

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

TIMM ADAMS, et al.,)	Case No. CV-03-49-E-BLW
)	
Plaintiffs,)	MEMORANDUM DECISION
)	AND ORDER REGARDING
v.)	DR. MILLER (Docket Nos. 758
)	and 1188)
UNITED STATES OF AMERICA,)	
et al.,)	
)	
Defendants.)	
_____)	

INTRODUCTION

The Court has before it DuPont’s Motion to Strike Plaintiffs’ Improper “Rebuttal” Expert Reports (Docket No. 758) and Dupont’s Motion in Limine to Bar Dr. Terry Miller’s Testimony Regarding Crops And Years Outside the Scope Of His Disclosed Opinion (Docket No. 1188). The first motion (Docket No. 758) requests that the Court preclude the Plaintiffs from offering any opinion set forth in Dr. Miller’s Rule 26 Rebuttal Report to the extent that the opinion is not a direct rebuttal to the opinions offered in the Defendants’ expert opinion reports. The second motion (Docket No. 1188) requests that the Court preclude Dr. Miller from offering (1) opinions which are not set forth in his Rule 26 Reports or his

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deposition, and (2) opinions which were disclosed in his Rule 26 Report, but which he later indicated he would not testify to at trial.

Without dealing with any specific opinion, the Court will generally grant DuPont's motion, since it only seeks what Rule 26 clearly requires. However, the Court is confident that counsel for the Plaintiffs is familiar with the strictures of Rule 26. The Court will expect that, upon soliciting any opinion from Dr. Miller, counsel will be prepared to show the Court (1) where that opinion appears in his Rule 26 Reports, (2) if the opinion appears for the first time in his Rule 26 Rebuttal Report, how that rebuttal opinion responds to an opinion offered by a defense expert, and (3) that Dr. Miller did not suggest during his deposition that this opinion will not be offered at trial.

ORDER

In accordance with the terms of the Memorandum Decision set forth above,
NOW THEREFORE IT IS HEREBY ORDERED, that DuPont's Motion to Strike Plaintiffs' Improper "Rebuttal" Expert Reports (Docket No. 758) and Motion in Limine to Bar Dr. Terry Miller's Testimony Regarding Crops And Years Outside the Scope Of His Disclosed Opinion (Docket No. 1188) are

GRANTED to the extent indicated above.



DATED: **June 18, 2009**

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable B. Lynn Winmill
Chief U. S. District Judge