

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
AT WHEELING**

**CSX TRANSPORTATION, INC.,**

**Plaintiff,**

v.

**Civil Action No. 5:05-cv-202**

**ROBERT V. GILKISON, et al.,**

**Defendants.**

**PLAINTIFF CSX TRANSPORTATION, INC.'S MOTION FOR EXTENSION OF TIME  
TO COMPLETE SERVICE OF THE AMENDED COMPLAINT ON  
DEFENDANT RAY HARRON**

Comes now Plaintiff, CSX Transportation, Inc. ("CSXT"), by and through counsel, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure and moves this Court for an extension of time to complete service on Defendant Ray Harron in the above-styled civil action.

In support of its Motion, Plaintiff states as follows:

1. That on July 5, 2007, pursuant to leave to amend granted by this Court on June 20, 2007, Plaintiff filed an Amended Complaint alleging claims against Defendants for fraud under common law and RICO<sup>1</sup>;
2. That as part of this Amended Complaint, CSXT has alleged that Dr. Ray Harron, as part of an ongoing conspiracy with the his Co-Defendants has engaged in fraudulent conduct while working as a B-reader and that he either recklessly disregarded or deliberately misrepresented the content of the x-rays he read for and on behalf of the Defendant Perice, Raimond & Coulter, P.C.;

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<sup>1</sup> CSXT would be required to serve the newly named Defendants, including Dr. Harron, with a copy of the Summons and Amended Complaint on or before Friday, November 2, 2007. *See* Fed.R.Civ.P. 4(m). Dr. Harron remains the only unserved Defendant in this matter.

3. That as more fully outlined herein, CSXT has been diligent in its attempts to locate and serve Dr. Harron with a copy of the Summons and Amended Complaint in this matter, but Dr. Harron, in what is believed to be a deliberate attempt to avoid being located, has been able conceal his whereabouts from CSXT preventing proper service;
4. That F.R.Civ.P. 4(m) provides in relevant part that "[i]f service of the summons and complaint is not made upon a defendant *within 120 days* after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant *or direct that service be effected within a specified time*; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period." (Emphasis added);
5. That the Fourth Circuit in *Mendez v. Elliot*, 45 F.3d 75 (4th Cir. 1995) observed that a district court has no discretion to salvage an action once the court has found a violation of Rule 4(m) and a lack of good cause;
6. That while the Fourth Circuit has retained the requirement of a showing of good cause, most Courts have followed the US Supreme Court's statement in *Henderson v. United States*, 517 U.S. 654, 663 (1996) ("Most recently, in 1993 amendments to the Rules, courts have been accorded discretion to enlarge the 120-day period 'even if there is no good cause shown.')2 and interpreted Rule

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<sup>2</sup> The Fourth Circuit's decision in *Mendez, supra*, was decided prior to the United States Supreme Court's opinion in *Henderson v. United States*, 517 U.S. 654, 663 (1996). It is likely given the opportunity that the Fourth Circuit would also do away with the "good cause" requirement for a party seeking an extension of time in which to serve a complaint. In fact, following *Henderson*, courts in the Fourth Circuit have been divided over the continuing validity of *Mendez*. Compare *Scruggs v. Spartanburg Reg 'l Med. Ctr.*, No. 98-2364, 1999 WL 957698, at \*2 (4th Cir. Oct. 19, 1999) (stating that the district court "in its discretion, could have extended the time for proper service of process ...."), and *Hammad v. Tate Access Floors, Inc.*, 31 F.Supp.2d 524, 527-28 ("[T]his court concludes that *Mendez* is no

4(m) to broaden a district court's discretion by allowing it to extend the time for service even when the plaintiff has not shown good cause for such an extension. See e.g., *Espinoza v. United States*, 52 F.3d 838, 840-841 (10th Cir. 1995) (“The plain language of Rule 4(m), however, broadens the district court's discretion by allowing it to extend the time for service even when the plaintiff has not shown good cause.”). See also, *Troxell v. Fedders of North America, Inc.*, 160 F.3d 381, 383 (7th Cir. 1998); see also *De Tie v. Orange County*, 152 F.3d 1109, 1111 n. 5 (9th Cir. 1998); *Boley v. Kaymark*, 123 F.3d 756, 758 (3d Cir. 1997); *Thompson v. Brown*, 91 F.3d 20, 21 (5th Cir. 1996); *Adams v. AlliedSignal Gen. Aviation Avionics*, 74 F.3d 882, 887 (8th Cir. 1996) (“The new Rule increases a district court's discretion to extend the 120-day time period by authorizing the court “to relieve a plaintiff of the consequences of an application of this subdivision even if there is no good cause shown.”); *Espinoza v. United States*, 52 F.3d 838, 840-41 (10th Cir. 1995);

7. That regardless of the standard employed by this Court, CSXT has met the good cause requirement for an extension of time for service on Dr. Ray Harron as it has been diligent in its attempts to locate and effect proper service on Dr. Harron. *Adams v. AlliedSignal General Aviation Avionics*, 74 F.3d 882, 886 (8<sup>th</sup> Cir. 1996) (“A showing of good cause requires at least ‘excusable neglect’-good faith and some reasonable basis for noncompliance with the rules.”). See also, *Wei v. State of Hawaii*, 763 F.2d 370, 371 (9<sup>th</sup> Cir. 1985) (“Neither Rule 4(j) [now Rule 4(m)]

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longer good law and that, if given the opportunity, the Fourth Circuit perforce would adopt the interpretation of Rule 4(m) held by the Supreme Court ....”), with *In re Hall*, 222 B.R. 275, 278 (Bankr.E.D.Va.1998) (“Although courts have criticized *Mendez*, it remains binding precedent in this circuit”).

nor its scant legislative history define 'good cause.' The only example of good cause provided by the legislative history is *the obvious one of a defendant's evasion of service.*(Emphasis added). See also, 1982 U.S.Code Cong. & Ad.News 4434, 4446 n. 25.

8. That as outlined below it is upon information and belief that Dr. Harron is specifically attempting to avoid service of process and/or liability<sup>3</sup>;
9. Specifically, CSXT has made the following efforts to locate and serve Dr. Harron:
  - a. CSXT initially attempted service on Dr. Harron at his listed West Virginia address as well as at his office address both located within Harrison County, West Virginia;
  - b. CSXT was unsuccessful at either location being advised by his office-workers that he had been gone for several weeks and that it was unlikely that he would be returning any time soon;
  - c. Following this initial attempt at service, CSXT attempted service on Dr. Harron pursuant to West Virginia law through the Harrison County Sheriff's Department, this effort was also unsuccessful with the Sheriff's office advising that several individuals were looking for Dr. Harron and they believed that he was located somewhere in the State of Florida, but could not provide any further information;
  - d. Through its own investigation, CSXT was able to locate additional addresses for Dr. Harron in the State of Texas and service was attempted initially at this location by certified mail, which proved unsuccessful;
  - e. As CSXT's initial efforts at service were unsuccessful it retained two separate private investigators to locate the whereabouts of Dr. Harron, one in West Virginia and one in Texas;
  - f. That these investigators have conducted a significant investigation into Dr. Harron's whereabouts, including surveillance, witness interviews, and background checks to ascertain his location, but as of the date of the filing of this motion have been unsuccessful in their attempts to locate Dr. Harron

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<sup>3</sup> Whether Dr. Harron has specifically left the jurisdiction due to the pendency of this matter is unknown. It is upon information and belief, however, that Dr. Harron may have fled this jurisdiction in an attempt to avoid potential liability for his actions in various matters.

10. That through the above-described efforts, CSXT has learned that Dr. Harron maintains a residence in several states including Texas, Florida, North Carolina, and West Virginia as well as maintaining dual-citizenship with several foreign states including Ireland, Jamaica, and other Caribbean nations;
11. That CSXT has received information through witness interviews that Dr. Harron may have fled the jurisdiction of the United States, without intention to return, in an attempt to avoid any possible civil and/or criminal matters;
12. That it is upon information and belief that Dr. Harron is attempting to avoid service with not only this Amended Complaint but is seeking to avoid attempts by law enforcement to locate his whereabouts;
13. That it is upon further information and belief that Dr. Harron has transferred a substantial amount of his personal assets including property into his wife's name and what is believed by CSXT to be an attempt to hinder efforts to locate him through traditional methods;
14. That despite all of these efforts, CSXT has yet to find a specific location for Dr. Harron or serve him under the applicable Rules;
15. That CSXT believes that if it were to have additional time for service on Dr. Harron that it may be able to effectuate proper service;

**WHEREFORE**, CSXT moves this Court to grant an extension of time for service of process on Defendant Ray Harron, M.D.

**CSX TRANSPORTATION, INC.**

By: /s/ Marc E. Williams  
Of Counsel

Marc E. Williams, Esquire  
Robert L. Massie, Esquire  
J. David Bolen, Esquire  
**HUDDLESTON BOLEN LLP**  
611 Third Avenue  
P.O. Box 2185  
Huntington, WV 25722-2185  
(304) 529-6181--Telephone  
(304) 522-4312--Facsimile

E. Duncan Getchell, Jr., Esquire  
Samuel L. Tarry, Jr., Esquire  
Mitchell K. Morris, Esquire  
**McGUIRE WOODS LLP**  
One James Center  
901 East Cary Street  
Richmond, VA 23219-4030  
(804) 775-7873--Telephone  
(80) 698-2188--Facsimile

**COUNSEL FOR THE PLAINTIFF**  
**CSX TRANSPORTATION, INC.**

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CSX TRANSPORTATION, INC.,

Plaintiff,

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Civil Action No. 5:05-CV-202

ROBERT V. GILKISON;  
PEIRCE, RAIMOND & COULTER,  
P.C., a Pennsylvania Professional Corporation a/k/a  
ROBERT PEIRCE & ASSOCIATES, P.C., a Pennsylvania  
Professional Corporation; and JOHN DOES

Defendant.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he served the foregoing "*Plaintiff CSX Transportation, Inc.'s Motion For Extension Of Time To Complete Service Of The Amended Complaint On Defendant Ray Harron*" upon the following via electronic filing with the Court's CM/ECF system on the 24<sup>th</sup> day of October, 2007:

Honorable Frederick P. Stamp, Jr., District Judge  
USDC for the Northern District of WV  
P. O. Box 791  
Wheeling, WV 26003

Daniel R. Schuda, Esquire  
**SCHUDA & ASSOCIATES, PLLC**  
232 Capitol Street, Suite 200  
P.O. Box 3425  
Charleston, WV 25335-3425

Stanley W. Greenfield, Esquire  
**GREENFIELD & KRAUT**  
1040 Fifth Avenue  
Pittsburgh, PA 15219

Walter P. DeForest, Esquire  
**DEFOREST KOSCELNIK**  
**YOKITIS & KAPLAN**  
3000 Koppers Building  
Pittsburgh, PA 15219

John E. Gompers, Esquire  
**GOMPERS, McCARTHY & McCLURE**  
60 Fourteenth Street  
Wheeling, WV 26003

/s/ Marc E. Williams