

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

EDWIN C. WEST,

Plaintiff,

v.

STEVE HAMILTON, AMY WYTTENBACH,
DENNIS SNYDER and DARLENE
HEIMERMANN-RAMSEY,

Defendants.

ORDER

04-C-211-C

Plaintiff Edwin West has moved to strike defendants' expert, Dr. David Thornton, for defendants' failure to make proper disclosure of this expert. Plaintiff's objection to the use of Dr. Thornton is well-grounded, but because trial is still three months away, plaintiff will not be prejudiced if defendants are given leave to correct their failure to observe the directions in the court's preliminary pretrial order.

The court's order includes a specific paragraph addressing the use of state employees as expert witnesses. It provides that such witnesses are to "follow Rule 26(a)(2)'s disclosure requirements." Had defendants' counsel read this part carefully, she would have understood that employee experts are not exempted from the requirements of Rule 26(a)(2), as she argues. Although Rule 26(a)(2) applies specifically to specially retained experts or employees

whose duties regularly involve giving expert testimony, it contains an important caveat:
“[e]xcept as otherwise stipulated or directed by the court.”

Were the trial imminent, defendants’ oversight would be good cause for enforcing the court’s order strictly against defendants. Because it is three months away, however, some leeway is possible. Plaintiff has had similar benefits with respect to discovery.

Therefore, IT IS ORDERED that the third affidavit and expert report of Dr. David Thornton filed on January 18, 2005, shall be considered to have been filed and served as of today’s date.

Entered this 31st day of January, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge