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*Attorneys for Strider Construction Co., Inc.*

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STRIDER CONSTRUCTION CO. INC.,

Plaintiff,

vs.

IDAHO WATER RESOURCE BOARD,

Defendant.

Case No. CV01-22-10932

PLAINTIFF'S MEMORANDUM IN  
OPPOSITION TO DEFENDANT'S  
MOTION TO AMEND SCHEDULING  
ORDER

**I. INTRODUCTION**

Plaintiff, Strider Construction Co., Inc. ("Strider"), by and through its counsel of record, Lindsay Watkins, Kristina Southwell and John Guin, hereby submits this Memorandum opposing Defendant's Motion to Amend Scheduling Order.

Defendant Idaho Water Resource Board ("IWRB") asks this Court to continue the trial date by approximately four months, from November 27, 2023 to March 25, 2024 and similarly continue all interim deadlines such as disclosure of expert reports, filing dispositive motions, and discovery

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO  
AMEND SCHEDULING ORDER – 1

cutoff. This Court should deny the IWRB's Motion because IWRB fails to provide good cause justifying a four-month continuance and further because the proposed continuance will cause prejudice to Strider.

## II. ARGUMENT AND AUTHORITY

The trial date and other case schedule deadlines “must not be modified except by leave of the court **on a showing of good cause.**” I.R.C.P. 16(a)(3) (emphasis added). IWRB asserts that continuance is necessary because one of the four attorneys representing IWRB – Steven Andersen – has an unforeseen medical issue that “will require ongoing treatment over the next few months.” Declaration of Jennifer Rheinhardt-Tessmer at ¶¶ 2-3. Strider's counsel is sympathetic to Mr. Andersen's health issues and has offered to stipulate to a continuance of a few weeks. Declaration of Lindsay Watkins (“Watkins Decl.”) at ¶ 2 and Exhibit A.

Strider, however, objects to the proposed four-month continuance because (1) no conflict has been asserted with respect to the trial date set, which is over five months away; (2) there are three other capable attorneys representing IWRB in this suit, (3) there are no imminent deadlines and trial is still more than five months away (**months longer than the “few month” conflict asserted**) with plenty of time for IWRB to bring on additional counsel, to the extent that is even necessary, or for Mr. Andersen to be present for trial, (4) delaying trial will prejudice Strider's right to just and speedy resolution, and (5) Strider's counsel have significant conflicts with the trial dates proposed by IWRB.

### A. IWRB Has Not Shown Good Cause

The absence of one attorney is not good cause where there are other capable counsel available to represent the party. In *Eldridge v. Black Canyon Irr. Dist.*, the Supreme Court affirmed the denial of a requested continuance because although one of defendants' attorneys was out of

state and unable to appear at trial, defendants “had counsel, other than the absent attorney, and were ably represented throughout the course of the litigation.” 55 Idaho 443, 43 P.2d 1052, 1053 (1935). In an even more extreme case, the Court of Appeals affirmed the denial of a continuance requested by a defendant whose attorney had withdrawn less than a month before trial. *Krepcik v. Tippett*, 109 Idaho 696, 698-99, 710 P.2d 606, 608 (Ct. App. 1985). The Court of Appeals found it was not an abuse of discretion for the trial court to deny the continuance where it recognized that resetting the trial would result in a delay of many months given the court calendar, plaintiff would be prejudiced by the delay in trial, and that the defendant could have acted more diligently in procuring new representation. *Id.* As the Court stated “The days are over—if indeed they ever existed—when litigants and attorneys could dictate the pace of the judicial process.” *Id.* at 698, quoting *Viehweg v. Thompson*, 103 Idaho 265, 269, 647 P.2d 311, 315 (Ct. App. 1982).

IWRB fails to show good cause why certain treatments in the next “few months” will prevent IWRB from being able to litigate pursuant to the existing Case Schedule. Three other capable attorneys remain available – Ms. Rheinhardt-Tessmer (Mr. Andersen’s partner and the attorney who had signed all motions and gave argument at the last motion hearing), as well as Ms. Carter and Mr. Baxter (deputy attorneys general for the Idaho Department of Water Resources). Moreover, the firm hired IWRB, Kirton McConkie, a sizeable firm with multiple office locations and at least six other attorneys in its Boise office.

The existing counsel of record have ample time to prepare this case and can even bring in an additional attorney to assist in Mr. Andersen’s absence. There are no imminent deadlines and IWRB has not yet worked up the case to such a point that it would be difficult for a new attorney to get up to speed. Trial is still more than five months away and discovery is ongoing. To date IWRB has issued and received discovery from Strider and has issued two subpoenas to third

parties. IWRB has not conducted any depositions; the deadline for completing depositions is still more than four months away. The deadline for IWRB to provide expert reports is more than seven weeks away, and IWRB has not designated or disclosed any experts. The deadline for filing dispositive motions is more than ten weeks away.

**B. The Requested Continuance Will Prejudice Strider**

As recognized by the Court in *Krepcik*, “the court must strive to treat both sides fairly” and should take into account prejudice resulting from a delay in trial. *Id.* Similarly, while I.R.C.P. 16(a)(3) gives the Court discretion to continue trial or other case deadlines for good cause shown, I.R.C.P. 1(a) command that the Idaho Rules of Civil Procedure be “construed and administered to secure the just, speedy and inexpensive determination of every action and proceeding.” Granting a continuance in this instance does not further the just, speedy and inexpensive resolution of this suit.

Strider initiated the instant suit by filing its Complaint on July 29, 2022. The impetus for suit was IWRB’s continual failure to pay Strider for work performed under the Parties’ contract, and Strider’s Complaint alleges damages of no less than \$1,500,000. Strider is entitled to just and speedy resolution to recover the payment it has long been owed. Strider requested the trial be set earlier in 2023, but due to scheduling conflicts of IWRB and the assertion that IWRB had just retained counsel from Kirton McConkie, the Case Schedule set trial to commence on November 2023, already 17 months after suit was filed. Pushing the trial by another four months means that Strider will have to wait nearly two years to get resolution.

Finally, two of the three attorneys representing Strider have significant conflicts with IWRB’s proposed trial dates of March 25, 2024 – April 12, 2024. Lead counsel for Strider, Lindsay Watkins, will be out of the country from March 30 – April 6, 2024. Watkins Decl. at ¶ 3. Counsel

John Guin will be out of the state February 19 – March 4, 2024 and in Arbitration April 8 – 12, 2024. *Id.* at ¶ 4. If IWRB’s motion is granted, these major conflicts will prevent Strider’s counsel from properly preparing for or attending trial, significantly prejudicing Strider.

**III. CONCLUSION**

For the above reasons, IWRB’s Motion to Amend the Scheduling Order should be denied.

DATED: This 8<sup>th</sup> day of June, 2023.

**AHLERS CRESSMAN & SLEIGHT PLLC**

By:                                   /s/ Lindsay Watkins                                    
Lindsay Watkins  
*Attorneys for Strider Construction Co., Inc.*

**LAW OFFICE OF JOHN H. GUIN, PLLC**

By:                                   /s/ John H. Guin                                    
John H. Guin  
*Attorneys for Strider Construction Co., Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of June, 2023, a true and correct copy of the within and foregoing instrument was served upon:

Garrick L. Baxter, ISB #6301  
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*Attorney for Defendant Idaho Water  
Resource Board*

*Attorney for Defendant Idaho Water  
Resource Board*

- Via U.S. Mail
- Via Legal Messenger
- Via Federal Express
- Via Facsimile
- Via iCourt E-File and Serve**

- Via U.S. Mail
- Via Legal Messenger
- Via Federal Express
- Via Facsimile
- Via iCourt E-File and Serve**

DATED: This 8<sup>th</sup> day of June, 2023.

*/s/ John H. Guin*

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John H. Guin