

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JANET JACKSON : CIVIL ACTION
 :
 v. :
 :
 THOMAS MILL, et al. : NO. 96-CV-3751

MEMORANDUM ORDER

Presently before the court is defendants' Motion in Limine to Preclude Testimony of Plaintiff's Liability Expert (Doc. #47).

Defendants contend that the expert report of Ronald Lynch fails to comply with the requirements of Rule 26(a)(2)(B) in that the report

"fails to identify any of the data or information which he considered in formulating his opinions . . . does not contain the required complete statement of all opinions to be expressed and the basis and reasons therefor . . . merely provides 12 conclusory statements none of which are supported by any specific basis or reason for the conclusions. . . fails to provide any meaningful assessment of how his conclusions apply to the facts of this case . . . fails to satisfy the standards set for such reports by the Federal Rules of Civil Procedure. . . hinders the [defendants'] ability to reasonably prepare a cross-examination of Mr. Lynch . . . and fails to disclose the basis of his conclusory opinions or identify the application of his opinions to the facts of the instant case."

Defendants ask that the court preclude Mr. Lynch's expert testimony at trial pursuant to Fed. R. Civ. P. 37(c).

The purpose of Rule 26(a)(2)(B) is to allow parties to prepare effectively for cross examination of expert witnesses and, if necessary, to arrange for testimony by additional expert

witnesses. See Fed. R. Civ. P. 26(a)(2)(B) advisory committee's notes for 1993 amendments.

The court finds merit in defendants' contention that plaintiff's expert fails to state the basis and reasons for his opinions in his report. Plaintiff's expert prefaces the opinion section of his report by stating that his opinions in this action "are based upon materials provided, my education and professional experience." However, "[m]ost, if not all, expert opinions reflect the education, training, and experience of the expert and her reliance upon something. To satisfy Fed. R. Civ. P. 26(a)(2)(B) the report must provide the substantive rationale in detail with respect to the basis and reasons for the proffered opinions. It must explain factually why and how the witness has reached them." Hilt v. SEC, Inc., 170 F.R.D. 182, 185 (D. Kan. 1997).

Also, plaintiff's expert characterizes his opinions as being "preliminary." "A 'preliminary' report is not contemplated by [Rule 26(a)(2)(B)], which calls for 'a complete statement of all opinions to be expressed.'" Smith v, State Farm Fire and Cas. Co., 164 F.R.D. 49, 53 (S.D.W.Va. 1995).

Plaintiff has now submitted addenda to her expert's report which contain additional conclusions and provide more specific information as to the basis for them.¹ Plaintiff has

¹ In the addendum marked Exhibit B to Plaintiff's Brief in Opposition, plaintiff's expert has provided reasons for his conclusions. It is unclear, however, if the information provides the basis for his conclusions in the report or just the
(continued...)

now otherwise essentially complied with the other requirements of Rule 26(a)(2)(B).²

In these circumstances, it is appropriate to give plaintiff some additional time to insure that the contents of her expert's original report complies with the requirements of Fed. R. Civ. P. 26(a)(2)(B) if this can be done. See Nguyen v. IBP, 162 F.R.D. 675 (D. Kan. 1995).

ACCORDINGLY, this day of November, 1997, upon consideration of defendants' Motion to Preclude Plaintiff's Liability Expert from Testifying at Trial, **IT IS HEREBY ORDERED** that such Motion is **DENIED**, upon condition that plaintiff provide to defendants, within fourteen (14) days a supplemental report clearly specifying each final expert opinion and the specific basis for each such opinion.

BY THE COURT:

JAY C. WALDMAN, J.

¹(...continued)
addenda.

² Plaintiff's expert provided a listing of the data used to form his opinions; stated that no exhibits were to be used as summaries or in support of his opinions; provided a list of his qualifications and a summary of his publications; and, stated his rate of compensation.