

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

KENT HIGGINS and)
JENNIFER HIGGINS, Individually and as)
Parents and Natural Guardians, and Next)
Friend on behalf of AH and NH, Minors, and)
JOHN TAYLOR and SARAH TAYLOR,)
Individually and as Parents and Natural)
Guardians, and Next Friend on behalf of JT,)
A Minor, and RACHEL TAYLOR,)

Plaintiffs,)

v.)

3:11-cv-81-RLY-WGH

KOCH DEVELOPMENT)
CORPORATION d/b/a)
Holiday World & Splashin' Safari,)

Defendant.)

ORDER ON DEFENDANTS' MOTION TO STRIKE

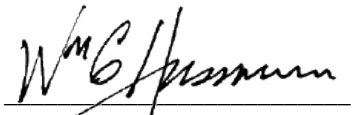
This matter is before the Honorable William G. Hussmann, Jr., United States Magistrate Judge, on Defendant's Motion to Strike (I) Expert Anthony Margherita, M.D., (II) Kent Higgins' Wage Loss and Future Impaired Earnings Capacity Claims, (III) Rachel Taylor's Future Impaired Earnings Capacity Claim, and (IV) Sarah Taylor's Future Impaired Earning Capacity Claim as Untimely, filed October 2, 2012. (Docket No. 57). Plaintiffs' Response was filed on October 16, 2012 (Docket No. 60), and Defendant's Reply was filed on October 23, 2012. (Docket No. 62).

The Magistrate Judge, being duly advised, now DENIES the Motion to Strike.

In this case, Defendant is not contesting liability, and the issue before the court is one of damages. Although three of the Plaintiffs have belatedly filed disclosures of experts on the issue of their future wage losses, the representations in the Plaintiffs' Response amount to good cause for the belated filings. It is the Magistrate Judge's belief that when in doubt, resolution based upon the merits of the claims is preferable to striking testimony and claims unless they are raised immediately before trial. The Plaintiffs' late disclosures will result in a continuance of the trial from February 19, 2013, to Monday, August 5, 2013. Any prejudice to the Defendant by the late disclosures is removed by the continuance of the trial date.

Therefore, the Motion to Strike is DENIED.

SO ORDERED the 29th day of October, 2012.



William G. Hussmann, Jr.
United States Magistrate Judge
Southern District of Indiana

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