

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

BARRY LEE SMALLEY,

Plaintiff,

v.

THE PROCTER & GAMBLE COMPANY,

Defendant.

ORDER

06-C-295-C

Plaintiff, a detainee at the Wisconsin Resource Center (WRC), claims to have suffered a severe rash from washing with Joy Dishwashing detergent, one of defendant's products.

Defendant contends that any rash plaintiff suffered is due to intentional misuse of the product. In response, plaintiff has requested that this court order WRC's medical staff to perform a controlled experiment on plaintiff to prove plaintiff's theories of causation and liability. That request is DENIED.

Plaintiff's December 1, 2006 deadline to disclose expert witnesses passed over six weeks ago. Plaintiff has the burden of proof on his claims and therefore was obliged to disclose his expert witnesses first. He did not do so. Defendant timely disclosed its experts and undercut plaintiff's claims. In response, plaintiff now wants this court to tilt the playing field in his favor by ordering WRC doctors and nurses to set aside their real work so that they can conduct a multi-day human experiment concocted by plaintiff. This is not going to happen.

This court alerted plaintiff in its September 7, 2006 preliminary pretrial conference order:

This federal civil lawsuit is a serious matter. As a party to a federal civil lawsuit, it is your duty to understand what you are supposed to do and when you are supposed to do it. To help you, this order explains what your duties are and what your deadlines are. This court has a number of rules that you must follow. It will not be easy to do everything that you are supposed to do, and you will not have a lot of time. Therefore, it is important for you to read this order now so that you can do things the right way.

* * *

Disclosure of Expert Witnesses: Plaintiff: December 1, 2006

Defendant: December 29, 2006

Because expert witnesses are different from other witnesses, there is a special rule telling how plaintiffs and defendants must name their experts and explain what those experts are going to say at trial. That rule is Rule 26(a)(2) of the Federal Rules of Civil Procedure. *If a party does not follow the requirements of Rule 26(a)(2) by his (or her) deadline to disclose expert witnesses, then this court will not allow that expert witness to present evidence in this case.*

* * *

This court does not have any money to help plaintiff hire an expert witness. This court does not have any lists or other information that would help plaintiff or defendants locate or contact an expert witness. *The parties are on their own and they should keep this in mind if they think they might want expert witnesses in this case. There is no extra time in the schedule to allow for extensions, so the parties should begin looking for expert witnesses right away if this type of witness might be important for summary judgment or for trial.*

Dkt. 15 at 2-3, 4-5, emphasis added.

So, this court explicitly warned plaintiff not to attempt an end-run around his disclosure obligations in this case, yet here we are. Defendant timely filed its motion for summary judgment on January 12, 2007. Even if this court were sympathetic to plaintiff's discovery

situation, his request is too little, too late. Plaintiff should focus his attention on preparing his response to the summary judgment motion, which is due by February 12, 2007.

ORDER

It is ORDERED that plaintiff's request for order is DENIED.

Dated: January 15, 2007.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge