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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

FILED

AUG 16 2002

JOHN M. WATERS, Clerk
U.S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

DEBRA K. KEACH and PATRICIA)
SAGE,)

Plaintiffs,)

v.)

Case No. 01-1168

U.S. TRUST COMPANY, N.A.,)
f/k/a/ U.S. TRUST COMPANY OF)
CALIFORNIA, N.A., ELLEN D. FOSTER,)
as Executrix of the Estate of Thomas S.)
Foster and Co-Trustee of the Thomas S.)
Foster Trust executed on April 14, 1994)
and 1995, and THE NORTHERN TRUST)
COMPANY, an Illinois corporation, as)
Co-Trustee of the Thomas S. Foster)
Trust executed on April 14, 1994 and)
1995, MELVIN R. REGAL, ROBERT A.)
OSTERTAG, JR., TERRY P. COLE,)
ALAN R. DIX, and JON D. ELLETSON,)

Defendants.)

ORDER

This matter is now before the Court on Plaintiffs' Motion for an Extension of Time to File Their Response to Defendant Lyle T. Dickes' Motion for Summary Judgment. In this Motion, Plaintiffs seek an extension until November 10, 2002, in which to file their response.

The Court first notes that Plaintiffs' Motion is not a motion pursuant to Rule 56(f) of the Federal Rules of Civil Procedure as there is no claim that further discovery of certain facts is necessary in order to enable them to adequately respond. In fact, the

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deadline for the close of fact discovery in this case was June 1, 2002, and there has been no request for an extension of this deadline.

Rather, Plaintiffs' only basis for seeking this considerable extension is that expert discovery is not yet complete. It is important to remember that any claims based on allegations that Dickes was a fiduciary have been dismissed, and he remains in the case only in a non-fiduciary capacity. The issue presented in Dickes' motion for summary judgment centers on what he knew or should have known regarding the consideration he received for the sale of his stock shares to the ESOP or alternatively, the argument that Plaintiffs have produced no evidence demonstrating that the stock's actual value was less than the amount he received. The first issue is a purely factual question on which expert opinion would not be probative. While the second issue could conceivably implicate expert opinion, the pleadings indicate that Plaintiffs have not presented expert opinion on this issue, and Dickes states that he has no intention of disclosing an expert to address what Plaintiffs' have chosen not to introduce. Accordingly, further expert discovery will not be relevant to the motion now before the Court, as there will apparently be no expert testimony in this respect for Plaintiffs to consider rebutting.

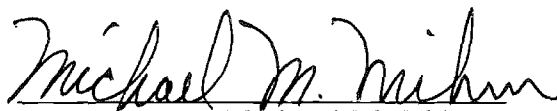
Although Plaintiffs argue that the expert discovery will be relevant to an exemption under § 408(e) of ERISA on which "some defendants may proffer expert testimony," Dickes has not asserted this affirmative defense in his pleadings and does not seek relief on this basis in his motion. Accordingly, the possibility that this issue may be relevant to other motions that may be brought by other Defendants does not

make it relevant to the motion that is presently before the Court and does not justify the extension requested.

CONCLUSION

For the reasons set forth above, Plaintiffs' Motion for an Extension of Time to File Their Response to Defendant Lyle T. Dickes' Motion for Summary Judgment [#336] is GRANTED only in that the Court will extend their response deadline to September 9, 2002, with any short reply brief by Dickes being due on or before September 30, 2002.

ENTERED this 19th day of August, 2002.



Michael M. Mihm
United States District Judge