

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CANAL INSURANCE COMPANY and
CANAL INDEMNITY COMPANY,

Plaintiffs,

v.

GOLDEN ISLES REINSURANCE CO.
LTD., NEIL HANSEL STRICKLAND,
REGINALD STRICKLAND, CLIFTON
STRICKLAND, SR., LAWRENCE F.
VOLK, GERRY WHITT, LOU ELLEN
RAWLS, KATHY WHITLOW, by and
through her estate, and DELWYN
STRINGER,

Defendants.

CIVIL ACTION NO.
1:15-CV-3331-LMM

ORDER

This matter comes before the Court on Plaintiffs' Time-Sensitive Motion for Leave to Conduct Limited Discovery [50].

Plaintiffs brought this action seeking to recover amounts allegedly due from Defendant Golden Isles pursuant to two reinsurance agreements. Dkt. No. [1-1]. Plaintiffs contend that rather than paying the amounts due, Golden Isles drained its assets by fraudulently transferring \$4.3 million in cash (the "Cash Transfers") to various individuals, all but one of whom are named as Defendants in this action. Id. ¶ 37. Plaintiffs allege one of the Cash Transfers was made to an unidentified individual. Id. ¶ 38.

Plaintiffs move for limited discovery to identify the recipient of the Cash Transfer referenced in paragraph 38 of the Complaint. Dkt. No. [50]. Plaintiffs contend this transfer is evidenced by a Golden Isles bank statement showing that check number 389 was issued from Golden Isles' account at First Covenant Bank, which posted on September 5, 2012. Id. at 2. Plaintiffs seek to serve a single interrogatory upon Defendant Golden Isles, requesting the name and last-known address of check number 389's recipient, so that individual may be joined as a necessary party. Id. at 1-2. Plaintiffs claim that Golden Isles has refused to provide this information as part of its Initial Disclosures, and expedited discovery is necessary because the statute of limitations for Plaintiffs' fraudulent transfer claim expires on September 5, 2016. Id. at 2-4.

Defendants oppose Plaintiffs' discovery request, arguing that discovery cannot commence until 30 days after the filing of an answer, and Plaintiffs have not cited any relevant law that would allow the Court to deviate from this limit.¹ Dkt. No. [51] at 2 (citing LR 26.2A, NDGa.).

¹ Defendants also argue that even if the Court could grant pre-answer discovery, Plaintiffs' Motion is improper because: (1) it relies on information obtained during confidential settlement negotiations; (2) it is merely a "fishing expedition;" and (3) early discovery will expend unnecessary time and resources if the pending Motions to Dismiss are granted. Id. at 3-6. The Court rejects each of these arguments because (1) Plaintiffs present evidence that the information they rely on was obtained by subpoena in prior litigation in which Golden Isles was a party; (2) Plaintiffs specifically identify the check and contend that it was a fraudulent transfer, such that this is not a fishing expedition; and (3) Defendants will not expend significant time or resources answering a single interrogatory, the answer to which should be readily available. See Dkt. No. [52].

In reply to Defendants' argument that pre-answer discovery is not permitted, Plaintiffs argue that the timing of discovery is within the district court's "broad discretion." Dkt. No. [52] at 4 (quoting Vig v. All Care Dental, P.C., No. 1:11-cv-4487-WSD, 2013 WL 210895, at *2 (N.D. Ga. Jan. 18, 2013)). Plaintiffs contend the information they seek is necessary to identify and add a party to this case prior to the expiration of the statute of limitations and it imposes no undue burden on Golden Isles. Id. Thus, the Court should exercise its discretion to allow their proposed interrogatory prior to commencement of the discovery period. Id.

Federal Rule of Civil Procedure 26(d) provides that "[a] party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except . . . when authorized by these rules, by stipulation, or by court order." Fed. R. Civ. P. 26(d). Here, the parties have conferred pursuant to Rule 26(f). Dkt. No. [38]. But pursuant to this Court's Local Rules, "[t]he discovery period shall commence thirty days after the appearance of the first defendant by answer to the complaint, unless the parties mutually consent to begin earlier." LR 26.2A, NDGa. Because Defendants' Motions to Dismiss are pending before the Court, no answer has been filed.

The Eleventh Circuit has held that district courts have "broad discretion" in the scheduling of discovery. Johnson v. Bd. of Regents, 263 F.3d 1234, 1269 (11th Cir. 2001). A court may order expedited discovery where a party shows "good cause" for such discovery. See, e.g., TracFone Wireless, Inc. v. Holden Prop.

Servs., L.L.C., 299 F.R.D. 692, 694 (S.D. Fla. 2014); Nu Image, Inc. v. Does 1-3, 932, No. 2:11-cv-545-FtM-29SPC, 2012 WL 1900165 (M.D. Fla. May 9, 2012).

Good cause exists “where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party.”

See TracFone Wireless, 299 F.R.D. at 694 (quoting Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D. 273, 275-76 (N.D. Cal. 2002)); see also OMG Fidelity, Inc. v. Sirius Tech., Inc., 239 F.R.D. 300, 304-05 (N.D.N.Y. 2006)

(ordering pre-answer, pre-conference discovery during the pendency of motions to dismiss, considering “the burden of responding to the contemplated discovery, [] the strength of the dispositive motion . . . and any unfair prejudice which may be suffered by the party seeking to engage in discovery.”); cf. Fed. R. Civ. P. 26(d)(3) (providing that a court may order a different sequence for discovery “for the parties’ and witnesses’ convenience and in the interests of justice.”).

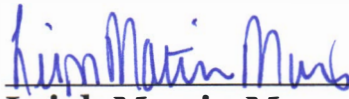
This Court finds that Plaintiffs’ need for pre-answer discovery “outweighs the prejudice to the responding party.” See TracFone Wireless, 299 F.R.D. at 694. A deviation from the discovery timing contemplated by the Local Rules is warranted in case such as this, where a delay may impact Plaintiffs’ substantive right to assert its claims, and where the expedited discovery requested would not unduly burden or prejudice Defendant Golden Isles.

Accordingly Plaintiffs’ Motion for Leave to Conduct Limited Discovery [50] is **GRANTED**. Defendant Golden Isles is **ORDERED** to respond to the

interrogatory set out in Plaintiffs' Motion within 7 days of the date of this Order.

Dkt. No. [50] at 2.

IT IS SO ORDERED this 22nd day of July, 2016.



Leigh Martin May
United States District Judge