simply incorrect, contrary to local practice and counter-intuitive.<sup>1</sup>

Second, Madison-Kipp's offer of a four-day extension is entirely reasonable under the circumstances - and certainly not lacking in professional courtesy. As all involved would surely agree, there is a significant amount of information for the Court to consider in ruling on Madison-Kipp's summary judgment motion and the Insurers' summary judgment motion as well. Madison-Kipp believes that to agree to a 21-day extension would put the Court at a disadvantage in ruling on Madison-Kipp's summary

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<sup>1</sup> In any event, Plaintiffs have not moved to strike Madison-Kipp's motions and Madison-Kipp will respond in full if such a motion to strike is filed.

judgment motion before final pre-trial submissions are due in mid-July. Madison-Kipp already agreed to one extension in briefing for Plaintiffs for summary judgment (based on Plaintiffs' assertion that it needed to take depositions which it never took). (See dkt. #169.) To agree to Plaintiffs' 21-day extension for motions that should be decided along with summary judgment would not serve the Court or the parties in reaching a just, speedy and inexpensive resolution of this lawsuit. Additionally, all briefing on the Insurers' motion for summary judgment will be completed on April 15, putting all motions (including Madison-Kipp's *Daubert* motions and motion to strike) under advisement only three months before the final pretrial submissions are due. Extending summary judgment briefing further - as Plaintiffs really are requesting -- without simultaneously moving the trial date is entirely unfair to Madison-Kipp as it necessarily limits the time between summary judgment and trial.

Plaintiffs came to this Court and sought a fast case schedule. Madison-Kipp has adhered to that schedule, granted reasonable extensions and cannot be forced to further compress the already short time between now and trial. Madison-Kipp believes a 4-day extension, to coincide with the conclusion of all summary judgment briefing, is entirely proper and provides Plaintiffs sufficient additional time to brief Madison-Kipp's motions.

Dated this 7th day of April, 2013.

**MICHAEL BEST & FRIEDRICH LLP**

By:       /s/ John C. Scheller      

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