

David GOWER
vs.
COMMONWEALTH OF THE
NORTHERN MARIANA
ISLANDS

Civil Action No. 82-0054
District Court NMI

Decided May 1, 1985

- 1. Civil Procedure - Involuntary Dismissal - Failure to Prosecute**
Where record of case shows that delay in the matter can be attributed to both plaintiff and defendant, defendant's motion to dismiss for plaintiff's failure to prosecute in a diligent manner will be denied.

- 2. Civil Procedure - Discovery - Expert Testimony**
A party will be compelled to identify its experts before the pre-trial conference only where the conference is set at a time so close to trial that there will be insufficient time for the moving party to adequately prepare for trial.

- 3. Civil Procedure - Involuntary Dismissal - Failure to Prosecute**
Defendant's motion to dismiss for plaintiff's failure to identify expert witnesses will be denied where trial date had not been set and no expert had been secured.

FILED
Clerk
District Court

MAY 01 1985

For The Northern Mariana Islands
By Samuel E. Eberk
(Samuel Eberk)

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IN THE DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

DAVID GOWER,)	CIVIL ACTION NO. 82-6054
)	
Plaintiff,)	
)	
vs.)	DECISION DENYING MOTION
)	<u>TO DISMISS AND DENYING</u>
COMMONWEALTH OF THE NORTHERN)	<u>MOTION TO COMPEL</u>
MARIANA ISLANDS,)	
)	
Defendant.)	
_____)	

The plaintiff, David Gower, brought this action on October 6, 1982 for injuries suffered due to the alleged negligence of the defendant Commonwealth of the Northern Mariana Islands in the administration of medical treatment. Presently before the Court are the Commonwealth's motion to dismiss and Gower's motion to compel discovery. For the reasons stated below, both motions are denied.

1 MOTION TO DISMISS

2 [] The Commonwealth bases its motion to dismiss on two
3 grounds. First, it argues that Gower has neglected to prosecute
4 this case in a diligent manner. In support of this allegation,
5 the Commonwealth cites Gower's failure to file a proposed amended
6 complaint, prepare a pre-trial statement and secure a proper
7 substitution of counsel. It is apparent to the Court that these
8 procedural omissions are largely due to a personal dispute
9 between Gower's past and present counsel. While the actions
10 taken or not taken by Gower's counsel in this matter are not
11 condoned, the Court is hesitant to levy sanctions against Gower
12 for problems which are not of his making. And, while it is
13 beyond dispute that these problems have slowed the progress of
14 this case, the Commonwealth is not free of some responsibility.
15 No fewer than seven attorneys have appeared in this matter,
16 either in the pleadings or before the bench, on behalf of the
17 Commonwealth. This attorney rotation has not been without
18 accompanying delay. See, e.g., Gower, Minutes of Proceedings,
19 April 27, 1984 (status conference continued due to substitution
20 of defense counsel). Moreover, the Commonwealth's responses to
21 Gower's November 15, 1982 interrogatories were not only filed
22 late, March of 1983, but, by the concessions of the Commonwealth,
23 were incomplete. In light of the history of this case, the Court
24 finds that blame for the delay in this matter can be laid on both
25 parties. Accordingly, that delay attributable to Gower is not a
26 sufficient ground for dismissal.

1 [2,3] The Commonwealth sets forth as further basis for its
2 motion the failure of Gower to identify his expert witness.
3 Cited in support of this assertion is the Commonwealth's inter-
4 rogatory No. 19 of December 4, 1984, seeking the identity of
5 Gower's experts, the response to which reads:

6 19. We are currently trying to finalize
7 arrangements with a potential expert.
8 We will supplement this answer when
arrangements are finalized.

9 This Court strongly encourages the timely and expedient exchange
10 of information regarding expert witness. However, it is this
11 Court's policy to order the identification of intended witnesses
12 before the pre-trial conference only where the conference is set
13 at a time so close to the trial date that there would be insuffi-
14 cient time for the moving party to adequately prepare for trial.
15 See, Maruyama & Associates, Ltd. v. Mariana Islands Housing
16 Authority, Civil No. 82-0066 (D.N.M.I. Decision filed February
17 12, 1985). Here, Gower has not yet secured his expert and more
18 importantly, no trial date has been set. Accordingly, the Court
19 does not believe that the failure at this date to identify an
20 expert constitutes sufficient grounds for dismissal. The motion
21 to dismiss is, therefore, denied.

22 The Court heard, on the same day, Gower's motion to
23 compel more complete answers to his first set of interrogatories.
24 On April 25, 1985, the day before the hearing, the Commonwealth
25 filed supplemental answers to that set of interrogatories.
26 Accordingly, Gower's motion to compel discoveries is denied.

1 without prejudice to any new motion based on the supplemental
2 responses.

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4 DATED this 15th day of May, 1985.
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9 JUDGE ALFRED LAURETA
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