

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DALLAS WITTGENFELD and DANIEL
A. BERNATH,

Plaintiffs,

v.

Case No: 2:17-cv-202-FtM-99MRM

ROBERT LOCKETT, DIANE
SHIPLEY, DON SHIPLEY and
EXTREME SEAL ADVENTURES,

Defendants.

ORDER¹

This matter comes before the Court on Defendant's Suggestion of Death ([Doc. 67](#)) filed on January 29, 2018. Defense counsel reports that Plaintiff Daniel A. Bernath passed away on January 22, 2018. The Service List includes Bernath's surviving spouse, Martha M. Wong.

Under Federal Rule of Civil Procedure 25, "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." Fed. R. Civ. P. 25(a)(1). Thus, the Court will stay this case for a period of 90 days to provide Ms. Wong, the surviving spouse, an opportunity to notify the Court if she or a personal representative anticipate continuing with litigation. Given the inactivity in this case, the Court will also direct Plaintiff

¹ Disclaimer: Users are cautioned that hyperlinked documents in CM/ECF are subject to PACER fees.

Dallas Wittgenfeld to inform the Court within 90 days whether he intends to continue with this case. **Failure to respond will result in this matter being dismissed for failure to prosecute.**

Given the delays in this case, the Court also notes that many of the deadlines in the Case Management and Scheduling Order ([Doc. 41](#)) are now infeasible. Mr. Bernath previously filed a request to continue the dates due to his incarceration. ([Doc. 65](#)). The Court will deny this Motion as moot, but is aware that the schedule needs to be amended if the case moves forward. Also, given the stay and the uncertainty surrounding the prosecution of this case, the Court will deny all other pending motions without prejudice to be refiled by Plaintiff(s) if they wish to prosecute this case and move forward with the issues raised in the motions.

Accordingly, it is now

ORDERED:

(1) This case is stayed for a period of **NINETY (90) DAYS** from the date of this Order. Upon expiration of this deadline, and without further notice, **the case will be deemed voluntarily dismissed without prejudice, and the case closed.** The Clerk is directed to add a stay flag to the docket.

(2) Plaintiffs' Motion for Service by Mail ([Doc. 46](#)), Motions to Compel ([Doc. 49](#), [Doc. 51](#)), and Motion for Leave to File Third Amended Complaint ([Doc. 63](#)) are **DENIED WITHOUT PREJUDICE.**

(3) Plaintiff Bernath's Motion to Continue Trial Dates ([Doc. 65](#)) is **DENIED AS MOOT.**

(4) The Clerk shall send a copy of this Order to Martha M. Wong, as the surviving spouse of Daniel A. Bernath, at 1319 Kingswood Court, Fort Myers, Florida, 33919.

(5) The Clerk is further directed to update the docket to terminate the last known address for Daniel A. Bernath of Chesapeake Correctional Center without sending a copy of this Order to that address, and update the address to 1319 Kingswood Court, Fort Myers, Florida, 33919.

DONE and **ORDERED** in Fort Myers, Florida this 31st day of January, 2018.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies:
Martha M. Wong
All Parties of Record