

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

ESTATE OF BETTY DUNFEE,

Plaintiff,

vs.

Civil Action 2:08-CV-759  
Magistrate Judge King

FOREMOST INSURANCE COMPANY,

Defendant.

OPINION AND ORDER

Plaintiff in this action seeks recovery in connection with a fire loss of real and personal property insured by defendant. This matter is now before the Court on defendant's motion, filed pursuant to F.R. Civ. P. 37(c), to preclude plaintiff from introducing evidence not already in defendant's possession and prohibiting plaintiff from introducing expert testimony. Doc. No. 12. There has been no response by plaintiff to the motion.

Defendant bases its motion on its assertion that plaintiff has wholly failed to comply with the deadlines established by the Court in the Rule 16 conference. *Preliminary Pretrial Order*, Doc. No. 9. At that conference, the Court established dates by which initial disclosures under F.R. Civ. P. 26(a)(1) and dates by which expert designations under F.R. Civ. P. 26(a)(2) were to have been made. *Id.* Defendant asserts, and plaintiff does not deny, that plaintiff has not met those deadlines.

Rule 37(c) provides in pertinent part that, where a party fails to comply with the obligations imposed by Rule 26(a), "the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless." Because it appears that

plaintiff has failed to meet its obligations under Rule 26(a), and because plaintiff has neither justified that failure nor established that its failure was harmless, defendant's motion for sanctions, Doc. No. 12, is **GRANTED**.

Plaintiff is **PRECLUDED** from introducing evidence not already available to defendant. Plaintiff is also **PRECLUDED** from introducing any expert testimony in this action.

April 21, 2009

*s/Norah McCann King*  
Norah M<sup>c</sup>Cann King  
United States Magistrate Judge