

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Case No. 07-cv-02471-PAB-KMT

THOMAS SILVERSTEIN,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS, et al.,

Defendants.

**ORDER GRANTING LEAVE TO FILE MOTION TO EXCLUDE EXPERT WITNESS
TESTIMONY**

This matter is before the Court on defendants' motion [Docket No. 367] seeking leave to file a motion to exclude expert testimony pursuant to Federal Rule of Evidence 702. The original trial preparation order entered by Judge Marcia S. Krieger in February 2008 set the deadline to file Rule 702 motions as "the same as that for filing dispositive motions" and explained that "[i]f the dispositive motion deadline is changed, the Rule 702 deadline automatically changes to match it." Docket No. 34 at 2. The dispositive motion deadline was extended several times, but eventually Magistrate Judge Kathleen M. Tafoya set a deadline of January 26, 2011. See Docket No. 294. Defendant, however, did not file any Rule 702 motions on that date.

Nonetheless, plaintiff still bears the burden of showing that his experts' opinions are admissible at trial and defendants' failure to file a written motion has not waived their Rule 702 objections. See Practice Standards (Civil cases), Judge Philip A. Brimmer, § III.G. Plaintiff acknowledges that defendants may still move to exclude the opinions of his experts at trial. See Docket No. 369 at 4. The Court finds that

addressing defendants' Rule 702 objections in advance of trial will enable a more considered and efficient assessment of those objections. Moreover, plaintiff has not demonstrated prejudice. Accordingly, it is

ORDERED that defendants' Motion for Leave to File a Motion to Exclude Expert Witness Testimony [Docket No. 367] is **GRANTED**. It is further

ORDERED that defendants' Motion to Exclude Expert Witness Testimony [Docket No. 367-1] is accepted for filing. It is further

ORDERED that plaintiff shall file a response to defendants' motion on or before **July 29, 2011**. It is further

ORDERED that defendants shall file a reply, if any, to plaintiff's response on or before **August 5, 2011**.

DATED July 8, 2011.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge