

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**WINFER "D.D." ABERNATHY**

**PLAINTIFF**

**v.**

**4:08CV04187-BRW**

**UNION PACIFIC RAILROAD COMPANY**

**DEFENDANT**

**ORDER DENYING DEFENDANT'S RENEWED MOTION  
TO STRIKE PROPOSED EXPERT REPORTS AND EXCLUDE  
THE PROPOSED EXPERT TESTIMONY**

There is some merit in Defendant's Motion to Strike Proposed Expert Reports and Exclude the Proposed Expert Testimony (Doc. No. 149), but not enough to cause me to grant it.

Defendant may take a 30 minute telephone deposition of each doctor to explore the areas left unexplored during the earlier depositions, as long as the questions are designed to ferret out information Defendant believes it may not have because of the failure of Plaintiff to supplement the reports.

Plaintiff is directed to pay the court reporter costs for these depositions. I believe there is some merit in Plaintiff's opposition to this motion.

If Defendant's counsel believes these depositions reveal a mother lode of information that would have been revealed with a supplemental report, Defendant can file a motion for attorneys' fees in connection with these depositions. But, truth be told, I would prefer not to hear any more about this issue. So Defendant should not file such a motion unless it discovers a considerable mother lode.

IT IS SO ORDERED this 11<sup>th</sup> day of May, 2011.

/s/Billy Roy Wilson  
UNITED STATES DISTRICT JUDGE