

# EXHIBIT 19

Not Reported in F.Supp.2d, 2004 WL 5644436 (C.D.Cal.)  
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Only the Westlaw citation is currently available.

**This decision was reviewed by West editorial staff and not assigned editorial enhancements.**

United States District Court,  
C.D. California.  
Loni GARCIA, Plaintiff,  
v.  
UNION LABOR LIFE INSURANCE COMPANY,  
Defendant.  
**No. CV 04-0721-WJR (RNBx).**  
Nov. 24, 2004.

Named Expert: Dr. Joseph I. Cohen, M.D., Donald Dadigan

[Craig S. Glatzhofer](#), Craig S. Glatzhofer Law Offices, Huntington Beach, CA, for Plaintiff.

[Beverly Y. Lu](#), [William S. Davis](#), Locke Lord Bissell & Liddell, Los Angeles, CA, for Defendant.

ORDER RE:

PLAINTIFF'S MOTION TO EXCLUDE DEFENDANT'S EXPERT JOSEPH I. COHEN; DEFENDANT'S MOTION TO EXCLUDE PLAINTIFF'S EXPERT WITNESS DONALD DADIGAN

[WILLIAM J. REA](#), District Judge.

\*1 Having considered the Motions, the papers filed in support thereof and in opposition thereto, and the case file, the Court now makes the following determinations: <sup>FN1</sup>

**FN1.** The Court finds the papers submitted by the parties sufficient to make its ruling. Oral argument on this matter is unnecessary.

(1) The Court DENIES Plaintiff's Motion to Exclude Defendant's Expert, Joseph I. Cohen.

(2) The Court DENIES Defendant's Motion to Exclude Plaintiff's Expert, Donald Dadigan.

**DISCUSSION**

Plaintiff Loni Garcia ("Plaintiff") moves the Court to exclude Defendant Union Labor Life Insurance Company's ("Defendant") Expert, Joseph I. Cohen ("Cohen"). Defendant moves the Court to exclude Plaintiff's Expert, Donald Dadigan ("Dadigan"). The Court addresses each Motion separately.

**I. Plaintiff's Motion to Exclude Defendant's Expert, Joseph I. Cohen**

Plaintiff contends that the Court should exclude the expert testimony of Cohen as untimely. Specifically, Plaintiff contends that Defendant's motion is untimely because (1) Defendant filed its Motion after the September 17, 2004, discovery cut-off date, and (2) Defendant did not meet the expert disclosure requirements as set forth by [Federal Rule of Civil Procedure 26\(a\)\(2\)\(C\)](#).

First, the Court finds that although the Parties agreed to a Discovery Cut-Off Date of September 17, 2004 at the April 12, 2004, Scheduling Conference, the Court did not specifically address any expert disclosure requirements. Thus, as long as Defendant's disclosure of Cohen is in compliance with [Rule 26\(a\)\(2\)\(C\)](#), Defendant's Motion will be deemed timely.

Under [Rule 26\(a\)\(2\)\(c\)](#), disclosure of expert testimony is timely as long as such testimony is disclosed "90 days before the trial date." See [Fed.R.Civ.P. 26\(a\)\(2\)\(c\)](#). Here, Defendant served Plaintiff with the Cohen Expert Disclosure on October 13, 2004. Because the trial date is set for January 11, 2005, Defendant's Cohen Expert Disclosure

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falls within the mandatory 90 day period and is thus timely.

In sum, Defendant's disclosure of Expert Cohen on October 13, 2004, was timely because it did not violate the discovery cut-off date and Defendant complied with [Rule 26\(a\)\(2\)\(c\)](#). Thus, Plaintiff's Motion to Exclude Defendant's Expert Cohen is DENIED.

## II. Defendant's Motion to Exclude Plaintiff's Expert, Donald Dadigan

Defendant contends that Plaintiff's Expert, Dadigan, should be excluded because Dadigan is not a proper "rebuttal expert" under [Federal Rule of Civil Procedure 26\(a\)\(2\)\(C\)](#).

[Rule 26\(a\)\(2\)\(C\)](#) allows for rebuttal expert testimony if the expert is disclosed within 30 days after the disclosure made by the other party and "the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph 2(B). See [Fed.R.Civ.P. 26\(a\)\(2\)\(c\)](#).<sup>FN2</sup>

<sup>FN2</sup>. Although Plaintiff attempts to introduce Dadigan's expert testimony based on several reasons, Plaintiff's only viable argument is under [Federal Rule 26\(a\)\(2\)\(C\)](#). Further, because Plaintiff's disclosure of Expert Dadigan was less than the mandatory 90 day requirement under [Rule 26\(a\)\(2\)\(C\)](#), the Court will only permit Dadigan to testify if his testimony serves to rebut the expert testimony of Defendant's Expert Cohen. See [Fed.R.Civ.P. 26\(a\)\(2\)\(C\)](#).

Here, Defendant served Plaintiff with the Expert Cohen Disclosure on October 13, 2004. In response to Defendant's expert disclosure, Plaintiff served Defendant with the Dadigan Expert Disclosure on October 19, 2004. Although Plaintiff's disclosure of Dadigan was timely under [Rule 26\(a\)\(2\)\(C\)](#), the central issue here is whether or not Dadigan's expert testimony serves to rebut or contradict the ex-

pert testimony of Cohen, Defendant's Expert.

\*2 Defendant contends that Dadigan can not serve as a rebuttal expert to Cohen because Dadigan is an insurance expert while Cohen is a medical expert, and thus each expert will testify on entirely different issues. The Court disagrees.

According to Defendant, Expert Cohen's testimony will include statements as to the cause of death, decedent's physical and mental condition, and the circumstances surrounding his death. Plaintiff offers Expert Dadigan's testimony to explain the medical review of the insured and the overall claims handling process. It is clear that, as an insurance expert, Dadigan does not have extensive medical knowledge, however, it is inaccurate to assume that based on this premise that Dadigan's testimony will not contradict or rebut Cohen's expert testimony.

[Rule 26\(a\)\(2\)\(C\)](#) only requires that rebuttal expert testimony serve to contradict or rebut evidence on the *same subject matter*.<sup>FN3</sup> Here, it is quite probable that testimony by Dadigan will serve to rebut or contradict elements of Expert Cohen's testimony.

<sup>FN3</sup>. The Court notes that neither Party provided any case law interpretation of [Rule 26\(a\)\(2\)\(C\)](#) pertaining to rebuttal testimony.

Specifically, if Cohen testifies as to the cause of death and circumstances surrounding the death, Dadigan may then testify as to the policy interpretation of such circumstances. While Cohen may view the cause of death as related to illness or disease, Dadigan, based on his knowledge of the insurance industry, may interpret the same circumstances differently. For example, if Cohen concludes the death was not accidental, Dadigan may contradict that while the cause of death may not be solely accidental, it may still be deemed accidental under the terms of the policy. In other words, Dadigan's knowledge of the claims handling process may serve to clarify the differing meanings of "accidental." Any differing interpretation would

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serve to contradict and/or rebut the subject matter of Cohen's expert testimony.

Lastly, the Court finds that Dadigan's expert testimony will only help to clarify the complexities of the instant case. In the interest of justice, both experts' testimony shall be admitted to assist the trier of fact. Thus, Defendant's Motion to Exclude Expert Dadigan is DENIED.

### CONCLUSION

For the foregoing reasons, the Court DENIES Plaintiff's Motion to Exclude Expert Cohen. Additionally, the Court DENIES Defendant's Motion to Exclude Expert Dadigan. Finally, the Court finds that sanctions are inappropriate here. Thus, Defendant's and Plaintiff's requests for sanctions are DENIED.

This matter is hereby taken off calendar.

C.D.Cal.,2004.

Garcia v. Union Labor Life Ins. Co.

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